

Reimagining Prison

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INSTITUTE OF JUSTICE

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Despite the lowest crime rates in decades, we have 1.5 million people behind prison bars. One and a half million—2.2 million if you count jails. Let those numbers sink in. We have lost generations of young men and women, particularly young men of color, to long and brutal prison terms.

Director's Note: Why reimagine prison?

This document—unlike anything we have ever produced at the Vera Institute of Justice (Vera)—is about the possibility of radical change. It asserts a dramatic reconsideration of the most severe criminal sanction we have: incarceration. It articulates a view that is sure to be alien to many. Yet we need not accept as a given the way we do things now, and we encourage you to envision a different path. Indeed, our vision has concrete reference points. It is in the hope, daring, and promise of a small unit for young adults in a Connecticut maximum-security facility. It is inspired by what we learned studying and visiting prisons in Germany, where the very conditions and operations of that entire system are defined by a commitment to uphold human dignity—a commitment born of that country's coming to terms with the Holocaust. And it is rooted in our own obligation—now physically exhibited in a museum and memorial in Montgomery, Alabama—to acknowledge and atone for our brutal history of dehumanization and racial oppression and to understand how it has shaped what we do today in our justice system. Our mission is to link these things and suggest a path forward that is as much about reconciliation as it is about criminal justice reform.

In October of last year, John,* a young adult in Cheshire Correctional Institution—where most people spend 22 hours a day in their cells—was accepted into a new small housing unit. Though the unit is within the same facility, John was handcuffed and shackled and placed in a prison van, subjected to strip searches, and given a medical assessment. In transit, John spent time in a kind of purgatorial interstitial space, waiting in what he described as “a full cage from top to bottom, something like on the show *Lockup* or *Hard Time*.”

But once inside the new unit, John entered a different world. The corrections officers greeted him and shook his hand. They asked him and the other young men in the unit serious questions about their goals and expressed genuine interest in their thoughts, feelings, and plans. In a letter to his family, John described this place as “not a regular prison environment [but] an open, caring, hopeful environment.” He began to develop relationships both with older men who act as mentors in the unit and corrections officers, with whom he played chess, talked, and reflected on visits with his family. Each day, John attends group discussions with other young men and older mentors, he participates in town

* Name has been changed to protect the individual's privacy.

hall meetings where everyone gathers to talk about and resolve issues, and he joins programs that teach him about conflict resolution and money management. He spends the majority of his days outside his cell—attending programs, moving freely around the unit, and playing basketball in the outside courtyard. John, like all the men in the unit, is learning about responsibility and actively working to become a better person for himself and society.

John's prison experience spans two possible futures for America's prison systems: the continuation of the punitive, retributive, and dehumanizing routines of the past; and the possibility of a reimagined future built on a wholly different set of foundational principles, designed to promote safety and success. The new unit John found himself in—called T.R.U.E., an acronym that stands for Truthfulness (to oneself and others), Respectfulness (toward the community), Understanding (ourselves and what brought us here), and Elevating (into success)—is a groundbreaking model in which we and our partners in Connecticut reimagine incarceration for young men aged 18 to 25. It was inspired by a visit to a young adult facility in Germany, where corrections officials from Connecticut were first exposed to what could be, not just what had always been. It represents a hopeful possibility for change in the way America handles incarceration. According to one of its participants, “the T.R.U.E.

program is dedicated to the reclamation of moral integrity,” inherent in which “is the recognition of the dignity of all prisoners in general.”

Unfortunately, while T.R.U.E. has inspired several other similar efforts, at the moment its goals and practices are shared by only a tiny fraction of prisons in America. At the vast majority of the facilities in the massive network of prisons across the country, people spend endless days in cells; they are marched to and from their limited activities; and their names and identities are lost, replaced with numbers, uniforms, and a stultifying idleness and isolation that impede cognition and fundamentally alters social-psychological processes. And for those who work behind the walls, the daily existence can hardly be described as enviable. It is telling that in American prisons, staff count down the years to retirement using the same language as those they are paid to keep locked up. In prison, everyone is serving a sentence.

More than a decade ago, Vera's own Commission on Safety and Abuse in America's Prisons tried to bring life behind bars fully into focus. We detailed the punishing and often inhumane conditions of confinement suffered by the hundreds of thousands of men and women who are held in our nation's prisons. We did so because we believed the country was malignly ignorant of what was going on behind those



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grey walls. While we painted a picture of these harms, we did not sufficiently examine the deep roots that our current practices have in this country's history of legalized slavery and racial oppression. We do so here.

Today, in America, we are in a different moment that demands such an examination. We owe it to those on whose behalf we work to be more forthright and more searching. We owe it to the millions of Americans who are grappling with our racism and its implications to a degree that has not existed for decades. We are indebted to the scholars and advocates who have brought these roots painfully and inexorably to the surface over the last few years, as well as to those who dug deep in the century before, but with a less attentive

or welcoming audience. The day in which these hard and shameful truths can be spoken—and must be examined—is here. With the opening in Montgomery, Alabama, of the Legacy Museum: From Enslavement to Mass Incarceration, and the National Memorial to Peace and Justice, which memorializes the lives of those lynched in our nation's campaign of racial terror, Americans are being newly asked to reckon with the truth about our nation's past and to sow seeds of hope for the future.

Our reckoning must include a deep consideration of the purpose and use of incarceration in this country. While policymakers, the public, and our reform allies now express dissatisfaction with the overwhelming costs—in outright expenditures, persistently high recidivism

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rates, and opportunities lost—of the current system of incarceration, reform efforts have tended to focus on stanching the flow into our system of mass incarceration. This is good, and right. We must, however, also evaluate our prison practices and include a critical re-envisioning of the purpose and experience of incarceration. Despite the lowest crime rates in decades, we have 1.5 million people behind prison bars. One and a half million—2.2 million if you count jails. Let those numbers sink in. We have lost generations of young men and women, particularly young men of color, to long and brutal prison terms. Even when they return home, they remain lost, as deplorable prison conditions and treatment seriously impair their ability to live productive and healthy lives long after release. And so, we find ourselves at an important crossroads.

In June 2016, we launched this initiative, Reimagining Prison. We sought to explore how America could do things differently—how we could fundamentally alter the way we view people who make mistakes and come into contact with the justice system and how we could fundamentally alter our conception of the obligations we have to them as fellow human beings in this shared enterprise of democracy. This project, and the resulting report, is—as I

said above—nothing like any that Vera has ever done in the past. It was an elaborate and challenging thought experiment, which brought together voices and ideas of corrections chiefs, formerly incarcerated people, scholars, thought leaders from across the political spectrum, and members of the public. Through these discussions and through policy, academic, and practical research, we have settled on a singular foundational value—human dignity—on which a new prison system, and new ethos of confinement, should be based. This report presents a vision of what could come to pass should we decide as a country that incarceration will no longer be used as a tool of racial oppression. It presents a vision of what could come to pass should we decide as a country that those whom society fears—those for whom incarceration is the last and only tool we can muster to redress the harms they may have done—are not banished as members of our human family and forever retain the inalienable right of human dignity.



Nicholas Turner
President, Vera Institute of Justice

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About the Reimagining Prison project

Vera formally launched the Reimagining Prison project in June 2016 at the Eastern State Penitentiary Historical Site in Philadelphia—the nation’s first prison—at an event that featured the voices of corrections leaders, formerly incarcerated people, scholars, thought leaders from across the political spectrum, and members of the public. The ideas discussed at this event contributed to the topics explored during the full lifetime of the project, most notably the importance of cultivating positive manifestations of autonomy even during incarceration, a move away from the language of rehabilitation in favor of a focus on providing incarcerated people the tools for success, and the need for a significantly smaller system as a prerequisite to real change.

Recognizing the wide reach of the criminal justice system and the diverse groups of people who are touched by it in different ways, a key component of the project was speaking with groups of stakeholders about their ideas of what prison could be—what it should achieve, how it should achieve that, and what it would take to make a system dedicated to those goals real. In these discussions, Vera introduced stakeholders to a set of proposed foundational values for a new system, an ethos of confinement, and real-world examples of these principles enacted. These groups included researchers, criminal justice and corrections practitioners, conservative thought leaders, advocates for progressive criminal justice reform, government staff, political leaders, those directly impacted by crime and prison, and those who advocate on their behalf—both experts on victimization and currently and formerly incarcerated people. These rich debates contributed a new set of perspectives to the reimagining enterprise. They revealed a need for an in-depth examination of historical and current practice and a strong link in many participants’ minds between economic opportunity, social context, and incarceration. Vera also engaged

the architectural firm MASS Design Group to reimagine the physical layout of a prison facility based on the principles set out in this report.

Finally, Vera organized a national prison visiting week, during which more than 400 people participated in public tours of 30 facilities in 17 states. In developing these events, corrections agencies reached out to community members, inviting them in to see their prison facilities. This included outreach to new partners in some instances, such as Chambers of Commerce. This week of events highlighted the possibilities of greater connectedness between prison and community. Through it, corrections agencies showed a great willingness to open their doors to members of the public, and those same laypeople welcomed the opportunity to engage with the prisons in their communities. This experience helped to build Vera's vision of community-connected prisons and the opportunities these connections might offer.

In addition to these activities, Vera conducted policy, academic, and practical research to ground its vision in American history, current prison practice, and legal principles.

These strategies make up the Reimagining Prison project, the goal and product of which is this report, which summarizes and presents the major areas of thought and practice that led to the development of Vera's foundational principles for a reimagined prison.



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To take a truly decisive step away from the past, America needs a new set of normative values on which to ground prison policy and practice values that simultaneously recognize, interrogate, and unravel the heretofore persistent connections between racism and this country’s systems of punishment.



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Introduction

Almost 150 years ago, just five years after the end of the Civil War, the Supreme Court of Virginia articulated a vision for prison that was a direct descendant of slavery. The court said that the incarcerated person “not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him,” and that, for the period of time in custody, he was “the slave of the state.”¹ This vision of prison was not accidental and would hold sway for generations. It manifested itself in such practices as convict leasing, a brutal and financially lucrative system in the Reconstruction South that created incentives for governments to arrest and convict newly freed black people in order to sell their labor to private industry; and chain gangs, in which incarcerated people, primarily black men, were shackled together, publicly humiliated, and forced to perform public works such as building roads or clearing land.²

Although such practices largely came to an end by the middle of the 20th century, the “slave of the state” vision of prison persists. Over the last 50 years, inhumane working and living conditions and the daily degradations of prison life have been the stated reasons behind continuing prison unrest and protest. In 1971, people incarcerated at the Attica Correctional Facility in New York took over the prison for two weeks, protesting what one participant, Elliot Barkley, described as “the ruthless brutalization and disregard for the lives of the prisoners.”³ He declared: “We are men! We are not beasts and we do not intend to be beaten or driven as such.” In 2013, some 30,000 people in various California correctional facilities refused food—some for close to two months—in protest of the state’s use of long-term solitary confinement.⁴ In September 2016, the largest nationwide prison strike took place—covering 24 states and including up to 24,000 participants—during which incarcerated people staged work stoppages or hunger strikes to object to unfair use of prison labor, poor wages, abusive guards, overcrowding, and poor health care, among other grievances.⁵ Commenting on his \$2-a-day pay—an amount only sufficient to buy a bar of soap at the commissary or make a short phone call—one participant, David Bonner, declared emphatically, “This is slavery. We’re forced to work these jobs and we get barely anything.”⁶ And, in April 2018, the dismal reality of life in prison—two meals of “barely nutritional,” sometimes moldy, food; “putrid water;” metal plates placed over windows; sweltering and filthy rooms; and no-hope idleness—simmered into explosive acts of violence at a prison in South Carolina that left seven dead and 17 injured. All incarcerated people; guards had evacuated the unit—and, in August 2018, incarcerated people began a 21-day labor strike in response to the tragic incident in South Carolina to protest U.S. prison conditions, including mandated labor for meager wages.⁷

Prison in America continues to be a place of severe hardship for those held there—a degree of hardship that is largely inconceivable to people who have not seen or experienced it themselves or through a loved one. It is an institution that causes individual, community, and generational pain and deprivation. For those behind the walls, prison is characterized by social and physical isolation, including severe restriction of personal movement. Prison enforces idleness and denies access to productive

activities. It provides insufficient basic care, such as adequate food and medical services, and prevents incarcerated people from securing those services for themselves. Incarceration results in a loss of meaningful personal contact and the deterioration of family relationships. Prison strips people of constitutional rights and avenues to justice. Those who work in prison are not exempt. Corrections officers suffer from post-traumatic stress disorder and commit suicide at significantly elevated rates.⁸

✦ **The harsh conditions within prisons have been demonstrated neither to ensure safety behind the walls nor to prevent crime and victimization in the community.** ✦

Beyond the walls of prison, incarceration's impact is broad: mass imprisonment disrupts social networks, distorts social norms, and hollows out citizenship.⁹ The high rate of incarceration—most notably among black Americans—as well as the individual impact of incarceration, has decimated the communities from which people in prison come.¹⁰ Its impact is also intergenerational—the children of incarcerated parents are more likely to experience psychological trauma, difficulties in school, and financial challenges.¹¹ The cumulative result is a pervasive and pernicious denigration of the humanity of those who live and work inside American prisons that ripples out to communities and across generations.

Over this country's long history of using prisons, American values of fairness and justice have been sacrificed to these institutions in the name of securing the common good of public safety. But the harsh conditions within prisons have been demonstrated neither to ensure safety behind the walls nor to prevent crime and victimization in the community.¹² These



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realities beg the question: isn't there another way? We have failed to ask this question with sufficient seriousness and thoroughness. The time for us to do so is now.

Policymakers and the general public are now more vocal in calling for a new direction in American criminal justice policy.¹³ Buoyed by public opinion polls that demonstrate overwhelming public support for alternatives to incarceration, change is afoot in both red and blue states, and criminal justice reform has become one of the few issues that bridges the political divide, with nearly all such reform packages receiving bipartisan sponsorship.¹⁴

The reform efforts underway to date have focused primarily on reducing the number of people in American prisons.¹⁵ This is with good reason. According to the latest available data, the country holds just under 1.5 million people in its state and federal prisons.¹⁶ At the 2007 high water mark, one in 100 American adults was in prison or jail—a direct result of policy decisions that made incarceration the response to all manner of social problems from urban blight to drug use in the community; a phenomenon termed “mass incarceration.”¹⁷ Now, paradoxically, mass incarceration is widely viewed as a serious social problem in and of itself.¹⁸ Current improvement efforts have sought to reform charging and

sentencing practices, divert people from incarceration altogether, and ease reentry barriers to reduce recidivism (the rate at which people return to prison after release).¹⁹ These strategies are all crucial to reversing America's incarceration boom and mitigating the negative impacts that incarceration has on disadvantaged communities, people of color, state and federal budgets and, most importantly, individual potential.

However, we have not yet confronted two fundamental aspects of America's system of incarceration. First, we pay inadequate attention to reforming the very manner in which we incarcerate—the conditions inside prison and the overarching goals of the system.²⁰ Excepting a few limited examples, corrections practice remains underpinned by the objectives of past eras: retribution, incapacitation, and deterrence.²¹ Ongoing concern about reducing the number of people in prison has not been matched by an equally forceful focus on transforming incarceration itself—an experience that has become harsher and more onerous in direct response to decades of “tough on crime” political sentiment. It is a problem that so many reformers in the field don't “do” conditions of confinement—as if the lives of people equal in number to the population of Philadelphia don't merit it.

Second, we as a nation have not yet fully grappled with the ways in which prisons—how they have been used, the purposes they serve, who gets sent to them, and people's experiences inside them—are intimately entwined with the legacy of slavery and generations of racial and social injustice.²² The current cultural moment gives us an opportunity to address this long-recognized but uncomfortable reality. More than at any time in the recent past, America is engaged in a pronounced dialogue about racism and racial injustice, both historical and current. Culturally, examples of this firmament abound. Just this year, the National Memorial for Peace and Justice, the nation's first memorial dedicated to documenting and acknowledging racial terror and lynchings, opened in Montgomery, Alabama.²³ Ava DuVernay's documentary tracing the lineage of mass incarceration to slavery, *13th*, was watched by millions, met with critical acclaim, and garnered dozens of awards and accolades.²⁴ In 2016, the National Museum of African American History and Culture—the only national museum devoted to documenting the lives, history, and culture of black Americans—opened as the newest museum of the Smithsonian Institution.²⁵ Figures like Jay-Z, Malcolm Jenkins, and Colin Kaepernick

have proactively used their platforms to raise consciousness in the tradition of Muhammad Ali, Harry Belafonte, and Ruby Dee.

Public discourse around the lived experience of being black in America is at an all-time high. Ongoing police violence against black Americans is regularly documented and covered on social and mainstream media.²⁶ The #BlackLivesMatter movement has spawned a new generation of activists and leaders, helping spur political responses to counteract racism.²⁷ The country is in the midst of a genuine sociocultural movement of heightened consciousness about racial and social injustice, triggered by appalling manifestations and validation of racism (even from the current President himself), but strengthened by the growing number of people who are willing to acknowledge the country's history of racial oppression and support actions to rectify it.



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It is time to acknowledge that this country has long used state punishment generally—and incarceration specifically—to subordinate racial and ethnic minorities. And so, to take a truly decisive step away from the past, America needs a new set of normative values on which to ground prison policy and practice—values that simultaneously recognize, interrogate, and unravel the heretofore persistent connections between racism and this country's systems of punishment.²⁸ Committing to new principles in this way is vital. The end of mass incarceration will not result in zero people in prison. If reform efforts are successful, America would

be fortunate to return to incarceration rates seen circa 1970—a rate of less than one person per 1,000 behind bars.²⁹ Should this goal be realized without addressing the values that underlie American prison systems, however, more than 300,000 people would still be subject to the current dismal conditions of confinement and all their known associated negative outcomes.³⁰ And, given the current make-up of the prison population, those who remain would likely come disproportionately from racial and ethnic minorities—unless current policies and practices change.

Through this report, the Vera Institute of Justice (Vera) offers a new and fundamentally different approach to incarceration in the United States—one that is grounded in the single core principle of respect for human dignity. This principle dictates that “[e]very human being possesses an intrinsic worth, merely by being human.”³¹ It includes the recognition of a person’s capacity for self-respect, self-control, empowerment, autonomy, and rationality.³² It is inviolable—and remains intact even when one breaks rules or engages in criminal behavior while in prison. It applies to people living in prison as well as the corrections staff who work there. Out of this emerges a system dedicated to fairness, equity, and respect. Human dignity relies on an entirely different set of assumptions about incarcerated people than those that not only instigated and sustained the past four decades of tough-on-crime policies, but also America’s historic use of prison as an institution of racist social control.

The principle of human dignity is neither foreign nor unfamiliar—as an organizing legal principle it is well founded in law and practice both domestically and internationally. Human dignity emerged as a central value underpinning international human rights law in the aftermath of World War II—as a response to the Holocaust and other wartime displays of inhumane, degrading, violent, and unequal treatment of people. In the United States, it is a common legal concept that is said to underlie the Eighth Amendment’s protection against cruel and unusual punishment, and it influences the interpretation of other constitutional amendments. Through study trips taken to Europe, Vera had the opportunity to witness firsthand the many different ways in which human dignity as a normative value finds real expression in German and Dutch prison policy and practice; and Vera is planting seeds of this in places like Connecticut, where an incarcerated young adult described an innovative new unit based

on human dignity principles as “an open, caring, and hopeful environment” where people want to “change their lifestyles”—a far cry from the typical prison experience in America.³³

Basing American corrections practice on the principle of human dignity would be an intentional acknowledgment of and response to this country’s history of racial and ethnic oppression and the role formal state punishment systems have played in creating and perpetuating inequality. The United States’ legacy of legal slavery and its denial of the personhood of black Americans have direct ties to the disproportionate representation of people of color among prison populations today. In fact, foundational conceptions of outsiderhood—particularly as manifested through the markers of race and ethnicity—are so thoroughly stitched into America’s understanding of punishment that tools of social control—from legislation to case law to institutions such as prison—have gone hand in glove in imposing and reinforcing preferred social hierarchies based on race or ethnicity—and even class.

Coming to terms with the long and pervasive reach of such a difficult history does not come easily, especially since the nation-building enterprise often requires the forging of a country’s own positive self-image.³⁴ This may mean flattening complicated histories that frustrate the ultimate aim of national self-realization—by drawing hard temporal boundaries between past and present, or minimizing or even forgetting challenging and inconvenient historical truths—to better align purported national symbols, narratives, rituals, and memories in a way that supports or reinvigorates a triumphant, progress-oriented national self-image.³⁵ We have done this in America. One only has to look at the national holiday of Thanksgiving for an example of this. While Thanksgiving celebrates a widely accepted United States origin story centered around a celebratory meal and gift-giving between Pilgrim colonists and indigenous people, it silences the fact that colonization of North America was durably destructive to Native Americans—and is instead largely a story of the displacement and subjugation of indigenous people, an enterprise that was entirely constructed on a platform of racial privilege and oppression.³⁶ Recognizing the role of race in American history chastens these types of illusions or sanitized versions of history. The point in this instance is to recognize the role of race in the making of America writ large, which

makes it less plausible to fashion and sustain an understanding of how incarceration has specifically evolved in this county—its purposes and uses—without understanding how race, too, made incarceration what it is today.

Movements that seek to reveal, make amends for, and respond to historical social injustice are not novel: they have been pursued by nations that faced similarly complex and painful histories. They mark the global landscape, from de-Nazification in Germany after 1945, to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families in Australia in the 1990s, to South Africa's Truth and Reconciliation Commission between 1996 and 1998, among others.³⁷ The United States must engage in a similar endeavor to come to terms with the nation's history of racial and ethnic subordination, of which this effort to re-center corrections practice is but one part.³⁸ An organizing system principle based on human dignity must govern the new aims of punishment; indeed, a state that recognizes human rights, the rule of law, and democracy demands it.

This report sits at the convergence of the criminal justice reform movement and the wider cultural push to recognize and ameliorate the country's legacy of racial oppression and its broader connections to law and punishment. But nothing is assured. Historically, every wave of political gain for black Americans—the end of the Civil War, the Great Migration, the Civil Rights movement—has been followed by a prison boom. A fear of crime is fomented, fueled by nativist rhetoric, and vulnerable populations—people of color, immigrants, people with mental illnesses—are swept into the control of the criminal justice system. A backlash against the two movements—the one seeking to reform the criminal justice system and the other seeking racial and social justice—is alive and well. The same “law and order” rhetoric uttered by Richard Nixon and Ronald Reagan—who together ushered in the era of mass incarceration—is now being elevated and exacerbated in the anti-crime policies of the current administration.³⁹ People—not just black people—are reduced to “animals.”⁴⁰ By recognizing and responding to the vestiges of white supremacy in America's prison system, Vera hopes to breathe life into its call for humanity—and create a blueprint to practice human dignity in prison systems, which may serve to counteract the backlash that is here.

To begin, this report illustrates the current prison experience: it examines who is in America's prisons today and the conditions they endure. (See "Examining prisons today" at page 13.) Recognizing our complex legacy of slavery and racial injustice—and that the prison experience of today is the product of prison experiences of yesterday—the report then delves into the history of prison in the United States, tracing in particular how its origins are deeply intertwined with centuries of unequal treatment of people of color. (See "American history, race, and prison" at page 31.) The report then introduces a new vision of incarceration based on respect for human dignity. Vera proposes that human dignity should serve as the cardinal principle that dictates how prison systems in this country organize themselves from top to bottom. (See "Human dignity as the guiding principle" at page 47.) Human dignity should act as a standard to which the system must perform, as well as a guide to set the contours of all prison policies and practices. While the vision presented here will no doubt be seen as aspirational by many, or even naive by some, this report proposes a series of practice principles to operationalize the concept and offers concrete guidance on what a system governed by human dignity might look like: namely, that it would (1) respect the intrinsic worth of each human being; (2) elevate and support personal relationships; and (3) respect a person's capacity to grow and change. (See discussion of Vera's proposed practice principles beginning at page 52.) The report concludes by pointing to how human dignity can be achieved in the short term by outlining how some jurisdictions are already putting it into practice. (See "Achieving human dignity today" at page 77.) Even in the midst of the mass incarceration era, there are promising models to draw from that show reimagining prison is possible now.

Listening to victims

Responding to victims is often cited as justification for harsh punishment policy. Yet this is inaccurate. A national survey and recent qualitative research paint a complex picture of crime victims that is not clearly reflected in debates on crime policy. When a representative sample of victims is surveyed about its views on crime policy, a vision for the criminal justice system that fosters the capacity for those who commit crimes to change begins to take shape. By a 2-1 margin, victims support rehabilitative over punitive responses to crime.^a Victims prefer state spending on mental health and drug treatment, job creation, and education over spending on prisons and jails.^b Perhaps most surprisingly, 60 percent of victims prefer shorter prison sentences focused on rehabilitation over longer sentences aimed at incapacitation for extended periods.^c Three victims believed prison in its present form increased the likelihood of a person committing a future crime for every one victim who believed it prevented future crime.^d This data suggests that there is a disconnect between the widespread needs and desires of victims and the ways in which their voices have been called on to inform policy in the past. When policymakers, judges, and corrections

administrators frame punitive policies as deferential to the rights of victims, they (perhaps unknowingly) distort the needs of those they are seeking to respect and honor.^e

Furthermore, victimization goes hand in hand with incarceration. A qualitative study found that many people who are sentenced to prison as adults report long histories of violence.^f These experiences begin in childhood in the form of physical and sexual abuse, typically within the home, and later occur as fighting and violence among peers in late childhood, adolescence, and adulthood. In addition to being a party to these events as victim or perpetrator, respondents had also witnessed extreme violence during childhood and into adulthood. Nearly 40 percent had witnessed the killing of another person.^g These experiences have long-lasting effects, contributing to chronic pain, drug use, post-traumatic stress disorder (PTSD) and other mental health issues, housing instability and homelessness, and educational deficits (such as dropping out of school).^h Some research has suggested that contact with the criminal justice system may actually increase the likelihood that a person will be a victim of a crime in the community.ⁱ

66% support rehabilitative over punitive responses to crime.

60% support state spending on treatment, jobs, and education over prison and jails.

75% believe prison increases recidivism.

^a Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice* (Oakland, CA: Alliance for Safety and Justice, 2016), 15, <http://perma.cc/NBU2-LFLU>.

^b *Ibid.*, 26.

^c *Ibid.*, 16.

^d *Ibid.*, 14.

^e Robert Elias, "Which Victim Movement? The Politics of Victim Policy," in *Victims of Crime: Problems, Policies and Programs*, edited by Arthur J. Lurigio, Wesley G. Skogan, and Robert Carl Davis (Thousand Oaks, CA: SAGE Publications, 1990), 229-47.

^f Bruce Western, *Homeward: Life in the Year After Prison* (New York: Russell Sage Foundation, 2018), 63-82.

^g In addition, half had been beaten by their parents, one-third grew up amid some other type of family violence, and

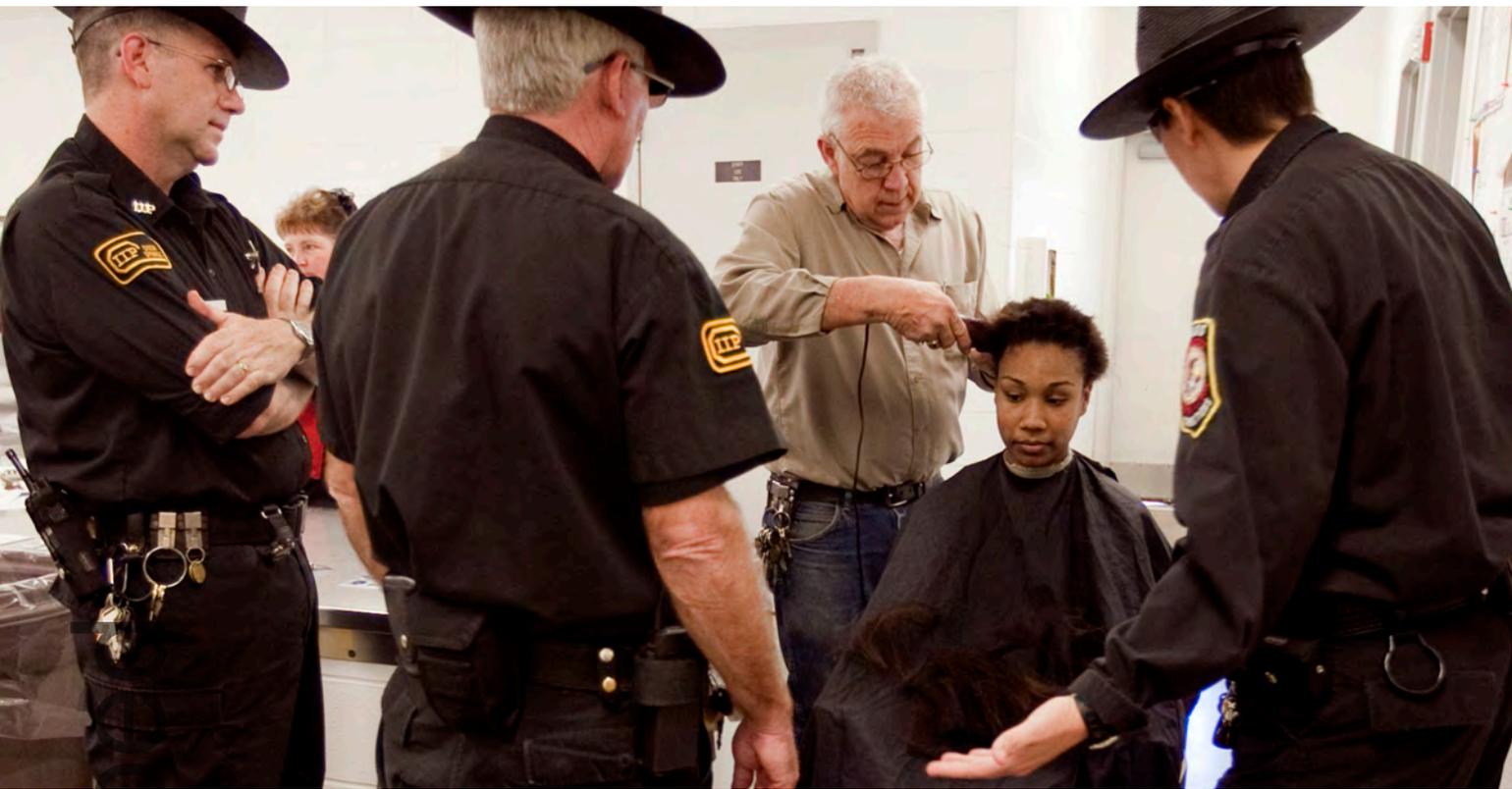
16 percent were sexually abused. Ninety percent of participants reported fighting in adolescence and half had experienced a serious physical injury in childhood. Once in prison, violence continued, with 75 percent reporting witnessing an assault on another incarcerated person. Violence followed these individuals home from prison as well. In the year after prison, 50 percent of respondents witnessed an assault on another person, 25 percent had been attacked, and another 25 percent reported assaulting another person. *Ibid.*, 67.

^h *Ibid.*, 63-82.

ⁱ For example, in an ethnographic study of a low-income neighborhood in Philadelphia, Pennsylvania, the sociologist Alice Goffman observed that a person who has a history of arrest, a pending case, or a probation or parole term to serve may be targeted for theft or violence because they are the least likely to seek assistance or protection from the police. Alice Goffman, *On the Run: Fugitive Life in an American City* (New York: Picador, 2015).



People of the



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Chapter 1

Examining prisons today

“I’m beginning to believe that ‘U.S.A.’ stands for the Underprivileged Slaves of America,” wrote a 20th-century prisoner from Mississippi in a letter detailing the daily violence he witnessed behind prison walls. His statement resounds with a long tradition of prisoners, particularly African-American prisoners, who have used the language and narrative of slavery to describe the conditions of their imprisonment.”

– Kim Gilmore, “Slavery and Prison: Understanding the Connections,” *Social Justice*, 2000⁴¹

“Daily degradations grind away at men’s souls. As one prisoner explained, the [South Carolina] Corrections Department has reduced visits from family members, limited their ability to send food and there are now only ‘two meals a day on weekends.’ . . . One man . . . sent pictures of the metal plates that prison officials put over the windows, meaning too little light and fresh air gets into this sweltering and filthy prison. Others have sent photos of the food they are served, which in contrast to the menu that the Department of Corrections posts publicly, looks barely nutritional. The men say it is sometimes moldy, and for those on lockdown, it is served erratically and cold.”

– Heather Anne Thompson, “How a South Carolina Prison Riot Really Went Down,” *New York Times*, 2018⁴²

Life in America’s prisons is dismal, and the brunt of these dismal conditions falls overwhelmingly on people of color and those who are socially and economically disadvantaged, the result of their systematic and historic economic and social exclusion from mainstream—predominantly white—American society.⁴³ Once in prison, their ties to that mainstream society are severed—often irreversibly—through prolonged separation from family and community. While behind bars, incarcerated people are subjected to degrading treatment, inhumane conditions, and abusive interactions—all of which result in substantial social, behavioral, and cognitive trauma that handicap them in their efforts to reintegrate into society upon release. In short, prison thwarts their chances for a successful and fulfilling life.

While some advocates, organizations, and policymakers have focused on improving conditions within prison in recent years, the isolation of prison facilities and the staff who work within them make wholesale change a slow and difficult process.⁴⁴ Changes to practices are introduced slowly and the implementation of new policies and practices is imperfect. Still, in recent years, some corrections agencies have sought to improve life behind bars, for instance by limiting their use of solitary confinement and increasing the number of in-prison postsecondary educational programs.⁴⁵

The underlying values of mass incarceration

Throughout history, governments and scholars have invoked various rationales for removing people from society and keeping them in prisons in response to criminal behavior. The three values below ground American corrections practice today.

- **Retribution.** A theory of justice in which the purpose of criminal penalties is to punish individuals for crimes committed. Retributive models are retroactive in nature: they punish what has already occurred and contemplate no effect on future behavior.
- **Incapacitation.** A theory of crime prevention in which prison's purpose is to separate people from society and thereby limit their ability to commit additional crimes.
- **Deterrence.** A theory of crime prevention that posits that by seeing punishment enacted on others—or by experiencing punishment

oneself—a person will be motivated to avoid crime in order to avoid such consequences.^a

^a In 2014, the National Academy of Sciences, a nonpartisan social science research body, concluded in a comprehensive literature review on incarceration trends in the United States that these values replaced an earlier period of rehabilitative ideology in American criminal justice policy. See Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 320-33. For definitions of retribution, incapacitation, and deterrence, see Kevin Carlsmith, John Darley, and Paul Robinson, "Why Do We Punish? Deterrence and Just Deserts as Motives for Punishment," *Journal of Personality and Social Psychology* 83, no. 2 (2002), 284-99, 285-86.

Despite these efforts, prison life by and large remains rife with deprivation, isolation, and violence.

Who is in prison?

Who ends up in America's prisons is the result of decisions made by numerous actors in the criminal justice system. Legislators enact laws that define crimes and set sentence lengths. Police make arrests. Prosecutors negotiate plea deals. Once a person is convicted of a criminal offense—whether as a result of a jury trial or, more likely, by plea—the judge must determine the punishment. Generally, judges are statutorily permitted to impose sentences within a range of lengths and types, such as probation or prison. Those sentences aren't always served in full. Historically, and in most states still, after a minimum amount of time served, people sentenced to prison may be paroled at the discretion of a parole board based on behavior, evidence of self-improvement, and other factors.⁴⁶ But between the 1970s and 1990s, the federal government and many state legislatures passed laws limiting judicial and parole board discretion.⁴⁷ Policies in many jurisdictions shifted toward more structured and transparent sentencing schemes—meaning that the sentence for a crime was predetermined by

law, and judges could do little to vary it. This generally resulted in longer sentences for all types of crimes.⁴⁸ These new laws included sentencing guidelines, determinate sentences (fixed prison terms and no parole), and mandatory penalties (such as mandatory minimum sentences, automatic sentence enhancements, or habitual offender laws).⁴⁹ Many jurisdictions also passed so-called “truth-in-sentencing” policies, which required individuals to serve a substantial portion of their sentences—often 85 percent—before they could be considered for release.⁵⁰ By the turn of the 21st century, longer sentences, combined with more aggressive policing strategies for quality-of-life and low-level drug crimes in many urban centers, resulted mostly in more people going to prison—and staying there for longer periods of time.⁵¹

These people are disproportionately Americans of color. This is most visible in the number of black Americans behind bars, although other groups—such as Latino and Native American people—are also

Black Americans are overrepresented in prison:

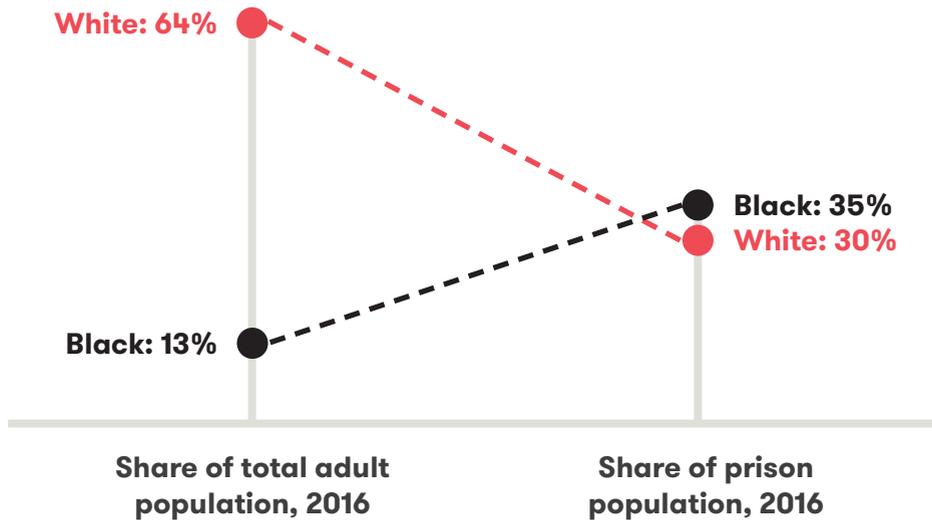


Figure adapted from John Gramlich, “The Gap Between the Number of Blacks and Whites in Prison in Shrinking,” Pew Research Center, January 12, 2018 [Chart: “Blacks and Hispanics are Overrepresented in U.S. Prisons”], <https://perma.cc/8CSW-LGBE>. Data Source: Bureau of Justice Statistics. Pew Research Center bears no responsibility for the analyses or interpretations of the data presented here. The opinions expressed herein, including any implications for policy, are those of the author and not of Pew Research Center.

overrepresented in prison in comparison with their presence in the general population.⁵² Today, black men and women make up just 13 percent of the country's population, but they represent more than 35 percent of those incarcerated in American prisons—making black Americans the largest racial or ethnic group in state or federal prisons.⁵³

Other groups of people with characteristics that put them in the minority of American society—such as their sexual orientation or gender identity—are also admitted to prison at disproportionate rates. Lesbian, gay, and bisexual men and women go to prison at three times the rate of their heterosexual counterparts.⁵⁴ When women are examined alone, that rate jumps to eight to 10 times.⁵⁵ In addition, transgender and gender nonconforming men and women report spending time in jail or prison at rates double to quadruple the rates of the general population.⁵⁶

The people who enter prison today are also characterized by social and economic vulnerability.



> **They are poorer than the average American.** People in prison report substantially lower incomes prior to incarceration than their non-incarcerated counterparts. Before going to prison, incarcerated people earn incomes that are 41 percent lower than people who do not go to prison.⁵⁷



> **They have lower levels of education.** Nearly 75 percent of those in state prison, and 60 percent of those in federal prison, have no high school credential—and only about a third of those without it successfully obtain one during their prison terms.⁵⁸



> **They experience higher rates of mental illness.** More than half of incarcerated individuals report mental illness: 56 percent of people in state prisons and 45 percent of people in federal prisons report mental illness, with the more severe measure of “serious mental illness” reported at

rates three to four times that of the general population. The likelihood of mental illness of any degree is more prevalent among incarcerated women and youth.⁵⁹



> **They have been victims and experienced trauma themselves.** Incarcerated people also report high rates of past trauma and victimization.⁶⁰ Indeed, the profiles of those who are convicted of crimes and those who are victims of crimes parallel—they are, in many respects, two sides of the same coin.⁶¹ (See “Listening to victims” at page 11.)



> **They suffer from substance use issues at higher rates.** More than half of the people in state prisons meet the criteria for drug dependence or abuse, as compared to approximately five percent of the total general population age 18 or older.⁶²



> **They are more likely to have a disability.** Nearly 32 percent of people in prison report having hearing, vision, cognitive, or ambulatory disabilities, as compared to approximately 11 percent of the general public.⁶³

The prison experience

“[The correctional facility], like countless other penal facilities across the country, is overcrowded and the men held inside have been trying to bring attention to the inhumane conditions they live under for a long time now. But this facility, again like so many others, is far, far away from where most of the prisoner families live as well as far from the media’s gaze. People on the outside can’t see the ‘spoiled food, severe overcrowding, indifference to inmate grievances’ that the men inside have been enduring. They don’t know the extent of the gang problem plaguing the prison, and how desperately prisoners have been asking for help, because prison

management manipulates its own data—for example . . . assaults on prisoners are written up as ‘mutual fights’ in order to make things seem better, less predatory, to legislators in the state capitol.”

– Heather Ann Thompson, “Prisons Are Erupting and Why it Matters,” *Daily Beast*, 2016⁶⁴

“The cell was so small that I could stand in one place and touch both walls simultaneously. The ceiling was so low that I could reach up and touch the hot light fixture. My bed took up the length of the cell, and there was no other furniture at all. . . . The walls were solid steel and painted all white. . . . Shortly after I arrived, the prison staff began construction, adding more bars and other security measures to the cell while I was within it. . . . It is hard to describe the horror I experienced during this construction process. As they built new walls around me it felt like I was being buried alive. . . . Due to the unchanging bright artificial lights and not having a wristwatch or clock, I couldn’t tell if it was day or night. Frequently, I would fall asleep and when I woke up I would not know if I had slept for five minutes or five hours, and would have no idea of what day or time of day it was. . . . I now know that I was housed there for about four years, but I would have believed it was a decade if that is what I was told. It seemed eternal and endless and immeasurable.”

– Thomas Silverstein, describing his experience in solitary confinement to Jean Casella and James Ridgeway, in “Five Unforgettable Stories From Inside Solitary Confinement,” *Solitary Watch*, 2017⁶⁵

The prison experience in America today is harsh, restrictive, and dehumanizing. No matter what the underlying purpose for imprisonment—retribution, incapacitation, and/or deterrence (see “The underlying values of mass incarceration” at page 15)—prison by its very nature is intended to remove people from society and subject them to state control. That control is all-encompassing—the prison dictates the size, look, and feel of a person’s

living space; the necessities a person can obtain (such as food, clothing, and medical care); and the activities a person can participate in, be they social, work, or educational.⁶⁶

In reinforcing state control, prison policies and practices are designed to diminish the self and weaken the individual. Prison life largely emphasizes two things:

- › the loss of each incarcerated person's sense of self, autonomy, and capacity to control his or her own destiny; and
- › the inculcation of a carceral identity—one reinforced by the strict social arrangements inside prisons and the power imbalance between corrections officers and incarcerated people.⁶⁷

People carry the prison experience and the identities they developed under prison duress with them as they return home, and this impacts their future success, their communities, and their loved ones.⁶⁸ For many, they remain branded as a criminal—both in their own minds and by society. Elements of the current prison experience contribute to these results, including the architecture of prison facilities, overcrowding within them, and the use of solitary confinement. The experience of incarceration is further marked by a lack of basic necessities, meaningful activities, and connections with the outside world. All of this is compounded by the trauma of the prison experience itself and the loss of the incarcerated person's constitutional rights. These features of the American prison experience are detailed in the subsections that follow.

Prison design and physical layout

By their very design and aesthetics, the physical buildings and layout of American prisons cultivate feelings of institutionalization, immobilization, and lack of control among the people who live there.⁶⁹ A typical cell is a small cement and brick box—the size of a typical parking space—with a metal or cement bed (sometimes a bunk bed) covered with a thin mattress, an open metal sink and toilet, perhaps a fixed metal desk, and a small window that is often sealed shut.⁷⁰ Other interior spaces are similarly utilitarian in nature, with hard fixtures and fittings, cinder blocks, and little color, ornamentation, or natural light.⁷¹ Because the spaces are designed

to maximize control of people's movement, they are configured in highly segmented and rigid ways—with clearly delineated boundaries that are reinforced through gates, locks, bars, and Plexiglas or Lexan.⁷² These common prison architectural designs do not encourage positive individual or group experiences.⁷³ Even recreation spaces are designed in this way—with little or no access to green spaces, often as covered cages, sometimes outdoors, but too often simply as another indoor space, such as a gymnasium.⁷⁴ In *Madrid v. Gomez*—a case challenging the constitutionality of conditions at Pelican Bay State Prison in California—the court remarked that the sight of incarcerated people in the facility's barren exercise pens created an image “hauntingly similar to that of caged felines pacing in a zoo.”⁷⁵

Overcrowding

Many American prisons are housing the maximum number of people they can hold—or more. In 2015, 27 states and the federal government operated their prisons near or above 100 percent capacity.⁷⁶ Because of the sheer number of people corrections staff must manage, overcrowding can cause



reductions in opportunities for rehabilitative programming and lead to limits on out-of-cell time, recreation, meal times, visitation, and access to staff. Moreover, in overcrowded conditions, individuals experience extreme deprivation of privacy—they may be forced to sleep dozens to a room in dayrooms, classrooms, or gymnasiums; receive inadequate medical care; be subject to victimization at higher rates; and commit suicide at higher rates.⁷⁷ In *Brown v. Plata*, the Supreme Court found that overcrowding in California prisons was the “primary cause” of suffering and deaths among those incarcerated, stemming from the “grossly inadequate provision of medical and mental health care.”⁷⁸

Solitary confinement

Tens of thousands of people in U.S. prisons are now held in solitary confinement either as punishment for rule breaking or, for a small number, as a preventive safety measure. The precise number of people held in these conditions on any given day is not known, but estimates range from 80,000 to 100,000, and there are indications that the use of such housing has grown substantially in recent years—perhaps by as much as 42 percent between 1995 and 2005.⁷⁹ Conditions for people held in solitary are dire. Although conditions can vary from jurisdiction to jurisdiction, and even from facility to facility, people held in solitary often are forced to live in cramped cells for 22 to 24 hours per day. They typically cannot participate in programming or other group activities and may be barred from access to reading materials.⁸⁰ There is often little or no natural light and artificial lights may be left on day and night.⁸¹ Long-term isolation also takes a mental and emotional toll: it has been shown to create or exacerbate mental illness and physical health problems, from which some people never recover.⁸² Nor does solitary enhance safety. Incarcerated people may take on the expected behaviors of the security levels to which they are assigned. Researchers have discussed this as evidence that labeling theory (the theory that individual behavior is influenced by the social expectations of others) applies to prison classification.⁸³ This suggests that restrictive housing units can actually create or escalate behavioral issues and violence among incarcerated people, rather than contain or reduce them.⁸⁴



Basic necessities

Although prisons are constitutionally required to provide their residents with basic necessities—from hygiene to clothing, food, and medical care—many do so in ways that make prison more taxing and dehumanizing.⁸⁵ For example, the hygienic supplies prisons provide to all residents can be limited in volume and poor in quality, with reports of people running out of toilet paper and other basic necessities—including sanitary pads and tampons.⁸⁶ Several facilities have begun issuing uniforms or other items of clothing in colors designed to humiliate the wearer, or using fabrics that cause discomfort.⁸⁷ A growing number of jurisdictions have returned to issuing people striped uniforms for their purported “punitive” effect.⁸⁸

Even meals may be limited. Access to food has become more restricted in recent years as many states have reduced meals from three to two on some days, or reduced the number of overall calories served in prison.⁸⁹ In the past decade, reports of insufficient quantities of food have become more widespread.⁹⁰ Poor quality food and improper food handling have also contributed to a rate of foodborne illnesses among people in prison at six times the rate of the free population.⁹¹ The food supplied is also highly processed, often low in fiber and high in cholesterol and sodium, and tends

not to include fresh fruits and vegetables or lean proteins, contributing to chronic medical conditions such as hypertension and diabetes, from which black people are more likely to suffer.⁹²

At the same time, prison medical staff struggle to appropriately respond to the medical needs of the incarcerated population. The failure to provide adequate medical care and its extreme consequences is well documented and has been a frequent subject of litigation in recent years.⁹³ Yet incarcerated people continue to report health problems at higher rates than the general population in a wide range of areas.⁹⁴ Prison environmental conditions, including poor air quality and high temperatures, can exacerbate existing health problems—or create new ones.⁹⁵

Meaningful activities

As prison life has become more restricted and punitive, it has simultaneously become more monotonous. Higher levels of security are generally the most restrictive, with more closely supervised movement, less time outside of cells, fewer options for leisure or programming, and more rigorously controlled rules regarding personal property.⁹⁶ However,



no matter where someone is placed—whether a minimum-, medium-, or maximum-security facility—opportunities for paid work, as well as rehabilitative, vocational, and postsecondary programming, have declined across the board—although opportunities for postsecondary education have been increasing in certain jurisdictions.⁹⁷ This leads not only to a worsening daily existence in prison, but it also hinders the chances of success for people after they leave prison. And fully 95 percent of people in prison will eventually be released—around 600,000 each year.⁹⁸ But despite research showing that prison violence tends to go down when education and vocational programs are introduced, and that cognitive behavioral and other rehabilitative programming may alleviate the negative impacts of incarceration and improve post-release employment prospects and earnings, in-prison therapeutic programming has become less—not more—available over time.⁹⁹ In fact, a study conducted in 2005 and 2006 found that although substance abuse treatment programs are available in a majority of facilities, less than 10 percent of people in prison were able to participate in treatment services.¹⁰⁰

Where work opportunities do exist in prison, many are now institutional jobs such as food service, laundry, or janitorial assignments that benefit the prison, rather than jobs in which incarcerated individuals can learn or apply new skills to prepare them for the workforce on release.¹⁰¹ Even among those who do obtain jobs, the average number of hours they work has decreased from 40 to 20 per week and median pay has declined to 86 cents per day.¹⁰² People in prison are thus able to buy fewer personal items from the prison store or commissary to supplement the limited supplies the prison provides.¹⁰³

Connections with the outside

Another reality of the prison experience is loneliness. During the prison boom of the 1990s, many new prisons were constructed in poor, rural areas.¹⁰⁴ Siting prisons in rural areas—especially when coupled with restrictive visitation and furlough policies—has made it all the more difficult for people in prison to sustain personal relationships with their families and friends. With prisons farther from population centers, many more people are forced to serve their sentences in places that may be unreachable by public transit—and where visiting can place a substantial

cost burden on friends and family, who may have to miss work, pay for childcare, and cover the costs of travel, including a place to stay, food, and gas.¹⁰⁵ Receiving fewer visits from family and friends not only exacerbates the isolating experience of prison, but it also implicates community safety, as regular visitation is associated with a reduction in future criminal justice contact after prison.¹⁰⁶

On top of this, many state corrections agencies enforce strict visitation policies—including denying physical contact between individuals (even parents and their children), limiting the number of approved visitors, especially non-family visitors, limiting the length of each visit, and restricting the days on which visits are permitted.¹⁰⁷ For those people who are able to visit their loved ones in prison, they often must undergo invasive search procedures—standard at most maximum-security facilities, even for children—which can be a traumatic experience that may deter future visits.¹⁰⁸ And while advancements in technology theoretically should make it easier for people to stay in touch remotely through phone, email, and video calls, these opportunities are also often restricted and can be quite costly.¹⁰⁹ Video calls can be anywhere between \$10 and \$15 for a 30-minute computer connection; telephone calls are nearly \$25 for only 15 minutes.¹¹⁰

Trauma

The prison experience in America not only crushes one's individual identity and robs one of dignity; it also produces long-term effects—including social and psychological adaptations to prison conditions and the lasting effects of trauma resulting from incarceration.¹¹¹ The National Academy of Sciences explains that this social adaptation to prison arises from two primary causes: (1) the “structure and routines [of prison] that can erode personal autonomy;” and (2) “the threat of victimization.”¹¹² The latter cause is key, as violence remains a regular occurrence within prisons. One study of 7,528 incarcerated people in 13 prisons found that nearly 40 percent of men and women in prison had experienced physical or sexual assault by staff or another incarcerated person within the previous six months, a finding echoed by other research.¹¹³ In addition, the rate of violence stemming from other incarcerated people—the most approximate measure of community-level violence in prison—was 10 times the rate of assault outside prison.¹¹⁴

Both the fear and actual experience of victimization can result in deep and long-lasting distrust of others, inability to express or share emotions, feelings of anger, and an outsider mentality that can make it difficult for people to seek help from others.¹¹⁵ Psychologists have identified rates of PTSD among those incarcerated in prisons that are two to 10 times the rate of the general population, and they have discovered evidence of compounded versions of this condition in prison populations.¹¹⁶ This “complex” PTSD results specifically from the repeated harms and “deformations of personality” that occur in captivity.¹¹⁷ In addition to trauma arising from personal victimization, vicarious trauma—trauma that is incurred when one is exposed to other people’s suffering and need—also occurs in prison, meaning that few escape the effects of violence behind bars.¹¹⁸

Loss of constitutional rights

The current prison experience further isolates incarcerated people from society through civic exclusion and the denial of constitutional rights guaranteed to those outside of prison. Incarcerated individuals generally lose their right to privacy in prison, and they are not protected from warrantless searches of their persons or cells.¹¹⁹ In all but two states, they are deprived of their right to vote while incarcerated, a ban that can follow them back into the community and sometimes last their whole lives.¹²⁰ Although people in prison retain some due process rights and are protected against unequal treatment or cruel and unusual punishment, the Prison Litigation Reform Act, together with rulings by the U.S. Supreme Court, serve to deny incarcerated people meaningful access to courts due to a host of unique restrictions and strict legal standards.¹²¹ In-prison administrative procedures do not provide people with an adequate substitute forum: weak internal complaint processes limit a person’s ability to alert officials to staff misconduct or other wrongful behavior by the prison administration or staff that violates peoples’ rights.¹²² Few jurisdictions have the sort of robust prison oversight mechanisms that might allow for independent inspections or investigations that could examine the treatment of people in prison and inquire into specific allegations of wrongdoing.¹²³ For incarcerated people, the right to justice is all but nonexistent.

The prison experience for corrections staff

The people who work inside prisons are largely responsible for the environment that is created behind the walls. Although corrections staff may not dictate standards and policies, they must interpret them and put them into practice. This takes its own toll. Corrections officers, who work inside these facilities for 40 or more hours per week over the course of 20 or more years are also subject to the restrictive nature of prison and the negative effects that has on mental health.^a Researchers have only recently begun to examine the psychosocial effects of working in prison on corrections officers, but early studies show that officers suffer from PTSD and commit suicide at rates much higher than law enforcement staff in other agencies and those in the military.^b Three aspects of working in prison and their negative effects on staff are described below.

Mundane routine and violence on the job. In the hierarchy of correctional goals, maintaining order within a facility is paramount. The majority of the training that officers receive is thus focused on the use of surveillance and control equipment and techniques.^c Officers are also trained on the psychological aspects of maintaining order and are taught to be suspicious of incarcerated people: to be constantly on the lookout for potential or actual trouble.^d Yet one American corrections officer admitted that “95 percent” of his job can be “pretty

mundane:” he admitted doing the same thing every day for eight—or even 16—hours straight, sometimes without a break, including making periodic rounds of assigned areas, conducting cell counts, and keeping an eye on the activities of those who are incarcerated.^e This experience of dull routine, conducted in an atmosphere where officers are primed to expect—and do at times experience—sudden, extreme violence, heightens stress and can lead to hypervigilance, a condition that can contribute to anxiety and exhaustion.^f

Escalating job stress. The effects of the prison environment on staff extend beyond the hours during which officers are on shift and the years in which they work in prison. Corrections officers have been found to suffer severe physiological, psychological, and behavioral effects from job stress. These can be so pronounced that a specific diagnostic category—“corrections fatigue”—has been proposed to account for them.^g Common stressors include unpredictable shift work; overtime demands; crisis situations; perceived or actual risk of being injured; lack of support from or trust in supervisory staff; and inadequate training, particularly in dealing with special populations such as young adults or people with mental illness.^h These conditions can lead to cardiovascular problems, diabetes, high cholesterol, and gastrointestinal

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Corrections officers experience...

Depression at a level significantly higher than the national average.



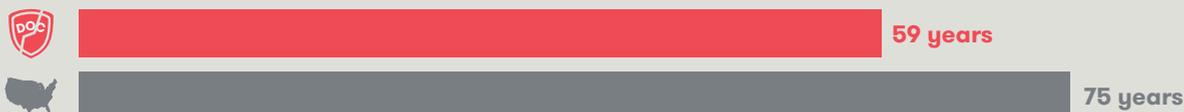
PTSD at a level significantly higher than the national average.



Suicide at a rate 39% higher than the working age national population.



Shorter life expectancy than the national average.



Sources: For corrections officer depression rates, see box note j, at the end of the report. For national depression rates, see National Institute of Mental Health (NIMH), "Major Depression," <https://perma.cc/GZV8-ZP38>. For corrections officer PTSD rates, see box note j. For national PTSD rates, see NIMH, "Post-Traumatic Stress Disorder (PTSD)," <https://perma.cc/23GX-6YBW>. For suicide rates, see Steven Stack and Olga Tsoudis, "Suicide Risk Among Corrections Officers: A Logistical Regression Analysis" *Archives of Suicide Research* 3, no. 3 (1997), 183-86, 184. For life expectancy statistics, see box note m.

ailments. In fact, some studies have shown that corrections officers experience heart disease and high blood pressure at rates significantly higher than other professionals considered at high risk for these conditions, including police officers.ⁱ

Job stress can also lead to high levels of major psychological problems: a 2013 study of a national sample of almost 3,600 corrections workers found that more than 25 percent suffered from depression, 27 percent from PTSD, and 17 percent from both—all levels significantly higher than the national average.^j Corrections officers with co-occurring disorders reported experiencing levels of both professional and personal functional impairment five to seven times higher than average.^k This can be fatal: a national study showed corrections officers' suicide rate to be 39 percent higher than the rest of the working-age population.^l In combination, this leads to an overall grim statistic: one study found that the average life expectancy of corrections officers was only 59 years, a full 16 years below the national average.^m

Poor working conditions and lack of public trust.

Although corrections work is often physically and emotionally demanding, stressful, and dangerous, it is all too frequently characterized by low pay (the average hourly rate for a corrections officer is \$16.65 per hour), insufficient training, little emotional

support, and a dearth of other rewards.ⁿ These problems, while substantial, are exacerbated by understaffing in many facilities. Corrections officers in jurisdictions as diverse as Michigan, Nevada, South Carolina, and West Virginia are working "six or seven days a week, 10- to 12- and sometimes 16-hour shifts."^o

Compounding this, corrections staff lack the status that other law enforcement professionals (such as members of the military or the police) tend to hold in communities. Media imagery often depicts prison staff as ignorant, brutal, corrupt, and abusive of socially wronged individuals.^p This image is further reinforced by reports that highlight abuses behind bars. For example, a 2015 report from Human Rights Watch recounted the routine and extreme physical abuse that guards across the United States had inflicted on incarcerated people who were mentally ill.^q Comparatively few accounts of officers' supportive or constructive engagement with incarcerated people make the news. "It's not a job that most people consider," says Chris Gautz, spokesman for the Michigan Department of Corrections. "Growing up, people play cops and robbers, not convicts and corrections officers. You don't grow up thinking 'I want to be a corrections officer.'"^r

* Box notes at end of report.

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Chapter 2

American history, race, and prison

“[In September 2016], on the 45th anniversary of the infamous Attica Prison uprising, tens of thousands of US inmates launched a nationwide protest. . . . The inmates’ grievances [were] as varied as the states they came from: Pennies for labor in South Carolina, racial discrimination in California, excessive force in Michigan. However, they share[d] an overarching goal: End legalized slavery inside American correctional facilities.”

– Max Blau and Emanuella Grinberg, “Why US Inmates Launched a Nationwide Strike,” CNN, 2016¹²⁴

In 1970, the era of mass incarceration began. This growth in the nation's prison population was a deliberate policy. It was inflamed by campaign rhetoric that focused on an uptick in crime and orchestrated by people in power, including legislators who demanded stricter sentencing laws, state and local executives who ordered law enforcement officers to be tougher on crime, and prison administrators who were forced to house a growing population with limited resources.¹²⁵



From America's founding to the present, there are stories of crime waves or criminal behavior and then patterns of disproportionate imprisonment of those on the margins of society.



Although the unprecedented increase in prison populations during this period may seem like an aberration, the ground was fertile for this growth long before 1970. Certainly the number of people sent to prison was far greater during the era of mass incarceration than in any other time period, but the policies that fueled that growth stemmed from a familiar narrative: one involving public anxiety about both actual and alleged criminal behavior by racial and ethnic minorities and the use of state punishment to control them.

It is a narrative that repeats itself throughout this country's history. From America's founding to the present, there are stories of crime waves or criminal behavior and then patterns of disproportionate imprisonment of those on the margins of society: black people, immigrants, Native Americans, refugees, and others with outsider status. The result has been the persistent and disproportionate impact of incarceration on these

groups. From 1850 to 1940, racial and ethnic minorities—including foreign-born and non-English speaking European immigrants— made up 40 to 50 percent of the prison population.¹²⁶ In 2015, about 55 percent of people imprisoned in federal or state prisons were black or Latino.¹²⁷

It is a narrative founded on myths, lies, and stereotypes about people of color, and to truly reform prison practices—and to justify the path this report marks out—it is a narrative that must be reckoned with and subverted. We must grapple with the ways in which prisons in this country are entwined with the legacy of slavery and generations of racial and social injustice. No new era is built from a clean slate, but rather each is layered on top of earlier practices, values, and physical infrastructure. Mass incarceration is an era marked by significant encroachment on the freedoms of racial and ethnic minorities, most notably black Americans. But this inequitable treatment has its roots in the correctional eras that came before it: each one building on the last and leading to the prison landscape we face today. This section ties together this country's history of racism with its history of incarceration and recounts three important junctures in the history of prisons through the lens of America's troubled and complex history of racial oppression.

American history, race, and prison: A timeline (1860s-1970s)

”

Inequitable treatment has its roots in the correctional eras that came before it: each one building on the last and leading to the prison landscape we face today.

Major economic and demographic events

Racism and fear

Criminal justice practices and policies

1865: End of Civil War

1870s: 95% of Southern prison population is black

1860s: Post-Civil War economic depression ensues after loss of free slave labor

1865: Passage of 13th Amendment, which outlaws slavery except as punishment for a crime

1870s: Black Codes passed in the South, outlawing conduct common to black people—and sweeping many into prison

1871: Virginia Supreme Court declares that an incarcerated person is “a slave of the state”

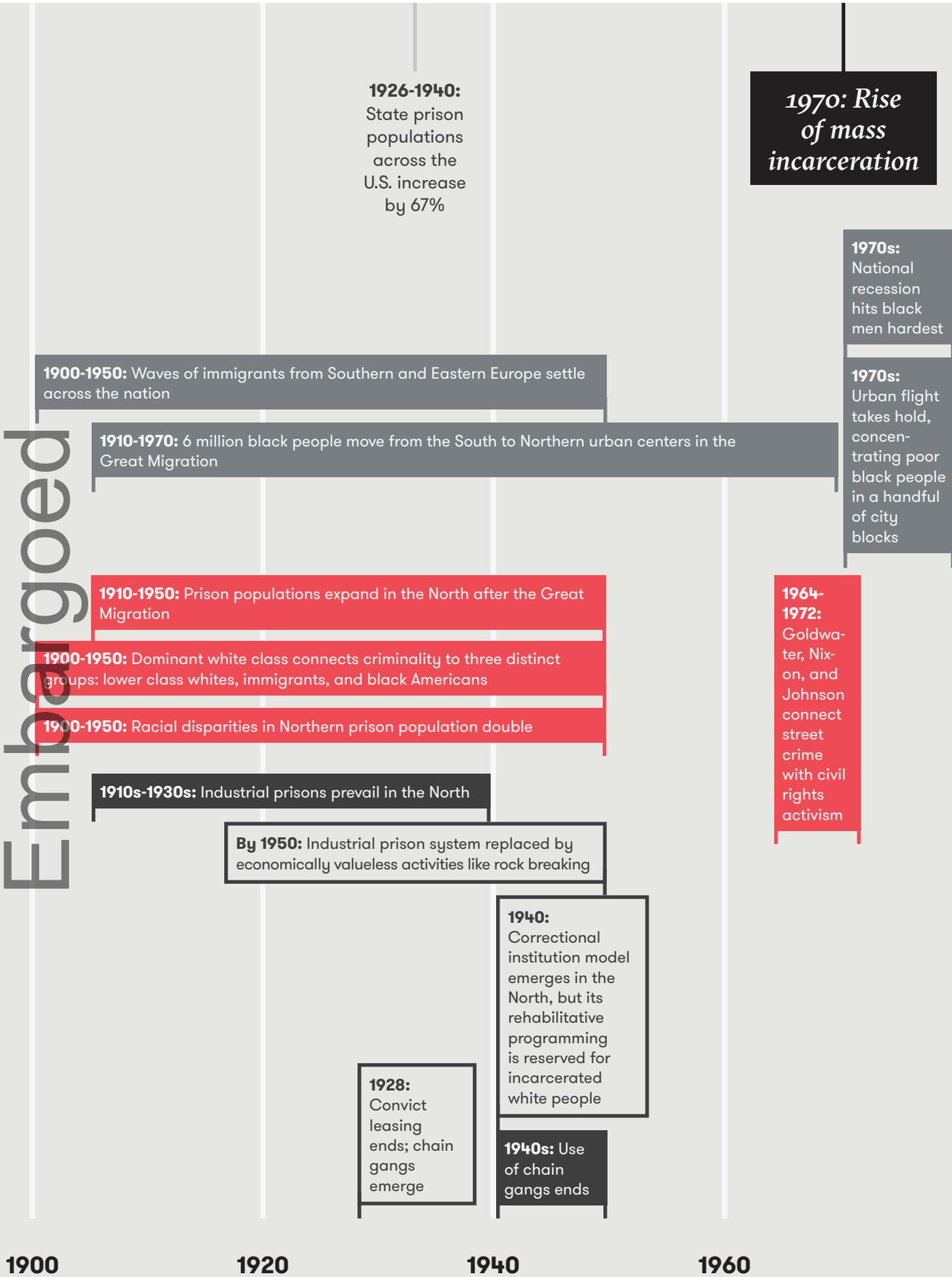
1870s: Prison farms and convict leasing common in Reconstruction South, almost exclusively ensnare black men

1860

1880

Emerson

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1900

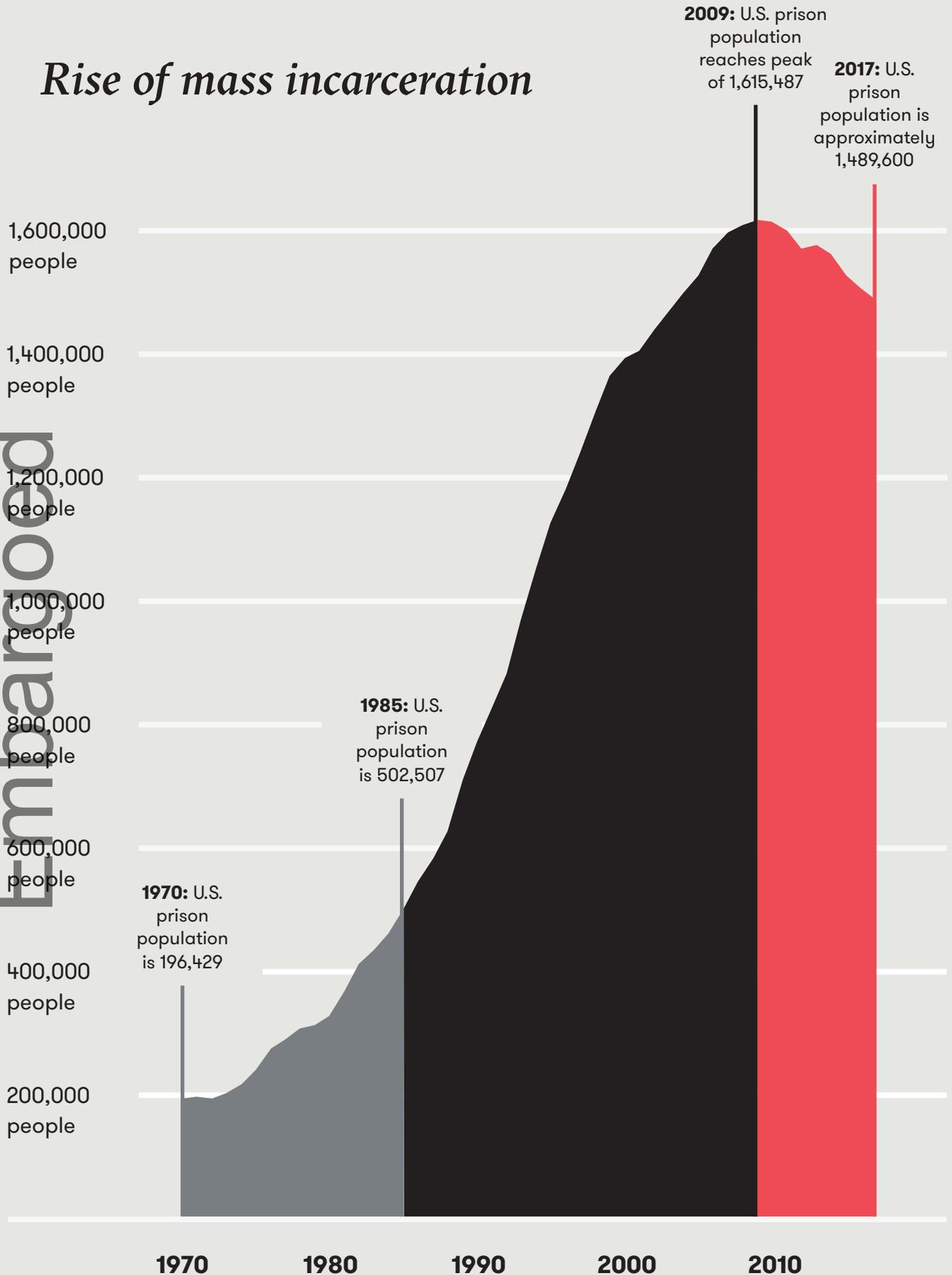
1920

1940

1960

Rise of mass incarceration

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Prison in the South: 1865–1940

“The history of Mississippi State Penitentiary is a history of failed reforms. Its creation in 1901 was borne of a statewide shame and frustration at the contemporary system of convict leasing. . . . Under convict leasing, the inmates were essentially slaves again. . . . They worked long hours for no pay, were poorly fed, and slept in tents at work sites doing dangerous jobs like dynamiting tunnels for railroad companies and clearing malaria-filled swamps for construction. Convicts, sometimes including children under age 10, were whipped and beaten, underfed, and rarely given medical treatment. . . .

Parchman [Farm]’s first year of operation was in 1905. It was massive, remote, and modeled after a traditional southern plantation. Parchman was originally comprised of three separate farms: a small farm, which was maintained by white convicts, a smaller one farmed by women (mostly black), and a huge sprawling plantation for the prison’s black convicts. Over 20,000 acres and 46 miles, it was intended to be self-sufficient and profitable for the state, and it was.

Parchman Farm stayed this way, more or less, for the next 70 years. Cotton picking became mechanized and the state instituted some small reforms. . . . [But the] small vocational and educational programs excluded black prisoners. A maximum security unit with a guard tower, fences, and gates housed individual cells, a gas chamber for executions, and a solitary confinement wing. Otherwise, Parchman remained frozen in time, a segregated, harsh prison farm.”

– Hannah Grabenstein, “Inside Mississippi’s Notorious Parchman Prison,” PBS NewsHour, 2018¹²⁸

The year 1865 should be as notable to criminologists as is the year 1970. While it marked the end of the Civil War and the passage of the 13th Amendment, it also triggered the nation’s first prison boom when the



number of black Americans arrested and incarcerated surged.¹²⁹ This was the result of state governments reacting to two powerful social forces: first, public anxiety and fear about crime stemming from newly freed black Americans; and second, economic depression resulting from the war and the loss of a free supply of labor. State and local leaders in the South used the criminal justice system to both pacify the public's fear and bolster the depressed economy. All across the South, Black Codes were passed that outlawed behaviors common to black people, such as “walking without a purpose” or “walking at night,” hunting on Sundays, or settling on public or private land.¹³⁰ Southern law enforcement authorities targeted black people and aggressively enforced these laws, and funneled greater numbers of them into the state punishment systems. By the 1870s, almost all of the people under criminal custody of the Southern states—a full 95 percent—were black.¹³¹

State penal authorities deployed these imprisoned people to help rebuild the South—they rented out convicted people to private companies through a system of convict leasing and put incarcerated individuals to work on, for example, prison farms to produce agricultural products.¹³² In the Reconstruction South, these were fiscally attractive strategies given the destruction of Southern prisons during the Civil War and the economic

depression that followed it.¹³³ Convict leasing programs that operated through an external supervision model—in which incarcerated people were supervised entirely by a private company that was paying the state for their labor—turned a state cost into a much-needed profit and enabled states to take penal custody of people without the need to build prisons in which to house them.¹³⁴

Although economic, political, and industrial changes in the United States contributed to the end of private convict leasing in practice by 1928, other forms of slavery-like labor practices emerged.¹³⁵ State prison authorities introduced the chain gang, a brutal form of forced labor in which incarcerated people toiled on public works, such as building roads or clearing land. Chain gangs existed into the 1940s.¹³⁶ And, as with convict leasing before it, those sentenced to serve on chain gangs were predominantly black.¹³⁷ Prison farms also continued to dominate the Southern landscape during this period. In 1928, Texas was operating 12 state prison farms and nearly 100 percent of the workers on them were black.¹³⁸

The loophole contained within the 13th Amendment, which abolished slavery and indentured servitude *except as punishment for a crime*, paved the way for Southern states to use convict leasing, prison farms, and chain gangs as legal means to continue white control over black people and to secure their labor at no or little cost.¹³⁹ Very few white men and women were ever sent to work under these arrangements.¹⁴⁰ By assigning black people to work in the fields and on government works, the state-sanctioned punishment of black people was visible to the public, while white punishment was obscured behind prison walls. By many accounts, conditions under the convict leasing system were harsher than they had been under slavery, as these private companies no longer had an ownership interest in the longevity of their laborers, who could be easily replaced at low cost by the state.¹⁴¹ Although the incarcerated people subjected to this treatment sought redress from the courts, they found little relief.¹⁴² Time and again, the courts approved of this abusive use of convict labor, confirming the Virginia Supreme Court's declaration in 1871 that an incarcerated person was, in effect, a "slave of the state."¹⁴³

Prison in the North: 1920–1960

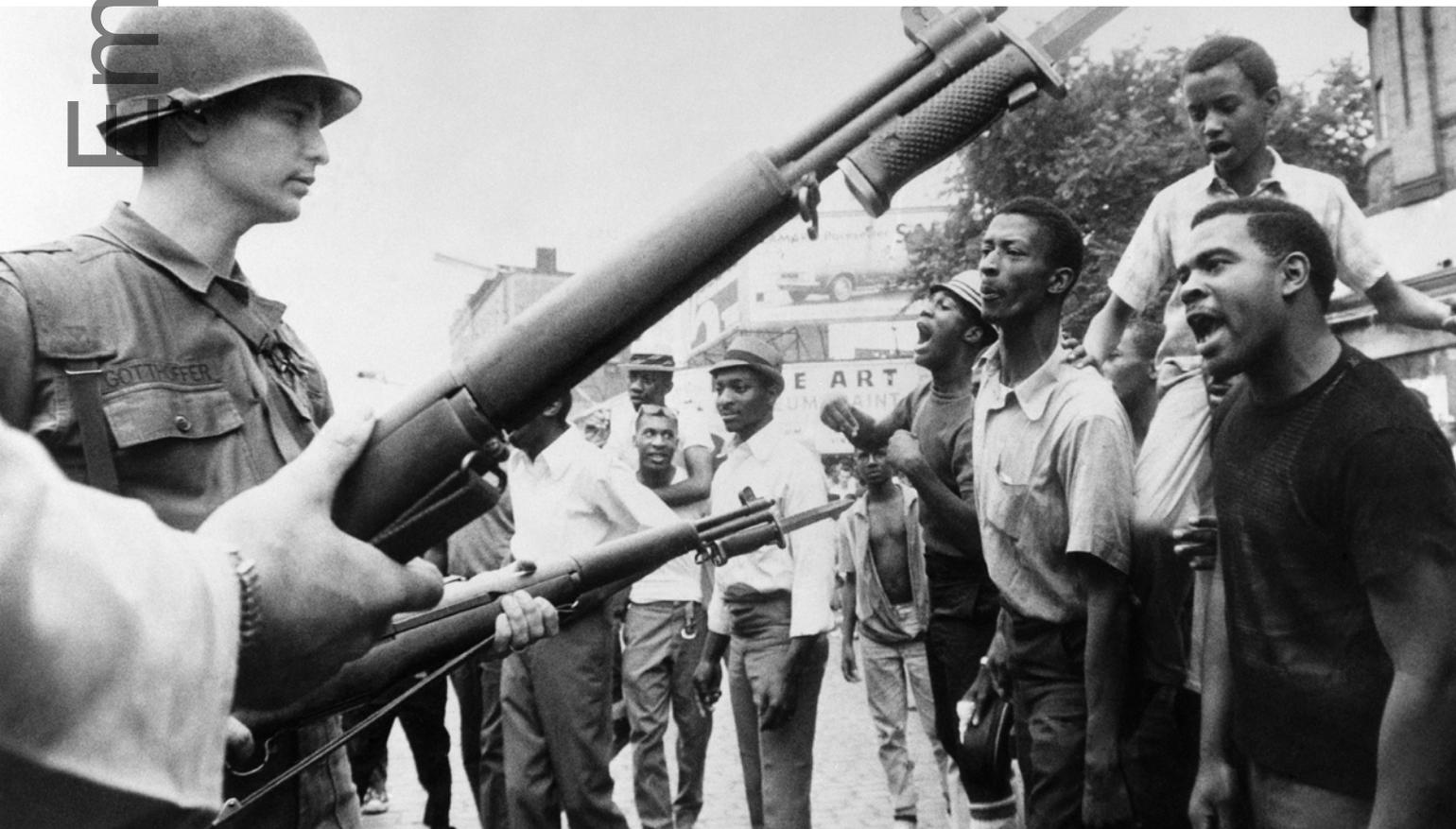
“At the dawn of the twentieth century, in a rapidly industrializing, urbanizing, and demographically shifting America, blackness was refashioned through crime statistics. . . . Northern black crime statistics and migration trends in the 1890s, 1900s, and 1910s were woven together into a cautionary tale about the exceptional threat black people posed to modern society. In the Windy City, in the City of Brotherly Love, and in the nation’s Capital of Commerce this tale was told, infused with symbolic references to American civilization, to American modernity, and to the fictive promised land of unending opportunity for all who, regardless of race or class or nationality, sought their fortunes.”

– Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*, 2010¹⁴⁴

The first half of the 20th century saw an expansion of prison populations in the Northern states, which coincided with shifting ideas about race and ethnicity, an influx of black Americans to urban regions in the North, and increased competition over limited jobs in Northern cities between newly arrived black Americans and European immigrants. As a backdrop to these changing demographics, public anxiety about crime flourished. A brief spike in violent crime in the 1920s was met with incendiary media coverage, highly publicized federal interventions into local crime, and the branding of certain suspected criminals as “public enemies,” stoking public fear and supporting criminal stereotypes.¹⁴⁵ The growing fear of crime—often directed at black Americans—intensified policing practices across the country and inspired the passage of a spate of mandatory sentencing policies, both of which contributed to a surge in incarceration.¹⁴⁶ Between 1926 and 1940, state prison populations across the country increased by 67 percent.¹⁴⁷

Between 1910 and 1970, over six million black Americans migrated from the South to Northern urban centers. Known as the Great Migration, this movement of people dramatically transformed the makeup of both

the South and the North: in 1910, 90 percent of black Americans lived in the South but, by 1970, that number had dropped to 53 percent.¹⁴⁸ These migrants—typically more financially stable black Americans—were fleeing racial terror and economic exclusion.¹⁴⁹ This influx of people overlapped with the waves of immigrants from Southern and Eastern Europe who continued to disembark and settle across the country throughout the first half of the 20th century. During this time period, the dominant white class connected criminality to three distinct groups: lower-class whites, immigrants, and black Americans.¹⁵⁰ However, while white and immigrant criminality was believed by social reformers to arise from social conditions that could be ameliorated through civic institutions, such as schools and prisons, black criminality was given a different explanation. Widely popular—but since discredited—theories of racial inferiority that were supported by newly developed “scientific” categorization schemes took hold.¹⁵¹ Combined with the popular portrayal of black men as menacing criminals—as represented in the film *The Birth of the Nation* released in 1915—a sharper distinction between white and black Americans emerged, which also contributed to a compression of European ethnic identities (for instance Irish, Italian, and Polish) into a larger “white” or “Caucasian” ethnic



category.¹⁵² These shifting beliefs regarding race and crime had serious implications for black Americans: in the first half of the 20th century, racial disparities in prison populations roughly doubled in the Northern states most affected by the Great Migration.¹⁵³

✦ Shifting beliefs regarding race and crime had serious implications for black Americans: in the first half of the 20th century, racial disparities in prison populations roughly doubled in the North.



These beliefs also impacted the conditions that black and white people experienced once behind bars. As in the South, putting incarcerated people to work was a central focus for most Northern prison systems. Until the 1930s, the industrial prison—a system in which incarcerated people were forced to work for private or state industry or public works—was the prevalent prison model. Gratuitous toil, pain, and hardship became a primary aspect of punishment while administrators grew increasingly concerned about profits.¹⁵⁴ The rise of organized labor in the 1920s and 1930s, as well as the passage of federal legislation restricting the interstate commerce of goods made by convict labor, brought an end to many industrial-style prisons.¹⁵⁵ In their place, the conditions and activities that made up the incarceration experience remained similar, but with purposeless and economically valueless activities like rock breaking replacing factory labor.¹⁵⁶

By the mid-1900s, as white immigrant groups were absorbed into the white racial category, the white public became increasingly concerned about the conditions they endured in prison.¹⁵⁷ Starting in about 1940, a

new era of prison reform emerged; some of the rigidity of earlier prison structures was relaxed and some aspects of incarceration became more physically and psychologically tolerable.¹⁵⁸ Under this new “correctional institution” model, prisons were still meant to inflict a measure of pain on those inside their walls, but the degree was marginally reduced in comparison to earlier periods. These prisons offered more recreation, visitation, and communication with the outside world through regular access to the mail, as well as sporadic movies or concerts. Most notably, this period saw the first introduction of therapeutic programming and educational and vocational training in a prison setting.¹⁵⁹

These programs were largely justified on the principle that they could bring about the rehabilitation of an incarcerated person. But they weren’t intended to rehabilitate everyone in prison: they were reserved for people deemed capable of reform—by and large white people.¹⁶⁰ Incarcerated black Americans and other racial and ethnic minorities also lived in race-segregated housing units and their exclusion from prison social life could be glimpsed only in their invisibility.¹⁶¹ Their experiences were largely unexamined and many early sociological studies of prisons do not include incarcerated people of color at all.¹⁶²

Prisons nationally: 1960–2000

“The growing menace in our country tonight, to personal safety, to life, to limb and property, in homes, in churches, on the playgrounds, and places of business, particularly in our great cities, is the mounting concern, or should be, of every thoughtful citizen in the United States. Security from domestic violence, no less than from foreign aggression, is the most elementary and fundamental purpose of any government, and a government that cannot fulfill that purpose is one that cannot long command the loyalty of its citizens. History shows us—demonstrates that nothing—nothing prepares the way for tyranny more than the failure of public officials to keep the streets from bullies and marauders.”

– Barry Goldwater, Speech at the Republican National Convention, accepting the nomination for president, 1964¹⁶³

“And tonight, it is time for some honest talk about the problem of order in the United States. . . . [L]et us also recognize that some of our courts in their decisions have gone too far in weakening the peace forces as against the criminal forces in this country and we must act to restore that balance. Let those who have the responsibility to enforce our laws and our judges who have the responsibility to interpret them be dedicated to the great principles of civil rights. But let them also recognize that the first civil right of every American is to be free from domestic violence, and that right must be guaranteed in this country. . . . I pledge to you that the new Attorney General will open a new front against the filth peddlers and the narcotics peddlers who are corrupting the lives of the children of this country.”

– Richard Nixon, Speech at the Republican National Convention, accepting the nomination for president, 1968¹⁶⁴

Beginning in the 1960s, a “law and order” rhetoric with racial undertones emerged in politics, which ultimately ushered in the era of mass incarceration and flipped the racial composition of prison in the United States from majority white at midcentury to majority black by the 1990s.¹⁶⁵ As in previous periods, the criminal justice system was used to marginalize and penalize people of color. In the 1960s and 1970s, as riots broke out in a number of urban centers and a wave of violent crime rolled across the United States, politicians on both sides of the aisle not only continued to link race and crime in rhetoric, they took action, enacting harsh, punitive, and retributively oriented policies as a solution to rising crime rates.¹⁶⁶ As black Americans achieved some measures of social and political freedom through the civil rights movement, politicians took steps to curb those gains. In the 1964 presidential election, Barry Goldwater (Lyndon Johnson’s unsuccessful Republican challenger) campaigned on a platform that explicitly connected street crime with civil rights activism.¹⁶⁷ In 1965, President Lyndon Johnson declared the “War on Crime,” and perceived increases in crime in urban centers—which were largely populated by black people—became connected with race in the public’s consciousness.¹⁶⁸

Richard Nixon also successfully used a street crime and civil rights activism narrative in his 1968 and 1972 presidential campaigns.¹⁶⁹ The message resonated with many Southern whites and Northern working-class whites, who left the Democratic Party in the decades that followed. This tight link between race and crime was later termed the Southern Strategy.¹⁷⁰

Compounding the persistent myth of black criminality was a national recession in the 1970s that led to a loss of jobs for low-skilled men in urban centers, hitting black men the hardest.¹⁷¹ The departure of white and middle- to upper-class black Americans from cities to the suburbs further concentrated poor black people in a handful of city blocks.¹⁷² Many black Americans found themselves trapped in a decaying urban core with few municipal services or legitimate opportunities for employment.¹⁷³ The quality of life in cities declined under these conditions of social disorganization and disinvestment, and drug and other illicit markets took hold.¹⁷⁴ In the 1980s and 1990s, policymakers continued to turn to punitive policing and sentencing strategies to restore social order and address increasing drug use—resulting in larger and larger numbers of unemployed black urban residents with low levels of education being swept into prisons.¹⁷⁵

The numbers are stunning. In 1970, the state and federal prison population was 196,441.¹⁷⁶ By 1985, it had grown to 481,616.¹⁷⁷ And, by the year 2008, federal and state correctional authorities had jurisdiction over 1.6 million people.¹⁷⁸ These numbers have defined the current period of mass incarceration. Prisons overflowed and services and amenities for incarcerated people diminished. People in prison protested and violent riots erupted, such as the uprising at the Attica Correctional Facility in 1971.¹⁷⁹ Legal remedies for people in prison also dried up, as incarcerated people lost access to the courts to contest the conditions of their incarceration.¹⁸⁰ And this growth in incarceration disproportionately impacted black Americans: in 2008, black men were imprisoned at a rate six and half times higher than white men.¹⁸¹ The incarceration boom fundamentally altered the transition to adulthood for several generations of black men and, to a lesser but still significant extent, black women and Latino men and women.¹⁸² By the turn of the 21st century, black men born in the 1960s were more likely to have gone to prison than to have completed college or military service.¹⁸³

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Vera proposes that human dignity be the foundational, organizing principle of the nation’s corrections system. This principle recognizes every person’s intrinsic worth and capacity for self-control, autonomy, and rationality.



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Chapter 3

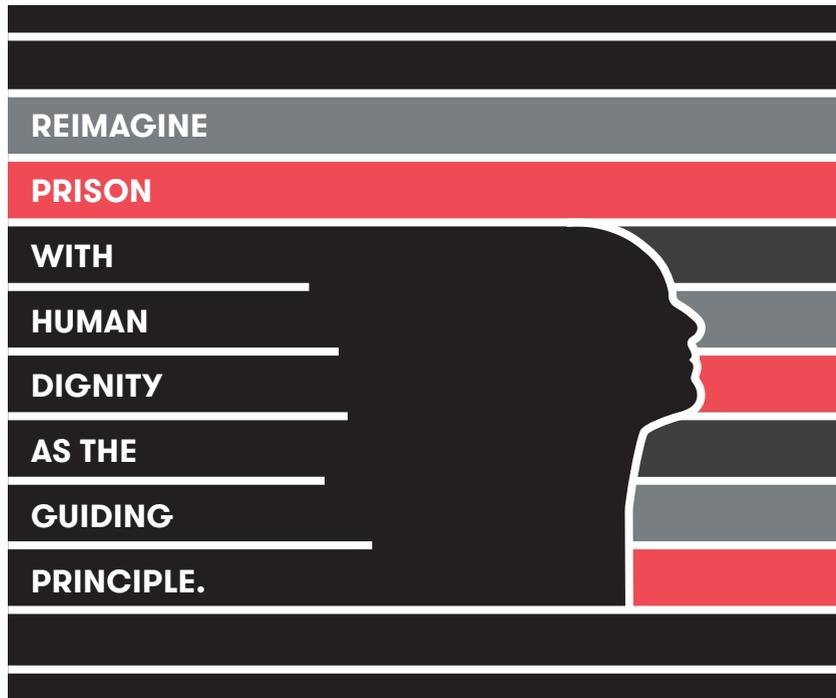
Human dignity as the guiding principle

This country's current prison practices and environment are built atop a long history of racially motivated incarceration and discriminatory prison practices and policies. That history harms all of us. Efforts to reform or improve the experience of incarceration along the margins—for example, a new focus on reentry, evidence-based programs, or expanded educational offerings—will not suffice to shift the weight of this history, a history that is built into the edifice of the nation's prison facilities. To effect real and radical change for everyone, we must acknowledge and respond to this country's history of racial and ethnic oppression and the role our corrections systems have played in creating and perpetuating inequality.

Incremental reforms based on the existing system ethos will not do. We must find a redefining principle to underpin the most severe sanction we have: deprivation of liberty.

Vera proposes that human dignity be the foundational, organizing principle of the nation's corrections system. This principle recognizes every person's intrinsic worth and capacity for self-control, autonomy, and rationality.¹⁸⁴ By establishing dignity as an organizing principle, and not just as an aspirational vision or legal backstop, all aspects of imprisonment—from its very purpose to the experience of everyday life in confinement—will be affected. The principle will serve to ensure that the corrections system does not compromise, abridge, or undermine an individual's human dignity. Human dignity is a rejoinder to the persistent dehumanization that characterizes current and historic incarceration, which was born precisely because of white supremacy—the belief that black people were subhuman. Where we have denied humanity, we must embrace human dignity.

Radical as this may seem, America would not be the first place to atone for inhumanity by embracing its opposite. In Germany, for example, Article I of its constitution, known as the Basic Law, reckons with the history and horrors of the Holocaust and states plainly: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”¹⁸⁵ Moreover, human dignity has deep and ancient philosophical underpinnings. (See “Human dignity in brief: An ancient lineage” at page 50.) As a modern legal principle, it is well-established both internationally and in the United States. The concept is the basis of international human rights law developed in the aftermath of World War II as a direct response to the dehumanizing bureaucratic horrors of the Holocaust. Human dignity is a founding principle of the United Nations (founded in 1945); a core concept in the Universal Declaration of Human Rights (adopted in 1948); and a persistent theme in international and regional human rights instruments—for example, it forms “one of the cornerstones” of the European Convention on Human Rights (drafted in 1950).¹⁸⁶ Human dignity has elevated status within the laws of many countries. It is the foundational value in the constitutional documents of Costa Rica, the Czech Republic, Estonia, Germany, Greece, Hungary, India, Israel, Italy, Japan, Lithuania, Poland, Portugal, Slovakia, South Africa, Spain, and



several other countries.¹⁸⁷ The South African constitution, for example, states boldly in its very first article that South Africa is a country founded on the value of human dignity and, in section 10, recognizes its universality and everyone’s right “to have his or her dignity respected and protected.”¹⁸⁸

Although the phrase “human dignity” does not appear in the U.S. Constitution, the Supreme Court has ruled in a number of cases that the concept animates and even underlies many of the amendments contained in the Bill of Rights, as well as subsequent constitutional amendments. The Court has explicitly relied on the concept of human dignity to limit punishment and protect the rights of those imprisoned (Eighth Amendment); limit unreasonable searches (Fourth Amendment); explain the right to represent oneself (Sixth Amendment); expand the right to privacy regarding marriage, reproduction, and one’s sexual activities and choices (14th Amendment); render illegal racial or other discrimination (14th Amendment); and protect one’s reputation (the common law of libel).¹⁸⁹ At the state level, too, dignity is a founding basis for law and citizenship. Dignity is explicitly referenced in the state constitutions of Illinois, Louisiana, and Montana; for example, the Montana constitution (ratified

Human dignity in brief: An ancient lineage

The idea of human dignity has a long history in both religious and philosophical thought and has undergone several evolutions in its journey to becoming a modern legal principle. In classical Roman times, the predominant view of dignity drew distinctions between those who occupied higher or lower social status, almost as a substitute for “reputation,” although Cicero used a limited concept of dignity to separate humans from animals.^a Theologians, humanists and, later, philosophers between the Renaissance and Enlightenment broke with this conception and began to declare the universality of dignity—that dignity is inherent in all humans and is worthy of protection, underscored by a theological argument: “the dignity of human beings is derived from their creation in the image of God.”^b In the 18th century, Immanuel Kant popularized the concept of dignity as a legal norm, grounded in the belief that “to treat people with dignity is to treat them as autonomous individuals able to choose their destiny.”^c Thus, the core idea of human dignity that arose long before its use in international human rights law is the idea that “worth and regard arise in each individual simply by virtue of being human. This

stripped-down dignity does not confer any status or social standing—but simply identifies the individual as the bearer of human dignity.”^d

^a Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights,” *European Journal of International Law* 19, no. 4 (2008), 655-724, 656-57.

^b Leslie Meltzer Henry, “The Jurisprudence of Dignity,” *University of Pennsylvania Law Review* 160, no. 1 (2011), 169-233, 199-203, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1038&context=penn_law_review.

^c McCrudden, “Human Dignity,” 2008, 659-60. Some regard Kant as “the father of the modern concept of human dignity.” *Ibid.*, 659 (quoting Giovanni Bognetti, “The Concept of Human Dignity in European and US Constitutionalism,” in *European and US Constitutionalism*, edited by Georg Nolte [Cambridge: Cambridge University Press, 2005], 85-107, 75 & 79).

^d Neomi Rao, “Three Concepts of Dignity in Constitutional Law,” *Notre Dame Law Review* 86, no. 1 (2011), 183-271, 196.

in 1972) recognizes that all human beings have an innate dignity, and that dignity “is inviolable.”¹⁹⁰

However, despite a larger commitment to human dignity, in most countries—the United States foremost among them—a standard of human dignity does not guide the law or policymaking processes. The Supreme Court typically addresses only the most extreme, “shock the conscience,” circumstances that arise in prison and elsewhere.¹⁹¹ The Court has, on occasion, offered sweeping platitudes about the application of human dignity to people in prison, but it has never used this concept to do more than ensure that incarcerated people are supplied with their basic needs or to condemn truly degrading treatment.¹⁹² Thus, while the Court in *Hope v. Pelzer* relied on human dignity in assessing the prison officers’ actions, it did not explicitly establish the principle as a new positive standard of treatment. It merely stated the “obvious:” that tying an incarcerated person to a hitching post in the sun for more than seven hours, supplying him with little water, and preventing him from going to the toilet violated the Eighth Amendment’s ban on cruel and unusual punishment.¹⁹³ The Court

has thus not created a clear standard of human dignity and no legislation in the United States explicitly affirms obligations regarding human dignity.

Vera's proposal elevates the concept of human dignity from one that merely prevents grossly unjust conduct to a cardinal principle that dictates how a prison system must organize itself from top to bottom—a standard to which the system must perform and a guide to set the contours of all prison policies and practices. Importantly, a commitment to human dignity does not undermine the fundamental correctional priorities of safety and security. In fact, human dignity demands that everyone behind the walls—staff as well as those incarcerated—is kept safe and secure.

✦ These proposed practice principles are derived from an expansive view of human dignity, shaped to address the deficiencies in this country's current prison experience and respond to America's history of using prisons as a form of racial oppression. ✦

A prison system grounded in human dignity also directly responds to the faults created by centuries of racial oppression. As two leaders of #BlackLivesMatter and the Black Alliance for Just Immigration explained, "We understand that the black liberation movement in the U.S.—from its inception as an anti-slavery movement, through the Civil Rights Era, and up to now—has never been only for civil rights. The movement is a struggle for the human rights and dignity of black people in the U.S., which is tied to black peoples' struggle for human rights across the globe."¹⁹⁴ Extending the principle of human dignity to people incarcerated in our country's prisons would mark a significant milestone in this movement.

In a practical sense, by adopting human dignity as the guiding ideal to govern imprisonment, many aspects of prison life and administration will need to change—including staff training and philosophy, programming and treatment offered to people in custody, the material conditions of confinement that incarcerated people live under, and even an institution’s physical design and layout. Prisons will have to create, improve, or expand policies and practices that facilitate respect for human dignity, while minimizing or avoiding others that will likely corrode it.¹⁹⁵

Only a select few countries, such as Germany, commit to human dignity in a manner that affirmatively shapes their prison policies and practices.¹⁹⁶ There, the German Prison Act—which sets the standards by which not only detention facilities must operate but also prison managers and staff must behave—explicitly dictates that “(1) life in penal institutions should be approximated as far as possible to general living conditions, (2) any detrimental effects of imprisonment shall be counteracted, and (3) imprisonment shall be so designed as to help the prisoner reintegrate himself into life at liberty.”¹⁹⁷ It is now America’s turn. Our circumstance makes us well situated to learn from Germany and other leaders and contribute new theories and strategies for upholding human dignity behind bars to the world.

How can a seemingly nebulous principle like human dignity be put into operation? What would the day-to-day workings of a prison system grounded in human dignity look like? The following sections outline three principles that are intended to help elucidate what a dignity-centered approach to prisons may mean in practice:

- › Principle 1: Respect the intrinsic worth of each human being;
- › Principle 2: Elevate and support personal relationships; and
- › Principle 3: Respect a person’s capacity to grow and change.

These proposed practice principles are derived from an expansive view of human dignity, shaped to address the deficiencies in this country’s current prison experience, and respond to America’s history of using prisons as a form of racial oppression.

Practice principle 1: Respect the intrinsic worth of each human being

The first practice principle honors one of the core tenets of human dignity: by virtue of their personhood, people possess an intrinsic worth and must be treated with basic respect. It is a principle that has been largely absent from this country's system of imprisonment from the beginning, yet is at the core of our shared humanity. The principle prohibits practices that degrade or demean a person. In other words, policies and practices should not dehumanize, cause humiliation, or evince a lack of respect. It would forbid forcing people to wear uniforms designed to make them feel ashamed or supplying them with insufficient food or inadequate health care. Instead, policies should serve to humanize people in prison, including in ways that mitigate to the extent possible the inherent power imbalance between the prison administration and incarcerated people.

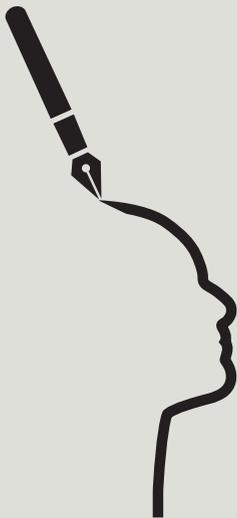


Legal basis for practice principle 1

There is scholarly consensus that personal integrity is an aspect of human dignity and that a person's dignity can be diminished by acts that degrade, debase, demean, and humiliate.^a This aspect of human dignity also underlies international and domestic jurisprudence surrounding the rights of those incarcerated, examples of which are below.

- In the United States, the Supreme Court has relied on this facet of human dignity to prohibit extreme maltreatment of an incarcerated person. In *Hope v. Pelzer*, the case in which the incarcerated person was tied to a hitching post, the Court described this treatment as one which created “a substantial risk of physical harm, unnecessary pain, unnecessary exposure to the sun, prolonged thirst and taunting, and a deprivation of bathroom breaks . . . [causing] particular discomfort and humiliation . . . [which was] antithetical to human dignity . . . under circumstances that were both degrading and dangerous.”^b
- In 2003, the Montana Supreme Court in *Walker v. State* interpreted the dignity clause in its state constitution as a prohibition against “[t]reatment which degrades or demeans persons, . . . which deliberately reduces the value of persons, and which fails to acknowledge their worth as persons.”^c The court specifically held that the state’s constitution “forbids correctional practices which permit prisons in the name of behavior modification to disregard the innate dignity of human beings, especially in the context where those persons suffer from serious mental illness,” and stated unequivocally that “the plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated.”^d
- A similar aspect of human dignity is acknowledged and protected by the U.S. Supreme Court in its cases analyzing the Fourth Amendment’s prohibition against unreasonable search and seizure. Although primarily used to demarcate the most extreme circumstances—and usually only to protect against physical humiliation (rather than psychological degradation)—the Court “readily characterize[s]” some police practices as offensive to human dignity.^e Justice Scalia used this concept of dignity to justify enforcing the “knock and announce” rule and tended to determine that searches were unconstitutional when they, as one scholar described when aggregating Scalia’s decisions, “involved exposing an individual to others when he was indecent, improper, undressed, ungraceful, or uncollected—in short, undignified.”^f
- On an international level, Article 3 of the European Convention on Human Rights and Rule 1 of the Nelson Mandela Rules, both of which prohibit inhumane or degrading treatment or punishment, are rooted in a similar conception of human dignity.
- The European Court of Human Rights (ECHR) very often applies human dignity reasoning in cases examining prison conditions and forms of punishment.^g According to the ECHR, whether an action amounts to “degrading treatment” depends on “whether its object is to humiliate and debase the person concerned and whether . . . it adversely affected his or her personality in a manner incompatible with Article 3.”^h For example, in *Peers v. Greece*, the applicant was confined to a cell with no ventilation and no window for a considerable part of each day even though the temperature was extremely hot at times, and the applicant and his cellmate had to use the toilet in each other’s presence. The ECHR held that such conditions “diminished the applicant’s human dignity,” having “aroused in him feelings of anguish and inferiority capable of humiliating and

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debasing him, and possibly breaking his physical or moral resistance.”ⁱ

^a See Leslie Meltzer Henry, “The Jurisprudence of Dignity,” *University of Pennsylvania Law Review* 160, no. 1 (2011), 169-233, 215-16; and McCrudden, “Human Dignity,” 2008, 686.

^b *Hope v. Pelzer*, 536 U.S. 730, 738 & 745 (2002). Also see *Demery v. Arpaio*, 378 F.3d 1020, 1030-33 (2004), where Maricopa County Sheriff Joe Arpaio installed webcams and filmed pretrial defendants as they were booked and detained in jail. Although the Ninth Circuit Court of Appeals did not explicitly invoke concepts of human dignity, it did find that deliberate degradation constituted “punishment” for purposes of granting injunctive relief. The court explained that the filming and broadcasting of such activities “constitutes a level of humiliation that almost anyone would regard as profoundly undesirable and strive to avoid.” *Demery*, 378 F.3d at 1030. Additionally, implicitly acknowledging the humanity of incarcerated people, the Ninth Circuit went on to quote the U.S. Supreme Court and noted that “[i]nmates are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters, however ‘educational’ the process may be for others.” *Ibid.* (quoting *Houchins v. KQED, Inc.*, 438 U.S. 1, 5 & note 2 (1978) (plurality opinion)).

^c *Walker v. State*, 68 P.3d 872, 884 (2003) (quoting Matthew O. Clifford and Thomas P. Huff, “Some Thoughts on the Meaning and Scope of the Montana Constitution’s ‘Dignity’ Clause with Possible Applications,” *Montana Law Review* 61, no. 2 (2000), 301-36, 307).

^d *Walker v. State*, 68 P.3d at 884.

^e Rex D. Glensy, “The Right to Dignity,” *Columbia Human Rights Law Review* 43, no. 1 (2011), 65-142, 89 (citing *Rochin v. California*, 342 U.S. 165 (1952) (a search that consisted of opening the petitioner’s mouth and extracting contents

from his stomach); and *Winston v. Lee*, 470 U.S. 753 (1984) (forcing an individual to undergo surgery to remove a bullet)).

^f Henry, “Jurisprudence of Dignity,” 2011, 220. See *Hudson v. Michigan*, 547 U.S. 586 (2006); and *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989) (dissenting opinion). The knock-and-announce rule is based in the common law and instructs that law enforcement officers executing a search warrant must first knock, identify themselves and their authority, and wait a reasonable amount of time before they enter. The Supreme Court described the rule’s history and philosophy in *Miller v. United States*, 357 U.S. 301 (1958).

^g Antoine Buyse, *Dignified Law: The Role of Human Dignity in European Convention Case-Law*, keynote address delivered on October 11, 2016, at Utrecht University, <https://perma.cc/KY5N-RB5L>. Also see Dirk Van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy* (New York: Oxford University Press, 2009), 127-30. Van Zyl Smit and Snacken note that the European Court of Human Rights approaches the question of appropriate conditions of confinement primarily “in the context of deciding whether there has been an infringement of the prohibition of inhuman or degrading treatment or punishment contained in Article 3 of the European Convention of Human Rights.” They demonstrate that the Court has consistently stressed that “under this provision the State must ensure that a person is detained in conditions which are compatible with respect for [his or her] human dignity” and that liability of the state in this regard is no longer determined by the intention of the state. *Ibid.*, 128.

^h *Peers v. Greece*, European Court of Human Rights Reports of Judgments and Decisions 2001-III, 275-336, 296, § 68 (citing *Rainen v. Finland*, 1997-VIII, pp. 2821-22, § 55), <https://perma.cc/62LH-E6R9>.

ⁱ *Peers v. Greece*, § 75.

Putting the principle into practice

“The women [in Utah’s prisons] were given brand-new uniforms the color of plum wine. The prison lifted its ban on cosmetics, and the inmates picked out lip colors, eye shadows and blushes. . . . [I]t seemed to work: Disciplinary problems plummeted. That’s because, thanks to their new uniforms, the women inmates no longer see themselves as prisoners but as people. The clothes they wear have altered how they perceive themselves, and the world.”

– Susie Neilson, “Prison Uniforms Make It Harder to ‘Go Straight,’” *Newsweek*, 2016¹⁹⁸

“I believe a ‘good morning’ just gets your day started. . . . I encourage the guys. When they have birthdays, we sing ‘Happy Birthday.’ They’re human beings, and it makes a difference. Some of these guys, they’ve never had someone tell them ‘Happy birthday.’ . . . We let them know there’s a different way of thinking and living. . . . It gets them motivated. ‘I can make a difference. I can get a good job. I can go to college. I don’t just have to settle.’”

– Elwanda Ray, quoted in Cole Waterman, “Michigan Corrections Officer of the Year Motivates Inmates to Do Better,” *MLive.com*, 2018¹⁹⁹

As simple as “treating each person with basic respect” sounds, this requirement implicates nearly every aspect of prison operations. It will no longer be enough to just provide people in prison with the bare necessities, as the application of Eighth Amendment currently requires.²⁰⁰ This practice principle elevates the standards by which people are provided with those necessities and mandates that prison systems deliver them in a way that promotes rather than diminishes people’s dignity.

How can a prison work to respect the intrinsic worth of the people incarcerated inside it? To do so will require the system to infuse humanity into its operations. A prison operating consistently with this first practice principle may consider some of the following measures:

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- › recognizing dignity by requiring corrections staff to call incarcerated people by their names rather than referring to them by institutionalizing terms that strip individuality away, such as their prison number, “prisoner,” “inmate,” or “tans” (a reference to the color of uniforms incarcerated people are made to wear in some jurisdictions);
- › providing high-quality health care on-site at the prison, equivalent to what would be provided at a walk-in clinic or other comparable community-based location, and providing for swift transportation to local hospitals in the event of more serious health issues;
- › permitting incarcerated people to make individual choices about attire, either by allowing them to wear their own clothes or by offering variety in institutionally assigned clothing, while prohibiting any type of uniform that is intended to humiliate or degrade, such as pink boxer shorts or tight, white, transparent uniforms;²⁰¹

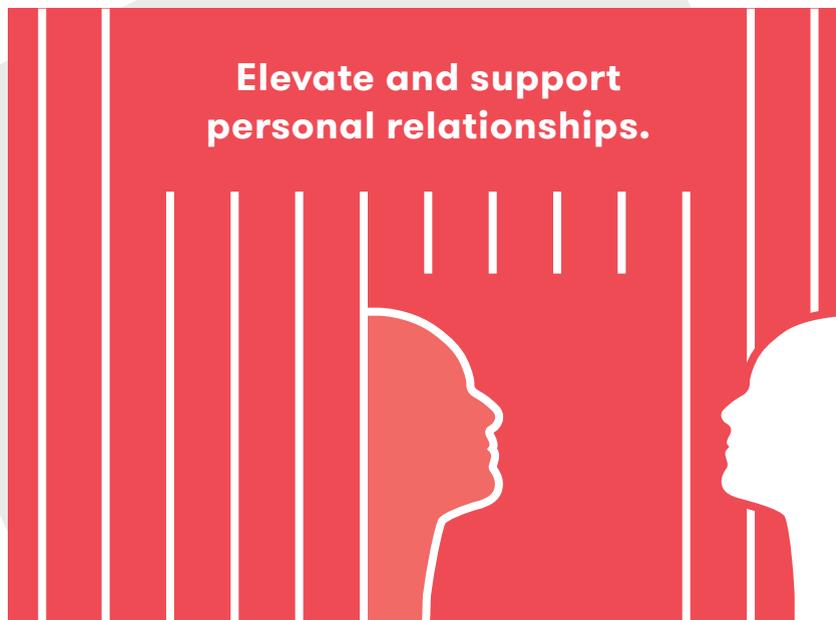
- › providing an adequate supply and variety of hygienic products that meet moderate standards of quality and offering a selection of additional products at reasonable cost in the commissary—and the products supplied and available should also take into account the cultural and personal preferences of the prison population;²⁰²

✎ **Policies and practices should not dehumanize, cause humiliation, or evince a lack of respect.** ✎

- › supplying incarcerated people who menstruate with an adequate supply and choice of sanitary products and strictly prohibiting corrections staff from using such supplies as a way to control the residents;²⁰³
- › serving a more than adequate quantity of edible and healthy food, including fruits and vegetables, and providing supplemental healthy snacks and items for purchase in the commissary;
- › instituting meaningful protection from physical and emotional abuse within the prison, whether perpetrated by staff or other incarcerated people, including private reporting mechanisms, access to emergency medical care following a physical or sexual assault, and access to victim support groups and long-term medical and behavioral health care;²⁰⁴ and
- › encouraging corrections staff and incarcerated people to view each other as humans worth getting to know beyond the stereotypical guard-inmate paradigm.

Practice principle 2: Elevate and support personal relationships

Human dignity also encompasses human connection. A person's inherent worth and sense of dignity is often bound up in his or her relationships with others—in the context of a prison, this means relationships among those living in prison, between corrections staff and residents, and between incarcerated people and their families and friends on the outside.²⁰⁵ Accordingly, Vera's second practice principle focuses on allowing people who are living in prison to develop relationships with others and, indeed, facilitating those relationships. It prohibits actions that serve to extinguish or hamper such interactions. At a minimum, the prison should ensure that its residents have a chance to develop and sustain real human relationships.



Legal basis for practice principle 2

Courts and international conventions do not explicitly cite the presence of, or opportunity to develop, personal relationships as a necessary component of human dignity. However, family life is considered a core value in several international texts. For instance, respect for family life is defined as a basic human right in Article 8 of the European Convention on Human Rights, and both the European Commission on Human Rights and the ECHR have long recognized the need for its protection.^a Specific to prisons, Rules 58 and 59 of the Nelson Mandela Rules state that (1) “Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals” and (2) “Prisoners should be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.”^b The European Commission on Human Rights has interpreted this right broadly, declaring that it means “the right to establish and develop relationships with other human beings, especially in the emotional field for the development and fulfillment of one’s own personality.”^c Many advocates support the view that family life and personal relationships contribute to the individuality aspect of human dignity: “Who one is and where one comes from are defining elements of individuality and for most people family life is an important element of this.”^d

^a The European Commission has explained that “it is an essential part of a prisoner’s right to respect for family life that prison authorities assist him in maintaining effective contact with his close family members. It is also an essential part of both private life and the rehabilitation of prisoners that their contact with the outside world be maintained as far as practicable in order to facilitate their reintegration in society on release. . . .” See *X v. United Kingdom*, no. 9054/80, Commission decision of October 8, 1982, DR 30, p. 113, <https://perma.cc/X63C-SBVT>. For a similar ruling in the ECHR, see *Messina v. Italy*, (No. 2) 2000-X, 63-82, 74, § 61, <https://perma.cc/DZB5-7CYE>.

^b *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, Rule 59, <https://perma.cc/8FG3-FJX5>. This sentiment is echoed in the proposed Dignity Act, a Senate bill that, if enacted, would mandate that if an incarcerated person has children, he or she must be placed as close to the children as possible. S. 1524, 115th Congress (2017-2018), <https://www.c-span.org/congress/bills/bill/?115/s1524>.

To the extent that positive interactions between people and the development of social relationships are a defining aspect of living in modern society, both the European Prison Rules and the Nelson Mandela Rules advocate for minimizing the differences between prison and outside life—sometimes known as the “normalization” principle—in order to mitigate the negative effects of incarceration and increase chances for successful rehabilitation and reintegration into the community.^e Consistent with this principle, German corrections officials, for example, routinely award people in prison short-term or extended home leave to visit with family or search for work or housing, recognizing that strong family and community connections foster successful reentry outcomes.^f Though the practice is not common, some facilities in the United States have extended family visitation policies that allow children and immediate family members longer visits, which may last overnight in special facilities designated for this purpose. These programs vary in terms of which family members are allowed to visit, for how long, and where they stay. Some facilities offer such visits through agency programming or in partnership with local community or faith-based organizations.^g

^e See *X v. Iceland*, Commission Application no 6825/74, European Commission of Human Rights Vol. 5, 86-87, <https://perma.cc/YT4Q-8Z7X>.

^d Andrew Coyle, *Humanity in Prison: Questions of Definition and Audit* (London: International Centre for Prison Studies, 2003), 39.

^e Nelson Mandela Rules, Rule 5: “The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.” U.N. General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*: resolution / adopted by the General Assembly, January 8, 2016, A/RES/70/175. European Prison Rules, Rule 5: “Life in prison shall approximate as closely as possible the positive aspects of life in the community.” Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules* (January 11, 2006).

^f Germany’s Federal Constitutional Court has affirmed the importance of prison leave to the principles of

resocialization and reintegration. See Frieder Dünkel and Dieter Rossner, “Germany,” in *Imprisonment Today and Tomorrow: Perspectives on Prisoners’ Rights and Prison Conditions*, edited by Dirk van Zyl Smit and Frieder Dünkel (New York: Springer, 2001), 288-350, 330-31. Also see Dirk van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy* (New York: Oxford University Press, 2009), 78.

⁹ Seven jurisdictions allow for overnight family visits (California, Colorado, Connecticut, Nebraska, New York, South Dakota, and Washington); three are limited to women and their children (Colorado, Nebraska, and South Dakota), while the rest include conjugal visits (private time between an incarcerated person and his or her spouse or domestic partner). See Chesa Boudin, Trevor Stutz, and Aaron Littman, “Prison Visitation Policies: A Fifty-State Survey,” *Yale Law & Policy Review*

32, no. 1 (2013), 149-89, 175. For example, the Family Reunion Program, which has operated in New York State for decades, allows eligible parents (those with lower security designations who are not assigned to a special housing unit and have not demonstrated a pattern of disruptive behavior) to receive extended visits from immediate family members in on-site, private mobile homes. Another example is a program for incarcerated mothers and their preadolescent children at Minnesota Correctional Facility–Shakopee. The program offers one overnight weekend visit each month for children under 11. These visits are highly structured and situated within the Anthony Parenting Program, which requires mothers to attend parenting classes. See Lindsey Cramer, Margaret Goff, Bryce Peterson, and Heather Sandstrom, *Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice* (Washington, DC: Urban Institute, 2017), <https://perma.cc/38B6-GRL6>.

Putting the principle into practice

“Perhaps the finest example of compassionate American prison design is the recently completed Las Colinas Women’s Detention and Reentry Facility, commissioned by the County of San Diego, designed by KMD/HMC Architects. The complex sits on a 45-acre campus and features residentially scaled buildings clustered around exterior courtyards. Research shows that isolation breeds violence and anger; the more normalized environment is meant to encourage socialization and to “minimize physical and psychological barriers” between inmates and staff. . . . Inside, the floors are a warm brown and sometimes playfully patterned; translucent green accent walls break down the scale of the cafeteria; and materials include not only concrete but also ashlar stone, cork, and wood. Due to the facility’s podular layout, all public spaces feature large windows and an abundance of natural light.”

– Rachel Slade, “Is There Such a Thing as ‘Good’ Prison Design?” *Architectural Digest*, 2018²⁰⁶

How can a prison system provide people with opportunities to nurture and grow their personal relationships? Although a prison system cannot force a person sentenced to incarceration to have interpersonal relationships, it

can facilitate rather than impede their development. This section discusses several ways that a prison can help incarcerated people build relationships with people inside as well as outside the prison and, in so doing, help keep them in the fold of the larger community. (For the ways in which the system can help grow relationships between people in prison and corrections staff, see “Human dignity and corrections staff” at page 74.)

Interacting with people inside the prison. Ensuring that interpersonal relationships can flourish starts with the layout of the prison itself. The architecture and design of a facility impacts how incarcerated people interact with each other and the relationship between staff and those held in prison. Indeed, research shows that people in prison more negatively assess their relationships with staff when they live in some of the most

Human dignity and prison design

The architecture and design of a facility have a significant impact on the people working and living within its walls.⁹ A range of factors—light, color, air quality, and acoustics, among others—can impact people’s mental and physical well-being and, thus, their dignity.

A prison system that prioritizes human dignity could renovate existing spaces or design new facilities to include some of the features below.

- Private, individual rooms that have adjoining private bathrooms, with doors to which prison residents hold the key. These should also provide
 - clear (rather than opaque) windows that open to allow for natural airflow;
 - light switches that allow incarcerated people to control artificial light; and
 - space for incarcerated people to display and store photographs and other personal possessions.

- A temperate environment that is adequately warm in the winter and safely cool in the summer, including working heat and air conditioning.
- A variety of room types for a full range of activities, including
 - an adequate numbers of classrooms, computer labs, libraries, and workshops;
 - quiet group spaces for studying, letter writing, and reading; and
 - private rooms for behavioral and mental health counseling, religious counseling, legal discussions, and phone calls.

For a vision of how to bring these architectural and design features to life, see an example of an American prison as reimagined by MASS Design Group, at www.vera.org/reimagining-prison#mass-design-group.

⁹ See generally James Krueger and John A. Macallister, “How to Design a Prison that Actually Comforts and Rehabilitates Inmates,” *Fast Company*, April 30, 2015, <https://perma.cc/W4G5-6E8T>.



common housing unit designs in the United States (panopticon, double-celled, and older housing units) rather than in other layouts.²⁰⁷

We recognize that a wholesale and immediate redesign of America's many prisons is economically unrealistic. But a prison system that prioritizes human dignity and seeks to encourage personal relationships could renovate existing spaces or, where old buildings are crumbling or unsafe, design new facilities to include some of the following features:

- › an acoustic environment that minimizes echoes and excess noise;
- › spaces for recreation, such as outdoor areas with green lawns and interior or exterior spaces for exercise and team sports;
- › buildings and outside spaces that are fully accessible to people with physical disabilities;
- › day rooms that facilitate group activities and personal interactions between staff and residents; and
- › kitchen areas where incarcerated people can work together to prepare food for themselves and others.

(For additional ways in which the design of a prison can be used to promote human dignity, see “Human dignity and prison design” at page 62.)

For those incarcerated people subjected to solitary confinement, the value of personal relationships takes on even more significance. Though such housing would be used rarely, if ever, in a prison system based on human dignity—and then only for brief periods of time—a dignity-centric prison system must ensure that those sent to such housing retain meaningful social contact with others by, for example, requiring a minimum amount of staff contact, allowing for social activities with others who are incarcerated, and ensuring interactions with other individuals, such as psychologists, religious representatives, and community volunteers.²⁰⁸

Interacting with people outside the prison. A commitment to fostering human connection must go beyond the prison walls. Given the danger that closed institutions have of falling into social patterns and communication habits so insular as to be unrecognizable to those outside the institution, ensuring outside contact is crucial to this principle.²⁰⁹ A commitment to human dignity mandates that facilities implement policies and practices that encourage families and friends to visit, facilitate the presence of outside organizations within the prison, and provide opportunities for



incarcerated people to spend constructive time outside the prison.²¹⁰ In this way, those in prison are not considered “other,” but rather are seen as integral members of the human family. A prison system aiming to achieve these goals might implement some of the following practices:



A commitment to human dignity mandates that facilities implement policies and practices that encourage families and friends to visit, facilitate the presence of outside organizations within the prison, and provide opportunities for incarcerated people to spend constructive time outside the prison.



- › housing incarcerated people in facilities that are as close to their homes and loved ones as possible;
- › developing in-person visitation policies that
 - allow for a generous number of visits for reasonable durations of time;
 - permit physical contact between partners or parents and their children;
 - provide reasonable accommodations for visiting, such as a room with natural light, a space that allows for some privacy, a place with food available for purchase, and a space for children and parents to play together; and
 - encourage structured activities among visitors, incarcerated people, and staff;

Infusing discipline with dignity

Basing a prison system on the principle of human dignity will not eliminate the need for discipline. Even when people are treated with respect, there will be inevitable breaches in prison rules and regulations ranging from small infractions, such as failing to report to school or work, to more serious and disruptive behavior that threatens the safety of others. The disciplinary procedures commonly employed in the United States tend to use sanctions that over-emphasize security, control, and punishment and are often disproportionate or excessive—in length and severity—to the infraction or to what is necessary to achieve order and security. For instance, sending people to lengthy periods in solitary confinement—the most severe disciplinary sanction—is too often used as a routine management strategy in response to all types of disruptive behaviors, including in some places for minor rule-breaking such as talking back.^a Other sanctions commonly used include restricting or removing visiting, telephone, or correspondence privileges; restricting activities such as school or work; adding extra work details; confining people to their quarters; removing recreation time; requiring restitution; and mandating letters of apology or other writing assignments.^b

So while prison discipline will still necessarily exist, disciplinary actions must be grounded in human dignity. Under a framework of human dignity, people in prison are not granted privileges at the discretion of the prison authorities; rather, they are bearers of innate, inviolable rights. As such, sanctions that restrict an individual's rights must be applied in proportion to the infraction and using the least intrusive means available.^c If the disciplinary sanction infringes on an aspect of human dignity, the system must ensure that the policy is narrowly tailored to achieve a legitimate goal.^d Systems of discipline within a human dignity-based prison could include the practices below.

- **A structured sanction grid that provides corrections officers with guidance on appropriate and proportionate punishments for particular behaviors.**^e These are currently used by many facilities in the United States. They delineate when less restrictive sanctions may be used and when more serious sanctions are appropriate. Less restrictive sanctions could include requiring mediation or anger management classes, withholding access to the commissary, removing television privileges, or making the person responsible for the costs of damaged

property.^f More restrictive sanctions could include revocation of good time credit—credit earned through participation in in-prison programming or through compliance with disciplinary rules that can be used to shave time off a prison sentence.^g

- **A rewards grid for positive behavior.**^h While many states currently provide incentives for program completion and good behavior, the rewards are received far in the future—usually in the form of reduced incarceration time (good time credit).ⁱ People accustomed to precarious environments often have difficulty associating remote rewards with immediate behavior and, because of the nature of the current prison system, many incarcerated people have a history of living in such environments.^j A dignity-centric disciplinary system could incorporate more short-term positive reinforcement or incentives to encourage compliance with rules and regulations and facilitate more constructive interactions among the institution, staff, and incarcerated individuals.^k Simple rewards such as positive feedback from corrections staff or recognition from the prison itself could be included in this grid, as well as commissary benefits or increased visitation privileges.
- **Strict limitations on the infractions that result in solitary confinement and in the duration of time spent in these units.**^l These standards are the norm in some Western European countries—for example, by statute, solitary confinement per incarcerated individual in any given year cannot exceed four weeks in Germany and two weeks in the Netherlands.^m In these countries, it is not unusual for solitary cells to go unused throughout an entire year. Moreover, those in solitary confinement must be provided with meaningful contact with others, as well as access to programming and treatment.

^a For such a finding in five jurisdictions, see Léon Digard, Elena Vanko, and Sara Sullivan, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems* (New York: Vera Institute of Justice, 2018), 15 & 17. Also see Alison Shames, Jessa Wilcox, and Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (New York: Vera Institute of Justice, 2015), 12-17, <http://perma.cc/KC6D-C3UL>.

^b See for example Washington Department of Corrections, *Prison Sanctioning Guidelines* [DOC 320.150 Attachment

2), on file with Vera. Also see Montana Department of Corrections, “Policy No. 3.4.1: Institutional Discipline,” <https://perma.cc/7KBF-D38A>.

^c People are more likely to view the sanctioning system as procedurally fair when rules and the consequences of violations are explained in advance, and when sanctions are imposed consistently but with an appropriate level of officer discretion. Council of State Governments, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community* (New York: Council of State Governments, 2005), <https://perma.cc/GGJ7-3J9D>; and Adele Harrell, Shannon Cavanagh, and John Roman, *Final Report: Findings from the Evaluation of the DC Superior Court Drug Intervention Program* (Washington, DC: Urban Institute, 1998), <https://perma.cc/8EUE-ZCQ2>.

^d The proposed standard is similar to the “least restrictive means” standard used in the strict scrutiny test employed by U.S. courts when examining laws that restrict constitutional interests. The Supreme Court contemplated in *United States v. Carolene Products Co.*, 304 U.S. 144, 152, note 4 (1938), that when the government established laws restricting the exercise of rights particularly guaranteed under the Constitution, those laws would be subject to higher standards of review. In *Korematsu v. United States*, 323 U.S. 214, 216 (1944), the Court established a rough outline of what would come to be known as strict scrutiny: “pressing public necessity may sometimes justify the existence of such restrictions.” The better description is that laws restricting rights guaranteed under the first 10 amendments, the 14th Amendment, or applied to “suspect classes” such as race, religion, or national origin, must be “narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). That is, the law must provide the least restrictive means of achieving the compelling governmental interest at hand. See Adam Winkler, “Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts,” *Vanderbilt Law Review* 59, no. 3 (2006), 793-873, 800-01, <https://perma.cc/954L-VBFU>.

^e Shames, Wilcox, and Subramanian, *Solitary Confinement*, 2015, 15.

^f Many European countries follow these approaches. For example, Dutch and German prison officials prioritize sanctions such as reprimands, restrictions on money and property, and restrictions on movement or leisure activities. These countries also ensure that the sanction lasts for a short and finite amount of time and is directly related to the alleged infraction. For example, if the person has problems interacting with others held in the prison, then the measure will address that behavior; if the violation relates to money, prison authorities will restrict—for a limited

time—a person’s access to funds (although not in ways that would impact access to basic necessities). See Ram Subramanian and Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States* (New York: Vera Institute of Justice, 2013), 13, <http://perma.cc/WQ42-EVE9>.

^g Alison Lawrence, *Cutting Corrections Costs: Earned Time Policies for State Prisoners* (Washington, DC: National Conference of State Legislatures, 2009), <https://perma.cc/2Y88-G5MF>. Also see A. Mitchell Polinsky, “Deterrence and the Optimality of Rewarding Prisoners for Good Behavior,” Stanford Law and Economics Olin Working Paper No. 478 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620784; and Michigan Department of Corrections, “Incentives in Segregation Pilot Project,” February 3, 2012, on file with Vera.

^h Eric J. Wodahl, Brett Garland, Scott E. Culhane, and William P. McCarty, “Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections,” *Criminal Justice and Behavior* 38, no. 4 (2011), 386-405, 399-400 (finding that administering rewards in proportionally higher numbers than sanctions produced the best results, especially when a ratio of four or more rewards for every sanction was achieved).

ⁱ See note g, above.

^j Jessica McCrory Calarco, “Why Rich Kids Are So Good at the Marshmallow Test,” *Atlantic*, June 1, 2018, <https://perma.cc/BP2P-ANRQ>.

^k These positive response grids are in use in some community corrections agencies in the United States today. They typically include the provision of small rewards for achieving supervision goals, such as offering positive feedback or other forms of community recognition, lengthening or eliminating a curfew, or relaxing other reporting requirements. See Peggy McGarry, Alison Shames, Allon Yaroni, et al., *The Potential of Community Corrections to Improve Safety and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 19, <https://perma.cc/B7WH-UA7E>.

^l There is mounting evidence of the inhumane practices of and harmful outcomes produced by solitary confinement. See for example Shames, Wilcox, and Subramanian, *Solitary Confinement*, 2015.

^m For standards around the use of solitary confinement used in Germany and the Netherlands, see Subramanian and Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, 2013, 13.



- › creating policies that ensure that all visitors are treated respectfully and fairly;
- › making phone calls, emails, and video calls available to incarcerated people at reasonable rates—and using video visitation to supplement, rather than replace, in-person visitation opportunities;
- › forging relationships with local organizations and giving community members, community organizations, volunteers, educators, and others reasonable access to the prison and its residents;
- › providing people living in prison with a meaningful opportunity to receive prison furloughs or other types of prison leave, including for important family events such as funerals, participation in work or educational programs, or in preparation for reentry; and
- › implementing compassionate release programs—sometimes called geriatric release or medical parole—that grant early discharge to people on the basis of serious illness or age-related impairment, so that they may spend their final months or years with their loved ones.²¹¹

Practice principle 3: Respect a person's capacity to grow and change

Vera's final proposed practice principle recognizes that no matter what behavior may have landed a person behind bars, they still have the potential to change. The role of a prison system operating according to this principle is not to require that a person grow and change, but rather to respect a person's capacity to do so. The inherent dignity of a human being includes a person's capacity for self-respect, self-control, empowerment, autonomy, and rationality. This implies a respect for a person's capacity to exhibit as well as enhance these characteristics. Under this practice principle, the prison should provide a proper setting and suitable opportunities for all incarcerated people to pursue productive activities and to grow and develop as people. At its essence, this is a principle that offers hope—for new opportunities and changed paths.



Legal basis for practice principle 3

While the principle of rehabilitation has early origins in the United States, today this practice principle is far more firmly rooted in international human rights texts and European jurisprudence.^a For example, in *Vinter and Others v. United Kingdom*, the ECHR held that a sentence of life imprisonment is not a violation of Article 3 of the European Convention on Human Rights so long as the person is offered a prospect of release and a possibility of review. A prospect of release, the court reasoned, is essential “under the Convention system, the very essence of which . . . is respect for human dignity.”^b The ECHR agreed with a ruling of the German Federal Constitutional Court, which had previously considered the issue and recognized that forcefully depriving people of their freedom without at least providing them with the chance to someday regain it “would be incompatible with the provision on human dignity in the Basic Law [of Germany].”^c As such, and echoing the German

court, the ECHR concluded that “prison authorities have the duty to strive towards a life sentenced prisoner’s rehabilitation, and that rehabilitation was constitutionally required in any community that established human dignity as its centrepiece.”^d

The ECHR reaffirmed this view in *Murray v. The Netherlands* and stated: “a life prisoner must be realistically enabled, to the extent possible within the constraints of the prison context, to make such progress towards rehabilitation that it offers him or her the hope of one day being eligible for parole or conditional release. . . . Life prisoners are thus to be provided with an opportunity to rehabilitate themselves. . . . [E]ven though States are not responsible for achieving the rehabilitation of life prisoners, they nevertheless have a duty to make it possible.”^e

^a The first clear statement of the rehabilitative ideal in America occurred in 1870 at the National Congress on Penitentiary and Reformatory Discipline. In the aftermath of the Civil War, the nation’s prisons were crowded, filled to the brim by the so-called “dangerous classes of impoverished immigrants.” Francis Cullen, “Correctional Rehabilitation,” in *Reforming Criminal Justice, Volume 4: Punishment, Incarceration and Release*, edited by Erik Luna (Phoenix, AZ: Arizona State University, 2017), 235-60, 241, <https://perma.cc/K9BA-R44Y>. The leading prison administrators and reformers reaffirmed that “the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering.” *Ibid.* Today, there are many examples of nonbinding declarations that acknowledge human dignity. For example, the American Correctional Association’s Declaration of Principles recognizes the principle of “humanity” as being essential to the foundation of sound correctional policy and effective public protection by stating that “[t]he dignity of individuals, the rights of all people and the potential for human growth and development must be respected.” See American Correctional Association (ACA), *Declaration of Principles: Humanity* (Alexandria, VA: ACA, 2002). The American Bar Association’s Standards for Criminal Justice also promote human dignity: “Correctional authorities should treat prisoners in a manner that respects their human dignity, and should not subject them to harassment, bullying, or disparaging language or treatment, or to invidious discrimination.” American Bar Association (ABA), *ABA Standards for Criminal Justice: Treatment of Prisoners*, Standard 23-7.1 (Chicago: ABA, 2011), <https://perma.cc/K7HC-V26U>. For modern, international guidance on rehabilitation, see Rule 4 of the

Nelson Mandela Rules, which states that protecting society against crime and reducing recidivism “can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.” U.N. General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*: resolution / adopted by the General Assembly, January 8, 2016, A/RES/70/175, http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/70/L.3. Also see Rule 91, which states: “The treatment of persons sentenced to imprisonment . . . shall have as its purpose . . . to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.” *Ibid.* Also, the International Covenant on Civil and Political Rights, Article 10(3), states: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” U.N. General Assembly, *International Covenant on Civil and Political Rights* (December 16, 1966), United Nations, Treaty Series, vol. 999, p. 171, <https://perma.cc/NP2A-U4YR>.

^b *Case of Vintner and Others v. United Kingdom*, 2013-III, 317 § 113, <http://hudoc.echr.coe.int/eng?i=001-122664>.

^c *Ibid.*

^d *Ibid.*

^e *Murray v. The Netherlands*, Application no. 10511/10 § 103-4, <https://perma.cc/SKF9-NV46>.

Putting the principle into practice

“Roz, a college graduate serving 50 to life, was interviewed for a study at New York’s Bedford Hills. She told the interviewers that school ‘was a whole new world. I started surrounding myself with people of like minds. Because when I first came here I . . . had a chip on my shoulder that I wanted somebody to knock off . . . when I started going to college that was like the key point for me of rehabilitation, of changing myself. And nobody did it for me, I did it for myself.’”

– “Inmates Find Self-Worth Through Prison Education,”
PrisonEducation.com, 2014²¹²

“[I]n the mornings, I attend a group called current events where we read an up-to-date article and give our opinion on that article. . . . Then we have a group discussion in which we can bring up any issues or topics a person thinks will get the group to start thinking. Some topics that have been brought up are money, family support, unity, and much more. . . . On Wednesdays, we have a town hall meeting where all the counselors, the unit manager, the lieutenant, mentors, and mentees gather together to talk about issues going on in the block and how we can resolve these issues. Other programs we started to attend throughout the week include reflections, conflict resolution, good intentions, bad choices, and money management. Doing all these programs really helps me look within myself and see what I need to work on before I get released.”

– Jordan, prison resident at T.R.U.E., written for Vera Institute of Justice, “Connecticut’s T.R.U.E. Prison Program Offers New Beginnings,” 2017²¹³

In order to foster people’s ability to grow and change, prison systems must give them the chance to enhance their capacity to do so or to exercise their ability to become more autonomous, especially given that most will be released into the community one day. Providing such programs and

activities is not optional, and they must not be subject to elimination due to budget cuts or scarce resources. Making these opportunities available might include

- › staffing prisons with case managers who can work with incarcerated people to develop joint case plans that include intermediate and long-term goals related to employment and education, behavioral and mental health needs, medical health care needs, and family responsibilities during and after incarceration;
- › affording access to high quality education at all levels provided by qualified instructors, from literacy to postsecondary education, and including career and technical training oriented toward future occupational goals rather than institutional needs, as well as language instruction for English Language Learners;²¹⁴
- › supplying up-to-date reading material, including newspapers, textbooks, legal information, and recreational nonfiction and fiction books;
- › offering behavioral health and mental health counseling, addiction and medical withdrawal treatment, and physical and cognitive disability assessment and therapeutic treatment;
- › allowing incarcerated people to form clubs or affinity groups to share hobbies and discuss issues of interest;
- › providing work opportunities and fair compensation for work performed—along with a fair wage, incarcerated people should have the means to save earnings and a mechanism to pay any financial obligations, such as victim restitution or child support, or send money to family;
- › offering in-prison restorative justice programs that bring together people most affected by a crime to address the harm, hold the responsible person accountable, and support the well-being of those harmed (for an example of this see “A human dignity pilot in Connecticut—and beyond” at page 83);²¹⁵
- › allowing incarcerated people to exercise their right to vote;
- › engaging incarcerated people in the creation and enforcement of in-unit rules; and

- › ensuring access to all of the above in the primary language of the incarcerated person, including for people with auditory or visual disabilities.

Finally, people living in prison must be provided with reasonable access to justice. Prison systems must let people who are incarcerated exercise their autonomy by seeking redress for wrongs. This can be achieved by constructing a functional prison oversight system.²¹⁶ Some of the components of the oversight system may include

- › repealing or significantly modifying the Prison Litigation Reform Act in order to ensure that incarcerated people have access to the courts;
- › developing fair and transparent internal grievance and complaint processes that are based in principles of procedural justice and, wherever possible, use a restorative justice model;
- › instituting external inspections to proactively examine the treatment of people in prison;
- › allowing for investigations into allegations of wrongdoing to be conducted by an inspector general or independent commission;
- › requiring prisons to conduct “quality of confinement” surveys of people living in prison and act on the results;²¹⁷
- › expanding the use of the citizen oversight model—which already exists in different forms across the country—to engage and educate the public about both the successes of prison operations and the challenges of incarceration;²¹⁸ and
- › developing performance measures, including both policy reviews and outcome measures, that reflect the goals of a dignity-centered prison system and regularly reporting these measures to the public and the legislature.²¹⁹

Human dignity and corrections staff

On a practical level, prison staff play the most significant role in how a prison functions and how incarcerated people experience their loss of liberty. To be faithfully enacted, the application of human dignity must extend beyond incarcerated people and include frontline corrections staff and administrators. As Andrew Coyle, a prison reform expert and former prison warden in the United Kingdom, has admonished: “If staff are to be expected to treat prisoners decently then they themselves will have to be treated decently by their management.”^a

Achieving a system based on human dignity will require a transformation in how prison staff relate to people who are incarcerated. For a system to successfully shift from one focused on security to one that prioritizes human dignity, it must provide its staff with training and education that supports this goal. Staff education must be reoriented away from tactical training focused on commanding and controlling people—such as use of restraints, arrest and control techniques, and disciplinary processes—toward a greater emphasis on the social and behavioral management of *human beings*. European prison systems generally reflect this understanding. For example, the European Prison Rules require that prisons are “managed within an ethical context which recognises the obligation to

treat all prisoners with humanity and with respect for the inherent dignity of the human person,” pointing out that the roles of corrections staff “go beyond those required of mere guards,” and staff must focus on helping people rehabilitate and reintegrate “through a programme of positive care and assistance.”^b

Corrections officers in a system based on human dignity will be doing difficult and taxing work that requires significant training and a high level of social skill. They will be working with people going through some of the most difficult periods of their lives—people who struggle with behavioral and mental health issues; histories of trauma, abuse, and addiction; and educational deficits. A number of possible reforms, listed below, are called for in relation to corrections staff.

- Given the nature of their new role, prison staff must develop the social and technical skills that are usually required of social workers and behavior specialists.^c In Germany, the 24-month corrections staff training curriculum emphasizes the practical side of the profession as well as, among other topics, psychology, social education, and the legal framework of corrections. Equally important will be trainings that stress positive reinforcement and

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interactions, teach critical strategies that defuse tension or de-escalate potentially dangerous situations, or reinforce a therapeutic approach to correctional management.^d

- To match the expectations of this position, as reimagined, corrections officers will need not only adequate compensation that reflects the technical skills required of the job, but also community respect for doing difficult and important work.
- Because working in prisons can be physically and emotionally challenging, corrections staff must be provided with opportunities and resources to help improve their well-being and manage their stress. Some strategies include providing easily accessible and affordable counseling and therapeutic services and support, and limiting overtime to reduce stress and mistakes due to lack of sleep or inattention.
- The culture of the prison must support staff making use of such wellness resources. Institutionalizing a culture of self-care and safety may take some time to accomplish. Executive leadership, middle managers, and union representatives all must adopt this reoriented ideology.
- Prison administrators and oversight bodies should solicit staff feedback, for instance by conducting staff surveys, in order to gain a more comprehensive understanding of what is working well and where they might be able to provide better support and training to employees.^e Staff will be more satisfied and committed to their work if organizational culture supports collaboration with management and input into operations.^f

^a Andrew Coyle, *Humanity in Prison: Questions of Definition and Audit* (London: International Centre for Prison Studies, 2003), 14.

^b European Prison Rules, Rules 72(1) & 72(3), <https://perma.cc/LGT7-9SHP>; and Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules* (January 11, 2006). The Council of Europe subsequently developed a code of ethics for prison staff requires that “prison staff respect and protect human dignity and maintain and uphold the human rights of all persons.” See Council of Europe: Committee of

Ministers, *Recommendation Rec(2012)5 of the Committee of Ministers to Member States on the European Code of Ethics for Prison Staff* (April 12, 2012) § C: Respect For and Protection of Human Dignity, Recommendation 11, <https://perma.cc/8U4E-3PS8>.

^c A similar shift in focus is happening in the field of community corrections, although the impetus for the change is not a devotion to human dignity, but rather research that demonstrates that a more individualized approach results in better outcomes for individuals and communities. See Alison Shames and Ram Subramanian, “Doing the Right Thing: The Evolving Role of Human Dignity in American Sentencing and Corrections,” *Federal Sentencing Reporter* 27, no. 1 (2014), 9-18, 13-14 (citing research that shows that strong, positive working relationships that are based on mutual respect, openness, and honesty can increase peoples’ compliance with rules and decrease recidivism; and officers who develop a “firm, fair, and caring” relationship with supervisees have seen a decrease in recidivism).

^d Some corrections agencies in the United States are implementing similar training models. For instance, several state departments of corrections have modified the Crisis Intervention Training model (originally designed to help law enforcement officers safely and effectively respond to people with mental illness) to apply to a prison and jail setting. A main focus of such training is de-escalation skills and techniques. See for example Gary Cattabriga, Ronald Deprez, Amy Kinner, et al., *Crisis Intervention Team (CIT) Training For Correctional Officers: An Evaluation of NAMI Maine’s 2005-2007 Expansion Program* (Portland, ME: Center for Health Policy, Planning and Research, University of New England, 2007), <https://perma.cc/8KFD-965G>. Also see Dean Aufderheide, “Crisis Intervention Teams Improving Outcomes for Inmates with Mental Illness,” *CorrectCare* 26, no. 1 (2012), 10-12, <https://perma.cc/5W7M-673F>.

^e Some oversight groups, such as the John Howard Association of Illinois, survey prison staff to assess their prevailing attitudes and opinions of their work, the facility, and prison administrators. See John Howard Association of Illinois, “Prison Inmate & Staff Surveys,” <https://perma.cc/2CFJ-A733>. Also see Andrew Coyle, *Humanity in Prison*, 2003, 65.

^f Seble Getahun, Barbara Sims, and Don Hummer, “Job Satisfaction and Organizational Commitment Among Probation and Parole Officers: A Case Study,” *Professional Issues in Criminal Justice* 3, no. 1 (2008), 1-16.

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Despite the challenges, movement toward human dignity in America’s prisons is possible today. Every jurisdiction in this country—local, state, and federal—can take tangible steps to begin infusing human dignity into their correctional operations.



Chapter 4

Achieving human dignity today

“We can nevertheless respect human dignity by enabling the effort to struggle for it. We can provide help—with education, sobriety, anger management, parenting, wellness, and so on—even if the outcome is uncertain. Among those who are greatly disadvantaged, the struggle for dignity itself is intrinsically meaningful, both for them as they envision a better future for themselves and for their community, which will have done something more than abandon the poorest among them.”

– Bruce Western, *Homeward: Life in the Year After Prison*, 2018²²⁰

Our vision of a system committed to human dignity is indeed a generational, audacious goal. We do not believe it can be achieved over the course of a few years. No corrections system has the ready financial means, much less the human capacity and political support, to redesign entire prison facilities, introduce new training, recruit more staff, or provide the new types of services required.²²¹ In that sense, a comprehensive human dignity-based model is a North Star.

However, we also believe that even if one could wave a magic wand and in 10 years' time the American corrections system reflected the three principles we've enunciated above, we do not think that alone would be satisfactory. Three changes are essential. We must end mass incarceration, reducing the total prison population to a pre-1970s level of one person per 1,000 residents (or lower, if possible). We must end the practice of locating prisons in the remote rural periphery for economic gain. And we must end the practices that lead to disproportionate impact of incarceration on people of color. Put differently, we do not advocate for a prison and jail system of 2.2 million people, characterized by massive racial disparities, where people remain isolated from family and community, but which has human dignity at its core. These characteristics of our current system are also inimical to human dignity.

- › **System size.** Efforts to date have stabilized the size of the prison population nationally, and in some places led to modest reductions.²²² But far more is needed: from sentencing reform to scale back the volume of people sent to prison as well as reduce the extreme sentence lengths for some crimes that were put into place during the “tough on crime” era; to police reforms that reduce overall contact with law enforcement, especially for noncriminal infractions among urban residents; to reentry services that provide meaningful supports for those leaving prison. A smaller system allows for better quality control and permits the expenditures required to achieve things like higher pay, more training for corrections staff, and better-designed facilities.
- › **Rural siting.** Second, we must reject further arguments to build prisons as a means of economic development for rural, depressed

communities if we ever hope to reduce the isolation that so many people in prison currently experience. Little has been done to place prisons in regions closer to where the majority of the population originates, which in many cases would result in an increase in facilities closer to metropolitan centers. Such a move would place people in prison closer to family and friends, likely make access to community-based services easier, increase collaborations with a wider variety of local organizations and community groups who may be able to provide more extensive in-prison supports, and enable correctional facilities to hire officers from a greater pool of potential employees.²²³

✦ A prison and jail system of 2.2 million people, characterized by massive racial disparities, where people remain isolated from family and community . . . [is] inimical to human dignity. ✦

The challenge is primarily an economic one: since 1980, the majority of new prisons built have been placed in rural areas, mainly to serve as a vehicle of economic growth—or at least slow economic downturn—in depressed locales.²²⁴ And, despite the lack of evidence demonstrating that prisons deliver a sustained economic boost to their hometowns, even when the prison population drops sufficiently to justify the closure of a prison, the political economy of many rural towns is such that continued financial straits and limited alternative development options may push them to support the continued operation of a local prison as the “least-worst economic

development option” for the area.²²⁵ Until local economies reorient away from the corrections industry and toward more sustainable employment models, prisons in rural areas are likely here to stay.

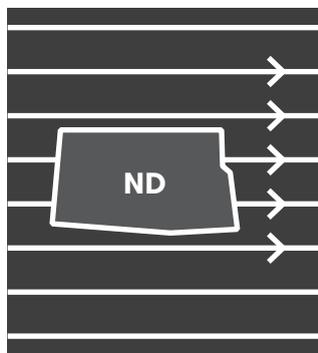
- › **Racial disparities.** Finally, we must address the pernicious use of prisons to lock up our nation’s people of color. A system that continues our racist history can never be considered truly reimaged, even if human dignity forms its basis. This will require efforts at every phase of the criminal justice system, which unjustly burdens particularly black Americans through the unequal enforcement of seemingly race-neutral laws, and further compounds their entanglement with law enforcement and the courts through the biases that seep into decisions made by police, prosecutors, judges, and juries.²²⁶

Despite the challenges of this aspirational goal, movement toward human dignity in America’s prisons is possible today. Every jurisdiction in this country—local, state, and federal—can take tangible steps to begin infusing human dignity into their correctional operations. This is already occurring. On five separate visits over the last five years, Vera and the Prison Law Office, together and separately, have introduced officials from at least a dozen states to several different Northern European corrections systems where human dignity plays a central role, with the aim of inspiring change in correctional approaches here.²²⁷ During each visit and in each country, the American delegations toured prisons, met with incarcerated people, and engaged with corrections leaders working within systems founded on the central tenets of resocialization and rehabilitation. The visitors witnessed firsthand systems that were oriented toward building the fundamental skills that incarcerated people would need in the community, including concrete training, education, and job skills, as well as opportunities to make decisions about their own lives, from the clothes they wore to the meals they prepared.²²⁸

Those who participated in these trips came back with a new outlook on the role and purpose of corrections. Many states have taken steps—both big and small—to infuse human dignity into their correctional facilities starting now.



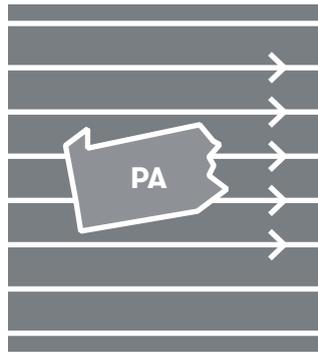
- › Leann Bertsch, the corrections director of North Dakota, left Norway with a resolution to “implement our humanity” and create conditions inside prisons that more directly related to outside life.²²⁹ The Missouri River Correctional Center in North Dakota—a facility that houses people convicted of lesser crimes or those approaching the end of lengthy sentences in the state’s maximum-security state prison—is now equipped with housing units that include up to 36 private rooms, each with toilets, showers, desks, real mattresses, and bulletin boards. Incarcerated people are free to close and lock their doors and wear civilian clothes. Through positive expressions of autonomy and responsibility, they can now earn more freedoms,



like shopping excursions and day passes home. They can also serve on the resident committee and have input into the facility’s “Phases System” and, depending on where they are in these phases, they may be permitted to walk a network of trails without accompaniment, ride bikes on the property, shop online for groceries and

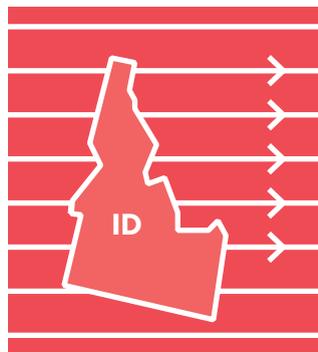
prepare their own food, take escorted trips into the community for social interaction or to obtain job services counseling, and earn passes to leave the facility unescorted for overnight visits home. The facility also scaled up an existing work-release program so more men could be employed in meaningful jobs outside of prison prior to release.²³⁰ People coming out of solitary confinement spend time in a new behavioral therapy unit in order to transition back to the general population.²³¹

- › John Wetzel, Pennsylvania's corrections director, attributes his changed attitude to corrections to his trip to Germany and the Netherlands: "We talk more now about the humanity of inmates, and the impact of harsh environments on both staff and inmates."²³²



Following Wetzel's trip, Pennsylvania launched new transitional housing units that focus on normalization and reintegration. Residents of the units are given access to enhanced reentry services, more individualized need-based support, and specialized vocational programming in high-demand fields.²³³

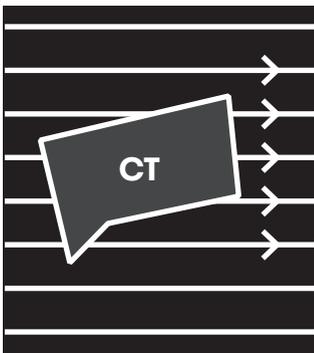
- › After a visit to Norway in 2016, Idaho Corrections Director Kevin Kempf said, "We came back totally converted," and he is committed to reforming prison practices to better reflect community norms and expectations.²³⁴ While Idaho hasn't yet launched a new unit



or developed a new program, it has taken many small steps that serve to recognize the humanity of its incarcerated people and corrections staff. Idaho has reduced its use of solitary confinement and has created robust incentive systems to reward positive behavior among the incarcerated population. Prison

administrators have also allowed staff and incarcerated people to invite their families to meet one another, repainted cafeterias and dayrooms, and replaced metal and plastic chairs with throw rugs and couches.²³⁵

A human dignity pilot in Connecticut—and beyond



Nowhere is the impact of these European visits more apparent than at the Cheshire Correctional Institution in Connecticut. Inspired by how the German prison system treats young adults aged 18 to 25, the Connecticut Department of Corrections (CT DOC) established the T.R.U.E. program in early 2017 with assistance from Vera. The program's name, developed by residents of the

unit, is an acronym for Truthfulness (to oneself and others), Respectfulness (toward the community), Understanding (ourselves and what brought us here), and Elevating (into success). In Germany, young adults are often adjudicated as juveniles and, if incarcerated, are separated from the rest of the adult population. Building on this model, T.R.U.E. is a therapeutic unit for young men that focuses on developing their sense of self, autonomy, and responsibility, and keeps a clear focus on preparing for life after prison. This undertaking has required a firm sense of purpose and a commitment to stay the course from CT DOC, which decided to implement this approach not with its most rule-abiding population, but with its most disruptive group: within the state prison system, the highest number of behavioral infractions and violence stems from those aged 18 to 25.

The T.R.U.E. unit exemplifies many of the practice principles set out in this report, and it serves to demonstrate not only that a corrections system can prioritize human dignity as a central value, but also that such a practice can lead to transformational results.

The first practice principle—respect the intrinsic worth of each human being—is at the core of the unit's existence. The T.R.U.E. unit strives to

cultivate a sense of community and camaraderie between staff and the young adults. In T.R.U.E., officers and young men shake hands, play cards, tell jokes and, above all, respect and support each other. Mentorship is key to the unit's model. A group of older men who are serving life sentences act as mentors to the young men. The mentors live in the unit among their mentees and work together with the staff to develop and lead therapeutic programs. They also work with staff and mentees to establish and enforce agreed-upon rules and multiple systems of accountability. Together, the staff, mentors, and mentees have created an atmosphere of kindness, compassion, and trust—one that recognizes the intrinsic worth of each person who lives or works within its walls.

Unlike in the other units inside the same prison—where officers and young men alike describe an “us versus them” environment, where “tans” (the incarcerated) are always wrong and the “uniforms” (the officers) are always the “bad guys”—the T.R.U.E. unit elevates and supports the development of personal relationships—this report's second practice principle. This has had a profound impact not only on the mentees and the mentors, but also on the staff—corrections officers and counselors—who work with the men day in and day out. All of the staff who work with T.R.U.E. volunteered for the role, taking what the warden described as the “biggest risk in their career,” swimming against long-established institutional culture and a certain level of fear. Staff received specialized training on topics like family engagement, conflict resolution, motivational interviewing, and mediation. The staff members—many of whom had a dozen or more years of experience working in other units in Connecticut—admitted they had themselves experienced trauma and extreme stress over years of violence, recidivism, and difficult working conditions. On the first anniversary of the T.R.U.E. program, staff and counselors described openly their deep feelings of care toward the men, the pride they took in their work in the unit, and the joy they had in coming to work each day. This change in their attitude toward work has made them better employees, better friends, and better parents.

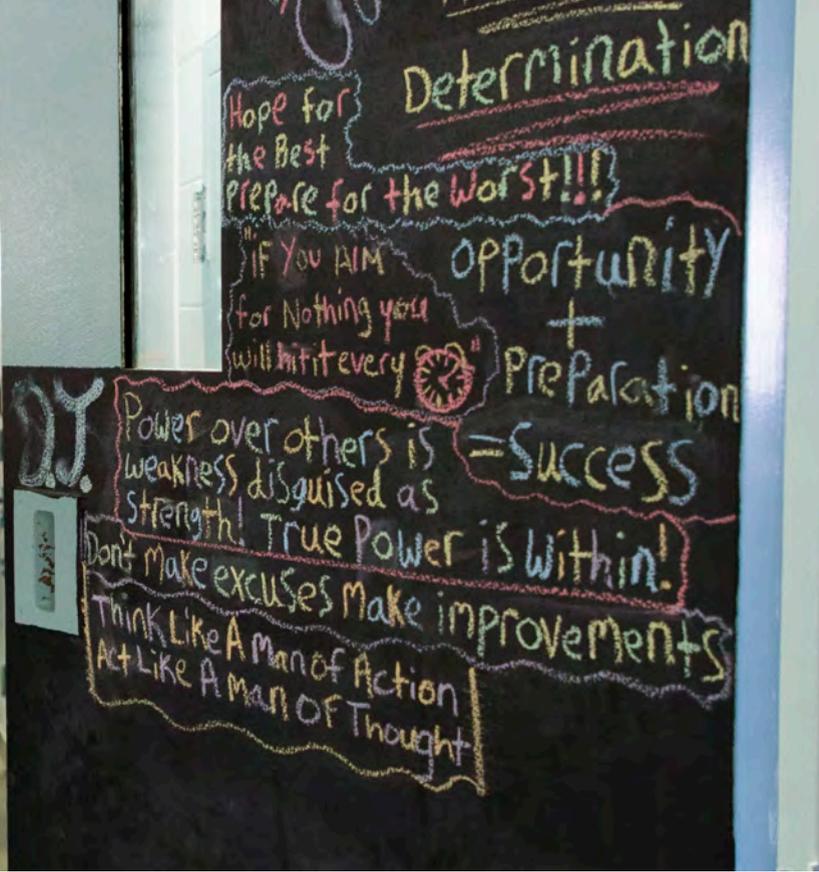
The unit's commitment to supporting personal relationships extends to proactively taking steps to involve mentees' families in the prison experience and helping to build those fundamental connections. This starts with an orientation night for family members where staff explain

the T.R.U.E. program, what to expect, and the role they hope family will play during a family member's term in prison. When family members visit, they are allowed to sit side by side with their loved one, and mentees are encouraged to hold their children and embrace their family members—actions usually prohibited by typical prison visiting rules. Staff and mentors are also encouraged to mingle throughout the visiting period to meet the families, talk about how the mentees are doing, and establish genuine relationships.

This report's third practice principle—respecting a person's capacity to grow and change—underlies the bulk of the activities that take place in the T.R.U.E. unit. The programs and sessions attempt to give young adults an opportunity to establish an adult identity that is based on a deep awareness of their relationships with others and society. This approach attempts to generate in the young men a sense of self-worth and individual and social responsibility, and to encourage and prepare them for responsible action within society after release. Some salient manifestations of this approach in the T.R.U.E. unit include the following practices:



- › The day begins and ends with a healing circle in which staff and incarcerated people participate. These circles are based on principles of restorative justice and require each participant to share at least one word describing his thoughts or feelings at that time, and they place incarcerated people and staff on equal footing in sharing their experiences. At these circles, issues of importance to the community often surface and are dealt with throughout the day. These circles become places in which participants can share individual-level stresses or hurts, as well as those that affect the full community. Young men often share anxieties or sadness about visits with family or other common hardships of incarceration, about which other participants, mentors, or staff then reach out to check in or offer support throughout the day.
- › For 13 hours each day, cell doors are open and the young adults are free to be in the common space, a dedicated outdoor area, or one of many converted cells within the housing unit that serve as a library, study room, meeting room, and quiet space. Their day is heavily structured—filled with therapeutic sessions, school, and life-skills programs.
- › The mentees are expected to hold themselves and each other accountable. When traveling to the other parts of the prison for work assignments, school or college, or to see visitors, young men in the T.R.U.E. unit wait at the “bus stop,” where a corrections officer is ready to escort them to the other part of the facility. If a young man does not arrive at the “bus stop” on time, he misses the activity for the day and, if he misses on too many days, may lose the opportunity altogether. This is in direct contrast with movement strategies in other units, where individuals are called out of their cells for their required activities. While it is rare for someone to “miss” work in these other units, neither do the incarcerated men within them build a sense of responsibility about meeting obligations.



- › Behavioral issues are also dealt with differently at T.R.U.E. If a mentee acts in a manner that is inconsistent with the unit's policies and rules, he works with his mentor and a counselor to create a "corrective action plan." This is developed in collaboration as a suitable response to the level or seriousness of the transgression. T.R.U.E. does not force anyone to change. Instead, it creates the circumstances and environment in which change is possible.
- › As part of its commitment to restorative justice, staff and residents in T.R.U.E. have also delved into the history of racial oppression in the United States and its connections to mass incarceration. Having frank discussions about race inside an American prison between staff and incarcerated people encapsulates the unit's achievements, in the warden's view. In other units, these discussions would have been avoided for fear of violence, but in T.R.U.E. they were met with respect and openness.

The framework under which the T.R.U.E. unit operates—including the structure of the mentor/mentee units, the programs and groups offered during the day, the physical alterations to the unit, and the time

in and out of locked cells—was developed as a collaboration between incarcerated people, corrections officers and counselors, administrators, and Vera staff. During these planning sessions, staff and incarcerated people engaged in healing circles. During one of these sessions, a formerly hardline corrections officer overcame one of the fundamental barriers to operationalizing human dignity in prison when he asked the incarcerated men to see him, too, as a whole person and to meet him at the start of this project as someone who is capable of change. A truly dignity-based system

✦ Other jurisdictions are also joining the movement to reimagine the purpose of young adult confinement from punishment and retribution to accountability, restoration, and healing. ✦

recognizes the integrity and capacity of every person within its walls—a commitment that must go both ways. In the year since, this officer has undergone a radical shift in his view of himself within the corrections system. The difficulty he experienced in asking for acceptance during the planning stages and the professional and personal growth he has experienced since have become emblematic of the changes underway in Connecticut and the benefits that can come from such efforts.

Inspired by the success of its T.R.U.E. program—where CT DOC has witnessed striking results across measures of safety and wellness for both young adults and staff in the unit—Connecticut opened a similar unit in May 2018 at York Correctional Institution, the state’s only prison for women, and plans to create another one at Cheshire.²³⁶ Other jurisdictions are also joining the movement to reimagine the purpose of young

adult confinement from punishment and retribution to accountability, restoration, and healing. In the fall of 2017, Vera began a partnership with the Middlesex County Sheriff's Office in Massachusetts, which has since opened a similar young adult unit in its jail in February 2018. Shortly after that, through a competitive application process, South Carolina was selected to join these partners in transforming custody for young adults.

Though T.R.U.E. is an enormously promising model, it does not completely reimagine prison in the way this report envisions. The unit, however altered, is a slightly renovated wing of a prison. It still looks and feels like prison. Only one age group is eligible for its benefits—an advantage that doesn't go unnoticed by the rest of the prison's population. The people in the unit still wear uniforms, and the food and hygiene products that are offered remain the same as those offered to the rest of the prison. But it is emphatically a place to begin.

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During one of these [planning] sessions, a formerly hardline corrections officer overcame one of the fundamental barriers to operationalizing human dignity in prison when he asked the incarcerated men to see him, too, as a whole person and to meet him at the start of this project as someone who is capable of change. A truly dignity-based system recognizes the integrity and capacity of every person within its walls—a commitment that

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must go both ways. In the year since, this officer has undergone a radical shift in his view of himself within the corrections system. The difficulty he experienced in asking for acceptance during the planning stages and the professional and personal growth he has experienced since have become emblematic of the changes underway in Connecticut and the benefits that can come from such efforts.



peopled



Conclusion

“[F]or me, the great evil of American slavery wasn’t involuntary servitude. It wasn’t forced labor. It was this ideology of white supremacy, this narrative of racial difference where black people were perceived as not human, not fully evolved, not the same as other people. And I think when we passed the 13th Amendment, in 1865, we expressly ended involuntary servitude and forced labor, but we didn’t say anything about this narrative of racial difference and because of that, slavery didn’t end. It evolved.”

– Bryan Stevenson, founder of the Equal Justice Initiative, the National Memorial for Peace and Justice, and the Legacy Museum, interviewed by Michel Martin, “Peace and Justice Memorial Seeks to Make Horror of Lynching Understood,” National Public Radio, 2018²³⁷

Our country has a long history of using prisons to warehouse particular segments of the population—particularly racial and ethnic minorities—in ways that create and reinforce the fundamental divide between “us” and “them.”²³⁸ Although ostensibly this separation is between those who comply with the law and those who do not, the unambiguously racial and ethnic character of imprisonment in the United States both yesterday and today reflects the outsized influence that our legacy of slavery and racial oppression has played in determining who is impacted by the criminal justice system.²³⁹ Prisons in America operate as both a central mechanism to maintain inequality and a locus where people are meant to experience their inequality in ways that further underscore their outsider status—best exemplified in the sort of conditions of confinement that perpetuate what judicial officers have described as “soul-chilling inhumanity.”²⁴⁰

✦ We call on ourselves and others to reshape the practice of imprisonment by grounding it in the foundational principle of human dignity. ✦

With this report, we break our silence about the connections between our troubled history and our use of prisons. Leveraging the convergence of a movement for criminal justice reform and increased consciousness about racial and social injustice, we bring to the fore a focus on how people are treated behind prison walls. We see, through an examination of current prison conditions, that the fundamental experience remains one of hardship, isolation, and dehumanization. A radical change is needed—not only to disrupt the habit of current practices, but also to break with historical legacy. We call on ourselves and others to reshape the practice

of imprisonment by grounding it in the foundational principle of human dignity.

Grappling with these issues and charting a course for change takes courage, determination, and compassion. While certain broad conditions may be necessary to completely transform corrections practice, we are today joining partners and working towards building a system consistent with a vision of human dignity. The T.R.U.E. unit in Connecticut is just one example of how change need not wait until the ideal conditions of reform are met. Through this report, we provide an aspirational vision and a blueprint for concrete reforms—which systems can consider, debate, and experiment with today, with the hope that by laying the necessary foundation of human dignity something new and wholly different will come tomorrow.

But this work must go beyond the corrections field. This is an American issue, and one that all Americans should care about. To truly effect radical change will require all of us to take action, not just those who administer and work in our nation's prisons. Policymakers, advocates, the media, criminal justice system stakeholders and even members of the public must join together to shine a light on these practices and to say, once and for all, that they cannot stand.

Endnotes

- 1 The prevailing view in the United States was that a person in prison “has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the state.” *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).
- 2 On the history of convict leasing, see generally Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2009).
- 3 Aya Abdelaziz, “When David Rothenberg Went to Attica,” Fortune Society, September 8, 2017, <https://perma.cc/BG7T-T3G2>. For continued abuses after the riot, see Alan Yuhus, “New Attica Documents Reveal Inmate Accounts of Torture After 1971 Prison Riot,” *Guardian*, May 22, 2015, <https://perma.cc/DUS6-8GLB>.
- 4 Rory Carroll, “California Prisoners Launch Biggest Hunger Strike in State’s History,” *Guardian*, July 9, 2013, <https://perma.cc/NL8T-VFMY>; and Josh Harkinson and Maggie Caldwell, “50 Days Without Food: The California Prison Hunger Strike Explained,” *Mother Jones*, August 27, 2013 (updated September 6, 2013), <https://perma.cc/B7Z5-TR5R>.
- 5 Jaweed Kaleem, “‘This is Slavery’: U.S. Inmates Strike in What Activists Call One of the Biggest Prison Protests in Modern History,” *Los Angeles Times*, October 28, 2016, <https://perma.cc/VL4G-3B4U>.
- 6 *Ibid.*
- 7 Heather Anne Thompson, “How a South Carolina Prison Riot Really Went Down,” *New York Times*, April 28, 2018, <https://perma.cc/4G54-QUA>. On the August 2018 prison strikes, see Ed Pilkington, “US Inmates Stage Nationwide Prison Labor Strike Over ‘Modern Slavery,’” *Guardian*, August 21, 2018, <https://perma.cc/TSV2-55XD>.
- 8 Simone Weichselbaum, “For Corrections Officers and Cops, a New Emphasis on Mental Health,” *The Marshall Project*, June 14, 2017, <https://perma.cc/UKR7-5VXG>.
- 9 Dorothy E. Roberts, “The Social and Moral Cost of Mass Incarceration in African American Communities,” *Stanford Law Review* 56, no. 5 (2004), 1271-1305, 1281-97, <https://perma.cc/333B-U6EA>.
- 10 Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford University Press, 2009).
- 11 More than five million children in the United States have had a parent in state or federal prison at some point in their lives. One in nine black children had a parent behind bars in 2008. See Teresa Wiltz, “Having a Parent Behind Bars Costs Children, States,” Pew Charitable Trusts, May 24, 2016, <https://perma.cc/UH9C-GUEA>. This hardship has become so common and is so stigmatized that the long-running children’s television program *Sesame Street* produced materials for caregivers about how to speak with children about their incarcerated parent. Sesame Workshop, “*Sesame Street* Launches New Resources for Young Children with an Incarcerated Parent,” press release (New York: Sesame Workshop, June 12, 2013), <https://perma.cc/6TNG-AGD2>.
- 12 Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), <https://perma.cc/DDK7-C8HS>. Also see M. Keith Chen and Jesse M. Shapiro, “Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach,” *American Law and Economics Review* 9, no. 1 (2007), 1-29 (finding that people housed in higher security levels are no less likely to recidivate than those housed in minimum security; if anything, the study suggests that harsher prison conditions lead to more post-release crime).
- 13 Public opinion supports reductions in the prison population and a refocusing of resources on community-based programs and supports. For example, in one survey, 84 percent of Americans from diverse geographic and political backgrounds agreed that people and resources should be diverted from prison and into community-based programs and, on average, they believed that one-fifth of people currently incarcerated could be released safely. Pew Center on the States, *Public Opinion on Sentencing and Corrections Policy in America* (Washington, DC: Pew Charitable Trusts, 2012), <https://perma.cc/5NKW-85MK>. This support extends even to those who have been victims of violent and property crimes, 69 and 72 percent of whom, respectively, prefer holding people who commit crimes accountable through different options beyond prison. A 2016 survey found that most victims believed that the current prison system was not the best or most effective way to respond to nonviolent crime. The responses revealed support for practices that not only favor rehabilitation over retribution, but also reduce the overall prison population significantly. In the same study, 83 percent of respondents preferred increased investment in mental health treatment, and 73 percent in increased drug treatment, over more investment in prisons and jails. See Alliance for Safety and Justice, *Crime Survivors Speak: The First-Ever National Survey of Victims’ Views on Safety and Justice* (Oakland, CA:

- Alliance for Safety and Justice, 2016), 19-20, <https://perma.cc/NBU2-LFLU>.
- 14 See for example Rebecca Silber, Ram Subramanian, and Maia Spotts, *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015* (New York: Vera Institute of Justice, 2016), <https://perma.cc/WR5H-LG6U>.
- 15 Ibid. The United States incarcerates 693 people per 100,000 residents. The country with the next highest rate of incarceration is Turkmenistan, with 583 incarcerated people per 100,000. This analysis includes only countries with at least 500,000 residents for meaningful comparison. Peter Wagner and Alison Walsh, "States of Incarceration: The Global Context 2016," Prison Policy Initiative, accessed November 17, 2017, <https://perma.cc/K358-EGP4>.
- 16 Oliver Hinds, Jacob Kang-Brown, and Olive Lu, *People in Prison in 2017* (New York: Vera Institute of Justice, 2018), 1, <https://perma.cc/8BV4-HTV2>.
- 17 Pew Charitable Trusts, *One in 100: Behind Bars in America* (Washington, DC: Pew Charitable Trusts, 2008), <https://perma.cc/L6C4-5VC4>. David Garland coined the phrase "mass imprisonment" in 2000 to describe the distinctive expansion of imprisonment in the United States between 1975 and the late 1990s. See David Garland, *Mass Imprisonment: Social Causes and Consequences* (London: Sage, 2001). To Garland, "mass imprisonment" constituted a new regime of penalty that raised incarceration rates on a quantum scale and applied policies and practices to entire categories of people (rather than individuals). This conceptualization of mass imprisonment has been adopted by many other contemporary criminologists, including Bruce Western and Todd Clear. See for example Clear, *Imprisoning Communities*, 2008; and Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006).
- 18 Jonathan Simon, "Mass Incarceration: From Social Policy to Social Problem," in *The Oxford Handbook of Sentencing and Corrections*, edited by Joan Petersilia and Kevin Reitz (New York: Oxford University Press, 2012), 23, 40 & 45, <https://perma.cc/MS72-LJHW>.
- 19 See Silber, Subramanian, and Spotts, *Justice in Review*, 2016.
- 20 But this issue of values has been percolating in recent years. In its 2014 report, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, the National Academy of Sciences proposed a new set of values as a basis for a new relationship between the prison and society: proportionality, parsimony, citizenship, and social justice. See Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academies Press, 2014), 323, <https://perma.cc/TUP2-AY7T>. The RAND Corporation also released a report in which criminal justice experts put forward two goals for prisons of the future: incapacitation and preparing incarcerated people for success after prison through evidence-based programming. See Joe Russo, George B. Drake, John S. Shaffer, and Brian A. Jackson, *Envisioning an Alternative Future for the Corrections Sector Within the U.S. Criminal Justice System* (Santa Monica, CA: RAND Corporation, 2017), 4, <https://perma.cc/4B8T-LUGC>.
- 21 See Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 320-33. For definitions of retribution, incapacitation, and deterrence, see Kevin M. Carlsmith, John M. Darley, and Paul H. Robinson, "Why Do We Punish? Deterrence and Just Deserts as Motives for Punishment," *Journal of Personality and Social Psychology* 83, no. 2 (2002), 284-99, 285-86, <https://perma.cc/JJK7-JQ9Q>.
- 22 See generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010). Also see Loïc Wacquant, "Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-First-Century America," *Boston Review* 27, no. 2 (2002), <https://perma.cc/FRH7-UXDC>.
- 23 Campbell Robertson, "A Lynching Memorial Is Opening. The Country Has Never Seen Anything Like It," *New York Times*, April 25, 2018, <https://www.nytimes.com/2018/04/25/us/lynching-memorial-alabama.html>.
- 24 Sydney Gore, "Ava DuVernay's 13th Documentary Wins Four Emmy Awards," *The Fader*, September 10, 2017, <https://perma.cc/AK9S-6DBH>.
- 25 "National Museum of African American History and Culture: I, Too, Sing America," *New York Times*, September 15, 2016, <https://www.nytimes.com/interactive/2016/09/15/arts/design/national-museum-of-african-american-history-and-culture.html>.
- 26 A high-profile example of this was the live-streamed death of Philando Castile. Castile was fatally shot in a car by Minnesota police officer Jeronimo Yanez. Castile's girlfriend, Diamond Reynolds, documented the moments following the shooting by streaming footage through Facebook via her phone camera. See James Poniewozik, "A Killing. A Pointed Gun. And Two Black Lives, Witnessing," *New York Times*, July 7, 2016, <http://www.nytimes.com/2016/07/08/us/philando-castile-facebook-police-shooting-minnesota.html>.
- 27 Wesley Lowery, "Black Lives Matter: Birth of a Movement," *Guardian*, January 17, 2017, <https://perma.cc/5PXA-7A4H>.
- 28 Prison abolition is another response that advocates and scholars have called for to address the deficits of the current

prison system. See German Lopez, “The Case for Abolishing Prisons,” *Vox*, January 19, 2018, <https://perma.cc/2M59-URXU>. However, this has not been implemented in any peer nation to the United States. Because this report is based in research and current practice in the United States and abroad, it does not contemplate abolition.

29 The incarceration rate in 1970 was 96 per 100,000. See Bureau of Justice Statistics (BJS), *Bulletin: Prisoners 1925-81* (Washington, DC: BJS, 1982), 2, <https://perma.cc/QR4G-NPSU>. For incarceration rates per 100,000 before 1970, see Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 27.

30 As of January 2018, there were approximately 327,000,000 people residing in the United States. United States Census Bureau, “Monthly Population Estimates for the United States: April 1, 2010, to December 1, 2018,” <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkml>.

31 Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights,” *European Journal of International Law* 19, no. 4 (2008), 655-724, 679, <https://perma.cc/8D5H-BCZ5>.

32 McCrudden, “Human Dignity,” 2008, 701.

33 For a discussion of the European models studied by Vera, see Ram Subramanian and Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States* (New York: Vera Institute of Justice, 2013), <https://perma.cc/WQ42-EVE9>.

34 Mark Mazower, *Salonica, City of Ghosts: Christians, Muslims, and Jews 1430-1950* (London: HarperCollins, 2004), 11-12 & 463-75.

35 Étienne Balibar, “The Nation Form: History and Ideology,” *Review (Fernand Braudel Center)* 13, no. 3 (1990), 329-61, 338 (arguing that “the myth of origins and national continuity is an effective ideological form in which the imaginary singularity of national formations is constructed daily by moving back from present to past”). According to Balibar, “The history of nations, beginning with our own, is always presented to us in the form of a narrative which attributes to entities the continuity of a subject. The formation of the nation appears as the fulfillment of a ‘project’ stretching over centuries, which there are different stages and moments of coming awareness, which the prejudices of the various historians will as more or less decisive (where are we to situate the origins of France? with our ancestors the Gauls? the Capetian monarchy? the revolution of 1789?) but which, in any case, all fit into an identical pattern: of the self-manifestation of the national personality. Such representation clearly constitutes a retrospective illusion,

but it also expresses constraining institutional realities. The illusion is twofold. It is in believing that the generations which succeed one another over centuries on an approximately stable territory, under an approximately univocal designation, have handed down to each other an invariant substance. And it consists in believing that the process of development from which we select aspects retrospectively, so as to see ourselves the culmination of that process, was the only one possible, that it represented a destiny. Project and destiny are the two symmetrical of the illusion of national identity.” Also see Ana María Alonso, “The Politics of Space, Time and Substance: State Formation, Nationalism and Ethnicity,” *Annual Review of Anthropology* 23 (1994), 379-405, 398. Alonso notes how Ecuadorian, Mexican, and Trinidadian nationalisms provide good illustrations of how minority ethnic identities and their contributions and places in the “nation” are constructed to preserve the cultural domination of the ruling group while including enough cultural features from subordinated groups, often consigning such contribution to the past. “In Ecuador, state strategies of temporalization fossilize indigenous peoples, identifying them with an epic past rather than a national future, as well as reducing their contributions to the nation to folklore while erasing contemporary realities of exploitation and domination [citation omitted]. One of the effects of the Ecuadorian national pastoral is to turn land—a key means of production—into heritage, into a national patrimony whose privileged custodian, the state, secures proprietorship of the past by erasing the genealogy of property.” Other examples of this type of “history” or “nation” making and re-making abound. In Turkey and Greece in the aftermath of World War I, and much of Eastern Europe after World War II, there were multipronged attempts to construct and sustain narratives of “nation-ness,” including a hegemonic national identity that required the suppression of a multi-ethnic, multiconfessional cosmopolitan past. In places like newly created postwar Russian Kaliningrad, the city’s multicentury past as Prussian/German Königsberg was literally erased and references to it were extirpated from national consciousness. Or in Poland, hundreds of thousands of German-speakers who remained in the “recovered territories” of that country (East Prussia, West Prussia, Eastern Pomerania, and Silesia) after the war were simply reclassified as Germanized Slavs who were to be re-slavicized. Even in occupied Western Germany, Allied zonal administrations also sought to deemphasize Prussia in the teaching of German history. For a discussion about Greece, see Mazower, *Salonica, City of Ghosts*, 2004. For a discussion about Prussia, see Christopher Clark, *Iron Kingdom: The Rise and Downfall of Prussia, 1600-1947* (Cambridge, MA: Belknap Press, 2009).

36 Roxanne Dunbar-Ortiz and Dina Gilio-Whitaker, “Learning the Truth about Thanksgiving and America’s Origin Story,” *Beacon Broadside*, November 22, 2017, <https://perma.cc/7FDC-Z6GD>.

Also see Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (Boston, MA: Beacon Press, 2014).

- 37 For information about de-Nazification, see Frederick Taylor, *Exorcising Hitler: The Occupation and Denazification of Germany* (London: Bloomsbury, 2011). For information about the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, see Human Rights and Equal Opportunity Commission of Australia, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney, Australia: Human Rights and Equal Opportunity Commission of Australia, 1997), <https://perma.cc/R7GE-62L3>. For information about South Africa's Truth and Reconciliation Commission generally, see the Truth and Reconciliation Commission's website at <https://perma.cc/9ZB4-94Y7>.
- 38 Also see Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* (Montgomery, AL: Equal Justice Initiative, 2017), <https://perma.cc/42HZ-R3AL>.
- 39 See for example Amelia Thomson-DeVeaux, "Jeff Sessions is Trying to Take Criminal Justice Back to the 1990s," *FiveThirtyEight*, February 7, 2018, <https://perma.cc/69G8-6L46>; and Josh Zeitz, "How Trump is Recycling Nixon's 'Law and Order' Playbook," *Politico*, July 18, 2016, <https://perma.cc/TDL6-EYEF>.
- 40 Dara Lind, "Trump's 'Animals' Remark and the Ensuing Controversy, Explained," *Vox*, May 21, 2018, <https://perma.cc/J5UV-XYPC>.
- 41 Kim Gilmore, "Slavery and Prison: Understanding the Connections," *Social Justice* 27, no. 3 (2000), 195-205, 195 [quoting *Prison Slavery*, edited by Barbara Esposito and Joe Wood (Washington, DC: Committee to Abolish Prison Slavery, 1982), which collects a number of prison narratives; in the letter at issue one incarcerated person had just observed another's death due to guards' failure to provide required medication to manage a seizure disorder].
- 42 Thompson, "South Carolina Prison Riot," 2018.
- 43 For more scholarship on the links between historical and modern policies, see Alexander, *The New Jim Crow*, 2010; Wacquant, "Rethinking Race and Imprisonment," 2002; Loïc Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh," *Punishment & Society* 3, no. 1 (2001), 95-134; Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, MA: Harvard University Press, 2010); and Austin Sarat and Charles J. Ogletree Jr., *From Lynch Mobs to the Killing State: Race and the Death Penalty in America* (New York: NYU Press,

2006). Also see Ava DuVernay, Howard Barish, and Spencer Averick, 13th, directed by Ava DuVernay (2016).

- 44 For example, in 2003, George W. Bush signed into federal law the Prison Rape Elimination Act (PREA), S. 1435, 108th Congress (2003). The law requires corrections agencies to comply with minimum criteria to protect incarcerated people from sexual victimization and provides for federal oversight of implementation. Through separate federal contracts, the Bureau of Justice Assistance has also provided technical assistance to states implementing the law through the National PREA Resource Center, <https://www.prearesourcecenter.org/>. This combination of legislation, implementation assistance, and federal oversight in some ways creates the ideal conditions for compliance. Fifteen years of implementation, however, have not yet produced full compliance or protections across the country. In the last three years, allegations of sexual abuse within Delaware, Florida, and New Jersey women's prisons have reached the media, and in two states, corrections officers have been charged with crimes in relation to allegations. Despite agency commitments to enforce the provisions of PREA, efforts to implement it with fidelity, and federal oversight, these agencies have not succeeded in changing the conditions in their prisons. This highlights the extreme difficulty of changing prison culture and conditions. Nick Muscavage, "Two Former Edna Mahan Inmates Suing State Department of Corrections," *mycentraljersey.com*, March 11, 2018, <https://perma.cc/37AH-XWPA>; Cris Barrish, "Sex Behind Bars: Women Violated in Delaware Prison," *News Journal*, July 31, 2015, <https://perma.cc/X9BH-KD7M>; and Julie Brown, "Bartered Sex, Corruption and Cover-Ups Behind Bars in Nation's Largest Women's Prison," *Miami Herald*, December 13, 2015, <https://perma.cc/L7WR-CH48>.
- 45 Alison Shames, Jessa Wilcox, and Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (New York: Vera Institute of Justice, 2015), 6-8, <https://perma.cc/KC6D-C3UL>; and Alex Boldin, *Second Chance Pell Experimental Sites Initiative Update* (New York: Vera Institute of Justice, 2018), <https://perma.cc/B58C-Q6AL>.
- 46 Ram Subramanian and Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences* (New York: Vera Institute of Justice, 2014), 6, <https://perma.cc/Z8KP-PP4G>.
- 47 As of 2017, 16 states had abolished discretionary parole; of the other states, Colorado, Connecticut, and Mississippi had abolished discretionary parole and then reinstated it. Andres F. Rengifo and Don Stemen, "The Unintended Effects of Penal Reform: African American Presence, Incarceration, and the Abolition of Discretionary Parole in the United States," *Crime & Delinquency* 61, no. 5 (2012), 719-41, 736. Also see Timothy A. Hughes, Doris James Wilson, and Allen J. Beck, *Trends in State*

Parole, 1990-2000 (Washington, DC: BJS, 2001), <https://perma.cc/M99Q-2VE3>.

- 48 Subramanian and Delaney, *Playbook for Change?*, 2014, 6.
- 49 Although estimates vary, there are approximately 17 states plus the District of Columbia with sentencing guidelines, of which 15 have what are characterized as “strong” robustly used systems (Alabama, Arkansas, Delaware, District of Columbia, Kansas, Massachusetts, Maryland, Michigan, Minnesota, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Virginia, and Washington). Florida and Tennessee have sentencing guidelines, but no longer have sentencing commissions. An eighteenth state—New Mexico—just established a commission with the mandate to develop guidelines in 2017. See Kelly Lyn Mitchell “State Sentencing Guidelines: A Garden Full of Variety,” *Federal Probation* 81, no. 2 (2017), 28-36, 28-29, <https://perma.cc/756C-FZUA>. Although many states retain indeterminate sentencing systems, this has not prevented some of them from adopting mandatory penalties as means of producing a “zone of hyper-determinacy” in sentencing for specified offenses. See Kevin R. Reitz, “The Disassembly and Reassembly of U.S. Sentencing Practices,” in *Sentencing and Sanctions in Western Countries*, edited by Michael Tonry and Richard Frase (New York: Oxford University Press, 2001), 229-231. Also see Bureau of Justice Assistance (BJA), *National Assessment of Structured Sentencing* (Washington, DC: BJA, 1996), 5-18. Regarding the roll out of mandatory penalties on the federal level, see for example Comprehensive Crime Control Act of 1984, Public Law 98-473, 98 Stat. 1976; Anti-Drug Abuse Act of 1986, Public Law 99-570, 100 Stat. 3207; and Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796, <https://www.congress.gov/bill/103rd-congress/house-bill/3355>. On the state level, see for example Cal. Penal Code § 667 (West Supp. 1998).
- 50 Subramanian and Delaney, *Playbook for Change?*, 2014, 6. For information on truth-in-sentencing, see Paula Ditton and Doris James, *Truth in Sentencing in State Prisons* (Washington, DC: BJS, 1999), <https://perma.cc/C4MY-Y8FS>. Efforts on the state level were supported by the federal government. The federal Violent Crime Control and Law Enforcement Act of 1994 authorized incentives to states that enacted truth-in-sentencing statutes. See Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322.
- 51 For an in-depth discussion of the growth of incarceration, its impact in increasing racial disparities in imprisonment rates, and the policies and practices that contributed to this growth, see Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 33-103.
- 52 In 2015, there were 1,745 black people, and 820 Hispanic people, in state and federal prisons per 100,000 U.S. residents, compared to 312 white people. E. Ann Carson and Elizabeth Anderson, *Prisoners in 2015* (Washington, DC: BJS, 2016), 8, <https://perma.cc/273U-4PPN>. Native American people are admitted to prison more than four times as often as white people. Christopher Hartney and Linh Vuong, *Created Equal: Racial and Ethnic Disparities in the US Criminal Justice System* (Oakland, CA: National Council on Crime and Delinquency, 2009), <https://perma.cc/7HWH-BXYA>.
- 53 State and federal prisons incarcerate 523,000 black (35.4 percent), 499,400 white (33.8 percent), and 319,400 Hispanic people (21.6 percent). The Bureau of Justice Statistics does not report regular figures on incarcerated members of other races or ethnicities. See Carson and Anderson, *Prisoners in 2015*, 2016, 6. White people who do not identify as Hispanic or Latino make up 61.3 percent of the U.S. population; Hispanic/Latino people make up 17.8 percent, and black or African American people make up 13.3 percent. See U.S. Census Bureau, “U.S. Census QuickFacts,” <https://perma.cc/7DZS-L5VH>.
- 54 Ilan H. Meyer, Andrew R. Flores, Lara Stemple, et al., “Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012,” *American Journal of Public Health* 107, no. 2 (2017), 267-73. For incarceration rates of lesbian, gay, and bisexual people generally, see Center for American Progress (CAP) and Movement Advancement Project (MAP), *Unjust: How the Broken Criminal Justice System Fails LGBT People* (Washington, DC: CAP/MAP, 2016), 3, <https://perma.cc/PR6N-THLY>.
- 55 Meyer, Flores, Stemple, et al., “Incarceration Rates and Traits of Sexual Minorities,” 2017, 234-40.
- 56 These rates are 21 percent for transgender women and 10 percent for transgender men, as compared to 5 percent of all people nationally. Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011), 163. Also see CAP/MAP, *Unjust*, 2016, 3.
- 57 Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned* (Northampton, MA: Prison Policy Initiative, 2015), <https://perma.cc/4TYQ-ZTVH>.
- 58 Caroline Wolfe Harlow, *Education and Correctional Populations* (Washington, DC: BJS, 2003), 3, <https://perma.cc/VQ2E-K8WQ>.
- 59 Doris James and Lauren Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: BJS, 2006), 1, <https://perma.cc/7K44-CUCM>. According to James and Glaze, 15 percent of those incarcerated in state prisons and

- 10 percent of those incarcerated in federal prisons reported at least one symptom of a psychotic disorder. Meanwhile, in 2016, there were an estimated 10.4 million adults aged 18 or older in the United States with a serious mental illness. This number represented 4.2 percent of all U.S. adults. See National Institute of Mental Health, “Mental Illness,” <https://perma.cc/NN5E-T5ZA>. Also see generally Seth Prins, “Prevalence of Mental Illnesses in U.S. State Prisons: A Systematic Review,” *Psychiatry Services* 65, no. 7 (2014), 862-72, 863 & figure 2, <https://ps.psychiatryonline.org/doi/pdf/10.1176/appi.ps.201300166>.
- 60 Although the most recent national survey of victimization among people in prison is nearly 20 years old, its findings show that incarcerated people experienced child abuse at twice the rate of the general population, a rate that increases if victimization beyond childhood is included. A survey published in 1999 found that 14 percent of all men in prison and 36 percent of women in state prison had been abused as children. Women experienced higher rates of victimization, including into adulthood. Among women in state prisons, 57 percent had experienced physical or sexual abuse—or both—in their lifetimes, as compared to 16 percent of men. See Caroline Wolfe Harlow, *Prior Abuse Reported by Inmates and Probationers* (Washington, DC: BJS, 1999), 2, <https://perma.cc/GA82-6SW7>. Trauma occurs when a person witnesses an event that involves actual or threatened death or serious injury to the self or others that involves fear, helplessness, or horror. Bruce Western, “Lifetimes of Violence in a Sample of Released Prisoners,” *RSF: The Russell Sage Foundation Journal of the Social Sciences* 1, no. 2 (2015), 14-30, 20-21 & figure 2 (discussing how, empirically, formerly incarcerated people have been surrounded by serious violence since early childhood), <https://perma.cc/4G3M-L8HQ>. More recent localized studies of incarcerated persons have revealed similarly high rates of victimization and more detailed accounts of experiences likely to be considered trauma. One study of incarcerated people in Massachusetts found that more than 40 percent had witnessed the killing of another person in childhood, in addition to experiencing or witnessing serious violence. *Ibid.* (discussing how empirically formerly incarcerated people have been surrounded by serious violence since early childhood). Also see Nena Messina and Christine Grella, “Childhood Trauma and Women’s Health Outcomes in a California Prison Population,” *American Journal of Public Health* 96, no. 10 (2006), 1842-48, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586137/>.
- 61 See generally Abbe Smith, “The ‘Monster’ in All of Us: When Victims Become Perpetrators,” *Suffolk University Law Review* 38, no. 2 (2005), 367-94.
- 62 Jennifer Bronson, Jessica Stroop, Stephanie Zimmer, and Marcus Berzofsky, *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009* (Washington, DC: BJS, 2017), 1, <https://perma.cc/R695-VZLY>.
- 63 For rates of disability among incarcerated people, see Jennifer Bronson, Laura M. Maruschak, and Marcus Berzofsky, *Disabilities Among Prison and Jail Inmates, 2011-12* (Washington, DC: BJS, 2015), 3, <https://perma.cc/C89G-MDJF>. For rates in the United States population see Matthew W. Brault, *Americans with Disabilities: 2010* (Washington, DC: U.S. Census Bureau, 2012), <https://perma.cc/2ZA8-PNVR>.
- 64 Heather Ann Thompson, “Prisons Are Erupting and Why it Matters,” *Daily Beast*, October 21, 2016, <https://perma.cc/RAA7-SGTV>.
- 65 Jean Casella and James Ridgeway, “Five Unforgettable Stories From Inside Solitary Confinement,” *Solitary Watch*, November 27, 2017 (quoting Thomas Silverstein describing his experience in solitary confinement), <https://perma.cc/Y8R3-KCSQ>.
- 66 Erving Goffman, “Characteristics of Total Institutions,” in *The Prison: Studies in Institutional Organization and Change*, edited by Donald R. Cressey (New York: Holt, Rinehart and Winston, 1961), 15-64, <https://perma.cc/P8CK-LVN8>; and Gresham Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton, NJ: Princeton University Press, 1958). Also see Victor Hassine, *Life Without Parole: Living and Dying in Prison Today* (New York: Oxford University Press, 2010), 7 (“To fully understand the prison experience requires a personal awareness of how bricks, mortar, steel, and the endless enforcement of rules and regulations animate a prison into a living, breathing entity designed to manipulate its inhabitants. . . . Prison designers and managers have developed a precise and universal alphabet of fear that is carefully assembled and arranged – bricks, steel, uniforms, colors, odors, shapes, and management style – to effectively control the conduct of whole prison populations”).
- 67 Erving Goffman termed these “mortification processes.” See Goffman, “Total Institutions,” 1961, 15-64. Also see John Irwin and Barbara Owen, “Harm and the Contemporary Prison,” in *The Effects of Imprisonment*, edited by Alison Liebling and Shad Maruna (New York: Routledge, 2011), 94-117; and Sykes, *The Society of Captives*, 1958 (arguing that imprisonment is synonymous with deprivations, specifically the loss of goods and services, personal relationships, security, and autonomy).
- 68 Irwin and Owen, “Harm and the Contemporary Prison,” 2011.
- 69 See Philip Hancock and Yvonne Jewkes, “Architectures of Incarceration: The Spatial Pains of Imprisonment,” *Punishment & Society* 13, no. 5 (2011), 611-29, 617. Noting that Sykes in *The Society of Captives*, 1958, 7-8, recognized the physical compression induced by typical prison environments served a

further function—the concomitant psychological compression of incarcerated people—the authors argued that “such compression is not only experienced as a pain, a deprivation, a restriction, but . . . also leads to the production of an institutionalized mode of subjectivity; one congruent with the demands of docility and dependency continually placed upon the prison population.”

- 70 The American Correctional Association publishes standards detailing the size and minimum furnishings of detention rooms or cells. In 1981, as the prison construction boom was well underway, people held in single occupant cells were to be provided with 60 square feet of space if confined for fewer than 10 hours per day; otherwise they were entitled to 70 square feet. Temporary holding facilities might give an incarcerated person as few as 50 square feet. Little distinction in cell size is made between restrictive housing and ordinary facilities; the expected difference is not in the cell, but in the amount of time spent outside of it and the activities available. American Correctional Association, *Standards for Adult Local Detention Facilities (Second Edition)* (College Park, MD: American Correctional Association, 1981), 30-34, <https://perma.cc/3N7W-UPNU>. For a survey of current conditions, see for example Joanna Weschler and Theodore Zang, *Prison Conditions in the United States* (New York: Human Rights Watch, 1991), <https://perma.cc/SL4K-53B6>. Also see Jamie Fellner, *Cold Storage: Super-Maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997), <https://perma.cc/B7UK-7ZF9>; and Jamie Fellner, *Red Onion State Prison: Super-Maximum Security Confinement in Virginia* (New York: Human Rights Watch, 1999), <https://perma.cc/3BLA-WJRZ>.
- 71 Hancock and Jewkes, “Architectures of Incarceration,” 2011.
- 72 *Ibid.*
- 73 *Ibid.*, 620-21 & 626; and Megan Fowler, *The Human Factor in Prison Design: Contrasting Prison Architecture in the United States and Scandinavia* (paper presented at Association of Collegiate Schools of Architecture Annual Meeting, March 19-21, 2015), <https://perma.cc/LA5A-8MTR>.
- 74 Fellner, *Cold Storage*, 1997.
- 75 See *Madrid v. Gomez*, 889 F. Supp. 1146, 1229 (N.D. Cal. 1995), <https://perma.cc/27A3-227W>.
- 76 Carson and Anderson, *Prisoners in 2015*, 2016, 27.
- 77 John Gibbons, Nicholas Katzenbach, and the Commission on Safety and Abuse in America’s Prisons, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons* (New York: Vera Institute of Justice, 2006), 23-27, <https://perma.cc/X78Q-TVEU>; and Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 181. Also see Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment* (Washington, DC: Urban Institute, 2002), 78, <https://perma.cc/ML33-CDNY>.
- 78 *Brown v. Plata*, 563 U.S. 493, 502 (2011), <https://perma.cc/7VE6-LM2D>.
- 79 Association of State Correctional Administrators, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* (New Haven, CT: Yale Law School, 2015), 2-3, <https://perma.cc/B3S7-K2ES>; and Shames, Wilcox, and Subramanian, *Solitary Confinement: Misconceptions and Alternatives*, 2015, 6.
- 80 For a description of the conditions faced in solitary confinement, see Shames, Wilcox, and Subramanian, *Solitary Confinement: Misconceptions and Alternatives*, 2015, 8-12.
- 81 *Ibid.*, 8.
- 82 See Sasha Abramsky and Jamie Fellner, *Ill-Equipped: US Prisons and Offenders With Mental Illness* (New York: Human Rights Watch, 2003), 151-53, <https://perma.cc/U2HK-9VVG>; and David Lovell, “Patterns of Disturbed Behavior in a Supermax Population,” *Criminal Justice and Behavior* 3, no. 8 (2008), 985-1004, https://www.researchgate.net/publication/247745192_Patterns_of_Disturbed_Behavior_in_a_Supermax_Population.
- 83 See Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 194-95; Lawrence L. Bench and Terry D. Allen, “Investigating the Stigma of Prison Classification: An Experimental Design,” *Prison Journal* 83, no. 4 (2003), 367-82; and John L. Worrall and Robert G. Morris, “Inmate Custody Levels and Prison Rule Violations,” *Prison Journal* 91, no. 2 (2011), 131-57.
- 84 See for example, Kate King, Benjamin Steiner, and Stephanie Ritchie Breach, “Violence in the Supermax: A Self-Fulfilling Prophecy,” *Prison Journal* 88, no. 1 (2008), 161-63, <https://perma.cc/U8LE-9VSE>; and Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, “The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence,” *Criminology* 41, no. 4 (2003), 1341-76, 1342 (finding that the effectiveness of supermaximum-security confinement as a mechanism to enhance prison safety remains largely speculative and that the implementation of supermaximum security in the locations studied was associated with a temporary increase in assaults against staff).
- 85 The U.S. Supreme Court has held, for example, that the government must provide people living in prison with medical care, adequate nutrition, a safe environment, and an acceptable standard of sanitation. See Rex D. Glensy, “The Right to Dignity,” *Columbia Human Rights Law Review* 43,

- no. 1 (2011), 65-142, 112 (citing *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) (medical care); *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (safety); and *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978) (lengthy deprivation of nutrition and sanitation issues including overcrowding)).
- 86 For reports on the lack of toilet paper, see Taylor Elizabeth Eldridge, “The Big Business of Prisoner Care Packages,” The Marshall Project, December 12, 2017, <https://perma.cc/D5L2-LHLG>; and Mary Ellen Klas, “Florida Prisons Have Toilet Paper, But They’re Not Supplying It to Some Inmates,” *Miami Herald*, July 19, 2017, <https://perma.cc/8JGB-8X4T>. Access to menstrual hygiene products is a widespread problem. See Zoe Greenberg, “In Jail, Pads and Tampons as Bargaining Chips,” *New York Times*, April 20, 2017, <https://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html>; and Chandra Bozelko, “Prisons that Withhold Menstrual Pads Humiliate Women and Violate Basic Rights,” *Guardian*, June 12, 2015, <https://perma.cc/9FMW-Y4T9>. Things may be changing soon. The Dignity Act, a bill introduced in the U.S. Senate to improve the treatment of people held in federal prisons, mandates making tampons and sanitary napkins available to incarcerated people free of charge. S. 1524, 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/senate-bill/1524/text>. In August 2017, the Federal Bureau of Prisons issued guidance on a new requirement to provide free sanitary products to incarcerated persons at all federal facilities. Federal Bureau of Prisons, Memorandum on Provision of Feminine Hygiene Products (Washington DC: Federal Bureau of Prisons, August 1, 2017), <https://perma.cc/3RAN-X6H9>. In Arizona, HB 2222, intended to provide a free, unlimited supply of hygiene products to incarcerated people, won approval from the House Military, Veterans and Regulatory Affairs Committee in early 2018; the Chairman of the Rules Committee, however, has announced that he does not intend to hear the bill, claiming that administrative changes in the meantime that doubled the number of free pads from 12 to 24 made the bill redundant. Incarcerated people must purchase tampons if they want them. Kaila White, “Arizona Legislator Kills Bill that Would Have Given Female Inmates Free Feminine Products,” *The Republic*, February 12, 2018, <https://perma.cc/2W3N-BGTR>. Virginia and Maryland have both passed legislation making menstrual hygiene products available to incarcerated people at no charge. Virginia HB 83 (2018), <https://perma.cc/V26C-Y3LA>; and Maryland SB 598 (2018), <https://perma.cc/3PYC-HB9N>.
- 87 Susie Neilson, “Prison Uniforms Make It Harder to ‘Go Straight,’” *Newsweek*, March 7, 2016, <https://perma.cc/F2KH-VK6Q>.
- 88 Issuing uniforms designed to make incarcerated people uncomfortable or alter their behavior is not an uncommon practice in the United States. One newspaper article described this practice as “the ultimate humiliation as the final shred of dignity is stripped away.” See Dan Glaister, “Pink Prison Makes Texan Inmates Blush,” *Guardian*, October 10, 2006, <https://perma.cc/J8MQ-H8EY>. For a discussion of trends in uniforms, see Thomas Vinciguerra, “The Clothes That Make the Inmate,” *New York Times*, October 1, 2000, <https://www.nytimes.com/2000/10/01/weekinreview/the-clothes-that-make-the-inmate.html>.
- 89 For example, in fiscal year 2010, seven surveyed states, and in fiscal year 2011, 13 surveyed states, reported reducing food services as a cost-saving measure. See Alison Shames, Michael Woodruff, Alissa Cambier, et al., *The Continuing Fiscal Crisis in Corrections: Setting a New Course* (New York: Vera Institute of Justice, 2010), <https://perma.cc/FUE4-AAHJ>; and Christine S. Scott-Hayward, *The Fiscal Crisis in Corrections: Rethinking Policies and Practices* (New York: Vera Institute of Justice, 2009), <https://perma.cc/BGF6-YZKJ>. Also see “Ohio Introduces Two-Meal Plan to Reduce Costs,” *Correctional News*, December 1, 2009, <http://perma.cc/SF2Z-36S5>; Manny Fernandez, “In Bid to Cut Costs at Some Texas Prisons, Lunch Will Not Be Served on Weekends,” *New York Times*, October 20, 2011, <https://www.nytimes.com/2011/10/21/us/texas-reduces-weekend-meals-for-prisoners.html?mtrref=undefined&mtrref=www.nytimes.com>; and Hanna Raskin, “Feeding the Prison System: Some Inmates Buy Way Around ‘Institutional Cooking,’” *Post and Courier*, December 14, 2014, <http://perma.cc/BSL5-XL45>.
- 90 Raskin, “Feeding the Prison System,” 2014. For this practice in jails, see Alysia Santo and Lisa Iaboni, “What’s in a Prison Meal?” The Marshall Project, July 7, 2015, <http://perma.cc/U3D2-SBJM>.
- 91 Joe Fassler and Claire Brown, “Prison Food is Making U.S. Inmates Disproportionately Sick,” *Atlantic*, December 27, 2017, <http://perma.cc/F2VA-NWK9>. For more on foodborne illness in prison, see Mariel A. Marlow, Ruth E. Luna-Gierke, Patricia M. Griffin, and Antonio R. Vieira, “Foodborne Disease Outbreaks in Correctional Institutions-United States, 1998-2014,” *American Journal of Public Health* 107, no. 7 (2017), 1150-56.
- 92 Wendy Sawyer, “Food for Thought: Prison Food is a Public Health Problem,” Prison Policy Initiative, March 3, 2017, <https://perma.cc/W49W-YPGV>.
- 93 To cite just two recent instances, two Vermont men died of cancer, one without being diagnosed with or treated for the disease by prison medical staff despite requesting care and suffering increasing debilitation of movement and cognition, as well as significant pain. The other man was diagnosed only after his femur snapped while he was dressing; he died within a year. Taylor Dobbs, “The Slow and Painful Prison Death of Roger Brown,” Vermont Public Radio, November 14, 2017,

<https://perma.cc/G94A-HLEA>; and Taylor Dobbs, “‘They Killed Him’: As a Vermont Inmate Suffered from Untreated Cancer, Officials Delayed Care,” Vermont Public Radio, November 13, 2017, <https://perma.cc/5L89-VQ58>. Also see *Brown v. Plata*, 563 U.S. 493 (2011).

- 94 Specifically, incarcerated people experience higher rates of hypertension, diabetes, heart problems, asthma, kidney problems, stroke, arthritis, and sexually transmitted infections. Laura M. Maruschak, Marcus Berzofsky, and Jennifer Unangst, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12* (Washington, DC: BJS, 2016), 2-3, <https://perma.cc/7LG5-ABQ9>. Also see Margaret Noonan, Harley Rohloff, and Scott Ginder, *Mortality in Local Jails and State Prisons, 2000-2013 - Statistical Tables* (Washington, DC: BJS, 2013), 1, 4, & table 24 (finding that the leading causes of death in prisons are cancer, heart disease, and liver disease), <https://perma.cc/N2M5-22YX>.
- 95 Poor air quality has also caused lung and breathing disorders at prisons in Pennsylvania. See Environmental Protection Agency, “EPA Settlement Will Reduce Air Pollution from Four Pennsylvania Prisons,” Environmental Protection Agency, January 4, 2011, <http://perma.cc/NT4P-EPH2>. High temperatures and inadequate cooling systems have been reported as the cause of death for people in prison facilities in Arizona, California, Michigan, and Texas. See James Ridgeway and Jean Casella, “When Summer is Torture,” *Mother Jones*, July 27, 2010, <http://perma.cc/2YMN-496C>; Manny Fernandez, “In Texas, Arguing That Heat Can Be a Death Sentence for Prisoners,” *New York Times*, July, 28, 2012, <https://www.nytimes.com/2012/07/29/us/in-texas-arguing-that-heat-can-be-a-death-sentence-for-prisoners.html>; Alice Spier, “‘Deadly Heat’ in U.S. Prisons is Killing Inmates and Spawning Lawsuits,” *The Intercept*, August 24, 2016, <http://perma.cc/3LR3-E62L>; and Maurice Chamamah, “Cooking Them to Death: The Lethal Toll of Hot Prisons,” The Marshall Project, October 11, 2017, <http://perma.cc/739C-3PH3>.
- 96 For the defining characteristics of minimum-, medium-, and maximum-security prisons, see James J. Stephan, *Census of State and Federal Correctional Facilities, 2005* (Washington, DC: U.S. Department of Justice, 2009), 8, <http://perma.cc/CXT4-N8A7>.
- 97 While the number of individual programs has increased for some types of educational opportunities (notably, vocational training), the actual number of seats available to people in prison has decreased, and many incarcerated people may be restricted or prohibited from enrolling because of disciplinary infractions or other administrative reasoning. See Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 191-92. However, over the last several decades, some educational programs became more available as a result of mandatory education policies requiring those who enter prison without a high school credential to participate in adult basic education. These policies exist in 22 states and the federal Bureau of Prisons. See *ibid.*, 190. Postsecondary education opportunities have become less accessible since 1994, when federal student aid in the form of Pell grants was made unavailable to incarcerated persons. Ruth Delaney, Ram Subramanian, and Fred Patrick, *Making the Grade: Developing Quality Postsecondary Education Programs in Prison* (New York: Vera Institute of Justice, 2016), 5, <https://perma.cc/3Z8F-27VS>. However, in 2016, the Second Chance Pell Pilot Program launched to make need-based financial aid available to students in prison for the first time in 20 years. See Vera Institute of Justice, “Bringing College Back to Prison,” <http://perma.cc/7LZL-TN2C>; and U.S. Department of Education, “U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals,” press release (Washington, DC: U.S. Department of Education, July 31, 2015), <http://perma.cc/VA38-TP2Y>. The fate of that program, which must be renewed each year, is uncertain under the Trump administration. See Nicole Lewis, “The Uncertain Fate of College in Prison,” The Marshall Project, March 28, 2018, <http://perma.cc/6KQS-TW3C>.
- 98 Jeremy Travis, Amy Solomon, and Michelle Waul, *From Prison to Home: The Dimensions and Consequences of Prisoner Reentry* (Washington, DC: Urban Institute, 2001), 9, <http://perma.cc/KY7V-GEYF>. Also see Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* (New York: Oxford University Press, 2003). For eventual release figures see E. Ann Carson and Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991-2012* (Washington, DC: BJS, 2013), 4 & table 2, <http://perma.cc/32TN-9ED3>.
- 99 See for example Katherine M. Auty, Aiden Cope, and Alison Liebling, “Psychoeducational Programs for Reducing Prison Violence: A Systematic Review,” *Aggression and Violent Behavior* 33 (2017), 126-143, 140; Grant Duwe and Valerie A. Clark, “Nothing Will Work Unless You Did: The Predictors of Postprison Employment,” *Criminal Justice and Behavior* 44, no. 5, (2017), 657-77; and Delaney, Subramanian, and Patrick, *Making the Grade*, 2016, 8-11. For the decline in in-prison programming, see Faye Taxman, April Pattavina, and Michael Caudy, “Justice Reinvestment in the United States: An Empirical Assessment of the Potential Impact of Increased Correctional Programming on Recidivism,” *Victims & Offenders* 9, no. 1 (2014), 50-75, 56-58.
- 100 Taxman, Pattavina, and Caudy, “Justice Reinvestment,” 2014, 68 & table 2.
- 101 Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 192.

- 102 In the United States, the vast majority of in-prison work opportunities fall into two categories: (1) regular prison jobs that support the prison facility; and (2) jobs in state-owned businesses, which produce goods that are sold to government agencies (often known as correctional industries). Data on average wages paid to people in prison are difficult to calculate, but one source found that the average hourly rate for regular jobs ranged from \$0.14 to \$0.63; and the average hourly rate for correctional industries jobs ranged from \$0.33 to \$1.41. See Wendy Sawyer, *How Much Do Incarcerated People Earn In Each State?* (Northampton, MA: Prison Policy Initiative, 2017), <https://perma.cc/6BNT-TH5A>. Also see Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 192.
- 103 Items they may need to purchase include food, toiletries, and hygienic supplies, and supplemental articles of clothing such as undergarments, socks, or shoes. Purchasing supplemental food is particularly important in prisons that have cut meals and calories. See note 89, above. Also see Eldridge, “The Big Business of Prisoner Care Packages,” 2017.
- 104 Before 1980, only 36 percent of prisons were located in rural areas. From the 1970s to the 1980s, the average number of new prisons constructed in rural areas each year went from four to 16, and in the 1990s that number grew again to 25. Almost 60 percent of new prisons built between 1992 and 1994 were in located in rural areas, although those areas accounted for only approximately 20 percent of the national population, and 53 percent of all people sentenced to newly built prisons from 1980 to 1991 were housed in rural facilities. Between 1990 and 1999, 245 new prisons were built in rural areas. See Calvin L. Beale, “Prisons, Population, and Jobs in Nonmetro America,” *Rural Development Perspectives* 8, no. 3 (1993), 16-19; Calvin L. Beale, “Rural Prisons: An Update,” *Rural Development Perspectives* 11, no. 2 (1996), 25-27; Tracy Huling, “Building a Prison Economy in Rural America,” in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, edited by Marc Mauer and Meda Chesney-Lind (New York: The New Press, 2002), 197-213; Amy K. Glasmeier and Tracey L. Farrigan, “The Economic Impacts of the Prison Development Boom on Persistently Poor Rural Places,” *International Regional Science Review* 30, no. 3 (2007), 274-99; Terry L. Besser and Margaret M. Hanson, “Development of Last Resort: The Impact of New State Prisons on Small Town Economies in the United States,” *Journal of the Community Development Society* 35, no. 2 (2004), 1-16; Susan H. Packard and Kevin E. Courtright, “Exploring Satisfaction and the Perception of Economic Impact Among Communities Hosting Correctional Institutions: A Qualitative Examination of Four Rural Communities in Pennsylvania,” *International Journal of Business and Social Science* 6, no. 8(1) (2015), 1-13; and Suzanne M. Kirchhoff, *Economic Impacts of Prison Growth* (Washington, DC: Congressional Research Service, 2010), 16. For example, between 1982 and 2010, New York constructed 40 new state prisons and located all of them in rural areas. Rebecca U. Thorpe, “Perverse Politics: The Persistence of Mass Imprisonment in the Twenty-first Century,” *Perspectives on Politics* 13, no. 3 (2015), 618-37, 624. In Pennsylvania, between 1990 and 2000, the number of people in rural prisons rose by 187 percent (compared to a growth in the number of people in urban prisons of only 46 percent). At the turn of this century, rural areas had 11 incarcerated people per 1,000 residents and urban areas had only five per 1,000 residents. “Just the Facts: Prison Population Growth,” Center for Rural Pennsylvania Newsletter, November/December 2001, <https://perma.cc/SMQ2-KPML>; and Kirchhoff, *Economic Impacts of Prison Growth*, 2010, 16.
- 105 Léon Digard, Margaret diZerega, Allon Yaroni, and Joshua Rinaldi, *A New Role for Technology? Implementing Video Visitation in Prison* (New York: Vera Institute of Justice, 2016), 2 & 4, <https://perma.cc/3XQ2-V4CW>.
- 106 Meghan Mitchell, Kallee Spooner, Di Jia, and Yan Zhang, “The Effect of Prison Visitation on Reentry Success: A Meta-Analysis,” *Journal of Criminal Justice* 47 (2016), 74-83 (finding that experiencing visitation resulted in a 26 percent decrease in recidivism).
- 107 See Chesa Boudin, Trevor Stutz, and Aaron Littman, “Prison Visitation Policies: A Fifty-State Survey,” *Yale Law & Policy Review* 32, no. 1 (2013), 149-89, 160-61 (number and duration of visits), 163-65 (number and nature of visitors) & 167 (physical contact). For people in prison who are parents of young children, these policies are particularly destructive. Research indicates that parent-child visits are most successful for both parent and child when, among other things, they allow physical contact and are conducted in a child-friendly setting—provided by only a few facilities. See Lindsey Cramer, Margaret Goff, Bryce Peterson, and Heather Sandstrom, *Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice* (Washington, DC: Urban Institute, 2017), 7, <https://perma.cc/FBJ7-5TTK>.
- 108 The state of Florida recently enhanced its search procedures, subjecting 2,350 people—more than 97 percent of whom are women—to strip searches when their clothing set off metal detectors. Ben Conrack, “Women Describe ‘Degrading’ Strip Searches at Baker Prison Visitation,” *Florida Times-Union*, March 22, 2018, <https://perma.cc/QW5J-NYU7>. Also see Cramer, Goff, Peterson, and Sandstrom, *Parent-Child Visiting Practices*, 2017, 7-8; and Boudin, Stutz, and Littman, “Prison Visitation Policies,” 2013, 149 & 166-69.
- 109 Digard, diZerega, Yaroni, and Rinaldi, *A New Role for Technology?*, 2016. Additionally, some facilities foreclose in-person visitation after they introduce video visitation: it is estimated that nearly 75 percent of local jails institute policies

that reduce or eliminate in-person visits once video calling is installed. Bernadette Rabuy and Peter Wagner, *Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails* (Northampton, MA: Prison Policy Initiative, 2015), <https://perma.cc/JJG6-MLVD>.

- 110 Digard, diZerega, Yaroni, and Rinaldi, *A New Role for Technology?*, 2016, 13. According to one report, before the FCC instituted an 11 cents per minute rate cap in 2015, the average rate for in-state phone calls was \$2.96 for 15 minutes, and the average rate for calls between states was \$3.15 for 15 minutes. Under the Trump administration, the FCC has declared that it will no longer enforce the cap on in-state calls. Ann E. Marimow, “FCC Made a Case for Limiting Cost of Prison Phone Calls. Not Anymore,” *Washington Post*, February 5, 2017, <https://perma.cc/2H5D-XTL8>. Also see Peter Wagner and Bernadette Rabuy, “Following the Money of Mass Incarceration,” *Prison Policy Initiative*, January 25, 2017 (prison phone companies may charge up to \$24.95 for a 15-minute call), <https://perma.cc/EL8N-GJ66>.
- 111 “Prisonization,” a condition identified among incarcerated people as early as the 1950s, is the process of internalizing behaviors and values associated with prison life in an effort to cope with the requirements of institutional life. For a discussion of the psychological impacts of incarceration see Haney, *The Psychological Impact of Incarceration* (2002). Also see Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 176-78.
- 112 Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 177. The result of adaptation to prison routines is a set of behaviors and cognitive patterns that make life outside, where myriad decisions must be made daily, increasingly challenging the longer the person is incarcerated. To fend off victimization, incarcerated people may adopt physically and sexually aggressive behaviors or gang affiliations. *Ibid.*
- 113 Nancy Wolff, Jing Shi, and Jane A. Siegel, “Patterns of Victimization Among Male and Female Inmates: Evidence of An Enduring Legacy,” *Violence and Victims* 24, no. 4 (2009), 469-84, 474 & table 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3793850/>. Also see for example Tawandra L. Rowell-Cunsolo, Roderick J. Harrison, and Rawha Haile, “Exposure to Prison Sexual Assault Among Incarcerated Black Men,” *Journal of African American Studies* 18, no. 1 (2014), 54-62, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4203380/>.
- 114 Wolff, Shi, and Siegel, “Patterns of Victimization,” 2009, 470. Also see Nancy Wolff, Cynthia L. Blitz, Jing Shi, et al., “Physical Violence Inside Prisons: Rates of Victimization,” *Criminal Justice and Behavior* 34, no. 5 (2007), 588-99.
- 115 Rochelle F. Hanson, Genelle K. Sawyer, Angela M. Begle, and Grace S. Hubel, “The Impact of Crime Victimization on Quality of Life,” *Journal of Traumatic Stress* 23, no. 2 (2010), 189-97 (finding that crime victimization, especially of violence, impacts role functioning in parenting, intimate relationships, jobs, and social roles).
- 116 Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 174-76. Post-Traumatic Stress Disorder is defined as a set of related symptoms resulting from a specific or recurrent trauma, these include re-experiencing the trauma or flashbacks, avoidance or emotional numbing, negative cognitions such as loss of memory or depression, and aggressive, self-destructive, or hypervigilant behavior. See American Psychiatric Association, “What is Post-Traumatic Stress Disorder,” <https://perma.cc/92CL-AV3B>. Suicide rates are one of the few harms that are consistently measured by prison authorities: after years of holding steady, suicide rates in state prisons rose sharply in 2013—increasing by 30 percent from 2013 to 2014. Margaret E. Noonan, *Mortality in State Prisons, 2001-2014 – Statistical Tables* (Washington, DC: BJS, 2016), <https://perma.cc/E64Y-6BWZ>.
- 117 Judith Herman’s proposed diagnosis of Complex PTSD would include “protracted depression, apathy, and the development of a deep sense of hopelessness.” See Judith Herman, “A New Diagnosis,” in *Trauma and Recovery*, edited by Judith Herman (New York: Basic Books, 1992), 115-29. Also see Craig Haney, *Reforming Punishment: Psychological Limits to the Pains of Imprisonment* (Washington, DC: American Psychological Association, 2006), 185.
- 118 Hearing about or witnessing serious bodily injury or the killing of another person can have significant consequences for bystanders. According to Nancy Wolff and colleagues, “research has found that even such passive activity is associated with emotional and behavioral effects similar to those found among direct victims of violence.” Wolff, Shi, and Siegel, “Patterns of Victimization,” 2009, 469 & 479. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) lists among the criteria for diagnosing PTSD: “Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: . . . Experiencing repeated or extreme exposure to aversive details of the traumatic event(s) (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse).” Work-related exposure through “electronic media, television, movies, or pictures” is also considered adequate to cause PTSD. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.) (Arlington, VA: American Psychiatric Publishing, 2013), Diagnostic Criteria 309.81 (F43.10).

- 119 *Hudson v. Palmer*, 468 U.S. 517 (1984), <https://perma.cc/G7LQ-9NBR>.
- 120 Maine and Vermont are the only U.S. states that provide incarcerated people with the opportunity to vote. Dozens of countries, including Canada, Germany, Ireland, Norway, and South Africa, allow most people in prison to vote. See “International Comparison of Felon Voting Laws,” ProCon.org, <https://perma.cc/Q56Q-JWRP>. For U.S.-specific laws, see “State Felon Voting Laws,” ProCon.org, <https://perma.cc/W6CU-LEG4>.
- 121 The PLRA’s restrictions include: (1) a strict interpretation of “exhaustion of internal prison remedies”; (2) a mandatory showing of physical, not just psychological, injury; (3) the strict application of the grievance exhaustion requirement to detained or incarcerated children, who must act on their own behalf rather than through a guardian; (4) limited court oversight of prison conditions; and (5) a limitation on attorney fees, making it difficult for potential applicants to obtain legal representation. See David Fathi, *No Equal Justice: The Prison Litigation Reform Act in the United States* (New York: Human Rights Watch, 2009), <https://perma.cc/VMN3-5BGY>. Also see Gibbons and Katzenbach, *Confronting Confinement*, 2006, 84-87. Additionally, although the United States Supreme Court has affirmed that solitary confinement is a form of punishment subject to scrutiny under Eighth Amendment standards, most federal courts have been unreceptive to limiting its use. This is because to succeed, an incarcerated person must satisfy a particularly onerous two-part test: first, his or her alleged suffering must be reasonably serious; and second, prison officials must have acted with “deliberate indifference to the prisoner’s health and safety”—where “deliberate indifference” is only proved if it is shown that prison officials “kn[e]w that inmates face[d] a substantial risk of serious harm,” but “fail[ed] to take reasonable measures to abate it.” See *Farmer v. Brennan*, 511 U.S. 825 (1994), <https://perma.cc/PQ4Q-M9LT>.
- 122 Gibbons and Katzenbach, *Confronting Confinement*, 2006, 86-87.
- 123 See Michele Deitch, “The Need for Independent Prison Oversight in a Post-PLRA World,” *Federal Sentencing Reporter* 24, no. 4 (2012), 236-44; and David C. Fathi, “The Challenge of Prison Oversight,” *American Criminal Law Review* 47, no. 4 (2010), 1453-1577.
- 124 Max Blau and Emanuella Grinberg, “Why US Inmates Launched a Nationwide Strike,” CNN, October 31, 2016, <https://perma.cc/S65Q-PVYS>.
- 125 Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 104-29; and Bruce Western, “The Prison Boom and the Decline of American Citizenship,” *Society* 44, no. 5 (2007), 30-36, 31-32.
- 126 Margaret Cahalan, “Trends in Incarceration in the United States Since 1880: A Summary of Reported Rates and the Distribution of Offenses,” *Crime & Delinquency* 25, no. 1 (1979), 9-41, 40. Note that over time, the ethnic and racial origins of interest to those collecting information on prison demographics have changed. Into the early decades of the 20th century, these figures included counts of those who were “foreign born.” More recent demographic categories have included white, black, and Latino/Hispanic populations.
- 127 Carson and Anderson, *Prisoners in 2015*, 2016, 14.
- 128 Hannah Grabenstein, “Inside Mississippi’s Notorious Parchman Prison,” PBS NewsHour, January 29, 2018 (referencing David M. Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* [New York: Free Press, 1997]), <http://perma.cc/Y9A9-2E2F>.
- 129 Christopher R. Adamson, “Punishment After Slavery: Southern State Penal Systems, 1865-1890,” *Social Problems* 30, no. 5 (1983), 555-69; Khalil Gibran Muhammad, “Where Did All the White Criminals Go? Reconfiguring Race and Crime on the Road to Mass Incarceration,” *Souls* 13, no. 1 (2011), 72-90; and Western, “The Prison Boom,” 2007, 30-36.
- 130 These laws also stripped formerly incarcerated people of their citizenship rights long after their sentences were completed. Among the most well-known examples are laws that temporarily or permanently suspended the right to vote of people convicted of felonies. Adamson, “Punishment After Slavery,” 1983, 558-59; A. E. Raza, “Legacies of the Racialization of Incarceration: From Convict-Lease to the Prison Industrial Complex,” *Journal of the Institute of Justice and International Studies* 11 (2011), 159-70, 162-65; Christopher Uggen, Jeff Manza, and Melissa Thompson, “Citizenship, Democracy, and the Civic Reintegration of Criminal Offenders,” *ANNALS of the American Academy of Political and Social Sciences* 605, no. 1 (2006), 281-310; and Elizabeth Hull, *The Disenfranchisement of Ex-Felons* (Philadelphia, PA: Temple University Press, 2006), 17-22.
- 131 This ratio did not change much in the following decades. In 1908 in Georgia, 90 percent of people in state custody during an investigation of the convict leasing system were black. For 1870, see Adamson, “Punishment After Slavery,” 1983, 558-61. For 1908, see Alex Lichtenstein, “Good Roads and Chain Gangs in the Progressive South: ‘The Negro Convict is a Slave,’” *Journal of Southern History* 59, no. 1 (1993), 85-110, 90.
- 132 Adamson, “Punishment After Slavery,” 1983; Gwen Smith Ingley, “Inmate Labor: Yesterday, Today and Tomorrow,” *Corrections Today* 58, no. 1 (1996), 28-77, 30; Theresa R. Jach,

“Reform Versus Reality in the Progressive Era Texas Prison,” *Journal of the Gilded Age and Progressive Era* 4, no. 1 (2005), 53-67; and Robert Johnson, Ania Dobrzanska, and Seri Palla, “The American Prison in Historical Perspective: Race, Gender, and Adjustment,” in *Prisons Today and Tomorrow*, edited by Ashley G. Blackburn, Shannon K. Fowler, and Joycelyn M. Pollock (Burlington, MA: Jones & Bartlett Learning, 2005), 22-42, 29-31.

133 In terms of prison infrastructure, it is also important to note that even before 1865, Southern states had few prisons. Another important consideration was that if a Southern state incarcerated a slave for a crime, it would be depriving the owner of the slave’s labor. Prisons in Southern states, therefore, were primarily used for white felons. The region depended heavily on extralegal systems to resolve legal disputes involving slaves and—in contrast to the North—defined white crime as arising from individual passion rather than social conditions or moral failings. Southern punishment ideology therefore tended more toward the retributive, while Northern ideology included ideals of reform and rehabilitation (although evidence suggests harsh prison operations routinely failed to support these ideals). Despite the differences between Northern and Southern ideas of crime, punishment, and reform, all Southern states had at least one large prison modeled on the Auburn Prison style congregate model by 1850. Adamson, “Punishment After Slavery,” 1983, 556-58; and Alexander Pisciotta, “Scientific Reform: The ‘New Penology’ at Elmira, 1876-1900,” *Crime & Delinquency* 29, no. 4 (1983), 613-30.

134 Prior to the Civil War, prisons all over the country had experimented with strategies to profit off of the labor of incarcerated people, with most adopting factory-style contract work in which incarcerated people were used to perform work for outside companies at the prison. Between 1828 and 1833, Auburn Prison in New York earned \$25,000 (the equivalent of over half a million dollars in 2017) above the costs of prison administration through the sale of goods produced by incarcerated workers. During the earliest period of convict leasing, most contracting companies were headquartered in Northern states and were actually compensated by the Southern states for taking the supervision of those in state criminal custody off their hands. Only in the 1870s and 1880s, after Southern-based companies and individuals retook control of state governments, did the arrangements reverse: companies began to compensate states for leasing convict labor. In some states, contracts from convict leasing accounted for 10 percent of the state’s revenues. Under convict leasing schemes, state prison systems in the South often did not know where those who were leased out were housed or whether they were living or dead. Private convict leasing was replaced by the chain gang, or labor on public works such as the building of roads, in the first decade of the 20th century in both Georgia and

North Carolina. The chain gang continued into the 1940s. Those sentenced to serve on chain gangs were predominantly black. Adamson, “Punishment After Slavery,” 1983, 556, 562-66 & 567; Lichtenstein, “Good Roads and Chain Gangs,” 1993, 85-110; Matthew W. Meskell, “An American Resolution: The History of Prisons in the United States from 1777 to 1877,” *Stanford Law Review* 51, no. 4 (1999), 839-65, 861-62; and Raza, “Legacies of the Racialization of Incarceration,” 2011, 162-65.

135 Matthew J. Mancini, “Race, Economics, and the Abandonment of Convict Leasing,” *Journal of Negro History* 63, no. 4 (1978), 339-52; and J. A. C. Grant, “Interstate Traffic in Convict-Made Goods,” *Journal of Criminal Law and Criminology* 28, no. 6 (1938), 854-60, 855.

136 Risa Goluboff, “The Thirteenth Amendment and the Lost Origins of Civil Rights,” *Duke Law Journal* 50, no. 6 (2001), 1609-85; and Lichtenstein, “Good Roads and Chain Gangs,” 1993, 85-110.

137 Adamson, “Punishment After Slavery,” 1983, 565-66; and Lichtenstein, “Good Roads and Chain Gangs,” 1993, 85-110.

138 Jach, “Reform Versus Reality,” 2005, 57; and Johnson, Dobrzanska, and Palla, “Prison in Historical Perspective,” 2005, 27-29.

139 The language was selected for the 13th Amendment in part due to its legal strength. The concept had first entered federal law in Northwest Ordinance of 1787, which governed territories that later became the states of Indiana, Illinois, Michigan, Ohio, and Wisconsin. These states subsequently incorporated this aspect of the Northwest Ordinance into their state constitutions. Many other states followed suit. By the time the 13th Amendment was ratified by Congress, it had been tested by the courts and adopted into the constitutions of 23 of the 36 states in the nation and the Home Rule Charter of the District of Columbia. Eight Northeastern states (Connecticut, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) abolished slavery through a mixture of means and using various language by 1804. Maine entered the union as a free state in 1820. For more information about the congressional debate surrounding the adoption of the 13th Amendment, see David R. Upham, “The Understanding of ‘Neither Slavery Nor Involuntary Servitude Shall Exist’ Before the Thirteenth Amendment,” *Georgetown Journal of Law & Public Policy* 15, no. 1 (2017), 137-71; Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967); and Matthew Mason, “The Maine and Missouri Crisis: Competing Priorities and Northern Slavery Politics in the Early Republic,” *Journal of the Early Republic* 33, no. 4 (2013), 675-700. Furthering control over black bodies was the continued use of extralegal punishment following emancipation, including brutal lynchings that were

- widely supported by state and local leaders and witnessed by large celebratory crowds. At least 4,000 such extra-judicial killings occurred between 1877 and 1950 in 20 states. Equal Justice Initiative, *Lynching in America*, 2015.
- 140 Incarcerated whites were not included in convict leasing agreements, and few white people were sent to the chain gangs that followed convict leasing into the middle of the 20th century. Adamson, "Punishment After Slavery," 1983, 565-66; Lichtenstein, "Good Roads and Chain Gangs," 1993, 94 & 102; and Raza, "Legacies of the Racialization of Incarceration," 2011, 162-65.
- 141 Adamson, "Punishment After Slavery," 1983, 562-66; and Raza, "Legacies of the Racialization of Incarceration," 2011, 162-65.
- 142 For a discussion of the narrow interpretation of the 13th, 14th, and 15th Amendments from 1865 to 1939, and the subsequent expansion of federal jurisdiction over exploitative work conditions as contrary to civil rights in the 1940s, see Goluboff, "The Thirteenth Amendment," 2001, 1615 & 1637-44.
- 143 Prior to the 1960s, the prevailing view in the United States was that a person in prison "has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the state." *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).
- 144 Muhammad, *The Condemnation of Blackness*, 2010, 7.
- 145 As crime was on the decline, the head of the Federal Bureau of Investigation, J. Edgar Hoover, began to characterize those who committed violent robberies as public enemies. Jeffrey Adler, "Less Crime, More Punishment: Violence, Race, and Criminal Justice in Early Twentieth-Century America," *Journal of American History* 102, no. 1 (2015), 34-46, 41.
- 146 Policies establishing mandatory life sentences triggered by conviction of a fourth felony were passed first in New York in 1926 and, soon thereafter, in California, Kansas, Michigan, New Jersey, North Dakota, Oregon, South Dakota, and Vermont. *Ibid.*; and Muhammad, "Where Did All the White Criminals Go," 2011, 79.
- 147 The arrest rate among white people for robbery declined by 42 percent, while it increased by 23 percent among black people. For homicide, arrests declined by 8 percent for white people, but rose by 25 percent for black people. Adler, "Less Crime, More Punishment," 2015, 44.
- 148 Isabel Wilkerson, "The Long-Lasting Legacy of the Great Migration," *Smithsonian Magazine*, September 2016, <https://perma.cc/FZ32-V3SR>.
- 149 Up until World War I, European immigrants were not granted the full citizenship privileges that were reserved for fully "white" citizens. This social, political, and economic exclusion extended to second-generation immigrants as well. The Great Migration of more economically successful Southern black Americans into Northern cities inspired anxiety among European immigrant groups, who perceived migrants as threats to their access to jobs. Christopher Muller, "Northward Migration and the Rise of Racial Disparity in American Incarceration, 1880-1950," *American Journal of Sociology* 118, no. 2 (2012), 281-326, 284 & 292-93.
- 150 Muhammad, *The Condemnation of Blackness*, 2010, 74.
- 151 All black Americans were fully counted in the 1870 census for the first time and the publication of the data was eagerly anticipated by many. By the 1890 census, census methodology had been improved and a new focus on race and crime began to emerge as an important indicator to the status of black Americans after emancipation. Debates arose whether higher crime rates among black people in the urban North were biologically determined, culturally determined, or environmentally and economically determined. White crime was typically discussed as environmentally and economically driven at the time. These ideas were supported by widely held so-called "scientific" theories of genetic differences between racial groups, broadly termed eugenics. Other popular theories included phrenology, or the measurement of head size as a determinant of cognitive ability, and some applications of evolutionary theories that hypothesized that black people were at an earlier stage of evolution than whites. This group of theories, especially eugenic theories, were publicly touted by social reformers and prominent members of the social and political elite, including Theodore Roosevelt and Margaret Sanger. Muhammad, *The Condemnation of Blackness*, 2010, 15-87; and Muller, "Northward Migration," 2012, 294-300.
- 152 The racial category of Caucasian was first proposed during this period to encompass all people of European descent. Muhammad, "Where Did All the White Criminals Go," 2011, 81-82; and Muller, "Northward Migration," 2012, 293.
- 153 The ratios jumped from 2.4:1 to 5:1 nonwhite to white between 1880 and 1950. These states were: Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin, each of which gained at least 50,000 nonwhite residents between 1870 and 1970. Muller, "Northward Migration," 2012, 286.
- 154 Meskell, "An American Resolution," 1999, 861-62; and Adamson, "Punishment After Slavery," 1983, 565-66.
- 155 Ingley, "Inmate Labor," 1996, 28, 30 & 77.

- 156 Johnson, Dobrzanska, and Palla, "Prison in Historical Perspective," 2005, 29-31.
- 157 These were primarily Irish first- and second-generation immigrants. Muller, "Northward Migration," 2012, 293-95.
- 158 Johnson, Dobrzanska, and Palla, "Prison in Historical Perspective," 2005, 33-35.
- 159 *Ibid.*, 33-35; and Muhammad, "Where Did All the White Criminals Go," 2011, 85-87.
- 160 Indeed, the implementation of this programming was predicated on public anxiety about the number of white people behind bars. As with other social benefits implemented at the time, black Americans were not offered these privileges. Muhammad, "Where Did All the White Criminals Go," 2011, 74 & 86-88.
- 161 Johnson, Dobrzanska, and Palla, "Prison in Historical Perspective," 2005, 32.
- 162 *Ibid.*, 29-31.
- 163 "Goldwater's 1964 Acceptance Speech," *Washington Post*, <https://perma.cc/6V9M-34V5>.
- 164 Richard M. Nixon, "Address Accepting the Presidential Nomination at the Republican National Convention in Miami Beach, Florida," American Presidency Project, <https://perma.cc/XN26-RSRA>.
- 165 Wacquant, "When Ghetto and Prison Meet," 2001, 96.
- 166 Riots were sparked by police violence against unarmed black youths, as well as exclusionary practices that blocked black integration into white society. During this period of violent protest, more people were killed in domestic conflict than at any time since the Civil War. Politicians also linked race and crime with poverty and the New Deal policies that had established state-run social programs designed to assist individuals in overcoming the structural disadvantages of poverty. The liberalism these policies embodied had been the dominant political ideology since the early 20th century, fueled by social science. This liberalism had replaced 18th century libertarianism that had sought to limit the function and reach of government. For information on the riots, see Elizabeth Hinton, "'A War within Our Own Boundaries': Lyndon Johnson's Great Society and the Rise of the Carceral State," *Journal of American History* 102, no. 1 (2015), 100-13, <https://perma.cc/5VA6-YFGT>. For information on the links between race, crime, and poverty in the erosion of the New Deal, see Ian Haney-López, "Freedom, Mass Incarceration, and Racism in the Age of Obama," *Alabama Law Review* 62, no. 5 (2010), 1005-21, 1016, <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2813&context=facpubs>; and Wacquant, "When Ghetto and Prison Meet," 2001.
- 167 Western, "The Prison Boom," 2007, 31-32.
- 168 Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard University Press, 2016), 1-3 & 6; and Elizabeth Hinton, LeShae Henderson, and Cindy Reed, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* (New York: Vera Institute of Justice, 2018), 3 & notes 18-20, <https://perma.cc/H8MX-GLAP>.
- 169 See Western, "The Prison Boom," 2007, 30-36; and Alexander, *The New Jim Crow*, 2010, 44-45.
- 170 Alexander, *The New Jim Crow*, 2010, 44-45.
- 171 In the 1970s, New York, Chicago, and Detroit shed a combined 380,000 jobs. These losses were concentrated among young black men: as many as 30 percent of black men who had dropped out of high school lost their jobs during this period, as did 20 percent of black male high school graduates. Julilly Kohler-Hausmann, "Welfare Crises, Penal Solutions, and the Origins of the 'Welfare Queen,'" *Journal of Urban History* 41, no. 5 (2015), 756-71; and Western, "The Prison Boom," 2007, 31.
- 172 Wacquant, "When Ghetto and Prison Meet," 2001, 96 & 101-05.
- 173 By 2000, in the Northern formerly industrial urban core, as many as two-thirds of black men had spent time in prison. *Ibid.*, 96.
- 174 By 1980, employment in one inner-city black community had declined from 50 percent to one-third of residents. *Ibid.*, 104. Also see Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 38, 40 & 45-47.
- 175 Western, "The Prison Boom," 2007.
- 176 BJS, *State and Federal Prisoners, 1925-85* (Washington, DC: BJS, 1986), 2, <https://perma.cc/6F2E-U9WL>.
- 177 *Ibid.*
- 178 William J. Sabol, Heather C. West, and Matthew Cooper, *Prisoners in 2008* (Washington, DC: BJS, 2009), 1, <https://perma.cc/SY7J-K4XL>.
- 179 Thomas Blomberg, Mark Yeisley, and Karol Lucken, "American Penology: Words, Deeds, and Consequences," *Crime, Law and Social Change* 28, no. 3-4 (1998), 269-86, 277; and Robert T. Chase, "We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners' Rights Movement," *Journal of American History*, 102, no. 1 (2015), 73-86.

- 180 Beginning in 1970, legal changes limited incarcerated people's access to the courts, culminating in the enactment of the Prisoner Litigation Reform Act in 1997, which requires incarcerated people to follow the full grievance process administered by the prison before bringing their cases to the courts. Blomberg, Yeisley, and Lucken, "American Penology," 1998, 277; Chase, "We Are Not Slaves," 2006, 84-87.
- 181 Ibid.
- 182 The transition to adulthood is a socially defined sequence of ordered events—today, the move from school to work, to marriage, to the establishment of a home, and to parenthood—that when completed without delay enables the youth to transition to adult status. Significant social or cultural events can alter the life course pattern for generations, for example, the Great Depression and World War II, which changed the life course trajectories for those born in the early 1920s. The prison boom is another major social event that has changed the life trajectories of those born in the late 1960s onward. Surveillance and supervision of black women was also exerted through the welfare system, which implemented practices reminiscent of criminal justice agencies beginning in the 1970s. Western, "The Prison Boom," 2007, 33; and Kohler-Hausmann, "Welfare Crises, Penal Solutions, and the Origins of the 'Welfare Queen,'" 2015, 756-71. For incarceration figures by race and gender, see Carson and Anderson, *Prisoners in 2015*, 2016, 6.
- 183 This new era of mass incarceration divides not only the black American experience from the white, it also makes sharp divisions among black men who have college educations (whose total imprisonment rate has actually declined since 1960) and those without, for an estimated third of whom prison has become a part of adult life. Among all black men born between 1965 and 1969, by 1999 22.4 percent overall, but 31.9 percent of those without a college education, had served a prison term, 12.5 held a bachelor's degree, and 17.4 percent were veterans by the late 1990s. These experiences stand in contrast to those of their white peers. White men were 10 times more likely to get a bachelor's degree than go to prison, and nearly five times more likely to serve in the military. Western, "The Prison Boom," 2007, 35.
- 184 Amanda Ploch, "Why Dignity Matters: Dignity and the Right (or Not) to Rehabilitation from International and National Perspectives," *NYU Journal of International Law & Politics* 44, no. 3 (2012), 887-949, 894-98. Also see McCrudden, "Human Dignity," 2008. The Vatican recently shifted its view of the death penalty, citing human dignity as the basis. Pope Francis declared capital punishment wrong "because it is an attack on the inviolability and dignity of the person." Previously, the church had stated it was acceptable in rare instances. David Brennan, "Pope Says Death Penalty 'Inadmissible' in All Cases in Major Catechism Reform," *Newsweek*, August 2, 2018, <https://www.newsweek.com/pope-says-death-penalty-inadmissible-all-cases-major-catechism-reform-1054027>.
- 185 Basic Law of Germany (1949), article 1, <https://perma.cc/2XYR-KVKX>.
- 186 Robert Spano, "Deprivation of Liberty and Human Dignity in the Case-Law of the European Court of Human Rights," *Bergen Journal of Criminal Law and Criminal Justice* 4, no. 2 (2016), 150-166, 151, <https://perma.cc/H77P-YA69>. "By 1986, dignity had become so central to United Nations' conceptions of human rights that the U.N. General Assembly provided, in its guidelines for new human rights instruments, that such instruments should be 'of fundamental character and derive from the inherent dignity and worth of the human person.'" McCrudden, "Human Dignity," 2008, 669. See International Covenant on Civil and Political Rights, Part III, article 10 ("All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"); International Covenant on Civil and Political Rights (New York, December 16, 1966), 999 U.N.T.S. 171 and 1057 U.N.T.S. 407, entered into force March 23, 1976 [the provisions of article 41 (Human Rights Committee) entered into force March 28, 1979]; European Convention on Human Rights, section I, article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment," Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, November 4, 1950, ETS 5, <https://perma.cc/9Z62-2RWX>; United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 1: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification;" U.N. General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, resolution adopted by the General Assembly, January 8, 2016, A/RES/70/175, <http://www.refworld.org/docid/5698a3a44.html> [accessed 25 June 2018]; and European Prison Rules, Part I: "1. All persons deprived of their liberty shall be treated with respect for their human rights," Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules* (January 11, 2006), <http://www.refworld.org/docid/43f3134810.html> [accessed 25 June 2018].
- 187 McCrudden, "Human Dignity," 2008, 664-65 & 673. Human dignity appears in multiple places in the South African constitution. See Constitution of the Republic of South Africa (1996), §§ 1, 7, 10, 35, 36, 39, 165, 181, 196 & schedule 2.
- 188 For South Africa specifically, see Constitution of the Republic of South Africa (1996), §§ 1 & 10.

189 See for example *Trop v. Dulles*, 356 U.S. 86, 100 (1958) (Eighth Amendment) (The court stated that “[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man”), <https://perma.cc/L29Y-7W58>; *Brown v. Plata*, 563 U.S. 493 (2011) (Eighth Amendment) (stating that while “[a]s a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights,” including the fact that “[p]risoners retain the essence of human dignity inherent in all persons.”), <https://perma.cc/KN5A-D29G>; *Rochin v. California*, 342 U.S. 165, 174 (1952) (Fourth Amendment), <https://perma.cc/WK2B-J8MW>; *McKaskle v. Wiggins*, 465 U.S. 168, 178 (1984) (Sixth Amendment), <https://perma.cc/2347-7U2P>; *Lawrence v. Texas*, 539 U.S. 558, 567 (2003) (Fourteenth Amendment right to privacy), <https://perma.cc/BQ2Y-RHQW>; *Brown v. Board of Education*, 347 U.S. 483 (1954) (Fourteenth Amendment equal protection), <https://perma.cc/N97Z-X6N5>; and *Rosenblatt v. Baer*, 383 U.S. 75, 92 (1966) (Stewart, J., concurring) (libel law), <https://perma.cc/MNK8-5LMT>.

190 Montana Constitution, article II, § 4. Also see Illinois Constitution, article I, § 20; and Louisiana Constitution, article I, § 3.

191 The term “shocks the conscience” entered into American jurisprudence in 1952 in the case of *Rochin v. California*, 342 U.S. 165, 172 (1952) (which ruled that a search that consisted of opening the petitioner’s mouth and extracting contents from his stomach was unconstitutionally invasive, stating that “the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism . . . [it] shocks the conscience”). The “shocks the conscience” standard has since been used as an elevated standard of review to determine whether due process rights have been violated by the government and has been most commonly used in review of Fourth or Fourteenth Amendment substantive due process claims. The Supreme Court explicitly related it to the protections of the Eighth and Fourteenth Amendments in *Whitley v. Albers*, 475 U.S. 312, 327 (1986) (“It would indeed be surprising if, in the context of forceful prison security measures, ‘conduct that shocks the conscience’ . . . and so violates the Fourteenth Amendment, [citation omitted], were not also punishment ‘inconsistent with contemporary standards of decency’ and ‘repugnant to the conscience of mankind’ [citation omitted]”). The latter two standards are the Eighth Amendment thresholds promulgated by the Court in *Estelle v. Gamble*, 429 U.S. 97 (1976). Critics of the test, from Justices Black and Douglas’ concurrences in *Rochin* on, have focused on how nebulous it is: because the test contains no concrete factors beyond what a judge or jury believes some vision of society finds not merely personally displeasing but “shocking,” it is difficult to apply consistently. Some

scholars argue that it should inform the “proportionality” tests applied to Eighth Amendment claims. See Jency Megan Butler, “Shocking the Eighth Amendment’s Conscience: Applying a Substantive Due Process Test to the Evolving Cruel and Unusual Punishments Clause,” *Hastings Constitutional Law Quarterly* 43, no. 4 (2016), 861-949, <https://perma.cc/T873-NLVJ>. Others have argued that the test as applied is so elevated a standard as to “emasculate [substantive due process]’s efficacy as a limitation on executive power” and should be discontinued. See Rosalie Berger Levinson, “Time to Bury the Shocks the Conscience Test,” *Chapman Law Review* 13, no. 2 (2010), 307-56, <https://perma.cc/3KAV-TE8N>. The test was also adopted by the Canadian Supreme Court to review “fundamental justice” cases in *Canada v. Schmidt*, 1 S.C.R. 500 (1987).

192 For example, in *Brown v. Plata*, 563 U.S. 493 (2011), the Court stated: “Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.” And, in *Atkins v. Virginia*, 536 U.S. 304, 318-21 (2002), the Court reiterated the rule from *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958), that “The basic concept underlying the Eighth Amendment is nothing less than the dignity of man The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.” Ultimately, though, the Court’s decisions do not go as far in practical effect as they do in rhetoric. Maxine Goodman examines “whether, in view of our ‘evolved’ standard of decency and the Lawrence Court’s express recognition of human dignity as a value underlying the petitioner’s constitutional rights, human dignity plays a substantial role in the Supreme Court’s decision-making.” Maxine Goodman, “Human Dignity in Supreme Court Constitutional Jurisprudence,” *Nebraska Law Review* 84, no. 3 (2005-2006), 740-94. “Dignity” conceptually appears in American jurisprudence as early as *Korematsu v. United States*, 323 U.S. 214 (1944). Justice Frankfurter actually used the term “dignity” regarding constitutional jurisprudence earlier, in his dissent in *Glasser v. United States*, 315 U.S. 60 (1942), where the defendant alleged ineffective assistance of counsel because the court appointed defendant’s counsel to also represent a co-defendant. Justice Frankfurter stated: “Whether [the Bill of Rights] safeguards of liberty and dignity have been infringed in a particular case depends upon the particular circumstances.” (Frankfurter, J., dissenting). However, Justice Murphy was the first to use phrases such as “dignity of man,” “human dignity,” and “dignity of the individual.” See Goodman, “Human Dignity,” 2005, 753. And *Miranda v. Arizona*, of course, is underscored by “dignity” concerns—Justice Warren described the “interrogation environment” as serving no purpose other than to “subjugate the individual to the will of his examiner.” 384 U.S. 436 (1966), <https://perma.cc/BB9X-97SF>. Though not

physical intimidation, the Court stated that this environment is “equally destructive of human dignity.” *Ibid.*, 457. Ultimately, however, while the Court occasionally uses phrases involving “dignity,” its decisions are heavily weighted in favor of any competing state interest, especially where incarcerated people are involved. See Goodman, “Human Dignity,” 2005, 775-78.

193 *Hope v. Pelzer*, 536 U.S. 730, 738 (2002).

194 Opal Tometi and Gerald Lenoir, “Black Lives Matter is not a Civil Rights Movement,” *Time*, December 10, 2015, <https://perma.cc/3LDH-T6AW>.

195 McCrudden, “Human Dignity,” 2008, 679 (stating that “this intrinsic worth should be recognized and respected by others, and some forms of treatment by others are inconsistent with, or required by, respect for this intrinsic worth”).

196 See for example The Prison Act (*Strafvollzugsgesetz*) of 1977, §§ 2-4 (German Prison Act).

197 The Prison Act (*Strafvollzugsgesetz*) of 1977, § 3.

198 Neilson, “Prison Uniforms,” 2016.

199 Elwanda Ray, quoted in Cole Waterman, “Michigan Corrections Officer of the Year Motivates Inmates to Do Better,” *Mlive.com*, February 15, 2018, <https://perma.cc/6H3V-DQTG>.

200 The U.S. Supreme Court has, for example, found that the government must provide people living in prison with medical care, adequate nutrition, a safe environment, and an acceptable standard of sanitation. See Glensy, “The Right to Dignity,” 2011, 112 (citing *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976)) (medical care); *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (safety); and *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978) (lengthy deprivation of nutrition and sanitation issues including overcrowding).

201 Neilson, “Prison Uniforms,” 2016. A newspaper article reporting on one sheriff’s practice of requiring people incarcerated in his prison to wear all-pink uniforms described it as “the ultimate humiliation as the final shred of dignity is stripped away.” Glaister, “Pink Prison,” 2006.

202 The Dignity Act, a bill introduced in the U.S. Senate to improve the treatment of people incarcerated in federal prison who are primary caretaker parents (and for other purposes), specifies that certain health care products are to be made available for free, including “moisturizing soap, which may not be lye-based; shampoo; body lotion; Vaseline; toothpaste; and toothbrushes.” S. 1524, 115th Congress (2017-2018), <https://www.congress.gov/bill/115th-congress/senate-bill/1524/text>.

203 For a discussion of using such products as a control tactic, see Tamar Kraft-Stolar, *Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons: A Report of the Women in Prison Project of the Correctional Association of New York* (New York: Women in Prison Project of the Correctional Association of New York, 2015), <https://perma.cc/7DYX-8BX7>. The Federal Bureau of Prisons modified its practices in August 2017 and now requires that all facilities provide adequate hygiene products to menstruating residents; the new policy specifies that federal prisons must make available two sizes of tampons and sanitary napkins. The proposed Dignity Act would, if enacted, also mandate making tampons and sanitary napkins available to incarcerated people free of charge. See note 86, above.

204 This is supposed to already occur with regard to sexual assault in confinement. In 2003, Congress passed the landmark Prison Rape Elimination Act (PREA), recognizing that sexual abuse is a serious and persistent problem in correctional environments. 42 U.S.C. § 15601 et seq. The National Prison Rape Elimination Commission was formed to study the problem and draft standards to address sexual abuse in correctional settings. In 2012, the U.S. Department of Justice (DOJ) issued its final ruling on PREA, which built on the work of the commission. DOJ, “Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape,” press release (Washington, DC: DOJ, May 17, 2012), <https://perma.cc/C8XG-W7WW>. DOJ’s PREA standards aim to facilitate comprehensive facility-based efforts to prevent, detect, and respond to sexual abuse and include regulations for adult prisons and jails, community confinement facilities, juvenile facilities, and lockups. Under the standards, correctional facilities must (1) develop a written facility plan to coordinate responses to an incident of sexual abuse; (2) follow uniform protocols for evidence and sexual assault medical forensic examinations for victims of sexual abuse, based on the DOJ’s *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents*, <https://perma.cc/WY95-J4C2>; and (3) provide victims who report sexual abuse with access to outside victim advocates for emotional support.

205 Regarding relationships with prison staff, Alison Liebling and colleagues developed indicators to measure “what matters” most in daily prison life to incarcerated people and staff. Through their research, they discovered that the key dimensions identified were primarily values relating to interpersonal treatment: respect, humanity, fairness, order, safety, and staff relationships with incarcerated people. The well-being of incarcerated people was to a large extent a consequence of their perceived treatment. Prisons were more punishing and painful where staff were indifferent, punitive, or lazy in their use of authority. The authors note that “As vulnerable and dependent creatures, human beings depend on acknowledgement (recognition) and justice as a condition of

human flourishing. Their opposite, disrespect and indifference, cause pain and damage.” See Alison Lieblich, “Moral Performance, Inhuman and Degrading Treatment and Prison Pain,” *Punishment & Society* 13, no. 5 (2011), 530-50.

206 Rachel Slade, “Is There Such a Thing as ‘Good’ Prison Design?” *Architectural Digest*, April 30, 2018, <https://perma.cc/N4CS-M97H>.

207 Karin A. Beijersbergen, Anja J. E. Dirkzwager, Peter H. van der Laan, and Paul Nieuwabeerta, “A Social Building? Prison Architecture and Staff-Prisoner Relationships,” *Crime & Delinquency* 62, no. 7 (2016), 843-74. People living in panopticon layouts (a circular design in which a custodial officer can view all incarcerated people’s cells or living spaces) were less positive about interactions with officers than people living in other layouts. Additionally, people housed in older prison units and in units with more double cells perceived more problems with officer interactions than those housed individually or in newer units. One journalist reported the study’s finding as follows: “After controlling for age, ethnicity, intimate relationships at the time of arrest, education level, personality traits, criminal histories, and officer-to-inmate ratios,” the researchers found that “[i]f the prisoners were housed in leaky dungeon-like panopticons, they tended to feel more estranged from guards. But if they were enjoying campus-style living arrangements or apartment-style high-rises, they perceived the relationships as more supportive.” Ryan Jacobs, “How Prison Architecture Can Transform Inmates’ Lives,” *Pacific Standard*, June 17, 2014, <https://perma.cc/E5DU-4E44>.

208 For instance, the Dutch Custodial Institutions Agency trains its staff to understand the collateral consequences of solitary confinement; asks its staff to put themselves in the shoes of isolated persons before deciding on how to interact with them; and specifically instructs its staff to always provide those in isolation with regular human contact, measures of personal autonomy, and access to programs that will provide opportunities to earn their way out back into the general population. Mariette Horstink, “The Custodial Institutions Agency” (presented at the European-American Prison Project conference at the Ministry of the Interior, The Hague, The Netherlands, February 21, 2013).

209 Goffman, “Total Institutions,” 1961, 15-64.

210 Notably, the proposed Dignity Act (see note 86, above) specifies four visitation regulations that must be applied to incarcerated people who are primary caretaker parents and their family members: “(1) a prisoner may receive visits not fewer than 6 days per week, which shall include Saturday and Sunday; (2) a Federal penal or correctional institution shall be open for visitation for not fewer than 8 hours per day; (3)

a prisoner may have up to 5 adult visitors and an unlimited number of child visitors per visit; and (4) a prisoner may have physical contact with visitors unless the prisoner presents an immediate physical danger to the visitors.” S. 1524, 115th Congress (2017-2018).

211 For an overview of compassionate release, see Rebecca Silber, Alison Shames, and Kelsey Reid, *Aging Out: Using Compassionate Release to Address the Growth of Aging and Infirm Prison Populations* (New York: Vera Institute of Justice, 2017), 2-10, <https://perma.cc/V6J6-ZFE4>.

212 PrisonEducation.com, “Inmates Find Self-Worth Through Prison Education,” in Christopher Zoukis, *College for Convicts: The Case for Higher Education in American Prisons* (Jefferson, NC: McFarland & Company, 2014), 35, <https://perma.cc/CFN9-VJH2>.

213 Vera Institute of Justice, “Connecticut’s T.R.U.E. Prison Program Offers New Beginnings,” May 2, 2017, <https://perma.cc/RC9L-ZMMC>.

214 For a discussion on the benefits of postsecondary education programs for incarcerated students, see generally Delaney, Subramanian, and Patrick, *Making the Grade*, 2016.

215 Restorative programs in prison may have as their objectives to help people in prison develop awareness of and empathy for victims or to make it possible for incarcerated people to make amends to their victims or survivors. See generally Gerry Johnstone, *Restorative Justice in Prisons: Methods, Approaches and Effectiveness* (Strasbourg, France: European Committee on Crime Problems, Council for Penological Co-operation, 2014), <https://perma.cc/3TB7-ZSSN>.

216 A robust prison oversight system would not only ensure people living in prison with access to justice, but it would also achieve transparency and accountability. See Michele Deitch, “Distinguishing the Various Functions of Effective Prison Oversight,” *Pace Law Review* 30, no. 5 (2010), 1439-42 (summarizing the components of an effective system of prison oversight).

217 For an example of an audit and possible survey questions for incarcerated people, see Andrew Coyle, *Humanity in Prison: Questions of Definition and Audit* (London: International Centre for Prison Studies, 2003), <https://perma.cc/NGL6-6TYL>.

218 A few notable citizen visitation programs include the Citizen Visitation Program of Illinois’s John Howard Association; the Prison Visiting Project of the Correctional Association of New York; and the Official Visitors Program of the Pennsylvania Prison Society. In a citizen visitation program, a group of citizens is granted access to correctional facilities and then report on conditions in an effort to engage public interest

- in prisons and jails and to provide decision makers with information they can use to improve their systems. See Michele Deitch, "Independent Correctional Oversight Mechanisms across the United States: A 50-State Inventory," *Pace Law Review* 30, no. 5 (2010), 1754-1930.
- 219 For example, a policy review would look at a prison visiting policy, while an outcome measure would determine how many actual visits occurred within a given time frame. An accompanying survey would look at the satisfaction of incarcerated people and visitors with the visits themselves. For additional examples and an audit tool designed to measure "treatment with humanity," see Coyle, *Humanity in Prison*, 2003.
- 220 Bruce Western, *Homeward: Life in the Year After Prison* (New York: Russell Sage Foundation, 2018).
- 221 Hinds, Kang-Brown, and Lu, *People in Prison in 2017*, 2018, 3.
- 222 *Ibid.*, 2 (finding that, as of December 2017, there were 125,900 fewer people in prison since the peak population in 2009, representing an 8 percent reduction. Researchers also found that the Bureau of Prisons and 30 states had reduced the number of people held in prison in 2017. However declines were not universal.).
- 223 DOJ, *Issues in Siting Correctional Facilities* (Washington, DC: Government Printing Office, 1992) (finding that remote sites can make it difficult to attract qualified personnel, hinder family visits, and create problems during medical emergencies), <https://perma.cc/K7EF-S6GZ>. Also see Kevin E. Courtright, Michael J. Hannan, Susan H. Packard, and Edward T. Brennan, *Prisons and Rural Communities: Exploring Economic Impact and Community Satisfaction* (Harrisburg, PA: Center for Rural Pennsylvania, 2006) (finding that rural siting of prisons suffers from a lack of adequate infrastructure, making it particularly difficult to attract and retain qualified employees, particularly people of color), <https://perma.cc/3WFX-4FM5>.
- 224 See note 157. Also see John M. Eason, "Prisons as Panacea or Pariah? The Countervailing Consequences of the Prison Boom on the Political Economy of Rural Towns," *Social Science* 6, no. 1 (2017), 1-23.
- 225 Eason, "Panacea or Pariah?," 2017, 20.
- 226 See generally Hinton, *From the War on Poverty to the War on Crime*, 2016, 1-3 & 6. Also see Hinton, Henderson, and Reed, *An Unjust Burden*, 2018.
- 227 In 2013, Vera and the Prison Law Office (PLO) jointly led delegations from three different states to prisons in Germany and the Netherlands. See Subramanian and Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, 2013. In 2015, Vera brought together delegations from four different states (Connecticut, New Mexico, Tennessee, and Washington) and visited Germany. See Maurice Chammah, "How Germany Does Prison," The Marshall Project, June 16, 2015, <https://perma.cc/T76L-FDWC>. In 2015, 2016, and 2017, the PLO hosted prison administrators from five states (Alaska, Hawaii, Idaho, North Dakota, and Oregon) and visited prisons in Norway. See Prison Law Office, "The European Prison Project," <https://perma.cc/VWU7-L37W>.
- 228 Subramanian and Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, 2013.
- 229 Dashka Slater, "North Dakota's Norway Experiment," *Mother Jones*, July/August 2017, <https://perma.cc/STW5-KQSM>.
- 230 *Ibid.*; and Prison Law Office, *The US-European Criminal Justice Innovation Program, 2015-16 Program Evaluation* (Berkeley, CA: Prison Law Office, 2016), <https://perma.cc/2JWQ-V53P>.
- 231 Slater, "North Dakota's Norway Experiment," 2017.
- 232 Maurice Chammah, "I Did It Norway," The Marshall Project, October 31, 2017, <https://perma.cc/72SN-VLNP>.
- 233 Subramanian and Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, 2013. Also see Pennsylvania Department of Corrections, *Transitional Housing Units and Reentry Services Offices*, brochure available at <http://www.cor.pa.gov/Initiatives/Reentry/Documents/Transitional%20Housing%20Units%20and%20Reentry%20Services%20Brochure.pdf>.
- 234 Rebecca Boone, "Prison Chief Aims to Make 'Hard Time' a Rehearsal for Home," AP News, November 25, 2016, <https://perma.cc/QY5G-GAE6>.
- 235 Chammah, "I Did It Norway," 2017.
- 236 Research results regarding the impact of T.R.U.E. on file with Vera (report forthcoming). For information about the new unit at York Correctional Institution, see Clarice Silber, "New Prison Unit Opens to Help Young Female Inmates," *Connecticut Mirror*, July 9, 2018, <https://perma.cc/TF3K-EQ9F>.
- 237 "Peace and Justice Memorial Seeks to Make Horror of Lynching Understood," National Public Radio, April 28, 2018, <https://www.npr.org/2018/04/28/606792776/peace-and-justice-memorial-seeks-to-make-horror-of-lynching-understood>.
- 238 Wacquant, "Rethinking Race and Imprisonment," 2002.
- 239 *Ibid.*

240 Melvin Gutterman, “Prison Objectives and Human Dignity: Reaching a Mutual Accommodation,” *Brigham Young University Law Review* 1, no. 4 (1992), 857-915, 858 (citing Douglas, J., dissenting in *Wolff v. McDonnell*, 418 U.S. 539, 598 (1974), stating that prisons are beginning to shed their “punitive heritage”); and *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676, 684 (D. Mass. 1973), where Garrity, J., declared that “the soul-chilling inhumanity of conditions in American prisons has been thrust upon the judicial conscience.” Also see Gutterman, “Prison Objectives and Human Dignity,” 1992, 889, where the author discusses a case regarding prison conditions in Alabama. Prisons were “horrendously overcrowded, infested with roaches, flies and other vermin. The food was unappetizing . . . poorly prepared and infested with insects . . . and there was rampant violence.”

“The prison experience for corrections staff,” p. 28

a Jaime Brower, *Correctional Officer Wellness and Safety Literature Review* (Washington, DC: U.S. Department of Justice [DOJ], Office of Justice Programs Diagnostic Center, 2013), 6-10 (citing a study of corrections officers in New Jersey which found their suicide rate to be more than double that of police officers), <https://perma.cc/7UH5-UV66>.

b *Ibid.*, 12; and Lois James and Natalie Todak, “Prison Employment and Post-Traumatic Stress Disorder: Risk and Protective Factors,” *American Journal of Industrial Medicine* (forthcoming) (19 percent of 355 surveyed prison employees met the criteria for diagnosable PTSD, a rate comparable to that of Iraq and Afghanistan war veterans). Also see Michael D. Denhof and Caterina G. Spinaris, *Prevalence of Trauma-related Health Conditions in Correctional Officers: A Profile of Michigan Corrections Organization Members* (Florence, CO: Desert Waters Correctional Outreach, 2016), 11-15, <https://perma.cc/RTY8-JGS9>.

c Training lasts anywhere from three to 20 weeks and can include training in the use of correctional technology and equipment such as metal detectors, x-ray machines, leg irons, waist chains, handcuffs, holding cages, restraint chairs, stun guns, pepper spray, and different types of firearms; riot control, movement and transport of incarcerated people; conducting cell searches and strip searches; identifying contraband; and writing up reports. See CorrectionalOfficerEDU.org, “Corrections Officer Training,” <https://perma.cc/HP8J-BUWY>. Also see New York State Department of Correctional Services Basic Training curriculum, available at <https://perma.cc/6CYP-5A7Z>; and Adam Jackson, *Evaluation of New Officer Training* (Columbus, OH: Correctional Institution Inspection Committee, 2012), <https://perma.cc/PMX6-4PKE>.

- d Elaine Crawley and Peter Crawley, “Understanding Prison Officers: Culture, Cohesion and Conflicts,” in *Understanding Prison Staff*, edited by Jamie Bennett, Ben Crewe, and Azrini Wahidin (New York: Routledge, 2012), 142.
- e Dasha Lisitsina, “‘Prison Guards Can Never Be Weak’: The Hidden PTSD Crisis in America’s Jails” *Guardian*, May 20, 2015, <https://perma.cc/Q8LQ-6TDX>.
- f *Ibid.*
- g See Michael D. Denof, Caterina G. Spinaris, and Gregory R. Morton, *Occupational Stressors in Corrections Organizations: Types, Effects, and Solutions* (Washington, DC: DOJ, National Institute of Corrections, 2014), 5, <https://perma.cc/HPV8-NNL9>. Also see Brower, *Correctional Officer Wellness*, 2013; and Peter Finn, *Addressing Correctional Officer Stress: Programs and Strategies* (Washington, DC: DOJ, 2000), 11-17, <https://perma.cc/5MGX-DEDX>.
- h Brower, *Correctional Officer Wellness*, 2013. Also see Finn, *Addressing Correctional Officer Stress*, 2000, 11-17. For a discussion of the impact of feelings of care and support from supervisory staff on willingness to overlook or engage in inappropriate behavior among corrections officers, see Finn, *Addressing Correctional Officer Stress*, 2000, 47-52 & 76; and Robert Worley and Vidusha Worley, “Guards Gone Wild: A Self-Report Study of Correctional Officer Misconduct and the Effect of Institutional Deviance on ‘Care’ Within the Texas Prison System,” *Deviant Behavior* 2, no. 4 (2011), 298-300, 310-14.
- i Wilmar B. Schaufeli and Maria C.W. Peeters, “Job Stress and Burnout Among Correctional Officers: A Literature Review,” *International Journal of Stress Management* 7, no. 1 (2000), 19-48, 29, <https://perma.cc/LG3S-NBT8>; and Brower, *Correctional Officer Wellness*, 2013, 11-13. Also see Finn, *Addressing Correctional Officer Stress*, 2000, 16.
- j Michael D. Denhof and Caterina G. Spinaris, *Depression, PTSD, and Comorbidity in Corrections Professionals*, (Florence, CO: Desert Waters Correctional Outreach, 2013), 14-15 & 35-36, <https://perma.cc/UZ8A-LXNN>.
- k *Ibid.*, 23-24.
- l *Ibid.*, 8. Regarding PTSD, see Jaimie L. Gradus, Ping Qin, Alisa K. Lincoln, et al., “Posttraumatic Stress Disorder and Completed Suicide,” *American Journal of Epidemiology* 171, no. 6 (2010), 721-27, <https://perma.cc/87XQ-GDCA>. Regarding depression, see John Michael Bostwick and V. Shane Pankratz, “Affective Disorders and Suicide Risk: A Reexamination” (published online December 1, 2000), <https://ajp.psychiatryonline.org/doi/pdf/10.1176/appi.ajp.157.12.1925>.
- m Brower, *Correctional Officer Wellness*, 2013, 11.

n Kevin Minor, Cherie Dawson-Edwards, James B. Wells, and Earl Angel, "Understanding Staff Perceptions of Turnover in Corrections," *Professional Issues in Criminal Justice* 4, no. 2 (2009), 43. For the average hourly wage for corrections officers see Payscale, "Corrections Officer Salary," <https://perma.cc/PT73-F8DZ>. Also see Bureau of Labor Statistics, "Occupational Employment Statistics: May 2017 National Occupational Employment and Wage Estimates, United States," <https://perma.cc/V4BH-A4X5>, which states that the median hourly wage is slightly higher at \$20.93. This number may be greater because it includes states with unionized corrections staff—such as California, Illinois, and New York—that often pay higher wages. See for example Jon Ortiz, "California Prison Officers' Union, Jerry Brown Agree on Contract," *Sacramento Bee*, March 16, 2016, <https://perma.cc/6Y7R-FPB4>. In fact, California pays the highest annual mean wage, at \$71,630 across all corrections officer and jailer jobs, whereas 12 states pay at most \$35,410 and more than three-quarters of states pay less than \$50,000 annually. Bureau of Labor Statistics, "Occupational Employment Statistics - Occupational Employment and Wages, May 2017 - Correctional Officers and Jailers," <https://perma.cc/9HU5-3BF2>. Also see Eric Lambert, "Want to Leave: A Test of a Model of Turnover Intent Among Correctional Staff," *Applied Psychology in Criminal Justice* 2, no. 1 (2006), <https://perma.cc/UFR4-48JT>.

o Katherine Barrett and Richard Greene, "Thousands of Unfilled Jail Jobs, Millions in Overtime, 'Zero Room for Error,'" *Governing*, June 21, 2018, <http://www.governing.com/topics/workforce/gov-corrections-workers.html>.

p See Peter Finn, "Correctional Officer Stress: A Cause for Concern and Additional Help," *Federal Probation* 62, no. 2 (1998), 65-74, 69, <https://perma.cc/ZG5H-8MFM>. Also see Samuel G. Vickovic, Marie L. Griffin, and Henry F. Fradella, "Depictions of Correctional Officers in Newspaper Media: An Ethnographic Content Analysis," *Criminal Justice Studies* 26, no. 4 (2013), 455-77; Bart Masker, "Public Perception of Corrections: The Dark Side of the Force," paper prepared for Florida Department of Law Enforcement, <https://perma.cc/8RK9-Q2VP>; and Ray Berger, "The Public Image of Corrections," *California Youth Authority Quarterly* 31, no. 1 (1978), 2-17, <https://perma.cc/M3GP-PZZV>. Also see Joey Hedger, "Here's the Bad News: Public Trust is Tanking, Negative Media is Growing," *Corrections Today*, September/October 2017, <https://perma.cc/6MMW-WKL3>.

q See Jamie Fellner, *Callous and Cruel: Use of Force Against Inmates with Mental Disabilities in US Jails and Prisons* (Washington, DC: Human Rights Watch, 2015), <https://perma.cc/3HAU-M346>. The report found that corrections staff have been known to "deluge [mentally ill prisoners] with chemical sprays; shock them with electric stun devices; strap them to

chairs and beds for days on end; break their jaws, noses, ribs; or leave them with lacerations, second degree burns, deep bruises, and damaged internal organs." Ibid.

r Barrett and Greene, "Unfilled Jail Jobs," 2018.

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Recognizing that prisons are part of communities and need engagement with—and oversight by—the communities outside the walls, Vera worked with 17 corrections departments around the country on National Prison Visiting Week in November 2016. We thank the corrections departments in the states of California, Colorado, Connecticut, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, and Rhode Island, as well as the cities of New Orleans, Philadelphia, and Washington, DC, and the Federal Bureau of Prisons. And we also thank those citizens who joined the visits to show their support for breaking down the walls between prisons and the communities they are in, as well as the communities from which people in prison come. We thank the administration of President Barack Obama for lending support to Prison Visiting Week, in particular Roy Austin, Jr., then director of the White House Office of Urban Affairs, Justice and Opportunity, and Ashley Allison, then deputy director, White House Office of Public Engagement. We are grateful to former White House Senior Advisor Valerie Jarrett and former White House Chief of Staff Denis McDonough for demonstrating their support and joining us at facility visits.

This project was in part the outgrowth of Vera's work studying prisons in Germany. Our first trip, in 2013, was part of a project initiated by Michael Jacobson, former director of Vera and now director, Institute for State and Local Governance, The Graduate Center of the City University of New York; and Peggy McGarry, former director of Vera's Center on Sentencing and Corrections, with support from the Prison Law Office and its executive director, Don Specter. This laid the groundwork for our 2015 trip, and we thank Jeremy Travis, senior vice president of criminal justice, Laura and John Arnold Foundation and former president, John Jay College of Criminal Justice, for co-leading

Vera's 2015 trip there. We also thank our gracious and giving German hosts: Jörg Jesse, director general, Prison and Probation Administration, Ministry of Justice Mecklenburg-Western Pomerania, Germany; and Gero Meinen, director general, Department of Prison Service, Social Services of the Courts and Petition for Clemency of the Senate Administration of Justice, Berlin (now retired), currently, director general, Department for Civil Law and Administrative Law, for arranging and hosting these visits. The trip to Germany inspired Vera's work with the Connecticut Department of Correction, and we thank Governor Dannel P. Malloy; Mike Lawlor, undersecretary for Criminal Justice Policy and Planning; Commissioner Scott Semple; and Warden Scott Erfe for their vision in reimagining prison for young adults there, as well as the residents and staff of the T.R.U.E. unit at the Cheshire Correctional Institution for sharing their experiences with us.

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In addition, over the course of more than a year, we convened several roundtables of different groups—prison reform advocates, conservative leaders, victim rights groups, prosecutors, people who have been incarcerated and people who are currently incarcerated, and prison staff and leaders—to probe their ideas. We also met individually with leaders in the field to solicit their input. Thanks are due to all who gave freely of their time and ideas to join us, listed below.

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Prosecutor convening: Bruce Brown, district attorney, Fifth Judicial District, Colorado; Darcel Clark, district attorney, Bronx County, New York; Megan Clark, commonwealth attorney, Prince Edward County, Virginia; Catie Wilkes Delligatti, prosecuting attorney, Berkeley County, West Virginia; Bridget Dinvaut, district attorney, St. John the Baptist Parish, Louisiana; Mark Dupree, district attorney, Wyandotte County, Kansas; Kim Gardner, circuit attorney, City of St. Louis, Missouri; Gurbir Grewal, county prosecutor, Bergen County, New Jersey; Michael Jackson, district attorney, Dallas County, Alabama; Keith Kaneshiro, prosecuting attorney, City and County of Honolulu, Hawaii; Beth McCann, district attorney, Denver County, Colorado; Hillar Moore, district attorney, East Baton Rouge, Louisiana; Margaret Moore, district attorney, Travis County, Texas; Melissa Nelson, state attorney, Fourth Judicial Circuit, Florida; Kim Ogg, district attorney, Harris County, Texas; Ismael Ozanne, district attorney, Dane County, Wisconsin; Darius Pattillo, district attorney, Henry County, Georgia; Matthew Redle, prosecuting attorney, Sheridan County, Wyoming; Mitch Roth, prosecuting attorney, Hawaii County, Hawaii; Marco Serna, district attorney, First Judicial District, New Mexico; James Stewart, district attorney, Caddo Parish, Louisiana; Rod Underhill, district attorney, Multnomah County, Oregon; Andrew Warren, state attorney, Thirteenth Judicial Circuit, Florida; and

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Credits

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