

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/reimagining-prison-web-report>

### Policy Issue Resources

Why reimagine prison?

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

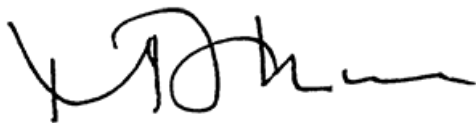
More than a decade ago, Vera's own Commission on Safety and Abuse in America's Prisons tried to bring life behind bars fully into focus. We detailed the punishing and often inhumane conditions of confinement suffered by the hundreds of thousands of men and women who are held in our nation's prisons.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

Vera formally launched the [Reimagining Prison project](#) in June 2016 at the Eastern State Penitentiary Historical Site in Philadelphia at 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.

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. 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). 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. 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).

Although such practices largely came to an end by the middle of the 20<sup>th</sup> 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. 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>. 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 for close to two months in protest of the state's use of long-term solitary confinement. 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>. 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. 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>. Commenting on his \$2-a-day pay 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. *Ibid.* 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. Heather Anne Thompson, How a South Carolina Prison Riot Really Went Down, *New York Times*, April 28, 2018, <https://www.nytimes.com/2018/04/28/opinion/how-a-south-carolina-prison-riot-really-went-down.html>. On the August 2018 prison strikes, see Ed Pilkington, "US Inmates Stage Nationwide Prison Labor Strike Over 'Modern Slavery,'" *Guardian*, August 21, 2018, <https://www.theguardian.com/us-news/2018/aug/20/prison-labor-protest-america-jailhouse-lawyers-speak>.

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. Simone Weichselbaum, For Corrections Officers and Cops, a New Emphasis on Mental Health, *The Marshall Project*, June 14, 2017, <https://perma.cc/UKR7-5VXG>.

Beyond the walls of prison, incarceration's impact is broad: mass imprisonment disrupts social networks, distorts social norms, and hollows out citizenship. 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>. 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. Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (New York: Oxford University Press, 2009). Its impact is also intergenerational—the children of incarcerated parents are more likely to experience psychological trauma, difficulties in school, and financial challenges. 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>. 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. 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). These 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. 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>. 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. 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>.

The reform efforts underway to date have focused primarily on reducing the number of people in American prisons. 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>. 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. 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>. 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. 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). Now, paradoxically, mass incarceration is widely viewed as a serious social problem in and of itself. 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>. 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). See Silber, Subramanian, and Spotts, *Justice in Review*, 2016. These strategies are all crucial to reversing Americas 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 Americas 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. 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>. Excepting a few limited examples, corrections practice remains underpinned by the objectives of past eras: retribution, incapacitation, and deterrence. 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>. 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 dont do conditions of confinement as if the lives of people equal in number to the population of Philadelphia dont merit it.

Second, we as a nation have not yet fully grappled with the ways in which prisons show they have been used, the purposes they serve, who gets sent to them, and peoples experiences inside them are intimately entwined with the legacy of slavery and generations of racial and social injustice. See generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010). Also see Loc Wacquant, Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-First-Century America, *Boston Review* 27, no. 2 (2002), <https://perma.cc/FRH7-UXDC>. 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 nations first memorial dedicated to documenting and acknowledging racial terror and lynchings, opened in Montgomery, Alabama. 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>. Ava DuVernays documentary tracing the lineage of mass incarceration to slavery, *13<sup>th</sup>*, was watched by millions, met with critical acclaim, and garnered dozens of awards and accolades. Sydney Gore, Ava DuVernays *13<sup>th</sup>* Documentary Wins Four Emmy Awards, *The Fader*, September 10, 2017, <https://perma.cc/AK9S-6DBH>. 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. 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>. 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. 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>. The #BlackLivesMatter movement has spawned a new generation of activists and leaders, helping spur political responses to counteract racism. Wesley Lowery, Black Lives Matter: Birth of a Movement, *Guardian*, January 17, 2017, <https://perma.cc/5PXA-7A4H>. 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.

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. 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. 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 at a rate of less than one person per 1,000 behind bars. 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. 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. As of January 2018, there were approximately 327,000 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=bkmk>. 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. 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>. It includes the recognition of a person's capacity for self-respect, self-control, empowerment, autonomy, and rationality. McCrudden, Human Dignity, 2008, 701. McCrudden, Human Dignity, 2008, 701. 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. 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 far cry from the typical prison experience in America. 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>.

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 prisons 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. Mark Mazower, *Salonica, City of Ghosts: Christians, Muslims, and Jews 1430-1950* (London: HarperCollins, 2004), 11-12 & 463-75. 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. Etienne 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 Mara 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 "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). 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. Roxanne Dunbar-Ortiz and Dina Gilio-Whitaker, Learning the Truth about Thanksgiving and Americas 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). 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 country's 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. 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 Commissions website at <https://perma.cc/9ZB4-94Y7>. 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. 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>. 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 a mental illness—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. 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-EYEE>. People—not just black people—are reduced to animals. Dara Lind, Trump's Animals Remark and the Ensuing Controversy, Explained, *Vox*, May 21, 2018, <https://perma.cc/J5UV-XYPC>. 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.) 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.) 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.) 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.) 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.) Even in the midst of the mass incarceration era, there are promising models to draw from that show reimagining prison is possible now.

~ Kim Gilmore, Slavery and Prison: Understanding the Connections, *Social Justice*, 2000 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).

~Heather Anne Thompson, "How a South Carolina Prison Riot Really Went Down," *New York Times*, 2018. Thompson, "South Carolina Prison Riot," 2018.

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. For more scholarship on the links between historical and modern policies, see Alexander, *The New Jim Crow*, 2010; Wacquant, *Rethinking Race and Imprisonment*, 2002; Loc 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, *13<sup>th</sup>*, directed by Ava DuVernay (2016). 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. For example, in 2003, George W. Bush signed into federal law the Prison Rape Elimination Act (PREA), S. 1435, 108<sup>th</sup> 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 Nations Largest Womens Prison, *Miami Herald*, December 13, 2015, <http://www.miamiherald.com/news/special-reports/florida-prisons/article49175685.html>. 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. 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>. Despite these efforts, prison life by and large remains rife with deprivation, isolation, and violence.

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. 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>. But between the 1970s and 1990s, the federal government and many state legislatures passed laws limiting judicial and parole board discretion. 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>. 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. Subramanian and Delaney, *Playbook for Change?*, 2014, 6. 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). 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, [http://www.uscourts.gov/sites/default/files/81\\_2\\_5\\_0.pdf](http://www.uscourts.gov/sites/default/files/81_2_5_0.pdf). 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. 1796; 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). 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. 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. By the turn of the 21<sup>st</sup> 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. 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.

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 overrepresented in prison in comparison with their presence in the general population. 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>. 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. 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://www.census.gov/quickfacts/fact/table/US#viewtop>.

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. 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, <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303576>. 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>. When women are examined alone, that rate jumps to eight to 10 times. Meyer, Flores, Stemple, et al., *Incarceration Rates and Traits of Sexual Minorities*, 2017, 234-40. 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. 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.

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

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. 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>.

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. Caroline Wolfe Harlow, *Education and Correctional Populations* (Washington, DC: BJS, 2003, 3), <https://perma.cc/VQ2E-K8WQ>.

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. 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>.

Incarcerated people also report high rates of past trauma and victimization. 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://scholar.harvard.edu/files/brucewestern/files/lifetimes\\_of\\_violence\\_in\\_a\\_sample\\_of\\_released\\_prisoners.pdf](https://scholar.harvard.edu/files/brucewestern/files/lifetimes_of_violence_in_a_sample_of_released_prisoners.pdf). 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/>. 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. See generally Abbe Smith, *The Monster in All of Us: When Victims Become Perpetrators*, *Suffolk University Law Review* 38, no. 2 (2005), 367-94, <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1218&context=facpub>. (See *Listening to victims.*)

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. 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>.

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. 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>.

~Heather Ann Thompson, "Prisons Are Erupting and Why it Matters," *Daily Beast*, 2016 Heather Ann Thompson, "Prisons Are Erupting and Why it Matters," *Daily Beast*, October 21, 2016, <https://perma.cc/RAA7-SGTV>.

~Thomas Silverstein, describing his experience in solitary confinement to Jean Casella and James Ridgeway, in "Five Unforgettable Stories From Inside Solitary Confinement," *Solitary Watch*, 2017 James 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>.

The prison experience in America today is harsh, restrictive, and dehumanizing. No matter what the underlying purpose for imprisonment—retribution, incapacitation, and/or deterrence—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. 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).

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

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. Irwin and Owen, *Harm and the Contemporary Prison*, 2011. 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 persons' constitutional rights. These features of the American prison experience are detailed in the subsections that follow.

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. 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. 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. 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>. Other interior spaces are similarly utilitarian in nature, with hard fixtures and fittings, cinder blocks, and little color, ornamentation, or natural light. Hancock and Jewkes, *Architectures of Incarceration*, 2011. [foote] Because the spaces are designed to maximize control of peoples 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. 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>. 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. Fellner, *Cold Storage*, 1997. In *Madrid v. Gomez* 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. See *Madrid v. Gomez*, 889 F. Supp. 1146, 1229 (N.D. Cal. 1995), <https://perma.cc/27A3-227W>.

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. Carson and Anderson, *Prisoners in 2015*, 2016, 27. 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. 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>. 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. *Brown v. Plata*, 563 U.S. 493, 502 (2011), <https://perma.cc/7VE6-LM2D>.

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. 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. 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. For a description of the conditions faced in solitary confinement, see Shames, Wilcox, and Subramanian, *Solitary Confinement*, 2015, 8-12. There is often little or no natural light and artificial lights may be left on day and night. Ibid., 8. 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. 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](https://www.researchgate.net/publication/247745192_Patterns_of_Disturbed_Behavior_in_a_Supermax_Population). 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. 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. This suggests that restrictive housing units can actually create or escalate behavioral issues and violence among incarcerated people, rather than contain or reduce them. 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://www.researchgate.net/publication/249707618\\_Violence\\_in\\_the\\_Supermax\\_A\\_Self-Fulfilling\\_Prophecy](https://www.researchgate.net/publication/249707618_Violence_in_the_Supermax_A_Self-Fulfilling_Prophecy); 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).

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. 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)). 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. 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, 115<sup>th</sup> 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>. Several facilities have begun issuing uniforms or other items of clothing in colors designed to humiliate the wearer, or using fabrics that cause discomfort. Susie Neilson, *Prison Uniforms Make It Harder to Go Straight*, *Newsweek*, March 7, 2016, <https://perma.cc/F2KH-VK6Q>. A growing number of jurisdictions have returned to issuing people striped uniforms for their purported punitive effect. 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>.

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. 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, <http://www.nytimes.com/2011/10/21/us/texas-reduces-weekend-meals-for-prisoners.html>; 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>. In the past decade, reports of insufficient quantities of food have become more widespread. Raskin, *Feeding the Prison System*, 2014. For this practice in jails, see Alysia Santo and Lisa Iaboni, *Whats in a Prison Meal? The Marshall Project*, July 7, 2015, <http://perma.cc/U3D2-SBJM>. 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. 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. 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. Wendy Sawyer, *Food for Thought: Prison Food is a Public Health Problem*, *Prison Policy Initiative*, March 3, 2017, <https://perma.cc/W49W-YPGV>.

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. 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). Yet incarcerated people continue to report health problems at higher rates than the general population in a wide range of areas. 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, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5219>. 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>. Prison environmental conditions, including poor air quality and high temperatures, can exacerbate existing health problems or create new



ones. 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 Chammah, Cooking Them to Death: The Lethal Toll of Hot Prisons, The Marshall Project, October 11, 2017, <http://perma.cc/739C-3PH3>.

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. 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>. 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. 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://storage.googleapis.com/vera-web-assets/downloads/publications/making-the-grade-postsecondary-education-programs-in-prison/legacy\\_downloads/making-the-grade-postsecondary-education-programs-in-prison.pdf](https://storage.googleapis.com/vera-web-assets/downloads/publications/making-the-grade-postsecondary-education-programs-in-prison/legacy_downloads/making-the-grade-postsecondary-education-programs-in-prison.pdf). 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>. 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. 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>. 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. 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. 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. Taxman, Pattavina, and Caudy, Justice Reinvestment, 2014, 68 & table 2.

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. Travis, Western, and Redburn, *The Growth of Incarceration*, 2014, 192. 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. 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. 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. 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. [footnotes]

Another reality of the prison experience is loneliness. During the prison boom of the 1990s, many new prisons were constructed in poor, rural areas. 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 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. 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. Lon 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>. 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. 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).

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. 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>. 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. 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. 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. 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>. Video calls can be anywhere between \$10 and \$15 for a 30-minute computer connection; telephone calls are nearly \$25 for only 15 minutes. 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>.

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. 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. 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. 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. 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. 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/>. 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. 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.

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. 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). 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. 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>. This complex PTSD results specifically from the repeated harms and deformations of personality that occur in captivity. Judith Hermans 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. In addition to trauma arising from personal victimization, vicarious traumata that is incurred when one is exposed to other peoples suffering and need also occurs in prison, meaning that few escape the effects of violence behind bars. 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* (5<sup>th</sup> ed.) (Arlington, VA: American Psychiatric Publishing, 2013), Diagnostic Criteria 309.81 (F43.10).

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. *Hudson v. Palmer*, 468 U.S. 517 (1984), <https://perma.cc/G7LQ-9NBR>. 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. 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>. 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. 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 unresponsive 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 prisoners 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>. In-prison administrative procedures do not provide people with an adequate substitute forum: weak internal complaint processes limit a persons ability to alert officials to staff misconduct or other wrongful behavior by the prison administration or staff that violates peoples rights. Gibbons and Katzenbach, *Confronting Confinement*, 2006, 86-87. 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. 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. For incarcerated people, the right to justice is all but nonexistent.

~ Max Blau and Emanuella Grinberg, *Why US Inmates Launched a Nationwide Strike*, CNN, 2016 Max Blau and Emanuella Grinberg, *Why US Inmates Launched a Nationwide Strike*, CNN, October 31, 2016, <https://perma.cc/S65Q-PVYS>.

In 1970, the era of mass incarceration began. This growth in the nations 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. 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.

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. 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 20<sup>th</sup> century, these figures included counts of those who were foreign born. More recent demographic categories have included white, black, and Latino/Hispanic populations. In 2015, about 55 percent of people imprisoned in federal or state prisons were black or Latino. Carson and Anderson, *Prisoners in 2015*, 2016, 14.

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 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.

~ Hannah Grabenstein, Inside Mississippi's Notorious Parchman Prison, *PBS NewsHour*, 2018 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>.

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 13<sup>th</sup> Amendment, it also triggered the nation's first prison boom when the number of black Americans arrested and incarcerated surged. 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. 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.

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. [footnote] 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. 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.

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. 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. 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. 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. 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. 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 states 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 20<sup>th</sup> 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.

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. 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. 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. 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. And, as with convict leasing before it, those sentenced to serve on chain gangs were predominantly black. Adamson, *Punishment After Slavery*, 1983, 565-66; and Lichtenstein, *Good Roads and Chain Gangs*, 1993, 85-110. 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. Jach, *Reform Versus Reality*, 2005, 57; and Johnson, Dobrzanska, and Palla, *Prison in Historical Perspective*, 2005, 27-29.

The loophole contained within the 13<sup>th</sup> 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. The language was selected for the 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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). Very few white men and women were ever sent to work under these arrangements. 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 20<sup>th</sup> 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. 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. Adamson, *Punishment After Slavery*, 1983, 562-66; and Raza, *Legacies of the Racialization of Incarceration*, 2011, 162-65. Although the incarcerated people subjected to this treatment sought redress from the courts, they found little relief. For a discussion of the narrow interpretation of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> 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. Time and again, the courts approved of this abusive use of convict labor, confirming the Virginia Supreme Courts declaration in 1871 that an incarcerated person was, in effect, a slave of the state. 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).

~ Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America*, 2010  
 Muhammad, *The Condemnation of Blackness*, 2010, 7.

The first half of the 20<sup>th</sup> 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. 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. 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. 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. Between 1926 and 1940, state prison populations across the country increased by 67 percent. 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.

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. Isabel Wilkerson, *The Long-Lasting Legacy of the Great Migration*, *Smithsonian Magazine*, September 2016, <https://perma.cc/FZ32-V3SR>. These migrants typically more financially stable black Americans were fleeing racial terror and economic exclusion. 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. 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 20<sup>th</sup> century. During this time period, the dominant white class connected criminality to three distinct groups: lower-class whites, immigrants, and black Americans. Muhammad, *The Condemnation of Blackness*, 2010, 74. 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. 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. 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. 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.

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

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 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. Meskeil, *An American Revolution*, 1999, 861-62; and Adamson, *Punishment After Slavery*, 1983, 565-66. 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. Ingley, *Inmate Labor*, 1996, 28, 30 & 77. 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. Johnson, Dobrzanska, and Palla, *Prison in Historical Perspective*, 2005, 29-31.

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. These were primarily Irish first- and second-generation immigrants. Muller, *Northward Migration*, 2012, 293-95. 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. Johnson, Dobrzanska, and Palla, *Prison in Historical Perspective*, 2005, 33-35. 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. Ibid., 33-35; and Muhammad, *Where Did All the White Criminals Go*, 2011, 85-87.

These programs were largely justified on the principle that they could bring about the rehabilitation of an incarcerated person. But they were not intended to rehabilitate everyone in prison: they were reserved for people deemed capable of reform by and large white people. 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. 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. Johnson, Dobrzanska, and Palla, *Prison in Historical Perspective*, 2005, 32. Their experiences were largely unexamined and many early sociological studies of prisons do not include incarcerated people of color at all. Ibid., 29-31.



~ Barry Goldwater, Speech at the Republican National Convention, accepting the nomination for president, 1964 Goldwaters 1964 Acceptance Speech, *Washington Post*, <https://perma.cc/6V9M-34V5>.

~ Richard Nixon, Speech at the Republican National Convention, accepting the nomination for president, 1968 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>.

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. Wacquant, *When Ghetto and Prison Meet*, 2001, 96. 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. 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 20<sup>th</sup> century, fueled by social science. This liberalism had replaced 18<sup>th</sup> 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-Lopez, *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. 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. Western, *The Prison Boom*, 2007, 31-32. 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 consciousness. 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>. Richard Nixon also successfully used a street crime and civil rights activism narrative in his 1968 and 1972 presidential campaigns. See Western, *The Prison Boom*, 2007, 30-36; and Alexander, *The New Jim Crow*, 2010, 44-45. 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. Alexander, *The New Jim Crow*, 2010, 44-45.

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. 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. 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. Wacquant, *When Ghetto and Prison Meet*, 2001, 96 & 101-05. Many black Americans found themselves trapped in a decaying urban core with few municipal services or legitimate opportunities for employment. By 2000, in the Northern formerly industrial urban core, as many as two-thirds of black men had spent time in prison. *Ibid.*, 96. The quality of life in cities declined under these conditions of social disorganization and disinvestment, and drug and other illicit markets took hold. 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. 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. Western, *The Prison Boom*, 2007.

The numbers are stunning. In 1970, the state and federal prison population was 196,441. BJS, *State and Federal Prisoners, 1925-85* (Washington, DC: BJS, 1986), 2, <https://perma.cc/6F2E-U9WL>. By 1985, it had grown to 481,616. *Ibid.* And, by the year 2008, federal and state correctional authorities had jurisdiction over 1.6 million people. William J. Sabol, Heather C. West, and Matthew Cooper, *Prisoners in 2008* (Washington, DC: BJS, 2009), 1, <https://perma.cc/SY7J-K4XL>. 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. 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. Legal remedies for people in prison also dried up, as incarcerated people lost access to the courts to contest the conditions of their incarceration. 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. 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. *Ibid.* 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. 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. 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. 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 bachelors 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 bachelors degree than go to prison, and nearly five times more likely to serve in the military. Western, *The Prison Boom*, 2007, 35.

This countrys 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 nations prison facilities. To effect real and radical change for everyone, we must acknowledge and respond to this countrys 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 nations corrections system. This principle recognizes every persons intrinsic worth and capacity for self-control, autonomy, and rationality. 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, 679, <https://perma.cc/3VMT-P4R5>. 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>. 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 individuals 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. Basic Law of Germany (1949), article 1, <https://perma.cc/2XYR-KVKX>. Moreover, human dignity has deep and ancient philosophical underpinnings. 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). 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]. 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. 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. 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 everyones right to have his or her dignity respected and protected. For South Africa specifically, see Constitution of the Republic of South Africa (1996), 1 & 10.

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 (14<sup>th</sup> Amendment); render illegal racial or other discrimination (14<sup>th</sup> Amendment); and protect one's reputation (the common law of libel). 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>. 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 in 1972) recognizes that all human beings have an innate dignity, and that dignity is inviolable. Montana Constitution, article II, 4. Also see Illinois Constitution, article I, 20; and Louisiana Constitution, article I, 3.

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. 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). 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. 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 Courts 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. 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 Amendments ban on cruel and unusual punishment. *Hope v. Pelzer*, 536 U.S. 730, 738 (2002). 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.

Veras 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.

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. Opal Tometi and Gerald Lenoir, Black Lives Matter is Not a Civil Rights Movement, *Time*, December 10, 2015, <https://perma.cc/3LDH-T6AW>. Extending the principle of human dignity to people incarcerated in our countrys 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 institutions 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. 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).

Only a select few countries, such as Germany, commit to human dignity in a manner that affirmatively shapes their prison policies and practices. See for example The Prison Act (*Strafvollzugsgesetz*) of 1977, 2-4 (German Prison Act). 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. The Prison Act (*Strafvollzugsgesetz*) of 1977, 3. It is now Americas 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:

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

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 countrys 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.

~ Susie Neilson, Prison Uniforms Make It Harder to Go Straight, *Newsweek*, 2016 Neilson, Prison Uniforms, 2016.

~ Elwanda Ray, quoted in Cole Waterman, Michigan Corrections Officer of the Year Motivates Inmates to Do Better, *MLive.com*, 2018 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>.

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. 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). 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 peoples 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:

Human dignity also encompasses human connection. A persons 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. Accordingly, Veras 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.

~ Rachel Slade, Is There Such a Thing as Good Prison Design? *Architectural Digest*, 2018 Rachel Slade, "Is There Such a Thing as 'Good Prison Design?'" *Architectural Digest*, April 30, 2018, <https://perma.cc/N4CS-M97H>.

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.

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

We recognize that a wholesale and immediate redesign of Americas 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:

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. 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).

**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. Goffman, *Total Institutions*, 1961, 15-64.

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. 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, 115<sup>th</sup> Congress (2017-2018). 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:

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.

~ Inmates Find Self-Worth Through Prison Education, PrisonEducation.com, 2014 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>.

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

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

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. 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). Some of the components of the oversight system may include

~ Bruce Western, *Homeward: Life in the Year After Prison*, 2018 Bruce Western, *Homeward: Life in the Year After Prison* (New York: Russell Sage Foundation, 2018).

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. Hinds, Kang-Brown, and Lu, *People in Prison in 2017*, 2018, 3. 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 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.

Despite the challenges of this aspirational goal, movement toward human dignity in American 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. 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>. 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. Subramanian and Shames, *Sentencing and Prison Practices in Germany and the Netherlands*, 2013.

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.

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 respects the intrinsic worth of each human being as 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 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 inmates (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 reports 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 members' 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 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 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 has 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. 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>. 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.

~ 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, 2018 *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>.

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. Wacquant, *Rethinking Race and Imprisonment*, 2002. 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. Ibid. 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. 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.

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.

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There are many people and institutions to thank for the Reimagining Prison Project, and for this report that comes out of it. Before Vera began the project, the project team brainstormed with Katharine Huffman and Robert Raben of The Raben Group, who remained steadfast supporters of the work. We began the actual work of reimagining in June 2016 with an event at the historic Eastern State Penitentiary. The launch event was followed by a daylong workshop bringing together stakeholders across the system. In addition to thanking our partners at Eastern, we also are grateful to those who traveled from across the country to launch this effort, particularly those who participated in the event and the working sessions that took place the next day. We extend our gratitude to Michael Ashe, sheriff (now retired), Hampden County, Massachusetts; Neil Barsky, founder and chairman, The Marshall Project; Leann Bertsch, director, North Dakota Department of Corrections and Rehabilitation and president, Association of State Correctional Administrators; Michela Bowman, co-director, National Resource Center for the Elimination of Prison Rape; Jamira Burley, senior campaigner, Amnesty International USA; Alex Busansky, president, Impact Justice; William Cobb, founder, Redeemed; Michele Deitch, senior lecturer, LBJ School of Public Affairs and UT School of Law; Craig DeRoche, senior vice president, Advocacy & Public Policy, Prison Fellowship; Wayne Dicky, jail administrator, Brazos County, Texas, and former president, American Jail Association; Baz Dreisinger, professor, John Jay College of Criminal Justice; Richard Dudley, Jr., clinical and forensic psychiatrist; Sara Jane (Sally) Elk, president and CEO, Eastern State Penitentiary Historic Site; Jamie Fellner, senior advisor, Human Rights Watch; Elizabeth Gaynes, president and CEO, Osborne Association; Saul A. Green, senior counsel, Miller, Canfield, Paddock and Stone, P.L.C.; David Guice, commissioner, North Carolina Department of Adult Correction and Juvenile Justice; Craig Haney, professor of psychology, University of California Santa Cruz; J. Jondhi Harrell, executive director, The Center for Returning Citizens; Carrie Johnson, justice correspondent, National Public Radio; Sean Kelley, senior vice president, Eastern State Penitentiary Historic Site; Max Kenner, founder and executive director, Bard Prison Initiative; Jim Kenney, mayor, City of Philadelphia; Scott Kernan, secretary, California Department of Corrections and Rehabilitation (now retired); Glenn E. Martin, founder, JustLeadershipUSA; Gary Maynard, principal, Criminal Justice Institute, Inc.; Vivian Nixon, executive director, College and Community Fellowship; Barbara Owen, professor emerita of criminology, California State University, Fresno; Vikrant Reddy, senior research fellow, Charles Koch Institute; Laurie Robinson, Clarence J. Robinson Professor of Criminology, Law and Society, George Mason University; Margo Schlanger, Henry M. Butzel Professor of Law, University of Michigan Law School; Frederick A. O. Schwarz, Jr., chief counsel, Brennan Center for Justice; Darcella Sessomes, assistant commissioner, New Jersey Department of Corrections; Ryan Shanahan, research director, Center on Youth Justice, Vera Institute of Justice; Ronald Simpson-Bey, director of outreach and alumni engagement, JustLeadershipUSA; A.T. Wall, director, Rhode Island Department of Corrections (now retired); John Wetzel, secretary, Pennsylvania Department of Corrections; Reginald Wilkinson, president, Connecting the Dots, LLC; and Jon Wool, director of public policy, New Orleans office, Vera Institute of Justice.\*

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: Jrg 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.

A project taking on this charge and the associated activities demands visionary staff. Vera was fortunate to have Cara Compani and Sarah Lustbader sign on to imagine these activities and make them a reality. We thank them for their hard work and dedication. Many other Vera staff played important roles, but special recognition is owed to Terrell Blount, Lon Digard, Margaret diZerega, Nancy Fishman, Alex Frank, Alison Hastings, Kaitlin Kall, Jessica Lasso, Insha Rahman, Charlie Ramirez, Alex Roth, Ryan Shanahan, Sara Sullivan, Elena Vanko, Rosanna Volpe, and Hayne Yoon, as well as former Vera staff John Bae, Kathleen Culhane, David Hanbury, and Scarlet Neath. The authors would also like to thank Fred Patrick and Mary Crowley for their leadership on the project and input into the final report. The report itself is the work of many, and the authors thank Cindy Reed for editing and project management, Maris Mapolski for cite checking and research, Paragini Amin for design and layout, Michael Mehler for design of the accompanying web report, Tim Merrill for proofreading, and Khusbu Bhakta, Gloria Mendoza, and Karina Schroeder for editorial and production support.

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.

## Advocate convening:

Dara Baldwin, senior public policy analyst, National Disability Rights Network; Amelia Collins, policy analyst, National Council of La Raza; Marissa McCall Dodson, public policy director, Southern Center for Human Rights; Laura Markle Downton, director of U.S. prisons policy & program, National Religious Campaign Against Torture; David Fathi, director, American Civil Liberties Union National Prison Project; Tara Graham, senior program director, Just Detention International; Ian Head, senior legal worker, Center for Constitutional Rights; Andrea James, founder, National Council for Incarcerated and Formerly Incarcerated Women and Girls; Marc Mauer, executive director, The Sentencing Project; Jesselyn McCurdy, ACLU Washington Legislative Office; Carlton Meyers, NAACP Legal Defense Fund; Alison Parker, co-director, U.S. Program, Human Rights Watch; Danyelle Solomon, director, Progress 2050, Center for American Progress; Nkechi Taifa, advocacy director for criminal justice, Open Society Foundations; and Sara Totonchi, executive director, Southern Center for Human Rights.

#### **Conservative convening:**

Adam Bates, policy analyst, Cato Institutes Project on Criminal Justice; Craig DeRoche, president, Justice Fellowship; Timothy Head, executive director, Faith and Freedom Coalition; Mike Leland, officer, State Campaigns Government Performance Project at The Pew Charitable Trusts; Marc Levin, policy director, Right on Crime and director of the Center for Effective Justice, Texas Public Policy Foundation; James Nolan; Pat Nolan, director, American Conservative Union Foundation, Center for Criminal Justice Reform; Vikrant Reddy, senior research fellow, Charles Koch Institute;

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#### **Prosecutor convening:**

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### **Credits**

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