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Institutionalizing the Pennsylvania System:
Organizational Exceptionalism, Administrative Support,
and Eastern State Penitentiary, 1829–1875

By

Ashley Theresa Rubin

A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
Jurisprudence and Social Policy
in the
Graduate Division
of the
University of California, Berkeley

Committee in charge:

Professor Malcolm Feeley, Chair

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Professor Calvin Morrill

Professor Jonathan Simon

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Abstract

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Organizational Exceptionalism, Administrative Support,
and Eastern State Penitentiary, 1829–1875

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Ashley Theresa Rubin

Doctor of Philosophy in Jurisprudence and Social Policy

University of California, Berkeley

Professor Malcolm Feeley, Chair

I examine the puzzling case of Eastern State Penitentiary and its long-term retention of a unique mode of confinement between 1829 and 1875. Most prisons built in the nineteenth century followed the “Auburn System” of congregate confinement in which inmates worked daily in factory-like settings and retreated at night to solitary confinement. By contrast, Eastern State Penitentiary (f. 1829, Philadelphia) followed the “Pennsylvania System” of separate confinement in which each inmate was confined to his own cell for the duration of his sentence, engaging in workshop-style labor and receiving religious ministries, education, and visits from selected personnel. Between 1829 and the 1860s, Eastern faced strong pressures to conform to field-wide norms and adopt the Auburn System. As the progenitor of the Pennsylvania System, Eastern became the target of a debate raging over the appropriate model of “prison discipline.” Supporters of the Auburn System (penal reformers and other prisons’ administrators) propagated calumnious myths, arguing that the Pennsylvania System was cruel and inhumane, dangerous to inmates’ physical and mental health, too expensive, and simply impractical and ineffective. Largely as a result of these myths, only three other prisons followed this model, including another prison in Pennsylvania, Western State Penitentiary. However, by the Civil War, all three prisons abandoned the System in practice and then formally rejected it, citing the manifestation of the myths at their prisons. Eastern maintained its allegiance. Even after overcrowding struck in 1866, making separation for all inmates impossible, Eastern’s administrators continued to aspire to their Pennsylvania System.

In the years after the Civil War, the Auburn–Pennsylvania debate faded and penal reformers moved on to new issues. The carceral field grew less isomorphic (homogeneous) as new facilities (adult reformatories in the North and plantation-style prisons in the South) emerged. The Auburn System itself had to evolve as new challenges emerged. The earlier pressures to conform had declined by the late 1870s. Ironically, it was in this context that Eastern effectively, but quietly, abandoned the Pennsylvania System. While legislative authorization continued until 1913, the Pennsylvania System was virtually unrecognizable at Eastern by the late 1870s as administrators sought to deal with an ever-growing prison population by double-celling inmates in violation of the principle of separate confinement to which they subscribed.

As one of the first modern prisons, the progenitor of a distinctive mode of confinement, and an exception to the historical trend, Eastern is one of the most famous prisons in penal history. However, its lengthy and exceptional retention of the Pennsylvania System remains significantly under-theorized. Instead, scholars have largely sought to explain Eastern’s initial adoption of the

Pennsylvania System, focusing on the unique features of that system (e.g., Dumm, 1987; Rothman, 1971; Rusche and Kirchheimer, 1939; see also Meranze, 1996). This study seeks to determine how and why the Pennsylvania System remained the model of confinement at Eastern despite pressures that encouraged conformity to a different model of confinement. I employ historical content analyses of archival materials consisting of a wide range of primary-source documents relating to the prison. These documents include Eastern's widely circulated Annual Reports to the legislature, private documents maintained by Eastern personnel and penal reformers that reveal actual practice at Eastern, and penal reform literature and penal legislation from across the United States that provide insights into the pressures from the field.

I find that the most important factor behind the Pennsylvania System's longevity at Eastern was the long-lasting support of its administrators (*administrative support*). While local penal reformers were useful in maintaining the statutory authorization of the Pennsylvania System and defending it against criticism from the field, they had little influence over public or private organizational behavior at Eastern. Moreover, legislative authorization was likely only minimally significant as the authority of the legislature, including actual legislation, was often disregarded by prison administrators, who saw themselves as the proper authority on penological matters. Thus, available countervailing forces were quite weak and unlikely to have played a significant role in overcoming pressures towards conformity. Apparently promising contextual explanations, moreover, fall apart upon investigation. Counterfactual evidence provides the most promising guidance: The lack of administrative support at other prisons that adopted the Pennsylvania System was highly significant in its failure at those prisons. At Eastern, by contrast, prison administrators maintained constant support of the Pennsylvania System—often in ways that mitigated against the same factors that led other prisons' administrators to abandon the Pennsylvania System for more efficient methods. Through *vehement rhetorical defenses*, Eastern's administrators countered the veracity of reformers' unflattering myths. Administrators also imposed *strategic marginal alterations* of the Pennsylvania System, manipulating features of their system to reduce its vulnerability to manifestations of the calumnious myths. Through these two tactics, they protected the Pennsylvania System at Eastern from factors that caused its demise at other prisons.

Why did Eastern's administrators expend this effort to protect an unpopular system of prison discipline? I suggest that retaining the Pennsylvania System at Eastern offered administrators particular benefits that overcame the challenges associated with exceptionalism. Specifically, I argue that the Pennsylvania System had become institutionalized (Selznick, 1949, 1957) at Eastern in the sense that it was meaningful to Eastern's administrators beyond its utility as a basic set of instructions regarding how to incarcerate criminals to achieve their reformation, deterrence, or punishment. Instead, the Pennsylvania System offered administrators certain phenomenological benefits (Whetten, 2006) such that it was in their interest to maintain and publicly defend the Pennsylvania System. First, as a distinctive structure increasingly unique to Eastern, the Pennsylvania System offered administrators a *status identity* both indirectly (through their affiliation with and endorsement of a system they described as humanitarian and generally superior to alternatives) and directly (through their claims of their own benevolence and professional expertise). Importantly, these sources of status identity were only available if administrators retained the Pennsylvania System, and they were strengthened through administrators' rhetorical defenses of the Pennsylvania System. Moreover, affirming this status identity may have alleviated existential anxiety among administrators, who faced normative criticism from the field. Second, protecting the public image of the Pennsylvania System constituted an *imperative* for administrative decision making when actual implementation proved problematic. When faced with conflicting goals, vague instructions that failed to cover all eventualities, and material challenges to implementation, the need to protect

the Pennsylvania System—to make it look good, to preserve it at Eastern—offered clarity. Having this imperative may have alleviated epistemic anxiety among administrators, who faced exacerbated levels of uncertainty from the ambiguities in their goals and technology and no guidance (no external model) from the field. Thus, the status identity and imperative rendered the Pennsylvania System valuable to Eastern’s administrators, despite the challenges. Indeed, administrative support continued until the Pennsylvania System no longer provided these benefits. By the 1870s, the field had moved on: the debate was over, as was the need to defend the Pennsylvania System—the Pennsylvania System had clearly lost—and it was no longer a source of distinction. While administrators retained the name, they began to change the core of the principle. No longer infused with value, the Pennsylvania System became expendable.

*To my parents, Ginny and Bob, and my husband, David,
for their love and support*

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Abbreviations

Archives

APS American Philosophical Society
HSP Historical Society of Pennsylvania
PSA Pennsylvania State Archives

Reform Societies

BPDS Boston Prison Discipline Society
PSAMPP Philadelphia Society for Alleviating the Miseries of Public Prisons

Periodicals

NAR *North American Review*
JPDP *Pennsylvania Journal of Prison Discipline and Philanthropy*

Preface

Between the late 1810s and 1860, virtually every state in the Union erected a modern prison. By the time of the Revolution, long-term cellular incarceration for convicted criminals was virtually unknown. After two and a half decades of initial experimentation with imprisonment as punishment, two models of carceral punishment emerged from New York and Pennsylvania. Inmates in New York's Auburn State Prison would work in large rooms performing factory-style labor and retreat at the end of the day, in a silent march, to cramped solitary cells. Pennsylvania's inmates would spend the duration of their sentences in solitary cells, receiving education, religious instruction, and training in craft-style labor as well as visits from approved personnel and society's elite. Immediately influential, New York's "Silent System" or "Auburn System" was copied by a dozen states within as many years. The "Separate System" or "Pennsylvania System," by contrast, was copied only by fellow Quaker states, Rhode Island and New Jersey. By the end of the Civil War, only one prison in the United States continued its commitment to the Pennsylvania System: Eastern State Penitentiary.

Eastern State Penitentiary opened in 1829 on a former cherry orchard outside of Philadelphia. Constructed with an ominous castle facade, Eastern was an architectural marvel toured by American and European luminaries and penal reformers; the prison still stands today, decades after its closure in 1970. But Eastern was most famous for its use of the Pennsylvania System. Though Pennsylvania's second state prison after Western State Penitentiary (opened 1826 in Allegheny), Eastern was the flagship prison of the Pennsylvania System—and therefore the center of what was a fierce debate over the appropriate model of "prison discipline," or the way in which inmates' time and activities would be orchestrated. It was criticized by New England-based reformers as cruel, dangerous to inmates' health, too expensive, and simply ineffective. It was also vigorously defended by Philadelphia-based reformers, received the endorsement of European dignitaries, and was the basis of several prison systems in Europe. But by the 1860s, this support had wavered and the debate itself over the two systems declined. While Rhode Island and New Jersey had already adopted the Auburn System, even Eastern's sister prison abandoned the Pennsylvania System for the very reasons reformers criticized it. Meanwhile, overcrowding at Eastern necessitated the double-celling of inmates in violation of the governing principle. Though the rest of the carceral field had moved on to debate new modes of confinement, Eastern's administrators continued to subscribe to their discredited, exceptional Pennsylvania System for an additional decade. By the late 1870s, Pennsylvania System the was barely recognizable in practice, even though it remained Eastern's statutorily mandated system of confinement until 1913.

Throughout this period, Eastern faced intense pressures to adopt the Auburn System as almost every other prison had. Almost one prison per year came online between 1820 and 1860, the vast majority adopting the Auburn System; with every passing year, the Auburn camp's numbers grew stronger. States readily adopted the Auburn System due in large part to the calumnious myths the New England reformers circulated about the Pennsylvania System; Eastern's administrators,

legislators, and supporters were routinely chastised for retaining such an inhumane and useless model, as its opponents described it. When Rhode Island, New Jersey, and Western's prison administrators openly condemned the Pennsylvania System, this only helped to make the reformers' case stronger: the myths were true; these administrators abandoned the Pennsylvania System because of them, so why did Eastern's administrators not do the same?, they argued. Even local penal reformers, who otherwise supported the Pennsylvania System, lobbied for modifications to the System, while state legislators did little to provide the material resources necessary to keep the Pennsylvania System functional at Eastern.

How and why did Eastern retain its distinctive Pennsylvania System while facing intense pressures to adopt the practices institutionalized at other prisons? As one of the first modern prisons and one of the few innovative prisons, developing the only meaningful alternative to the Auburn System, Eastern has received extensive treatment by penal historians and sociologists of punishment. However, this question has not yet been answered. Penal historians have largely explained why the Pennsylvania System failed to spread across the United States: relative to the Auburn System, many believed, it was too expensive and the association between solitary confinement and mental illness among inmates was too stigmatizing (e.g., McLennan, 2008, 63-64; Rothman, 1971, 85-97; Barnes, 1968, 172). Additionally, penal historians have helped to explain the *emergence* of the Pennsylvania System and its particular features at Eastern. Such analyses of the Pennsylvania System have focused on its relationship to the historical development of prison as punishment and characterized it as an alternative model by which ideas were translated into policy (e.g., Dumm, 1987; Meranze, 1996). Consequently, historical accounts have focused far more attention on Walnut Street Jail, Eastern's predecessor of sorts, which was far more influential in shaping carceral practice in the new states.¹ However, the reasons for Eastern's retention of the Pennsylvania System may be quite distinct from the motivations behind its initial adoption. Indeed, as one contemporary commentator explained,

great caution should be observed in distinguishing between the originators and advocates of the system of solitary confinement [i.e., the Pennsylvania System] and those who have been immediately entrusted with the practical development of the theory, in the executive department of the institution, by the supreme power of the Commonwealth. (McElwee, 1835a, 98)

So while examinations of penal reform in Pennsylvania from this period have received significant attention, the longevity of the Pennsylvania System at Eastern remains under-theorized and unexplained. This book seeks to determine how Eastern State Penitentiary retained its Pennsylvania System, longer than any other prison, in the face of tremendous pressures to follow the dominant model of prison discipline.

¹Rothman (1971, 85) suggests that the support for both systems was so extreme due to very "high stakes." But he does not explain why "[t]he Pennsylvania camp had no doubt of its superiority" beyond their convictions about the system's features, or why its administrators maintained this position despite the increasing consensus among reformers that it was inferior or deeply flawed. Early twentieth century historian Harry Elmer Barnes (1968) comes closest, suggesting the support of a particular administrator, discussed below, but does not elaborate. Other treatments of Eastern State Penitentiary have largely focused instead on offering detailed descriptions of its history (e.g., Johnston, 1994a,c, 2004). Historical and theoretical accounts of the emergence and subsequent history of the prison have largely acknowledged Eastern, particularly noting the debate over the appropriate model of confinement, but subsequently ignored Eastern, which was otherwise irrelevant to the trend they sought to explain (e.g., Rusche and Kirchheimer, 1939, 127-134).

Why is it important to understand why Eastern retained the Pennsylvania System despite the associated challenges? In truth, the practical significance of Eastern was small. It is an interesting case to examine contemporaries' understandings of what punishment should accomplish and how, and how to translate these into a set of prison rules. Despite Eastern's exceptionalism, its administrators faced many challenges faced by other prisons' administrators (Janofsky, 2004). Perhaps Eastern's biggest role was as a deviant prison, which New England reformers could use to chastise states into adopting the Auburn System. Indeed, while the promise of profits from inmate labor appears to have been fairly persuasive, we may speculate that, without a model from which to distinguish themselves, states may have been slower to adopt the Auburn System. I explore this possibility in the conclusion (Chapter 8). Ultimately, while the great debate over the Pennsylvania System and Auburn System increased penal reform's salience, Eastern had little other impact over the course of prison history. Scholars' general lack of concern with explaining Eastern's long-standing exceptionalism may be explained by the minimal practical importance.

However, understanding why Eastern remained exceptional has theoretical importance. Bellwethers often receive more attention,² but exceptions are just as interesting; while they have less influence, exceptions tell us much about the mechanisms behind penal trends. There may always be a lone holdout that rejects the dominant trends. Which prison, state, country will it be? What features of an entity make it more likely to resist external pressures or influences? What conditions enable such resistance? This study begins to answer these questions for one such exception. While Eastern is a relatively unimportant prison based on its impact on American prison development, exceptionalism is a fairly important concept in punishment studies. The myriad theories designed to explain "American exceptionalism" with respect to the death penalty, for example, (e.g., Zimring, 2003; Whitman, 2003; Garland, 2005, 2010) represents not only the general tendency to focus on Anglo-American trends in punishment, but also our fascination with the way in which American penalty is qualitatively and quantitatively different from penalty in so-called peer nations. As international incarceration trends begin to reflect American trends (Sutton, 2012) and European politicians and penal actors begin to employ similar rhetoric (e.g., Chantraine, 2010), one question centers on convergence: is America's exceptionalism simply a matter of perspective; in twenty years from now, will it too abolish the death penalty (Garland, 2010)? How long will convergence take? It took nearly 80 years for Eastern to effectively converge to the rest of the field, and only then adopted a modified version of the Auburn System, which itself had changed with time. Theorizing exceptions to theoretical and contextual expectations helps us to better understand the the mechanisms of penal change as well as the limits of existing theoretical models.

²For example, as a leader in twentieth-century correctionalism and late-modern mass incarceration, California has been a favorite site of penal research on these periods (Cummins, 1994; Simon, 1993; Gilmore, 2007; Davis, 1998; Kruttschnitt and Gartner, 2005; Zimring et al., 2001).

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I had the benefit of working with half a dozen valuable undergraduate research assistants. UC Berkeley's Undergraduate Research Apprenticeship Program (URAP) allows undergraduates to work on professors' or (occasionally) graduate students' research projects. This provides researchers with additional hands to do what we cannot do alone, while providing undergraduates an opportunity to not only see but also participate in the research process. I would like to thank my research assistants, Javier Garcia (2011), Young Ji Kim (2012), Haley Lee (2012), Amir Salehzadeh (2012), and, especially, Katarina Blagojevic (2011–2012), Adam Garzoli (2012), Nora Lambrecht (2012) for all of their hard work. I would also like to thank the URAP personnel for their assistance, as well as Professors Malcolm Feeley and Calvin Morrill, who graciously supervised my supervision of these undergraduate apprentices.

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I have been extremely fortunate for the last six years to have had access to a tremendous group of scholars at UC Berkeley. I have benefited from discussing my work with Professor Michael Musheno, who has heard multiple iterations of the final project and its off-shoots. Since my first year in graduate school, Professor Justin McCrary has been a valuable sounding board for my quantitative projects; over the course of my dissertation research, he helped me think through the challenges of research design and causal inference specific to qualitative projects. Professor

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Since I entered graduate school six years ago, Professor Malcolm Feeley has been a constant mentor and supporter. Over the years, Malcolm has put a lot of confidence in me—oftentimes I suspected this was unfounded confidence or at least more than I deserved. He has helped me receive multiple opportunities I am fairly sure I would not have received but for his work behind the scenes. Especially throughout the dissertation process, Malcolm provided me with a host of sage advice that helped to make the dissertation less overwhelming when the project seemed too large or my aspirations too high.

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Part I

The Puzzle

Chapter 1

Introduction

[T]he separate system of imprisonment in the United States is confined at present to the state of Pennsylvania, and exists in vigor only in the city of Philadelphia. Wherever else the experiment has been tried in our country, it has failed. (Wines and Dwight (1967), *Report on the Prisons and Reformatories*, 55)

1.1 The Puzzle

The modern reliance on state prisons as the primary form of punishment for serious offenders began in the first decades of the nineteenth century. At the dawn of the American Revolution, long-term cellular incarceration for convicted criminals was virtually unknown. Prisons, or “gaols,” were largely used for administrative reasons; inmates often experienced short-term detention only. A post-war penal reform movement, targeting capital and corporal punishments and criticizing the inhumane conditions of colonial jails, initiated a substantial change in the use of carceral facilities. After two and a half decades of initial experimentation with imprisonment as punishment, states embarked on a significant prison building campaign that institutionalized state prisons as a central feature of American criminal justice. By 1860, more than thirty state prisons had been established, at least one in almost every state.¹

The vast majority of these prisons operated a mode of confinement innovated at New York’s Auburn State Prison in 1823. Under the Auburn System, inmates worked in large rooms performing factory-style labor and retreated at the end of the day to cramped solitary cells. To prevent inmates from communicating with each other, inmates were required to remain silent at all times and were not allowed to look at each other. Auburn-style prisons were run under a kind of military order: inmates wore striped uniforms, they traveled to and from their cells marching in lockstep,² and misbehavior was punished at the end of a lash. Champions of the Auburn System argued that the rule of silence would prevent inmates from “contaminating” each other, and prevent them

¹This period of penal reform and prison development on both sides of the Atlantic has been examined by a large and growing cohort of penal historians and scholars examining the relations between punishment and society. See Bookspan (1991); Foucault (1977); Hindus (1980); Hirsch (1992); Ignatieff (1978); Kann (2005); Keve (1991); Lewis (1965, 1922); McKelvey (1977); McLennan (2008); Melossi and Pavarini (1981); Meranze (1996); O’Brien (1982); Oshinsky (1997); Pisciotta (1994); Rothman (1971); Rusche and Kirchheimer (1939); Sellin (1976); Spierenburg (1991); Ward and Rogers (2003).

²The lockstep “was a curious combination of march and shuffle, the march aiming to impose discipline, the shuffle trying to make certain that the men did not become too prideful” (McLennan, 2008, 122).

from further indoctrinating each other in crime. Hard labor, supporters argued, would be both reformative and would instill discipline. Proponents also argued that the Auburn System would be profitable for the state, which could sell the goods made by inmate labor, a particularly attractive feature for states with limited abilities to tax their citizens. The Auburn System was immediately copied by a dozen states within as many years, governing prisons in both the North and the South. By the dawn of the Civil War, every state but one had adopted the Auburn System for its prisons. A century after its creation, some version of the Auburn System continued to shape the prison experience of most inmates.

The Auburn System was not the only mode of confinement proposed in this period. Pennsylvania, one of the richest centers of penal reform, showcased its mode of confinement at the Eastern State Penitentiary just outside of Philadelphia beginning in 1829. Unconvinced by the ability of silence alone to prevent cross contamination, the Pennsylvania System centered on inmates' physical separation from one another. Under the Pennsylvania System, inmates would spend the duration of their sentences in solitary cells, never to see another inmate. Moreover, they would perform all of life's functions—working, sleeping, praying, eating—from within their own cells. They were set to work on craft-style labor—shoemaking, weaving, tailoring, carpentering—the products of which could be used to reimburse the cost of their confinement. They also received access to a variety of books and other reading material, some of which was in other languages. On the Sabbath, inmates could open a hole in their cell door and listen to religious services given in the prison's hallways. To accommodate these activities and ensure proper health, these cells were quite larger than those at Auburn. Additionally, each cell had access to a small, private yard, in which an inmate could exercise or even cultivate a garden.³ This long-term solitary confinement, or “separate confinement” as supporters called it, was the central feature of the Pennsylvania System.

However, other core components of the Pennsylvania System required personal contact with non-inmate others. Both prison personnel and society's elite visited inmates in their cells to aid inmates' reformation and for other official purposes. These people taught illiterate inmates how to read and write. They offered religious instruction and moral education during individual visits. They trained those inmates in crafts who entered the prison without a trade or lacked sufficient training. Beyond visitation for these and other official purposes, however, inmates received no communication from the outside world, including news periodicals or letters from family. But these fairly frequent interactions with others enabled supporters to speak of “separate confinement,” to emphasize that inmates' sentences were not devoid of human contact as in purely solitary confinement.

Champions of this model argued that it was more conducive to inmates' reformation. It removed all negative influences, allowed them the opportunity to reflect on their life undisturbed except by “moral” influences, and offered useful training that could aid inmates in their quest to avoid crime upon release from prison. The solitude, supporters argued, would also make inmates welcome their work assignments, as it would alleviate boredom, and in this way teach inmates the benefits of labor. Moreover, because inmates were always in their cells, prison administrators would not need to rely on corporal punishment to control their behavior: diminishing their food or removing their work tools would suffice.

Despite certain shared assumptions about the roles of separation and labor, the Pennsylvania System could not be more different from the Auburn System. Auburn resembled a factory run on military order, with inmates literally marching to and fro, while Eastern was frequently

³Later cellblocks were built with second stories; inmates assigned to these cells were given an additional cell to compensate for the absence of a garden.

described as a monastery. While Auburn's first Warden, Captain Elam Lynds, expressed his disbelief in the possibility of inmates' "complete reform, except with young delinquents,"⁴ Eastern's first warden, Samuel R. Wood, a Quaker, was a profound supporter of the concept. Indeed, while both systems attempted to teach inmates discipline, the systems went about this goal in different ways. Inmates in Auburn were forced to work; inmates at Eastern would come to desire labor as a distraction from their solitude. Inmates who stepped out of line at Auburn would be whipped; inmates who violated the rules at Eastern would receive diminished rations or lose their "privilege" to work.

Unlike the Auburn System, the Pennsylvania System sought to address the basic causes of criminality (as they were understood at the time). Illiterate inmates would learn to read and write. Inmates who lacked an occupation would receive vocational training. Immoral inmates would receive the good council of ministers and upstanding citizens. Stigma would be prevented: no one would know who was or had been incarcerated. Inmates' privacy would be protected even among the prison personnel: inmates would be known by numbers alone; hoods would protect inmates' identities as they were escorted to and from their cell. Administrators' hoped these precautions would prevent prospective employers from discriminating against former inmates. Additionally, fellow inmates could safely pass each other on the street without recognition, thereby preventing potential criminal alliances.⁵ To further aid inmates' transitions to free society, Eastern's wardens, inspectors, and local penal reformers donated money, clothing, and other resources to inmates leaving the prison and helped them find housing and work. In violation of utilitarian philosopher Jeremy Bentham's less eligibility principle, in which the best conditions of punishment were worse than the worst experiences of free citizens, confinement at Eastern was often considered preferable to the alternative. Inmates sometimes asked to stay beyond their term and at least one member of the community asked to be incarcerated at Eastern to help him kick his drinking habit (see PSA, Warden's Daily Journal).

However, the Pennsylvania System never quite reached the status of competitor to the Auburn System. Indeed, penal reformers and administrators of other prisons—supporters of the Auburn System—circulated a variety of arguments outlining the inferiority of the Pennsylvania System. Drawing on earlier failed experiments with solitary confinement, they argued that solitude would drive inmates mad, or otherwise impair inmates' physical health. Even without such health effects, "unmitigated solitude," as they described it, was cruel and inhumane. Man is a social creature, they argued; consequently, solitary confinement is a less physical form of torture. A writer for the popular *North American Review* summarized the prevailing opinion when he wrote, "[W]e cannot believe that even Pennsylvania will any longer allow the prison at Philadelphia, with its annual train of horrors, to cast an opprobrium on the justice and humanity of the State" (NAR, 1848, 190). More practically, reformers suggested that it would be ineffective, as it would either be impossible to implement or it would have no reformatory effect on hardened criminals. Most importantly, they pointed to the necessary expense of building a prison with large cells for every inmate. The initial expense combined with skepticism that workshop-produced goods could remu-

⁴He explained once, "Nothing, in my opinion, is rarer than to see a convict of mature age become a religious and virtuous man. I do not put great faith in the sanctity of those who leave the prison; I do not believe that the counsels of the chaplain, or the meditations of the prisoner, make a good Christian of him" (de Beaumont and de Tocqueville, 1833, 202). Lynds later ran Sing Sing, New York's second prison.

⁵Many penal reformers worried that an inmate, once released from prison, could be recognized by a former occupant of the same prison; this fellow former inmate could then lead the well-intentioned former inmate back into a life of crime.

nerate fixed costs, let alone make a profit, made the Pennsylvania System particularly unappealing to the young, fiscally limited states. In the end, only four of the 31 state prisons built before 1860 adopted the Pennsylvania System, and no prison built after 1838 adopted the Pennsylvania System. By the end of the Civil War, only one prison operated under the Pennsylvania System: Eastern State Penitentiary.



Retaining the Pennsylvania System brought substantial reputational, material, and legal challenges for Eastern. An extensive debate emerged over the two systems of prison discipline between 1820 and 1860; thousands of articles, pamphlets, letters, and other writings were published and circulated detailing the strengths and weaknesses of the two models. As the the flagship prison of the Pennsylvania System,⁶ Eastern bore the brunt of the criticism directed at the anomalous mode of confinement, which was criticized in no uncertain terms. In a particularly devastating critique, British author Charles Dickens (1842) wrote in his *American Notes*, “In the outskirts [of Philadelphia], stands a great prison, called the Eastern Penitentiary: conducted on a plan peculiar to the state of Pennsylvania. The system here, is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong.” Reformers scoured Eastern’s public annual accounts of its operations for evidence to support their claims that the Pennsylvania System was normatively and pragmatically problematic. They also visited the prison to observe its operations and published scathing descriptions of what they found. These criticisms obtained a powerful myth-like status; many believed them to be true, and many continue to believe them today despite inconsistent evidence. Four calumnious myths were repeated most frequently: that the Pennsylvania System was cruel and inhumane, dangerous to inmates’ physical and mental health, too expensive, and simply impractical and ineffective. While the three other prisons to adopt the Pennsylvania System received some of this attention, the public scrutiny was strongest at Eastern. When these other prisons abandoned the Pennsylvania System, they too criticized the Pennsylvania System along the same lines. Eastern was thus increasingly alone in its targeted position.

In addition to constant challenges to the prison’s reputation, Eastern faced frequent resource constraints that limited the scope of the Pennsylvania System in practice (discussed in Chapter 4). Inmates were sometimes left idle due to a lack of raw materials for them to use or a lack of demand for their products. An important personnel position was left unoccupied for nearly a decade because the legislature failed to appropriate a salary. It often took years to receive funding for building repairs or to build new cells. Ultimately, overcrowding came when the legislature failed to appropriate funds for the construction of new cells. These material challenges made it difficult to fully implement the Pennsylvania System.

Finally, as the Pennsylvania System lost local allies, Eastern increasingly became the subject of new legislation that challenged the prison’s autonomy. Local penal reformers, though supporting the Pennsylvania System in principle, offered modifications to the Pennsylvania System to mitigate what they saw as its undue severity. These reformers successfully passed legislation requiring changes at Eastern consistent with mainstream practice (see Chapter 5). In the late 1860s, the legislature further demonstrated its lack of commitment to the Pennsylvania System by approv-

⁶As one contemporary description noted, Eastern was “the corner-stone of what is now designated the ‘Pennsylvania System’ ” (Smith, 1852, 381).

ing congregate confinement at Eastern's sister prison, Western State Penitentiary (Pennsylvania, 1869b). There, inmates would work, eat, and even sleep in each other's presence, with legislative approval; gone was the attempt to prevent inmates from contaminating one another through physical separation.

Eastern's administrators thus faced an uphill battle in managing their prison. Viciously attacked in the reformer literature and in newspapers, constrained in their ability to fully practice the Pennsylvania System, and increasingly challenged by their own legislature, they had much reason to abandon the Pennsylvania System. Despite these myriad challenges, however, the Pennsylvania System persisted at Eastern longer than at any other prison (about forty years) and almost a full decade after the last prison formally abandoned it. This book seeks to determine how and why this happened.

1.2 Eastern and the Pennsylvania System

In the course of my research, three questions presented themselves about the relationship between the Pennsylvania System and Eastern. Each had been addressed in the prison history literature already. However, each question made my ultimate research question somewhat more complicated.

When did Eastern eventually abandon the Pennsylvania System? It is difficult to pinpoint an exact date because the System's demise came in stages. Unlike the other prisons that had briefly adopted it, there was no formal rejection of the Pennsylvania System at Eastern, nor was there a sharp break with the past. Overcrowding in 1866 should have been the System's natural cause of death: the principle of separation could not be maintained for all inmates. Nevertheless, the Pennsylvania System remained the ideal at Eastern for nearly a decade more, despite the double ceiling of some inmates. Near the end of this period, Eastern's inspectors wrote of their prison, "It is the first, and now the only Penitentiary administered on the Pennsylvania System of convict discipline" (Inspectors, Annual Report 1875, 23). In fact, this had been the case for quite a while. Western, the penultimate prison on the Pennsylvania System, had formally rejected the system in 1866, making Eastern the last prison to follow the highly criticized mode of confinement. After persisting for several more years, the "spirit" of the Pennsylvania System faded quickly in the mid to late 1870s. Increasingly, its central principles were abandoned as inmates' virtual separation from the outside world deteriorated. Inmates could receive visits from family members (Inspectors, Annual Report 1873, 11) and subscribe to (approved) periodicals (Pennsylvania, 1876). Prison administrators mobilized new definitions of the Pennsylvania System to account for practice, but separation from the world and from each other were no longer emphasized. As though in eulogy of the Pennsylvania System, prison administrators offered a full history of the Pennsylvania System at Eastern in their annual report for 1874 (Inspectors, Annual Report 1875, 5–59). The prison retained a symbolic commitment to the Pennsylvania System in its Annual Reports until the mid-1890s; the death of Richard Vaux, an Inspector of the prison for over fifty years, severed the remaining ties in 1895 (Barnes, 1968, 302). In 1911, construction was completed on a new, tiered cellblock on the "Big House" model of prisons (Bright, 1996; Jacobs, 1977) that characterized new prisons coming online at the time. Finally, the Pennsylvania System lost legal authorization in very short 1913 statute (Pennsylvania, 1913) without comment in Eastern's annual report.

How did the Pennsylvania System remain the statutorily authorized system of confinement for eighty-five years despite pressures to change? This question is relatively easy to answer. The Pennsylvania System was championed by a group of Philadelphia-based penal reformers, the Philadelphia Society for Alleviating the Miseries of Public Prisons. They fervently defended the Pennsylvania System, which their charter members had initiated in Pennsylvania, albeit in a com-

paratively primitive version in 1790 at the first state prison. However, by the end of the nineteenth century, the Society's support declined as few of the Society's members who had been engaged in the intense debates earlier in the century continued as active participants. In 1913, a few years after the last of the defenders had ceased participating, the Society publicly acknowledged the need to abandon the Pennsylvania System at Eastern; that same year, the legislature passed a statute abandoning the Pennsylvania System at Eastern (Teeters, 1937, 202–211). For nearly a century, this group actively supported the law authorizing the Pennsylvania System; when their support ceased, so did the law. The longevity of the law, however, is not of particular interest. Law and society scholars have long described significant gaps between law on the books and law in action in a variety of contexts; we should not expect prisons to be an exception to this widespread phenomenon.⁷ Thus, regardless of the law's content, it has only limited significance if it did not actually reflect practice. Indeed, the Pennsylvania System had been rhetorically and practically abandoned at Eastern for several decades before the legal denouement.

How did the Pennsylvania System remain the practice at Eastern for so long despite pressures to adopt the techniques more common in the field? The short answer is: it was not (e.g., Johnston, 1994c; Janofsky, 2004). Within its first five years, a legislative committee investigating the prison revealed multiple practices that violated the statute's requirement of "separate or solitary confinement" in which inmates were not to have contact with any but a select number of authorized personnel if absolutely necessary. The archival record includes even more violations that continued throughout the four decades during which Eastern touted the Pennsylvania System (see Chapter 7). However, many of these deviations from the rule only affected a small portion of the prison population, and none of the deviations borrowed from the Auburn System; in the main, the Pennsylvania System remained in practice, even after overcrowding in 1866 necessitated double-celling inmates. Again, deviations from the rules in actual practice is somewhat unsurprising. Organizational scholars are well aware of the common practice within organizational behavior of symbolic compliance in which formal policies are adopted but loosely coupled to actual practice, thus offering the appearance of compliance without disrupting the daily routines that make for a more efficient workplace (Meyer and Rowan, 1977; Edelman, 1992). Indeed, prisons are certainly no exception, as symbolic compliance has been demonstrated in many historical and sociological accounts of prisons.⁸ What is particularly interesting, especially to organizational scholars, is the visible organizational behavior or its results, both of which have significant consequences for the legitimacy and thus longevity or autonomy of the organization. Indeed, it was Eastern's visible behavior that brought it to penal scholars' attention.

Thus, the research question to which this book is dedicated to resolving focuses on the retention of the Pennsylvania System as a formal structure at Eastern from 1829 to approximately 1875. By "formal structure," I mean an integral part of the prison organization, its "blueprint for activities" (Meyer and Rowan, 1977, 342). Formal structures are often suggested or required by law, but their adoption is ultimately an organizational decision. While organizations publicly endorse certain formal structures, organizations do not necessarily adhere to them in practice (where informal arrangements are more common). However, an organization's public endorsement of proper

⁷To take one example, practices promoting racial or ethnic segregation in prisons are alive today despite laws against such outcomes (Goodman, 2008).

⁸For example, the hiring of a single prison psychiatrist or sociologist was a common means of obtaining legitimacy for prisons in the early twentieth century as psychoanalysis became increasingly influential in the field. However, their roles were necessarily circumscribed by the fact that they were charged with providing services to as many as several thousand inmates (Rothman, 1980, 134; see also Jacobs, 1977).

formal structures is crucial to whether the organization obtains legitimacy (Meyer and Rowan, 1977; Suchman, 1995; Greenwood and Suchman, 2008). In the nineteenth century, the choice of “prison discipline” was considered the most important part of the prison regime: it determined how exactly inmates would spend their time and it provided a narrative for exactly the prison would reform, deter, and punish its inmates. As we shall see, the choice of prison discipline was especially related to the perceived legitimacy of nineteenth-century prisons (Chapter 2). That Eastern continued to rely on the illegitimate Pennsylvania System, and continued to face heavy scrutiny for this decision, especially when the System was not adhered to in practice, needs to be explained.

1.3 Examining Prisons, Punishment, and Society

Much of the literature examining prisons, and punishment more generally, is rooted in social theory. These scholars often rely on the classic social theory of Emile Durkheim, Norbert Elias, Karl Marx, and Max Weber as well as some newer postmodern social theorists like Michel Foucault and Pierre Bourdieu to explain penal trends (Garland, 1990). These theories offer explanations for how macro-level changes in society have influenced the nature of punishment in that society. To account for Eastern through their theories, we would have to find something unique about society in Pennsylvania, or perhaps Philadelphia, that cannot be found elsewhere and that changed at the same time Eastern abandoned the Pennsylvania System. However, this does not appear to be the case: Philadelphia, and Pennsylvania more generally, was subject to the same sets of influences as New York, Baltimore, and Boston—immigration, industrialization, urbanization, etc. Indeed, these foundational social theories have a very difficult time explaining Eastern’s exceptionalism. Unsurprisingly, in those works where these theorists actually discuss Eastern, they do not try to explain why Eastern remained on the Pennsylvania System while the rest of the country followed the Auburn System. Instead, they explain why the rest of the country adopted the Auburn System and then ignore the subsequent history in Philadelphia. I examine two influential examples briefly.

1.3.1 Foucault

In his social theory of punishment, Michel Foucault (1977) emphasized the confluence between the social technologies by which power is exercised (including the prison) and the social context. For Foucault, the nineteenth-century rise of the prison resulted from the transition into a disciplinary society.⁹ According to Foucault, older public execution rituals that displayed the grandeur and power of the monarch were no longer appropriate for a capitalist democracy. Instead, modern society relies upon citizens to “discipline” or control their own activities and the prison represents an efficient technology for instilling this discipline. For example, in the hypothetical Panopticon, Foucault’s quintessential disciplinary prison, one guard could see into all the cells with a single glance; if inmates never know when guards were watching, they always behave to avoid further punishment. The mind, rather than the body, becomes the primary target and source of power: the goal of punishment becomes shaping individuals’ desires, habits, and future choices. Successful disciplinary punishment can make individuals behave as expected long after the punishment ends (18). Importantly, this requires a special understanding of individuals—how they think and the extent to which discipline is taking hold. In this way, we observe the diffusion of new technologies

⁹For Foucault (1977), penal reform sought “the rearrangement of the power to punish” into one “more regular, more effective, more constant and more detailed in its effects” (80-81); the goal was “not to punish less, but to punish better” (82).

of discipline, including separation, categorization, assessment, and repetition, that provide a special “knowledge,” or insights into the soul, and thereby enable control. Foucault argues the first modern prisons borrowed these technologies from the military, schools, and the factory, which had already emerged as parts of modern society’s disciplinary structure.

However, under this theory, Eastern’s retention of the Pennsylvania System remains puzzling. The Auburn System had much more in common with the technologies employed in these other social institutions than did the Pennsylvania System. Indeed, the Auburn System was modeled heavily on the techniques to establish order in the military and in factories. While Eastern is a favorite example to illustrate Foucault’s description of the transition from the body to soul,¹⁰ from the gruesome scaffold torture-executions to the highly contemplative experience of incarceration (see Dumm, 1987), the Pennsylvania System would have been less efficient than the Auburn System. Indeed, the factory model on which Auburn was based was more conducive to the disciplinary techniques—hierarchical observation, normalizing judgment, and the examination—Foucault describes as crucial to this transition. Unlike Bentham’s Panopticon, guards at Eastern could not see all inmates under their charge at once. Inmates were housed in separate cell blocks, some of which had two floors. A guard was assigned to each block and ordered to check on inmates thrice daily. Doing so required going to the door of each cell, opening a special latch, and peering in; this could not be done without the inmate’s knowledge as required for the form of self-discipline enabled under the hypothetical Panopticon. As a disciplinary technology, the Pennsylvania System would be an advantage over public execution spectacles and earlier experiments with punitive public labor, but it was less efficient than the Auburn System.

Foucault’s theory has no answer for why Philadelphians would adopt a less efficient technology. To explain Eastern’s retention of the Pennsylvania System under this frame would require a finding that the “dominant class” (Foucault, 1977, 26) in Philadelphia was distinctively positioned relative to members of this class in other cities that relied on the Auburn System. This would require that Philadelphia (or Pennsylvania more generally) had a different social order, whether along economic and class divisions, forms of labor, or a different power structure. However there is no reason to think Philadelphia’s power needs were different from those in the rest of the country.

1.3.2 Marxist Thought

From a Marxist position that emphasizes the economic goals of penal trends (e.g., Rusche and Kirchheimer, 1939; Melossi and Pavarini, 1981; McLennan, 2008), Eastern is something of an aberration as well. These accounts primarily focus on the condition of the labor supply in a particular social contexts, especially based on the current economic paradigm (e.g., mercantilism, capitalism). Prisons can act as a training ground for a labor force or as a deterrent to those who may avoid the labor market to engage in illicit activities or simply to wait for better conditions. These accounts also consider the direct fiscal costs of punishment to be a major determinant of penal trends. For example, Rusche and Kirchheimer (1939, 127-128) explain that, while the prison movement in the United States was stoked by an intense need for labor, the Auburn System succeeded in the United States because of its perceived profitability.¹¹

¹⁰The way in which administrators and reformers talked about the Pennsylvania System was fully consistent with this transition. For example, the administrators explained, “We endeavour to operate on their hearts and their feelings, not by lacerating their bodies, but by bringing them to a just sense of their own moral degradation. We endeavor to create anew within their bosoms the love of industry, of virtue and of piety” (Warden, Annual Report 1835, 8).

¹¹However, to explain its unpopularity in Europe, Rusche and Kirchheimer suggest that the Pennsylvania System (which they describe as unmitigated solitary confinement) was simply more “intimidating” to a potentially uncoop-

These fiscally determined motivations cannot account for Eastern. First, Eastern was the most expensive prison built at the time (de Beaumont and de Tocqueville, 1833) and one of the grandest architectural endeavors. When the penitentiary opened in 1829, cells were already equipped with amenities (including flushing toilets, showers, and central heating) not yet available in many high-profile buildings, including the White House and the Capitol (Johnston, 2004, 25). Second, aside from initial costs, the Pennsylvania System offered doubtful prospects for profits. Under the Pennsylvania System, inmates performed workshop or crafts-style labor (shoemaking, weaving, carpentering) rather than the more profitable and efficient factory-style labor of the dominant Auburn System. Third, while inmates were encouraged to be “industrious,” this was part of the contemporary definition of virtue (e.g., Franklin, 1732) and discipline (Meranze, 1996). To aid inmates in their path to a virtuous life, the state gave them a modest stipend to hold them over until they found employment, an expense that would be surprising for profit-mongers to bear. Moreover, as a training ground for the future workforce, workshop-style labor was in decline as the North slowly industrialized. In addition to being an expensive and (believed to be) less profitable system, the Pennsylvania System is difficult to explain from a Marxist tradition unless the labor and economic needs in Philadelphia were different from elsewhere. However, this does not appear to be the case. Reflecting the difficulty in explaining Eastern’s retention of the Pennsylvania System from this perspective, most scholarship simply notes Eastern’s existence in passing, focusing on the main trends in the field (e.g., Rusche and Kirchheimer, 1939, 127-128).

1.3.3 Traversing the Macro-Micro Divide

To some extent, these theorists simply do not care about Eastern—it is effectively a blip, a bit of historical trivia—because they are interested in the large-scale penal trends that Eastern rebuffed. To borrow the analogy from Smith (2012), scholars in the “punishment and society” tradition have often focused on penal weather (the large scale shifts that last and affect much of the country) and less on penal climate (the regional, local, and organizational trends that may be less pervasive and more temporary). However, other scholars have focused on the micro level while still recognizing the central theme of punishment and society scholarship: factors other than the need to prevent crime inevitably shape punishment.¹² Three such studies, in particular, informed my attempt to focus on a single organization while still cognizant of field-level trends.

First, Mona Lynch (2010) offers a largely historical case study of Arizona’s penal (especially carceral) policy and practice. Lynch demonstrates that Arizona’s penal policy, characterized by a preference for tough and cheap punishment, was largely an exception to the mid-twentieth-century dominance of the rehabilitative ideal. (Arizona’s exceptional prison system became a

erative workforce than the Auburn System (132) and made it easier to maintain order within the prison (134).

¹²Multiple scholars have focused on smaller dimensions, often looking for exceptions to the overall trend. Many of these penal scholars have demonstrated gaps between the rhetoric used to discuss punishment (policy, practice, and aims) and the reality of punishment on the ground (Phelps, 2011; Lynch, 1998). Miller (2008) had identified a disconnect between urban and suburban residents’ desires for crime policy and other forms of crime control. Similarly, Garland (2010) has argued that the variety in capital punishment legalization and utilization can be traced to American federalism and the high level of local democratic control: the lack of centralized political power allows local culture to determine punishment practice within a general framework determined by the central government. Understanding how punishment is created and meted out is an important corrective to our more macro-level understandings of penal trends. However, these scholars have pointed to similarities across units within a pattern of dissimilarity; they have not accounted for a single outlier unit.

model for the “postrehabilitative prisons” of the late-modern period.) Through a careful analysis of the state’s history, Lynch identifies the significant role wardens, directors of department of corrections, governors, legislators, and courts played in shaping punishment. However, for Lynch, these actors are essentially conduits through which Arizona’s cultural values—distrusting of (big) government, fiscally conservative, and punitive—are translated into penal practice.¹³

Second, Kruttschnitt and Gartner (2005) examined two California prisons: the California Institute for Women (CIW) and Valley State Prison for Women (VSPW). They sought to identify the effect of changing rhetoric at the field level—the transition from rehabilitative correctionalism of the 1950s and 1960s to the tough-on-crime punitiveness of the 1980s and 1990s—on the prison experience. They found that CIW, built during the correctionalism wave, still retained some (though certainly not all) of its initial rehabilitative culture even in the 1990s.¹⁴ By contrast, VSPW, a no-frills prison that emerged in the midst of California’s prison-building boom, was more firmly wedded to the harsher, self-reliant rhetoric so common at the time. In identifying these differences Kruttschnitt and Gartner highlight the role of organizational culture, or the way in which a prison built at the height of California’s rehabilitative era still retained some of its earlier characteristics at the peak of the tough-on-crime prison boom several decades later. Their study helps to demonstrate the role prison administrators can play in translating field-level rhetoric to actual organizational practice.

Finally, most influential for the present study, however, is a case study of Stateville Prison by James B. Jacobs (1977). Jacobs examines six decades (1920s–1970s) of that prison’s administration and the changing nature of its administrative authority. For much of the period examined, Jacobs describes the near-total control the prison’s warden had over his prison. A highly charismatic warden—rather than the governor, legislature, or department of corrections, which was nonexistent for much of the period—set the prison’s internal policies, which became tradition meted out by later wardens. Jacobs relates the important role of administrators to the relationship between the prison and its external environment. As earlier wardens experienced little political or other pressure over how to run their prison (and co-opted what little there was), administrators were able to have this near-total control. However, a combination of administrative turnover, challenges from courts, and inmates’ identification with the Civil Rights Movement ultimately circumscribed wardens’ authority and disrupted entrenched traditions at Stateville. Under this more bureaucratic period, wardens have less discretion and control over their prisons. Indeed, while much of the punishment and society literature focuses on punishment after the emergence of penal bureaucracies, Jacobs reminds us of administrators’ extensive control in shaping their own prisons in the early part of the twentieth century, and presumably before. Even when Stateville was pressured from outside forces, administrators fought this incursion. While Stateville generally conformed (outwardly) to field-wide norms, it was very slow to adopt the rehabilitative ideal, and did so only for a brief period in the 1970s. Jacobs attributes this to prison administrators’ resistance to external groups’ emphasis on rehabilitation. These important dimensions of administrators’ control over their prisons is a useful insight for this study. They also highlight the importance of thinking of prisons as organizations.

¹³Lynch’s work provides an additional example of mimetic isomorphism. Her careful analysis shows that the Arizona model was essentially copied by the rest of the country when the existing model fell into crisis in the 1970s.

¹⁴While the rhetoric and management tendencies of the prison did change over time, and this had consequences for how the female inmates did their time, but “not fundamentally” (93).

1.3.4 Prisons as Organizations

Despite the importance of organizational actors, and the fact that most punishment is meted out within organizations (prisons, parole offices, departments of corrections, etc.), treating prisons as organizations—or relying on organizational theory—is, strangely, a novel approach for the study of prisons. In the “golden age” of prison ethnography (Simon, 2000), understanding the prison as an organization, and the consequent implications for practice, was a central focus of punishment research (e.g., Sykes, 1958; Cressey, 1961; Cloward et al., 1960; Zald, 1965; Jacobs, 1977). These studies acknowledged the competing motivations of inmates, guards, and other keepers, including the organizational imperatives towards external legitimacy and internal control and efficiency. However, they primarily examined the prison as a “closed system,” in which the primary determinants of outcomes come from inside the organization itself, while the organization’s internal operations are generally insulated from the rest of the world. As was typical of organizational studies at the time (Scott and Davis, 2002), they focused mainly on the interactions between the keepers and the kept, and on other internal issues, and focused less on the relationship between the organization and its setting. These classic studies laid the foundation for later studies of prison order (Useem and Kimball, 1989; Sparks et al., 1996), but the focus on prisons as organizations has increasingly departed from mainstream organizational theory and its growing emphasis on influences from the organizational environment or field (but see Page, 2011) within which the prison exists. Since that time, there has been little attention to prisons as organizations and the implications this has on prison officials’ behavior or the meting out of punishment.¹⁵ As a consequence of punishment scholars largely losing touch with this heritage, punishment studies have been deprived of an important and useful body of research (see Sutton, 1996).

1.4 An Organizational Approach

My theoretical approach to this puzzle draws on two threads of organizational theory: the classic or “old” institutional theory of Philip Selznick (1949, 1957), which tended to focus on the organizational level, and the neo-institutional theory that emerged in the 1970s and 1980s (Meyer and Rowan, 1977; DiMaggio and Powell, 1983), which tends to focus on the field level—the level at which multiple organizations interact and influence one another. My central arguments are (1) neo-institutional theory aptly explains the rise of the prison, (2) but it cannot account for Eastern, (3) while old institutional theory can.

1.4.1 Neo-Institutional Theory

Neo-institutional scholars examining organizations provide a useful lens through which the emergence of the prison can be understood. When new organizational forms are created, or when changes are imposed on an existing organizational field, the aggregate of all similar organizations and their affiliates (e.g., regulators, resource-granting agencies, client organizations), these scholars expect to observe increasing conformity. They call this—the significant structural similarity of

¹⁵The general trend towards efficiency and managerialism in penal policy as well as the behavior of prison officials beginning in the 1980s described in the new penology (Feeley and Simon, 1992; Lynch, 2000), but this has not been linked to the needs of organizations so much as to problems of post-modern punishment. Likewise, DiIulio (1987) examines prison management styles to evaluate their efficacy, rather than to understand *why* particular prison styles emerge.

all organizations involved in the same line of work—“institutional isomorphism.” Neo-institutional scholars argue that this isomorphism reflects the organizations’ attempts to appear legitimate in the eyes of their fellow organizations, their clients, government actors, and others. What constitutes legitimate organizational forms or behaviors is shaped by the norms, cognitive expectations, and legal regulations dominant in the field. These factors can emerge organically and contingently, but they can also be manipulated by certain interested actors (Meyer and Rowan, 1977; DiMaggio and Powell, 1983).

An ideal-type narrative explains the intuition. In the face of novelty or change, a few well-resourced organizations will innovate, generating different approaches to the challenge. While several models may emerge at first, one model will come to dominate the field. This need not necessarily be the most effective or efficient model; if it appears successful, that may be sufficient for dominance. To avoid the need for innovation or to quickly end the challenges of ongoing uncertainty, some organizations will simply adopt one of the existing, early innovator models, perhaps one pioneered by an organization that has a reputation for success or legitimacy. As more organizations follow one particular model, the trend builds momentum further pushing this model to become the standard for the field. Standing out from the gathering crowd becomes increasingly difficult and poses liabilities. To bolster their own status within the field, professionals may create and propagate stories suggesting or explaining why this particular model is superior and encourage organizations to adopt this model. Laws may begin requiring all organizations within the field to adopt this model, or other organizations may only allocate resources and other privileges to organizations that follow this model. Organizations then adopt this model to appear legitimate.

In their classic article, DiMaggio and Powell (1983) outline the three mechanisms, hinted at above, that produce institutional isomorphism (see also Washington and Ventresca, 2004). First, through “coercive pressures,” organizations can be coerced by pressures within their environment, whether from regulating governing bodies or general cultural expectations of behavior (e.g., Edelman, 1990, 1992; Tolbert and Zucker, 1983). Second, through “mimetic pressures,” organizations may imitate other organizations when faced with uncertainty; this uncertainty may stem from their technology, goals, or environment (e.g., McTague et al., 2009; Studer-Ellis, 1995). Finally, through “normative pressures,” organizations may be guided into adopting similar structures by networks of professionals who propagate “rational myths” (Meyer and Rowan, 1977), or stories about the utility or legitimacy of particular structures or practices (e.g., Dobbin, 2009; DiMaggio, 1991). Collectively, these mechanisms—the coercive power of resource-granting agencies, the uncertainty-induced mimicry, the normative influence of professionals—are referred to as “institutional pressures.” Isomorphism can result from only one or two mechanisms—all three need not be present. Importantly, each of these mechanisms can occur without actual evidence of the technical value of the structures and practices (DiMaggio and Powell, 1983, 153).

Institutional isomorphism is a powerful framework by which to understand diffusion patterns and organizational change. It has been demonstrated in multiple organizational fields, home to a variety of organizations (e.g., schools, corporations, non-profit organizations, countries) (see, e.g., DiMaggio and Powell, 1991). Importantly, these mechanisms are especially likely to influence penal organizations (Sutton, 1996). Indeed, their influence has been demonstrated in criminal justice settings in multiple contexts. For example, the role of reformers (pseudo-professionals) has been demonstrated in the rapid diffusion of juvenile justice policies (Sutton, 1990, 1988) and mental asylums (Sutton, 1991) during the Progressive Era. Institutional forces have also been demonstrated to be more influential in the widespread adoption of COMPSTAT, a computerized policing technology, over technical explanations (Willis et al., 2007). While identifying divergent strategies towards hate crime law, Grattet and Jenness (2005) find mimetic and normative (as well

as actuarial) pressures explain clusters of responses among various police and sheriff departments (see also Grattet et al., 1998). Where these pressures are present, we should expect to observe institutional isomorphism.

Indeed, in Chapter 2, I argue that neo-institutional theory helps to make sense of the diffusion of the early prison: profound uncertainty likely influenced legislators and prison administrators to simply mimic existing models while normative pressures exerted by vocal penal reformers contributed to the success of the Auburn System. However, this theory cannot make sense of Eastern. As I explain in Chapter 3, we should expect Eastern to have become isomorphic with its environment, but it certainly did not.

Of course, scholars have demonstrated and theorized exceptions to increasing institutional isomorphism. A homogenous field may become heterogeneous with time, even as a result of the same institutional pressures that earlier led to isomorphism.¹⁶ Within an organization, the need to appear in conformity with other organizations may be mitigated by other forces, such as the way things have always been done, local culture, the prior training and experience of personnel, or who happens to be present during decision making.¹⁷ There are also a handful of organizations that have been shown to employ structures that uniquely differ from the rest of the field; typically these are organizations suffering from a kind of identity problem in which their affiliation with a particular organizational field it is unclear.¹⁸

¹⁶For example, Washington and Ventresca (2004) suggest that variations of these three institutional pressures towards conformity and stability can actually breed organizational change and variety. Beckert (2010) also criticizes the story of convergence and suggests that, under the right conditions, institutional pressures can lead to “divergent change” instead of isomorphic change. Similarly, Hambrick et al. (2005) argue that macro-social changes can create new institutional pressures towards heterogeneity: for example, as goals become less ambiguous, mimetic pressures towards conformity go away and more heterogeneity occurs. Most strongly, Kraatz and Zajac (1996) found that, despite the presence of strong institutional pressures, the technical environment and an organization’s need for adaptation can overpower these pressures and lead to field-wide heterogeneity. Pedersen and Dobbin (2006) suggest that organizations can demonstrate conformity to their environments, but still demonstrate their uniqueness along institutionalized dimensions.

¹⁷A growing number of case studies, particularly within the emerging tradition of inhabited institutionalism (Hallett and Ventresca, 2006), have problematized the seemingly effortless or fluid influence of institutional pressures on particular organizations’ internal decisions, emphasizing instead the local organizational culture or the influence of other institutional pressures. A major theme within this work is the heterogeneity of local responses to institutional pressures: Heimer (1999) examines the way in which organizational decisions are shaped in the context of multiple competing institutional logics finding that different logics shape decisions depending on which logics have representatives present in the decision making process. Binder (2007) illustrates the way in which different sub-units or departments within a non-profit organization respond differently to the institutional pressures according to the different levels of exposure to external institutional pressures and the level of professionalization within the department. Similarly, Fine (2006) illustrates the way in which local cultures across working groups within the same line of work affect the employees’ work identity and approach to work and, consequently, differences in work output. But thus far, these studies have identified small ways in which actors negotiate rather than fully resist these pressures, often at best changing micro-level decisions that can effect outcomes, but rarely the structural features of the organization and never in widely publicized ways.

¹⁸Only a handful of studies exist that examine organizations that adopt structures that do not conform to their environments, and these have largely focused on cases situated at the intersection or on the margins of multiple fields. Examining an organization at the “margins” of an institutional field, Lindsay (2010) found that such organizations may strategically reject the institutionalized formal structures to better appeal to the organization’s constituency.

However, Eastern represents an additional, unique exception to the theory of institutional isomorphism. It existed in a homogenous field in which strong institutional pressures had created isomorphism. Its source of variance with the field was less what actually happened behind closed doors, but rather its very public rejection of the dominant structures and defense of its own unique structures. Moreover, Eastern was strongly rooted in the carceral field and was clearly recognized as a prison. These characteristics distinguish Eastern from known exceptions to institutional isomorphism. To date, there is no readily available neo-institutional theory to explain “organizational exceptionalism” in the sense of the (1) public adoption and retention of structures (2) that differ in significant respects from the institutionalized structures that dominate the field (3) in which the organization is firmly embedded. Thus, by remaining a public exception to the dominance of the Auburn System, Eastern’s retention of the Pennsylvania System represents a puzzle in light of neo-institutional expectations. Below, I begin to theorize Eastern’s exceptional retention of the Pennsylvania System. While neo-institutional theory does more to frame the puzzle of Eastern, old institutional theory does more to help explain the puzzle.

1.4.2 Old Institutional Theory

While neo-institutional theory focuses primarily on large-scale changes occurring at the field level, old institutional theory primarily focuses on the internal workings of individual organizations. While neo-institutional scholars describe isomorphism as an “iron cage” that is nearly automatic and forced on organizational actors, old institutionalists emphasize the agency of individual actors. While neo-institutional theory focuses heavily on cognition—what actors understand is the right way of doing things based on industry norms—old institutional theory focuses more on individuals’ values and commitments (see Selznick, 1996; Hirsch and Lounsbury, 1997; Stinchcombe, 1997). Some of this theory has been updated in recent years under the new heading “inhabited institutionalism” (e.g. Hallett and Ventresca, 2006), which examines organizational actors’ varied responses to institutional pressures. However, the foundational statements of old institutional theory came from Philip Selznick (1949, 1957). One of Selznick’s central points was that an organization, once formed, develops “a life of its own” (Selznick, 1949, 10), generating its own momentum and motivations, largely because of the organizational actors who work there. Whatever the external forces pressing the organization, these forces confronted the internal momentum of the organization.

One source of this momentum is institutionalization. For Selznick, an entity that was institutionalized had become “infuse[d] with value beyond the technical requirements of the task at hand” (Selznick, 1957, 17). Once an entity is institutionalized, it is no longer a mere “tool” for some technical goal; once it holds this greater, non-technical value, it is no longer “expendable” even when “a more efficient tool” is available (Selznick, 1957, 10). Actors may pursue small alterations to protect it, but its special value motivates organizational actors to resist any attempts to change or abandon the institutionalized entity.

Organizational phenomena can hold non-technical importance to organizational actors in a variety of ways. The importance may stem from the status or prestige that comes with holding

Similarly, Sallaz (2012) found that the decision to accept or reject the institutionalized formal structures within one’s organizational field depends on how such a decision would help the organization within its political field; for some organizations, adopting formal structures make them appear more legitimate, while for others adopting other structures would improve their legitimacy in the eyes of regulators. On the other hand, an organization may adopt changes that increase conformity with their organizational field, but offer narratives that describe these changes in terms of their institutional field’s culture and values Haedicke (2012).

a particular position within the organization (Selznick, 1957, 14). It may be a sense of meaning that infuses one's work, giving one's work and one's life a larger purpose, thereby quenching some deeply rooted "psychological needs" (Selznick, 1957, 8-9; see also Fligstein and McAdam, 2012). Both the status and meaning can be reinforced and elaborated upon when individuals repeat narratives about why they do what they do. These narratives accumulate and are reinforced over generations as new organizational actors are trained in the ways of this organization; through this repetition and accumulation, they become truths (Selznick, 1949, 252). This process generates a commitment on the part of organizational actors to the source of this status or meaning, the institutionalized feature.

Institutionalization is more or less likely to occur under certain conditions. While Selznick noted that "no organization of any duration" was immune to this development (Selznick, 1957, 16), he specified two organizational characteristics that were conducive to "institutionalization." First, Selznick argued that some organizational conditions lead organizational actors to have a greater need for meaning, and thus are more likely to experience institutionalization. He explained,

This quest for an ideology, for doctrinal nourishment, while general, is uneven. Organizations established in a stable context, with assured futures, do not feel the same urgencies as those born of turmoil and set down to fend for themselves in undefined ways among institutions fearful and resistant. As in individuals, insecurity summons ideological reinforcements. (Selznick, 1949, 48)

When an organization's position is not secure, it must "feel its way. This require[s] the formulation of a policy that would reassure external elements and would so educate its own ranks as to maximize the possibilities of social acceptance" (Selznick, 1949, 49). Second, Selznick argued that some types of organizations offer conditions that are generative of institutionalization. Specifically, individuals in organizations with a large amount of discretion and ambiguity, and that lack either specialization or mechanical simplicity, have more room to think and act beyond the narrow constraints of technical work as well as more opportunities for the "interaction" that enables group commitment (Selznick, 1957, 16). This interaction is fertile ground for the creation of narratives that can infuse organizational structures with value.

Both the need for meaning that makes institutionalization attractive and the conditions that would enable the process to occur were present at Eastern. First, Eastern was embroiled in the debate over the appropriate method of confinement. Moreover, it was on the losing end of this debate, as measured by states' decisions to adopt the Auburn System over the Pennsylvania System. Some confirmation of the importance of their work—that it was not mistaken or in vain—would have been important to any administrators who took the debate seriously, as many of them did. Second, Eastern's administrators had ample opportunities to engage in the activities necessary to institutionalize the Pennsylvania System. There were few limitations on the institutionalization process as their goals were ambiguous (poorly defined, uncertain, and conflicting) while the carceral setting was (and still is) not particularly technical and specialized. More importantly, Eastern's administrators had multiple opportunities to discuss and reflect on their methods and purpose, allowing them to create narratives about their particular way of doing things and enumerate values that valorize their work. However, at Eastern, these opportunities for interaction were multiplied by the debate of which Eastern was the center. We should consequently expect institutionalization to occur at Eastern. Indeed, at least superficially, the administrators' long commitment to the Pennsylvania System and resistance to change suggests, by definition, some kind of institutionalization had taken place. The question then becomes, *How was the Pennsylvania System actually important to Eastern's administrators? Why was it valuable to them?* Before addressing those questions, I

explore administrators' role in maintaining the Pennsylvania System at Eastern.

1.5 The Importance of Administrative Support

In this section, I explain the nature and role of administrative support for the Pennsylvania System at Eastern. I seek to make the case that this was an important, albeit not the sole, reason for Eastern's exceptional retention of the Pennsylvania System. I then try to make sense of this support by locating the personal benefits administrators gained by supporting a highly criticized system.

1.5.1 The Contours of Administrative Support at Eastern

Administrative support of the Pennsylvania System at Eastern primarily took two forms. One form of support was largely reactive: administrators utilized various *rhetorical strategies to defend the Pennsylvania System* against threats, primarily the calumnious myths from the field. One set of rhetorical strategies sought to characterize the Pennsylvania System in ways that challenged its characterization as cruel and inhumane: administrators described the Pennsylvania System, the prison's personnel and the system's supporters, its specific methods and goals, and its heritage as humanitarian, progressive, benevolent, and mild. Another set of rhetorical strategies offered evaluations of the Pennsylvania System in theory and in practice at Eastern: administrators demonstrated how it was logically superior to other methods; they offered statistics demonstrating its success in preserving inmate health, keeping costs low, and effecting inmate reformation; and they constructed narratives to displace blame for any apparent failures away from the Pennsylvania System. A final set of rhetorical strategies focused on displaying their own professionalization by emphasizing their special knowledge expertise derived from experience that others—particularly opponents of, and other threats to, the system—lacked. Through these rhetorical strategies, administrators effectively counteracted the substance of reformers' myths. With few, temporary exceptions (limited to individual administrators), these strategies persisted throughout the entire period examined, but often reflected the dominant challenges from the local and national field.

The other major form of support was more proactive: Eastern's administrators utilized *strategic alterations of the Pennsylvania System at its margins* to protect it against internal threats that could prompt or exacerbate external threats. This was strategic in that it was goal-oriented behavior, but these goals were not related to actual penal goals. Instead, these strategic alterations focused on vulnerable features of the Pennsylvania System—elements that made it susceptible to additional criticism, particularly along the lines of the calumnious myths. Specifically, administrators suggested or imposed alterations to the name and definition of the Pennsylvania System, the policies affecting their ability to administer it, and its actual implementation on the ground. In each case, they sought to prevent the “incarnation” (Hallett, 2010) of the calumnious myths at Eastern. However, each of these alterations was arguably marginal: they either consisted of peripheral changes to the Pennsylvania System for most of the prison population or they changed core features of the Pennsylvania System for a minority of the prison population. These strategic alterations to the Pennsylvania System at its margins thus represent changes, but changes intended to preserve the Pennsylvania System: by reducing its vulnerability, they could potentially improve its longevity. These strategic, marginal alterations persisted once established, but new alterations developed in response to needs to adapt.

Were these strategies actually effective? Administrators' reactive and proactive strategies were ultimately aimed at preserving the reputation of the Pennsylvania System within the field; did they actually improve its reputation, and thereby maintain its longevity at Eastern? Confounding

factors make this assessment exceedingly difficult. First, these strategies were relatively continuously deployed, if in greater concentrations in some periods than others; this simultaneity as well as any layering effect make it difficult to determine which particular strategies were most successful. Second, it would be difficult to isolate the effect of these strategies from the effect of the rhetorical support and lobbying efforts of the PSAMPP. More importantly, however, the reputation of the Pennsylvania System at the field level appears to have had little impact on whether or not the Pennsylvania System was retained at Eastern given administrators' disregard of legislators' commands and penal reformers' opinions. Longevity is thus not necessarily evidence of their success at protecting the reputation of the Pennsylvania System.

However, administrative support may have been deterministic in the longevity of the Pennsylvania System in two ways. One hypothesis suggests that the *absence of administrative opposition* enabled continued organizational exceptionalism. At a minimum, it may have been sufficient that administrators did not voice their discontent with the Pennsylvania System, as administrators had elsewhere; their defense and endorsements of the System may have played no role in its retention. That is, by not requesting its abandonment, administrators proved to be a crucial factor. Under this hypothesis, any strength of institutional pressures imposed on the organization may not have been sufficient to overcome the Pennsylvania System because administrative opposition is a necessary factor to the rejection of structures. A second hypothesis suggests that the *presence of administrative assistance* caused continued organizational exceptionalism. Administrators' attempts to prevent the Pennsylvania System from succumbing to various challenges or sustaining abject failures may have been important in preventing stronger threats to the System at Eastern. If administrators' reactive and proactive strategies in fact made the System more robust against threats, then the administrators proved to be a crucial factor. Under this hypothesis, the strength of institutional pressures had been reduced enough to preserve the Pennsylvania System, because strong institutional pressures are necessary to cause the rejection of structures. Both hypotheses are consistent with the data examined, but limitations of the data make it difficult to negotiate between the two hypotheses. Under either hypothesis, however, Eastern's exceptionalism is a case of agency—the choice of the administrators to retain the Pennsylvania System, including their lack of opposition and their active support—over structure—the institutional and other pressures encouraging its abandonment.

If administrative support was as important as I suggest, the more interesting question becomes, *Why did Eastern's administrators support the Pennsylvania System?* As we will see, administrators were not facing coercive pressures from resource-granting agencies (the state legislature) to keep the Pennsylvania System; nor were they particularly concerned with the influence of local pseudo-professionals (Philadelphia-based penal reformers) encouraging its retention. Retention was also a problematic decision due to the difficulties with implementation, the damage to the prison's legitimacy, and potential costs to administrators' own reputations. Uncertainty surrounding how the Pennsylvania System—their “experiment”—would ultimately fair must have caused anxiety among its administrators, who may have also been privately troubled by the prospect that the System was, in fact, inhumane. Finally, the myths suggesting the Pennsylvania System was dangerous, expensive, and ineffective made retention an irrational decision for any organization. If administrative support was crucial to the retention of the Pennsylvania System, why that support existed at all must be explained.

Briefly, I argue that the Pennsylvania System became “institutionalized” (Selznick, 1949, 1957) at Eastern: administrators resisted any efforts to abandon or alter the Pennsylvania System because it was particularly valuable to them to keep and defend. Specifically, retaining and defending the Pennsylvania System allowed its administrators to claim a specific status identity, directly

through their accounts of the Pennsylvania System and indirectly through their affiliation with the Pennsylvania System. In order to continue to enjoy this status identity, they not only had to fight to keep the Pennsylvania System, continuing to defend it and proactively reducing its vulnerability, but they also had to display it in the best possible light—failures would jeopardize its continuance at Eastern as well as the bases of their status identity. This requirement offered an imperative that was particularly advantageous in light of the uncertainty they faced.

1.5.2 The Utility of the Pennsylvania System to Eastern’s Administrators

The Pennsylvania System provided two related phenomenological benefits to Eastern’s administrators. The Pennsylvania System offered Eastern’s administrators a particularly attractive status identity, which could counteract any negative claims about the administrators for their deviance, as well as a clear imperative to guide their work through rampant uncertainty. Both of these benefits had the potential to mitigate against institutional pressures the administrators may have felt for retaining the Pennsylvania System. Moreover, both of these benefits explicitly derived from retaining the Pennsylvania System and were reinforced through the administrators’ support of it.

Employing and defending the Pennsylvania System offered Eastern’s administrators the means by which they could establish a desirable status identity as particularly knowledgeable and important humanitarians within the penal field, pursuing the best methods available with great success and benevolence. Retaining and defending the Pennsylvania System enabled administrators to establish this status identity both indirectly (by affiliation) and directly (through specific claims). They described the Pennsylvania System in glowing terms: it was a paragon of humanity and benevolence, as were those who endorsed and operated it, and the System was logically and evidently (they claimed) superior along every important dimension. Those who criticized it, they argued, were ignorant or prejudiced; by contrast, Eastern’s administrators, as they often pointed out, had collected and examined the necessary data, they had first-hand experience with the Pennsylvania System in operation, they met with inmates and studied the literature, and they even promulgated texts that were foundational to the emerging “penal science.” Affiliating with this vaunted system of punishment as well as explicitly establishing their own *bona fides* as benevolent, humanitarian penal experts thus offered Eastern’s administrators a particularly attractive status identity. Indeed, this status identity may have been especially important to some administrators as a means of combatting field-wide criticism and attacks on their work as not only cruel and inhumane but worthless, too. The status identity they crafted for themselves explicitly challenged both claims. Whether they indeed internalized their claims to this status identity or simply saw it as a means to greater social status is unclear, but either outcome was only possible through their continued adherence to the Pennsylvania System and their continued defensive statements of the Pennsylvania System.

However, Eastern’s administrators could only reap the status identity from a mode of confinement they could reasonably describe in the glowing terms that supported this status identity. Defending the Pennsylvania System against criticism was only a first step: defense would help to protect it from existing external threats, while reaffirming their special status identity. But more could be done: the Pennsylvania System needed more proactive measures as well to prevent new attacks, especially those that would betray the claims from which they derived their status identity. Thus, the need to retain their status identity offered Eastern’s administrators an imperative: to act in such a way that would allow the Pennsylvania System to appear in the best possible light. A better reputation, manifested by continued success (or at the very least the absence of failure), would not only help to retain the Pennsylvania System at Eastern but also preserve their ability to

construct their status identity through references to its excellence. Importantly, this imperative entailed eliminating any threats to the Pennsylvania System, even if that meant aspects of the System itself that made it vulnerable. Deriving their status identity from the Pennsylvania System did not actually require keeping the Pennsylvania System perfectly in tact.

Beyond its instrumentality in securing their status identity, this imperative also offered its own benefit to administrators: clarity. As noted, Eastern’s administrators—as well as other prison administrators and penal actors in the field—faced enormous amounts of uncertainty about what prisons were supposed to do, how they should go about it, and whether they would succeed. But this uncertainty was exacerbated for Eastern’s administrators because they had no model to which they could look for answers (and no model behind which they could hide any of their own failings against heavy scrutiny). It was further made problematic by the legislature’s frequent inaction that made full compliance with the Pennsylvania System impossible. How the administrators should have proceeded under these conditions was essentially undefined. The imperative to protect the reputation of the Pennsylvania System, to maximize their ability to retain it and to enjoy their status identity, offered a clear path in the face of numerous alternatives.

These benefits are also consistent with a neo-institutional understanding of organizational behavior: we can interpret these benefits as possible counter forces to the institutional pressures administrators personally faced. Their status identity potentially mitigated any existential anxieties produced by the field-wide normative criticism of them and their work. Similarly, the imperative to preserve the reputation of the Pennsylvania System by any means necessary potentially mitigated any epistemic anxieties produced by the significant uncertainty about their technology and goals. If administrative support is the mechanism by which institutional pressures may be resisted, institutionalization may provide the source of their willingness to resist these pressures.



Was administrative support sincere, or just strategic? Unfortunately, the sincerity of their statements cannot be fully verified, and their private documents and actions provide only so much insight in this regard. For example, the first warden, Samuel Wood, recorded some observations in the warden’s daily journal about former inmates who returned to the prison

Had a visit in the evening from No 4, who appears anxious to do well, but wants a suit of cloathes [sic] to appear decent in. He had work as a drayman, & I agreed to get him a suit[.] No 54 came back this evening & was locked up in his cell as I had engaged [sic] to give him work for a short time. *What a commentary on the system.* (PSA, Warden’s Daily Journal, December 6, 1835, italics added)

For him, like other administrators, daily developments at the prison provided evidence of the Pennsylvania System’s excellence. To some extent, it appears that these administrators internalized some of their claims to superiority. Wood recorded several years later of his visit to Sing Sing prison in New York (which followed the Auburn System), “[I] was received kindly by R. Wilton & the clerk & shown round by them, did not like the appearance of the place, as well as when I was last there” (PSA, Warden’s Daily Journal, August 26. 1838). To some of Eastern’s administrators, the Pennsylvania System truly was the better system.

However, it would be both naive and simply inaccurate to attribute administrators’ long-standing support to a universal belief in their system’s superiority. “True believers” would not have

supported the alterations to the Pennsylvania System that multiple generations of administrators authorized. Indeed, the local penal reformers, whom historian Negley Teeters (1937) describes as true believers, often opposed these alterations.¹⁹ Other administrative behavior intermittently visible in the data suggest insincerity among at least some administrators.²⁰ However, my interpretation of the data available is that there was a mix of both sincerity and strategic behavior. My interpretation of the data is that these were very shrewd men whose support of the Pennsylvania System was not coerced, not rooted in sentiment exactly, and not at all practical by most measures. Some of the administrators may have believed their own claims, and even internalized their status identity, while others may have simply seen the Pennsylvania System as a means to an end. Which stance was taken, however, is irrelevant to the ability of this thesis to explain the puzzle of Eastern.

¹⁹Teeters (1937, 199), explains of the PSAMPP between 1829 and 1851,

From the reading of the Minutes of these years one cannot possibly get the impression that the members of the Society had the slightest suspicion that the system of separate confinement was not efficient—in the Eastern Penitentiary. They were unanimously of the opinion that the system was humane, efficient, and reformatory, but the reports of the committees working in ten County Prison (Moyamensing) show that various problems confronted the exponents of the system in this institution.

²⁰One prison administrator in particular, Warden Scattergood, appeared in the record as a classic bad actor who, despite his public claims, did not appear to have prioritized the principles they claimed. Penal reformer and frequent visitor to the prison, William Foulke, recorded at length in his prison notebook several stories recounted to him by a former, potentially disgruntled, employee of Eastern. These stories involved the misappropriation of resources by then-Warden Scattergood at the detriment to inmates. Foulke reported that the former guard, “Merrill,”

was satisfied Scattergood regarded his own interests more than those of the institution. That he skimmed the cream from the milk and gave the skimmed milk to the infirmary, that he sent the cream to the city to some of his friends, also vegetables from the Prison garden, that in one case (german wheelwright or cabinet maker) who had been ordered by the Doctor to take a cold [] bath for a disease with which he had been afflicted, Scattergood had seen the bathing apparatus, and had taken it from the prisoner and applied it to the use of a member of his own family, and Merrill had to saw a barrel in half for the prisoner. (APS, Foulke Papers, Prison Journals, October 26, 1849)

While no other data exists to confirm these stories, Foulke was able to independently confirm other information received from this guard and continued to meet with him. What is particularly problematic about this example is Scattergood’s own entries into the Warden’s Daily Journal often sound sincere. The men who administered Eastern were very complex individuals.

Other stories recorded in Foulke’s journals also mention instances of “neglect” on the part of the Warden. Some amount of neglect was common across several wardens, as inmates were often found to openly communicate with one another, sometimes with the wardens’ knowledge or with minimal attempts to prevent it. Presumably, administrators whose confidence in the Pennsylvania System was genuine would have worked to prevent this practice, and would not have jeopardized inmate care. By contrast, the penal reformers who visited and observed any deviations from the Pennsylvania System noted their opposition (see, e.g., APS, Foulke Papers, Prison Journals; HSP, Prison Society Minutes).

1.6 What Lays Ahead

Chapter 2 (The Carceral Field) begins by fleshing out the skeletal historical background provided here. This chapter will first give an overview of the nineteenth-century carceral field: I begin by reviewing the emergence of the modern prison, beginning with the rise of proto-prisons after the Revolution through the emergence of Auburn and Eastern, including the rapid and widespread diffusion of the Auburn System. After identifying the limitations of existing theoretical frameworks to account for the resulting isomorphism (field-wide homogeneity), I turn to neo-institutional theory. I attribute the widespread success of the Auburn System to the presence of two institutional pressures—the uncertainty of the new technology and the ambiguity and conflicting goals of punishment on one hand, and the work of pseudo-professional penal reformers and their calumnious myths on the other.

I then move from the field to the organizational level in Chapter 3 (The Deviant Prison). I begin by describing the emerging theory of the Pennsylvania System as it was intended to work at Eastern. I then delve into the structure of Eastern, noting the highly informal and pre-bureaucratic nature of prison authority. I then discuss the unique challenges administrators experienced in retaining their Pennsylvania System. I then show that neither neo-institutional theory nor historical factors can account for Eastern’s unique retention of the Pennsylvania System. Without guidance from these explanations, I look to “counterfactuals,” where the Pennsylvania System was adopted but failed, and the conditions surrounding the actual demise of the system at Eastern. These data begin to suggest the importance of administrative support over other factors.

With this background in place, I move in Part II to the specific strategies Eastern’s administrators used to protect the Pennsylvania System from criticism and bolster their own status identity in the process. In Chapter 4 (Rhetoric), I explore administrators’ vehement rhetorical defenses of the Pennsylvania System. First, I describe the way in which they characterized the Pennsylvania System, their prison, their personnel, their methods, their goals, and their heritage as progressive, mild, benevolent, and especially, humane or humanitarian. I then explore administrators’ use of logic and quantitative evidence to evaluate the theory and practice of the Pennsylvania System. Their evaluations of the prison’s health and mortality rates, expenses, and recidivism rates did more than simply contradict the calumnious myths: they posited the Pennsylvania System as the superior model of confinement and Eastern as the superior prison over its competitors. These strategies thus both challenged the substance of the myths and constructed a status identity for themselves in the process.

In Chapter 5 (Professionalization), this theme is magnified. I illustrate how administrators slowly created an identity as knowledge experts. First, the administrators pointed to their first-hand experience in the prison and their access to data about criminality and prison management. Second, they touted their affiliations with the new “penal science” and the expanding networks of other professionals involved in its development. Third, they directly challenged the expertise of their competitors. While administrators’ efforts to construct their professional status were always present and increased over time, these tactics were in full force in the 1860s when administrators mobilized their professional status to protect the Pennsylvania System against a law that would alter the System. Constructing this identity as knowledge experts could effectively bolster the strength of their own claims about the System’s excellence while also undermining the authority of its challengers; it also contributed to administrators’ status identity.

These two chapters thus illustrate the three major strategies through which administrators sought to preserve the reputation of the Pennsylvania System. Each strategy offered administrators a positive externality: an opportunity to directly and indirectly establish their own status iden-

tity, for ostensibly neutral and unselfish reasons. This status identity described them as (1) good, humanitarian, benevolent people, (2) working at a superior prison that uses the best available methods, and (3) who are authoritative knowledge experts. Of course, to maintain their status identity, the Pennsylvania System had to live up to this reputation, at least on paper.

In Chapter 6 (Adaptation), I explore how Eastern's administrators altered their system on its margins to reduce its vulnerability to further criticism or external incursion. I explore how officials strategically altered the meaning and definition of the Pennsylvania System to mitigate criticism from the field. This strategy was most apparent in the transition between three different names for the Pennsylvania System: solitary confinement with labor and religion, the separate system, and the individual treatment system. With each name, officials formally placed different emphases on the System's various components. I then examine how administrators made policy recommendations (requests, really) intended to mitigate legal or material constraints that impeded the full and proper implementation of the Pennsylvania System at Eastern. In their attempts to protect their prison from these constraints, administrators sometimes changed their positions on some policies based on what would help the Pennsylvania System be positively evaluated.

Finally, in Chapter 7 (Practice), I examine administrators' strategic marginal alterations behind closed doors. I show that administrators selectively violated the Pennsylvania System, but only for a minority of the population: the population that rendered the Pennsylvania System most vulnerable to criticism. I suggest that administrators' changes to the margins of the Pennsylvania System in practice were intended to improve its external image. When faced with enormous uncertainty, administrators did not find guidance in a general imperative to follow the Pennsylvania System as closely as possible or to pursue certain penal ends as effectively as possible. Instead, when confronting the ambiguity of their goals or the impossibility of full implementation, administrators followed an imperative to withstand external evaluation at all costs.

I close in Chapter 8 (Conclusion) by summarizing the argument and extending the present work. Drawing on neo-institutional theory and the case of Eastern, I suggest a new understanding of organizational deviance as organizational exceptionalism. I then consider this work's value for the organizational theory and punishment and society literatures. I begin by discussing institutionalization and administrative support as potentially general tools for resisting institutional pressures. I then discuss the utility of organizational theory for understanding penal trends, emphasizing the importance of examining prisons as organizations: the present study illustrates the importance of prison administrators in shaping outcomes, the way in which organizations can take on a life of their own, and the role of external legitimacy in shaping organizational behavior.

Chapter 2

The Carceral Field

The antebellum proliferation of a wide range of custodial institutions—orphans, juvenile homes, penitentiaries, and mental hospitals, as well as poorhouses—is striking and greater than the population increase or the level of disorder warranted. (Walters (1978, 200), *American Reformers, 1815–1860*)

2.1 The Emerging Carceral Field

To understand just how puzzling Eastern appears from sociological and historical perspectives, one must first understand the carceral field in which it was located. The notion of a “field” is a useful heuristic referring to the collection of actors—individuals, groups, organizations, regulating bodies—that can shape, or are affected by, some important area of life—medicine, education, law, or criminal punishment. Thus, the carceral field refers to those actors who determine, carry out, seek to influence, or experience penal outcomes specific to incarceration.¹ The nineteenth-century carceral field’s most influential actors were, primarily, penal reformers, state legislators, and prison administrators, mostly within the United States, but also those from Great Britain and European countries. Penal reformers and prison administrators often worked to influence legislators’ penal and social policy decisions; legislators and penal reformers sought to shape the prison practice otherwise controlled by prison administrators; prison administrators variously used or ignored the penal reformers, and the legislation. Secondary groups also shaped penal outcomes: The upper

¹Pierre Bourdieu is often credited with introducing the concept of a field, by which he means a nonautonomous arena in which groups and actors compete for resources and influence over some domain of life (Bourdieu and Wacquant, 1992). This concept has been well received by students of punishment: Josh Page (2011), who has been primarily responsible for introducing the notion to the study of punishment and society, has examined the way in which California’s prison guards’ union, in competition and coordination with other groups, influenced the late-modern penal field. They lobbied for tough-on-crime legislation that increased incarceration rates, prison building, and the demand for more correctional officers. By allying themselves with crime victims, they achieved the necessary political capital to obtain their desired ends. Neo-institutionalist also use conception of an *organizational* field (DiMaggio and Powell, 1983), which emphasizes the cognitive and cultural influence organizations within a particular domain have on each other. Unlike Bourdieu’s framework, the organizational field de-emphasizes the agency and interests of organizational actors, and material or rational concerns more generally (DiMaggio, 1988). Indeed, neo-institutionalists only draw on Bourdieu’s work “selectively” (Hirsch and Lounsbury, 1997, 413). More recently, however, Fligstein and McAdam (2012) have worked to blend the neo-institutional with the Bourdieusian conceptions into the “strategic action field,” a framework which combines attention to both social construction and power.

and lower judiciary played a role in upholding or rejecting legislation, appointing prison officials, and deciding how long inmates would spend behind bars. State governors also appointed prison officials, vetoed or supported legislation, issued statements, and issue pardons to remove selected inmates from custody. The media, such as it was, played another role. Newspapers were only beginning to take hold and replace daily broadsheets and other texts; the most relevant sources of information on penalty were a handful of national periodicals like the *North American Review* and local periodicals like the *Philadelphia Gazette*, which ran occasional opinion pieces about penal and social policy. Monographs were often published as pamphlets, paid for by reform societies, which eventually founded their own journals, like the *Pennsylvania Journal of Prison Discipline*.

This field barely existed before the American Revolution. A *penal* field certainly existed and had long existed. In the American colonies, it was primarily controlled by the various governing bodies of each colony, but especially the clergy, the judiciary, and the British Crown. These groups determined what (or whom) was deemed criminal, how punishment would be meted out, and what justifications. But a shift in the penal field beginning before the Revolution brought the *carceral* field into existence. The carceral field primarily took shape after the Revolution, as individuals increasingly called for the erection of carceral facilities specifically for the purpose of punishing convicted criminals. Once the idea gained acceptance, the field expanded as reformers sought to control the design of such facilities, the legislature authorized the construction of the facilities, and individuals were put in charge of running such facilities. Rather quickly, the carceral field replaced a large portion of the penal field and became a major focal point for those concerned with penal matters.

During the period between the American Revolution and the Civil War, the American carceral field rapidly expanded and changed drastically. It saw the emergence of two distinct organizational forms: first, beginning in the 1790s, the reformed jail, sometimes called a “penitentiary house” and what I call the “proto-prison” as these represented the first attempt at state prisons; second, beginning in the late 1810s, the first modern prisons, sometimes called penitentiaries, but which I will refer to simply as prisons. The emergence of each of these organizational forms was relatively rapid and widespread. These developments were the product of what contemporaries believed was a need for reform and intense debates over how to satisfy this need. Underlying the process was great uncertainty about what the reforms should accomplish, how they might accomplish these goals, and how they would actually work in practice.

2.1.1 The Emergence of Proto-Prisons

Europeans and Americans had used jails to confine their social deviants for centuries (Peters, 1998). However, jails were not primarily places of punishment; they were not like modern prisons that hold convicted criminals in prison cells for long periods. Instead, especially in the colonial period and on the continent, jails often contained vagrants, beggars, debtors, witnesses, those condemned to execution, and some family members in addition to petty criminals. Inmates were housed together in large rooms, often indiscriminately. Labor was sometimes required to compensate the gaoler, but there was no organized attempt to improve these inmates through religious reflection, education, or vocational training. Far from the primary form of punishment, jails were generally an administrative service aiding criminal courts; corporal punishments and capital punishment were the center of criminal justice system, such as it was.²

²Jails like these (often called “prisons”) continued to be built into the nineteenth century; in 1807, Philadelphia began construction of Arch Street Prison, which would be “a lock-up house, a place for the confinement of vagrants, untried criminals, debtors, apprentices, and witnesses” (McElwee, 1835a, 108). Such was the state of most incarceration

During the middle of the eighteenth century, however, a number of factors shifted sentiment against capital punishment, the conditions of jails, and the goals and methods of punishment generally. First, in 1764, Italian jurist Cesare Beccaria published *On Crimes and Punishment*, a treatise outlining several reasons to abolish capital punishment. Among these, he argued that capital punishment was a poor deterrent: certainty rather than severity is the most effective characteristic of punishment, and that a mild and prolonged punishment is more effective than brief, sanguinary punishment. He argued that, more than a poor deterrent, the spectacle of execution causes more crime by the example it affords, brutalizing the public into more violent behavior. He also argued that punishments must be proportionate to their crimes. In this retributivist logic, he further suggested that the punishment should somehow reflect the crime committed. Finally, inspired by Jean-Jacques Rousseau, he argued that the state lacks the right to take its citizens' lives because such power is not vested in the social contract. Indeed, any punishment which punishes to excess when another punishment can achieve the same result with less violation of a citizen's rights is illegitimate, he argued. This pamphlet, translated into English in 1767 and arriving in the colonies by at least 1770, was tremendously influential (Maestro, 1973, 465). His key arguments found appreciation and acceptance among American and European penal reformers for at least the next fifty years, including Benjamin Rush, Edward Livingston, and Thomas Jefferson. As we shall see Rush was an active penal reformer in Philadelphia, while Livingston and Jefferson both wrote penal codes for Louisiana and Virginia (both proposals, however, were rejected after extensive debates) (McClain, 1983, 503–507). Beccaria's arguments were repeated in nearly every penal reform statute, newspaper article, and journal article between the American Revolution and the early nineteenth century. Beccaria's arguments merged with other tenets of Enlightenment thought and a growing hold from evangelical Christianity and helped to produce a strong movement to abolish capital punishment (Masur, 1989; Banner, 2002).

A second influence from Europe also arrived in America in textual form in the 1770s: John Howard's *The State of the Prisons in England and Wales* (1777). If Beccaria problematized capital punishment, Howard problematized the conditions in jails. Howard's treatise reflected his own experiences managing a county jail and traveling to visit the county jails and "prisons" of Great Britain and some other countries. It offered a detailed imagery of the horrific conditions in which so many people were held. He wrote of insufficient and bad food and water that left inmates sick or emaciated. He decried the cohabitation of different categories of inmates (men and women, young and old, debtors and felons, the insane, and others) and suggested that those who entered the jails left them more thoroughly entrenched in the criminal lifestyle. Perhaps the most influential parts of his treatise described the threat of disease (especially gaol fever or typhus), which was exacerbated by the overcrowding, stale air, poor ventilation, and exposed raw sewage in British prisons.³

during the colonial period through the nineteenth century. See Spierenburg (1991) and Foucault (1965) for discussions of European confinement before the eighteenth century.

³ Among the most memorable descriptions, he described the stink of the prisons that would follow him long after he had left:

My reader will judge of its malignity, when I assure him, that my cloaths were in my first journeys so offensive, that in a post-chaise I could not bear the windows drawn up: and was therefore obliged to travel on horseback. The leaves of my memorandum-book were often so tainted, that I could not use it till after spreading it an hour or two before the fire: and even my antidote, a vial of vinegar, has after using it in a few prisons, become intolerably disagreeable. I did not wonder that in those journeys many gaolers made excuses; and did not go with me into the felons wards. (Howard, 1777, 13)

He reminded his readers of the “Black Assize,” the 1577 court session at which everyone present (more than 300 people), “died within forty eight hours” (Howard, 1777, 18). The threat of typhus resonated with American penal reformers who had lived through several citywide epidemics. Philadelphia experienced two major bouts of yellow fever in 1793 and 1798, in which thousands of Philadelphians perished. The threat of disease was made even more poignant by his own death by gaol fever in 1790, a martyr to the cause of penal reform. These descriptions resonated with Americans well-versed in Enlightenment values of reason and opposition to suffering. They held particular resonance, however, for the many American statesmen and ordinary citizens (including a number of pacifist Quakers suspected of Loyalist sentiments) who experienced the conditions of colonial jails firsthand. Something had to be done to improve the conditions of American jails.⁴

Finally, the growing resentment towards the British government during the 1760s and 1770s encouraged resistance to existing punishments. Capital punishment was increasingly viewed as a monarchical practice inappropriate for the emerging Republic. Indeed, many Americans blamed British rule for the severity of their penal codes and punishments. As Pennsylvania jurist, William Bradford, noted in 1793, “We perceive that the severity of our criminal law is an exotic plant, and not the native growth of Pennsylvania. It has endured, but I believe, has never been a favorite” (Bradford, 1793, 20). Indeed, many thought British rule had restrained Americans from authorizing and endorsing progressive, republican punishments. For Pennsylvanians, this perception was especially acute. In 1682, William Penn abolished capital punishments for all crimes but premeditated murder; in its place, he substituted imprisonment. This “Great Law,” however, was repealed in 1718 by the British Crown (Dumm, 1987, 65–82). British rule had thus replaced the most progressive penal code to date with one relying heavily on capital and corporal punishments. Their own history seemed to support Montesquieu’s claim, “as freedom advances, the severity of the penal law decreases” (cited in Bradford, 1793, 20). When they shrugged off the yoke of monarchy, the former colonists sought to excise their most severe punishments as well.

Liberated from the British Crown and Parliament, several new states used their new-found freedom to endorse or enact reforms that would distance their own punishments from those common to British rule. Pennsylvania was one of the first states to take advantage of their state constitutional conventions to require penal reforms. Sections 38 and 39 of the *Plan or Frame of Government for the Commonwealth or State of Pennsylvania of September 28, 1776* demonstrate both the impact of Beccaria’s work on the legislatures and the development of the new commitment to reformatory punishments. Section 38 called for a change in the penal laws “as soon as may be” such that the punishments will be “less sanguinary, and in general more proportionate to the crimes.” Section 39, determined that

houses ought to be provided for punishing by hard labour, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons. . . .

The imperative was not taken up until a decade later, when the war had ended. But when it did, it inspired a flurry of activity.

The imperatives embodied in constitutions and actual penal reforms that followed reflected the efforts of penal reformers. In this period, a number of existing social and political societies turned their attention to penal reform, while distinct organizations dedicated to penal reform were

⁴More than his exposé, Howard’s work with William Blackstone to write legislation calling for “penitentiaries” also influenced the subsequent penal reform movement in the United States, as we shall see.

also formed. Most notably, in 1787, a group of penal reformers founded the PSAMPP. These reformers visited the local jails or “prisons” to provide aid and comfort to the inmates and police their treatment. They also voraciously consumed penal reform literature from the emerging states and the Continent, a literature they contributed to as well. Their most influential member, Benjamin Rush, was responsible for the development and instantiation of the first proto-prison, which he referred to as a “house of repentance.” In a speech that was later published in a collection of his essays, Rush (1806, 150) outlined his vision:

Let a large house be erected in a convenient part of the state. Let it be divided into a number of apartments, reserving one large room for public worship. Let cells be provided for the solitary confinement of such persons as are of a refractory temper. Let the house be supplied with the materials, and the instruments for carrying on such manufactures as can be conducted with the least instruction, or previous knowledge. Let a garden adjoin this house, in which the culprits may occasionally work, and walk. This spot will have a beneficial effect not only upon health, but morals, for it will lead them to a familiarity with those pure and natural objects which are calculated to renew the connection of fallen man with his creator. Let the name of this house convey an idea of its benevolent and salutary design, but let it by no means be called a prison, or by any other name that is associated with what is infamous in the opinion of mankind.

This vision of confinement was heavily influential in the subsequent developments.⁵

In 1790, after other attempts at reforming punishment, the Pennsylvania legislature, encouraged by penal reformers like Rush, restructured its Walnut Street Jail. The new Walnut Street Prison was a significant break with the past. First, for the first time, convicted felons would be confined in a state-run institution; Walnut Street was effectively the first state prison. Second, though still largely familiar as a simple jail, Walnut Street began to separate criminals. To prevent the spread of vice between the more and less criminally inclined, prisoners were housed according to a classification system based on gender, the nature of the criminal (young or old, hardened or cooperative), and the criminals period of confinement. Third, the Pennsylvania legislature provided for “the addition of unremitted solitude to laborious employment” (Pennsylvania, 1790, 511). This solitude allowed inmates enable time for reflection, which many reformers believed was necessary for the reformation of character. Additionally, the terror of solitary confinement was intended to deter would-be offenders. Prison labor, it was hoped, would remunerate some of the losses of the inmates’ support. These changes were quite significant: no longer would the facility simply hold offenders indiscriminately together, with little to organize their day, and no efforts to change their criminal propensities.

However, the reality of the experiment at Walnut Street never fully conformed to the plan. The unremitting solitude imagined by the statute was never actually part of prison management. The prison only had 16 solitary cells (Teeters, 1955, 19), while most prisoners remained in large rooms, albeit segregated by sex and criminality. Only those criminals who misbehaved while incarcerated were sent to the solitary cells and were forced to remain silent, alone, and without work or other distractions, but only for a few days.⁶

Despite Walnut Street’s somewhat meager advancement over earlier jails in practice (McLennan, 2008), this “penitentiary house” model, as it was sometimes called, was tremendously popular

⁵The debate over how inmates should be governed while incarcerated predated the late eighteenth-century developments (e.g., Spierenburg, 1991; Foucault, 1965) and in many ways informed them (Dumm, 1987). However, the question was generally irrelevant until incarceration became a major feature of the penal system.

⁶Meranze explains,

in other states. First copied in New York's Newgate Jail, other states built more penitentiary houses over the next thirty years or so (see Table 2.1). By 1810, ten of the 17 states had built a penitentiary house (Rothman, 1971, 61). As McLennan (2008, 38) explains, "for the first time, the great majority of the country's duly convicted offenders were undergoing their punishment within the walls of a carceral institution." However, the popularity of the penitentiary house was short lived.

City and State	Year
Hartford County, Connecticut	1790
Philadelphia, Pennsylvania	1790
New York, New York	1796
Trenton, New Jersey	1797
Frankfort, Kentucky	1798
Richmond, Virginia	1800
Baltimore, Maryland	1804
Charlestown, Massachusetts	1805
Windsor, Vermont	1809
Tennessee	<1810
Concord, New Hampshire	1812
Columbus, Ohio	1816
Georgia	1817

Table 2.1: The Diffusion of Early State Prisons or Proto-Prisons, 1790–1817.

Dates represent either the date of legislative authorization or the date of opening. *Source:* Lewis (1922); Barnes (1921); McKelvey (1977); Keve (1991); Carlton (1971); Shugg (2000); Keve (1986).

Reformers began to question the merit of this first reform in the 1800s and 1810s. Riots, fires, escapes, and other forms of inmate misconduct compounded a general Jacksonian anxiety about crime. Walnut Street experienced 4 large riots between 1817 and 1821, while New York's Newgate Prison suffered "serious insurrections in 1818, 1819, 1821, and 1822" (McLennan, 2008, 44). The new jails were thought unsuccessful at preventing contamination and ultimately adding to a perceived crime wave (Meranze, 1996; Rothman, 1971). Some reformers suggested abandoning the whole project (McLennan, 2008), while others searched for modifications. It was in this atmosphere that the modern cellular prison emerged.

2.1.2 The Emergence of Modern Prisons

To quell problems with disorder, states sought to expand the use of solitary confinement at new, larger prisons. In 1818 and 1821, the Pennsylvania legislature authorized the construction of two new prisons, Western State Penitentiary in Allegheny County and Eastern State Penitentiary in Philadelphia, to follow "the principle of solitary confinement" (Pennsylvania, 1821). Unlike at Walnut Street, solitary confinement was provided for all inmates and it would persist through their entire sentence. New York took a more moderate approach. At Auburn State Prison, a new prison

Although solitary confinement had an important role in support of prison authority, it was not the linchpin of the prison order. Not all inmates suffered solitude. Not even all those who violated prison regulations were sent to the cells. Solitude was the last, not the first, resort of discipline. Contact with and pressure from prison officers was the immediate response. Solitary confinement was only one technique within a wider economy of communication—an economy marked by conflict and insubordination. (Meranze, 1996, 196)

constructed in upstate New York, the legislature authorized a hybrid system in which some inmates were in solitary cells and others were held in conditions more similar to the Walnut Street model.⁷ Those inmates sentenced to solitary would sleep and eat in their cells, approximately three feet wide, with no distractions—no work, no communication—and they were not permitted to leave. The experiment began on Christmas Day 1821 (Lewis, 1922, 81). The results were disastrous: the cells were too narrow to allow inmates sufficient exercise and they sustained muscle atrophy and developed diseases (Barnes, 1921, 53); insanity and suicide were the results for others. Auburn's Warden, Gershom Powers, reported, "one [inmate] was so desperate that he sprang from his cell, when the door was opened, and threw himself from the gallery upon the pavement. . . . Another beat and mangled his head against the walls of his cell until he destroyed one of his eyes" (cited in Lewis, 1922, 82). The surviving inmates received pardons.⁸

Following the disaster at Auburn, New York created a new system of confinement—one that would dominate the field. Inmates now silently worked together in factories within the prison during the day. Still concerned with the potential for contamination, officials forbade inmates from looking at each other, let alone speaking with each other. Inmates were ordered to walk in lock step (to increase discipline and make conversation difficult) while misconduct was punished by whipping. At night inmates would retreat to their cells and sleep alone. At Auburn itself, inmates would also eat alone in their cells, but at New York's new Sing Sing prison, which was completed in 1828, inmates ate together, but silently nonetheless (McLennan, 2008; Lewis, 1965). This mode of confinement, became known as the Silent System, the Congregate System, or the Auburn System, and it was tremendously popular.

However, many penal reformers and others concerned were unconvinced by the ability of silence alone to prevent cross contamination. They continued to insist on the necessity of inmates' physical separation from one another, which was only possible through solitary confinement. This school of thought was strongest in Pennsylvania. In 1818 and 1821, before the Auburn disaster, the legislature had authorized the building of two state prisons, Western State Penitentiary and Eastern State Penitentiary, respectively. Both were initially authorized to follow a system of total and unmitigated solitary confinement, much like the practice at Auburn. However, the architecture at Western made separation impossible when it opened in 1826, while the disaster at Auburn suggested against maintaining inmates in unmitigated solitary confinement. Thus, in 1829, the legislature comprised, authorizing "solitary or separate confinement at hard labor" in both prisons. Under the Pennsylvania System, as it came to be known, inmates would be housed separately in cells large enough to allow the inmate to work, sleep, pray, read, and exercise in, never needing to leave their cells, except to walk in a small, enclosed garden attached to each cell. Inmates would not be permitted to talk, except when official visitors (prison officials, legislators, and invited guests including elite reformers and European diplomats). Their silent existence, their solitary labor, and their time to pray would allow them to reflect and ultimately reform their lives. Moreover, the System promised the inmate anonymity so that he could reenter society unrecognized and unimpeded from his quest to upright living: inmates were known by numbers only, while inmates were hooded as they were escorted to their cells to protect their identities even from the guards. These

⁷Auburn's construction was authorized in 1816; solitary confinement was added in 1819.

⁸The experience was repeated elsewhere. For example, Maine adopted the system in 1823 with similar consequences. "One man, sentenced to 70 days, hung himself after four days; another man, condemned to 60 days, committed suicide after 24 days. Many prisoners had to be repeatedly taken from solitary confinement to the hospital in order to be restored to a condition that would permit them again to be returned to the same torture!" The system was finally abandoned in 1827 (Lewis, 1922, 147-148).

ideas shaped the understanding of the Pennsylvania System for the next forty years.

2.2 The Antebellum Carceral Field

These two models of prison discipline, the Auburn System and the Pennsylvania System, became the basis of American and European understandings of what carceral punishment should look like for much of the subsequent history. After the innovation at Auburn State Prison, other states quickly followed, including Maine (1823), Kentucky (1825), Connecticut (1827), Massachusetts (1829), Maryland (1829), Ohio (1834), and Michigan (1839). (See Figure 2.1.) The Auburn System's potential for profit, particularly attractive for states struggling to effectively tax their citizens, has often received much of the credit for its success over the Pennsylvania System (e.g., McLennan, 2008, 63–64). By 1860, most of the 31 state prisons in existence followed the Auburn System.

By contrast, the Pennsylvania System had very little impact on the development of American prisons—at least if we measure by the number of prisons that adopted it. Some prisons borrowed aspects of the Pennsylvania System or experimented with it for several years—especially those built following the penitentiary-house wave—but quickly converted to the Auburn System. The Pennsylvania System was largely adopted and retained only in Quaker stronghold states, New Jersey (1833–1858) and Rhode Island (1838–1844). After these two states abandoned the Pennsylvania System, only Pennsylvania's Eastern and Western State Penitentiaries were the last two prisons to follow the Pennsylvania System.

Three characteristics of this development are particularly noteworthy: First, the diffusion of prisons generally and the Auburn System specifically was incredibly rapid, considering the state action required. Within the three decades since the tumult in the early proto-prisons, most American prisons had turned to the Auburn System. Second, the diffusion was widespread. Prisons were adopted in the frontier states as well as the more establish coastal states, and, more surprisingly, in both the North and the South. While Southern criminal justice was highly stratified, with slavery the primary penal mechanism for African Americans, Southern states were just as enthusiastic consumers of the prison and the Auburn System (Ayers, 1984; McLennan, 2008). Finally, the resulting carceral field was highly isomorphic: prisons looked very similar to each other, from their fortress-like architecture to their embrace of the Auburn System.

2.2.1 The Limitations of Traditional Accounts

An extensive body of scholarship has emerged to explain the rise of the proto-prison and prison and their dominance over the earlier system of primarily corporal and capital punishments. Three accounts, focusing on cultural, political, and economic factors, have been particularly influential.⁹ Rothman (1971) offers a cultural explanation of the emergence of the prison and other asylums in the antebellum United States. Specifically, Rothman suggests that upper- and middle-class reformers reacted to a sense that their social order was disintegrating in the wake of the revolutionary changes in their society. Under a growing sense of disorder, they turned to prisons and other asylums that would impose strict order and cure the most glaring manifestations of disorder—crime, delinquency, poverty, insanity. The emergence of prisons was thus the result of changing cultural

⁹While their primary focus is elsewhere, these accounts touch on the American prison and their explanations have also been the basis for additional accounts that are focused primarily on American prisons.

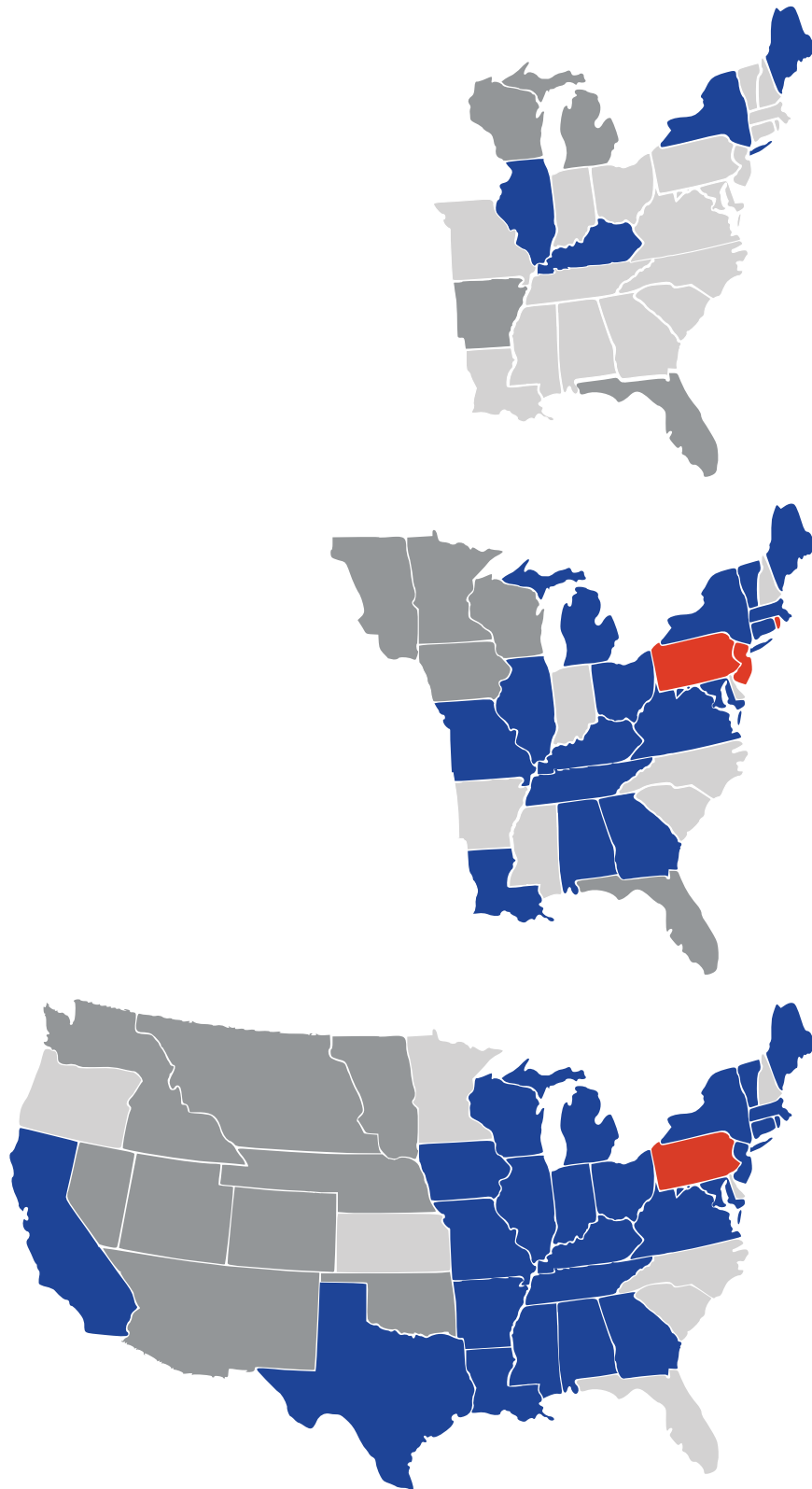


Figure 2.1: The Diffusion of Systems of Prison Discipline in 1825, 1840, and 1860.

Red states represent adoption of the Pennsylvania System. Blue represents adoption of the Auburn System. Light grey states represent those states that existed in the Union but did not have a prison. Darker grey states represent territories or other lands not yet part of the United States. *Source:* Table C.1.

perceptions following the seismic shifts in the social, political, and economic relations in society (see also Hirsch, 1992).

Focusing primarily on the European adoption of the prison, Foucault (1977) offers a cultural-political explanation. Foucault suggests that older forms of punishment, especially scaffold-based executions, became increasingly problematic technologies of power; rather than illustrating the political might of the monarch, they became liabilities as crowds cheered the condemned or committed crime. Instead, as societies entered a new economic-social order that required greater restraint and insisted on a capitalistic work schedule (with which day-long execution festivals conflicted), authorities turned to more “efficient” forms of punishment. Through the surveillance and control mechanisms available in prisons, inmates could be taught to internalize self-control and “discipline” themselves to behave the way authorities wanted. Discipline and control could be achieved without the expensive, time-consuming, and otherwise problematic penal festivals of earlier times. For Foucault, prisons represented a more efficient exercise of power than earlier penal technologies (see also Meranze, 1996).

Finally, Rusche and Kirchheimer (1939), offer a political-economic explanation for both European and American penal reforms. Rusche and Kirchheimer suggest that prisons were the result of the shift towards a more industrial economic order. Each penal epoch, they argued, was tied to a corresponding economic order (feudalism, mercantilism, industrialism, capitalism) and the specific labor needs. Capital and corporal punishments had worked well under feudalism when the labor supply was more than needed and surplus populations could be dispensed with. However, population declines and the shift to mercantilism at the end of the sixteenth century made productive bodies more valuable, and capital and corporal punishments wasteful. Thus, states turned to alternatives like galley slavery, convict transportation, and houses of correction. While industrialization in Europe caused additional shifts as the demand for labor declined, they argue that America experienced a significant demand for labor. Factory-style prisons like Auburn were attractive alternatives to capital punishment, but also useful ways of extracting labor from inmates. It was thus the particular needs of the labor market that, for them, accounted for the turn to modern prisons in the United States (see also Melossi and Pavarini, 1981; McLennan, 2008).

While scholars have pointed out theoretical or factual problems with each, these accounts have nevertheless been tremendously influential in making sense of the development of the prison. However, these highly compelling theories cannot account for the rapid, widespread, and isomorphic diffusion of the prison. At the most basic level, each explanation posits a central factor—culture, power, economy—to account for an incredibly widespread phenomena. Given the diversity of the jurisdictions in which the prisons were adopted, single-factor explanations are problematic. Indeed, some scholars have been attuned to the distinctive needs of the southern economy (e.g., Hindus, 1980), which explains their weaker reliance on the prison in the antebellum period. However, these differences only account for the variable intensity with which prisons were supported and used. We still have no compelling account that explains why such diverse societies adopted prisons at all, let alone prisons that were so similar in their formal structures (like the Auburn System).

I suggest that the primary problem with these accounts is their shared assumption that the same mechanism is responsible for the initial idea of the reform as for its diffusion. Indeed, I do not challenge the mechanisms these accounts offer as inspiring the initial idea of reform or even the initial support for it. These mechanisms explain very well why penal reform was so salient to citizens of New York, Boston, and Philadelphia. However, the perception of social disorder, the appeal of discipline, and the potential impact on the economy was not static across time or place. It seems unlikely that the same mechanisms would make these reforms appear equally attractive

across the new states to the West and those to the South. It also seems unlikely that the tensions in the aftermath of the Revolution that spurred reform in the 1820s persisted to those states adopting prisons in the 1850s and 1860s. Indeed, the cultural, political, and economic situations of each state varied incredibly by region: New England, central states, Southern states; frontier states and coastal states; states with large cities and states that were largely rural; states that relied on slavery after the 1810s and those that did not; states with weak central governments and states with strong central governments. Given variation in the strength of the mechanism, we should observe variation in the adoption of prisons, but we do not. Frontier states adopted the prisons as they became states, and sometimes even before. Many Southern states adopted the prison in the same year as northern states did (Ayers, 1984). Indeed, the prison was adopted in nearly every state by the time of the Civil War. Only Delaware and West Virginia lacked state prisons as of 1867 (Wines and Dwight, 1967, 86, 100) and one would be hard pressed to find a cultural, political, or economic similarity between these states that helps to account for it.

If traditional accounts of the rise of the prison cannot help to explain its rapid, widespread, and isomorphic diffusion, we must search for new theoretical frameworks that can.

2.3 A Neo-Institutional Account

The early penal field developed quite as neo-institutionalists would have predicted. The existence of two factors—intense uncertainty (mimetic pressures) and the influence of penal reformers (normative pressures)—help to explain the rapid and widespread diffusion of the Auburn System.¹⁰ I explore these below.

2.3.1 Mimetic Pressures

Uncertainty permeated the young penal field. The idea of incarceration as punishment, the prison itself, was new. The technology of the prison was untested and poorly understood. Actors across the field referred to prison practice as an “experiment,” expressing their level of unpredictability. Heated philosophical debates over prison design—particularly the Auburn System and the Pennsylvania System—discussed intricate details of prison practices because individuals had little evidence to rely upon, turning to logical arguments in the absence of meaningful experience. There was thus widespread uncertainty about best practices. And the stakes were high: failure could include anything from the death and insanity of inmates, as occurred in early experiments at Auburn State Prison, to the death of the fragile republic, as some members of the middle class feared following the increase in urban crime associated with the failure of an earlier generation of penal reforms and proto-prisons (Meranze, 1996; Rothman, 1971).

In addition to technological uncertainty, penal actors also faced goal ambiguity. Penal actors outlined multiple, often conflicting purposes of punishment. Many commentators were focused on inmate reformation—changing the inmate’s character through education, training, or spiritual reflection such that he no longer needed or desired to commit crime—as well as deterrence—dissuading would-be offenders from committing future crime by imposing punishment for wrong-

¹⁰DiMaggio and Powell (1983, 155-156) identify several additional factors that would further predict rapid diffusion: Prisons were “dependent on a single (or several similar) source of support for vital resources,” namely the state. As a state-run agency, it had numerous “transact[ions] with agencies of the state.” Despite the claim to experimentation, most states copied or very slightly altered existing forms of confinement, leading to a limited “number of visible alternative organizational models.”

doing or displaying the punishment of wrongdoers. Another theme was simply to avoid making anyone—observers or the punished—worse because of the punishment.¹¹ While they eschewed vengeance as an inappropriate goal of punishment, penal actors acknowledged the propriety of punishing criminals and emphasized the need for proportionality (something the infinitely customizable length of prison sentences was thought to provide). More generally, punishment was intended to serve the goal of public safety, and crime reduction specifically, but it was expected to do so in cost-effective and humane ways. Several goals within this diverse set of ends are somewhat ambiguous and subject to interpretation: What exactly would reform mean? For example, must there be a religious component? Do we intend an “honest,” “industrious,” and “useful” citizen (common refrains) or simply someone who abstains from crime? What exactly is proportionate punishment? If execution is not a proportionate to murder, is life in prison or 15 years? Should truly punitive punishment consist of a sentence at hard labor or solitary reflection? In addition to being a diverse and ambiguous set of goals, satisfying one goal often frustrated another. The level of punishment required for deterrence may be at odds with the level required by proportionality; the mode of punishment necessary for reformation may not deter or punish a wrongdoer sufficiently. Satisfying any of the crime reduction goals (deterrence, reform) may be too expensive, while deterrence and retribution may violate some definitions of humane punishment. Nor was a clear hierarchy available to resolve the conflict. This uncertainty exacerbated the uncertainty over the appropriate or best forms of punishment.

2.3.2 Normative Pressures

While coercive and mimetic pressures were important, they largely set the stage for the much more influential normative pressures exerted by penal reformers. The nineteenth century witnessed an extremely active group of penal reformers, especially in the larger cities like New York, Boston, and Philadelphia (Rothman, 1971; Meranze, 1996; Masur, 1989; Walters, 1978). Many penal reformers were organized into societies specifically founded for this purpose, including the first such society, founded in 1787, the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP), later renamed the Pennsylvania Prison Society (Teeters, 1937). They were particularly interested in causes of crime and the best ways to prevent crime. Much of their attention focused on drafting penal codes, abolishing “undesirable” corporal and capital punishments, and advocating the new carceral punishments. They were particularly concerned with what they called “prison discipline.” Prison discipline was the general description for how prisons would be organized, including the activities inmates performed and rules by which they were governed. These penal reformers individually and collectively visited jails and prisons to identify and prevent abuses, to cater to the inmates, and to inform their understanding of proper prison discipline. With these insights, they lobbied state legislatures and published letters or pamphlets on the topic of prison discipline. Through frequent (often weekly) meetings of their reform societies, lobbying efforts, propaganda (public debates, treatises, pamphlets, and articles), positions on prison visiting committees and even official boards of inspectors, prison reformers were well positioned to influence penal policy. They were apparently successful as their suggestions were translated into policy and their arguments repeated by state legislatures, prison administrators, other penal reformers, and third-party observers.

¹¹Poorhouses, colonial jails, and earlier attempts at long-term confinement (e.g., Walnut Street Jail) were believed to enable cross-contamination of its inhabitants producing “schools of vice” (a common refrain), while public punishments (executions, public labor, corporal punishment) could make observers (particularly the poor attending for entertainment) more violent (Masur, 1989; Banner, 2002).

These reformers were the primary drivers of penal reform at the state and local level in this period, contributing to the revision of state penal codes, gaining legislative authorization of new carceral facilities, shaping the mode of confinement for jails and prisons. In particular, a major cause of the rapid diffusion of the modern prison and, especially, the Auburn System was the debate over prison discipline between rival penal reform societies. Members of the PSAMPP, championing the Pennsylvania System, were locked in a vicious battle against the Boston Prison Discipline Society (BPDS, f. 1825), later joined by the New York Prison Association (NYPA, f. 1844), which championed the Auburn System. The debate took place primarily in published documents: the societies' widely circulated annual reports, single-authored pamphlets, small treatises, travel diaries, and letters to other penal reformers—all of which were frequently republished by reviews and other periodicals.

More than simply arguing in favor of the Auburn System's merits, the New England-based reformers crafted explanations about the moral and practical problems in the Pennsylvania System. First, they argued, it was too expensive and unprofitable. Building sufficiently large cells for each inmate was prohibitively expensive, while this expenditure would not be repaid by the traditional craft-style labor used in the System. By contrast, the factory-style labor of the Auburn System was much more efficient and produced more sought after goods. Second, the Pennsylvania System was dangerous to inmates' mental and physical health because of its reliance on "solitary confinement." For this, they drew the earlier experiments with total, long-term solitary confinement, particularly at Auburn (1821–1823), which resulted in illness, insanity, death, and suicide. They also provided more logical explanations of how the Pennsylvania System would produce these bad outcomes. Third, and partially as a consequence of the expected impact on health, the Pennsylvania System was cruel and inhumane: humans are social creatures, reformers argued, and to lock them up away from human contact for years would be akin to torture. Finally, they argued that the Pennsylvania System was impractical and ineffective. The hardest criminals would be unaffected by their conscience to be reformed. Moreover, too many problems would plague its implementation (inmates would be able to communicate through the pipes as they had at earlier facilities, inmates would need to be relieved from the solitude necessitating violations of the Pennsylvania System) and the preconditions of reform could not be achieved. For all of these reasons, they argued, the Pennsylvania System was vastly inferior to the Auburn System.

The reformers primarily propagated these myths in their annual reports and independent writings. In one of their annual reports, the Boston Prison Discipline Society explained:

It has also been said, that the Pennsylvania system is not injurious to health. We have always felt distrustful of the system, on this ground; because we have not known, from the nature of man, how he could be confined day and night in solitude, for a short term of years, to so narrow a space, and have his cell made his work-shop, his bed-room, his dining-hall, his water-closet, his chapel, &c., without getting the air and himself into a condition unfavorable to health. (BPDS 1835, 884)

Following this statement, the Society presented statistics that showed Eastern to have a higher mortality than Charlestown, Auburn, and Wethersfield prisons (each following the Auburn System). Through logic and evidence, they conveyed the belief that the Pennsylvania System was bad for inmate health. Their reports provided discussions like these for the cost and efficacy of the prison, as well as more theoretical discussions of its cruelty.

To these claims, Philadelphia-based reformers responded with critiques of the Auburn System and defenses of the Pennsylvania System. They pointed to the use of the whip at Auburn and derided the profit motivation of its proponents. They also argued the logical advantages of

fully separating inmates from one another, arguing that silence was not sufficient. However, these reformers' arguments were far less persuasive to states and prison administrators. Instead, the arguments in favor of the Auburn System and against the Pennsylvania System—they were two sides of the same coin—were often the justifications made by state legislatures and prison administrators in their decisions to adopt the Auburn System and reject the Pennsylvania System. They were repeated so frequently that they acted as a kind of social fact—it was simply expected that a prison on the Pennsylvania System would fail to perform well financially or to sustain the mental and physical health of their inmates.

The debate culminated in a substantial pamphlet war, particularly in the 1830s and 1840s (see Table 2.2). One third-party observer of the debate summarized the arguments, as well as one view, of the debate well,

“You drive the prisoners mad,” cries Boston, “by the long continued horrors of solitary confinement”; “You subject the criminals to the cruel and degrading punishment of the lash,” shouts Philadelphia. “Your own statistics,” exclaims the former,” show a fearful amount of insanity and mortality in your prisons”; “Figures prove nothing, and there is a mistake in your calculations,” retorts the latter. And so it goes; the quarrel is a very pretty quarrel, and if we had the Irishman’s disposition to be “any body’s customer in a row,” we might be tempted to engage in it, having an opinion of our own to support; and in this matter, certainly, we could not find a more courteous and gallant opponent with whom to break a lance than Dr. Howe [an author of a widely read pamphlet on penal reform]. But for the present, at least, we decline the contest. (NAR, 1845, 259)

Although the debate subsided in the 1850s and had ended (in most commentators’ opinions) by the 1860s, individual penal reformers and penal reform societies continued to minister to their local inmates, travel to other states’ prisons, and lobby for changes.

Author	Year
William Roscoe	1825
Roberts Vaux	1827, 1830
Charles Shaler, Edward King, and Thomas J. Wharton	1828
Edward Livingston	1828, 1836
George Washington Smith	1833
de Beaumont and de Tocqueville*	1833
William Crawford*	1835
Charles Lucas*	1837
Francis Lieber	1838
Charles Dickens*	1842
Dorthea Dix	1845
Samuel Gridley Howe	1846
Francis C. Gray	1848
Richard Vaux	1872

Table 2.2: The Pamphlet War Over Prison Discipline.

These represent widely published letters, pamphlets, and reports on “prison discipline” published by individual penal reformers. I exclude the hundreds of other articles published in newspapers and other periodicals. For example, penal reform societies’ annual reports and their privately funded journals (e.g., the *Pennsylvania Journal of Prison Discipline and Philanthropy*) offered another forum for discussion. Both kinds of publications were also discussed in *North American Review*, a popular review. As the publication dates illustrate, the debate was most intense in the 1830s and 1840s. *Note:* Starred authors were British or European.

The critiques of the Pennsylvania System acted similarly to “rational myths” (Meyer and Rowan, 1977; Heimer and Petty, 2010), but their highly critical tone produced more visceral re-

actions. These “calumnious myths” offered taken-for-granted understandings of why the Auburn System was simply superior to the Pennsylvania System along practical and normative dimensions. Like rational myths, they thus explained the pragmatic purposes behind adopting or relying upon a particular structure, and help institutionalize that structure. However, these calumnious myths differ from traditional rational myths by explicitly criticizing an alternative structure, thereby bringing into relief the merits of the preferred structure. This criticism takes a particularly malicious tone that combines both pragmatic and normative arguments, raising the stakes of the decision to adopt either structure. These myths thus provided incentive and cover for states and prisons adopting the Auburn System and substantial problems of legitimacy for those few that adopted the Pennsylvania System. However, the highly critical tone of these myths, which helped to advantage the Auburn System by emphasizing the defects of the Pennsylvania System, made these especially strong motivators.

2.4 Conclusion

Whatever the reason for their initial inception in Philadelphia and New York, the modern prisons rapidly and widely diffused across the United States. This chapter has suggested institutional pressures contributed substantially to this development. Subject to normative and mimetic mechanisms, state legislatures adopted not only the new organizational form of the state prison, but also the increasingly popular formal structure of the Auburn System. These pressures overrode economic, cultural, and political differences like the southern preferences for slavery, honor, and small government (Ayers, 1984). With virtually no evidence, states accepted the calumnious myths and spurned the Pennsylvania System when they built their new prisons on what they believed was the superior model. However, Eastern and, for a short period, three other prisons adopted and remained on the Pennsylvania System. The next chapter examines the Pennsylvania System at these prisons in more detail and begins to examine alternative explanations for their retention of the Pennsylvania System.

Chapter 3

The Deviant Prison

It is the first, and now the only Penitentiary administered on the Pennsylvania System of convict discipline. (Board of Inspectors for Eastern State Penitentiary, Annual Report, 1875, 23)

3.1 Introduction

While the carceral field was firmly ensconced in the Auburn camp, Eastern’s administrators and some local penal reformers favored the Pennsylvania System. Before exploring some possible explanations for their support, I review the theory and experience of the Pennsylvania System at Eastern. With the major components elucidated, I turn to the specific challenges administrators faced at Eastern, noting especially the heavy criticism they received and the uncertainty they faced when implementing the Pennsylvania System. Finally, I turn to neo-institutional theory, historical factors, and penal theory to explain Eastern’s unique retention of the Pennsylvania System. With little guidance from these factors, I look into the experience at prisons that adopted and then rejected the Pennsylvania System. The absence of alternative explanations and minimal suggestive evidence lays the groundwork for my central argument that administrative support was crucial to the retention of the Pennsylvania System at Eastern, discussed in Part II.

3.2 The Pennsylvania System in 1829

As we saw in Chapter 2, the failure at Western—as well as the other failed experiments with solitary confinement in the field—led the Pennsylvania legislature to change its mode of confinement at its prisons. Drafted by members of the PSAMPP, the penal reform society responsible in large part for the 1790 renovation of Walnut Street Prison, the 1829 statute authorized “solitary or separate confinement” in both Western and Eastern. Pennsylvanians thus retained their emphasis on long-term solitary confinement; however, they added two features that would distinguish their system from the traditional form of solitary. First, and most significantly, inmates were sentenced to “hard labor” during their confinement. Specifically, they would work on workshop-type crafts—shoemaking (cordwaining), weaving, carpentry, tailoring—tasks they could perform without the assistance of other workers and within the space of their cells. Moreover, the products of their work could be used to reimburse the cost of their confinement. Second, inmates would have personal contact with non-inmate others. Prison officials were required to regularly visit with the inmates. Members of the prisons’ Board of Inspectors were charged with visiting the prison twice

a week and to speak with each inmate in these visits; the Warden to visit inmates on a daily basis (Pennsylvania, 1829, Sect. 8). The Physician was required to visit inmates twice a week as well, and more if necessary for health reasons (Sect. 4). Additionally, the overseers (or guards) were required to check the inmates three times a day; however, these visits were presumably faster and less conversational (Sect. 3). Beyond prison personnel, members of the PSAMPP were officially granted access to the prison to visit with the inmates (Sect. 7). Beyond these visits, inmates would have no contact with the outside world, through newspapers or letters, or visits from family members. But these fairly frequent interactions with others enabled defenders of the Pennsylvania System could to distinguish their mode of confinement from solitary confinement—inmates did not go for months or years without human contact—and label it instead “separate confinement,” emphasizing their separation from contaminating influences of their fellow criminals in and outside of the prison ways. These core ideas were the basis of what became known as the Pennsylvania System.

Despite the legislative mandate, little changed at Western at first. The still-unhealthy, small cells were not large enough for solitary inmate labor, either, so inmates continued to help with construction in the open air. With legislative appropriations, parts of the prison were torn down and rebuilt (Doll, 1957). Consequently, the Pennsylvania System was not fully implemented at Western until 1838 (Barnes, 1968, 303). Instead, the Pennsylvania System took effect immediately when Eastern State Penitentiary received its first inmate late in 1829. Indeed, it was really at Eastern that the Pennsylvania System most fully developed in practice.

3.3 Eastern State Penitentiary

3.3.1 The Architecture

Eastern State Penitentiary opened in 1829 on a former cherry orchard outside of Philadelphia. Despite the cheerfulness of its more colloquial moniker, “Cherry Hill,” the street view of Eastern had the potential to terrify a passerby. (This would likely have pleased Benjamin Rush were he alive to see it.) As many have noted, Eastern resembled a medieval castle. Its four external walls—200 feet long, 30 feet high, and 12 feet wide at their base (Teeters and Shearer, 1957, 63)—formed a square perimeter enclosing “approximately twelve acres,” (Lewis, 1922, 124) or the area of about nine football fields. Arrow-slits decorated the walls and turrets stood at each of the four corners. At the center of the front wall stood a barbican (fortified front entry) and portcullis. The turrets and barbican were crowned with crenelated parapets (battlements). Escape from this fortress seemed unlikely, while the prospect of confinement within its walls brought trepidation.

Within these walls lay over five hundred solitary cells.¹ English-born architect John Haviland (1792–1852) designed Eastern’s cell blocks on a “radial” architectural plan: within the square perimeter, the cells composing the prison were housed in seven long corridors emanating from a central building like spokes in a wheel: three to the east, one to the north, and three to the west; where the eighth corridor would have laid, a walkway connected the center building to the front entrance. This radial design developed, but was not yet widely used, in British and European prisons (Johnston, 2004, 32).

¹More specifically, the number of cells varied by year. The initial design allowed for 200 cells. By the end of 1834, the prison had enough cells for 311 inmates, and the construction was ongoing (McElwee, 1835b). Additional appropriations brought the number to 526 by 1866 (Annual Report 1866). More were added in the attempt to match the overcrowding, but the number of new inmates outpaced the cellular additions.

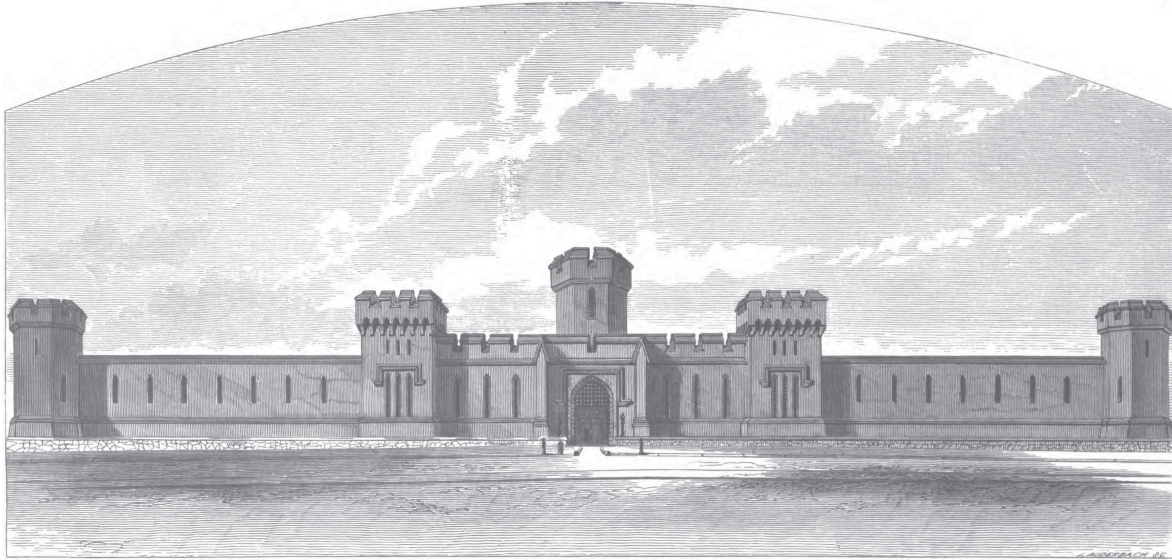


Figure 3.1: The Facade of Eastern State Penitentiary in the 1870s.

Source: Vaux (1872, n.p.).

Each cell block could contain between 36 and 100 inmates. Cells lined the corridors' interiors. The size of individual cells varied: the cells in the first three cell blocks built were smaller (about eight by eight feet), while later cells were larger. All of the cells, however, were far larger than Sing Sing's three-by-seven-foot cells; and, as Norman Johnston (1994c, 49) notes, "The cells at Cherry Hill were unusually large by contemporary and even today's standards."² Moreover, each cell was attached to a private garden (with similar dimensions to the cell), which the inmates could use as an exercise area or to grow various plants to supplement their rations (Smith, 1833, 23). One commentator suggested in the late 1840s, "many of them [the inmates] cultivate a little garden, and raise both flowers and fruits" (JPDP, 1848, 216). However, it appears that yard time was often limited. In the 1860s, "the prisoner is permitted to exercise [in the yard] for the space of one hour each morning in the Summer, and for a somewhat diminished period in the winter—the weather being suitable" (Warden, Annual Report 1862, 46).

More than a terrifying fortress, Eastern State was a high-technological marvel for its day. When the penitentiary opened in 1829, cells were already equipped with amenities (including flushing toilets, showers, and central heating) not yet available to many famous and important buildings, including the White House and the Capitol (Johnston, 2004, 25). Haviland also went to great trouble to ensure inmates would have enough fresh air to stave off jail fever (typhus). One scholar has rightly noted that Eastern State Penitentiary was using the "cutting edge" technology of its time (Johnston, 2004, 25). To visiting foreign dignitaries, Eastern was essentially a tourist destination representing the capacity of American progress and democracy. When Charles Dickens toured America, he stated that he wished most to see Niagara Falls and Eastern State Penitentiary (Vaux, 1872, 111). In the 1860s, over 100,000 people visited Eastern (Johnston, 2004, 25).

²The dimensions of any given cell varied depending on when it was constructed, most were between 7.5 and 8 feet wide, 12 to 16 feet long, and 11 to 14 feet high. Cells built as part of the original construction were slightly smaller, often 7.5x15x11 feet, while the newer cells were slightly larger. "Double cells," or second-story cells that lacked an attached garden, were 17x12x12 feet. (Vaux, 1872, 69–70). The private yards affixed to ground-floor cells were 8x14x11 feet, and thus roughly the size of the cell itself (Vaux, 1872, 71).



Figure 3.2: Eastern State Penitentiary in the 1870s.

The attached gardens are visible in the foreground on either side of the main walkway. The cell blocks to the right were part of the original design; the double-story blocks to the left were added, after the prison opened, to accommodate a larger portion of inmates. *Source:* Vaux (1872, 64).

This impressive structure came with an impressive price. Observers offered various estimates of how much it cost Pennsylvania to build Eastern—this was a particularly important point to observers at the time. According to one observer, “The cost of the building cannot be accurately ascertained, but the following sums are known to have been appropriated by the Legislature...” However, several legislative appropriations between 1821 and 1835 totaled \$772,600.69 (McElwee, 1835b; cited in Vaux, 1872, 63) In their report on the American penitentiary system, de Beaumont and de Tocqueville posited that Eastern “will, at the time of its completion, have cost 432,000 dollars; which makes the price of each cell 1624 dollars,” or ten times the cost of those at Wethersfield State Prison (de Beaumont and de Tocqueville, 1833, 75). Construction costs were an important part of the debate over which model of prison discipline was superior: Eastern was not only unlikely to produce a profit, it was also incredibly expensive to build. For those who cared about cost—a majority of those concerned—Eastern’s expense represented another argument against its mode of confinement.

3.3.2 The Experience

While Eastern was an expensive architectural marvel, it also represented a place of solitude and despair. Although construction was approved in 1821, Eastern State did not receive its first inmate until the fall of 1829 when construction was still on-going. On July 15, 1875, Eastern received its eight-thousandth inmate (PSA, Warden’s Daily Journal). By that time, overcrowding had let

to double celling, but for most inmates in this period, confinement followed the Pennsylvania System. Let us imagine, for a moment, viewing this substantial edifice as a contemporary, as an inmate entering the prison. Let us follow this convict into the prison, as his journey was related by administrators and visitors to the prison.³

An incoming inmate enters through the prison's portcullis: First the outer gate opens allowing the inmate to enter, escorted by the county sheriff from which he was sent. Once that gate was closed, the gate to the interior of the prison would open and the party would proceed. The inmate is taken to a reception room within the prison, where he is stripped, bathed, and given new clothes. The warden interviews him for relevant information and his physical features are recorded. His name recorded in two places only, he would henceforth be referred to by his unique inmate number. Before leaving the room, a hood is placed over his head and he is silently escorted down the corridor to his cell. His escorts would not know his identity, and he would not know theirs. This way, his identity is protected when he leaves the prison—he also cannot learn the prison's layout to escape. The escorts stop in front of a cell, a number placed on top of the door to signify the inmate's identity. As they pause momentarily, it is silent. "Occasionally, there is a drowsy sound from some lone weaver's shuttle, or shoemaker's last, but it is stifled by the thick walls and heavy dungeon-door, and only serves to make the general stillness more profound" (Dickens, 1842). As the escorts leave, the pair of doors to his cell—a metal grate and a heavy wooden door—close behind them.

The inmate is now alone inside his cell, without work to perform or a bible to read. The room is large enough to healthfully and productively spend the duration of the years to come without leaving their cell—approximately eight feet by 14 feet and 11 feet high. The cell is roomy for a prison, but to its new occupant, it is exceedingly claustrophobic. The inmate walks to the opposite side of his cell to look through a small window to his private garden, mirroring the same dimensions of his cell. He can see the sky above him through a skylight. He examines the bare contents of the room: "a bedstead, clothes rail, seat, shelf, tin cup, wash basin, victuals pan, looking glass, combs, scrubbing brush and sweeping brush, straw mattress, and one sheet, one blanket and one coverlet" (McElwee, 1835b). After what seems like days, the inmate hears a latch moving; he approaches his door and retrieves his meal through a small opening in the door. He does not see out; he never saw the person who delivered the meal. It is some broth and mutton, perhaps some okra as well, or some other fresh vegetable. After another eternity, the lights extinguish. It is silent and cold as he lies in his bed, dreading the years to come. In the morning, he retrieves bread and coffee (Physician, Annual Report 1845, 35). A new day.

After a few days, he is provided with work, a welcome reprieve to the boredom and melancholy that has set in. Now his room contains a "loom, or bench, or wheel"; he moves his bed during the day so he has more room to work. He is also allowed "a Bible, and a slate and pencil" (Dickens, 1842). He is also allowed into his garden. After a few more days, he is given enough fresh water to bathe. On Sunday, the inmate opens a latch in his door and listens attentively to the minister preaching down the corridor; perhaps he does not believe the words, but it is better than the silence. As the days and weeks pass, he becomes more efficient at his tasks, producing more shoes than he had when he first entered. He learns to look forward to his opportunity to leave his cell for his little garden. At first, he had hoped to hear from a neighboring inmate, but he does not; neighboring inmates are never allowed in their gardens at the same time. Perhaps he will plant some vegetables in his garden when the weather improves. He also grows fond of the regular visits

³This is a creative interpretation of the process, but one heavily reliant on official accounts from the prison's administrators as well as from visitors to the prison.

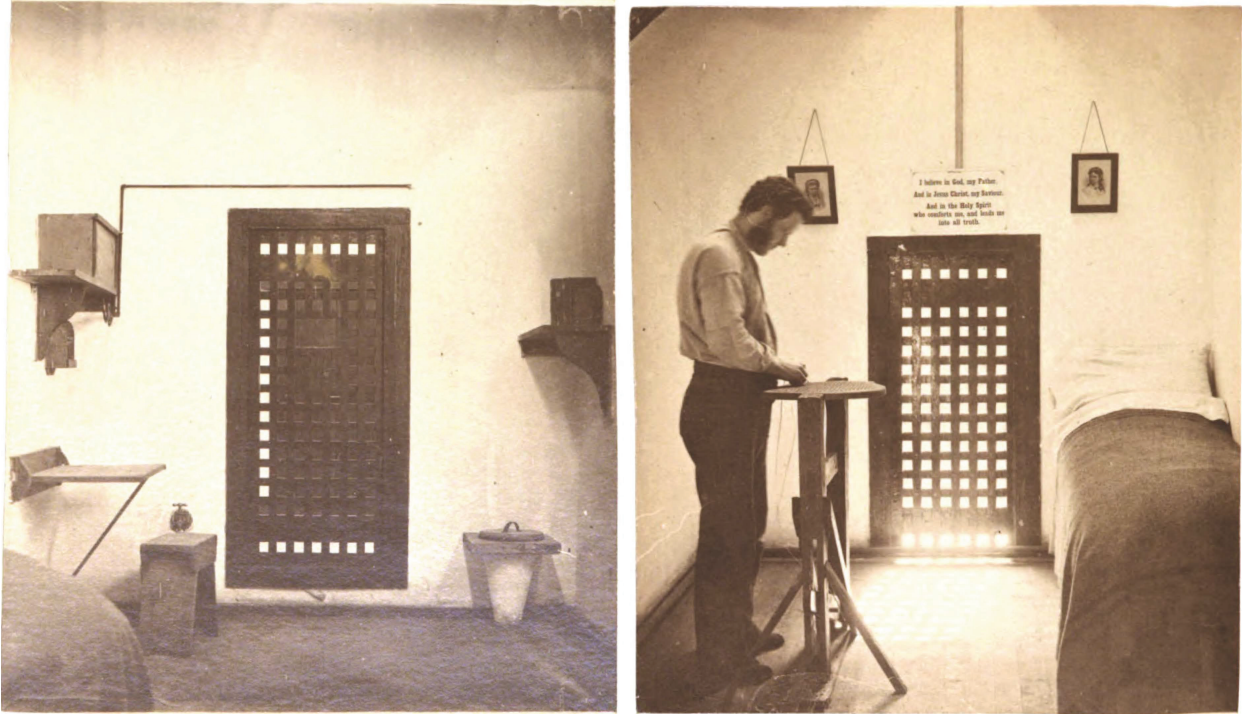


Figure 3.3: A Cell at Eastern State Penitentiary in the 1870s.

Source: Vaux (1872, 98)

from the warden, the inspectors, even the do-gooder volunteers from that Society. His visitors can be condescending and naive, but at least he can talk with someone. The weeks continue like this. He thinks to himself, It will be over one day.

This was the aspiration. Through solitude, bereft of immoral distractions or influences, the inmate is forced to learn the benefits of labor and take solace in religious ministrations; perhaps he even learns how to read. He leaves the prison a better man.

The reality was something quite different. In the day time, doors were left ajar.⁴ Inmates and guards alike knew the names of the inmates. Guards were statutorily required to be present when the inmate arrived in order to familiarize themselves with the inmate's countenance, should he or she escape. The guards also spoke informally with the inmates, sometimes using improper language (i.e., swearing) or making inappropriate comments (e.g., questioning the existence of

⁴In several cases, inmates are described as being allowed greater freedom of movement than one would expect inside a nineteenth century prison, especially one following the separate system. Several inmates interviewed by Foulke discuss their ability to leave their doors to the corridor open. In his May 9, 1846, interview with inmate No. 1976, the inmate praised his treatment at Eastern, noting, “[H]ere his door was often open and he was allowed to go into the corridor with boots. That his Keeper (Smith) was a gentleman” (APS Foulke Papers, prison journal, no page). Similarly, when meeting with inmate No. 1407 in January of that year, Foulke noted, “there was a degree of pride in his manner when he spoke of his having the free use of his yard all day, and also that he could have his door or wi[c]ket [i.e., a small door within the bigger door] into the corridor, ajar” (APS, Foulke Papers, Prison Journals January 24, 1846). These instances seem to have been sanctioned by the guards in charge of the blocks in which the inmates were housed. There are also a number of instances in which official visitors, especially those from the PSAMPP, visited the inmates and left the door open during their visit, though the inmates would not exit the cell during this time.



Figure 3.4: Inside a Cell Block at Eastern State Penitentiary in the 1870s.

Source: Vaux (1872, 68).

god). Sometimes, guards provided inmates with inappropriate reading material. Inmates knew other inmate's identities. A pair of inmates even started a business after they were released (APS, Foulke Papers, Prison Journals, January 18, 1846). Inmates inscribed their names in bobbins—wooden poles wrapped with raw wool more skilled inmates would use in their looms—which they circulated to other inmates in the prison, as they were supposed to (APS, Foulke Papers, Prison Journals, March 21, 1846). That their identities were known was problematic; but perhaps more important was the communication itself. Eastern's inmates developed a variety of communication techniques. At night, soft tapping sounds could be heard on the pipes throughout the prison, forming a communication network among the inmates; one inmate complained it that “it annoys him” (APS, Foulke Papers, Prison Journals, January 24, 1846). Inmates also communicated through their cells' skylights, sometimes stand atop their looms or other work equipment. One inmate broke a limb after falling from his loom for this purpose (PSA, Warden's Daily Journal, May 14, 1837). Others passed letters to each other or met clandestinely in the prison's cellar (APS, Elwell Correspondence). Several of the guards tolerated these violations of the Pennsylvania System, and there is partial evidence that even the administrators knew of them but did little to stop them. As we will see in Chapter 7, a number of administrative practices even accidentally facilitated these violations. However, most often, the administrators found these frustrating incidents and frequently punished inmates who were caught.

3.3.3 The Administration of Eastern

Several high-level administrators were charged with implementing the Pennsylvania System at Eastern. The prison's primary managers were its the Board of Inspectors—five men appointed by the Pennsylvania Supreme Court judges. They held meetings and a subcommittee of two inspec-

tors visited the inmates on a weekly basis.⁵ The Inspectors set policies and gave directives to the other administrators. The Inspectors appointed the Warden, the administrator primarily in charge of the prison and its day-to-day functions. He (it was always a he) too visited the prisoners, but he also supervised the overseers or guards, interviewed the prisoners as they entered and exited the prison, and meted out punishment to refractory inmates (some cases of punishment required the Inspectors' approval). The next most important "officer" of the prison was the Physician, who supervised inmate health and treated unwell inmates. At times, the Physicians' authority vis-a-vis the warden increased: in earlier years, when the warden left for a vacation or was sick, one of the more trusted overseers was put in charge; in later years, the Physician or the Clerk was put in charge. Indeed, the Physician clashed with the Warden over health policies several times throughout the period, and the inspectors would decide between them. For example, around the late 1840s or early 1850s, the Physicians supported deviations from the Pennsylvania System that the Wardens often disapproved; these deviations were authorized. Finally, the Moral Instructor supervised the moral or religious and often educational training of the inmates. He, too, interviewed inmates as they entered and left the prison, but he also visited them on a nearly weekly basis and provided sermons on Sundays (supplemented by the assistance of other ministers). The prison also supported a Clerk, who helped the Inspectors supervise the prison's finances and worked to keep up many of the prison's statistics, and later a School Teacher, who helped the Moral Instructor. However, the administrators, those high-level personnel who had a significant say in prison policy and were required to offer annual reports to the legislature, consisted of the Board, Warden, Physician, and Moral Instructor.

As is evident from this sketch of Eastern's administration, Eastern was squarely a pre-bureaucratic organization for much of the period examined. Until 1880, and to a large extent after, Eastern was run by gentleman reformers—middle- and upper-class men who were involved in penal reform, and some other reform movements.⁶ They had little or no formal training; about a dozen of the administrators had worked in other penal facilities and had been involved in the PSAMPP and its efforts to reform parts of the penal system. Warden Samuel Wood (1829–1840) had been the Warden of Walnut Street Jail prior to his appointment at Eastern; he had also toured the prisons of Europe, prior to his tenure at Eastern, for his own edification. Several of the early administrators, including Warden Wood and Inspectors Thomas Bradford (1829–1843) and John Bacon (1831–1851), were also involved in drafting the 1829 law (Thomas Bradford, APS, Legislative Investigation, 1835, no page). Several administrators had a family history of penal reform: Inspector and long-time advocate of the Pennsylvania System, Richard Vaux (1841–1895), was son of Roberts Vaux, while John Halloway (1856–1870) was the son of one of Walnut Street Jail's "principal keepers" (Teeters and Shearer, 1957, 90) and was given the position of clerk for many years before becoming warden.⁷ About half of the inspectors held elected positions elsewhere in

⁵This structure of a subcommittee of Visiting Inspectors seems to have been modeled on PSAMPP, who also had a subcommittee of visitors to the prison. Indeed, the structure of the Inspectors' meetings—stated meetings and special meetings, for example—also reflected the structure of the penal reformers' organization. This is likely due to the overlap in their memberships.

⁶Reading the warden's daily journal, one is struck by the highly social nature of prison administration. They often attended meetings with fellow gentlemen. Their interactions with guests to the prison (European travelers, diplomats, and royalty; local and national legislators; judges and jurors; visiting penal reformers and administrators; and others) often included a tour and were followed by tea and/or a meal. Even their descriptions of these "visits" implied the social nature (PSA, Warden's Daily Journal).

⁷An obituary of Halloway noted that he "was born and raised in its [Walnut Street Jail's walls]" (The Daily Evening

government, including three Mayors of Philadelphia and three State Senators. Businessmen and lawyers were also well represented (see Appendix F). Wardens especially did not persist in their criminal justice careers: Wood went on to be “first Master” at the Northumberland Post Office (APS, Foulke Papers, Prison Journals, October 15, 1849), while George Thompson (1841–1845) ended his career at Eastern to go into business. The first warden to be appointed who had risen through the ranks was Halloway, who had been clerk continuously since 1837. The first “‘career’ warden” (Teeters and Shearer, 1957, 90), however, was Michael J. Cassidy (1880–1900), who had been an overseer and later a deputy warden before gaining his position as warden (PSA, Warden’s Daily Journal).

In addition to little training, Eastern’s administrators had fairly flexible work hours. Inspectors often lived in the city of Philadelphia and travelled the distance in carriage or on horse. As one inspector explained, “It was my habit to ride out on horseback, before breakfast, as well as in the afternoon” (Former Inspector Benjamin W. Richards testimony cited in McElwee (1835a, 74)). While the law required inspectors to visit each inmate twice a week, several inspectors noted the impossibility of that requirement (APS, Legislative Investigation, 1835, no page). One inspector noted that he only visited “sometimes three times a week” with at least “one visit every week” (McElwee (1835a, 82)). Until 1843, the physician also lived in Philadelphia and travelled to the prison; sometimes he would be called to the prison for a medical situation while he was out making a house call for his private practice, causing extensive (sometimes fatal) delays. In 1843, the Inspectors insisted that the physician maintain his residence at the prison. The warden and his family lived on the premises, as did some of the overseers.

Administrators’ flexibility towards their work was largely possible because there was little oversight. Throughout the period examined, Eastern’s administrators welcomed visitors to the prison. Guidebooks introducing strangers to Philadelphia advertised the “Tickets of admission”; those desirous of visiting the prison were instructed to speak with the Inspectors, noting, “For the accommodation of strangers [e.g., European tourists], we will state that MR. VAUX’S office is in Sixth below Chestnut Street. This gentleman takes pleasure in giving any information in his power respecting this truly noble Institution, which, we assure the reader, is well worthy of a visit” (Smith, 1852, 385). Eastern was as much a tourist attraction as a state penitentiary. However, some official visitors provided a small measure of oversight. The founding statute gave the PSAMPP the right to visit Eastern’s inmates; throughout the period, the PSAMPP used their position to keep an eye on the administration of the prison, diligently noting the quality of the food and how well the prison was heated, as well as any other potential problems with the prison conditions (HSP, Prison Society Minutes). However, this was the formal goal of the PSAMPP rather than a requirement for their legally promised access to the prison. Moreover, the PSAMPP did not have unlimited access to the prison, and were sometimes turned away if they lacked the proper paperwork.⁸ Additionally, the PSAMPP’s members sometimes flagged in their duties, going for weeks or months without visiting the prison. A review of the PSAMPP’s meeting minutes reveals multiple meetings in which members who were responsible for visiting specific wings of the prison reported they had only visited a few times since the last meeting (often a month prior) or had not made it to the prison at all (see HSP, Prison Society Minutes). After a period of few, sporadic visits from PSAMPP members, Warden Halloway noted,

Telegraph, February 10, 1870, p. 8).

⁸“Mr James Barclay Secretary of the Prison Society visited with a Friend, visited a prisoner (Alexander) without orders the Overseer considering he had a legal right, and supposing the Gentleman was also one of the Committee of the Prison Society.” (PSA, Warden’s Daily Journal, April 13 1843)

Samuel Caley, of the Prison Society, visited to-day; Townsend Sharpless was also here. Mr C. is the only one of the Society who can be said to have visited faithfully and regularly during the past year. Several others who came on Sunday have done pretty well; but the majority of the Society committee have been very irregular and infrequent in their attendance. (PSA, Warden's Daily Journal January 2, 1856)

Grand Juries from the various counties, especially Philadelphia, served as one other form of oversight. These bodies of men tended to visit the prison variably, sometimes several times a month to once every several months. Judges and Sheriffs of the various counties also came to tour the prison and visit the inmates from their counties, but this was not formally required. Finally, in the late 1860s, Eastern came under formal state oversight for the first time. In 1869, Pennsylvania created a State Board of Public Charities, largely due to the lobbying efforts of the PSAMPP (Barnes, 1968, 395).

The rather informal nature of Eastern, by comparison to twentieth century prisons enmeshed in a tremendous bureaucracy, is somewhat startling. But it was a similar situation at the Almshouses, the House of Refuge, the Insane Asylum, and other carceral facilities that were largely run by reformers but often bore the stamp of the city or the state. It was also characteristic of criminal justice more generally. Well into the 1850s, there were no police departments for most of the state: Philadelphia had been the first in the state (and one of the first in the country) to inaugurate a police department in 1845. Similarly, there were no public prosecutors; court cases were tried by lawyers hired by the victims of the crime. Criminal justice in nineteenth-century Philadelphia underwent a tremendous change towards greater centralization, formalization, and bureaucratization (Steinberg, 1989). The absence of a large former bureaucracy meant Eastern's administrators had a large degree of control and autonomy within the walls of their prison. However, it also meant they largely faced the difficulties of running Eastern alone.

3.4 The Operational and Institutional Challenges on the Pennsylvania System

Eastern's administrators faced myriad challenges when operating their prison. Like other prisons' administrators, they governed at the mercy of the legislature. They faced constant funding constraints and did what they could with limited resources, frequently beseeching the legislature for more funds. Administrators were also constrained by the law itself. For example, because the 1829 statute did not provide a salary for the office of Moral Instructor, no one sought the position. Until 1838, inmates received the ministrations of volunteers and the inspectors themselves who sometimes preached in the hallways. Similarly, when admissions to the prison skyrocketed after the Civil War, administrators requested funding to build more cells and changes to which counties could send the prison their felons. Administrators frequently requested legislative action to alleviate these and other problems. At other times, however, legislative action was extremely unwelcome. In 1861, the legislature passed the "Commutation Law" that authorized the early release of inmates who behaved well in prison. The statute specified a precise metric by which administrators would determine their time of release which the administrators found extremely tedious and opposed the measure. Thus, Eastern's administrators faced a variety of legal ambiguities, material constraints, and legislative incursions into their autonomy. However, these challenges were not unique to Eastern; for many other prisons' administrators at the time (and today), these were facts of life.

As an exceptional organization, however, Eastern faced two challenges in greater degree than any other prison: uncertainty and criticism. A certain level of uncertainty was endemic in

the emerging field, but the novelty of incarceration was heightened by the fact that Eastern lacked a model to look to for guidance; Eastern's administrators had to decide how to forge uncharted territory. Additionally, while the Eastern–Auburn debate aired plenty of criticism on both camps, Eastern, as the originator of the Pennsylvania System took the brunt of the criticism; to the extent that Pennsylvania's supporters criticized the Auburn System, Auburn's administrators could take comfort in the several dozen other prisons to follow their lead. These challenges likely reinforced each other: critics were perhaps more vocal because of the uncertainty in the field, while the criticism likely exacerbated issues of uncertainty for Eastern's administrators. This chapter explores the substance of the uncertainty and criticism Eastern's administrators faced, and argues that these challenges presented both external and internal challenges. Externally, the uncertainty and criticism made Eastern vulnerable: it relied on an illegitimate model, a fact which should have made legislators eager to abandon it, and which did encourage local reformers and legislators to pass laws that mitigated its more problematic aspects. Internally, these pressures necessarily produced anxiety among the administrators: epistemic anxiety about how to proceed when facing daily decisions and existential anxiety about whether they were right or wrong in their continuing reliance on the Pennsylvania System. These external and internal challenges present the primary obstacles to the retention of the Pennsylvania System at Eastern. They present the problem of why administrators would continue to rely on, let alone support, the Pennsylvania System instead of embarking on an easier path, and how they succeeded in overcoming the challenges to their organization's legitimacy.

3.4.1 Criticism and the Calumnious Myths

In the previous chapter we saw how New England penal reformers propagated calumnious myths, criticisms of the Pennsylvania System intended to undermine its attractiveness. These myths suggested that the Pennsylvania System cruel and inhumane, dangerous to inmates' physical and mental health, too expensive, and simply impractical and ineffective. The connotation of the Pennsylvania System with the mutilations and suicides suffered at Auburn and elsewhere encouraged this criticism.

One of most devastating critiques from the field came in the 1842 publication of British author Charles Dickens' travels to America, *American Notes*. In his travel log, he described his visit to Eastern, especially its system of "torture" imposed on the inmates there.

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body: and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay. (Dickens, 1842)

Capitalizing on the Romantic era empathy for suffering, Dickens described quite eloquently the terrors of Pennsylvania's solitary system.

One of the most famous extracts from Dickens' description of his visit to Eastern featured his intercourse with "a German, sentenced to five years' imprisonment for larceny, two of which had just expired." Dickens explained,

a more dejected, heart-broken, wretched creature, it would be difficult to imagine. I never saw such a picture of forlorn affliction and distress of mind. My heart bled for him; and when the tears ran down his cheeks, and he took one of the visitors aside, to ask, with his trembling hands nervously clutching at his coat to detain him, whether there was no hope of his dismal sentence being commuted, the spectacle was really too painful to witness. I never saw or heard of any kind of misery that impressed me more than the wretchedness of this man.

Dickens' account substantiated the calumnious myth that the Pennsylvania System was cruel and inhumane, a system of torture unbefitting a democratic country just climbing out of monarchy's yoke. But Dickens' criticisms were attacks not only on the system, but on the prison's administrators as well. "In its intention, I am well convinced that it is kind, humane, and meant for reformation; but I am persuaded that those who devised this system of Prison Discipline, and those benevolent gentlemen who carry it into execution, do not know what it is that they are doing" (Dickens, 1842). These well-meaning fools, he suggested, were inflicting unknown torture in the name of justice.

If their opponents were correct, Eastern's administrators were conducting an extremely immoral and worthless endeavor. This must have affected their confidence in their work to some extent, even if they consciously rejected the veracity of these myths. However, reading their Annual Reports, one is struck by the extremely defensive nature of their statements. Each critique is rebutted through logic and evidence, as we shall see in Chapter 4. Ironically, the more administrators tried to claim inevitability of their program's success, the more insecure they appeared. Indeed, the myths were likely exacerbated by an excessive amount of uncertainty at Eastern.

3.4.2 Uncertainty

Neo-institutional scholars tell us that individuals and the organizations they run seek to avoid uncertainty, often by following an existing model. DiMaggio and Powell (1991, 151) explain, "When organizational technologies are poorly understood (March and Olsen, 1976), when goals are ambiguous, or when the environment creates symbolic uncertainty, organizations may model themselves on other organizations." And as discussed in Chapter 2, technological uncertainty and goal ambiguity were rampant in the emerging penal field, which most state prisons dealt with by adopting the Auburn System. But Eastern not only eschewed the Auburn System, but it faced heightened levels of uncertainty as a direct result of its retention of the Pennsylvania System. Eastern's administrators could not look to a model for assistance—theirs was the primary model of the Pennsylvania System.

This uncertainty was illustrated in the administrators' frequent use of the term "experiment." Each of their early reports described Eastern and the Pennsylvania System as an "experiment." Indeed, as early as 1835, they claimed that the Pennsylvania System was "no longer an experiment"; however, they repeated this phrase well into the 1860s, bringing into question how firmly they believed the experiment was over. One source of their uncertainty was the contentious nature of the debate over the appropriate form of prison discipline:

Opposed at home by a respectable number of our fellow citizens, who, with views quite as honest, held adverse opinions; its main principles questioned by a commission of our

own state especially instituted to examine the subject; assailed by the official agent of an influential and indefatigable society of a sister State, because it conflicted with his favourite system: Attacked from abroad by persons of high consideration in the moral and political world, who had become endeared to America by their military and other services, the friends of the Pennsylvania system held their course unchecked, and with a steadiness and perseverance worthy the cause, made their opinions public sentiment, and the State at length passed the law which will render her character for philanthropy preeminent. (Inspectors, Annual Report 1837, 3-4)

Not far behind the criticism came the cost: “The experiment at the outset was attended with an expense which even a great nation has paused to incur” (Inspectors, Annual Report 1837, 4). If their “experiment” was in error, it came with a great cost.

Superficially, publicly, Eastern’s administrators dismissed any uncertainty about their experiment, offering unwavering support for it instead: naturally, the Pennsylvania System would prove to be the best system in the world and its detractors would sooner or later remove their arguments to the contrary. Privately, the administrators were constantly examining their prison’s functioning for reassurance and evidence that it was working as intended. Like a devout Calvinist looking for signs of Grace, the administrators interviewed inmates before their release into free society, recording any evidence that the system had worked, or at least not harmed the inmate. In the 1840s, evidence of inmates’ weight gain during their incarceration was taken as evidence of their “good health” or even improved health during their confinement. The results of administrators’ exit interviews with inmates often included remarks like hopeful, improved, promising, etc. (PSA, Warden’s Daily Journal). Administrators’ fates were somewhat tied to Eastern and its Pennsylvania System, and failures were excruciating.

At Eastern, technological uncertainty was even greater because Eastern’s administrators lacked a model to which they could turn for guidance. Eastern’s administrators reveled in their prison’s special status as the first prison run on the Pennsylvania System.

The separate confinement of prisoners for criminal and political offences has been practised in different parts of the world for a long period of time, and the separate confinement of criminals with labour was for the first time practiced in the “Penitentiary House” of the prison in Walnut Street, Philadelphia, in 1791, with a portion of the prisoners, and a less strict system was subsequently partially tried in England, at Gloucester, in 1793. But the separate confinement of criminals, with labour, as practiced in this Penitentiary, varies from all others that were in operation previously and can justly be called as it is, the “Pennsylvania System.” (Warden Wood, Annual Report 1840, 9)

Western State Penitentiary, though opened in 1821, had not worked as planned under the older version of the Pennsylvania System, and administrators quickly crafted their own system of prison discipline as a stop gap. After the 1829 legal revision creating the newest iteration of the Pennsylvania System emphasizing “separate” confinement instead of pure solitary confinement, Western’s administrators still did not adhere to the plan. Eastern’s administrators did look to Western for guidance, but with little help:

Believing that an accurate knowledge of the discipline established in the Western State Penitentiary, near Pittsburg, (in regard to which from rumour there was some uncertainty,) might be useful in estimating the operation of that in the East, the President of the Board visited that Institution in June last, to ascertain from personal inspection, the character of the experiment there made, and, it is trusted, the Board can in no wise be regarded as reflecting upon the highly respectable gentlemen who superintend that prison,

constructed, as it confessedly was, for solitary confinement, unmitigated by labour, in the remarks here submitted. The ranges of cells being too small and not sufficiently ventilated and lighted to be used as workshops, appeared to be principally useful as dormitories, and he was induced to believe, that convicts could not be advantageously employed therein at solitary labour. The building being also unprovided with separate yards for the different cells, it became necessary to the health of the prisoners to allow them to associate with each other in the common yards, in which, the sexes only appeared to be separated. The result of this visit was, a belief that no inference can be drawn from the situation of a prison thus constructed, (as some unfriendly to the system appeared to think,) prejudicial to the permanency of the greatly successful experiment of its operation in the Eastern Penitentiary, in which every prisoner is provided with a separate cell, of ample dimensions, and with sufficient light, communicating with a separate yard, for air and exercise. (Inspectors, Annual Report 1831, 8)

Western did not fully rely on the Pennsylvania System until 1838, after making the necessary architectural changes.

Eastern's administrators also toured other prisons and their administrators toured Eastern. But most these visits could produce at best little assistance to administrators of the Pennsylvania System. When Warden Scattergood visited New Jersey State Prison, also on the Pennsylvania System, with two overseers "in order to gain what information we could in regard to cane seating" (a trade in which inmates were instructed at Eastern), they learned little. The Warden recorded, "The Warden Jacob Gaddis was very kind in giving us all the information he could. But it appears evident that their profit in working arises from the use of machinery, and a departure from the Separate System of imprisonment" (PSA, Warden's Daily Journal, April 26, 1850). Other trips were similarly disappointing in other ways. The Moral Instructor Thomas Larcombe noted in his Annual Report for 1839,

The season of my vacation gave me an opportunity to visit some of the Criminal Institutions in neighbouring States. I hoped to derive benefit from intercourse with those who have been several years officiating in similar spheres of religious instruction but was in part disappointed, by the removal of two of them who had relinquished their stations previously to my visit. The privilege of conversing with the prisoners was not permitted in any of the prisons I visited, except those of Trenton and Providence. From the facilities afforded in this Institution to Ministers of the Gospel, and to other persons, seeking information relating to prisons, this was to me an unexpected disappointment. (Moral Instructor, Annual Report 1840, 45)

Despite the disappointments, Eastern's administrators continued their visits to different prisons to further investigate the mysteries of prison discipline, looking for practices to avoid because they did not work and practices to adopt that may work better than their own.⁹

In other cases, other prisons on the Pennsylvania System were not just unhelpful, but discouraging. The public rejection of the Pennsylvania System at the Rhode Island State Prison, the

⁹One area in which Eastern's administrators could turn for assistance from other prisons was these other prisons' statistics to compare against their own: "The Board of Inspectors have desired to obtain information from other prisons on the Pennsylvania plan, in order to compare it with that submitted by them. The Warden, Physician, and Inspectors of the Chester County Prison, in this State, have most cheerfully and kindly furnished, at the cost of much patient labor, the following tables, showing the condition of the separate Prison in that county." (Inspectors, Annual Report 1847, 22)

New Jersey State Prison, and finally Western could not have improved any anxiety Eastern's administrators may have had from the uncertainty of their situation. Other statements were less final, but similarly damning: "It seems to be the opinion of a high authority connected with the Pen-tonville Penitentiary, that the separate system cannot be safely administered for more than a year or eighteen months" (Physician, Annual Report 1850, 21).

The law itself offered little guidance. Though the 1829 statute authorizing the Pennsylvania System was one of the most comprehensive state laws authorizing a prison, it was primarily an outline and did not offer answers to a number of eventualities Eastern's administrators would have to face. Eastern's administrators also had to determine for themselves the meaning of such important parts of the statute as what precisely "separate or solitary confinement at labor" meant. Indeed, the statute was internally inconsistent: The first page twice uses the phrase "to suffer punishment by *separate or solitary confinement* at labor" (Pennsylvania, 1829, 341). In the second page, it switches between the phrase "the punishment by *solitary confinement* at labor" and in the next paragraph "*separate or solitary confinement* at labor" (Pennsylvania, 1829, 342). Later, it again refers to "solitary confinement at labor" (p. 344) and the "system of solitary confinement" (Pennsylvania, 1829, 347). Over the years, additional statutes continued the trend, with some reverting to the 1821 preference for "solitary confinement" wording (Pennsylvania, 1847a). A substantial revision of the penal code in 1860 (Act. No 374) authorized some convicts to "undergo an imprisonment, by separate *and* solitary confinement at labor" (Pennsylvania, 1860, sect. 86, p. 404) and others "to undergo an imprisonment, by separate *or* solitary confinement at labor" (Pennsylvania, 1860, sect. 139, p. 416, italics added). It was up to Eastern's administrators to construct the meaning from these ambiguous phrases. Indeed, the disparate conjunctions were actually significant in the interpretation of the original statute, as the legislature and the administrators disagreed about whether "separate or solitary confinement"—the main description administrators utilized in their reports—should be read as implying solitary confinement as traditionally understood, or as "separate confinement," what reformers and administrators saw as the distinguishing feature of the Pennsylvania System from prior penal arrangements (APS, Legislative Investigation, 1835, no page). Inmates were not held in mere solitary confinement, but rather received visits from the administrators and authorized reformers. This was not to be confused with the system of solitary confinement that led dozens of inmates at Auburn to become mentally and physically ill, commit suicide, and die of other causes. The administrators thus placed extra emphasis on the word "separate" while legislators on the word "solitary." Disputes like these did not alleviate the uncertainty administrators faced when approaching their jobs.

While administrators rarely expressed any doubts about any aspect of the Pennsylvania System in their published Annual Reports, they were nevertheless concerned about how well inmates would be able to bear the discipline of the Pennsylvania System. At one point during his testimony to the 1834–1835 investigation, Inspector Bradford explained of the early days at the prison,

The experiment of separate confinement by day and night was about to be made. Good men had doubts. None of us could say how far the mind and body could be in total seclusion from society and confinement to a cell for a length of time. We knew that the great evil of the old system was the association of convicts by which they encouraged each other in crime and banished reflection from the mind—and that separation from each other would remove the excitement and growth of vice and prepare the mind for reflection on their past conduct. . . ." (Bradford, APS, Legislative Investigation, 1835, no page)

This uncertainty impacted his approach to his role as an Inspector: “It was my practice when acting as one of the Visiting Inspectors in the commencement of the experiment. . . to visit every prisoner at least once a week and not generally twice a week. I was deeply anxious in observing the operation of the system as well on the body as on the minds of the prisoners. . . .” Overtime, this anxiety waxed and waned. By 1835, administrators anxiety had been alleviated by several years of practice and happy results with their “experiment.” But even their declarations of support suggest their earlier fears. Warden Wood wrote in 1835,

I think we may now cease to call our system of discipline an experiment, it having been more than five years in actual operation, and there being at present several prisoners who have from the period of their reception, nearly five years ago, been in close confinement without apparent injury to their mental or bodily health. (Warden, Annual Report 1835, 7)

It was a success that these “several prisoners” had survived, but the Warden’s relief that the “experiment” had worked suggests fear of a very real alternative result. So confident were the administrators that the physician reduced the frequency of his visits to each inmate.¹⁰

Uncertainty reached into the mundane, day-to-day operations of the prison. For example, particularly in the earlier period, the prison’s jurisdiction over particular convicted criminals—more specifically, which convicts could be received in to the prison—often led to some confusion among the administrators, as well as those charged with sending convicted criminals to them. For example, on September 24, 1830, Warden Wood was sent for confinement “Sam Shadle from

¹⁰He explained,

I was influenced also in changing my plan by an assurance received from one of the Inspectors that he had drawn up that passage of the law, Mr. Bradford, when the impression of the public was that separate confinement as contemplated in dungeon without work would cause the prisoners to be [*illegible*] and make it necessary that the effect of the confinement should be carefully watched by the Physician. I therefore concluded that the Spirit of the Law was complied with by visiting the prison twice a week. (APS, Legislative Investigation, 1835, no page, Physician Bache, January 5, 1835)

However, their anxieties were also alleviated somewhat by necessity. Indeed, with time came a sense that the original, statutory requirements were unrealistic in light of practical experiment, and administrators had to decide between the impossible and a violation of the law. In the same testimony, the Physician explained,

At first I saw each prisoner twice a week and had some little conversation with them. This was when there were 1 to 40. . . . When the number of prisoners made the duty onerous, my disposition was to comply with the letter of the law. I saw each prisoner twice a week as rapidly as possible by opening the window of their cell and suffering them to see me and I seeing them. As the number increased this rapid mode of seeing them occupied so much time as to encroach on that which I worked to appropriate to the sick. I became concerned that seeking the prisoners in this way was worse than a [*illegible*] formula and that if I invested [*sic*] several minutes with each that I would occupy more time than I could afford for the salary I got. I made up my mind that I complied with the Spirit of the Law and did more justice to the sick by visiting the prison more than twice a week. I made such arrangements as to have my attention called to any prisoner who wanted to see me. (APS, Legislative Investigation, 1835, no page, Physician Bache, January 5, 1835)

Union Co. convicted of an assault & battery with intent to kill”; however, after “consultations with the Inspectors,” the Warden remitted the man to Walnut Street Prison, which properly had jurisdiction over this crime (PSA, Warden’s Daily Journal). Assault and battery was not within the crimes listed in the 1829 statute for which one could be incarcerated at Eastern (Pennsylvania, 1829). In some cases, convicts were not sent to Eastern despite judicial orders to punish a person at Eastern. Thus, on December 9, 1835, “Ann Morgan al Elizabeth Eartlick, (no 539)” was received for incarceration at Eastern, despite being sentenced the year before to a three-year sentence at Eastern; she had been “acting as nun” at Arch Street Prison in Philadelphia, but lost her keepers’ sympathy after trying to escape (PSA, Warden’s Daily Journal). Similarly, “James Farrall (945). . . a white boy aged 12 years” was sentenced to the House of Refuge; “the Sheriff took him there but they would not receive him & he then took him to a Magistrate who would not commit him. I received him with the advice of [Inspector] Tho. Bradford who was here at the time” (PSA, Warden’s Daily Journal, August 8, 1838). This musical-chairs jurisdiction over convicted criminals suggests the uncertainty surrounding the changing landscape of criminal justice in the explosion of private and public, criminal and civil facilities for the poor, vagrant, thief, and especially the women and children who frequented the lower-level institutions. But Eastern’s administrators also faced other uncertainties about implementing the law in practice. When inmate Sam Brewster escaped from Eastern and then was captured and returned, the warden sought “the opinion of the Judges of the Supreme Court” as to whether Sam’s sentence should be lengthened by the length of his absence, such that he would serve the full term of his sentence under custody at Eastern. Somewhat surprisingly, the judges said no, and that the warden “must discharge him on the day his sentence expires” (PSA, Warden’s Daily Journal January 10, 1838).

The level of uncertainty facing Eastern’s administrators was undoubtedly highest in its earliest years, its “experimental years,” and reduced somewhat as administrators and personnel fell into standard routines and developed patent responses to increasingly common eventualities. But time was not a perfect emollient; instead, new challenges continued to present new kinds of uncertainty. Short-term uncertainty would follow during instances of turnover; staff were given trial periods while administrators had to learn the routines of their office. Disagreements between the various administrators also produced uncertainty: if the warden and physician disagreed about a new policy, whose authority was superior? But the uncertainty was certainly heightened during prolonged periods of novelty: when in 1866, Eastern became overcrowded, officials faced a new set of problems. Could the Pennsylvania System survive overcrowding?¹¹ How would the inmates’ health fare under overcrowded conditions?¹² Should administrators turn away the inmates they could not house separately, or should they succumb to double celling? If they double-celled

¹¹“That the time has arrived when something should be speedily done to meet this pressing necessity for greater accommodations for our convict population, can no longer be a matter of doubt. The integrity of the system, and the welfare of the community, as well as that of the prisoner, demand it” (Warden, Annual Report 1868, 93).

¹²“It is, I regret to say, the last mentioned feature of this faint but faithful picture of the present, which, in the sunshine of the Institution’s success, casts a shadow on the future. The number of prisoners now in the house, is more than is consistent with the design of the system, or, what is more germane to the matter in hand, with the laws of hygiene.” (Physician, Annual Report 1868, 100)

inmates, what was the right way to do it?¹³ Which inmates should be housed together?¹⁴ Once they did double cell inmates, new challenges to the discipline occurred. How to maintain the standards of labor and religious and secular instruction?¹⁵ Also, more overseers were required, bringing a larger staff and changing the dynamics of the prison as a workplace.¹⁶

Several of the examples above illustrate the primary way in which administrators resolved problems that lacked clear decisions: they consulted with each other. The Warden often asked the Board of Inspectors what to do, the Board held special meetings to discuss problems, the Physician made recommendations that the Board discussed alone or with the Warden. But there were often disagreements about how problems should be addressed or resolved and no higher power to resolve these disputes. Uncertainty was thus a hard fact of life at Eastern for its administrators.

3.5 Searching for Explanations for Retention

In the face of these myriad challenges to the Pennsylvania System coming from several different groups for a variety of reasons, Eastern's retention of the Pennsylvania System is particularly puzzling. However, multiple factors might explain this retention that we can explore deductively. Neo-institutionalist scholars might hypothesize that localized countervailing institutional pressures at Eastern enabled retention by working against the institutional pressures from the field. Historians might look to local, contingent factors that motivated or necessitated retention. However, none of these explanations withstand review of the data. Inductive analyses prove more promising. If the reasons behind the failure of the Pennsylvania System at the other three prisons were absent at Eastern, these reasons may account for the difference. However, this approach requires additional analysis and data to determine *why* these reasons were not present.

3.5.1 The Failure of Neo-Institutional Explanations

Weak Countervailing Institutional Pressures

Despite these strong institutional and other pressures to abandon the Pennsylvania System, there may have been institutional pressures that offered a counterforce: the rule of law and the support

¹³“This induces the temporary necessity of putting more than one in some cells, and after great deliberation this has been done with due regard to safety and convenience. There are many convicts of such a low grade of mental capacity as to render them unfit for any punishment but restraint, and these have been so placed as to render association harmless, but the effect has been prejudicial to the system of discipline.” (Inspectors, Annual Report 1867, 17)

¹⁴“The crowded condition of our prison has made it necessary to put more than one prisoner in many of the cells. I have endeavored to exercise my best judgment (aided by the co-operation of some of our oldest overseers) to place together those whose association would be the least productive of evil to themselves in prison or on their discharge. This duplicating of convicts is much to be deplored” (Warden, Annual Report 1871, 111)

¹⁵“The rapidity with which our numbers increased, presented serious difficulties in the way of organizing them for labor, and in procuring suitable employment for separate confinement, as well as instructing them in such work as could be made available.” (Warden, Annual Report 1867, 104)

¹⁶“The excess of prisoners over the capacity of the Penitentiary is a serious question, which has deeply impressed itself on the Inspectors, both as to their duty to receive this excess and the treatment of these prisoners under the law. The Inspectors, however, feel themselves relieved of their responsibilities” because it the legislature had failed to respond to the Inspectors’ request for help (Inspectors, Annual Report 1868, 25).

of penal reformers. These two factors may be expected to have assisted Eastern's administrators in their public retention of the Pennsylvania System.

The protection of legal authorization may have provided some insulation against the dominant institutional pressures from the field. Had the Pennsylvania System lost legal authorization earlier, administrators' attempts to retain the Pennsylvania System may have been more difficult, even subject to sanctions. Legal authorization thus may have made retention easier. Additionally, legal authorization may have offered administrators some psychic benefits. When administrators wavered in their commitment, they could have potentially told themselves they were required to maintain this course. However, neither of these are particularly compelling explanations in light of the historical record. Indeed, I argue that the statutory endorsement of the Pennsylvania System cannot explain its persistence at Eastern. The legislature's ability to change policy and practice at Eastern was often limited by Eastern's administrators, who publicly dismissed legislative mandates on several occasions. On one occasion, Eastern's administrators disagreed with a legislative committee's interpretation of the Pennsylvania System and did not make the changes required. On another occasion, Eastern's administrators simply refused to implement a new law changing the administration of punishment at Eastern; administrators went so far as to challenge the authority of the legislature over prison policy. Moreover, the legislature's constant failure to act (providing funding or authorizing the hiring of new personnel) to prevent violations of the Pennsylvania System due to material constraints suggest that its concern with the full implementation of the Pennsylvania System was relatively superficial. Indeed, the legislature acted much more reactively than proactively in shaping prison policy: legislative changes to the Pennsylvania System at Eastern came at the behest of reformers, while the legislature immediately passed legislation abandoning the Pennsylvania System at Western once the administrators of that prison requested it. Thus, to the extent that local coercive pressures helped to counteract field-level pressures towards isomorphism, they were fairly limited.

The support of the PSAMPP may have also provided institutional support for Eastern's retention of the Pennsylvania System. They were staunch defenders of the Pennsylvania System and provided counterarguments to the unflattering myths about the Pennsylvania System. Explaining the strength of their commitment, one historian suggests that they truly believed that the Pennsylvania System was, as they claimed, the most perfect system available (Teeters, 1937, 200). However, it is very likely that this normative support had limited influence over Eastern's administrators' efforts to retain the Pennsylvania System. While the Society provided material support throughout the prison's existence, the reformers and Eastern's administrators were often at odds with each other. Beginning especially in the 1840s, the Society's members grew increasingly critical of Eastern's administration. This tension continued into the 1850s, when the Society successfully lobbied for legislation that imposed changes at Eastern—changes that would leave the heart of the Pennsylvania System in tact, but that would bring Eastern into greater conformity with the field. In response, administrators accused them of being inexperienced dilettantes who, like the legislators, lacked the authority to impose changes to the prison. This language continued into the 1870s. Thus, the existence of normative pressures that counteracted isomorphic pressures at the field level were largely under utilized, and sometimes encouraged conformity instead of exceptionalism.

With significant institutional pressures towards conformity and limited countervailing institutional pressures, a priori there is no clear institutional explanation behind the longevity of the Pennsylvania System at Eastern. In the next section, I explore more context-specific factors that may explain the persistence of the Pennsylvania System at Eastern, and in the following section, I turn to counterfactual evidence for additional clues.

The Decline of the Pennsylvania System in the Midst of Waning Pressures

In the decades after the Civil War, several changes occurred in the carceral field that made retention easier. First, the field became less isomorphic. New carceral forms emerged: In addition to traditional prisons on the Auburn System, states built separate prisons for women (Rafter, 1985) and adult reformatories for young-adult or otherwise reclaimable felons (Pisciotta, 1994). In the South, traditional penitentiaries gave way to labor camps, a system of convict leasing, and eventually new plantation-style prisons to fulfill the social-control goals previously performed through slavery (Ayers, 1984; Lichtenstein, 1996; Oshinsky, 1997). Additionally, northern labor unions successfully lobbied against the use of inmate labor (that competed with their employment). In response, legislation removed what had been the central organizing principle of carceral punishments throwing prisons into a state of “crisis” (McLennan, 2008). Prisons had to experiment with a variety of tactics to organize inmates’ time. Thus, formal and informal differences in penal practice at any given prison became less noteworthy and less problematic.

Second, the debate between the Pennsylvania System and the Auburn System was over. Beginning in the late 1860s and early 1870s, it was increasingly clear that the Pennsylvania System had lost. In their comprehensive examination of carceral facilities in the United States and, to some extent, abroad, penal reformers Wines and Dwight (1967, 55) reported, “[T]he separate system of imprisonment in the United States is confined at present to the state of Pennsylvania, and exists in vigor only in the city of Philadelphia. Wherever else the experiment has been tried in our country, it has failed.” Once Eastern became the last prison to retain the Pennsylvania System, commentators declared the earlier debate over and the field moved on (e.g., NAR, 1866). By this time as well, penal debates were less about the Auburn System or the Pennsylvania System and focused more on the virtues and drawbacks of the Irish System or the new adult reformatories. Eastern was no longer a central prison because of its unique status; instead, the field was focused on new innovations like the Elmira Reformatory. Eastern was out of the spotlight and criticism subsided—Eastern’s administrators even claimed that the Pennsylvania System was widely respected (e.g., Annual Report 1871, 28; Annual Report 1875, 28).

The Pennsylvania System thus survived at Eastern despite resource constraints and legal incursions, strong criticism from the field to adopt the Auburn System, and even overcrowding, only to fade from view in a period of relatively little institutional pressure.

3.5.2 The Failure of Alternative Explanations Using Contextual and Contingent Factors

Stepping away from institutional theory, there may have been more contingent, situation-specific reasons to expect Eastern to retain its Pennsylvania System.

Architectural Constraint

One might expect that the physical structure of the prison constrained the range of available choices for prison discipline at Eastern. Eastern was an incredibly expensive architectural marvel (Johnston, 1994a), while alterations to its structure would incur further expense at a time when government spending and taxation were problematic.¹⁷ However, architectural constraint is not a compelling explanation for several reasons. First, when Western State Penitentiary transitioned to the Pennsylvania System in 1829, architectural problems made adhering to the system difficult

¹⁷Concern about minimizing the burden on the taxpayers and emphasis on diminishing the expenses of the prison abound in its Annual Reports.

(Dwight and Wines 1867, 99). In 1833, the Pennsylvania legislature ordered that the prison's cells be rebuilt (Barnes, 1968, 168); some of the prison's structures actually had to be destroyed (Barnes, 1968, 303). This restructuring occurred after previous alterations to the architecture were necessitated at further expense, despite an initial cost of nearly \$200,000 (Doll, 1957, 12, 17). Second, as suggested above, mention of architectural alterations at Eastern were relatively common in the annual reports: new buildings were added to Eastern and others destroyed and rebuilt about every decade. In addition to basic repair of the roof and other alterations to the physical plant, officials often requested and received large-scale reconstruction of aging cell blocks (for example, blocks 1-3 in the 1840s).¹⁸ These alterations suggest that the expensive architecture of Eastern cannot be described as a significant constraint on the choice to abandon the Pennsylvania System in favor of some other system. Finally, while some detractors argued that the expense of revising the mode of confinement at Eastern explained the retention, Eastern's administrators addressed and rejected this hypothesis twenty years into the prison's history (Inspectors, Annual Report 1849, 9-10). Only in the 1890s does the expense of abandoning Eastern appear to have made a difference. In 1895, Governor Daniel Hastings vetoed a bill to raze Eastern and establish a new prison (with a 2,000-inmate capacity) on the principle of solitary confinement. The Governor explained the endeavor would be too expensive (Hastings, 1902, 688-689).

Avoiding Defeat

One might also expect a general need for face-saving in the field, and a strong desire against admitting defeat or being wrong, played some role. That is, the local reformers, the legislators, or the prison administrators may have avoided abandoning or even making changes to the Pennsylvania System because to do so would be tantamount to an admission of failure, which would be especially painful in the midst of a heated debate over the best model. However, as noted above, reformers who had supported the Pennsylvania System initially were not prevented by such a need when, in the 1850s, they began to question the system's severity and impact on inmate health and endorsing practices from rest of the field. Likewise, pride did not stop legislators from adopting these practices and even revoking the Pennsylvania System at Western. Nor do we see such a need driving Eastern's administrators, or Western's administrators for that matter. Western's administrators had just as vocally supported the Pennsylvania System but reversed course in the 1860s and actually condemned the system. In the 1840s, Eastern's administrators began to criticize *earlier* iterations of the Pennsylvania System, which they described (incorrectly) as little more than a system of solitary confinement, while maintaining their fervent endorsements of the current version of the Pennsylvania System. They thus had no problems suggesting that their forerunners had been wrong in their administration of the Pennsylvania System.

¹⁸During its first decade, the number of cells expanded as architectural additions and modifications were ongoing. Major modifications to the grounds came in 1851 when they added bath houses and a drying house—to dry the inmates clothes when washed (before, they were returned somewhat damp). New slate roofs—which help to prevent fire—were also a big issue in the late 1840s and early 1850s. Then in the 1850s and 1860s, they were big on trying new sources of light. There were a number of changes to the water and sewage systems, as well as the heating system for the prison. At some point, an engine house was added, as was a “reservoir.” A library was also added, and then remodeled in 1855. In the summer of 1861, they replaced a building for washing and drying that perished in fire. A bake house and cook house were also added at some point by the end of the Civil War.

Religious Impulses

One might expect that religious fervor delayed the abandonment of the Pennsylvania System. Scholars have often described Eastern's Pennsylvania System with religious overtones (e.g., Johnston, 2004, 26) and have emphasized the role of Quaker reformers in its development. Scholars have long noted the influence of Quakers in the penal reform movements on both sides of the Atlantic, spurred by both their history of suffering in criminal justice and by their religious beliefs (Masur, 1989, 74, 82; Ignatieff, 1978, 58-59). Pennsylvania Quakers, whose penal reform traditions could be traced to William Penn (Dumm, 1987), were particularly active in Philadelphia: Quakers represented 40% (136 of 340) of the members of the PSAMPP between 1787 and 1830; Barnes describes "the Pennsylvania system of prison administration as fundamentally a product of a Quaker movement" (Barnes, 1968, 84). Scholars have also pointed out similarities between Quaker values and the religious, labor, and solitary aspects of the Pennsylvania System (Dumm, 1985; Dumm, 1987; see also Rothman, 1971, 92). Moreover, the Pennsylvania System was only adopted in states with large Quaker strongholds—Rhode Island, New Jersey, and Pennsylvania. While Quakers undoubtedly played an important role in Eastern's history, their presence cannot explain its long retention of the Pennsylvania System. Only a few of Eastern's administrators were Quakers. Indeed, only half of the six wardens in this period were Quakers: the first Warden of Eastern, Samuel Wood (1829–1840), the third Warden, Thomas Scattergood (1845–1850), and the sixth Warden, Edward Townsend (1870–1781). And even though the Society contained a large cohort of Quakers, this did not stop the Society from eventually criticizing aspects of the Pennsylvania System. Moreover, such an explanation underestimates the importance of religion among competing reform groups like the Boston Prison Discipline Society, especially the strong presence of Quakers in these groups.¹⁹

European Popularity

One might also expect that the Pennsylvania System's success in Europe helped to reinforce administrators' resolve to retain their system. Most notably, the Pennsylvania System largely enjoyed a favorable reputation in Europe thanks to the endorsement of French emissaries de Beaumont and de Tocqueville (1833), and this popularity spread among monarchs interested in penal reform. Indeed, by early 1846, Eastern's administrators could brag that France, England, Prussia, Sweden, and Austria had all adopted the Pennsylvania System (Inspectors, Annual Report 1846, 18), and the following year they gloated about the endorsement from the Prison Congress at Frankfort on the Maine (Inspectors, Annual Report 1847, 27). The Pennsylvania System was so popular that Johnston (2004, 32) has called it America's "second major cultural export to the rest of the world." Even though the Pennsylvania System suffered at home, we might expect that its success abroad was sufficient to strengthen administrators' resolve.

However, the success of the Pennsylvania System abroad was rather limited. Few prisons were built in Europe on Eastern's model in the first half of the century, a period when the Pennsylvania System was most vulnerable. Great Britain built its penitentiary, Pentonville, modeled on the Pennsylvania System in 1842, but the full impact of American influences is unclear because Pentonville was also influenced by earlier British experiments with "separate confinement" (Ignatieff

¹⁹The role of American Quakers in penal reform more generally has often been over emphasized. Writing about penal reforms on both sides of the Atlantic, Carl E. Schneider (1979, 718) argues that the rehabilitative prison, relying on solitude and silence, was not "an innovation of American Quakers" but rather "was advocated by English Christians of several denominations throughout the eighteenth century."

1978). Despite initial support in France the 1830s and 1840s for the Pennsylvania System, legislation was never passed in this period and the popularity of the Pennsylvania System declined after 1847 (O'Brien 1982, 23, 26); France ultimately followed the Auburn system and only later authorized routine "solitary confinement" in the 1870s, though it was not sustained in practice (O'Brien, 1982, 26). By 1895, European adoption of the Pennsylvania System was rather localized, with prisons in Belgium (1838), Sweden (1840), Denmark (1846), Norway (1851), Holland (1851), and finally the French Republic in 1875 (Wines, 1919, 162). Other countries, even in other continents, followed late in the nineteenth century or in the twentieth century (see Johnston, 1994b, 2004). Moreover, even with greater success in the most crucial period, it is difficult to believe that international popularity would be able to outweigh local and national unpopularity. As one observer noted in their "consideration of what is now almost the sole argument that is adduced in defence of the Pennsylvania plan—the weight of opinion in Europe in its favor. It is difficult to treat this plea seriously" (NAR, 1848, 178). Indeed, the perceived popularity of the Pennsylvania System abroad does not appear to have hindered the silent system at home, as every prison built or restructured after 1838 was built on the silent system model.²⁰

Charisma

One might imagine that a particularly charismatic person resisted change and aided the retention of the Pennsylvania System. Weber (1968) postulated that people with exceptional personalities can gain followers and establish legitimacy by virtue of their charisma. Indeed, certain charismatic administrators, like Warden Elam Lynds at Auburn (Lewis, 1965), Warden Joseph Ragen at Stateville (Jacobs, 1977), Warden Frank Eyman in Arizona's state prison at Florence (Lynch, 2010), George Beto in the Texas Department of Corrections (Perkinson, 2008), have had profound influence in shaping internal prison policies. Perhaps we could attribute Eastern's retention of the Pennsylvania System to a particularly charismatic administrator. Barnes (1968, 302) suggests such an explanation in the person of Richard Vaux, who was a profound supporter of the Pennsylvania System, a member of Eastern's board of inspectors for over fifty years (1841–1895), and president of the board for most of that period. Vaux. Vaux is indeed the most likely individual who could have been able to make an impact simply based on his longevity as an administrator at Eastern. Given the long period over which the prison lasted and the fairly frequent turnover of wardens, there are few candidates who could have significantly influenced the forty-year retention. However, while Vaux was a vital part of the retention efforts, his presence alone cannot explain the support of Eastern's administrators for their system and the efforts they took to maintain it. First, Vaux played no administrative role for the first period of Eastern's history, joining the prison administration over a decade into Eastern's existence. Second, for much of Vaux's tenure, until he became the board's president in 1859, he was in a position of limited influence and could have been overruled, as occasionally occurred.²¹ Finally, Vaux's enthusiasm for the Pennsylvania System outlasted the Pennsylvania System at Eastern: Vaux continued to support the Pennsylvania System and outline its merits long after it became clear the Pennsylvania System could not be

²⁰Moreover, local penal reformers sometimes distanced the Pennsylvania System from that in operation in Europe (e.g., JPDP, 1846, 39).

²¹Several references in the diary of penal reformer William Foulke suggest Vaux conflicted often with other inspectors, especially the more powerful, more established (at the time) Inspector Bradford. For example, Foulke record that Inspectors Vaux and Porter had initiated some "hygienic measures," but when Inspectors Bacon and Bradford served as visiting inspectors, the measures "were set aside!" (APS, Foulke Papers, Prison Journals, November 12, 1849).

be revived after overcrowding had effectively made the Pennsylvania System impossible. Even if Vaux did help to sustain the Pennsylvania System for some period, he was not able to protect it from change indefinitely.

Path Dependence

Perhaps the most likely explanation is general path dependency, organizational inertia, or organizational imprint. Path dependence theory suggests initial conditions essentially “lock in,” making change difficult, and persist until some exogenous force moves us onto a new path (e.g., Thelen, 1999, 2003). Under this theory, we might expect Eastern to stay on course, retaining its Pennsylvania System, until some exogenous shift occurred offering or forcing a new direction simply because it began with that system. To some extent, we see evidence for this theory: a significant reason for the Pennsylvania System to be eventually abandoned was the post-war crime surge causing overcrowding at Eastern. However, path dependence leaves much unexplained. First, overcrowding was avoidable and path dependency does not explain why this outcome was not avoided. The inmate population had been increasing for years; officials had predicted overcrowding would result and requested funds to build more cells for several years before it impaired the system. They also requested authorization to remove some of the inmates to the other state prison or to local jails—a not uncommon practice for carceral facilities in Pennsylvania. Both the funds and the removals eventually came, but not in time. That is, this exogenous shock could likely have been mitigated, delayed, or even prevented had the legislature been so inclined. Path dependence leaves other factors unexplained as well: It does not explain why other exogenous shocks like earlier material constraints or legislatively imposed changes failed to alter practice at Eastern. Nor does it explain the changes to the Pennsylvania System that did occur on a relatively regular basis at the imposition or request of Eastern’s administrators. Nor does it explain why officials also overcame some of the exogenous shock of overcrowding by continuing to embrace core elements of the Pennsylvania System for another decade.

3.5.3 Summary

While I do not completely discount the role of these several factors—indeed, some may have played an enabling role—I am not convinced that they provide a coherent and convincing account of Eastern’s retention of the Pennsylvania System for so long. In what follows I make the case that administrative agency overcame structural factors towards conformity. I do not believe that administrators’ motivations or success occurred in a vacuum or to the exclusion of other factors; however, the data appear to suggest that the Pennsylvania System could not have persisted at Eastern without the efforts of the prison’s administrators.

3.5.4 Counterfactuals: Where the Pennsylvania System Failed

The history of prisons that initially followed the Pennsylvania System but later abandoned it—the Rhode Island State Prison (1838–1844), the New Jersey State Prison (1836–1858), and Eastern’s sister prison, Western State Penitentiary (1829–1869)—provide a reasonable source of alternative explanations. Rhode Island’s experience with the Pennsylvania System was extremely brief before adopting the Auburn System. With its proximity to Philadelphia, New Jersey had authorized the Pennsylvania System at its prison at Trenton early on and retained it for nearly two decades. But it officially began to abandon the system in 1858, authorizing workshops where inmates would work

in congregate, and completed the process with legislation in 1861 fully endorsing the Auburn System. Though within the same state as Eastern and generally governed by the same laws, Western officially abandoned the Pennsylvania System after only 30 years in favor of a combination of the silent system and short-term solitary for new inmates, according to the “Irish System.” Three factors appear to be important in the demise of the Pennsylvania System in these prisons: the prisons’ administrators, the incarnation of the rational myths (see Hallet 2010), and architectural problems.

First, in each case, the prison’s administrators—inspectors, physician, even the warden—criticized the Pennsylvania System and encouraged investigations into the propriety of continuing the system. By their fourth year of operations, the Rhode Island prison’s board of inspectors called for an investigation, noting the widespread insanity of inmates; after the shift occurred, the warden wrote a report condemning the Pennsylvania System (Wines and Dwight 1867, 54–55). In New Jersey as well, the administrators contributed to the decline of the Pennsylvania System. In the 1840s, administrators, particularly the physician, criticized the effects of the Pennsylvania System on inmate well-being (Wines and Dwight 1867, 52). Over the years, in addition to concerns about inmate health, administrators also complained about their failure to profit and expressed a disbelief in the reformatory power of the Pennsylvania System (Wines and Dwight 1867, 53–54). Perhaps unsurprisingly, the administrators also failed to adhere to the system in practice: Barnes notes that at New Jersey, within the first few years on the Pennsylvania System, “the law was little respected after a few years of the trial of the system” (105).²² At Western, by the 1860s, the prison administrators began to criticize the Pennsylvania System. In their opinion, the Pennsylvania System was impracticable—that difficulties of implementation had long superseded faithful application—that it was ineffective at reforming inmates, and they hinted at the cruelty of separate confinement. These problems and their belief in the benefits of other systems led them to suggest the abandonment of the Pennsylvania System (Barnes 1968, 307–309). Barnes suggests, “Without the active support of the controlling authorities it had little chance of permanent survival” (308). In 1869, the legislature followed the advice of Western and imposed congregated labor on inmates at that prison (Barnes 1968, 308). In each case, then, the lack of support of the prison administrators appears to have facilitated the decline of the Pennsylvania System.

As a second and related factor, in each case, the lack of administrative support for the Pennsylvania System appears to have been enhanced by the incarnation of rational myths criticizing the Pennsylvania System—that is, the manifestation in reality of the myths. Cost and profit, the negative impact on inmate health, inefficacy, and cruelty were at the base of their complaints and proposals to reevaluate the prison system their states had chosen. These factors were also apparently persuasive to the legislatures that listened to their complaints. In these locations, the field-wide beliefs that the Pennsylvania System would yield such rotten fruit had not been sufficiently persuasive in the initial choice over prison discipline. However, when these beliefs were supported with actual evidence, it was enough to encourage administrators and legislators to abandon the Pennsylvania System.

The difficulties associated with the architecture represented a third factor that was important, though only at New Jersey and Western (the trial at Rhode Island may have been too brief for architecture to be a significant factor). Architectural problems are not unrelated to administrative pessimism and the rational myths, but rather contributed to the lack of administrative support and

²²Elsewhere, Barnes (1968, 173) also explains the “failure and abandonment were due to the strange architectural oversight of neglecting to provide exercising yards with the solitary cells, to the demoralization of the administrative system brought the interference of party politics, and to the attacks of the prison physician on its detrimental effect on the mental and physical health of the prisoners” (173).

to the manifestation of rational myths in reality. In particular, architectural difficulties made the various components of the Pennsylvania System itself difficult to enforce and diminished inmate health. Overcrowding at Western began in 1861 and was followed shortly by administrative criticism of the Pennsylvania System (Barnes 1968, 307). Particularly influential in their criticism was the failure to prevent communication among inmates, which was enabled by architectural factors, for example, the system of pipes connecting each room (Barnes 1968, 308). Similarly, in addition to other factors, Barnes (1918) emphasizes the role of architectural problems in the failure of the Pennsylvania System at New Jersey: he points to the “failure to provide for a proper exercising space” (105) and overcrowding beginning in 1845 that led to the double-celling of inmates. Without outdoor exercise, inmates may have been more at risk for mental and physical disease, while the early onset of double-celling violated a number of components of the Pennsylvania System. Facing the challenges imposed by architecture, including the manifestation of the reformers’ rational myths about the Pennsylvania System, administrators at these prisons became more willing to abandon the system.

Of these three factors, an unsupportive administration was the only factor not found at Eastern throughout its four decades on the Pennsylvania System. As we shall see, Eastern’s architecture often proved problematic, and was particularly limiting after the Civil War, while administrators often confronted evidence supporting the rational myths about the Pennsylvania System. However, with few exceptions over the period examined, Eastern’s administrators were persistent in their support for the Pennsylvania System, both in rhetorical endorsements of the system but also in working to mitigate the problems that could jeopardize the Pennsylvania System. The administrators kept the incarnation of myths and architectural problems from jeopardizing the Pennsylvania System. When expense, physical and mental illness, and recidivism occurred, they offered explanations displacing blame from the Pennsylvania System onto conditions, individuals, or groups, instead of attributing these outcomes to failures of the Pennsylvania System. When architecture proved limiting or otherwise problematic, administrators found ways to mitigate its impact on inmate health and were quick to make requests from the legislature to alleviate greater architectural problems.²³ Overcrowding struck in 1866 only because the legislature did not respond to administrators’ (numerous) requests to expand the prison or alter its jurisdiction, but even this did not halt administrators’ efforts to preserve the Pennsylvania System at their prison. Thus, while the evidence from the “counterfactuals” suggests that the support of its administrators *may* have been a significant factor that enabled the Pennsylvania System to persist at Eastern and nowhere else, the actual level of administrative support at Eastern illustrates the way in which this support in fact mattered.

3.5.5 Timing

Naturally, Eastern’s administrators did not explain why they defended the Pennsylvania System beyond their claims of its perfection and their desire for its propagation. However, three factors favor the robustness of this explanation. First, as we have seen, other likely explanations proved to be irreconcilable with the data. Second, while they did not make explicit the way in which

²³For example, over the course of nearly 35 years of operation, New Jersey State Prison did not expand beyond its initial cell count (fewer than 200), despite the overcrowding of the prison that occurred within its first decade (Barnes 1918, 90, 106, 160). By contrast, Eastern was initially intended to hold 250 inmates, but over the years, the administrators lobbied for and received more than twice that many cells. Moreover, when older cellblocks and other buildings became unlivable, they requested and (eventually) received funds to improve these structures.

maintaining the Pennsylvania System provided status identity and imperatives, these benefits were apparent in their behavior as will be demonstrated. Understanding the Pennsylvania System as having been institutionalized in this way thus offers a consistent interpretation of the data. Finally, this interpretation is further reinforced by the timing of the Pennsylvania System's demise at Eastern.

The Pennsylvania System was finally allowed to break down in the late 1870s. Overcrowding had necessitated adaptations since 1866, but these adaptations had largely only affected a minority of the prison population. By the late 1870s, however, both policy and practice at Eastern no longer reflected the central components of the Pennsylvania System, despite its nominal retention. Administrators themselves had altered Eastern's internal policies. I suggest that this decline occurred because the Pennsylvania System was no longer of value to Eastern's administrators. By the 1870s, the Pennsylvania System did not provide the same sustenance it had for previous generations. Perhaps for Richard Vaux, for whom the debate represented the heyday of his life's work, but by the 1870s, he was in the minority at Eastern. For other administrators, the Pennsylvania System no longer provided status identity and the imperative lost its force. Moreover, criticisms of cruelty had subsided and opinions about how prisons should be run, at least in the north, had largely converged. There was no reason—practical or phenomenological—to continue to defend it in word or deed. Ultimately, the Pennsylvania System did not give way to institutional pressures (these pressures were much weaker and, more importantly, would have directed change in other directions), nor did overcrowding constitute its death knell. Instead, I argue that the Pennsylvania System finally failed at Eastern because administrative commitment to the system ceased.

3.6 Conclusion

At this point, the evidence offers a very puzzling case as well as a possible explanation. Institutional and other pressures should have led to the abandonment of the Pennsylvania System at Eastern much earlier, but they were apparently overcome somehow. However, countervailing institutional pressures were weak and plausible local, contextual explanations cannot explain the retention. Instead, the factor that, *a priori*, seems to be most important in explaining Eastern's puzzling retention of the Pennsylvania System was administrative support—administrators' lack of opposition to the Pennsylvania System as well as their positive actions to protect or preserve the system. Without this support, the Pennsylvania System failed at other prisons that had adopted it: in these other prisons, administrators both expressed their opposition to or dissatisfaction with the system and were unable or unwilling to avert significant threats to the system. At Eastern, by contrast, administrators continued to voice their support of the Pennsylvania System, and provided insulation against a variety of threats to the Pennsylvania System. While it is unlikely that administrative support was the sole factor sustaining the Pennsylvania System at Eastern, it does appear to be significant.²⁴

²⁴Administrative support has been demonstrated in other contexts as an important factor in achieving dedication to a particular path. Zald et al. (2005) suggest that social movements have been effective in achieving social change within organizations when, among other things, there is "ideological commitment" on the part of an organizational managers. They argue that "organizational responses" to external pressures, like legislative mandates supported by a social movement, is determined in part by managers' level of "commitment to movement goals" (Zald et al., 2005, 264).

Part II

Strategies

Chapter 4

Rhetoric

Professionally, too, the personnel becomes identified with the agency, deriving prestige and disesteem from the fortunes of the organization itself. To defend the organization is often to defend oneself. These defensive activities are aided when a set of beliefs is so fashioned as at once to fortify the special needs or interests of the organization and to provide an aura of disinterestedness under which formal discussion may be pursued. (Selznick, 1949, 51)

4.1 Introduction

This chapter and the one following examine the most common theme within Eastern's public documents (their Annual Reports to the legislature), Eastern's administrators' rhetorical strategies to defend their prison against attacks on its use of the Pennsylvania System. Much of their defense countered the substance of the rational myths propagated by penal reformers—that the Pennsylvania System was cruel and inhumane, dangerous to inmates' physical and mental health, expensive and unprofitable, and ineffective. Thus, administrators touted the humanity of their prison, its origin and heritage, its methods, and its personnel. They explained why it was logically superior to alternative methods and they calculated statistics about inmates' health and likely levels of reformation as well as overall cost, often in comparison with available data from other prisons. When the administrators had to acknowledge failures, they constructed narratives that placed the blame on conditions, individuals, or groups rather than on intrinsic failings of the Pennsylvania System. However, defense was not always a response to the substance of the rational myths. As we will see in the following chapter, administrators also drew on their experience, and thus their special expertise, to challenge not only those propagating the myths, but any other entity challenging the Pennsylvania System at Eastern. These challengers, the administrators claimed, did not have standing to judge or alter the prison's policies.

These reports—anywhere from several dozen to several hundred pages long—were the product of a great deal of effort. Eastern's administrators fought, and fought hard, to defend and keep their Pennsylvania System. This defense, however, was not always the result of the same genuine belief in the righteousness of the Pennsylvania System that inspired local penal reformers to defend it throughout the nineteenth century. Instead, retaining and actively defending the Pennsylvania System yielded benefits to the administrators who could directly and indirectly derive a status identity from the arguments they made. As defenders and utilizers of the Pennsylvania System, they could advertise their humanitarian, benevolent natures. Their affiliation with the superior

prison gave them a basis to claim an exalted status within the field. Their expertise in “penal science” enabled them to claim professional status. Defending the Pennsylvania System thus allowed administrators to bolster their own positions in a seemingly “disinterested” manner, as Selznick (1949, 51) has explained.

4.2 Characterizing the Organization

The exceptional retention of the Pennsylvania System at Eastern made it impossible for the administrators to signal conformity to the larger environment in the same way as other administrators could and did, viz., through their formal structures. Their exceptionalism rendered them vulnerable to criticism that their distinct system was cruel and inhumane. Thus, in addition to rejecting the institutionalized formal structures of the Auburn System, the Pennsylvania System was characterized as not conforming to an important social institution constituting the penal field: humanitarianism. Eastern’s administrators challenged these attacks on their prisons—and their own—character directly by proclaiming their and their system’s humanitarian nature. In a common theme throughout the period examined, Eastern’s officials frequently used the words “humanitarian,” “progressive,” and “benevolent” in their reports.¹ They offered creation myths about punishment in early Pennsylvania and the origin of the separate system, pointing to higher goals that eschewed the need for profit. While referring to the multiple purposes of punishment, inmate reformation was frequently discussed as a goal, and at times, the primary goal, of Eastern’s separate system. In this way, officials both challenged the calumnious myths and displayed their conformity to important logics in the penal field that (they claimed) the congregate system and its affiliates had rejected. Beyond establishing the legitimacy and character of the prison and its Pennsylvania System, these statements also created a status identity for the administrators themselves. *They* were humanitarian, benevolent, progressive individuals who supported the more humane system. *They* were affiliated with the prison that uniquely sought and achieved the most admirable goals.

4.2.1 The System

Eastern’s administrators were adamant in their annual reports that the Pennsylvania System was a morally irreproachable system. It was not harsh, but mild. It was not cruel, but kind. It was even progressive and benevolent. For example, the inspectors noted, “The Pennsylvania system is emphatically a mild and humane system” (Inspectors, Annual Report 1835, 4). While these words, “mild,” “kind,” “humane,” “benevolent,” “progressive” and other similar terms, heavily populated the reports, administrators were fond of lengthy descriptions demonstrating to the reader how their system qualified.

The mode of treatment in the Eastern Penitentiary is of a mild character. The severity used in other prisons, in which large bodies of men are to be kept in subjection by force or power, is not required here. The warden and his officers are considered by our prisoners, not as tyrants or cruel oppressors, but as their friends. The voice of kindness is that which reaches their ears, and most successfully affects their hearts; suitable labour, daily exercise, cleanliness in their persons and apartments, with wholesome diet, and

¹This represents the first technique of neutralization that is apparent in the data. Administrators used these characterizations to “appeal to higher loyalties” (Sykes and Matza 1957) as a way of accounting for their deviance, perhaps to themselves (to alleviate their existential anxiety), or simply to others (to make their decisions appear less deviant).

above all, religious instruction by personal conversation and the public preaching of the Gospel, all combine to produce health of body, and moral renovation of the mind. (Inspectors, Annual Report 1833, 4)

In other cases, they relied on the testimony of their own inmates. In one report, administrators exclaimed, “The mode of treatment in the Eastern Penitentiary. . . has been called, by one who was once a subject of its wholesome regulations, ‘a humane institution;’ and we believe many more are prepared to unite in the same testimony” (Inspectors, Annual Report 1833, 4-5). Indeed, in several reports, administrators included letters from former inmates praising the Pennsylvania System. While the spelling, grammar, and word choice make these letters fairly suspect,² their inclusion was part of administrators’ arsenal for challenging characterizations of their system as cruel and inhumane.

Administrators also extended their arguments beyond a mere refutation of the critique into additional praise. Likely cognizant of the possible shame the criticisms of the Pennsylvania System brought to its namesake state, administrators argued that the Pennsylvania System was an asset rather than a liability. So benevolent and progressive was the Pennsylvania System, they argued, that it reflected very well on the state. The 1829 legislation authorizing the Pennsylvania System, they exclaimed, “will render her [Pennsylvania’s] character for philanthropy pre-eminent” (Inspectors, Annual Report 1837, 4). They further described Eastern as “an institution, which will stand a monument of the benevolence and wisdom of Pennsylvania, and the glory of her people” (Warden, Annual Report 1845, 18). Indeed, the prison was a beacon of Pennsylvania’s humanitarianism:

Long may the institution continue to be administered by such faithful Inspectors, long may its unhappy inmates receive the blessings of your kindness and care, and thus prove a blessing to the State in which it is erected, and spread its philanthropical principles to the remotest corner of the globe. (Warden, Annual Report 1841, 16)

In another extension of their argument, administrators explicitly aligned their system with philanthropists. Its humanity, the administrators argued, was so great that all humanitarian, philanthropic persons should endorse the Pennsylvania System. They Inspectors noted of themselves,

They [the Inspectors] believe, that all the friends of practical philanthropy, in examining this system, as it has been developed, and can be tested by the experience of so long a period of time, do rejoice in the great change which is thus being effected in the treatment of the outcast prisoner—kindness and compassion, and a desire for their improvement and reform, accompanied by the means to produce both, are supplanting cruelty and contempt.” (Inspectors, Annual Report 1845, 16–17)

²A letter from the 1833 Annual Report used words like “immured” and referred to Eastern as “that terrific prison” (Inspectors, Annual Report 1833, 4). However, one former inmate published a book of poems that he dedicated to the warden. In the preface of the book, the former inmate wrote of himself,

He regards his confinement at Cherry Hill the happiest event of his life. It has dissolved improper connections, remodelled [sic] his tastes, improved his mind, and, he trusts, made better his heart. He is neither morose, imbecile, dispirited, or deranged, and whatever reformation his imprisonment may have produced, he can attribute it to the separate seclusion from evil example and worse precept, which must necessarily follow the indiscriminate congregation of offenders, in place of punishment. . . . Philadelphia, July 25, 1843. (Hawser, 1844)

Through statements like this, administrators forged a link between humanitarianism, benevolence, progressiveness, philanthropy and the support of the Pennsylvania System. By corollary, those who oppose the Pennsylvania System are not as humanitarian and philanthropic as its supporters, but the administrators never made that argument explicit.

However, administrators were not content to simply deny the claims of opposing penal reformers by claiming their own humanitarian status. They also sought to make it clear that their system was *the most humane* system. Thus, as they were fond of saying, “As to its [the Pennsylvania System] humanity, if the term of imprisonment is justly proportioned to the offence, no system can claim precedence” (Warden, Annual Report 1841, 8). The administrators described the Auburn System as mere punishment that lacked reformatory influences and did not seek to improve the offender or help him; the Pennsylvania System, they argued, did all of this and more. As they noted in a later report,

The separate system regards these reformatory influences as essential elements of punishment, if that is to be a restorative infliction, for the good of the convict, and the benefit of the State. Mere deprivation of liberty, with labor, is not all of punishment. It may be, only in so far as it restrains or detains the offender in a fixed place. But that is the external or physical idea. Has punishment only this one phase? Secure a convict in a place removed from society, and can we then proclaim that the social relations between the secluded and society end till the days of his sentence are ended, and be satisfied that his punishment is complete? Have benign philosophy, christian benevolence, civilization, penal and social science and jurisprudence, no better teachings, no higher aims? The Pennsylvania system reaches to the confines of a truer humanity. It preserves, cultivates, teaches the individuality of the convicts; their personal relations to society and their fellow man, and the God of that newer dispensation which seeks for the soul of a man, not that of a class, and proclaimed that it were better, individually, to receive the whole promise of the gospel, than gain a world without it. (Inspectors, Annual Report 1865, 16)

As we will see below, administrators often counted the ways in which their system was the better system. Indeed, though they began from a position of defense, administrators ended up on the offensive in many such comments. Thus, after one lengthy description of the system in practice, the inspectors noted, “The nature of this report forbids a longer indulgence in this strain of remark, but it appears to us only to be necessary to turn the current of thought in the proper channel, and the real difference between this and all other known systems must be apparent” (Inspectors, Annual Report 1835, 5). The message was clear: Our system is humane; these other systems do not compare.

Indeed, they saw their system as a model for the country—in many ways, it appears that they were more anxious about securing domestic success than global success, which they could partially claim by the 1840s. Its humanitarian features, the reformers argued, made it particularly well suited to the United States. As they explained,

France, England, Prussia, Sweden and Austria, have adopted our plan of penitentiary reform, as the basis of their own, and it is the hope of the Board that it may become general in the States of the Union. It is certainly most in unison with the principles of our Institutions, for it seeks to benefit those who are the objects of its operation—and while it protects society and punishes crime; it not only deters from its commission and prevents its increase; but in its humanity, does not forever brand the prisoner, as one of a class to be regarded with repugnance—and thus deny him the opportunity of

commingling with the virtuous—which in the wise economy of Providence, is secured to all the children of men. (Inspectors, Annual Report 1846, 18)

4.2.2 Its Parts

While much of their evangelical support for their system relied on grand statements, administrators also pointed to specific aspects of their system and prison, including specific descriptions of their treatment, their personnel, their goals and motivations, and the history of the Pennsylvania System.

Administrators sought to demonstrate how their treatment under the Pennsylvania System was humanitarian in a number of ways. Kindness was one major theme in their descriptions of treatment, as apparent in this descriptive discussion:

Where do we place them, and how do we treat them? They are taken to the bath and cleansed of outward pollution, they are new clad in warm and comfortable garments, they are placed in an apartment infinitely superior to what they have been accustomed, they are given employment to enable them to live by their own industry, they are addressed in the language of kindness, interest is shown in their present and future welfare, they are advised and urged to think of their former course and to avoid it, they are lifted gently from their state of humiliation; self-degradation is removed, and self-esteem inducted. Pride of character and manliness is inculcated, and they go out of prison unknown as convicts, determined to wrestle for a living in the path of honesty and virtue. Is not this humane? (Inspectors, Annual Report 1835, 4–5)

Indeed, a common refrain in the Annual Reports was the way in which treatment at Eastern was “kind” or “firm, but kind.” The administrators were kind, but they did not let the inmates run wild: order was still maintained through firmness. For example, the Inspectors noted in their report one year, “To the kindness, firmness, and humanity of the Warden, Overseers, and Matron, we are chiefly indebted for the order, obedience, and contentment which have prevailed, and which continue to prevail, throughout the prison” (Inspectors, Annual Report 1851, 7). This emphasis on kindness, beyond a refutation of cruelty, was central to their claim of humanitarianism. As one administrator explained, “Any treatment of prisoners, which has for its object imprisonment and reform, and is not based on principles of *kindness*, is worse than useless; indeed, it is a cruelty, a wrong, and a prevention of benefit” (Inspectors, Annual Report 1844, 5). When Eastern’s administrators emphasized their own kind treatment of their inmates, they were depicting the Pennsylvania System as a humane system. More strategically, however, they were implicitly labeling the Auburn System, not particularly known for its kind treatment, as the cruel system.

Indeed, Eastern’s administrators often described their treatment in opposition to treatment under the Auburn System. Administrators often included accounts of how much misconduct occurred and punishment was meted out in the course of the year. They often used this opportunity to explain how their treatment of inmates differed from treatment at Auburn, with optimal results. It was a point of pride among Eastern’s administrators that they did not use the whip to instill discipline in their prison. The whip, especially associated with Southern slavery, was a symbol of inhumane treatment and cruelty. Thus, Eastern’s administrators frequently emphasized the “mildness” of the punishments they did use as a kind of code for their refusal to resort to whipping. For example, the Inspectors noted, “During the past year the conduct and deportment of a very large majority of the prisoners have been good. Few cases have required any other than humane treatment, and where any such cases have occurred, the mildest form of punishment the Inspectors could adopt, has been resorted to” (Inspectors, Annual Report 1842, 4). During

their period of overcrowding, they were sure to point out to their readers of their Annual Reports that even this challenge did not push their resolve against inhumane punishments: “Oppressed by numbers, perfect discipline is observed, without resort to any but the milder degrees of punishment” (Physician, Annual Report 1868, 101). By not using the whip, Eastern’s administrators could concretely argue their system was more humanitarian than the Auburn System. In practice, of course, administrators—especially the warden and physician, sometimes after consulting the inspectors—imposed a number of additional punishments on recalcitrant offenders, but the more extreme punishments were rarely discussed in the annual reports.

Indeed, the administrators were cautious to publicize their abhorrence for anything resembling cruel punishment as a way of emphasizing their system’s humanity. Their public abhorrence and rejection of the whip was one version of this emphasis, but it was also apparent in their emphasis that the Pennsylvania System was not a system of solitary confinement. Their quest to distinguish the Pennsylvania System and its separate confinement from true solitary confinement was a common theme in their reports, as we will see in Chapter 6. But actively condemning solitary confinement helped to make the case that the Pennsylvania System, which they endorsed, did not rely on this “cruel” treatment. As they noted early in the prison’s lifetime,

Absolute solitude for years, without labour or moral or religious instruction, probably does bear too severely upon a social being like man, and, were such the mode of punishment in this Institution, the Board would feel little hesitation in recommending its repeal, as cruel, because calculated to undermine the moral and physical powers of the prisoner, and to disqualify him from earning his bread at the expiration of his sentence; as impolitic, because, when persisted in beyond a very limited time, it tends to harden rather than reform the offender, while it produces great expense to the public, the prisoner in no way contributing by labour to his support. (Inspectors, Annual Report 1831, 9)

Showcasing their opposition to such punishment not only helped to demonstrate their humanitarian bonafides but also challenge the identification of the Pennsylvania System as a system of solitary confinement. But the administrators also established these by condemning other instances of inhumane treatment:

Until the Legislature of Pennsylvania shall provide a suitable asylum for the indigent deranged, a measure which every motive of policy, of economy, and humanity imperiously demands, we must expect that such will be sent to the Penitentiary.

In a future age it will scarcely be believed, that in the nineteenth century, in a Christian land, in a State containing throughout its extent innumerable monuments of piety, of intelligence and benevolence, that those whom Providence, in its mysterious dispensations, had visited with the most grievous [sic], the most appalling calamity, the deprivation of reason, and consequently of responsibility—that indigent lunatics should be deprived of all sympathy, of all justice, by the cruelty or negligence of their fellow men—should be consigned to a prison appropriated only to felons of the vilest degree, where no friend or relative could visit them or alleviate their distress, and where almost every surrounding circumstance is hostile to their repose, their comfort, or their restoration to reason. . . . I hope, I trust, that the great State of Pennsylvania, which is inferior to none in wealth, which has already done so much to ameliorate the miseries of prisons, will not refuse to do justice to her lunatics, by imitating, even at this late day, the institutions of her rival sisters. (Warden, Annual Report 1841, 13)

As I have implied, administrators' statements about the Pennsylvania System were often as much about the administrators' themselves as the system they sought to defend.

The Pennsylvania System and its treatment were not the only recipients of humanitarian accolades in the annual reports. The administrators were also in the habit of referring to themselves and others associated with the Pennsylvania System in these ways as well. Instances of personnel turnover were ripe opportunities to heap praise on incoming or outgoing wardens, inspectors, and other administrators. Thus, when Eastern's first warden left his post in 1840, the inspectors eulogized his tenure:

On the first of July last, SAMUEL R. WOOD, in accordance with an intention long before expressed, resigned the office of, Warden, which he had held for eleven years. Much praise is due to this gentleman, for his judicious organization and arrangement of an important and united system of Penitentiary punishment, and for his humane and kind treatment of the prisoners under his care. (Warden, Annual Report 1841, 5)

Likewise, when Warden Thomas Scattergood assumed office, the inspectors explained, "The benevolent and highly respectable gentleman now Warden, induced by his own views of duty and the solicitations of many of the best friends of the Pennsylvania System, consenting to assume the office" (Warden, Annual Report 1846, 20). These flowery descriptions helped to establish the personnel as humanitarian gentlemen who would never consent to supervising or imposing a cruel system of punishment.

Of course, these comments were not restricted to descriptions during turnover. Instead, they were fairly commonplace. As part of his Annual Report, Physician Given reported, "In all efforts that have been made to lessen the injurious effects of these unhealthy avocations, I cannot refrain from expressing my high sense of the intelligence and humanity that have been invariably displayed by the officers of the different departments" (Physician, Annual Report 1850, 22). Nor were these restricted to the prison's high-level personnel. The prison's overseers were also held to this standard and engendered the administrators' praise:

The officers of the institution under my control have, by attention to their duties, deserved the confidence reposed in them; I have the most conclusive proofs of their humanity and kindness to the prisoners, by the unbiased statements to that effect made at the period of their discharge, when no motive can exist for a perversion of truth. (Warden, Annual Report 1842, 9)

The administrators also praised the volunteers who spent time with the inmates:

On the minds of some [inmates], a permanent impression for good is not unfrequently produced. To those instrumental in achieving this result, and particularly to the occasional visitors [sic], whose only object is the highest welfare of their fellow men, the thanks of the community are emphatically due. (Inspectors, Annual Report 1850, 5)

. Virtually any individual associated with Eastern was bequeathed the administrators' praise as humanitarian and philanthropic. Often, the administrators received the bulk of this praise, providing a solid foundation for their status identity.

Administrators could further describe their system, and their personnel, in positive terms by discussing their motivations and the goals of the Pennsylvania System. At base, their motivations were benevolent—that the prison would benefit its inmates and society. For example, one warden recorded, "I humbly hope by divine aid, that it [the penitentiary] will prove a blessing to most, if not to all, of the unhappy persons who are brought within its walls" (Warden, Annual Report 1832, 10).

Similarly, society was considered a primary beneficiary. “Upwards of two years’ acquaintance with the institution and its discipline has confirmed in my mind the opinion, that it is in every respect better adapted than any other system for the reform of offenders, and for the peace and security of society” (Moral Instructor, Annual Report 1841, 28). Often, however, administrators pointed to specific policies or goals that demonstrated their upright motivations.

According to administrators, the main concern at Auburn and similar prisons was profit; at Eastern, it was often rehabilitation or “reformation.” There was some confusion about whether reformation was the primary goal or simply a desirable goal³, but the point they sought to communicate was how they prioritized the good of society and the offender over what they saw as cruder interests. Thus, they often talked about the ways in which the Pennsylvania System enabled rehabilitation—and did so better than could be achieved under the Auburn System.

the distinctive features of the Pennsylvania plan. . . are—separation of the prisoners from each other at all times—moral and intellectual improvement—honest and persuasive efforts to reform and reclaim the prisoners. Prevention, by this constant separation from each other of the evil of contamination and the prejudicial influence which must arise from the association of the more or less hardened offenders. The prevention by separation of the acquaintance and knowledge which the community of evil-minded persons obtain of each other by association in the place of punishment. The ability which is afforded by the separation of offenders, to individualize the corrective and reformatory treatment best suited to their peculiar characters. The almost certain consequence which results from the separate system, of making these no worse who cannot be made better by the infliction of the punishment they undergo. The addition of all improvements which experience and not mere theory suggests in the improvement of the moral and physical condition of the prisoners. These are the principles on which the Pennsylvania system is based, these rendered it antagonistical to the congregate system. (Inspectors, Annual Report 1847, 17)

Moreover, administrators used their commitment to reformation as one of the features that most defined the Pennsylvania System as a progressive system: Its “remedial and reformatory influences”

attest the enlightened, benevolent, and indeed philosophic treatment, by society, of those few, who have violated its laws. They mark the progress of penal science. The separate system is its most signal and *sui generis* realization.” (Inspectors, Annual Report 1860 6-7)

The same could not be said of the Auburn System.

In addition to proclaiming their preference for reformation, administrators also drew attention to the way in which they prioritized the good of the inmate and society over issues like cost and profit. In one version of this argument, administrators claimed that they were willing to

³In the same year, two separate administrators filed reports offering different views of the role of reformation. One noted, “While reformation is not the sole or even main object of punishment, it is, nevertheless, a most desirable effect of it” (Inspectors, Annual Report 1850, 5). The other noted, “in an age which declares the reformation of the convict to be the chief motive for his incarceration, and under a system of discipline which professes to accomplish this desirable result more effectually than any other. . .” (Physician, Annual Report 1850, 28). Throughout the entire period, however, administrators were usually concerned with reformation to some degree, and often more than any other purpose of punishment.

pay more for a good cause. Reflecting on the not-so-distant origins of the Pennsylvania System at Eastern, the administrators noted,

The experiment at the outset was attended with an expense which even a *great nation* has paused to incur, and is only to be reconciled by the prevalent humanity of the people of Pennsylvania, which yearned to ameliorate the condition of her criminals, and to substitute a moral and wholesome atmosphere in lieu of the vicious miasma which pervades great communities. (Inspectors, Annual Report 1837, 4)

Years later, they continued to demonstrate their prioritization of moral over fiscal benefits. Thus, commenting on the influx of prisoners at the close of the Civil War, administrators wrote,

Attention is called to the number of unapprenticed convicts and minors which the tables appended show have been received during the past year. It is of far greater advantage to these individuals and to society, to teach, to improve, or reform them, than to waste vain regret at the per centage of profit their manual labor would produce during the time they are undergoing punishment for crimes. The punishment is inflicted, and they are placed in a position to avoid crime thereafter, as a necessity. If new impulses are given to the life of a majority of these convicts, Pennsylvania will have gained far more permanent moral benefits, than the saving of a few dollars which without this benefit, would have been realized. (Inspectors, Annual Report 1866, 26–27)

It was not that they were fiscally irresponsible, as they would explain; instead, it was that they pursued more humanitarian goals than this.

Central to their argument, administrators constantly noted that they were unconcerned with profitability. This was a particularly strategic tact that did more than confirm their humanitarian intentions. Administrators did not know at the outset whether Eastern would be profitable, self-sufficient, or an extremely expensive endeavor. Challenged from the beginning about the cost of their prison, they noted that profitability was not a concern. Instead, they described pecuniary interests as a lowly and inappropriate incentive for penal or social policy.

I rejoice that it never has been the policy of the legislature of this state, to sacrifice the safety of the community and the welfare of the convict for apparent pecuniary gain. They have taken a higher, a more dignified and nobler ground. They have provided that labour shall be furnished the convict in his cell, and not for the sordid purpose of reimbursing the Commonwealth the expense of his maintenance. Nevertheless, sufficient time has elapsed to satisfy me of the correctness of an opinion I have long believed and asserted, “that a prisoner who has two years or upwards to serve, can in his solitary cell earn sufficient to clear all his expenses from the time of his admission to his discharge.” (Warden, Annual Report 1831, 13)

Years later, administrators reflected,

Like institutions in other states, may regard the profits of prisoners’ labor, as paramount to every other principle of Penitentiary discipline. Pennsylvania has always, from the dawn of an enlightened benevolence in Penitentiary reform, advocated and successfully practiced far higher aims. (Inspectors, Annual Report 1856, 8)⁴

⁴See also:

The Inspectors have never from the earliest dawn of reformatory efforts in prison discipline, been taught

This theme thus augmented the system's humanitarian status, excused fiscal failures, and criticized those supporting the Auburn System. Administrators, whether savvy or sincere, thus made their weakness their opponents' weakness: they may or may not make a profit, but it was an improper concern for humanitarian, benevolent prison administrators. Moreover, they were well aware of the inversion they were attempting. Referring to the warden's annual report, the inspectors noted,

This document will show that the Commonwealth is not an immediate pecuniary gainer by the maintenance of the present system of discipline—a fact of which constant use is made by a class of writers, as proof of the defects of the system, as well as of the obtuseness of the popular mind in tolerating it, but which, to the apprehension of the undersigned, constitutes much stronger evidence of that stable, straight-forward and effective benevolence, which has ever distinguished the people of Pennsylvania. (Inspectors, Annual Report 1849, 9)

Proclaiming fiscal disinterest helped to establish their system's humanitarian nature and their superiority from other systems.

These claims, however, were belied by their own attempts to make the prison more cost-effective, as we will see below and in Chapter 7. Throughout the Annual Reports, administrators did indicate that they were indeed concerned with the pecuniary faring of their prison. It is true that, when they did discuss profitability, they often noted that it was not their "primary" concern. For example, after offering a favorable account of the year's finances, the Warden noted, "This result is satisfactory; for, although it never was contemplated to make profit a primary object, yet it is desirable that the convict should not be a burthen to the state." (Warden, Annual Report 1833, 10) The next year, however, administrators described what they were doing to ensure profitability:

Weaving and shoemaking have been the principal employments. In the former, some loss has been sustained in the past year, from the depreciation in the value of goods. In the latter, the aggregate profit has been small. If, however, we can ensure the steady employment of the prisoners, in trades which must eventually benefit them, and tend to divert them from the commission of crime, when restored to society, the main design will be fulfilled. (Inspectors, Annual Report 1834, 3)

Administrators could publicly justify labor tasks in light of reformation, but as we will see in Chapter 7, privately cost-effectiveness was often the greater concern. It is perhaps fair to say that profit was not their *primary* concern, but their descriptions of their lack of concern for profit were somewhat stronger than the reality.

This feigned disinterest in fiscal issues was part of the or "creation myths" (Heimer and Petty, 2010), or narratives of Eastern's origin, administrators deployed to counteract criticism of their system's inhumanity. In addition to overlooking their fiscal concerns, administrators' narratives of Eastern's history often took a rather heroic tone.

The experiment at the time was a bold one, and was attended with difficulties at its commencement that would have damped the courage of any set of men less persuaded

to regard a profit-paying penitentiary, as a primary purpose of that true philanthropy, which originated our system of penitentiary punishment. . . . Economy in their maintenance is the duty of all to secure, who are entrusted with their custody and care. But there are higher objects to gain in the treatment and discipline of convicts, than profit from their labor. (Inspectors, Annual Report 1858, 7)

of the practicability or a plan which years of deliberation had decided to be the true one. Opposed at home by a respectable number of our fellow citizens, who, with views quite as honest, held adverse opinions; its main principles questioned by a commission of our own state especially instituted to examine the subject; assailed by the official agent of an influential and indefatigable society of a sister State, because it conflicted with his favourite system: Attacked from abroad by persons of high consideration in the moral and political world, who had become endeared to America by their military and other services, the friends of the Pennsylvania system held their course unchecked, and with a steadiness and perseverance worthy the cause, made their opinions public sentiment, and the State at length passed the law which will render her character for philanthropy pre-eminent. (Inspectors, Annual Report 1837, 3)⁵

These creation myths often described the Pennsylvania System as facing tremendous odds to succeed and the reformers and administrators who nurtured the system as extraordinary, benevolent humanitarians who bore the criticism but were not dissuaded from doing the right thing.

⁵These descriptions became even more Herculean as time went on:

Half a century ago, when the Pennsylvania system of Penitentiary Reform was established by the Legislature, the theory of separate Imprisonment of convicts was attacked by earnest men in Massachusetts, New York and England, with a series of objections, which in themselves were thought to be fatal to its successful administration. Then, penal science, as an element of social science, was almost unknown. Thinkers and students had avoided it as repulsive and incapable of development. There were no data, there was no knowledge, nor experience, from which to deduce a reasonable conclusion as to its results. Its opponents resisted it on several grounds. They assumed that it would be, if carried out, destructive to health, injurious to the mind, and useless in its influences on those under its discipline. Against that system they set up the congregate plan, of commingling convicts by day at work, in prison, separating them at night. The distinction between these systems was radical. The separate system rested on the philosophy that punishment was a separation of the convict from society, to be treated for his crime as his individual character required; to produce that regret which might cause an amended life; to aid or induce reformation; to protect society; to prevent discharged criminals from organizing into a class in the community to prey on it with success, and by acquaintance with each other, made in prison, thus recruit the number and prevent any from returning to honest pursuits, or forming domestic ties. This was the basis on which the separate confinement of convicts was placed. These were the reasons which induced the founders to press it to a practical trial. The theory of the congregate system, on the other hand, may be thus stated: that as convicts were associated with society, association on conviction was obedience to social law, and in prison, therefore, they should work together; that each knew his degradation, and that crime was its cause; yet legal punishment was complete when thus inflicted, though measured alone by the period of this degradation, and that on its termination the convict was either a better man or a worse one, society only requiring crime to be punished and the criminal sentenced to a prison. The effects on the individual which his punishment produced, were never considered, except so far as that it should not injure his health nor his mind; and it was not cruel, because these convicts worked together all day, and went to separate cells at night. A Penitentiary as a place of reformatory penance for crime, may represent one system; a Factory, as a place of primitive manual labor, may represent the other. This is plainly stating the opposite theories of the two systems at the time to which we refer. It cannot be denied, that since then, changes have been made in both systems, by which they have been improved. In both, experience has done much. In both, remedial and reformatory influences have been introduced. (Inspectors, Annual Report 1869, 6–8)

4.2.3 Summary

In these ways, Eastern’s officials sought to establish their prison, its personnel, its methods, purpose, and its heritage as humanitarian, progressive, benevolent. Relying on the logic of humanitarianism throughout their descriptions was no accident. Emphasizing the humanitarian aspects of the Pennsylvania System helped to counter the calumnious myth that the Pennsylvania System was a cruel and inhumane. Through these arguments, officials at Eastern crafted an identity for their prison that directly challenged several criticisms of prison—in particular, its particularly harsh and cruel character. Administrators’ characterized their organization with terms that represented the opposite of cruelty, deployed creation myths emphasizing the benevolent origins of the prison, and emphasized their unique status within the field as a prison that sought to—and successfully achieved—inmate reformation. In these ways, officials marketed their organization’s difference, turning deviant status into an asset, showing how its deviant Pennsylvania System can achieve goals not achievable through alternative means. Along the way, administrators were able to characterize themselves in positive terms that were salient to their largely reformer audience.

4.3 Evaluations

Eastern’s administrators also spent large portions of their Annual Reports evaluating their prison. Focusing particularly on the areas on which they were challenged—health and mortality, cost and profitability, and efficacy in reforming inmates and reducing crime rates—officials consistently endorsed their prison and its system, relying on “another years experience.” To the extent that they identified failures in the system, they displaced blame from the system to individuals, groups, or situations. Administrators also compared Eastern and its Pennsylvania System to other prisons following the Auburn System. By offering detailed comparisons of mortality, cost, and recidivism, Eastern’s officials could claim parity with other prisons, if not “superiority” over these systems, as they had through humanitarian characterizations.⁶

These evaluations offered a double advantage. On the one hand, they offered evidence against the veracity of reformers’ calumnious myths against Eastern and its Pennsylvania System. The administrators relied heavily on empirical data, especially statistics, but also on more anecdotal evidence to illustrate that their Pennsylvania System was not guilty of various negative charges—that no or very few negative outcomes ever occurred or, when they did, the Pennsylvania System was not to blame. On the other hand, these evaluations also offered administrators the justification necessary to place their prison on a pedestal, and themselves right along next to it. As the administrators in charge of a superior prison, and defenders of a superior system, they, and they alone, were champions in the field. Not only were they humanitarian and benevolent men (Chapter 4), but they were also effective administrators.

⁶In this section, we observe two additional techniques of neutralization (Sykes and Matza, 1957) deployed by Eastern’s administrators. First, they offered evidence that the Pennsylvania System did not cause harm—they did not increase the taxpayers’ burden, they did not increase citizens’ vulnerability to victimization, and they did not harm the inmates (denial of injury). Second, when failures did occur—expenses outweighed revenues, inmates recidivated, or inmates became ill, appeared insane, or died—they offered scapegoating explanations that essentially erased any blame from the Pennsylvania System (denial of responsibility). As in with the characterizations described above, these accounts (Scott and Lyman, 1968) may have alleviated any existential anxiety the administrators experienced in deviating from the field by retaining the Pennsylvania System.

Any one competent to estimate the character of the corrupt mass of a prison population, who is fully acquainted with its chaotic elements of ignorance, brutality, debased profligacy, and lawless passion, would be astonished to observe the uniform good order, and apparent good disposition, which now reigns throughout this Institution. Amid the violence which rages in the midst of hitherto peaceable communities, in civilized society, this state of internal tranquillity is peculiarly significant. It is a volume of evidence in favour of the system, “which he who runs, may read;” and it indicates wisdom and judgment, in the administration of its discipline. (Moral Instructor, Annual Report 1849, 34)

⁷ Thus, the better their prison’s evaluations, the better their own status identity. These evaluations were as much a statement of the prison’s value as the worth of its administrators.⁸

4.3.1 Challenging the Myths

The annual reports offered administrators a prime opportunity to challenge the calumnious myths. By gathering facts and statistics and constructing tables of data, administrators could offer concrete proof against the claims that their system was cruel and inhumane, dangerous to inmates’ physical and mental health, too expensive, and simply impractical and ineffective. Indeed, challenging these criticisms was exactly the purpose of this work. As the administrators noted towards the end of the period,

The yearly reports that have been made for the last quarter of a century, are testimony on the subject that are reliable, as far as they can be made so. They present more informa-

⁷ Similarly, Richard Vaux, in this 1872 monograph about the Pennsylvania System, explained,

It may be said, without fear of denial, that the best system of prison discipline ever devised may utterly fail by reason of its bad administration. So also is it true of a bad system, it may produce good results, provided it is well administered. So much depends on administration. The most important element in all administrations is the character and capacity of the governing power, and the adaptation of the officers to their duties. (1872, 91)

⁸ Three characteristics are striking about the fighting on this empirical front in the war over prison discipline. First, as the evaluations were key weapons against the calumnious myths, the focus of the knowledge procured and disseminated at Eastern had much less to do with the reformative transformation of individual criminals and much more about the functioning of the prison itself. While reformation and recidivism were included in Eastern’s public dossier, most attention was focused on the cost of the Pennsylvania System and its effect on inmates’ mental and physical health. Yet our understanding of the creation of knowledge in nineteenth-century prisons has been on the dossiers that followed individual offenders and that sought to provide insights into their “soul” (Foucault, 1977). Second, beyond the subject of knowledge, the very truth of the knowledge was challenged by both sides. Eastern’s administrators often relied on additional contextual evidence to explain how their statistics did not do their system justice, while opponents challenged whether the disseminated knowledge was constructed honestly or accurately. Even while both sides relied on statistics, both sides distrusted the statistics. This problematizing of knowledge seems out of place given the revolution that was taking place in which knowledge was an integral part of discipline. Finally, just as the subject of knowledge was here more the prison rather than the inmate, so to was the object of discipline at this different scale. Knowledge of the prison’s functioning was generated to shape its behavior, a topic I return to in Chapter 7.

tion, on penal science, or data from which penal science can be studied, than any other like institution in the country. There is not a criticism which objectors to the Pennsylvania system have ever made, that the administration, in its details and from the experience thus gained, have not successfully removed or denied. (Inspectors, Annual Report 1865, 16-17)

Indeed, they often described this data as “the best argument” against the myths (Inspectors, Annual Report 1869, 5).⁹

These evaluations took the form of logical, summary, and comparative analyses along the dimensions of cost and profitability, inmates’ health and mortality, and recidivism and reformation. The logical evaluations of the Pennsylvania System, like the characterizations of the system, often implicitly compared the Pennsylvania System to the Auburn System. As the administrators explained, “Ours is a rule of reason rather than of fear or coercion; and herein consists one of the chief excellencies of our mild and rational system. The separate convict uninfluenced by the bad example, and secured from the sneers and taunts of his fellows, soon yields himself to the better feelings of his nature, and becomes ready to listen to the salutary counsels extended to him by the Inspectors and other officers of the prison, aided by the visits of those benevolent gentlemen, who seek in this unobtrusive way to promote the general good” (Warden, Annual Report 1851, 9). These features are not part of the Auburn System, nor are their consequences possible there, they argued. Indeed, the separation of offenders was central to their claim to logical superiority.

Punishment is necessary for offenders against the laws, and the security of society. It is preventive by example, and corrective by infliction. Correction is the more personal and practical; it is primary, by position of its necessity, and thus proximate to the moral effect therein attainable. Punishment to be corrective, should prevent contamination by the association of the least with the most guilty; it should be individualized in its infliction; it should cultivate and strengthen every aspiration for improvement; it should stimulate regrets; it should awaken hope, cheer the desponding, excite desires for re-instatement among the respected. Its efficacy should depend on its remedial and reformatory character. Such essentials can only, surely best, be attained by separation. As corollary, these remedial and reformatory influences can only be ascertained and administered, on an obtained knowledge of the offender. This diagnosis is a prerequisite. It requires personalities to be under recurring observation. Separation, certainly best secures this aim. (Inspectors, Annual Report 1860, 6-7)

Other features also made the Pennsylvania System a logically excellent system. For example, it would be particularly conducive to inmate health. At Eastern, inmates’ “good health is not effected by the administration of large quantities of medicines or stimulants, but by the regular habits of living of the prisoners, the quietude of their non-associate confinement, their having a regularly allotted task, enforced cleanliness, and a good, strong, wholesome diet” (Physician, Annual Report 1873, 40). The system thus had a number of features that produced (or would produce) good results.

Some comparisons were direct attacks on the Auburn System. One claim was the Auburn System caused crime, while the Pennsylvania System did not. After reviewing the apparently greater crime rate (as they calculated it) in New York, Eastern’s administrators explained,

⁹They noted, “It is submitted that the truest test of our system, is to be found in this comparison, as well as that of the yearly tables of statistics, which constitute a part of the Reports made to the Inspectors. Indeed it is not well understood, how else to determine the question” (Inspectors, Annual Report 1868, 25).

Contracting for the labor of the convicts, by which individuals may become rich on the toil of the unfortunate and degraded, and blending together the innocent, the young offender, and the hardened criminal, are, it would seem, producing their proper fruits, by augmenting to repletion the population of prisons, where every thing is thus done to foster habits, which naturally produce crimes, or educate criminals. (Inspectors, Annual Report 1859, 19-20)

Eastern's administrators also claimed that the Auburn System was not profitable. After reviewing various New York prisons' financial records for the year, the Inspectors noted,

If they accurately express the entire cost, and all the earnings and the whole population; congregate labor, under the contract plan, or any other adopted in these institutions, is certainly not a paying system of convict labor. It is very problematical, if a profit can be made by this character of compulsory employment, unless a prison is converted into a manufactory. With the most entire respect for the New York authorities, it would be a question, not irrelevant to ask, to which class these establishments belong." (Inspectors, Annual Report 1861, 48)

As we saw above, they also criticized as unhumanitarian Auburn's commitment to profitability.¹⁰ It is unlikely accidental that these criticisms of the Auburn System were precisely the complaints against the Pennsylvania System.

Such claims, however, could only have limited success; objective measures would be more attractive than the testimony of interested parties from any part of the field. Supported by pages of statistical information in their reports, administrators evaluated the Pennsylvania System along three areas in particular: the mental and physical health of its inmates, the cost and profitability of their prison, and their inmates' apparent rehabilitation and their recidivism. Almost always, their assessments were positive.

Administrators' evaluations focused foremost on medical assessments. Here they received the harshest criticism, so here they expended the most ink refuting the criticisms. The administrators often pointed to cases in which inmates entered the prison in a diseased or otherwise weak

¹⁰As the Inspectors noted,

In the several States of America, it can be truly said, the objective point of their penitentiary plans is pecuniary gain to the State out of its convict population. All other ameliorations are incidental to this primary purpose. Without too broadly or unkindly stating the aim of most of our sister States, it may be said, the philosophy of their systems of convict treatment, is to congregate the prisoners into classes, that the most money can be made out of their imprisonment. "Self-supporting" is the test of their prisons and penitentiaries, and those systems are regarded best, which yield the largest pecuniary returns from convict labor. The larger the number working together, the greater the facilities to supervise and render them the more productive. Pennsylvania rejects an economy, so false both as to the convict and to society. The teachings of enlightened benevolence have never sanctioned it. The progress of social science has left the sordid and the selfish among the false doctrines of that material dispensation which idolises gain, and denies to man the inherent right, even in his convict condition, to every beneficial influence which christianity or civilization has in its power to bestow. (Inspectors, Annual Report 1866, 17)

state and improved during their sentence.¹¹ In other cases, they noted that despite widespread epidemics in the neighboring Philadelphia, the prison was largely unscathed.¹² In a sense, they were commenting that their prison was healthier than open society. More generally, they would note their recent low disease and mortality rates. In one year, the Warden noted,

The mortality is so small that it cannot be regarded otherwise than exceptional, as a greater one must certainly be due amongst the class of persons who form a prison population. And yet while this is the fact, it only furnishes additional evidence of the general healthfulness of the institution, and the nice adaptation of the diet and general hygienic [sic] arrangements of the house for the preservation of health. (Warden, Annual Report 1862, 46)

In other cases, they used the statistics of another prison to proclaim their mortality statistics on par with the competing system. They also, however, accused the other prisons of poor reporting strategies that made comparison unfavorable to the Pennsylvania System. For example, Eastern's administrators claimed Eastern's physician was more fastidious in recording cases of insanity, while clear cases of insanity went unreported in other prisons like Wethersfield. Similarly, administrators claimed that other prisons solicited pardons for their insane inmates, which artificially reduced their mental health and mortality numbers. Administrators explained,

to my knowledge, no prisoner has been pardoned that would have been likely to have added to the mortality if he had remained during the year: this fact should always be ascertained in examining prison records of mortality, as a few pardons, humanely interposed by the Executive, would entirely alter the per centage, and lead to great error in comparing the mortality of different prisons (Warden, Annual Report 1845, 20).

Comparisons were consequently misleading and unfavorable to the Pennsylvania System.

The administrators also evaluated their costs and profitability in most years. Indeed, in the first several years, administrators claimed their system made a profit.

The inspectors feel great satisfaction in announcing that the profits of the past year meet the expenses of the Institution, excepting the salaries, and we entertain the belief heretofore expressed, that when the entire plan shall be completed, and the prison fully occupied, a revenue will arise from the labour of the convicts. (Inspectors, Annual Report 1833, 5-6)

They also included assessments of their cost per inmate and, as with medical evaluations, they compared their costs to those at other prisons. These comparisons were particularly useful when Eastern did not turn a profit. In one characteristically enthusiastic report, the Inspectors noted,

Notwithstanding these facts, the excess of maintenance over productions for 1860, is $8\frac{1}{2}$ cents per diem.

¹¹The warden's daily journal may provide some insight into the sincerity of these claims. Beginning in the 1840s, wardens would record of inmates that their bellies had increased during confinement. For example, "January 20: Discharged by expiration of sentence No 1634 Henry Butler in good health, had been well treated by Over. Smith. Food had been plenty, circumference round the body had increased six inches" (PSA, Warden's Daily Journal, January 20, 1844). This seemed to be a point of pride and was recorded often by several wardens, though not all.

¹²"Although the small-pox epidemic has fearfully prevailed in the city and throughout the country, I am able to say, with feelings of gratitude, that we have been almost exempted from it. There have been only three cases within our walls—the first proved fatal—the other two have entirely recovered" (Warden, Annual Report 1872, 93).

From the report of the New York State Penitentiaries [sic], for the year '58-9, it appears, that $32\frac{1}{3}$ cents per diem per capita, is the average cost of maintenance of their convicts. This is found from the official returns from those prisons.

The same sources of information from our Penitentiary show, that for the past year, with all its embarrassments, $28\frac{1}{2}$ cents is the similar cost in this Institution. These expenditures are as $32\frac{1}{3}$ to $28\frac{1}{2}$ cents, and the difference is in favor of the separate system. . . . The Inspectors would be fully justified, relying on all the facts contained in this report, to assume, that a more economical or productive system of prison discipline is not shown in a large majority of State Penitentiaries on the congregate plan. (Inspectors, Annual Report 1861, 46)

As this last quotation illustrates, these comparisons not only helped to refute the calumnious myths that the Pennsylvania System was unprofitable (while the Auburn System was profitable), but to also designate their system the superior system.

Administrators repeated this tactic with recidivism statistics. Analyzing recidivism in the nineteenth-century was of course much more difficult than it is today. Thus, administrators often looked at the rates of return to their prison or the size of the prison population relative to the state population, both of which are highly problematic measures but the instruments of choice at the time. For example,

Without desiring to be invidious, it is justice to our State Penitentiary System to remark, that while, under the congregate plan, the several state prisons of New York are full, and overflowing with inmates, our two State Penitentiaries have hardly an increased number, in proportion to the ratio of the increase of population. But ten per cent. of re-convictions appear on our records since the opening of the institution. (Inspectors, Annual Report 1859, 19)

They also compared the recidivism rates of offenders who had only spent time under the Pennsylvania System and those who had been incarcerated under the Auburn System. Thus, one typical evaluation read:

Twenty-two years have now elapsed since the admission of the first prisoner into this institution; during that period, 2846 have been the subject of its discipline. Of this number, 2290 have been discharged by expiration of sentence, pardon and otherwise; of whom there have been 287 re-convictions, and, of this latter number, 169 had been the inmates of other prisons, previous to their confinement here, leaving 118 as the number of those who, so far as our information extends, had never been the subjects of any other system of prison discipline; being equal to $5\frac{1}{2}$ per cent. (Warden, Annual Report 1852, 11)

In many cases, administrators found favorable assessments or, as we will see below, they had explanations for why they did not.

However, administrators also supported these statistics with more qualitative measures—either their own assessments of how rehabilitated inmates are when they leave or their knowledge of former offenders living in Pennsylvania. For example, the Moral Instructor explained, “Several prisoners have been discharged during the year, of whose reform a confident impression is entertained; of the permanency of their good dispositions, time only can determine” (Moral Instructor, Annual Report 1840, 42).¹³ In other cases, the Moral Instructor recorded the number of reformed

¹³As another example, the Inspectors noted, “In their occasional official visits, the Inspectors have been called to witness the triumph of the Gospel of Peace, in the heart of many a child of sorrow. From the couch of many a

inmates leaving his care. These additional measures could sometimes override administrators' more quantitative findings: "although out of the one hundred and eighty-nine prisoners discharged from the opening of the institution to the first of this year, sixteen have been reconvicted, we feel little discouragement on that account, knowing as we do, that many who have been inmates, are living correct and exemplary lives, and demeaning themselves as good citizens" (Warden, Annual Report 1836, 11-12). More galvanic assessments, however, came from administrators of the other prisons. In one report, Eastern's administrators gleefully repeated the findings of Massachusetts' Board of State Charities, "OUR PRISONS DO NOT DIMINISH CRIME" (Inspectors, Annual Report 1866, 23). The administrators noted, the finding "is not very creditable to Massachusetts" or the Auburn System (Inspectors, Annual Report 1866, 22). These findings complemented administrators' more logic-based assessments of Eastern's superiority.

4.3.2 Insulating the System from Blame

However, the data did not always favor the Pennsylvania System, and the administrators were well aware that the best weapon in their arsenal could be used against them. To dissuade additional criticism from befalling their system when failure was apparent, Eastern's administrators displaced the blame for the visible failures from the system to individuals, groups, or situations. Administrators centered their explanations on state actors (the legislature, governor, and judges), policies, the economy, and even the inmates themselves, and particularly the African-American inmates to insulate the Pennsylvania System from blame. More than mere excuses, administrators characterized their statements as highly justifiable narratives that would ultimately reduce the suffering and increase the greater good. For example, the Physician explained,

Could I deem it at all compatible with my duties, as the medical officer of the institution, I would prefer confining my Report for the past year, to the presentation of the usual statistics; but having daily forced on my observation, suffering and death, originating in defects that have no just connection with our discipline, I feel that I should be highly culpable, were I to pass them over in silence. (Physician, Annual Report 1849, 25)

As these scapegoating exercises were ultimately in service of the public good, they had tremendous license to detail the problems that kept the Pennsylvania System from working the way it should—and achieve the results they knew it was capable of. As we will see in Chapter 6, administrators often used these explanations, or complaints, to support their policy recommendations to the Pennsylvania legislature.

The administrators often blamed bad health outcomes—disease, mortality, mental instability, suicide—on the inmates themselves. Administrators often argued that specific inmates who got sick, or inmates as a group, entered the prison in a particularly weakened or diseased state. For example,

Although a large proportion of the convicts received during the past year were infirm in health, the mortality has been exceedingly small, and of the three deaths which have occurred from natural causes, two were the result of chronic affections existing prior to their admission into the prison. I do not deem it possible, by any additional sanitary regulations, to reduce the average of mortality below what it has been for several years past. (Physician, Annual Report 1858, 25)

prisoner, a light has beamed, fitted to obscure the splendor of the highest human attainments" (Inspectors, Annual Report 1849, 11).

Administrators thus advanced the expectation that the Pennsylvania System should not be judged harshly for failures it could not possibly have prevented. Relatedly, they claimed that the inmates' prior bad habits (intemperance, previous infirmities, debauchery) had taken their toll and made them more susceptible to disease. For example, examining the tabulated medical statistics in that year's report, the Physician explained,

These facts confirm what has, again and again, been stated in previous Reports, i.e., the impaired health of prisoners when received in the Penitentiary; their habits, previous to conviction, together with the exigencies of a life at variance with the law, having a powerful tendency to produce both physical and mental disease. The percentage of mortality therefore, and of mental disorders, small as it is, cannot be fairly charged against the System. (Physician, Annual Report 1871, 117)

Most colorfully, administrators claimed that the inmates were making themselves insane by excessive masturbation (or "mst.," "the secret vice," "self-abuse," "erotic enervation," etc.). According to beliefs at the time, masturbation could produce disease, mental illness, and even death. As the Pennsylvania System insisted on the separation of all inmates, administrators were particularly sensitive to the fact that their system provided inmates' the requisite privacy for their immoral actions.

In addition to blaming inmates as a group for negative health outcomes, administrators specifically targeted African Americans as problematic inmates. Beginning in the late 1830s, coinciding with the arrival of Physician Darrach, the prison began distinguishing its health statistics by race (White and Black). African Americans were often reported to have a higher mortality rate, which led to widespread speculation and scapegoating. African Americans, they argued, were an overly sexual people who masturbated to excess, accounting for their disproportionate mental illness and death rates. African Americans were also particularly vulnerable to disease because they had an inferior constitution, the administrators argued. These inmates were also not used to the cooler climate in Philadelphia. In these ways, African American inmates were viewed as especially problematic and the cause of the prison's unexpectedly high mortality rates. In one of the earliest references to this issue, the Physician noted,

this Penitentiary is burdened with a sickly inefficient coloured population, which by self-abuse, become debauched in mind and body, and diseased, and make 3-5 of its mortality, yet during a period of 7 years and 3 months, there has been no more than 51 deaths, of whom only 17 are of the white prisoners, making of the total average of such a percentage of 1 80-100. (Physician, Annual Report 1838, 12)

In light of these predispositions, administrators were particularly upset when they saw an increase in the African American portion of their inmates. In one report, the warden complained about "the peculiar situation of Pennsylvania as the frontier State, between the slave and free State, and hence the recipient of a worthless clan of coloured persons, which was the cause of our having so large a portion of coloured prisoners" (Warden, Annual Report 1840, 13-14). No similar remarks were made about Irish or German inmates, or any other group. Indeed, race became a kind of catchall scapegoating category that could be blamed for a number of problems. For example, administrators blamed the "increasing disproportionate number of coloured prisoners in the Eastern Penitentiary... for its sickness, mortality, medical expense and labour" (Physician, Annual Report 1840, 16). Administrators' beliefs about African Americans also played a role in their assessments of the prison's costs and profitability.

Finally, the administrators also blamed their negative health outcomes—particularly their mental health outcomes—on state actors. Administrators often included information about specific

cases where the inmate was previously known to have been insane. In these cases, the administrators often chided the Legislature and Judiciary first for not having a public insane asylum for these inmates and then, after one was built, for not sending these inmates to the asylums where they could be better looked after. After explaining two such cases, the Physician reflected,

I may be asked, why dwell upon the cases of Nos. 2153 and 1978? I have dwelt upon them in order to call attention to the fact that much of our mortality is composed of prisoners, who, first go deranged, and then, like Bajazet, literally dash out their brains against the bars of their cage. When will this terrible cruelty end? I had hoped that the remedy was at hand, but I regret to learn that the prospect of transferring our insane to the State Asylum seems as yet far distant. In their behalf, however, I shall make a last appeal. In the name of justice and mercy, let it be no longer necessary for the friends of the institution to deplore, or in the power of its opponents to boast that a number of helpless lunatics are immured within the cells of the Eastern Penitentiary. (Physician, Annual Report 1852, 30)

Because the state failed to allow these inmates to be held in the Asylum, they were effectively sabotaging the Pennsylvania System. Administrators assumed (perhaps correctly) there was little they could do for these inmates—and later argued that the Pennsylvania System was actually worse for them. But this was not a condemnation of the Pennsylvania System; rather, they argued that Eastern was not the proper place for them, they were not proper subjects of the Pennsylvania System. Without these problematic inmates, Eastern's statistics would fare much better, they argued.

These themes were largely repeated in administrators' explanations for economic failures. Here, too, state actors loomed large as a recipient of administrators' blame. When Eastern did not turn a profit or had greater-than-typical costs, they often blamed a combination of underfunding, a lack of resources, and a general need for more investment from the legislature. Thus, in one early report, the administrators stated,

I am therefore sanguine in the belief, that if the proper machinery, &c. were provided, this Penitentiary would not only produce the great good which we all so ardently desire to the unfortunate inmates, but would also relieve the several counties who send them, of the great burthen which they have hitherto borne in the support of convicts." (Warden, Annual Report 1831, 14)

Often, their scapegoating was more aggressive:

It was hoped that the Legislature of the last year would have appropriated a sum of money as a capital to be invested in our manufacturing department, particularly as a committee of the House of Representatives who came and examined into the various branches, advised it in their report. We have, and must continue to labour under serious loss and great disadvantage for want of capital; and therefore cannot compete with other institutions who have their forty, fifty, and some upwards of one hundred thousand dollars capital. Had this grant been made, a different result in our pecuniary affairs would have been shewn. It is very desirable that the Legislature should grant not only a sufficient sum to enable us to properly conduct our manufacturing, but also to complete the whole establishment in building and machinery; as the system cannot be conducted satisfactorily until this is done, and all the workmen are out of the yard. (Warden, Annual Report 1835, 10-11)

In both cases, the expectation was that the Pennsylvania System can function effectively and profitably if only the legislature provided the requisite investment; because the legislature had failed to

act, the Pennsylvania System could not be blamed for its underperformance.

The administrators also blamed their lack of profitability on the duration of sentences to Eastern. Administrators often complained, particularly in the first two decades or so, that inmates' sentences were too short for inmates to learn a trade.

To an old convict, accustomed to be sentenced to 5 or 10 years, a sentence of one appears a trivial punishment, [but] a novice cannot always be taught in that period, a business that will be of service to him. The cases of numbers 38 and 39 may be mentioned in support of this opinion, lads of 18 and 19 years of age, sentenced to one year only, might, if their sentences had extended to 3 years, have been taught shoemaking or weaving, and thus have been enabled to support themselves, when discharged. (Warden, Annual Report 1831, 17)

Teaching an inmate a trade took time but it also cost money; consequently, their first year or two were often losses to the institution. They argued, however, that with sufficiently long sentences, inmates could pay back the institution for the losses; but many inmates were released before serving two full years, preventing the prison from recouping its losses. The problem was especially acute for inmates who came in with no trade: "a convict sentenced for a short term of years, if he be ignorant of a trade, can rarely produce a profit by his labor" (Inspectors, Annual Report 1834, 3). Longer sentences were necessary if Eastern were to profit. However, administrators later changed their minds about this, as we will see in Chapter 6.

Here, too, administrators focused on inmates and African Americans in particular. Some inmates were too old, diseased, insane, or otherwise infirm to work well or at all. In one year in which most inmates were able to repay their expenses, the warden singled out several inmates fitting this description as exceptions to this general success.¹⁴ Often, administrators' complaints were more general: "until some provision is made by our State to relieve us of the number of insane and imbecile that are now from time to time committed to our charge, I fear, that however successful we may be in the introduction of labour, we shall still fall short of producing a sufficient amount to maintain our prisoners free of cost to the Counties" (Warden, Annual Report 1846, 24). Others were fairly creative: "Prisoners from large cities will not be found as productive labourers as those from country districts. We accordingly find among them a more intelligent and better class in the New England States, and at Auburn, than at Sing Sing and Philadelphia; they are therefore much more easily taught trades, are more healthy, and are abler to do work" (Warden, Annual Report 1839, 10). In each case, bad economic outcomes were the fault of the inmates and their characteristics.

But one of the most common complaints was they were simply bad workers: they were lazy, poorly trained, or their diseased state kept them from working. Repeating one of the complaints used for explaining health outcomes, the warden explained,

Pennsylvania being bounded by three slave States, (being the Frontier between the slave and Free States,) is the recipient of discontented free blacks, of worthless slaves set free by their masters, and of runaway slaves. All acquainted with this neglected class know how helpless, ignorant, and of course worthless, they generally are, and how prone they are to commit depredations. Thus we find that about forty per cent. of the inmates of the Eastern Penitentiary are coloured persons. It is difficult to provide productive labour for

¹⁴"The exceptions are one old man, the diseased, and a few who came in without trades and had but one year or 13 months to serve, this period being too short to learn a trade and afford time to remunerate us for teaching them" (Warden, Annual Report 1832, 10).

them; and many enter the prison in so diseased a state that for some time they cannot be set to work. It is to this class that we must attribute the small amount of the earnings in proportion to the number of our prisoners. (Warden, Annual Report 1839, 10)

They were not only bad workers, but their frequent illness also made them “a burthen to the Institution” which had to pay for their upkeep, their additional medical expenses, and not receive compensation from their labor (Inspectors, Annual Report 1840, 5). This argument was made more explicitly the following year: “The coloured prisoners are a burthen to the system, both because it does not and cannot operate as beneficially on them as on the white prisoners, and because they are more diseased, and less capable of being made profitable in confinement” (Inspectors, Annual Report 1841, 4). These racist complaints were strongest in the late 1830s and early 1840s, but they persisted throughout the period. In this earlier period, however, administrators claimed to have “the most worthless, ignorant, and least profitable inmates of any prison in the union” (Warden, Annual Report 1840, 13-14); how could they be expected to produce a profit?

The general economic climate was another recipient of administrators’ blame. When demand was low, or they lacked enough raw materials, inmates were left idle, in violation of the Pennsylvania System, or system expenses increased. But this was not the fault of the system—it was the economic conditions that made profitability impossible: “no opportunity has existed for making sales” (Inspectors, Annual Report 1838, 6). In one year, they explained, “Although the vicissitudes of trade have not allowed us to realise as much as it has cost to maintain the prisoners, and pay all incidental expenses, (except salaries), yet we have abundant evidence to satisfy us, that in ordinary times we shall be able to do this” (Warden, Annual Report 1834, 5). Similarly, when prices went up for basic necessities, the cost of housing inmates necessarily increased as well.

The average cost per diem per capita for the keep of convicts for 1840, was $23\frac{58}{100}$ cents; 1850, $21\frac{71}{100}$ cents; 1860, 20 cents; 1870, 34 cents; for the year 1874, 31 cents.

The annual cost for fuel and light is included in the above cost. It is to be observed that in the latter of these items the cost is fixed, and as to the former but small reduction in price is to be obtained. This explains the increase of cost from 1870 to 1875.

The cost of coal for the (5) five years ending December 31st, 1874, was \$38,700.17.

The cost of gas for the (5) five years ending December 31st, 1874, was \$24,865.45. (Inspectors, Annual Report 1875, 7-8)

These external factors made profitability unlikely at Eastern, regardless of the perfection of its system of prison discipline.

Administrators also carefully complained that the *type* of labor pursued under the Pennsylvania System made profitability difficult. This in itself was exactly the expectation of its critics: workshop-style labor is far less efficient, more costly, and overall less profitable than factory labor. However, they were careful not to attack the Pennsylvania System and to focus more on the conditions that made this work unprofitable:

The year just closed, like the one preceding, in the pecuniary operations affecting the labor of this institution, has been below the just expectations of the Inspectors. The demand for the peculiar kind of work within the scope of our employments has been limited. Great care is required to select purchasers whose business facilities enable them to make short and cash payments. These causes have produced less return for labor than is equivalent to cost of maintenance. The Inspectors have followed the teachings of Pennsylvania philanthropy, which has ever regarded man, even criminal and in prison,

as worthy of higher consideration, than a mere money-making agent for the people of the Commonwealth. They, believing that the best efforts are carefully directed to secure reasonable economy, have cheerfully granted the small sum, in comparison with other appropriations, to maintain their state penal institutions. (Inspectors, Annual Report 1859, 12-13)

It was not that workshop-style labor was inefficient; rather, it was that demand was too low. Similarly, later in the period examined, administrators complained about their need to compete with free labor, which further made their labor unprofitable.¹⁵

While relying on some of these by-now familiar arguments to account for high recidivism statistics, administrators primarily blamed state actors and policy for the prison's failings. While that the Pennsylvania System was virtually guaranteed to prevent the spread of crime because inmates were separated from each other and incapable of cross-contamination, administrators pointed out that the county jails were still largely on the colonial and Early Republican model. Jail inmates were generally housed in large rooms together with little work and no separation, allowing older, hardened offenders to contaminate young, fresh, impressionable offenders. By the time inmates reached Eastern, the administrators argued, the damage had already been done. Thus, administrators argued, "Before the Pennsylvania System can be said to be in full operation, each county must have a prison to confine the accused before trial, separate and alone, and those for small offences in separate cells, for all terms under two years, the System would be in perfect operation" (Warden, Annual Report 1840,14) As this had not yet happened, they could not say the Pennsylvania System was fully operational and the prison should not be judged as such.

While this argument persisted throughout the period, administrators focused on two additional penal policies that they said negatively affected inmates' chances at reformation—sentence length and pardoning. Unlike with jail policy, however, administrators primarily used these arguments in the first two decades of the prison's history. First, administrators claimed that judges were far too lenient on offenders: their sentences were too short. Administrators often disaggregated their recidivism statistics to show the role of short sentences. For example, "Since the Penitentiary has been in operation, one hundred and four prisoners have been discharged; of this number only three have returned to this prison re-convicted, two of whom had served less than one year, and one two years" (Warden, Annual Report 1835, 10). Administrators claimed that reformation takes time, and inmates were released before they were ready. Short sentences prevented inmates from receiving the proper portion of training and mentorship:

I must express my firm belief that if any material benefit is to be afforded to those who

¹⁵For example:

We have very much to regret the want of sufficient employment for our men. With the exception of bedding and wearing material for the use of the Institution we have had a great lack of employment for the looms. Weaving was once a very important branch of manufacture; now a few hands can accomplish all that can be procured. The number employed at shoemaking has been largely increased. Much thought has been given to the subject of introducing other branches of industry into the Institution, but there are very few of the mechanic arts that can be pursued with which we can successfully compete with labor outside. This subject will continue to claim serious consideration, and if any means can be devised to increase the labor of our convicts without violation of the law which prevent unjust competition with outdoor labor they will be adopted. (Warden, Annual Report 1871, 111-112)

are brought here, that their sentence should extend to two years or more: no great benefit will result to any who have a shorter period to serve. One year is not sufficient to learn a trade, to eradicate old and fix new habits; and the period is too brief, that the impression made on their minds, will very soon be obliterated. I have little doubt, that when we receive convicts for a second conviction to this penitentiary, that they will prove to be those who have had on their first sentence, but one year. (Warden, Annual Report 1834, 7)

This warden also added, “In thus recommending an extension of the term from one to two or three years, I am not actuated by a desire to punish the unfortunate culprits, but by a decided belief that it will promote their ultimate good” (Warden, Annual Report 1834, 7). Longer sentences would ultimately benefit the inmates and society, because they would enable the Pennsylvania System to work as intended.

Second, administrators also complained that pardons, which shorten sentence length, interfered with the proper functioning of the Pennsylvania System. In a characteristically lengthy exegesis on pardons, Warden Wood illustrates the several arguments administrators made to show how pardons prevented the Pennsylvania System from working properly in this early period. To begin with, administrators in this period frequently stated their opposition to pardons and highlighted the fact that they did not recommend any sane inmates for pardon. They were careful to emphasize that this opposition was not out of a punitive instinct, but rather for the good of society that was stifled by the use of the pardon. The warden complained,

Of the 71 pardoned, I believe only three or four have had the sanction of the Board of Inspectors or myself, and there is certainly no cause for either of us abandoning our opposition to this practice. It appears necessary that this power should be placed somewhere as the last resort; but if the happiness and good of the mass were consulted, the power would, I am persuaded, be abrogated, if the existing evil attending its exercise be inseparable from it.

Administrators also relied on more traditional arguments. The use of pardons in capital punishment had long been criticized by penal reformers concerned with deterrence; Easterns officials relied on this history to defend their prison. To sustain their claims, they referred to the Beccarian adage that the certainty of punishment was more important than its severity (Beccaria, 1764). The warden thus explained, “There is nothing more certain than that the certainty of punishment is of more importance than its severity” (Warden, Annual Report 1841, 14).¹⁶ Building on this logic, administrators argued that the hope of pardon, nurtured by news of its frequent use, prevented offenders from taking reformation seriously. The Warden explained,

The prisoner is promised by his friends, immediately on conviction, that their influence will be exerted, and he very soon liberated, and by these means he is encouraged to keep up his spirits. The sheriff, in whose custody he is, not wishing him to attempt an escape, gives him all the encouragement he can; and thus he goes into the Penitentiary with a full belief that he is scarcely to set there before his pardon will arrive. Disappointment

¹⁶As another example, “A moderate sentence, with the certainty of having to serve the entire period, is much more beneficial than twice the number of years accompanied by the constant hope of receiving a pardon” (Warden, Annual Report 1838, 9).

This was a particularly ingrained belief. In a later report, the administrators noted, “society gains its ends by the certainty, and not by the quantity of punishment” (Inspectors, Annual Report 1865, 87).

succeeds hope, and the man is kept all the time restive and unhappy, and finally thinks he is utterly neglected by his friends, or that he has not one left in the world. (Warden, Annual Report 1841, 13-14)

Additionally, pardons were given out inconsistently across offenders. The warden bemoaned their overuse for the undeserving: “Whilst others more guilty, who have powerful friends, scarcely occupy their cells before they are liberated, and in many instances directly return to their former habits” (Warden, Annual Report 1841, 14). The bottom line was that pardons interfered with the operations at Eastern. So long as inmates held out hope for a pardon, officials argued, the prison could not be expected to effectively reform its inmates, encourage them to learn a trade or how to read and write, or improve them through religious and moral training.

Our penal system will never be perfect until our governors cease to pardon, except in those few cases where innocence can be proved or some circumstances that could not be on their trial. Of all that have been pardoned since my knowledge of prisons, I know of very few that would not have been decidedly better if they had been allowed to remain until their terms expired, and I know of many who have been very much injured by it. . . . Too much pains cannot be taken by the friends of reform to discourage the pardoning power as it has been exercised. (Warden, Annual Report 1841, 14)

Pardons, and not the reformatory potential of the Pennsylvania System, were thus responsible for recidivism—and it was administrators’ duty as good humanitarians and public servants to bring this to the attention of the legislature. As with sentence length, however, administrators later changed their minds, as we will see in Chapter 6.

4.3.3 Reaction

By explaining how these various actors, groups, policies, and conditions prevented the Pennsylvania System from achieving its expected results, administrators effectively displaced any blame from their system. Making these particularly compelling explanations, administrators relied on central beliefs that would resonate with their audience, for example, stereotypes about African Americans, the preference for certainty over severity, and the importance of investment for financial solvency. Indeed, some of their arguments, like the overuse of the pardon or the problems of incarcerating the mentally ill, may still resonate with us today. However, administrators’ empirical evaluations and explanations for failure were not readily received by opponents of the Pennsylvania System.

Members of the opposing Boston Prison Discipline Society (BPDS), and other defenders of the Auburn System, challenged the methodology, operationalization, and even honesty of the figures produced at Eastern. They complained that Eastern’s administrators were suppressing figures.¹⁷ At one point they noted, “On the whole, therefore, we are becoming more, rather than less distrustful, of the Philadelphia system of Prison discipline” (BPDS 1835, 885).

¹⁷

It does not appear, from the annual report of the inspectors, how much the convicts earned by their labor, nor how much was expended for their support. This Prison, unlike other public institutions of a similar kind in the United States, publishes nothing concerning its pecuniary affairs, in its annual reports. This does not satisfy the mind that wishes to know the results of solitary labor. (BPDS, 1835, 883)

Beyond general challenges, however, the BPDS simply used Eastern's annual reports to condemn the Pennsylvania System. The BPDS was particularly interested by the claims by Eastern administrators and their testators that insanity at Eastern was often a product of masturbation was of particular interest to the BPDS. In one annual report, the Boston reformers cited at length their own "letter. . . addressed to Dr. Woodward of the Insane Hospital at Worcester," his response, and the replies of other doctors weighing in on the issue. What Woodward found most "surprising" was Eastern's doctor's claim to have cured the cases of dementia, noting, "On the whole, I think there must have been some mistake in this part of the report" (BPDS 1834, 241). This was useful ammunition to the Boston reformers who concluded, "the Ninth and last Report of the New Penitentiary of Philadelphia is the most unfavorable ever made concerning this institution: —unfavorable in regard to deaths; unfavorable in regard to dementia; unfavorable in regard to recommitments; unfavorable in regard to current expenses; unfavorable in regard to moral and religious instruction" (BPDS 1834, 244). Indeed, the BPDS examined the same data Eastern's administrators did and often came to very different conclusions. In one report, they noted, "These matters of record do not look very favorable to the system, in regard to its effect on the mind. There is too much about insanity, in proportion to the number of prisoners" (BPDS 1835, 885). This conclusion persisted and worsened over time. In one report, the reformers colorfully announced:

The Tenth Report on the Eastern Penitentiary, by the inspectors, warden, and physician, is in excuses and opinions very fair, but in facts, AWFUL!—402 prisoners, 26 deaths; 23 recommitments, 18 cases of amnia, &c., and expenses above earnings, untold by the government of the Prison, but disclosed by the treasurer of the commonwealth, to be the amount of \$34,38 in a single year. (BPDS, 1839, 353)

In the end, the Boston account was more persuasive to states looking for a system on which to organize their new prisons.

However, the more opponents pushed back, the more justification Eastern's administrators had to continue the defense of Eastern and thereby sublimate their own self-praise into the defense of the prison.

4.3.4 Endorsements

These evaluations enabled the administrators to praise their system extensively. Most reports contained some version of what became a virtual boilerplate endorsement of their system—that it was the best, most humane system known to man. A fairly common version of this theme was the administrators' endorsement of the system based on "another year's experience," their miscellaneous experience with the system, or its demonstrated record. Thus, the Warden noted, "A year's further experience has served to fasten still more deeply in my mind the conviction of the humanity, and the advantage of the separate system of confinement for the reformation of offenders" (Annual Report 1847, 35). Another form of this endorsement was the administrators' congratulations to all involved in the system or argue that they should be gratified with the "experiment thus far made" (Warden, Annual Report 1836, 11). In some cases, the administrators called for more than gratification: "The Inspectors, in common with all the friends of practical philanthropy, can but rejoice in the great change which is thus being effected in the treatment of the outcast prisoner" (Inspectors, Annual Report 1844, 11). Their reports also contained more hyperbolic statements. For example, the inspectors stated in one report, "The system of punishment which belongs exclusively to Pennsylvania, as it is now administered, which had its origin in our State, and is known over the civilized world as peculiarly Pennsylvanian, demands a yearly tribute to its value and success" (In-

spectors, Annual Report 1865, 5). At their boldest, these endorsements took the shape of a kind of dare or invitation to review the prison for oneself. Thus, in one case, the administrators exclaimed,

To the philanthropist, to all who earnestly wish for the well being and improvement of society; to all who look forward to so desirable an end as the reformation of those deluded, misguided, miserable beings who are under our charge, I would exhibit fully and fairly the discipline of the Institution; and ask them to examine thoroughly its condition and every branch of its operations; to view the convicts at their various employments, to witness their health, their cleanliness, their general cheerfulness, and with very few exceptions their willing industry; to learn from their own lips the manner in which they are treated by the Inspectors, the Warden and Officers; to ascertain from them their feelings toward those who have the immediate care of them, to speak to them of their future intentions, and in short to inquire minutely into the whole effect of the system on both body and mind. (Warden, Annual Report 1835, 9)

However, before any of these endorsements could take place, administrators had to offer evidence of their prison's success. Their meticulous evaluations made this praise possible.

4.4 Conclusion

Eastern's administrators fervently defended their prized Pennsylvania System throughout the period examined. Their characterizations of the system and its components routinely set the Pennsylvania System apart as the superior system, while their evaluations provided evidence to support their claims. By emphasizing its humanitarian qualities and finding its medical, fiscal, and penal outcomes to be on par with, or better than those under the Auburn System (unless something was preventing proper functioning), the administrators undermined the claims of the calumnious myths. Indeed, implicit (and some explicit) responses to the claims that the Pennsylvania System was cruel and inhumane, dangerous to inmates' physical and mental health, too expensive, and simply impractical and ineffective represented the largest share of the annual reports. I suggest that Eastern's administrators conscientiously used their reports to defend the Pennsylvania System—and their prison and their own reputations—against the challenges from the field. In doing so, however, they were able to describe themselves in glowing terms and enjoy the status that came with administering a superior prison. These defenses of the Pennsylvania System thus provided the administrators with a means of creating a unique status identity that no other administrators could claim.

In the following chapter, we will explore how Eastern's administrators bolstered the credibility of their characterizations and evaluations by claiming to be penal experts. This claim to expertise helped to challenge the authority of the Boston penal reformers propagating the myths about the Pennsylvania System. Over time, however, their claims to expertise were increasingly utilized to challenge the legislature and local penal reformers, who began to encroach on the administrators' autonomy over their prison. More than experts, they claimed to be professionals, distinguishing themselves from dilettante reformers and unknowledgeable legislators. This third rhetorical strategy represents the strongest source of their status identity.

Chapter 5

Professionalization

In physical sciences successful experiment is proved by demonstration; while in moral science the like result is shown by continuous effects coming from co-existing causes. If the united evidence of three decades, as to the practical effects of the separate system, cannot be relied on as exemplifying its real character, then one must look in vain for higher sanction than such cumulative evidence, to attest that which is claimed to be indubitable. (Inspectors, Annual Report 1859, 6)

5.1 Introduction

While administrators often defended the Pennsylvania System against the *substance* of the rational myths, they also positioned themselves within the field to strengthen their ability to defend the Pennsylvania System. In a variety of ways, Eastern's administrators worked to construct a status identity for themselves as professionals in the emerging field of "penal science": As experts with unique access to a body of knowledge, they argued their system's critics (and other challengers) lacked jurisdiction over penal matters. Administrators claimed that their expert status uniquely qualified them to evaluate the Pennsylvania System and determine what changes were necessary to it and the penal code. Those who claimed that the Pennsylvania System was cruel, deadly, expensive, or ineffective simply were not qualified to make such statements; for that matter, nor were local penal reformers or state legislators sufficiently versed in penal science or the data from Eastern to determine what was best for the prison. By claiming professional status, then, Eastern's administrators not only defended the Pennsylvania System against its challengers, but also carved out a special status for themselves relative to other actors in the field. Because these claims were in the service of the Pennsylvania System, Eastern's administrators could construct this status for ostensibly neutral, unselfish reasons.

Eastern's administrators demonstrated their professional credentials through several specific strategies. First, administrators laid the foundation for their claims to professional status by making a case for their special expertise in issues pertaining to the causes of crime and the appropriate methods of punishment. This theme was the most common and persistent throughout the entire period examined, though how exactly they claimed and demonstrated this expertise varied. Second, administrators bolstered this foundation by identifying themselves with the emerging "penal science" of "penology" to which they saw themselves contributing. Part of this effort included noting their level of affiliation with emerging field-level networks of those interested in penology, while other efforts aimed to demonstrate the importance of this new science. This theme

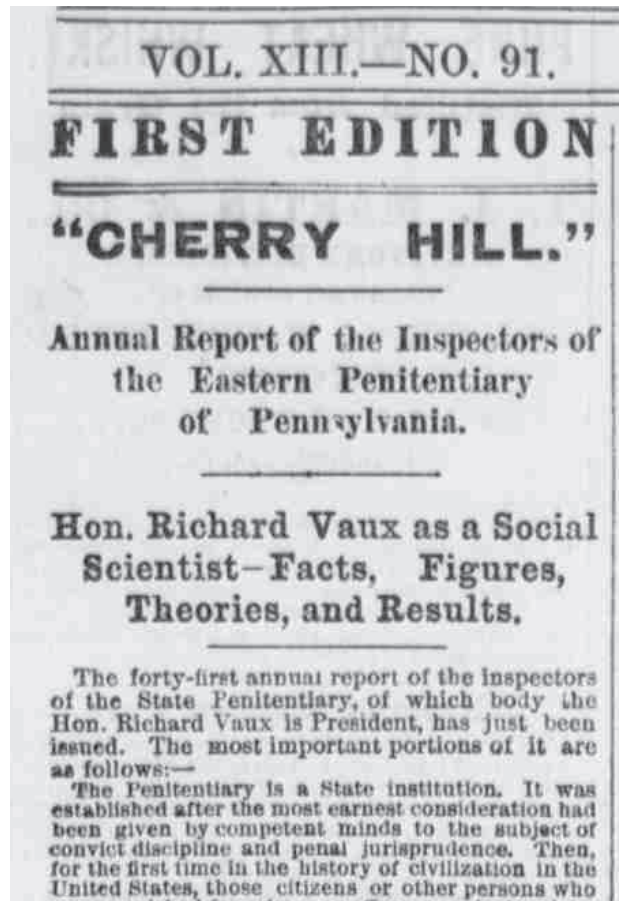


Figure 5.1: Newspaper Clipping.

Source: The Evening Telegraph, Vol. 13, No. 91, April 16, 1870, p. 1.

emerged beginning in the late 1840s, around the time that local penal reformers were growing increasingly critical of the administration of Eastern (Teeters, 1937). Third, administrators adopted more offensive stances in which they challenged the expertise of others—local penal reformers, Pennsylvanian legislators, and the prison administrators and penal reformers beyond their state. While this theme was present throughout, the most stunning instances (targeting local reformers and legislators) occurred later in the period when local attempts to change penal policy had serious implications for the Pennsylvania System at Eastern. Finally, as we will see in Chapter 6, administrators both reinforced and exercised their professional status by making policy recommendations, in their more proactive efforts to protect the reputation of the Pennsylvania System. These strategies were not unique to their situation, but rather reflect the hallmarks of professionalization found in other organizational settings and in other periods (Wilensky, 1964; DiMaggio, 1991). Before I explore these strategies below, I note two consequences of these claims.

First, administrators' claims to expertise may have helped to prolong the Pennsylvania System. While a certain baseline of claims to knowledge expertise were always present, and even invited by the 1829 statute requiring the annual reports,¹ administrators' claims to professional

¹The statute specified that the Inspectors' annual reports should "make such observations as to the efficiency of the system of solitary confinement as may be the result of their experience, and give such information as they may deem expedient for making the said institution effectual in the punishment and reformation of offenders" (Pennsylvania

expertise increased over time and were particularly common in periods of direct threats to the Pennsylvania System at Eastern. Indeed, each of these themes was present, and heavily deployed, during an important episode in the 1860s in which Eastern's administrators mobilized their professional status to protect the Pennsylvania System from legal incursions. In 1861, the state legislature passed a law at the behest of local penal reformers, without consulting Eastern's administrators. In response, Eastern's administrators refused to implement this law. The dispute was resolved by the state's high court, which agreed with Eastern's administrators. The legislature passed a different version with the approval of the administrators. I suggest that the administrators' claims to professional status may have enabled the administrators to challenge the legislature in this way successfully and without facing consequences. This possibility is bolstered by the frequent success of professionals in shaping organizational behavior, often for their own motivations to gain power or status (Edelman et al., 1992; Dobbin, 2009).

Second, while helping to secure the Pennsylvania System into the 1860s, these claims to expertise may have also enabled the transition away from the Pennsylvania System in the 1870s. In addition to becoming more intense during periods of crisis, administrators' claims to professional status matured and increased over time. Beginning in the 1840s, but especially by the 1870s, the locus of their claims increasingly shifted to developments in the field instead of focusing solely on their experience at Eastern. Unlike the other rhetorical defense strategies (characterization and evaluation), claims to professionalization were available even after the Pennsylvania System because of the growing professionalization and structuration of the field—by the 1870s, their claims to professional status no longer depended on their defense of the Pennsylvania System but were instead reinforced by multiple networks of penal actors. I suggest that this availability made abandoning the Pennsylvania System easier: it was no longer necessary to retain their exceptional system to retain their particular status identity. While in the earlier years, defending the Pennsylvania System was their primary path to professional status, by the 1870s, their professional status had become decoupled from the Pennsylvania System and was tied to the field instead. This shift may have enabled the transition away from the Pennsylvania System.

5.2 Making a Case for Knowledge Expertise

5.2.1 Access to Data and Experience

At the center of the administrators' claims to knowledge expertise was their access to unique insights about crime and punishment. Their insights came from their first-hand experiences with criminals and punishment, their ability to gather data, and their ability to analyze this data in light of their experience and their vast knowledge about punishment. Their annual reports were full of illustrations of this body of knowledge and reminders to their audience about the special access administrators had to it.

The compilation of large tables of statistics were one way of demonstrating knowledge expertise. While a certain minimum of information was required by law to be included in the reports, administrators included dozens of pages of tables in some years. The reports regularly contained statistical tables about the drinking habits, marital status, literacy, national (or state) origin, skin color, gender, age, and employment status (including occupation and apprenticeship status) of the prison population. In some cases, lists of the common "causes of crime" were also included in the Moral Instructor's report. The physician would also include tables of common

1829, 247).

illnesses and the various sources of mortality for white and “coloured” prisoners. In later years, extensive tables displayed the relevant information for juveniles (offenders under 25 years of age); these began as a few tabulated statistics over one or two pages (e.g., Annual Report 1862) and became their own subsections of the report (e.g., Annual Report 1867). After the Civil War, special tables were reported for “Army Prisoners,” or those prisoners who had served time in the military and were subsequently convicted and sentenced to Eastern (e.g., Annual Report 1866). A list of tables presented in 1869 report (Annual Report 1870, 53) is representative of the standard list presented for the general population:

STATISTICS
OF
PRISONERS RECEIVED DURING 1869.
CONVICTION AND RECONVICTION, ETC.,
WITH THE
EFFECTS OF LONG AND SHORT SENTENCES, AS EXHIBITED BY THE
RECONVICTIONS.
OVERWORK OF PRISONERS FROM 1852 TO 1870.
PRISONERS PARDONED.
EDUCATION OF PRISONERS COMPARED WITH THEIR CONVICTED CRIMES,
ETC.
NECROLOGICAL STATEMENT.
STATISTICS OF THE WHOLE NUMBER RECEIVED, COLOR, SEX, AGE,
SOCIAL, EDUCATIONAL, MORAL AND LOCAL RELATIONS, AND THEIR
CONVICTED CRIMES AGAINST PROPERTY AND PERSONS.
GENERAL ACCOUNT OF EXPENDITURES FOR 1869.

Thus, over the course of the period, the number and extensiveness of tables presented in the reports grew.

These compilations—the amount of work they represented as well as the information that could be gleaned from them—demonstrated administrators’ professionalism, especially in the eyes of the administrators. Indeed, administrators were not shy about reminding their audience how much effort went into their work and how important this work was. For example, the prison physician noted,

Anxious to give all possible information respecting the effect of the separate system on the health of the prisoners, with the kind and invaluable assistance of the clerk, Mr. John S. Halloway, I have prepared the following statistical history of the medical department, from the opening of the Institution on the 25th of October, 1829, up to the present date. I may here remark, that the labour and time which its accurate compilation required, prevented me from giving similar tables of the mental health for the same period. In my next report, however, I shall give to this subject all the care and attention which its importance demands, and hope to find corresponding records in the reports of other prisons, as *it is only by comparison between extended tables of this kind, that anything like just and philosophic deductions can be drawn. I am aware that those who may undertake the task will find it both tedious and perplexing; but when human life and*

reason are the objects of research, no time can be considered lost—no labor wasted.
(Physician, Annual Report 1846, 31, italics added)²

Their willingness to “undertake” such a time-consuming and “tedious” task set them apart from dabblers and interlopers. These showcases, however, also worked to another claim to professional status. Administrators used their experience and their access to the data to establish themselves as the gatekeepers of knowledge pertaining to punishment:

Those who desire to be acquainted with the practical workings of the Pennsylvania Penitentiaries, the better to understand and appreciate the advantages of the separate system of prison discipline, are invited to an examination of the details *authoritatively* presented by the Inspectors to the Legislature. (Inspectors, Annual Report 1856, 7, italics added)

To understand the mysteries of crime, to determine the appropriate methods of punishment, and even to establish penal policy (as we will see below), one had to go through Eastern’s administrators.

Beyond showcasing the data in tabular form, administrators often reminded their audience about their first-hand experience at the prison and their familiarity with the data compiled at the prison. For example, in one case, the Inspectors referred to “[t]hose, whose constant intercourse with convicts enables them to form an opinion on the subject” (Annual Report 1855, 6). Without directly referring to themselves as one of this number, they went on to express their opinion on a subject that presumably they could form because of this experience.³ Indeed, they would often ground their suggestions or substantive discussions in this experience or their data: Their reports were full of discussions about the causes of crime,⁴ based on their individual interactions with the inmates or a review of the data they collected from the inmates. They also used this data and experience to suggest alterations to the Pennsylvania System or the penal code (as we will see in

²See also: “These minute details are here given, not because it was deemed essential, but that if such information was desired it might be readily obtained, and also to indicate that the duties of the Inspectors and officers of the Institution are varied, responsible, and, it is believed, carefully and conscientiously performed. The accounts hereto annexed give the disbursements in the form therein presented.

These are interesting details, it may be, to many who are not engaged in considering the absorbing questions of penal science, as applied to systems of punishment for crimes.” (Inspectors, Annual Report 1872, 10)

³“There is a period in the history of every criminal’s punishment, when his liberation would most benefit him, and hence society would gain, by the improvement afforded in reclaiming an offender. Those, whose constant intercourse with convicts enables them to form an opinion on the subject, will admit that such periods occur, when most decided advantage would result from the convicts liberation. One mode, to be sure a most imperfect one, to effect this object, is, to shorten the sentence, as much as a proper regard to the interests of society would justify, in all cases of first convictions, and convictions of young offenders. The Inspectors feel the force of these views, and they have ventured again to invoke Legislative attention to the subject. This is not the occasion to suggest any plan to modify and improve the present laws on this subject, but it is hoped that the time will come when the Legislature of Pennsylvania will take the important subject of the present penal code, as it relates to our admirable system of Penitentiary punishment, into consideration. Sporadic reforms are worse than useless; labors of those who are required to learn while they attempt to teach, are vain. The familiarity of long experience, careful and earnest devotion to the subject, and an interest in the questions involved, above and beyond an interest in self, are among the qualifications which a proper reform in penal jurisprudence will require at the hands of those who undertake the task.” (Inspectors, Annual Report 1855, 6-7)

⁴For example, “Neglect of early education the use of ardent spirits, gambling and dealing in lottery tickets, are the most prominent causes of felony” (Warden, Annual Report 1833, 9).

Chapter 6). They even went so far as to make recommendations for social policy, based on their own analyses, for the purpose of reducing crime. While much of their focus was on the education and training of juveniles, their suggestions could venture into other realms of policy. For example, the administrators sometimes made suggestions regarding the state of labor in society generally:

The employment of large capital in manufactures, which have heretofore occupied individual handicraft, skill, and labor, has had the effect of dividing a thorough knowledge of the branch, into the acquirement of dexterous manipulation in their integral parts. A workman may understand how to apply the labor of machinery to specific or special work, which the branch requires, but he is not thus taught to be a mechanic. This plan prevents the training of apprentices. As a profit-producing system of labor, it no doubt is a benefit, so far as capital gains large remuneration, but in its relations to society, it becomes of questionable advantage. It is now to be considered only as it affects those individuals who produce labor, in mechanical and industrial pursuits. And in thus considering it, from the stand-point taken, can it be regarded as crime-producing? No one will doubt, that skilled workmen in mechanical branches, are essential to society, and self-supporting, under an ordinary condition of affairs. The fewer of such valuable members of community, the larger the population, that is dependant [sic] on unskilled labor. This demand is more than supplied when an excess of the unemployed exists—the rates of wages then are reduced—idleness becomes a necessary consequence, and then evils are produced which society feels. May it be true therefore, that the large number of prisoners without trades, as shown by the facts above stated, is accounted for? This suggestion is only here presented, as worthy of the consideration of those who are investigating the subject of crime-cause as it relates to social development. (Inspectors, Annual Report 1865, 88-89)

Their analyses of data, produced at the prison, had identified one cause of crime (the “crime-cause”); with this analysis and data, they positioned themselves as qualified to make social policy recommendations. And just to better illustrate their expertise and the strength of their policy recommendations, Eastern’s administrators would often discuss how claims based on their special knowledge had borne out. Indeed, they were particularly fond of describing the consequences when legislators had failed to follow the administrators’ suggestions.⁵

5.2.2 Other Qualifications

Their first-hand experience and familiarity with the data seem to have been the primary bases of their implicit claims to knowledge expertise. However, administrators also pointed to other ways in which they could be considered experts in the field. In the earlier period, they often pointed to

⁵Similarly,

I expressed the opinion several years ago, in one of my annual reports, that no prisoners ought to be sent here for a shorter period than two years, and that some of the good effects of the system would probably not be realized in the course of a single year. Experience appears to have confirmed the correctness of this conjecture, as it respects the welfare of both the individuals and the Penitentiary. (Warden, Annual Report 1838, 8)

their involvement in the several decades of penal reform that had preceded and even precipitated the opening of Eastern. The Inspectors noted in one of their first reports,

Many years [sic] experience, in the practical operation of the penal laws, and prison discipline, on the part of most of the Inspectors, and, the particular knowledge of the Board, in the actual operation of this institution, upon the moral and physical powers of the prisoners, and upon the public interests, have established a conviction, of the humanity and excellence of this system of penitentiary punishment. (Inspectors, Annual Report 1831, 12)

Their long-term involvement in penal reform qualified them to judge the Pennsylvania System. Importantly, however, it also gave them unique insight into how Eastern should be run:

The present Inspectors stand in a peculiar relation to the Commonwealth, they were the friends and associates of the promoters of the system, and were in the habit of discussing the subject of Penitentiary relations in all its bearings. They were fully imbued with the principles and views of its advocates, and the majority of them took an active part in calling into operation the schemes of those who felt the necessity of a reform in the criminal jurisprudence of the State. (Inspectors, Annual Report 1837, 3)

In the earlier period, their penal reformer credentials were useful sources of their expertise.

In later years, however, the administrators looked to other sources of knowledge—particularly to other qualified actors—for external validation. The administrators could not simultaneously claim expertise by referencing their penal reformer credentials while challenging the credentials of opposing penal reformers. Thus, to support his own claims about the causes of insanity at Eastern, the physician noted, “I have only to add, that in order to remove all doubt of the reality of these cases, I have availed myself of the knowledge and experience of Dr. Evans, Physician to the Frankford Asylum for the Insane” (Physician, Annual Report 1849, 28). Indeed, as we will see below, one major source of administrators’ claim to expertise—their affiliation with the emerging “penal science”—was a rejection of the knowledge claims of penal reformers.

Some of their claims to professional status were more stylistic—how they analyzed the data, what their goals were in doing so—than linked specifically to some set of knowledge. These claims in particular could appear somewhat defensive. Such statements offered a challenge to potential criticisms of their own statements. For example, they claimed that their judgments were evidence-based and not emotional or biased. Thus, the Physician explained,

Finally, I have often heard those interested in penal reform twitted for the “morbid philanthropy,” “mawkish sensibility,” &c., that seeks, at the expense of the industrious taxpayers, to render the criminal more comfortable in every respect than the honest poor man or pauper. It may possibly soften the ire of the gentlemen who thus complain to remind them that nothing has ever been asked for the prisoner that veterinary surgeons have not claimed for, and by every intelligent owner is granted to the horse; and surely man, even in his most degraded state, is deserving of as much care as the beasts that perish. But leaving such arguments entirely aside, I may be permitted to ask, whether, in a pecuniary sense, it is not better for the State to have productive workmen in the shops, than profitless patients in the infirmary? (Physician, Annual Report 1852, 37-38)

They also made explicit their objectivity by rejecting any form of bias in their judgments:

The very obvious deductions from this portion of the subject I shall leave others to draw, and shall add nothing more than to declare that, in pursuing these investigations, as

now in recording them, my object was not to bolster or prop any particular system of imprisonment, but to discharge conscientiously my duty as a public officer, by throwing every possible light on a question that deeply interests and engages many of the most enlightened and benevolent minds of the present day. (Physician, Annual Report 1846, 51)

Sometimes they extended these by attributing such motivations to their critics instead. But these more stylistic claims, essentially those establishing their objectivity, also helped to identify them with the growing movement towards scientific inquiry.

5.3 Professional Affiliations: Penal Science and Field-wide Networks

In addition to grounding their claims to knowledge expertise in their analyses of the data and their experience at the prison, administrators also demonstrated their expertise by reference to their associations with other, more external, status-granting phenomena. In particular, Eastern's administrators affiliated themselves with the emerging trend toward the scientific study of punishment and the growing network of individuals concerned with prison policy and administration. Science could lend to Eastern's administrators' multiple positive traits including the skill and objectivity necessary for proper inquiry, the intrinsic importance of science, and a means by which their own data and analyses could be construed as significant. The growing networks of individuals examining the data and publications from prisons could additionally provide external validation for administrators' claims as well as the aura of professional status by association.

5.3.1 Constructing the "Penal Science"

In the late 1840s, administrators began referring to "science," specifically, the "penal science," or alternatively "penology." This was a significant change. They had long used the language of experimentation, and they included tables of summary statistics in the reports for virtually every year—though, the number of statistical tables and the use of higher-order cross tabulations increased in this period—but that was as close as they had come to displaying the trappings of science. Likewise, references to the "moral science" could be found in these earlier reports, but this generally referred to philosophical considerations rather than a branch of physical or social science as we understand it today. "Science" did not fully play a role in the first dozen or so reports. Beginning in the late 1840s, however, the penal science increasingly became a focus of administrators' annual reports.

As this was an emerging field, administrators often tried to define the penal science and penology for their audience. Generally speaking, penology referred to the systematic analysis of data for the purposes of better determining crime and penal policy, by identifying the underlying causes of crime and assessing the effectiveness of available punishments. Despite the continuity in their overall concerns (the causes of crime, appropriate methods of punishment), their discussions in the 1840s and later appear to have been relatively distinct from those before: earlier examinations of the causes of crime were rather superficial listings of a variety of inmates' characteristics, while discussions about the appropriate methods of punishment were much more theoretical and even philosophical. One major difference was their emphasis on rigor—a defining feature, as administrators described it, of penology:

The careful study of statistics of crime and criminals is now essential to the full understanding of all systems of penal jurisprudence. It is no longer permitted to any present

or future consideration of penal science, to be content with a knowledge of the fact that violations of law or crimes are followed by the imprisonment of the criminal. Vast progress has been made within the past few years on this subject. The attention of enlightened minds everywhere, has been of late, increasingly directed to the penal systems of States. Comparison between them is being based not merely on results attained, but regard has been had to the systems themselves. The principles of treatment of crime, the philosophy of that treatment; its direction and application; how directed and applied, and the consequences which follow directly are undergoing critical examinations. It is not enough now to present a “crimes-act,” with a schedule of terms of imprisonment attached, and then a statement of the number of convicts convicted each year, and rest satisfied with such an exposition of the convict population of a community. This gives, it is true, the per centage of criminals out of such population in prison, but this is not now satisfactory, far from it. Nor will it longer be received as final in the economic view of penal systems, to state that a convict has “earned his keep,” and as a “self-supporting” machine the principle of punishment he represents is to be glorified since it costs nothing to the State, and for that reason only. (Inspectors, Annual Report 1864, 7-8)

If this—essentially what they had been doing in previous years—was no longer sufficient, what was? Perhaps unsurprisingly, Eastern’s administrators advocated the kinds of activities that were (they claimed) only possible through the Pennsylvania System. For example, they explained how the Pennsylvania System enabled them to better learn from their inmates:

these remedial and reformatory influences can only be ascertained and administered, on an obtained knowledge of the offender. This diagnosis is a prerequisite. It requires personalities to be under recurring observation. Separation, certainly best secures this aim. These remedial and reformatory influences are paramount. They attest the enlightened, benevolent, and indeed philosophic treatment, by society, of those few, who have violated its laws. They mark the progress of penal science. The separate system is its most signal and *sui generis* realization. (Inspectors, Annual Report 1860, 7)

By enabling the necessary activities for penological inquiry, the Pennsylvania System represented the crowning achievement of penal science—and Eastern’s administrators were consequently god-fathers, of a sort, of this development.

Another key feature of the penal science was its importance. Of course, administrators rarely failed to emphasize the importance of penal policy and criminological knowledge in earlier years. In the late 1840s and into the 1870s, however, the penal science was now particularly salient. As noted above, administrators argued that it played, or it should play, an “essential” role in the promulgation of laws. Indeed, they argued that it was important in a variety of ways:

These remarks are made with a view to indicate the importance of Penitentiary discipline, to elevate the subject to the high position of a science, where it properly belongs, and to awaken Legislative mind to the conception of the importance of institutions which are more than receptacles for convicts, wherein incarceration is not the only object to be attained. Imprisonment alone, as a penalty for crime, rarely, if ever, produced improvement in a single object of its infliction.

If the prisoner is to be left to the single effect of his circumscribed locomotion within a prison, and he is expected thus to be punished for his offence, or to repent of its commission, then never so groundless an expectation existed. Such a plan of punishment would be far more injurious than advantageous, even to the community at large. Imprisonment should be a means to discover, remedy and restore, defective constitutional

organism, from which crime resulted as a consequence. This must be ultimately, its admitted object. To attain it, however, will require greater enlightenment on the subject than now exists. It will become a study for intelligent mind. (Inspectors, Annual Report 1859, 7-8)

Not only was the new science a prerequisite for altering or establishing crime or penal policy, but failing to abide by the penal science could have disastrous consequences. Intelligent minds were needed to prevent this from happening. Of course, it was within the purview of prison administrators use their prisons as laboratories, propel this science forward, and prevent such calamities.

Indeed, Eastern's administrators spent a large portion of their discussions of the penal science identifying their unique contribution to it. Primary among their contribution, they identified their Annual Reports as furthering the penal science or as sources of penology. For example,

The yearly reports that have been made for the last quarter of a century, are testimony on the subject that are reliable, as far as they can be made so. *They present more information, on penal science, or data from which penal science can be studied, than any other like institution in the country.* (Inspectors, Annual Report 1865, 16-17, italics added)⁶

Why were their annual reports so useful to this science? They provided the all-important data that others can analyze to advance the knowledge in the field. They explained,

From these reports and statistical tables is to be evolved the real progress of prison discipline as administered in this prison.

Crime, crime-cause, social conditions, individual character, are ascertained, recorded, and treated as constitutional, chronic, or sporadic superinducements to that abnormal moral state in each individual convict, which produced or resulted in crime-punishment.

It is believed no more interesting study can be given to the scientist than the results which are collected in these reports. It will be observed that they touch upon the limits of two generations of people, and exhibit in some degree the effects of that social condition called civilization which has grown up and out of the means adopted for its advancement.

Whatever distrust, however, the Inspectors have in their own opinions, yet the deep interest they feel in the subject alone induces these remarks as to the special value of these reports. They have been prepared with the single purpose of contributing, as far as possible, the information attainable on the subject of penal, as an element in social science, although exclusively obtained from this Penitentiary. (Inspectors, Annual Report 1875, 22-23)

⁶See also:

The Inspectors have annually made reports as to the condition of the Penitentiary, as required by law. These reports exhibit the gradual reforms which experience suggested were necessary in the administration of the discipline of the institution. They contain the opinions and suggestions of the Inspectors as to the developed character of the system, and present as valuable a collection of statistics as any like institution has ever furnished for the study of those engaged in the investigation of the penal element in social science. It is doubted if in any State, or indeed in any country, forty-four volumes containing the annual statistical tables relating to the populations of a penal institution, covering nearly half a century, can, on examination, be regarded as more complete. From these reports and statistical tables is to be evolved the real progress of prison discipline as administered in this prison. (Inspectors, Annual Report 1875, 22)

These reports were unsurpassable because generations of Eastern's administrators had assembled relevant data and analyses, creating a collected body of knowledge no other prison could offer. But more than their aggregate significance, each report continued to advance the penal science. To the extent that administrators believed these statements, which is necessarily unclear in the data, such a belief would have made their work seem especially meaningful and important. However, whether or not they believed these statements, these statements certainly offered a claim to a heightened status: if penal science was important, the administrators were very important because they helped to craft and further that science with the data and experiences to which few others had like access, or even the skills to analyze.

5.3.2 Affiliating with Field-wide Networks

In addition to emphasizing their role in constructing the new science of penology, Eastern's administrators also demonstrated their various connections to emerging national and international associations of penal experts. In some cases, the Pennsylvania System had been endorsed by these networks. In other cases, administrators used publications from these networks to support their own statements. In both cases, this external validation helped to make administrators' own claims sound more authoritative and to identify themselves with a growing field structured around the generation of penal knowledge.

External endorsements, as we have seen (Chapter 4), were particularly important to administrators' defense of the Pennsylvania System. But endorsements coming from collections of individuals involved in penal reform and penal science were especially important. Unlike local, city- or state-based collections of penal reformers, international congresses (in addition to generally being more willing to endorse the Pennsylvania System) could be described in more sophisticated terms.

...the Board of Inspectors feel it no less within their province to refer to information they have received of the meeting at Frankfort on the Maine, on the 28th, 29th and 30th of September last, of a Congress of distinguished men who are interested in the subject of prison discipline. At this Congress it appears seventy-five members met, by voluntary arrangement, to discuss the many important questions intimately connected with the reform of prison discipline. The discussions are reported to have been maintained by great ability, and possessed of an unusual interest. Delegates were present from France, England, Prussia, Sweden, Holland, Denmark, Belgium, and various parts of Germany. Many of the names are familiar to the friends of Penitentiary reform, as among the most able men of their respective countries.

The action of such a body of men at this time is undoubtedly of the greatest importance, and the Board of Inspectors are cheered and gratified to find that the Pennsylvania system of Prison discipline has received the almost unanimous approval of this Congress. (Annual Report 1847, 27)

The endorsement of such an impressive group could bolster administrators' own claims of the Pennsylvania System's superiority, and thus reinforce their position as knowledgeable in evaluating appropriate modes of punishment.

Especially in later years, though, administrators turned to written works to support their claims. In these years, their citations to papers produced at national and international conferences on prison reform or management increased. For example, the Inspectors reassured their readers, "That these views may not be regarded as unsupported by any other authority on penal science,

the following extracts are made from a paper prepared by ‘request of the Committee of the English Social Science Association,’ and presented to the ‘London Congress last July’ (Inspectors, Annual Report 1873, 13).⁷ Implicitly, these claims further demonstrated administrators’ familiarity with these networks and developments within the growing field to which they claimed membership. Primarily, however, such references were often used to support the administrators’ statements to show they were not just opinion, but rather something approaching established fact.⁸ For this purpose, the administrators also turned to other prison administrators’ writings to support their own claims: Eastern’s Inspectors noted, “Such a corroboration of the views of the Inspectors of the Eastern State Penitentiary, made independently by the Inspectors of the Western Penitentiary, gives to the opinions of both, the merit of an unanimity and concurrence on a subject, of which they are at least not incompetent authority” (Inspectors, Annual Report 1862, 37). Through these external, textual validations, Eastern’s administrators cemented their claim to respected, authoritative experts, well connected in the field of penology.

5.4 Challenging the Expertise of Others

Administrators could further reinforce their own status by undermining the status of their opponents. Indeed, administrators often defined themselves and their expert status in opposition to parties they described as dilettantes. In addition to whatever existential benefits administrators received from the reinforcement of their own status, these claims also bolstered their defense of the Pennsylvania System: not only were critics ignorant, biased, or otherwise poorly disposed to criticize it, but the only claims that could be believed were those from Eastern’s administrators.

5.4.1 Undermining Field-wide Opponents

Administrators employed a variety of tactics to undermine the authority of any individual offering arguments against the Pennsylvania System. Most often, however, they implied or outright suggested that their opponents were simply ignorant. This could be especially useful for directly defending the Pennsylvania System against rational myths. For example, the Physician noted,

It is true that the per centage of deaths has been somewhat greater than in any of the three preceding years; but physicians connected with kindred establishments are aware how often a large mortality from chronic maladies, is compatible with a high state of the general health. (Physician, Annual Report 1846, 31)

⁷References to other literature produced in these settings was not always discussed to support their claims. Sometimes officials referred to such publications and rejected the positions taken within them. For example, in one case, the Clerk explained that the Pennsylvania System did not have the effect described in “Mr. Tallack’s (of London) paper read before the International Prison Discipline Convention held at Cincinnati” (Clerk, Annual Report 1871, 95).

⁸See also: “Attention is invited to the articles on Penitentiary Reforms in the Prison, Discipline Review, published in Rome, by MM. M. B. SCALIA, the Inspector of Prisons of the Kingdom of Italy. This Review is edited by M. B. Scalia, and may be regarded as one of the ablest publications on Prison Discipline. Thus it will be seen that the opinions of the Inspectors of the Eastern Penitentiary of Pennsylvania, on Penal Science, as applied to Penitentiary punishment, are working reforms and are accepted as authority wherever this subject of Penitentiary Systems of convict punishment is studied, without prejudice, preconceived objections, or the utilitarian dogma that the State must make a money profit out of the punishment for crimes of its convict population....” (Inspectors, Annual Report 1873, 22)

This statement did not challenge any particular group, but generally implied that anyone dismayed by mortality rate that year was simply unknowledgeable. Alternatively, administrators demonstrated their opponents' ignorance by criticizing the evaluation criteria these critics used:

When so much ignorance exists on the subject of convict separation and punishment and the most mercenary tests are only thus applied to systems of prison discipline; when labor is all that convicts are supposed to be able to yield for profit, to States or prisons, it seemed the duty of those engaged in a higher development, to continue to give reasons for their opinions and views. (Inspectors, Annual Report 1862, 43-44)

In this case, the Inspectors used their opponents' ignorance to offer a normative critique of these opponents, and to clearly identify themselves on the right and correct side.

A related normative critique of the opponents of the Pennsylvania System established their subjectivity. Especially in the early period, administrators often labeled those who criticized the Pennsylvania System as biased—predisposed to favor the Auburn System. However, this theme persisted throughout the period. For example, the Physician explained,

the superiority of one or other system can never be justly established, unless the respective partisans of both, are as faithful in reporting what contradicts, as they are ready to publish what supports, their cherished views. May both parties remember, that it is the lives and reason of fellow men, that may be saved or sacrificed by their prejudices or desires. (Physician, Annual Report 1849, 28)⁹

This further protected the Pennsylvania System by suggesting it was being evaluated against tainted data—data that unprofessional opponents had either altered or otherwise suppressed.

Indeed, to actually be qualified to evaluate the Pennsylvania System, one needed to be knowledgeable of many things. To truly understand punishment

requires an unshaken faith in the susceptibility of human nature to improvement—to reformation in its moral character. It requires a conviction as to the reality of the effects which can be produced on the ignorant, vicious and depraved, as well as on the erring, by systematic efforts to correct and cure the causes of their crimes.

It demands the recognition of a philosophy, which teaches that their crimes are the results of abnormal condition of the moral constitution. It rejects the conclusion that convicts are to be separated from society, and then society has no further interest in their condition. It doubts the propriety of introducing persons of all shades of individual and criminal character to each other, by associate recognition, thus establishing a class cognizant of their correlation. It looks with no superior favor on the sacrifice of all noble and benevolent efforts, to redeem and reform the fallen or the depraved, to the one single utilitarian purpose of pecuniary profit to the public. It regards labor as an element of the punishment of the guilty, and not that every other consideration should yield to an effort to make it profitable, by complicity with craft or covin.

⁹See also: “Wherever these systems have been fully and impartially investigated, wherever the single and only purpose has been to benefit the prisoner and the public, wherever enlightened minds have been fully alive to the character and consequence of both, by reflecting on each in theory and practice, wherever sordid, sinister or selfish purposes have been banished from any participation in the conclusions from a comparison, wherever wise and liberal economy exists, and a spirit of progress and a humanizing agency control public opinion, there the separate system of Penitentiary punishment converts, convinces and conquers.” (Inspectors, Annual Report 1860, 8)

It is in vain to expect that a subject which has occupied the attention of deep thinkers and practical observers, for so long a period, can be understood by less than an impartial denotation to its study.... (Inspectors, Annual Report 1860, 9)

Of course, Eastern's administrators believed—and sought to demonstrate—their qualifications in this respect. Others did not pass such a test and thus lacked the expertise Eastern's administrators held.

5.4.2 Threat-Specific Attacks

In a number of cases, administrators' attacks were more clearly targeted at specific groups posing current threats to the Pennsylvania System, especially beginning in the late 1840s. In this period, local reformers (the Philadelphia Society for Alleviating the Miseries of Public Prisons) began to criticize the administration of the Pennsylvania System at Eastern, and began to lobby for changes. In particular, they began to acknowledge the actual severity of the Pennsylvania System and suggested alterations that would mitigate against this severity. Around this period as well, and seemingly in response to this challenge, administrators authored statements that subtly attacked the authority of penal reformers to make suggestions about penal law.

One tactic administrators employed suggested that the local penal reformers were not objective. Administrators argued that reformers would not carefully review the evidence (as administrators did), but instead argue based on their beliefs; this subjectivity led them to make poorly thought out recommendations. For example:

A few years ago, the effects of our discipline on the health of those subjected to it were entirely unsuspected, its friends being so dazzled by its moral influences to be totally blind to its physical and mental evils. A reaction in a contrary direction has now taken place, and I regret to hear the Institution as blindly condemned as it was heretofore lauded. Those opposed to the Institution base their objections on its recorded effects on the health of the prisoners; but they seem to forget, or never to have been aware, that much of the evil complained of, was the result of unhealthful influences, many of which have been materially remedied, and none of which are an indispensable accompaniment of the principle of separating convicts from each other. Let me respectfully remind both parties, that the subject is one of the deepest interest to society, involving the life and the reason, the reformation, and, it may be, the eternal welfare of many of our fellow-men, and should not, therefore, be discussed in a partisan, but in a philosophic and christian spirit; weighing accurately all the facts, no matter how they tend, and giving to each its true value. If this kind of spirit is brought to the investigation of the past history of the Institution, I have the fullest confidence that its great moral superiority will be established, and its perfect adaptation, when intelligently administrated, to a large majority of convicts acknowledged; at the same time that all who are not blinded by prejudice will admit that the mental character of a certain proportion of prisoners renders it unsafe to subject them to its discipline. (Physician, Annual Report 1852, 25-26)

Other statements indirectly implied the ignorance of local penal reformers. While most of these comments came from the Inspectors, Warden, and Physician, even the Moral Instructor participated. He noted in one report:

In some cases, where indications of penitence appear, and ingenuous confession is made, the good effect is neutralized, by brooding over real or imaginary wrongs, received in

or from society, which leads them to the ordinary conclusion, that they are not worse than others. The difficulties in the way of producing right impressions, and sustaining them when produced, are innumerable. A book, in ordinary circumstances, having no inherent tendency to evil, may turn the whole current of thought and feeling into an undesirable channel. *Injudicious visitors, with the best intentions, may often mar the symptoms of promise; an inadvertent expression from one who cannot be acquainted with the peculiarities of a prisoner's position or disposition, may do much harm.* These are but a small part of the many untoward influences, which must be overcome by patient and prayerful effort. And while all that moral influences can effect should not be left un essayed, the conviction will inevitably force itself upon the mind of any one, long devoted to true philanthropic or religious effort, that the only agency that will effect radical and permanent reformation, is the Spirit of God. (Moral Instructor, Annual Report 1849, 35)

Not only were they not sufficiently knowledgeable, the Moral Instructor argued, but their ignorance could have negative consequences. In this way, the moral instructor claimed knowledge expertise over local penal reformers who visited and ministered to inmates at Eastern.

In this period as well, Eastern's administrators turned their attention to their state's legislators. The legislature was apparently receptive to penal reformers' suggestions, even authorizing some of these into law in 1861. In another sin, the legislature authorized a commission to revise the Pennsylvania penal code, which occurred in 1860. That legislators were willing to pass legislation affecting the Pennsylvania System without consulting Eastern's administrators or against their advice made the legislators another significant target. Administrators statements to this end centered primarily around the lack of experience and unfamiliarity with the data. However, some of these claims were rather aggressive in their language: "These reports and tables present such an amount of information, and the deductions from them become so interesting and important, that any legislation not based on the knowledge herein obtained must be in itself of doubtful value" (Inspectors, Annual Report 1868, 25). As the subtext implied that such legislation had not been passed based on such knowledge, administrators criticized existing legislation. Other quotations were even more condescending:

In considering the important questions involved in the science of penology, not only in their relations to jurisprudence, but also to social science, and systems of Penitentiary reformatory discipline, it is of necessity that facts should be presented which are obtained from an analysis of the convict population, as to ages, localities, crime-cause, individual characteristics, educational and industrial acquirements of those sentenced for violation of law.

Therefore, in some degree to give such information which is regarded of the highest value in any investigation, of either penal laws or Penitentiary punishments, the following tabulated facts are presented. Every thoughtful mind will examine them with deep interest. *The Legislator, and he who should study systems of Penitentiary punishment, will discover, that the knowledge which is to be had after the careful investigation of the questions these tables present for consideration, is necessary for wise legislation, or to qualify for the determination as to the best system of convict punishment*" (Inspectors, Annual Report 1875, 8, italics added).

Again, we are reminded that the administrators are the gatekeepers through which legislators must pass to make "wise legislation."

In some ways, any attack on the penal reformers was a critique of the legislators for listening to them, while most attacks on the legislators were reminders that they were listening to impostors, and thus a critique of the penal reformers. Because of this confounded relationship, many claims could attack both in one breath. Indeed, sometimes the target of administrators' statements was not exactly clear, and was probably intended for multiple parties. For example,

What the penalty should be for crimes is a subject for the Legislature. The administration of these penalties is far more difficult to be determined, and should be placed in an administration wholly concerned with this subject, and, from long experience, the better enabled to judge of the results which are practically attainable. There are so few who are willing to devote the attention to this subject which it merits, and which is essential to the comprehension of so difficult a problem, that any labor given to it is often felt to be useless. A crude opinion is not unfrequently accepted as sound and exhaustive, because it is in harmony with those views which are naturally entertained by uninformed minds. This is to be regretted, because it proves how limited is the number of those who are properly interested in this increasingly important subject. (Inspectors, Annual Report 1872, 10)

By establishing who was not an expert, administrators could argue that they belonged in an elite minority to whose opinion legislators and penal reformers should defer.

5.5 Mobilizing Status to Retain Autonomy

For reasons discussed previously, it is difficult to determine whether these claims to professionalization actually helped to preserve either the reputation of the Pennsylvania System or its position as the mode of confinement at Eastern. Whether or not they were effective, the claims certainly increased when local penal reformers or other actors sought to change the laws that affected the Pennsylvania System at Eastern, directly or indirectly. The change in tone beginning in the late 1850s was very likely in response to these attempted changes. Indeed, the most explicit set of comments came in response to a new law, for which reformers had lobbied and which had passed without any prison administrators' input.¹⁰ In addition to making colorful statements throughout their annual reports for 1861 (Annual Report 1862), as well as their special report affixed to their report for the year 1861 (Annual Report 1862, Appendix),¹¹ the administrators flat out refused to implement the new law. While establishing a basis for causal inference is difficult, it is possible that administrators' claims to professionalization *may* have enabled Eastern's officials to openly condemn and violate the law for a period of eight years without the emergence of other, more coercive pressures to stop them.

¹⁰In fact, in their report to the legislature, the administrators from Western explained how they were informed about the law: "Through the thoughtful attention of the Inspectors of the Eastern Penitentiary, (for we were not favored with a copy of the law by the proper authorities,) we have received a transcript of an 'Act relative to prison discipline,' approved May 1st, 1861." (cited in Annual Report 1862, 37). Eastern's administrators "first knew of the passage of the 'Act relative to prison discipline' from the lips of a convict under their care" (Inspectors, Annual Report 1862, 8-9).

¹¹At the motion of the Board of Inspectors, a selected group of Inspectors formed a commission to evaluate the new law and determine how to implement it. Their report was addressed to the full Board of Inspectors but appended to their annual report and thus made public.

5.5.1 The Commutation Law of 1861

On May 1, 1861, the Pennsylvania legislature passed a law entitled, “A Law Relative to Prison Discipline” (informally, “the Commutation Law”). The law ordered its state prisons and some other carceral facilities to release inmates early for good behavior. Following a rather complicated metric, inmates would receive a certain amount of “good time” credits (a number of days on a sliding scale) for every month during which they behaved well; this credit would then be removed from an inmate’s sentence and he would be released earlier than the date initially assigned by the judge. This law had been initiated, supported, and largely written by the local prison reform group, the PSAMPP (PSAMPP)—much to the chagrin, and of prison administrators throughout Pennsylvania. In that year, administrators from Eastern as well as several other penal organizations wrote to the legislature to declare their complete disregard for the law, their principled reasons, and a general declaration that they would refuse to enforce it. As Eastern’s Inspectors explained, “This Act of the 1st of May, 1861, is unnecessary” (Annual Report 1862, Appendix, 24) and heavily flawed.

Significantly, Eastern’s administrators interpreted the 1861 law as an attack on the Pennsylvania System and on their own authority. Eastern’s administrators described the Commutation Law as a way to bring Eastern more in line with the rest of the country. They explained,

If this plan has any value it belongs exclusively to prisons on the congregate system, where the largest sentences are... imposed.... In point of fact, the Irish system, whence the cardinal features of this Act have been borrowed, required that the criminal code should be revised, purposely to lengthen the terms of sentence, in order to meet the contingency of their reduction. (Annual Report 1862, Appendix, 25)

But more than an attack on the Pennsylvania System, the Law was also an infringement on Eastern’s administrators jurisdiction over the prison and prison policy. Indeed, these concerns were relatively intertwined, as Eastern’s administrators described them. Inexperienced, non-experts had passed a law trying to modify the discipline at Eastern to become more like the discipline under the Auburn model; any modifications to the Pennsylvania System or policy affecting Eastern should include the prison’s administrators, who have the requisite knowledge expertise to make such changes. It was, they argued, a bad law. Administrators described a number of ways in which the law was problematic, ranging from how the law was passed to whether its substance was even constitutional. Most importantly, however, the bulk of their complaints about the law illustrate the administrators’ understanding of their own identity as members of an elite group of knowledge experts, who should be consulted for this knowledge any time legislation will alter prison policy or practice, to the exclusion of others, interlopers who can do more harm than good if allowed. Through their attacks on those who contributed to the 1861 Law, Eastern’s administrators reinforced their claims to professional status and knowledge expertise, ostensibly to defend the Pennsylvania System against what they saw as an ill-planned attempt to change it.

5.5.2 The Need for (Legislative) Deference to Administrators’ Expertise

As they had on other occasions, the administrators focused on the way in which matters relating to penal policy were within their purview and that they therefore should be consulted in their alteration. In this case, the administrators argued that it was within their purview, both legally and substantively, to be consulted in the writing and passing of this law. They pointed to the long-standing precedent under which they had been allowed to shape the policy under which Eastern operated. For example, up until the passage of this law, “the Legislature of Pennsylvania was

willing to allow the experiment of this penitentiary system to be tested by those on whom the duty was devolved and its responsibilities were imposed.” Referring to the provisions of the 1829 establishing this devolution, they continued:

From these carefully devised provisions by the Legislature, it is justly to be assumed that any legislation of the State of Pennsylvania on the “prison discipline” of the Penitentiaries, would not be enacted without either notice to the Inspectors, or requiring them to report on any projected law, so directly affecting a subject of which they were presumed to be fully informed. (Annual Report 1862, Appendix, 7-8)

Thus, by precedent and existing statute, administrators expected that they were entitled to providing their opinions, let alone receiving notification that a new law was under consideration. Moreover, due to its substance, they simply should have been included in the process. They explained,

If the Act of May 1st, 1861, had relation to penal laws or jurisprudence, crimes or penal code, the views of the Inspectors in regard to it, might be of no importance or value. But the law relates entirely to prison discipline... It should have received full consideration before applying it to a system, working its way as a successful experiment, under the supervision of a body, directly conversant with its principles. (Annual Report 1862, Appendix, 8)

Their right to be included was, again, rooted in their knowledge expertise.

Taking a more offensive stance, Eastern’s administrators also used the opportunity to criticize the legislators and the authors of the law, particularly these groups’ lack of expertise and general foresight—that the administrators, of course, possessed. First, the passage of the law had been rushed. They explained, “This law, we are informed, passed one branch of the Legislature at the latest moment, of the session, without a word of observation or criticism from a single member” (Annual Report 1862, Appendix, 9). Perhaps because of this process, or perhaps because of their failure to consult true experts, there were significant problems with the law. First and foremost, it simply is not conducive to the Pennsylvania System: They explained, “We have only here made these remarks to the Board... to show that the principles of the plan are wholly unsuited to any real system of penitentiary punishment and discipline, which works primarily, steadily, and constantly at reformation of the criminal” (Annual Report 1862, Appendix, 24). More importantly, however, the law would have negative ramifications if it were actually enforced:

To adapt this law to our system of prison discipline, or to mould any system to it, is no easy task. Its principles are very questionable. Its judicious application to the separate system is at present, a very grave question—because it embraces its propriety, its usefulness, its applicability, and its liability to engender discontent, disputes, and confusion between and among the convicts and the overseers. It may impair our present carefully created system, without yielding a single beneficial provision in return. (Annual Report 1862, Appendix, 9)

Presumably, anyone who was knowledgeable in penology would not have made such mistakes. The amount of knowledge and care that went into this law thus contrasted greatly with the decades of thoughtful reflection, experience, and analyses of the data collected at the prison that shaped the Pennsylvania System in its current form. In these ways, administrators implicitly offered an argument that the law was not written by experts—it was not written by them.¹²

¹²In one case, the administrators even reminded the legislature about legislation it had passed at the administrators’ behest:

It is important to note that some of their statements criticizing the law, and especially how it reflected negatively on the authors, were particularly vitriolic. One of their most explicit statements to this end explained of the law:

Its scope is too sweeping to produce the results aimed at or desired. The law itself is drawn by a most inexperienced pen. Its looseness of expression, its conflicting provisions, the difficulty of reconciling its language with any proposed purpose, the extended scope of its provisions, are either separately or collectively, serious obstacles in the way of its just, reasonable or appropriate interpretation. (Annual Report 1862, Appendix, 9)

Though the administrators were rather explicit in this comment, they did not refrain from making other such comments criticizing the skill, knowledge, and level of care behind this law that were as aggressively worded.¹³

5.5.3 Showcasing their Own Status by Criticizing the Law

Apart from the process by which the law was passed, many of their complaints centered around the interpretation of the law (its ambiguity and conflict with existing laws and policies) and questions about its legality or constitutionality. These were quite numerous and sometimes trivial. For example, for each of the following claims, they offered a paragraph to explaining the basis of their confusion regarding the law:

Neither is it clear in another particular, to what precise class of prisoners the Act applies. (Annual Report 1862, Appendix, 14)

We are equally at a loss to ascertain where the Act is applicable to fractions of a year, although a large number of sentences include fractions of a year. It speaks only of entire years. (Annual Report 1862, Appendix, 14)

We desire to call attention to the first important legislation after 1829, touching prison discipline. We refer to the Act of the 18th of February, 1847, entitled “An Act concerning sentences of convicts,” to confirm these statements.

This Act was passed by the Legislature in conformity with suggestions in the Eighteenth Annual Report of the Inspectors. Its purpose was to protect a convict who, under the law as it then stood, was liable to end his sentence in winter, and be discharged, under circumstances most disadvantageous to him. The difficulty of obtaining honest employment at that season of the year was regarded by the Legislature, as rendering the discharged prisoner liable to temptation. To protect him was a high benevolence. To shield him by a law was wise legislation. The Legislature of that day enacted its philanthropy into an easily understood statute. (Annual Report 1862, Appendix, 8)

This, then, is what good legislation looks like—it follows the advice of actual experts.

¹³See also:

Judging from other portions of the Act, we cannot wholly exclude the supposition that its framers may have intended this construction notwithstanding the *preposterous* character of the result.

But the Act is so fertile in possible interpretations that we have our choice of several other modes of computation, if dissatisfied with the preceeding [sic]. (Annual Report 1862, Appendix, 16, italics added)

A still further question of sub-division is presented by the law. (Annual Report 1862, Appendix, 15)

These complaints helped to reinforce their earlier claims that the law was essentially sloppy and poorly considered before its passage. Indeed, after reviewing about a dozen concerns, they concluded, “The purpose and aim of the law, it is feared, were not carefully considered by those who volunteered to create so extreme a change in our prison discipline.” (Annual Report 1862, Appendix, 21). However, administrators also used their complaints about the ambiguities of the law to demonstrate their own good (professional) qualities.

Through these comments, they could showcase their positive traits in a number of ways. Generally, these comments demonstrated the carefulness and foresight of Eastern’s administrators—they identified problems that the law’s authors did not, in part because the administrators, and not the authors, understood what prison discipline actually entailed. More specifically, however, these comments also demonstrated the administrators’ concern for the inmates, particularly their rights to due process, which would be potentially violated under the new law. For example, one confusion pertained to the additional punishment of inmates and the process by which this punishment is approved and authorized. As the Inspectors interpreted it,

it is a singular inversion of things to inflict the punishment first, and afterwards call on the Board to approve or disapprove the infliction! Ordinarily an investigation precedes the punishment; here it is to follow. Should the Board disapprove, what then is to be done? The prisoner has already suffered the penalty of the supposed infraction, and the wise philanthropy which thus suggested a trial after conviction has not provided that any reparation or restitution should be made in case of an erroneous judgment. (Annual Report 1862, Appendix, 10)

In another case, they expressed their concern that the law constituted an *ex post facto* law.¹⁴ By implication, of course, these concerns were not as highly valued by the authors of the law.

Administrators also used these comments to demonstrate their commitment to upholding the law generally and their desire to continue to be law-abiding authorities. While they found ways to incorporate this concern in other comments, they most clearly expressed their obedience to legislation generally in the special report of the committee.

Before asking the attention of the Board to the remarks the undersigned have felt it their duty to make, on the subject referred to them, they wish it to be clearly understood, that both as citizens and Inspectors of the Penitentiary, *each member of the Board has been anxious to carry out this and every other law, enacted for the government of this Institution. Obedience to law is the especial obligation resting on those who are entrusted with the management of a public Institution, in which those who violate law are confined as a punishment.*

¹⁴“But again: when this Act passed, we had in custody, 459 prisoners. Does the law extend to them? Laws are not generally presumed to be retrospective, and there would be justice in limiting the new system to prisoners, whose terms of sentence had been graduated with reference to a possible diminution under the Act, and not including within its operation cases before its passage, where it is likely a sentence had been imposed, because in the opinion of the sentencing power justice required that the prisoner should be confined until the full end of his term. The language of the Act seems to be prospective, for it speaks of the first; second and other months of the first year of imprisonment. Even if there were no legal liability involved in the determination of this question, it is one of great practical importance.” (Annual Report 1862, Appendix, 13)

The undersigned, and their colleagues in the Board, have given most anxious reflection to the issues which this Act of Assembly presents.

Your Committee has but embodied in the following report, views, opinions and conclusions, which this anxiety to reconcile the law with the duties attempted to be imposed by it, have made too important to be overlooked, *even under the strongest desires to obey the law*, if it was possible. (Annual Report 1862, Appendix, 6-7, italics added)

The Inspectors concluded their special report by explaining that it was simply not possible to follow this law, despite their sincere, long-standing commitment to obeying all laws pertaining to the prison. These comments, it should be remembered, were very likely strategic instead of genuine: Eastern's administrators tolerated and authorized violations of the law throughout the entire period (Chapter 7).

These comments also demonstrated their concern with not overstepping their purview. They likened their responsibility to reduce sentences, under the law, to the pardoning power. Addressing the full Board of Inspectors, the smaller Commission concluded,

Your Committee cannot advise the Inspectors of the State Penitentiary for the Eastern District of Pennsylvania, to grasp power, to seize, upon authority, or to exercise either or both, unless on the clearest and most indisputable grounds.

Under any construction of the Act, it practically gives the Board of Inspectors the power to release from imprisonment certain convicts, before the expiration of their respective sentences by the courts of the Commonwealth. This is an important power. A grant of the highest Executive authority under our constitution. The exercise of a clemency or pardon which is vested only in the Governor of the State. (Annual Report 1862, Appendix, 31)

Just as they refrained from commenting when they lacked sufficient data or knowledge to form judgments, the administrators also sought to remain within their purview and not venture beyond it.

5.5.4 Mobilizing the Network of Experts

Finally, Eastern's administrators supported their claims with the opinions of other experts. They included extracts from the reports submitted to the legislature from the Board of Inspectors at Western State Penitentiary and the local county prison (jail) of Philadelphia. These references reinforced Eastern's administrators' own statements, while also making their overall point even stronger. They showed that the field of administrators—i.e., all relevant actors whose opinions actually matter for this issue—agree:

To whatever forum an appeal may be taken as to the character of the Act of May 1, 1861, they who believe the law is injudicious, injurious, unnecessary, incomprehensible and unconstitutional, are fortified in this opinion by those whose especial duty it is to execute it, if that was practicable. When the authorities of three separate penal Institutions in Pennsylvania unanimously condemn this act, its powers, provisions and purposes, it is no violent presumption to claim for such cumulative evidence, the efficacy always given to the weight of the testimony. (Inspectors, Annual Report 1862, 38)

Statements like this not only confirmed Eastern's administrators' statements, but it also helped to identify who the relevant authorities were in this matter, including themselves in this group. While these statements implicitly illustrated who was not included in this group, the administrators were

more explicit in other statements about whom they considered to lack expert status. After reviewing around a dozen problems with the law, the administrators concluded,

A minute analysis of the Act in other respects would suggest other queries equally entitled to consideration. Each and all of them must be settled by Inspectors, Wardens, and Superintendents, at the peril of actions for escape, and writs of habeas corpus. It is evident, therefore, that while the new law may tend to *alleviate the miseries of public prisons*, it has aggravated those of their officers. (Annual Report 1862, Appendix, 18, italics added)

Here, the reference to “Inspectors, Wardens, and Superintendents” identified the prison administrators from the several penal institutions that had condemned the law; the reference to the law’s intention was a fairly explicit identification of the law’s author, the PSAMPP.

5.5.5 Aftermath

After Eastern’s administrators refused to release inmates under the Commutation Law, two inmates independently submitted *habeas corpus* claims to the Supreme Court of Pennsylvania. In the combined case of *The Commonwealth ex rel. Johnson v. Halloway* (1862), the Supreme Court struck down the law. The Court’s reasoning reflects the arguments made by Eastern’s administrators, sometimes repeated verbatim. Most importantly, the Court confirmed Eastern’s administrators claims to expert status and their consequent prerogatives to be consulted. Justice Woodward, for the court, noted,

It is much to be regretted that the legislature of 1861 permitted its powers to be employed in disturbing an admirable system of penitentiary punishment, without consulting any of the officers to whom the system had been intrusted for administration, and whose experience had qualified them for advising wisely in respect to the proposed measure. (1862, 447)

Additionally, while the Court did not accept all of the arguments raised by the administrators, they were convinced by the administrators’ general reasoning for refusing to implement the law, including its consequences for the Pennsylvania System.

In the exercise of that discretion, thus left with them, they have declined to discharge the relators, and, indeed, to execute the law. They say it would derange the system of administration long pursued—that the eldest and most experienced criminals would reap the largest benefits from the act, for it is they who, having been most in prison, are most observant of prison rules, and that public justice would not be promoted by an execution of the law.

We will not overrule their reasons nor control their discretion. The letters from other states in reference to the operation of similar statutes, under different systems of punitive discipline, do not weigh very much with us. Our own experience under our peculiar system is opposed to all such attempts at alleviating prison discipline, and we think it may be safely trusted. (1862, 449)

While Philadelphia penal reformers and the state legislature had been attracted to other developments in the field, Eastern’s administrators successfully convinced the state’s Supreme Court of the uniqueness and superiority of the Pennsylvania System, the execution of and control over which was best left to the experts.

Though their claims to expertise and their support of the Pennsylvania System, Eastern's administrators thus resisted the legislature's attempts to alter the Pennsylvania System. In 1869, the legislature authorized a new version of the law with the offending portions removed or rewritten. In that year, Eastern's administrators committed the sentence of over 100 inmates, as authorized. Administrators continued to express their concerns with the legality of the law, but they did not elaborate as they had when the law was first passed.¹⁵ Despite a lack of clear records about the decision to begin to comply with the law, administrators' reasons are relatively easy to guess: it provided a means of preserving the core of the Pennsylvania System, which was under greater threat from the challenges of overcrowding and the necessary double celling of inmates since 1866. By 1869, the prison population substantially exceeded capacity—the prison population had reached 630 by years' end. While the legislature authorized the building of new cells in 1868, these would not be completed for several years (only 20 had been completed in the first year) and still would not be enough. Administrators requests to alter the jurisdiction of Eastern to alleviate overcrowding had yet to be followed.¹⁶ Early release provided a ready way to reduce the prison population, albeit by a small amount. If Eastern's administrators wanted to preserve the principles of the Pennsylvania System, the Commutation Law provided a way.

5.6 Decoupling Professional Status from the Pennsylvania System

I have argued that Eastern's administrators retained the Pennsylvania System for so long, despite the consequences for them and their organization, because it provided particular phenomenological benefits to them. In the previous chapter, I argued that they could construct an identity as humane and benevolent individuals associated with a superior prison and mode of confinement. In this chapter, I have also demonstrated the way in which retaining the Pennsylvania System offered administrators the opportunity to claim professional status as well. Unlike their other claims to a special status, this claim to professional status outlasted the Pennsylvania System at Eastern, and even accelerated after its decline. On the first page of their report for 1879, Eastern's inspectors claim that experience is not enough for one to rightfully be deemed an authority. Instead, "Very much must depend on the qualifications of those who offer this experience and present its results, to secure public confidence" (Inspectors, Annual Report 1880, 7). This emphasis on the qualifications and general ability of those running the prison became stronger as the Pennsylvania System lost its place at Eastern.

¹⁵They had apparently justified it to themselves as a "recommendation," as opposed to a full usurpation on their part. However, it still troubled them: "This plan has been described as a statutory recommendation to the Executive to discharge the convict before the sentence inflicted by the judicial power expires. While it is not a pardon under the exercise of the constitutional prerogative of the Governor, it is a device which, by legislation, controls the judicial and directs Executive action. How wise such legislation may be, is no part of the province of the Inspectors to consider, much less to determine. It is now brought to the notice of the Legislature for the purpose of inviting attention to the precedent thus established." (Inspectors, Annual Report 1871, 38)

¹⁶"On the 27th of April last [i.e., 1871], the State Legislature passed a law authorizing seven counties, viz.: Cameron, Clinton, Centre, Fulton, Juniata, Mifflin and Potter, to send their convicts in future to the Western Penitentiary, also to remove those who had been sent from those counties and were serving out terms of sentence here, to that prison. This was accomplished—twenty-seven (27) prisoners were safely conveyed to Alleghany [sic] prison by six of our officers, not one of whom carried a pistol or other firearms. The removal of these prisoners measurably relieved our crowded condition, still we are obliged in many cases to place two convicts in one cell for want of sufficient room." (Warden, Annual Report 1872, 93)

I have suggested that part of the reason administrators stopped supporting the Pennsylvania System was because the Pennsylvania System stopped providing benefits to the administrators. In particular, Eastern's administrators may have been more comfortable in their decision to cease their commitment to the Pennsylvania System because their claims to professional status could continue without this commitment. That is, by the late 1870s, however, their professional status was increasingly reinforced by developments within the field, rather than the need to defend the Pennsylvania System against a debate that had long since passed. Drawing on a sample of annual reports (as well as the full collection up to and including 1875), I briefly describe two trends in their claims to professionalization that accelerated in the period between 1870 and 1930: (1) qualifications and training and (2) affiliations with professional associations.

5.6.1 Enhanced Training

Having established their own qualifications, however, administrators increasingly focused their energies on the training and qualifications of the overseers. Administrators became increasingly concerned with the level of training and qualifications among the guards. In 1879, Eastern's administrators created a "school" in which they would train the prison "officers," now only infrequently called "overseers" (Inspectors, Annual Report 1880, 87). Over the years, the sophistication of this training increased, as did the qualifications required to become a prison guard. Three quotations from this later period illustrate the evolution of the "training" of guards at Eastern:

"The overseers, whose positions depend on fidelity and cheerful obedience to the regulations, perform their respective duties to entire satisfaction. They merit this acknowledgment. Training and the experience obtained by service are vitally important in the successful administration of this, or any penal institution." (Inspectors, Annual Report 1871, 47)

"The Overseers perform their duties faithfully. The 'school' established years ago, in which they are instructed in their vocation, has produced the most excellent results. Such a regulation for the instruction of prison officers will yet become a necessity in penal institutions." (Inspectors, Annual Report 1888, 129-130)

"The high standard of the personnel of the guards was maintained throughout the year by strict discipline and the careful selection of new men to fill vacancies. Applicants are required to furnish references and to pass a mental, physical and marksmanship examination. In this manner we have been able to appoint men of the highest character with excellent records." (Warden, Annual Report 1930, 9)

However, administrators did not cease their own attempts to claim professional status. Instead, during this the same period, developments within the field also contributed to their ability to claim professional status.

5.6.2 Structuration of the Field

In the late part of the century, the field underwent the process of "structuration" (Giddens, 1979; DiMaggio and Powell, 1983) as new professional organizations emerged and participation in national and international networks of penologists increased. Thus, in the 1888 report, Eastern's Warden could write,

The Prison Association of the United States held their last annual meeting in Toronto, Canada, in September last, which, by your direction, I attended. Most of the prisons of

this country were represented by wardens and other prison officials. The government officials of Canada, and the prison officials of the Dominion, together with the officials and citizens of Toronto, made everything pleasant and agreeable. The meeting was fairly attended. Much discussion of the subjects of crime-treatment, prison management, labor for prisoners, were considered. The prison wardens are all disposed to treat the subject fairly, seeking to learn all they can from each other of the different methods of discipline and treatment of prisoners for the best results. (Warden, Annual Report 1888, 134)

In earlier years, administrators simply mentioned the occurrence of similar meetings, often mentioning how the Pennsylvania System was discussed in the meetings' published documents. Now administrators emphasized their participation in these events.

5.6.3 Professionalization Wins the Day

Additionally, professionalization continued to pay off for the administrators. When the PSAMPP lobbied for a bill that would make them official visitors to the prisons, the prison's administrators resisted. In his veto message (May 9, 1899), Governor William Stone explained,

The wardens of the penal institutions of the State are opposed to this bill becoming a law. They fear that it will interfere with the discipline of their institutions. The prison boards are opposed to it, and they with their wardens enter their protest with me against it. I hesitate to approve a bill which is opposed by men charged with the responsibility of prison discipline, and whose judgment is relied upon as a guide in matters of this kind. They are men of long years of experience. . . . This bill authorizes societies heretofore incorporated and now existing in this Commonwealth to visit prisoners for the purpose of instructing them. The experience of prison officials and those dealing with prisoners is that non-interference by outside parties is better for the reformation of the prisoners. (Stone, 1902, 451-452)

Thus, as they had previously won against the legislature, the administrators also increasingly made the prison their domain, removing it from the penal reformers.

5.7 Conclusion

The strategies Eastern's administrators used to claim and demonstrate their professional status are by no means uncommon in our understandings of professionalization. Clergy, lawyers, doctors, and other occupationally defined groups have generally achieved professional status through a common process, with some variation in different periods and contexts (Wilensky, 1964). DiMaggio (1991, 275-276) identifies this process of consisting of five steps at the field level: designating expertise through training, establishing a body of knowledge, creating professional associations, demarcating elite status, and making this knowledge expertise indispensable (see also Larson, 1977). Each of these steps was apparent at Eastern, but modified for the organizational level. While other professionalization processes included training in universities, Eastern's administrators pointed to their on-the-ground training, their experience working in their prison, and their familiarity with the data. The emerging "penal science" offered them access to a unique, important body of knowledge. They displayed their affiliations with professional associations in the form of international congresses and later national meetings of prison administrators and other penal experts. Eastern's administrators clarified the boundaries of their professional elite by clearly

identifying who was and who was not a knowledge expert—misguided legislators, uninformed penal reformers, and all those who could not objectively evaluate the data were not members of this elite. Finally, Eastern’s administrators made their particular expertise more salient by warning legislators about the dangers of passing laws at the behest of non-experts, and by making policy recommendations of their own, as we will see in Chapter 6. In these ways, Eastern’s administrators constructed a professional status for themselves. I suggest this behavior was motivated by two goals: protecting the Pennsylvania System and enhancing their own status.

Professionalization offered a means by which administrators could protect the Pennsylvania System from external attacks, whether from the pressure of the rational myths, the influence of local penal reformers, or unwanted legislation that jeopardized the Pennsylvania System at Eastern. Basing their claims in objectively analyzed data and first-hand experience, Eastern’s administrators could claim a special jurisdiction over prison policy—only their analyses of how well the Pennsylvania System performed could be trusted. The critiques embedded in reformers’ rational myths were unreliable because reformers propagating them were not neutral observers and lacked the expertise and access to evaluate relevant data. Legislation passed by poorly informed legislatures and written by dilettante penal reformers should be repealed immediately. These claims, if successful, could protect the Pennsylvania System’s reputation, prevent externally imposed changes on the system, and ensure its longevity at Eastern.

Indeed, there is reason to believe this tactic may have been successful. Many groups have claimed knowledge expertise and professional status in their attempts to affect organizational outcomes, and many have been successful. Professionalization has been a means of creating new fields and organizational forms (DiMaggio, 1991), facilitating field-wide changes already underway (Greenwood et al., 2002), and shaping organizations’ responses to new challenges (Dobbin, 2009; Edelman et al., 1992). While scholars have largely focused on organizations’ receptivity to professionals’ recommendations, some scholars have found that professionals’ recommendations have even been enshrined in law by courts and legislatures (Edelman et al., 1999). While claims to knowledge expertise and other professionalization strategies have been influential in shaping institutional isomorphism (DiMaggio and Powell, 1983), claiming professional status may also be a successful strategy for sustaining organizational exceptionalism.

Claiming professional status is also a well-known method of attaining power within an organizational context and affecting personally satisfying outcomes (e.g. Dobbin, 2009; Edelman et al., 1992). At Eastern as well, professionalization directly offered personal benefits to the administrators making these claims. Professional status has long bestowed a special elite status on those designated as such. Professionals constitute a kind of caste infused with honor and authority (Haber, 1991). This status invites deference, particularly in domains over which professionals claim jurisdiction (Abbott, 1988). By claiming professional status, Eastern’s administrators could elevate themselves above amateur penal reformers in Philadelphia and even state legislators. The defense of Pennsylvania System as a “professional project” thus offered administrators benefits distinct from, but derived from, their technical goals as prison administrators (DiMaggio, 1991). Until these benefits could be derived from the field, maintaining the Pennsylvania System was the only way in which the administrators could make these claims. Without the Pennsylvania System, administrators would lack both a disinterested reason to claim professional status and reasonable claims to a unique source of knowledge expertise.

Chapter 6

Adaptation

There are few organizations which can afford the luxury of a neat or complete correlation of ideas and action. The needs which lead to or reinforce the formulation of an official doctrine do not ordinarily exhaust the demands made upon an organization. To be sure, there must be some warrant in action for the general ideas propounded by the leadership, but the latter is free to select from a portion of its program a set of objectives which will reflect its primary aspirations. This fragment may become the receptacle of meaning and significance and—on the level of doctrine, of verbalization—may infuse the organization as a whole with a special outlook. But only when a leadership is reckless of the fate of its charge may it drive toward the exemplification of an administrative ideology in all phases of its activity. (Selznick, 1949, 57)

6.1 Introduction

This chapter and the one following is concerned with administrators' attempts throughout the period to alter the Pennsylvania System, while resisting others' infringements on the system. Specifically, I demonstrate that administrators' proposed or imposed alterations to the definition, policy, and practice of the Pennsylvania System at Eastern were strategically determined¹: administrators identified areas of the Pennsylvania System that rendered it—and their prison—vulnerable to criticism when externally evaluated and sought to mitigate these problems. Administrators' descriptions of what the Pennsylvania System entailed and how they referred to it were intended to distance the system from illegitimate modes of confinement. Their policy recommendations targeted any problems administrators saw as impeding the proper functioning of the Pennsylvania System, and thus its ability to succeed and be positively evaluated (as discussed in Chapter 4). As we will see in the following chapter, administrators also adapted the system behind the scenes as well. Administrators took liberties in the actual implementation of the system to reduce the incidences of failures—insanity, death, recidivism, unprofitability—placing the importance of external evaluation ahead of slavish adherence to the Pennsylvania System. Importantly, in each case, any alterations to the Pennsylvania System itself were marginal—they either affected only a minority of the prison population or focused on peripheral aspects of the Pennsylvania System. The core of the Pennsylvania System was kept in tact for the majority of the population.

Initially, this behavior is puzzling given administrators' vehement defense of the Pennsylvania System, their claims of its superiority, and their resistance to any effort to alter it (Chapter 4

¹These represent an additional technique of neutralization (Sykes and Matza, 1957): adaptation.

and Chapter 5). Indeed, if the administrators were “true believers” in their Pennsylvania System, this behavior would be entirely unexpected or possibly evidence of cognitive dissonance (Festinger et al., 1956). Local members of the penal reform group, the PSAMPP, who do appear to have been true believers (see, e.g., Teeters, 1937), were very much opposed to the alterations administrators made in practice.² This behavior would also be puzzling from a rational-actor perspective. Some of the alterations imposed or suggested had the potential to improve the functioning and cost effectiveness of the prison. However, from a rational-actor perspective, we would expect administrators to abandon the Pennsylvania System or impose more significant alterations: cheaper, ostensibly profitable methods were available and abandoning the Pennsylvania System could end the field-wide attacks on their prison’s legitimacy. Instead, these instances of strategic alteration followed a simple imperative: do what is necessary to retain the Pennsylvania System.

The source of this imperative was the need to retain the source of their status identity. Importantly, retaining the benefits administrators derived from the Pennsylvania System did not actually require that they follow it to the letter or never alter it, as Selznick (1949, 57–58) explained. Maintaining the core elements was sufficient to maintain adherence to the Pennsylvania System. Most importantly, however, to continue to derive benefits from the Pennsylvania System required that they protect its reputation, particularly through external evaluation (Chapter 4). The stronger their system appeared, the more likely they could avoid legislative overhauls. Moreover, if it could not withstand external evaluation, their claims to humanitarianism and general superiority would not ring true. However, having this imperative represented its own benefit for administrators as well: when they had to choose between conflicting goals (like punishment or profitability), manage their prison within their material constraints, or try to follow the Pennsylvania System within the limited guidance available through the statute, the imperative provided an answer. It was not always the answer a true believer or a rational actor would choose, but it was one way of negotiating between multiple possibilities.

6.2 Naming Practices

Throughout the period examined, administrators often referred to their defining principle as “the Pennsylvania system of prison discipline.” However, Eastern’s administrators also used more substantively descriptive names for the Pennsylvania System, which changed over time. In the earliest period,³ they referred to the Pennsylvania System as the system of “solitary or separate confinement” with particular activities like labor, education, and religion. In a middle period, they relied on the most well-known title of the “separate system.” Finally, in the later years, they referred to the Pennsylvania System as the “Individual Treatment System.”⁴ (This last eventually displaced the Pennsylvania System once administrators fully abandoned the importance of the separation of inmates.) While their definition of the Pennsylvania System often had much in common, the

²However, the penal reformers also suggested their own alterations that the prison’s administrators rejected.

³It is impossible to give exact dates at which a particular shift in nomenclature came because in each identifiable period, administrators referred to their mode of confinement with multiple names, switching back and forth between an older moniker and the newer. However, while the dominance of a particular moniker took several years to establish, it tended to persist. In the text below, I offer specific dates when the transitions begin, but I note the halting way in which these names took hold.

⁴These were not distinct phases of development, as administrators sometimes slipped into using names from earlier different periods or began using a future name very early and intermittently.

definitions associated with each name emphasized different elements: the solitude of the inmate (and his opportunities for reformation), the separation of the inmate from other inmates (and his opportunities for reformation), and administrators' ability to treat the inmates according to their individual needs. Though generally similar, these were three different ways of conceiving of the Pennsylvania System. One unifying theme, however, was the idea that the Pennsylvania System was not merely solitary confinement. While administrators explicitly and implicitly rejected this idea in other ways, the names and definitions of the Pennsylvania System emphasized the distinction between what their system did and the failed experiments at Auburn and elsewhere. Another theme was the distinction from their system and the Auburn System, which congregated inmates together. Moreover, in each case, these names and their definitions emphasized the idea that prison had a larger purpose than mere punishment, in particular, some version of reformation. Despite these similarities, these name changes represent important shifts over time.⁵

I suggest that the administrators strategically changed the name and even the definition of the Pennsylvania System over the years in order to reduce their vulnerability to the calumnious myths and thereby increase the legitimacy of the Pennsylvania System. Administrators' name changes were not simply responses to fads or the administrators' own whims; instead, these were strategic attempts to protect the legitimacy of the Pennsylvania System. The two significant transitions in naming practices (from the "solitary and separate system" to the "separate system" and from the "separate system" to the "individual treatment system") illustrate this goal. Administrators changed the name of their system in response to specific challenges. In each naming practice, we see three themes to greater and lesser extents. First, administrators sought to distinguish the Pennsylvania System from complete solitary confinement, which *was* emphasized by the legislature initially. Second, administrators sought to emphasize the distinctiveness of the Pennsylvania System (and ultimately its logical superiority over the Auburn System). Finally, a theme localized to the post-Civil War period, administrators adapted the Pennsylvania System to their specific capacities to enforce it. Before exploring these themes, however, I first review the extent to which administrators looked to the law for guidance when labeling and defining the Pennsylvania System.

6.2.1 Legal Guidance?

It is important to note that these naming practices came not from the law, but from the administrators (and to some extent the reformers as well). First, while administrators changed the name and meaning of the Pennsylvania System twice, there was no significant change in the way the legislature referred to the Pennsylvania System, let alone its definition; as noted, meaningful legal change only came in 1913 when the system was formally abandoned. While the law's description of the Pennsylvania System did change overtime, these were only small wording changes and there was no apparent pattern in the changes. If anything, the internally inconsistent statutes and the lack of precision with which the legislature referred to the Pennsylvania System indicate how little significance the label offered. Second, administrators' nomenclature for the system increasingly departed from those used in the statutes. The legislature's most consistent referent for the Pennsylvania System was "solitary confinement," a phrase the administrators heartily rejected in the 1840s. Finally, throughout the duration of Pennsylvania System at Eastern, the law offered little insight into the meaning of the Pennsylvania System. Though Pennsylvania's prison statutes

⁵Naming trends may seem somewhat superficial and unimportant, but they can be important statements of an organization's identity (Glynn and Abzug, 2002). Here, however, I emphasize the way in which they are strategic defenses against reformers' calumnious myths.

were much more detailed than those affecting most other states' prisons, Pennsylvania law was nevertheless a poor guidebook for anyone desiring a full definition of the Pennsylvania System.⁶ At most, the Pennsylvania System was referred to as “separate or solitary” confinement at hard labor. Beyond this skeletal framework, it was then up to the prison administrators to create daily routines and practices designed to achieve the prison’s ostensible goals. The inconsistency and ambiguity in the legal language thus gave administrators a wide discretion to construct the Penn-

⁶The law primarily focused on the requirements for the prisons personnel—who would be employed, their general duties, their duty to report to the legislature. Beyond frequent visitation and information gathering at the inmates release from prison, there was little discussion of the prison’s ultimate goals—“the punishment and reformation of offenders” (Pennsylvania, 1829, 347)—or how the various duties (except those of a Moral Instructor) would achieve these goals.

sylvania System.⁷ Thus, Eastern’s administrators created the names and constructed the meaning

⁷Several examples illustrate the imprecise and inconsistent way in which Pennsylvania legislatures referred to the Pennsylvania System in their statutes. The first statute to authorize Eastern stated:

BE it enacted... That a state penitentiary capable of holding two hundred and fifty prisoners, on *the principle of solitary confinement of the convicts*,... to be called the state penitentiary for the eastern district... (Pennsylvania, 1821, 94)

That the said penitentiary shall be constructed on the plan of the penitentiary at Pittsburg, subject to such alterations and improvements... Provided always, That *the principle of the solitary confinement of the prisoners* be preserved and maintained. (ibid., p. 95)

Eastern would simply be a larger version of the solitary cells found at Walnut Street (Chapter 3). Additionally, at this time, news of the fatal experiment at Auburn had not yet arrived.

The 1829 statute, which was credited with establishing the Pennsylvania System at Eastern, offered little guidance as to what that system would mean. It introduced three new features designed to keep the Pennsylvania System from replicating Auburn’s failures (and those at Western): (1) the introduction of the word “separate” to define the style of confinement, (2) the addition of labor into the regime, and inmate visitation⁸ However, the central difference was not between solitary and separate confinement, but the introduction of labor. The use of the word “separate” was intermittent at best, but “labor” was nearly always included in the legislature’s description of the system.

The statutory distinction between separate and solitary confinement was ephemeral. The first page of the 1829 statute twice uses the phrase “to suffer punishment by *separate or solitary confinement at labor*” (Pennsylvania, 1829, No. 204, p. 341). In the second page, it uses the phrase “the punishment by *solitary confinement at labor*” and in the next paragraph “*separate or solitary confinement at labor*” (p. 342). Later, they refer to “*solitary confinement at labor*” (p. 344) and the “*system of solitary confinement*” (p. 347). These inconsistencies were repeated over the years. The legislature passed a number of laws respecting sentences to confinement within the penitentiary, but their nomenclature was not consistent: they frequently passed laws sentencing to people to solitary confinement, like this one from the 1840s demanding: “imprisonment in *solitary confinement at labor*” for those holding or selling lottery tickets (Pennsylvania, 1847a, 476). An exemplary pair of provisions from the 1860 penal code illustrates the level of internal inconsistency.

If any person shall unlawfully apply or administer to another, any chloroform, laudanum, or other stupefying and overpowering drug, matter or thing, with intent thereby to enable such offender, or any person to commit... any felony, every such offender shall be guilty of a felony, and being convicted thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, and undergo an imprisonment, by separate *and* solitary confinement at labor, not exceeding five years. (Pennsylvania, 1860, Sect. 86, p. 404) Every person, being the owner of... any other building, who shall wilfully burn or set fire thereto, with intention to burn the same,... shall be guilty of a misdemeanor, and, on conviction, be sentenced to pay a fine not exceeding one thousand dollars, and to undergo an imprisonment, by separate *or* solitary confinement at labor, not exceeding seven years. (Pennsylvania, 1860, Sect. 139, p. 416)

For a legal document setting out the requirements of criminal, this carelessness is somewhat disturbing. But it illustrates the lack of care and precision with which the legislature discussed the Pennsylvania System.

of the Pennsylvania System largely on their own.⁹

6.2.2 The “System of Solitary or Separate Confinement,” 1829–1839

The first and most short-lived appellation administrators used to describe the Pennsylvania System often included the phrase “solitary confinement.” Administrators were not fully consistent when referring to the system by name in this period or any other: In their first two reports, administrators referred to “the system of solitary confinement” (Inspectors, Annual Report 1831, 5) “the system of solitary confinement, with labour” (Inspectors, Annual Report 1831, 4), and “the penitentiary system of solitary confinement at labour, with moral and religious instruction” (Inspectors, Annual Report 1831, 7).¹⁰ Nor was solitary confinement the only description included. In the same report, administrators referred to “this plan of the separate confinement of criminals” (Physician, Annual Report 1831, 15, see also Annual Report 1833). In other cases, they referred to it as “separate or solitary confinement” (Inspectors, Annual Report 1836, 7) or “solitary or separate imprisonment with labour” (Inspectors, Annual Report 1836, 7). While “separate confinement” became increasingly common, throughout the first decade, administrators often used “solitary” to describe the Pennsylvania System. This was consistent with the statute, which some of that generation of Eastern’s administrators had helped write.

As in the other periods, administrators emphasized the importance of solitary confinement for reformation. It was also central to how the Pennsylvania System would work. For one thing, inmates were kept away from each other and unable to contaminate each other; inmates could repent without an audience to jeer at them or goad them into backsliding.¹¹ These comments were

Eastern’s administrators responded to this legal ambiguity with detailed descriptions of the meaning of the Pennsylvania System; but rather than seeking to demonstrate symbolic compliance with the law through these elaborate descriptions (Edelman, 1992), in many ways these definitions challenged the law. After the first decade of practice, administrators fervently rejected the term “solitary confinement” as a part of the Pennsylvania System. Moreover, as early as 1835, an administrator testified that the leading interpretation among Eastern’s administrators was an emphasis on the “separate” confinement of inmates away from each other, not total solitary confinement. Indeed, there was a fair amount of discussion about the just of the conjunctive used (Bradford, APS, Legislative Investigation, 1835, no page). In many ways, administrators’ legal environment (Edelman, 1990) mattered less than the carceral field of other prison administrators and penal reformers.

⁹Rather than working in “the shadow of the law” (Mnookin and Kornhauser, 1979), Eastern’s administrators were much more influenced by the organizational and institutional fields in which their prison was located. It was not the text of the law to which they looked for guidance, but rather the various myths about the Pennsylvania System circulating in the field and the changing penal logics. This may have been an artifact of the law’s sparsely worded prescriptions of about the mode of confinement and the room this ambiguity gave administrators for determining practice (Edelman, 1992).

¹⁰Another iteration included “the penitentiary system of solitary confinement at labour, with instruction in labour, in morals, and in religion” (Inspectors, Annual Report 1832, 5).

¹¹For example:

The punishment inflicted not merely on the body, but on the mind of the prisoner, uniting severity and humanity, is one which the unhappy culprit feels with all its force; but there is nothing in its operation calculated to increase his evil passions, or stimulate him to hatred or revenge; those who have the care of him, treating him with the kindness and compassion which are due to the unfortunate man, rather than the unnecessary and unfeeling harshness too frequently displayed towards the victims of folly, vice and

familiar to administrators like Warden Wood who had been an inspector at the Walnut Street Jail, where this rhetoric was common (Meranze, 1996). However, administrators were less ready to emphasize this advantage in later years as fears of insanity intensified.

Indeed, administrators' word choices in this period only subtly distinguished their system from solitary confinement. Their designations often included specifications such as "solitary confinement at labor" or with "moral and religious instruction" to make it clear that it was not just solitary confinement. But by the end of the decade, administrators had realized the error in continuing to refer to "solitary confinement" at Eastern. "Solitary" still generated visions of inmates going insane, mutilating themselves, dying, or killing themselves after spending months in the cramped solitary cells—stories that were repeated even in the 1860s (Wines and Dwight, 1967). Throughout their reports, administrators reassured their reader that the Pennsylvania System did not cause inmates to go insane: "The expectation hitherto expressed by the board [of inspectors], that solitary or separate imprisonment with labour, has no unfavorable influence upon the mind or body of the prisoner, is fully confirmed by the experience of another year" (Inspectors, Annual Report 1836, 7). They also increasingly reminded their audience that solitary at Eastern included "labour, with moral and religious instruction." But the word "solitary" was too much of a liability, and, beginning in the 1840s, "solitary" was rarely included in their naming practices. Years later, administrators were still conscientious of their predecessors' error, complaining, "Nearly all the objections which have ever been urged against this Penitentiary discipline arose entirely from the name by which it was first known" (Inspectors, Annual Report 1875, 27).¹²

crime, he is soon made to feel that the horrors of his cell are the fruits of sin and transgression, and the only certain relief to be obtained is through his Redeemer. Having no one to prompt in wickedness or shame him for his tears, he becomes humbled in spirit and anxious for help in the way of truth; and I am pleased to be able to say, that I do believe that there are some who rejoice that they have been brought here. (Warden, Annual Report 1833, 9)

But unique to this early period, administrators emphasized the way in which solitude broke the spirit of inmates. For example,

An opportunity of witnessing the effects of absolute solitude without labour has occasionally been presented, when, as a punishment to a sturdy and disorderly convict, the warden has ordered the light of his cell to be closed; little time has elapsed with the most hardy, before the prisoner has been found broken down in his spirit, and begging for his work and his bible, to beguile the tedium of absolute idleness in solitude. (Inspectors, Annual Report 1831, 9)

¹²See also:

So important are words in expressing ideas, that for a long period in the history of this Penitentiary it was designated as the "Solitary" system. The separation of prisoners from each other, was described as a solitary confinement of the convict. This was, at the time of the opening of the prison, the nearest approach to a description of the system, as contradistinguished from the congregate, or the association of prisoners together.

The term thus used, has had the effect of creating the impression, that the convicts under the separate system are subjected to "solitary confinement;" this word indicating the entire and unbroken solitude of the prisoner in his cell.

The term solitary, expresses only the single, or individual, or separate condition of each prisoner. It

6.2.3 The “Separate System,” 1840–1860s

For the most important period of Eastern’s history, roughly 1840 to the 1860s, its mode of confinement was known as “the separate system.” Indeed, by the the 1840s reports, the designations “system of separate confinement” or the “separate system” became and continued as the dominant name with few exceptions. They also sometimes included “with labor” (e.g., Inspectors, Annual Report 1844, 11) following the early practice, but references to “moral and religious instruction” as part of the system’s name were dropped by 1841 (the last reference in Annual Report 1840, 10, by the Warden).

With this transition from “solitary” to “separate” confinement, administrators cautiously avoided the association between their system and the failed experiment at Auburn.¹³ Their reports increasingly reminded their readers that separate confinement did not mean inmates were isolated from all personal contact. For example, the Inspectors explained,

The prisoners in the separate or solitary prisons have the same intercourse with all, but their fellow convicts,. . . and the idea that prisoners are shut up, and shut out, from all intercommunication with the good and the instructive, is an error—a gross error. They have that, at all times, besides almost hourly intercourse with their overseers and other officers of the prison. (Inspectors, Annual Report 1845, 15)

Part of their explanation for the term “solitary” or “separate” was their intention to distinguish their

would be more correctly defined as the non-associate, rather than the congregational plan. (Inspectors, Annual Report 1865, 90)

The quotation in the text comes from this longer explanation:

To state that the experience gained during nearly half a century in the practical administration of the system of Penitentiary discipline which was originated in this Penitentiary, has produced modifications and changes in the Practice resulting from the application of the theory, would be but to assert what almost every reasonable being would expect to be true.

The primary purpose of the originators of the Pennsylvania system was non-association of convicts during imprisonment for crime. This was the central principle. Radiating from it were the aims of a reformatory treatment. For association, some other system was sought by which to punish and reform the convict, deter others from crime, and protect society. The alternative reached was isolation. It was almost the other extreme. What other name could be then given to such a radical change at its very birth than “The Solitary System?” So it was called during all its infancy. To subject the convict to isolation in a cell was, to be sure, a solitary imprisonment. *Nearly all the objections which have ever been urged against this Penitentiary discipline arose entirely from the name by which it was first known.* Philanthropy with its benign, Prejudice with its severe, Fiction with its descriptive, and Controversy with its hostile pen have assailed it. The contest for half a century and more has been unequal, because comparative ignorance of the subject, and the mistaken notion that convict punishment, to be successful as a penalty, must pay, enlisted in an opposition which appealed to pecuniary considerations to array public opinion in conflict with the rudimental principles of philosophy. (Inspectors, Annual Report 1875, 26-27)

¹³Ignatieff (1978, 142) has described an earlier example of this strategic shift from solitary to separate confinement in England in the 1780s.

mode of confinement from the congregation of inmates under the Auburn System. The inspectors explained in the same report,

It may be proper here to remark, that the term “solitary or separate confinement,” refers to the fact that each prisoner is alone, in contradistinction to the “aggregate confinement,” or “silent system,” where prisoners are in gangs, or together in large or small numbers. (Inspectors, Annual Report 1845, 15)

Years later, administrators continued to emphasize this difference, referring to “the separate as contradistinguished from the congregate system of punishment” (Inspectors, Annual Report 1862, 24). Thus, in these years, the “separation” of inmates became the key designation, not their solitude. For example, administrators explained, “The prisoners are separated from each other at all times. They never see one another. From the moment they come into prison, they are separated and alone, only as regards their fellow prisoners. The system is properly called therefore the separate system” (Inspectors, Annual Report 1846, 7). The naming practices thus shifted as administrators sought to distinguish the Pennsylvania System from absolute solitary confinement and emphasized instead its differences from the Auburn System.¹⁴

In later years, administrators’ attempts to distinguish the Pennsylvania System from a system of solitary confinement took a different course. This later generation of administrators often criticized the earlier operations at Eastern as a system of solitary confinement to further emphasize that their current system was not one of solitary confinement. In a representative example, the Physician explained that the mortality and incidences of mental illness were lower than they had been previously because the administrators had abandoned its earlier, more “stringent” system of solitary confinement:

¹⁴Administrators offered a lengthy account of its history in the 1872 report:

A few words, it is hoped, will show that no such cruelty enters into the actual treatment. Our system is properly called the separate or solitary. To describe it properly would be to denominate it the system of individual treatment. But the separation or the solitude is relative not absolute. This is evident from the historical origin of these descriptive terms. They were originally suggested at a time when the congregational system prevailed, and they were employed to contradistinguish the new system from the old, so the words separate or solitary simply signify anti-congregational. The subsequent practice at the Penitentiary has conformed to this explanation. It is a separation or solitude as respects other convicts, not as respects other connections or relationships of the prisoner which may be beneficial to him. It is considered of the utmost importance that association or fellowship or intercourse with other criminals should by all means be guarded against, and that to this extent the imprisonment should be separate or solitary. But otherwise, the prisoner’s door is open to every other influence that may ameliorate his condition or benefit himself. He is constantly visited by those who have his interest at heart. His overseer visits him; the Moral Instructor visits him; the Secular Instructor visits him; religious people from without visit him; the physician visits him; the teacher of his trade or handicraft visits him; he corresponds with his family, and may make them the recipients of a portion of the profits of his labor; books and news Papers are supplied to him from the library; the Inspectors grant special permits to see him; they themselves visit him, and the Warden is in constant intercourse with him. It thus appears that the separation or solitude is to be understood relatively to other convicts. (Inspectors, Annual Report 1872, 25-26)

In reviewing the medical records of the institution during the early years of its existence, it will be perceived that the amount of physical, and especially of mental disease, was much greater than at present. This was no doubt owing to the peculiarly stringent discipline in vogue at the time, when solitary confinement was an appropriate designation. This term has become obsolete, and separate confinement, more properly describes the condition of the prisoner. The former existed at a time when a criminal was considered as divested of the attributes of humanity, and the object was more to punish than reform. At this time a lunatic was treated more like a beast than an unfortunate human being. He was caged and chained, starved and beaten. The spread of more enlightened opinions has changed all this, and the insane are shown all kindness and consideration consistent with safety. The prisoner too, although debarred from intercourse with his fellows, has the benefit of visits from the Inspectors, Warden, Physician, Moral Instructor, Teacher, Overseers, and Keepers, also the members of the Prison Discipline Society, from whom he receives much kindly advice and instruction, tending to render him a more respectable and useful member of society. (Physician, Annual Report 1865, 66–67)

A review of the annual reports from the earlier period suggests more fiction than truth in this description. However, administrators' willingness to critique their forerunners illustrates the desperation in their efforts to renounce solitary confinement.

6.2.4 The “Individual Treatment System,” 1860s–1913

As time went on, and the debate over prison discipline subsided (especially after the death of Louis Dwight in 1854 (Barnes, 1968, 376)), administrators reduced their efforts to distinguish the Pennsylvania System from a system of solitary confinement. Instead, their appellations in this period reflect a larger shift in the field. As discussed in Chapter 5, towards the second half of the period examined, administrators increasingly affiliated themselves with developments in the field. It is thus not surprising that their rhetoric reflected developments on the national scene more than that in Philadelphia.

Gradually, their naming practices reflected this trend. Indeed, in the 1850s and 1860s, administrators' references to the terms “individual” and “treatment” began to increase.¹⁵ Soon, these terms were incorporated into their naming practices. In the 1858 report, they referred to their “system of treatment” (Inspectors, Annual Report 1858, 8). Four years later, they referred to it as “the system of separate imprisonment of criminals, and the individual treatment of moral disease” (Inspectors, Annual Report 1862, 41-42). The emphasis on individual attention reappeared in 1865 (Annual Report 1865, e.g., 12, 13). Finally, in the 1867 report, the emphasis on individuals entered the “system” designation: they called it “the separate or individual system of Penitentiary discipline” (Inspectors, Annual Report 1867, 27). They explained:

the best system of punishment for crime is the *individual system*, as distinguished from *class or congregational* discipline. The idea which for so long a time has occupied the uninformed mind, that solitude and isolation were the only interpretations of the Pennsylvania plan, has been forced to yield to that truer and more perfect translation of our system which is presented under the higher signification of the individual or personal treatment of those convicted of crimes against social happiness, or the laws which create and protect it. (Inspectors, Annual Report 1867, 14)

¹⁵These terms were also central to the transformations of the criminal justice system in Great Britain several decades later (Garland, 1985).

Thus, by the late 1860s, administrators increasingly emphasized the way in which the separate confinement of inmates allowed administrators to make “individual” assessments and customize the “treatment” to their unique needs. This method had been implicit in the earlier discussions of treatment under the Pennsylvania System, but it took center stage in the post–Civil War years.

Internal developments likely sped this process after 1866. Overcrowding at Eastern, caused by the post-war crime wave as soldiers disbanded flooding the market and the economy stalled, necessitated the double celling of some inmates. Referring to their system as the “separate system” became increasingly inaccurate. Administrators could not very well claim the superiority of their system if the central component was no longer practicable. Administrators held out hope that by building more cell blocks, they could return to a fully separate system, as we will see below. They explained that they tried to maintain the separation of inmates.¹⁶ Indeed, they retained the “separate system” designation as the dominant moniker into the 1870s. But administrators increasingly shifted their emphasis from separation to individual treatment. Reflecting this centrality, in the 1868 report, they referred to it as “the individual system of Pennsylvania Penitentiary discipline” (Inspectors, Annual Report 1868, 24) and the “individual or Pennsylvania system” (Inspectors, Annual Report 1868, 18-19). They vacillated in the 1871 report, again referring to “the separate or individual treatment system” as well as “the separate system” (Inspectors, Annual Report 1871, 26, 27; see also Annual Report 1872). However, by the early 1870s, the Individual Treatment System became the dominant appellation for the Pennsylvania System. Indeed, the clearest statement that they had shifted their system came in 1873:

It will be observed from the above statement that the System of Penitentiary Discipline administered in this institution is not of the “solitary,” sad, gloomy, dungeon-like character which the uninformed have so long persistently applied to it. On the contrary, it is most appropriately designated as the INDIVIDUAL TREATMENT SYSTEM, because it admits of the direct personal application to each prisoner of all the influences and instrumentalities which science and experience recognize as best adapted to secure the interests of the prisoner, and of society, and dignify practical benevolence. (Inspectors, Annual Report 1873, 11)

Still cognizant of the association with the Pennsylvania System and solitary, administrators reminded their readers that their system was far more advanced than such a backwards system. However, from this time on, administrators, rarely referred to separate confinement. Instead, they had introduced concepts that were implicit in the system’s earlier iterations. At this point, administrators stopped emphasizing the central component of the Pennsylvania System for much of its history until then.¹⁷ This is one way in which we can see the Pennsylvania System fade from view

¹⁶For example, “The separate and individual treatment of prisoners has been adhered to as far as it was possible. Our crowded condition has made it necessary to duplicate many of the cells, and in some of the larger rooms three prisoners have been placed; these were generally invalids, and by the advice of the physician, excused from labor” (Warden, Annual Report 1873, 37).

¹⁷Administrators had long considered the separation of offenders to be the central component of the Pennsylvania System:

The Separate system has but one essential condition; the absolute separation of the prisoners from intercourse of any kind with each other. On this may be ingrafted labour instruction, and even constant society with the officers of the prison, or with virtuous persons. In fact, these have become, in a greater or less degree, component parts of the system. In constant employment the prisoner finds peace; and

in the 1870s. The name, the “Individual Treatment System” persisted until the foundational 1829 statute was finally overridden, but by then any trace of the Pennsylvania System was long since lost.

6.2.5 Summary

Reflecting on the history of the Pennsylvania System, the Inspectors explained, “It was first called the ‘Solitary system,’ then it was more correctly styled the ‘Separate system,’ and now the truer and more philosophic description as modified and improved is, the ‘Individual system of convict discipline’ ” (Inspectors, Annual Report 1875, 23). This evolution reflected administrators’ strategic adaptations of their naming practices: in each case, the name was strategically chosen to express the positive qualities of the Pennsylvania System. Each transition, from Solitary to Separate and from Separate to Individual Treatment, however, reflected administrators’ attempts to insulate the Pennsylvania System from further criticism. In the first transition, they sought to distinguish their system from a system of solitary confinement, an association was the primary source of several calumnious myths. Changes in the penal field precipitated the second transition, but the permanence of overcrowding accelerated the transition: What began as the introduction of concepts complementary to the original Pennsylvania System system, reflecting changes in the field, became a way to avoid severe contradictions between theory and practice. But this convenience eventually displaced the original system as administrators released their hold on the core components of the Pennsylvania System. (See Table 6.1.)

	(Separate or) Solitary Confinement	Separate System	Individual Treatment System
Approximate Dates	1829 –1839	1840–1860s	1860s–1913
Elements Emphasized	Labor, Moral and Religious Instruction	Labor	Individualization
Mode of Punishment	Discipline	Reform, Punishment, Discipline	Treatment, Discipline
Penal Purpose			
Reason Behind Name	Emphasize isolation of inmates from each other	Distinguish from Auburn’s (and other) fatal experiments and the congregate system	Distinguish from congregate system; avoided further fallacy due to overcrowding

Table 6.1: The Pennsylvania System Over Time.

6.2.6 The Effect of Definitions

To what extent did these definitional changes alter practice on the ground? In each period, inmates participated in out-of-cell labor, which had the subsequent consequences of mitigating the level of separation between inmates (Chapter 7). The importance of religion and instruction appear to have varied over time, but not in ways that correlated with the naming practices. Indeed, in the only period in which the name reflected the Pennsylvania System’s emphasis on religion was the period in which the prison staff lacked a moral instructor and inmates received little religious instruction.

in the society with which he is indulged, an innocent relaxation and a healthy influence. This is the Pennsylvania system. (Inspectors, Annual Report 1846, 8)

In the [1850s and 1860s] when religion and education apparently dueled for supremacy, this was not reflected in the name change. Finally, while much changed over time at Eastern, the central components of an inmates' confinement did not. Rejections of earlier, more primitive versions of the Pennsylvania System are therefore puzzling: changes in inmates' diet, kinds of additional punishment for refractory inmates, and general treatment of insane inmates seem to be the most celebrated changes. But administrators also refer to the early years as truly a system of solitary confinement in which inmates were treated brutally; however, the record does not indicate any substantial changes in the way in which inmates were confined to justify such comments. These rhetorical shifts without the associated changes on the ground can best be understood as strategic attempts to distance the present program less from the older versions of the Pennsylvania System and more with the affiliated criticisms of it. At the same time, they provided the added benefit of improving the position of current administrators' character vis a vis prior administrators.

6.3 Policy Recommendations

While Eastern's administrators imposed the name changes themselves, they also requested or made recommendations for policy change. While administrators could control a lot of what occurred behind the prison's walls, policies set by the legislature, governor, and judiciary often circumscribed what the administrators could do and how the Pennsylvania System occurred in practice. In some cases, the legislature's policies and inaction made violations of the Pennsylvania System unavoidable. In other cases, social and penal policies simply impeded the proper functioning of the Pennsylvania System, as we observed in Chapter 4. However, administrators' policy recommendations were more than complaints or simple requests: they were strategic means of altering the Pennsylvania System so that it functioned better. Specifically, administrators sought to change policies that affected the Pennsylvania System in ways that made the "incarnation" of the calumnious myths likely (Hallett, 2010). This is clearest in the fact that administrators actually *changed* their position on policies according to their understanding of the policies' effect on their prison.

6.3.1 Challenging Imposed Violations

For nearly ten years after Eastern received its first inmates, Eastern did not employ a Moral Instructor, as required by the 1829 statute. The statute had made this an unpaid position and expected someone would volunteer his time. During this period, a number of penal reformers and local ministers volunteered their time to preach in the hallways of the prison's spokes and to mentor the inmates in their cells. However, no one had volunteered to be *the* moral instructor and "the degree and extent of instruction imparted to the prisoners [wa]s not such as to satisfy the inspectors" (Inspectors, Annual Report 1834, 3-4). Recalling that at this time the Pennsylvania System was the system of "solitary or separate confinement" with labor and moral and religious instruction, the absence of a moral instructor was a particular embarrassment. "Moral and religious instruction form one of the most important features of the system, and will require the faithful, unremitting, and undivided time of a Chaplain, or religious instructor" (Inspectors, Annual Report 1832, 4). Administrators saw this as a substantial violation of the system: "a fair experiment of the system of solitary confinement, with labour, cannot be made without moral and religious instruction" (Inspectors, Annual Report 1831, 4). Years later, a Select Committee appointed by the legislature agreed: "the system, in its practical operation, must remain imperfect, until a moral instructor is employed" (Pennsylvania, 1838b, 10). At long last, the legislature finally provided "a sum not

exceeding eight hundred dollars per annum” to support a moral instructor (Pennsylvania, 1838a, 690). In 1838, after nine years of operations, administrators hired their first moral instructor.

In other cases as well, administrators’ pleas to the legislature were responded to after lengthy delays. After the Civil War, the number of inmates sent to Eastern increased to the point of overcrowding. In 1866, administrators were forced to double cell their inmates.¹⁸ In announcing “the exhausted capacity of the Penitentiary” in their report for that year, administrators explained that they had already done all that they could:

By adapting our resources for temporary accommodation, five hundred and thirty-five convicts have been confined, but now we have five hundred and seventy (570) prisoners under sentence.

As a large number of convicts have been sentenced during the past two years, for the higher grades of crime, and necessarily for longer terms than heretofore, the discharges are now less than the receptions, and this added to the increase of number, requires increase of room. (Inspectors, Annual Report 1867, 132)

In that report, they requested funding from the legislature

[t]o put a second story on the first block, and increase its length, making it in all respects similar to the seventh block” which would provide “accommodations for one hundred and four (104) prisoners additional.

It will require seventeen months to complete this alteration, and when complete, the entire Penitentiary will accommodate six hundred and thirty (630) convicts. (Annual Report 1867, 132–133)

They also submitted a “Special Report” to the Legislature in an appendix to their annual report (Annual Report 1867).

However, when the legislature did not provide these funds, despite the fact that inmates were being housed two to a cell, administrators repeat their request the following year. Writing to express the gravity of the situation, the Warden explained,

We commenced the year with 569 prisoners, and ended it with 626, an increase of 57, which though considerably less than that of the former year, is more oppressive to us as we were then full to our utmost capacity without further additions.

That the time has arrived when something should be speedily done to meet this pressing necessity for greater accommodations for our convict population, can no longer be a matter of doubt. The integrity of the system, and the welfare of the community, as well as that of the prisoner, demand it. (Warden, Annual Report 1868, 93)

The warden went on to warn that overcrowding could have serious consequences for the health of the prison. Its “comparative freedom from the prevalence of any contagious or infectious diseases which the Penitentiary has hitherto enjoyed... cannot reasonably be expected with our present

¹⁸The Inspectors mournfully reported,

It is proper to state that there were on the 1st of January, 1867, 569 prisoners in the Penitentiary. The number of cells is 540. So that the number of prisoners in excess of cells is 29. This induces the temporary necessity of putting more than one in some cells, and after great deliberation this has been done with due regard to safety and convenience. (Inspectors, Annual Report 1867, 17)

over-crowded population” (Warden, Annual Report 1868, 93–94). The Physician concurred, “The number of prisoners now in the house, is more than is consistent with the design of the system, or, what is more germane to the matter in hand, with the laws of hygiene” (Physician, Annual Report 1868, 100). Overcrowding thus violated the principle of separation, by requiring double celling, while it made Eastern vulnerable to the negative outcomes they so often sought to escape. The Physician dramatically made the point more clear: “in the sunshine of the Institution’s success, [overcrowding] casts a shadow on the future” (Physician, Annual Report 1868, 100).

Several months after these reports were submitted to the legislature, that body finally approved funding for more cells in April 1868. However, at this point, the numbers were out of date and the funding provided was insufficient. In addition to requesting new cells, the administrators requested changes to the penal law, such as reducing the number of counties under Eastern’s jurisdiction. The legislature also made this alteration in 1869 and 1871. However, administrators reported that these changes did not solve the problem: “The removal of these prisoners measurably relieved our crowded condition, still we are obliged in many cases to place two convicts in one cell for want of sufficient room” (Warden, Annual Report 1872, 93).

6.3.2 Opposing Policies that Impeded Proper Functioning

As we have seen (Chapter 4), prison administrators often blamed problems and negative outcomes on larger penal policies that were not directly relevant to the Pennsylvania System. Administrators went beyond scapegoating and complaining about these policies; they offered alterations. Administrators opposed the congregate confinement of inmates in county jails. They believed this tainted the inmates before they even arrived at Eastern and jeopardized inmates’ chances at reformation. These county jails jeopardized the Pennsylvania System by increasingly its recidivism rates. Administrators expressed their opposition:

The most superficial students of criminal jurisprudence as applied to punishment of criminals, will readily perceive that any system adopted, to be effective, must be complete, and all its parts be in harmony with the whole. This is especially true of the separate system. To congregate offenders before trial, associate them temporarily after conviction, in County prisons, before sending them to the Penitentiary, violates at once and primarily, the principle of non-association which is the distinctive [sic] feature of the separate plan. (Inspectors, Annual Report 1866, 32–33)

More than opposing the policy, however, they also offered their own recommendations:

County jails should only receive those detained for trial and short sentences for misdemeanors, not exceeding three months. They could thus become “Houses of Correction” in fact, which would subserve all the requirements of small populations. These persons not included in the class of convicts, would be subjected to a discipline which might be best suited to their characters. Those whose crimes require penitentiary discipline would properly come to such institutions.

It will be necessary, at no very remote future, to legislate on this subject, and it is now referred to for the purpose of marking the consideration which it is now receiving from the Inspectors of this institution. (Inspectors, Annual Report 1866, 33)

County jails were not within their jurisdiction as administrators of Eastern, but Eastern’s administrators found their license to comment in the policy’s consequences for their prison.

Similarly, in the mid- to late-1840s, administrators requested a change to the administration of sentences. Specifically, they explained, “it is very desirable that suitable steps should be taken

to remedy the evil of having prisoners discharged during the winter months; it is a season of the year in which work is not readily obtained, and when in addition to this the convict has come from the country, and is discharged into a community in which he is an utter stranger, perhaps one or two hundred miles from his family and friends, his case is cheerless indeed” (Warden, Annual Report 1847, 45). While the Pennsylvania System may work perfectly while the prisoner is within their custody, once he is released, he may be thrown directly into the path of crime by necessity. These would also increase the prison’s recidivism rate, but it would be an unfair reflection on the Pennsylvania System (they would argue). About a month after this statement (February 18), the legislature passed “An Act concerning sentences of convicts,” which prevented the sentences of convicts from expiring during winter months because the problem with finding employment (Pennsylvania, 1847b).

Some of the administrators’ policy recommendations were sometimes less benevolent and more transparently about the prison’s functions. For example, during the Civil War period, administrators began to voice their opposition to housing female inmates at Eastern. They did not volunteer penological motivations or concerns about gender—that women should not be housed in the same facilities as men. Instead, their motivations were far more material. As they explained,

It would be desirable if female prisoners were excluded from this Penitentiary. The number of these convicts is small. The cost of their custody is equal to that for a far larger number. . . . Much inconvenience is produced at present, and the expense of female prisoners is out of reasonable proportion to that of the males, owing to the small number of the former, and the necessary charges directly involved. (Inspectors, Annual Report 1862, 32)

More specifically, “There are now about 20 females in prison, here, who cost the same amount as the custody of 50 male convicts. . . . The average number of this class for the past ten years has been but 15. It will be seen by this statement that the expenditure for their maintenance and support has been as 37 to 50 males. This is a large outlay for so small a number of convicts” (Inspectors, Annual Report 1864, 18). Women had traditionally been held in a separate wing and floor of the prison, separately from the men. However, as their number increased, changes would be necessary. Their increased number would even require constructing “a separate building. . . for their reception and discipline” (Inspectors, Annual Report 1864, 18).

Housing female inmates did not seem to bother administrators so much in previous periods. However, administrators’ sudden concern to stop receiving women in order to reduce costs makes sense in light of the prison’s growing need for retrenchment. The depression of the late 1850s and other financial troubles spurred the administrators to cut costs in a number of areas.¹⁹ Women represented an overly expensive portion of their population and thus an attractive portion to excise

¹⁹Administrators noted in their report for 1859, “the depression in industrial pursuits, consequent upon the crisis of 1857 has not entirely passed away” (Warden, Annual Report 1860, 29). This necessitated a number of cutbacks. The warden recorded in his journal (PSA, Warden’s Daily Journal, May 31, 1861)

In conformity to the resolution of the Board passed at its last meeting viz. “to take immediate steps to reduce the expenses of the Institution in the items of salary & subsistence[”] I have made the following changes to wit have reduced the tobacco and molasses ration one half, the meat ration from 10 to 15 [sic] per cent, and have substituted Rye Flour for Middlings in the bread, and also the use of all Rye for Coffee instead of two thirds Rye as heretofore. In pursuance of the same order for retrenchment I gave notice on the 20th inst. to the following Officers that this services would not be required after the 31st and left this Evening, namely, Jos. J. Keyes and Wm. H. Schulyer Overseers of the 4th Block David F.

from the budget. Though not always this material, however, administrators were often strategic in their policy recommendations.

6.3.3 Changing Positions According to Context

As we have seen (Chapter 4), administrators blamed their apparent failures in health and penal outcomes on the state's penal policy, especially sentence length and the alleged overuse of pardons. Both of these positions were held by administrators at the beginning of Eastern's history; however, over time, administrators changed their positions. In the case of sentence length, administrators were adamant, from the beginning, that judges were being too lenient on the convicts sent to Eastern. Administrators believed that judges thought the Pennsylvania System was too severe and that the judges moderated their sentencing habits in response. In one of their earliest reports, administrators pleaded, "If the Judges of the several courts in the Eastern District of Pennsylvania could be induced to visit and carefully examine this establishment, I believe their sentences, in many instances, would not be so light as at present, for I am induced to suppose, that this mildness is based on the supposition, that our system of discipline is excessively severe" (Warden, Annual Report 1831, 16). Throughout these early years, they complained about sentences that were one or two years at most, and the consequences for their prison's ability to reform inmates and for the costs of running the prison. In this period as well, they emphasized how mild their system was ("that if we are in error, the system is too mild" (Warden, Annual Report 1831, 17)) and offering evidence of their low insanity and death rates, as we have seen. More than simply complaining, however, administrators also made specific recommendations. In one case, complaining about the problem of recidivists returning with insufficiently lengthy sentences, administrators explained, "It is evident that Legislative enactment alone can correct the evil of reconvications, we therefore respectfully recommend the enactment of a Law imposing on every person reconvicted to this prison an additional term of imprisonment" (Inspectors, Annual Report 1840, 5). Indeed, throughout the 1830s and most of the 1840s, administrators were staunchly in favor of longer sentences.

By the late 1840s, however, administrators began to reconsider their views²⁰ and then reverse their positions. Administrators started to express concern that inmates would convince themselves that their sentences are too long and thus reassure themselves that their punishment is an injustice, which would keep them from focusing on reformative activities, and encourage their desire for a pardon.

The official experience of the Board of Inspectors has been, that too long a sentence is as objectionable as one too short. Under the first, the prisoner becomes impressed with the idea that society has dealt hardly with him for his first offence. If the sentence is too

Reinert, Teacher, and Aaron Carlisle Assistant in the first Block.

The warden also explained their economic woes: "The Caning business carried on in the 4th Block having about entirely ceased and a change of labor necessary, rendered the services of the present overseers to a great extent valueless." Additionally, as the number of inmates declined during the war, administrators fired several overseers whose services were no longer needed given the smaller population (e.g., PSA, Warden's Daily Journal, June 14, 1864).

²⁰In one report, they noted: "The subject of the length of sentence to the Prisons on the separate plan, has occupied the attention of the Board of Inspectors; but they are not prepared at this time to give the Legislature their views at length" (Inspectors, Annual Report 1847, 29).

short, he does not receive the benefit which the system is capable of imparting. A severe sentence also excites public sympathy, and the hope of pardon

Judges should sentence offenders to shorter sentences. More than judges, the legislature should change the penal code: “The time, it is hoped, will come ere long, when the Legislature will institute a commission to examine the subject” (Inspectors, Annual Report 1848, 5).

However, administrators’ anxieties about inmates being too angry at their sentence to reform was not the only reason for their change of heart. In the late 1840s, Eastern’s administrators were increasingly aware of an insanity problem. The portion of offenders administrators claimed were mentally ill prior to their commitment at Eastern was growing. It was in this period that administrators began to take private measures (like therapeutic double ceiling) to prevent mentally ill inmates from decompensating further and to keep others from becoming ill, as we will see in Chapter 7. It was at this point that the PSAMPP sought to make changes to the system that the administrators rejected. Instead, administrators asked for shorter sentences. They argued that the Pennsylvania System in smaller doses was not so dangerous, but lengthy sentences could produce mental illness. “It is conceded that imprisonment in a prison on the separate plan, is far more severe punishment, than is a prison where the prisoners are congregated” (Inspectors, Annual Report 1848, 4). Administrators were careful not to concede too much—their system was still superior to the Auburn System—but administrators shifted their emphases to other dimensions of the system.²¹ Sentences where offenders are incarcerated under the Pennsylvania System must be shorter than those under the Auburn System or the earlier confinements at the Walnut Street Jail. Unfortunately, they argued, “On the adoption of the separate system of imprisonment by Pennsylvania, the reduction which took place in the length of sentences was not at all sufficient to counterbalance the greater severity of the separate over the associate discipline. From this error I am confident that much injury to the minds and bodies of the prisoners has arisen, and that indirectly the moral influences of the administration have been materially weakened” (Physician, Annual Report 1848, 41–42).²² However, ever cautious not to denigrate their vaunted system, administrators made clear: the Pennsylvania System is safe so long as it is imposed with moderation and judges carefully take

²¹For example, whipping was more important now than the questionable “mildness” of separate confinement:

There are many who consider our system milder than that of Auburn; but that is certainly an error. If the number and severity of punishments for breaches of discipline be considered a criterion, the Pennsylvania System is certainly the milder; but those who reflect, will readily understand that the few and trifling punishments inflicted in the Eastern Penitentiary, only prove the moral superiority of its discipline, and are no index whatever of its influence on the health of body or mind. (Physician, Annual Report 1850, 21)

²²Predating the medical model of punishment that informed twentieth-century American corrections, they Physician continued:

In sentencing criminals, I cannot but believe that the peculiarities of individual cases are too often lost sight of, and as physicians sometimes prescribe for the name of a disease, without reference to particular symptoms or the idiosyncrasy of the patient, so are criminals frequently sentenced for a given offence without the slightest regard to the circumstances under which it was committed, or the physical or mental peculiarities of the offenders. (Physician, Annual Report 1848, 42)

into consideration the individual characteristics of the offender:

At the end of a seven years' experience, I have still unshaken confidence that a large majority of prisoners can be subjected to the intelligent administration of the Pennsylvania System for moderate periods, with entire safety to the health of both body and mind; but the friends of penal reform should remain no longer blind to the momentous fact that a certain class of convicts. . . cannot be placed under the usual isolation without the greatest risk of insanity supervening. (Physician, Annual Report 1852, 24-25)

Motivated by this concern, administrators continued to complain that their sentences were too long.²³

Policy recommendations about sentence length were thus another tool by which administrators could strategically alter the Pennsylvania System on its margins. Sentence length was not a core component of the Pennsylvania System and its emphasis on separation, so administrators could demand adjustments to sentence length without demanding adjustments to the Pennsylvania System. However, administrators believed that sentence length did effect the ability of the Pennsylvania System to succeed: short sentences frustrated their efforts to reform offenders and led to higher recidivism rate while also increasing the costs of the institution; lengthy sentences accelerated the decline of the mentally ill. Both outcomes could be used as evidence that the myths about the Pennsylvania System were true. In both cases, administrators sought to prevent these outcomes from happening by requesting legislators and judges take action.²⁴

6.3.4 Summary

When administrators perceived various social and penal policies, whether directly or indirectly related to their prison, as a threat to the Pennsylvania System, they not only complained about the policy but recommended alternatives. Administrators were strategic in these recommendations, changing their positions on some policies depending on the current needs of the prison. Through these policy recommendations, they effectively altered the conditions in which the Pennsylvania System would operate instead of the system's core features. If successful, these recommenda-

²³Later, their arguments became more savvy: "one of the advantages of that system that under its benign influences less time is required to secure the reformation of the convict than under the most improved discipline of the best congregate prison" (Inspectors, Annual Report 1870, 72).

²⁴Administrators performed a similar reversal in their views of pardons. Pardons, they argued, interfered with inmates' ability to reform, as we have seen (Chapter 4). To some extent, administrators may have seen pardons as an incursion on their autonomy and a lack of deference to their knowledge expertise. For example, administrators often complained about pardons that they had opposed: "Twenty prisoners were pardoned by the Governor, one of whom only was recommended by the Inspectors" (Inspectors, Annual Report 1841, 3). That administrators refused to request pardons was to some extent a nod to their system: other prisons, they argued, pardoned insane inmates, artificially reducing their rates of insanity. Eastern's administrators repeatedly reminded their readers that they did not engage in this nefarious practice and were not, thereby, manipulating the data. For example, "In obedience to established custom no pardons have been sought or procured on the plea of ill health....No prisoner has been pardoned on account of ill health, nor has any been pardoned whose health was so impaired, as to have been likely to add to the mortality: of the year, if he had remained in prison" (Warden, Annual Report 1844, 13). However, around the same time as their reversal on sentence length, administrators also reversed course to support pardons. However, they did not supply a reason for this reversal. They continued to emphasize the pardons were not granted out of health concerns.

tions had the potential to improve the system's health, financial, and penal outcomes and thus the system's external evaluations.

6.4 Conclusion

Administrators' name alterations and policy recommendations were both public acts. Name changes were primarily a public relations tool, rhetoric that apparently had little effect on practice but that could change the way in which people thought about the Pennsylvania System. Policy recommendations were attempts to let the Pennsylvania System function the way it was intended and with as few hindrances as possible and maximum help. But administrators' strategic marginal alterations were often private as well. Indeed, the most substantial alterations to the Pennsylvania System occurred behind the scenes, with minimal notice to the public. It was their alterations to the practice of the Pennsylvania System that administrators most aggressively sought to improve their system's ability to receive positive evaluations.

Chapter 7

Practice

[W]e must not view the prison as a machine which simply and automatically translates the dictates of society into action. The tasks assigned to the prison must be given priorities; general social objectives must be transformed into specific organizational aims; assumptions must be made about the nature of the criminal and his reactions to confinement; and the limitations placed by society on what the prison can do in pursuit of its mission must be taken into account. In short, the regime which the custodians struggle to impose on the inmate population may indeed be a means of fulfilling the objectives allotted by the larger social order and only become explicable in light of these objectives. But the rules and routines of prison officials represent a choice among alternative means and we must examine the basis of this choice as well as the objectives themselves. (Gresham Sykes (1958), *Society of Captives*, 13–14)

7.1 Introduction

Despite Eastern's organizational exceptionalism, and administrators' resistance to the pressures to conform to field-wide expectations, Eastern's environment was particularly influential in administrators' decisions regarding actual prison practice. This influence was reflected in a multiplicity of factors shaping administrative decision making: Administrators relied on understandings of appropriate penal goals (like inmate reformation), and how this could be achieved, as well as dominant understandings of racial difference. When explaining their decisions, administrators also referred to the general uncertainty about the prison technology and the correct interpretation of the law. Most commonly, however, administrators paid significant attention to issues of inmate health and system expense, factors that were central to the field-wide calumnious myths targeting the Pennsylvania System. Some of these competing influences existed in contradiction with each other, and some influences were more determinative of outcomes, and the goals associated with these influences were prioritized over others. Indeed, in practice, penal goals were rarely the primary influence: they were sometimes left unmentioned and they were often subordinated to other goals.

In particular, decisions about actual practice reflected administrators' attempts to prevent negative outcomes regarding inmate health or the prison's economic success, even at the expense of penal goals. Most notably, administrators' commitment to these other goals were the basis of decisions to violate the Pennsylvania System for some groups of inmates, effectively loosely coupling practice to the principles of the Pennsylvania System. For reasons of health and expense, inmates were often allowed out of their cells and able to fraternize with unapproved personnel, while some

inmates were housed two-to-a-cell long before overcrowding necessitated this on a larger scale. But whether administrators were engaging in loose coupling or making otherwise unremarkable decisions, their decisions were consistent with a single imperative: ensure the Pennsylvania System at Eastern can be positively evaluated, as measured through inmate health outcomes and expense. Loose coupling was thus another way in which administrators strategically modified the Pennsylvania System at its margins.

Despite the imperative to protect the reputation of the Pennsylvania System, administrators' behavior, particularly the loose coupling, had unintended consequences. With inmates out of their cells, all sorts of violations of the Pennsylvania System were possible. While some of these were generally inconsequential, like inmates passing each other in the yard, some were quite significant, as when inmates were able to carry on relationships or even escape. These violations compromised internal management, the ability to effect positive penal goals, and, ultimately, the reputation of the prison. However, these consequences were apparently rare enough or inconsequential enough for officials to continue to loosely couple practice to its theoretical and legal referents.

Despite Eastern's unique history, these characteristics of actual practice reflect more general characteristics of a variety of organizational settings, predicted by neo-institutional and old institutional theory. Eastern's administrators were quite responsive to their environment, even in ways that were not exactly rational. They engaged in loose coupling to privately ensure efficiency while obtaining public benefits. And these decisions had unintended consequences given their intentions. These examples thus reflect more broadly the organizational influences on actual practice at Eastern.

7.2 Decision Making in Context

Two characteristics of administrators' behind-the-scenes decisions about implementing the Pennsylvania System are striking, both of which reflect the significant influence of the larger social and organizational environment on administrative decisions. First, decision making frequently revealed the influence of other factors than penal logics—understandings about what punishment should accomplish, and how it should do so. Instead, behind administrative decisions, we observe the influence of the field-wide calumnious myths about the Pennsylvania System, the impact of uncertainty about the prison technology, and social institutions, including punishment but also including race. These factors reflect the influence of the prison's larger environment—particularly its organizational field and the dominant understandings, but also the social world that prison administrators brought with them.

Second, administrators' decisions that effectively violated the Pennsylvania System, albeit for a minority of the population, were quite prevalent. Despite the Pennsylvania System's emphasis on inmates remaining in their cells, away from other inmates, a small number of inmates each year were assigned to labor outside of their cells, sometimes with significant, unintended consequences for both internal management and external reputation. More strikingly, some inmates were held two-to-a-cell, well before the experience with overcrowding made double-celling a permanent practice for some inmates. Importantly, these decisions to violate the Pennsylvania System were often motivated by other, non-penal goals, and even impeded penal goals.

Below I outline these various influences. I then illustrate the way in which these influences, in practice, often crowded out the influence of penal logics in routine decisions. I then demonstrate the way in which these same influences motivated administrators to violate the Pennsylvania System for some inmates. Finally, I describe some of the unintended consequences that followed these

decisions before exploring the way in which these various phenomena can be explained through organizational theory.

7.2.1 The Influence of Uncertainty

One environmental factor that impacted decision making was the general sense of uncertainty surrounding punishment. As previously noted, not only were the exact penal goals unclear and conflicting, but significant uncertainty—even doubts—surrounded the new technology of the prison, the “experiment” as many called it. How inmates would respond to long-term confinement, how their mental and physical health would be affected, how effective it would be, and especially how prisons should be governed.¹ Because of their minority status within the field, and the lack of a relevant model to inform their expectations, Eastern’s administrators were particularly susceptible to this. Two other factors, moreover, would have exacerbated the role of uncertainty: the ambiguity inherent in legal doctrine that makes implementation of theory into practice difficult (Edelman, 1992) and any doubt administrators may have experienced because of the field-level calumnious myths and their general isolation within the field.

¹Inspector Bradford explained his visitation habits with reference to legal requirements and the effect of the Pennsylvania System: “The law requires the Inspectors to visit the Penitentiary twice in every week, but does not require each prisoner to be visited twice a week by two Inspectors. It was my practice when acting as one of the Visiting Inspectors in the commencement of the experiment... to visit every prisoner at least once a week and not generally twice a week. I was deeply anxious in observing the operation of the system as well as the [illegible] on the minds of the prisoners.... But as the number of prisoners increased it became impossible to visit each prisoner as frequently and finding that the system worked happily I did not feel that there was the same necessity of seeing them so often.” (APS, Legislative Investigation, 1835, no page).

One exchange illustrates how this uncertainty impacted the prison physician’s interpretation of his duties:

At first I saw each prisoner twice a week and had some little conversation with them. This was when there were 1 to 40.... When the number of prisoners made the duty onerous, my disposition was to comply with the letter of the law. I saw each prisoner twice a week as rapidly as possible by opening the window of their cell and suffering them to see me and I seeing them. As the number increased this rapid mode of seeing them occupied so much time as to encroach on that which I worked to appropriate to the sick. I became concerned that seeking the prisoners in this way was worse than a [illegible] formula and that if I invested [sic] several minutes with each that I would occupy more time than I could afford for the salary I got. I made up my mind that I complied with the Spirit of the Law and did more justice to the sick by visiting the prison more than twice a week. I made such arrangements as to have my attention called to any prisoner who wanted to see me. I was influenced also in changing my plan by an assurance received from one of the Inspectors that he had drawn up that passage of the law, Mr. Bradford, when the impression of the public was that separate confinement as contemplated in dungeon without work would cause the prisoners to be [illegible] and make it necessary that the effect of the confinement should be carefully watched by the Physician. I therefore concluded that the Spirit of the Law was complied with by visiting the prison twice a week. (APS, Legislative Investigation, 1835, no page, Physician Bache, January 5, 1835)

Bache thus claimed to contend with two uncertainties: first, the conflict between his ability to comply with the letter or the spirit of the law, and second, uncertainty about the possible effect of the Pennsylvania System on the inmates.

7.2.2 The Influence of Social Institutions

Social institutions also impacted administrators' decision making. A social institution is a significant, taken-for-granted area of social life that helps us to understand and organize our world. Friedland and Alford (1991) argue that society is constituted through multiple competing, sometimes conflicting, institutions, for example, the law, family, medicine, education, religion, the market, and the state. Institutions can arise and disappear or change over time, such as the rise of democratic governments or the changing understandings of marriage over the centuries. Importantly for our purposes, institutions contain cognitive, normative, and regulative features (Scott, 1995): they underscore forms of formal and informal social control and "constrain" individual and organizational behavior (1995, 35); they shape norms and values, and offer prescriptions about appropriate behavior (1995, 37–38); and they shape individuals' understandings of the world, providing scripts or frames by which individuals interpret the world around them (1995, 40–42). It is this latter aspect of institutions which was most apparent in administrators' decisions, particularly in the influence of social institutions like race and punishment. Their decisions were sometimes based on understandings about the characteristics of different races and understandings about how penal goals can be accomplished, what we might refer to as "racial logics" and "penal logics" (Friedland and Alford, 1991, see).

7.2.3 The Influence of Calumnious Myths

By far the most common factor affecting administrative decisions, however, were what might be considered organizational goals: a concern for inmate health and the prison's expenses. Administrators frequently explained their decisions as attempts to achieve cost-effectiveness and even profitability and to preserve inmates' mental and physical health.² While these goals may seem like good stewardship, they were often pursued in ways that violated the prison's central purpose and legally required methods, suggesting other motivations. I suggest that these decisions reflect was the influence of field-level calumnious myths about the Pennsylvania System.

As previously demonstrated, Eastern's administrators were very concerned with these myths. In a variety of ways, they challenged claims that the Pennsylvania System was cruel and inhumane, dangerous to inmates' physical and mental health, expensive and unprofitable, and impractical or ineffective. Publicly, administrators offered characterizations of the Pennsylvania System as humane, evaluations of its success at Eastern, and claims to professionalization undermining reformers' authority regarding these matters. Privately, however, their decisions, in effect, worked to prevent the manifestation of these myths at Eastern—in their attempts to reduce inmate health problems and overall expense. Administrators did not reference the myths themselves in their private decisions. However, administrators' concern with them in the Annual Reports, combined with the frequency of efforts to avoid the expectations of the myths, is deeply suggestive. For these reasons, I interpret administrative efforts to preserve health and reduce costs as attempts to prevent the manifestation of the myths about the Pennsylvania System's potential flaws.

If calumnious myths influenced decisions, as I suggest, why do we observe in their decisions the influence of the economic and inmate health myths and not, directly, the other two myths about cruelty and effectiveness. The health and mortality of inmates as well as the expense and

²In his 1835 testimony, Inspector Bradford explained, "It was the object of the Warden [Samuel Wood] and the Board to keep down the expenses as much as possible." In another portion of his testimony, he explained, "The diet of the prisoners has always been good and sufficient. [W]e have endeavored to economise wherever it could be done consistent with the health of the prisoners" (APS, Legislative Investigation, 1835, no page).

profitability of the Pennsylvania System were among the most potent of the calumnious myths. Economy and inmate health were among the most influential in the critique of the Pennsylvania System: as noted, many observers have suggested that the cost of the Pennsylvania System was the most influential factor in its failure to be adopted by most states when authorizing new prisons (e.g. McKelvey, 1977; McLennan, 2008) while the impact on inmate health was particularly influential in other prisons' administrators' decisions to abandon the Pennsylvania System. Health and expense were prominent in Eastern's administrators' evaluations of their prison and comparisons to rival facilities (Chapter 4). The impact on health, in particular, could also be utilized in arguments that the Pennsylvania System was cruel and inhumane. Thus, public failures along these lines would be particularly damaging to the reputation of the Pennsylvania System.

Other reasons could explain the unique influence of these factors in shaping practice. Effectiveness at these two goals was easily evaluated: the amount of legislative appropriations and the number of inmates who died were recorded and readily available in the Annual Reports and the reformer literature. These numbers could only be mitigated by outright deceit and could not be ignored by Eastern's officials. Other aspects of the calumnious myths were more problematically evaluated: Measuring inmate reformation was subjective, while recidivism statistics suffered from selection bias, as officials well knew. (Of course, this did not stop officials from attempting to evaluate their prison in this regard, as we have seen, Chapter 4.) Determining how "cruel" and "inhumane" a prison is primarily a logical or qualitative endeavor. (Officials' response to this critique was to construct an oppositional identity for their prison, Chapter 4.) Economy and inmate health were thus factors that demanded attention to preserve the reputation of the Pennsylvania System because of their potential to impact these other evaluations and characterizations.³ Additionally, we might expect administrators to focus on these factors because these factors are somewhat more straightforward to achieve. While medicine and business were not simple realms, especially for Eastern's administrators, the steps that are necessary to succeed at these were perhaps more clear than the steps necessary to reform inmates and reduce recidivism. Moreover, micro decisions about punishing inmates to accomplish reformation would have long-term impacts that would not allow administrators to readily evaluate these decisions—the effects of such efforts may take years or decades to manifest, depending on how long it would be before an inmate was released and how soon he returned, if he returned at all. By contrast, efforts to reduce expense and mortality could be measured on a yearly or even monthly basis, and decisions could be (and were) changed accordingly. Measurability and clarity, thus, may have made these myths more influential than the other myths.

7.2.4 Multiple Influences, Competing Goals, One Imperative

Administrators' decisions reflected multiple influences from their environment. In practice, administrators were faced with two sets of goals: penal goals (e.g., inmate reform, improvement) and organizational goals (cost effectiveness and profitability, preserving inmate health). These goals often dictated conflicting courses of action. Moreover, administrators negotiated between these goals while dealing with rampant uncertainty and the influence of their own racialized beliefs. However, these factors were not equally influential: some factors (inmate health and expense) were far more commonly referenced in the decisions. But the influence of each factor varied across areas of practice: penal goals appear to have only been discussed with respect to the additional punishment of

³Indeed, it is not uncommon for a social movement (here the penal reformers propagating the myths) to influence the behavior of an organization (e.g. Weber et al., 2009), especially by shaping the categories by which an organization is evaluated (Lounsbury et al., 2003; Bartley and Child, 2011).

refractory inmates. Thus, there was also no static, unconditional hierarchy of influences one can point to. Despite this variation, there was a persistent theme: Amidst the uncertainty and influence of social institutions, administrators made decisions that would have positive impacts on the evaluation of the Pennsylvania System at Eastern.

7.3 The Subordination of Penal Logics in Practice

In light of these multiple, conflicting influences, some influences would inevitably be subordinated to others. What is perhaps surprising about decisions shaping practice, however, is that penal logics were frequently subordinated to other influences. Administrators' decisions about how the Pennsylvania System should be implemented were motivated by achieving goals other than inmate reform or crime reduction, despite the fact that these were the prison's primary reason for existence. These penal goals were, at best, simply left unmentioned and, at worse, actually subverted. This subordination of penal logics is illustrated in administrators' decisions about what kinds of labor inmates should be instructed in, and their decisions about when and how to punish refractory inmates.

7.3.1 Example 1: Determining Kinds of Labor

Labor was an integral part of the Pennsylvania System. It was intended to alleviate the effects of long-term solitary confinement. It was also supposed to enable inmates to ameliorate the cost of their confinement to the state. Importantly, however, inmates were expected to learn a trade with which they could support themselves after release from prison. For example, the administrators noted,

Weaving and shoemaking have been the principal employments. In the former, some loss has been sustained in the past year, from the depreciation in the value of goods. In the latter, the aggregate profit has been small. If, however, we can ensure the steady employment of the prisoners, in trades which must eventually benefit them, and tend to divert them from the commission of crime, when restored to society, the main design will be fulfilled. (Inspectors, Annual Report 1834, 3)

Over the years, administrators repeatedly stressed that profitability was subordinated to the goal of inmate reformation and the benefits that would accrue to them by learning a trade, however unprofitable the work for the prison.

In practice, however, the economic logic that inmates defray the cost of their confinement frequently dominated the penal logic in which inmates receive beneficial training in a useful trade. This is particularly evident in the range of trades available to inmates and the tasks assigned to specific inmates. In one illustrative example from the historical record, the current warden explained to the PSAMPP member and semi-regular visitor to the prison, William Foulke, “that one restriction upon the choice of trade was the value of materials which were wasted by learners, especially if unwilling...” Another restriction he noted was the inmate's sentence length: the cost of training the inmate made training inefficient for those serving short sentences, as they were not present long enough to pay back the prison (an argument frequently repeated in the Annual Reports). Foulke explained, “the warden told me that persons received in short sentences (e.g., one year) are set at bobbin winding because of the time being too short to teach them a trade with advantage” (APS, Foulke Papers, Prison Journals, 10.13.49, emphasis in the original). Bobbin-winding was a particularly tedious task and was considered to be “unskilled” labor. Inmates performing this task thus

received no training in a useful trade; instead, they effectively performed manual labor in order to offer the prison some profit.

The economic logic also shaped the variety of available trades inmates generally could perform. Specifically, administrators chose trades based on their profitability and related benefits to the prison, rather than the benefit to the inmate's reformation. Continuing the same conversation, Foulke recounted administrators' assessments of the various trades. They informed him,

That a trial of hinge-making had just been begun; but it was yet to be seen how far it would succeed: 8th That harness work might be profitable; but the smithing part would require more than one hand in the shop and besides there was particular reason to apprehend interference from workmen engaged in that branch of labour out of doors... Mr. Vaux [a member of the prison's Board of Inspectors] stated to me that in making business calculations at the prison, the cost of keeping a convict was rated at 19 or 20 cts per day—probably an average of three years would give 20 cts per day* [*This is exclusive of the allowance from the state which would make it about 25 cts per day says Mr. Vaux][.] This rate was assessed by him in his estimate of the probable advantage of hinge-making. (APS, Foulke Papers, Prison Journals, 10.13.49, emphasis in the original)

This description illustrates multiple economic considerations shaping the decision to allow inmates to engage in particular trades. “Success” was determined by profitability, in their assessment of hinge-making. Harness-making might be advantageous, were it not for other potential costs. And to determine how successful hinge-making would be, administrators compared the likely profits against the cost of inmates. Thus, the cost effectiveness of a particular trade was the dominant focus in authorizing new trades within the prison, and not its utility to inmates and their ability desist from crime in the future. In these two labor practices, the economic logic overcame the penal logic.

7.3.2 Example 2: When and How to Punish Inmates

The punishment of refractory inmates was by law within the discretion of the warden and an important aspect of the prison regime. This is one area of practice in which penal logics were apparently influential at some times. Most centrally, we observe the role of the reformatory logic. One aspect of the reformation logic was discipline, as measured by subordination to authority and a willingness to perform one's tasks—both goals of punishment of refractory inmates. However, other factors were also influential in these decisions. Indeed, isolating the influence of the penal logic from the economic logic was often difficult in many cases of inmate punishment. For example, one reason an inmate could be punished, according to Inspector Thomas Bradford, was “destroying their work” or generally refusing to work (APS, Legislative Investigation, 1835, no page). Whether the need for punishment was to prevent material loss to the prison or to subordinate the inmate is unclear. This is true of specific instances of punishment as well. Bradford's testimony illustrates the point:

I can safely say that in the generality of the cases of punishment which have come under my notice, the result has been beneficial to the [inmate] by subjecting his spirit and reducing him to the subject of the discipline of the house....

Thus far, penal logics appear to be the primary goal of this punishment. However, he continues to explain in more confounded terms:

Let me state a case... a coloured man No. 40 who had been a convict in Walnut Street Prison sentenced to the Penitentiary.... He very soon refused to work. The Warden put him in a dark cell on short allowance. After he had been there for a few days, the Visiting Inspectors, having visited him, were induced by his profession of future obedience to request the Warden to take him out.... [The warden and Bradford disagreed with these inspectors, warning that] in a day or two he will be as bad as ever.... [T]he man was taken out of the dark cell and put to work. After a few days he became more obstreperous than before, when the same Inspectors, Mr. Coxe and Richards, said to the Warden take him and punish him according to your own judgment. He did so and the result was that he became one of the most obedient prisoners in the house. (APS, Legislative Investigation, 1835, no page)

As refusal to work was evidence of insubordination, and willingness to work evidence of penal success, determining whether economic or penal goals were motivation is difficult.

Decades later, instances of punishment are still blends of economic and penal factors. Foulke's diaries reveal several examples of punishment in which subordination and productive labor are intrinsically linked. For example, he noted,

The warden related a story which illustrates our mode of discipline. A man was reported a few days ago for refusing to work. He said that his rubber was not good and he'd be d—d if he'd work till he got a better one. The Warden directed his dinner to be stopped and resolved to see him after 2 or 3 hours. Before the visit was made, a keeper came and said that the convict had resumed his work, and had rec[eive]d his dinner. This was approved by the Warden, whose visit was afterwards made without allusion to the offence until the prisoner introduced the subject. (APS, Foulke Papers, Prison Journals, 11.15.46, emphasis in the original)

These cases illustrate the way in which the reformation logic and economic logic were apparently merged in practice.

In other cases, however, the role of the two logics were more distinct. Officials tended to emphasize the “benefit” of discipline to the inmates, suggesting a role for the reformative logic. For example, Bradford referred to one case of punishment:

He was an obstinate boy of about 19 years of age. He refused to do some trifling work which the warden had ordered and which he could have done and actually did do at last. He was told by the Warden as well as by myself that he should have food as soon as he performed the work.... This act of discipline proved to be beneficial to the individual.

Bradford testified that the inmate told him, “You conquered me. My proud and obstinate spirit submitted and I hope I am an altered man.” Bradford then explained that he is now “an excellent prisoner and hopes to lead a new and virtuous life” (APS, Legislative Investigation, 1835, no page). This narrative suggests a major factor in authorizing and evaluating the punishment was changing the inmate's character.

In other cases, the economic logic was more clear. The impact on an inmate's ability to work (and thus defray the costs of the system) was an important factor in shaping decisions to punish. During his 1835 testimony, Bradford explained the choice of different punishments available. He testified,

As to the Straight Jacket, I always approved of it as one of the least injurious and most operative mode of punishment we have in use. *It produces submission sooner than*

starvation or short allowance and it does not affect the health or strength of the prisoner, added to which he does not lose more than a day from his work. (emphasis added, APS, Legislative Investigation, 1835, no page)

While the penal goal could be accomplished either way, it was important to avoid impacting the inmate's productivity, by either reducing his strength or keeping him long from work. Bradford offered other evidence for these positive characteristics of the straight jacket. Bradford reported that an inmate had told him "that he had never met with anything which broke him down so much as the Jacket." The inmate, he said, compares it (favorably) to solitary confinement "on bread and water" at Walnut Street, which the inmate told him severely affects the inmates' strength. Bradford reminded the legislative committee to which he was testifying that the straight jacket "would have produced... no loss of strength" (APS, Legislative Investigation, 1835, no page). These considerations highlight the role of economic logics in determining aspects of administering punishment at Eastern. In these cases, the determinants of punishment were thus some combination of penal and economic logics, a combination that was inconsistent across instances of punishment.

7.3.3 Summary

In establishing practices regarding labor and disciplining refractory inmates, administrators thus concerned themselves primarily with economic logics. Sometimes, this was to the exclusion of other, even penal logics, as with the choices regarding the trades available or assigned to inmates. Sometimes, economic logics were found in combination with other logics. It is particularly telling that even in the case of punishing refractory inmates, the relative influence of economic logics and penal logics are unclear. However, the sway of the economic logic, quite distinct from the penal logic, in some discussions of the appropriate punishment techniques begins to suggest the subordination of the penal logic to the economic logic. A closer look at actual practice, however, reveals just how much the penal logic was subordinated to other concerns.

7.4 Violations of the Pennsylvania System in Practice

The Pennsylvania System was violated in practice frequently and in a variety of ways. Inmates subverted the system by, among other activities, communicating with each other, refusing to work, or feigning reformation in the hope of receiving a pardon. Guards communicated with inmates in ways officials and reformers deemed inappropriate and often tolerated (or enabled) inmates' various forms of subversion. Underfunding or understaffing (as noted in Chapter 4) often prevented the full implementation of the Pennsylvania System with respect to religion, education, labor, health, and the frequency of official visits. However, Eastern's officials also tolerated and even routinely authorized violations of the Pennsylvania System.

When Eastern's administrators authorized violations of the Pennsylvania System, they did so to improve the prison's economy and to preserve inmates' health, rather than to effect penal goals. Below I examine two semi-routine practices at Eastern, both of which deviated from the official rules of the Pennsylvania System. I begin by examining the decision to temporarily double-cell selected inmates. Rather than an attempt to deal with overcrowding, as occurred in the prison's later years, this decision was primarily motivated by the desire to preserve inmates' mental health, despite the possible consequences for penal goals. I then examine the practice of assigning inmates to out-of-cell labor. Throughout the period examined, inmates were assigned to tasks that took them out of their cell for reasons of cost effectiveness and to preserve inmates'

health; however, these decisions were also informed by understandings about race and the general uncertainty surrounding carceral punishment at the time. These work assignments also put penal goals in jeopardy. Inmates' authorized excursions often enabled various forms of inmate resistance and other outcomes that frustrated the penal logic of inmate reformation.

While other violations were authorized, these two practices reflect the range of influence on decisions to violate the Pennsylvania System. Double-celling inmates reflects one primary influence, while out-of-cell work assignments reflect four influences. As with the two previous examples, however, the subordination of penal goals to other goals and influences is illustrated in two ways. First, the absence of any clear reference to the influence penal goals suggests that penal goals were simply not influential in these decisions. Second, the prioritizing of other goals over penal goals, in this case illustrated by the negative ramifications for penal goals caused by some practices' unintended consequences, as discussed in the following section.

7.4.1 Example 3: Double-Celling inmates

Long before overcrowding necessitated double celling in 1866, prison officials authorized select inmates to be housed together. Though a seemingly rare occurrence, mentally ill inmates were provided with a roommate—another inmate—with the hope of alleviating any aspect of their mental illness that was (believed to be) caused by the solitary confinement demanded by the Pennsylvania System. The first reference I uncovered comes from the 1840s. In his prison journal, William Foulke recorded parts of his conversation with inmate No. 2153, “a young man.” The inmate informed Foulke that “he was put in a cell with Daniel or David Hsath, an old criminal who was unwell; and 2153 was put in with him to attend him” (APS, Foulke Papers, Prison Journals, 11.15.46). Several years later, Foulke recorded his conversation with an overseer at Eastern, Mr. Roe, who indicated that this was a fairly routine practice at Eastern (APS, Foulke Papers, Prison Journals, 11.1.51 entry).⁴ This practice continued in the 1850s: In the minutes for the meeting of the PSAMPP on “5 Mo 31, 1854,” the visitor to the 3rd cell block, “James J. Barclay reports having visited the prisoners in this Block and saw 16 in their cells—2 or 3 of the cells have two prisoners in each of them.” It is unclear from the record when this practice began or for how long it persisted.⁵

Inmate Health

The decision to double-cell inmates appears to have been driven primarily by a concern for the inmates' health. In conversation with Foulke, the keeper Mr. Roe explained (in Foulke's words)

that whenever a prisoner's mind becomes a little unsound, another prisoner is selected and put with him for company.... Mr. Roe... is [in] favour of the association in this way in cases in which the mind is likely to fail. (APS, Foulke Papers, Prison Journals, 11.1.51 entry)

However, by celling inmates together, several aspects of the reformation penal logics (as understood at the time) were frustrated: inmates were not left alone with their thoughts; solitude was

⁴Reference was also made in the Foulke prison diaries to the same practice occurring at Western State Penitentiary (see APS, Foulke Papers, Prison Journals, 5.29.51).

⁵The PSAMPP Minutes are only available beginning in 1854 and the records after 1862 are less detailed; this is also the primary period in which Foulke visited the prison. The practice was not discussed in available records from the 1834–1835 investigation.

not interrupted only by labor or prayer; the contaminating influence of other criminals was not prevented. While maintaining inmate health is presumably a necessary prior condition to one's reformation, the chosen course of treatment (according to contemporary understandings) would have impeded the ability of his cellmate to reform. In this case as well, then, the penal logic was subordinated to the inmate health logic.

7.4.2 Example 4: Out-of-Cell Work Assignments

The Pennsylvania System did not simply mean the separation of inmates from each other. Integral to the Pennsylvania System was also the idea that inmates would never leave their cell—the prison was designed in such a way that the inmate could work, eat, pray, and sleep without ever leaving his cell; when he needed additional exercise, he⁶ could enter his attached private garden to breathe fresh air and walk around in the minimal space. However, officials routinely assigned inmates to work that took them out of their cells. It was not a common practice that affected most inmates—only a handful of inmates were employed in this manner at any given time—but it was a practice that persisted for the duration of the period examined.

The first evidence of this practice occurs early in the prison's history. In the Legislature's Investigation into official misconduct at the prison, testimony from late 1834 to early 1835 (APS, Legislative Investigation, 1835, no page) and the official report (Pennsylvania 1835) indicated that several dozen inmates had been assigned tasks that took them out of their cells. Prison administrator, Thomas Bradford, a member of the Board of Inspectors, testified,

The first prisoner admitted to the Institution was suffered for a time to work in the large yard during the day under the watch of a keeper and at night returned to his sleeping room.... [W]e erected a blacksmith's shop in the South Western side of the Center building in which a convict was kept at work during the day singly and separately from any other prisoners and then returned to his cell at night. Afterwards a convict was employed in the same shop as a cook and treated in like manner. Another was placed in the upper room of the Center Building, at warping and beaming and treated in like manner. Another was employed in the dye house, another at making the fire and breaking the coal, taking care of the house occasionally and splitting wood. Since the commencement of the new cell building we have employed several of the convicts at blacksmithing and carpentry, necessary in the erection of the cells and to this end workshops have been erected in the cell yards and assistants have been hired to work with the convicts in the shops. Twenty four convicts are employed in shops connected with their cells, working in the day time in their shops under the supervision of an overseer or an assistant and at night locked up in their cells. At different periods, convicts have been employed as bakers and cooks and on two occasions one has been taken down to the front to wait on table when the member of the Legislature or Judge dined in the Institution after having come out to pay an official visit to the Penitentiary.⁷

⁶The several female inmates who entered the prison each year were generally assigned to cells on the second floor of a cellblock and thus did not have access to a garden.

⁷The testimony in this collection is not paginated, and the date of Bradford's testimony is not specified, though it was very likely in early January.

Note that the testimony of former overseer, John Coxe, given on January 6, 1835, also noted this practice: "John Gurren when he was a prisoner went with me outside of the External Wall to work while a prisoner" (APS, Legislative Investigation, 1835, no page).

These various employments were all beyond inmates' private cells.

The practice was not continuously employed. Bradford and other of the prison's personnel explained that the practice of out-of-cell work assignments was at least temporarily halted before the 1834–35 legislative investigation, except in a few cases of inmates working as blacksmiths. At the time of the investigation, one of the several inmates “engaged as blacksmiths in the manner stated, one of whom owing to his great skill as a workman, is still engaged in work connected with the building of new cells, which as your committee understood sometimes required that he should be employed out of his cell” (Pennsylvania 1835, 18). However, the investigative committee did not condone the practice and stated that it violated the principles of separate confinement (Pennsylvania 1835, 19-20). The committee suggested that it would tolerate the continuation of the practice so long as the prison remained under construction, but that the practice should cease thereafter (Pennsylvania 1835, 22).

However, the practice of assigning inmates to out-of-cell work continued throughout the period examined. Records for the work performed by inmates on December 31, 1843, and on August 14, 1844—the two days for which I could find such records—indicated that on both days, four inmates were designated as a “Runner” (out of 359 and 351 inmates total, respectively). Two inmates were also employed as “Baker” and “Cook,” while several were also employed as “blacksmiths,” “fireman,” and “warping”—jobs that were previously performed in separate workshops and would be difficult to carry out within one's cell (APS, 1843, 1844). There is some evidence that inmates assigned to work outside of their cells were “trusty” inmates. The labor records from 1843 and 1844 list the character of the inmates: those employed as runners were generally inmates of “Good” or “Very Good” character; but one Runner employed in 1843 was listed as having a “Bad” character. In his journal, Foulke wrote of an inmate, #1814, who also worked beyond his cell: “His keepers told me that he is one of the best in prison – a trustworthy man. [H]e picks oakum and works about the corridors” (APS, Foulke Papers, Prison Journals, p. 85, 5.24.46 entry). However, whether these inmates were selected for their good character is not explicit in the records.

In the following decade, some version of out-of-cell work assignment was still ongoing. Evidence is found in the minutes (HSP, Prison Society Minutes) of the PSAMPP's Committee charged with visiting inmates at Eastern on a regular basis that some inmates continued to leave their cells for work. For example, in the entry for February 8, 1854, (“8 Mo 2, 1854,”) the member assigned to visit the Sixth block, “Richard Williams... [found m]any of the prisoners, particularly those under his charge, were out of their cells, in the workshops and other places.” This entry was not common. No such report came from the other blocks for that meeting, nor was a similar found for other meetings held in surrounding months. But this was not the last such entry. For example, during the February 1862 meeting, the member charged with visiting the “Third Block and Fourth Block Gallery” met with “40 prisoners in their cells and shops.” In the same year, a series of contraband inmate letters—written by a surprisingly literate female inmate, Elizabeth Elwell, to her lover, Albert Jackson, also incarcerated at Eastern—refers to other out-of-cell work. In one such reference, she wrote, “I am very sorry you can not be in the in the yard eney more” (Elwell to Jackson, April 22, 1862). Other parts of her letters offer additional evidence of the practice. Throughout the period examined, then, out-of-cell work was a fairly routine practice, known to be a violation of the prison's formal design established by law and clarified by legislative committee, that persisted for years.⁸

What accounts for such a significant and, as we shall see, consequential violation of the

⁸This practice also seems to have occurred at Western State Penitentiary. Foulke notes that at a State Medical Conference in 1851, he heard from that prison's physician, “That the prisoners at the Western Penitentiary generally are

Pennsylvania System? When asked about these practices, officials explained their decisions primarily in terms of two goals: maintaining a cost-effective prison (economy) and maintaining inmates in good health (inmate health). Interwoven in these accounts, we also see understandings of race (e.g., the unique health and skills of African-American inmates) and the role of uncertainty. What was largely (and perhaps surprisingly) absent from these explanations, however, was reference to penal logics (e.g., reformation)—logics that were particularly imperiled by the consequences of out-of-cell labor (described below).

Economy

Economic logics were a dominant factor in decision making at the prison, including the decision to assign inmates to tasks outside of their cells. Inspector Bradford explained the decision retrospectively:

[W]e were induced to permit some of the convicts to work out of their cells... from principles of economy, and in one or two instances from a desire to preserve the health of some who were suffering under the effect of confinement.

After further testimony, he made the calculus clear to further justify the decision: “Laborers cost us from 75 [cents] to \$1 per day while the average value of convict labor ... was only 25 [per cents per day]” (APS, Legislative Investigation, 1835, no page). In their final report, the investigative committee concluded, “Economy seems to have been the chief motive for this departure from the spirit and letter of the law” (Pennsylvania 1835, 19).⁹ Thus, an economic logic appears to have been instrumental in structuring the decision to send inmates to work assignments beyond the confines of their separate cells.

Inmate Health

Inmate health was another motivation behind administrator decisions, including their authorization of out-of-cell work assignments. Officials often implicitly referred to a belief that inmates’ ability to leave their cells for some period of time would be beneficial to inmates in poor health. This was a motivating factor at the beginning of the practice, as the Bradford testimony (above) illustrates. However, it persisted over the years as the practice expanded. On October 24, 1849, Foulke noted that he met with No. 1533, a “Coloured man.... He has been in about 7 years—on a sentence of 10 years. His health becoming impaired he was made a runner in the 6th block, but grew worse.” Health was also a reason behind sending inmates to work in the gardens:

Mr. Scattergood [the current warden] informed me... that during the last 2 or 3 weeks an average of 20 prisoners per diem had had exercise... in the space between the cells[.]

confined wholly to their cells, a few get out to sweep the passages and do necessary work about the establishment; but the number of these is very small” (APS, Foulke Papers, Prison Journals, 5.29.51).

⁹Even the investigative committee was somewhat moved by the economic logic. Though disapproving of out-of-cell work assignments generally, the committee did, however, leave open the possibility that this practice could continue for a short duration. “Perhaps it may be expedient owing to the great saving which such employment of the convicts produces to permit it to continue until their work is no longer needed in the building of new cells, but when this takes place, it should be altogether abandoned” (Pennsylvania 1835 1835, 22). Thus, again for economic reasons, deviation from the practice could be allowed to continue until the construction of the new cells was completed, and only for some jobs.

That 5 or 6 were out at one time, of whom one was of the most infirm invalids under the [] charge of the assistant nurse; and the others worked in the garden patches under the direction of the gardener. (APS, Foulke Papers, Prison Journals, 10.13.49)

Allowing inmates to leave their cell for a variety of work assignments was thus motivated in part by a health logic as well as an economic logic.

Race

Racialized beliefs interacted with these organizational logics of economy and inmate health. As we have seen (Chapter 4), many elites throughout this period believed that African Americans would respond poorly to confinement; this belief further informed decisions based on the organizational logic to preserve inmate health. In his testimony on out-of-cell work assignments, Inspector Bradford noted, “In one or two instances of coloured prisoners I recommend that they should be put to splitting wood in an open yard for the benefit of health of which the Doctor approved. Solitary confinement affects people of colour more than it does the white” (1835 testimony). Thus, the need to prevent disease among African-American inmates, and the belief that they were particularly susceptible to disease within prison, made administrators more willing to assign these inmates to out-of-cell labor.

Years later, Warden Scattergood, operating on an economic logic, was also influenced by understandings of racial differences to different ends. In a long summary of points made by the warden, Foulke noted,

5th that when a prisoner had learned a trade before admission, which is practiced in the prison, he is set at that if possible, for obvious reasons. 6. That [sic] as respects blacksmiths and carpenters, there are not many so engaged at any one time; and those have previously learned those trades; which also accounts for whites being selected for them. (APS, Foulke Papers, Prison Journals, 10.13.49)

The institutional logics of race, in combination with economic and health logics, thus structured decisions to assign inmates to work that took them beyond their cells. Specifically, inmates who were already knowledgeable in a trade did not need to be trained; to retrain them in another trade, simply because they cannot conduct their trade in their own cell, would be a waste of resources. This practice also reinforced the racial hierarchy by failing to trade African Americans in trades that may have been useful to them, because it was not cost effective.

Uncertainty

More generally, uncertainty also helped to make these logics more salient. The proper interpretation of an ambiguous law and the unknown effects of the new technology informed decision making, particularly in the early period (i.e., the 1830s). How safe and how expensive the Pennsylvania System would be was unknown, and administrators felt compelled to build in assurances in these matters. Meanwhile, legal ambiguity provided cover for the more questionable efforts towards these ends. During his 1835 testimony, Inspector Bradford explained to the legislature that out-of-cell work assignments were authorized

under a full and perfect belief that the word and spirit of the law sustained us. I drafted the section which provides that the prisoner shall be kept singly and separately at labor in their cells or work yards and in this Mr. Wood [the warden] fully concurred. The

experiment of separate confinement by day and night was about to be made. Good men had doubts. None of us could say how far the mind and body could be in total seclusion from society and confinement to a cell for a length of time. We knew that the great evil of the old system was the association of convicts by which they encouraged each other in crime and banished reflection from the mind—and that separation from each other would remove the excitement and growth of vice and prepare the mind for reflection on their past conduct.... We therefore did not consider the system infringed although some of the convicts were permitted to work out of their cells, more especially as we were enabled to employ them in a manner which produced a considerable savings to the Institution.¹⁰

For Bradford, the inmate health logic was particularly salient in this context of uncertainty and helped to motivate the decision to send inmates to work outside of their cells. The economic logic encouraged and reinforced the decision.

The ambiguity of the law, however, allowed officials to offer a justification for the violation, and perhaps emboldened their willingness to violate the Pennsylvania System in this way. They could argue that penal goals could be accomplished because the mere separation of inmates from each other would (in theory) be retained despite the out-of-cell nature of their work. While this explanation may have satisfied the legislative committee, it was largely a fiction, again reflecting the subordination of penal logics. Repeated evidence that penal logics were jeopardized by this practice did not prevent officials from continuing the practice. Moreover, the uncertainty about how inmates would react to separate confinement should have been less strong after several decades of practice (and the mass of statistics generated by prison officials). Yet the practice continued, despite more data about inmate health, a mandate from the legislature to stop this practice, and evidence that the practice imperiled penal logics. The duration of this practice and the explanations behind the decision to impose it suggest the strength of the economic and inmate health logics, particularly to the exclusion of penal logics.

7.4.3 Summary

These violations of the Pennsylvania System were not common in the sense that they affected many inmates—perhaps 5-20% of the population at any given time was affected by the double-celling and out-of-cell labor practices combined. However, they were persistent, as examples continued to appear where primary sources allow glimpses of practice. Importantly, though, these marginal alterations to the practice of the Pennsylvania System reveal administrators' greater concerns with factors on which the Pennsylvania System was most heavily criticized and scrutinized—inmate health and system expense. Administrators felt it necessary to violate the Pennsylvania System that they so defended in order to serve health and economic logics. These were not purely for reasons of efficiency, however, as these violations had severe, unintended consequences for prison management.

¹⁰He noted elsewhere about the authorization of out-of-cell work, "In so doing the Warden and Inspectors did not conceive that the provisions of the law or the design of the system were violated or defeated." To illustrate this point, he noted, "The orders of the warden were that these men should be kept singly and separately at labor and in no instance to be suffered to converse with a fellow prisoner or even to see them." (Bradford, APS, Legislative Investigation, 1835, no page)

7.5 Unintended Consequences of Loose Coupling

Perhaps most importantly, administrators' decisions to loosely couple actual practice to the theory of the Pennsylvania System, in order to preserve the prison's external image, had negative consequences on internal prison management and, potentially, penal outcomes. In what follows, I examine the unintended consequences of the long-standing practice of assigning inmates to work outside of their cells. While limited to only a small population of inmates in each year, the practice sometimes had severe unintended consequences. Below I discuss four consequences of this practice, each of which constituted a further violation of the Pennsylvania System, potentially jeopardized its penological goals, and (in some cases) potentially discredited the reputation of the Pennsylvania System. Out-of-cell labor may have been unusual in its numerous, problematic, unintended consequences; however, as an extreme example, it brings into focus the ripple effects of administrative behavior that may otherwise occur on a smaller scale.

7.5.1 Chance Encounters

Out-of-cell work assignments led to inmates having unapproved contact with others. Despite the warden's orders that inmates "in no instance to be suffered to converse with a fellow prisoner or even to see them" (Bradford's testimony, APS, Legislative Investigation, 1835, no page), inmates (perhaps inevitably) indeed laid eyes on one another. Bradford mentioned one case in his 1835 testimony to the legislative committee, stating, "We had reason to believe from the investigation had before the Inspectors that these orders had not been strictly complied with so far at least as one prisoner for a moment in seeing another and that as to these employed in cooking and baking some evils had taken place" (APS, Legislative Investigation, 1835, no page). After hearing the testimony of all of their witnesses and closing the investigation, the legislative committee concluded,

Care seems to have been taken in this employment of convicts out of their cells, to keep them entirely separate from each other. This was certainly strictly enjoined by the warden, and if it was in any case departed from, it was the result of accident, not design, or grew out of the nature and manner of the employment of the convicts. (Pennsylvania, 1835, 18-19)

However, additional "accidents" continued to occur.

Another example suggests that inmates working beyond their cells were observed in other unauthorized ways. Inmate anonymity was central to the Pennsylvania System under the belief that a fresh start after incarceration, with no trace of a prison record, would enable former inmates to better resist the pressures to return to crime. Out-of-cell work assignments occasionally enabled unapproved personnel to learn the identity of inmates. The prison was frequently populated with construction workers repairing or constructing new structures, and these men sometimes laid eyes on the inmates. In his journal entry on April 5, 1846, Foulke recorded his observation that "No. 1896 (who was to be discharged the next week) was working in the garden between the 5th and 6th blocks. Three cart loads of dirt came in, and the drivers saw the convict, and he joined them in emptying the loads. The gardiner was present but still the thing was wrong" (APS, Foulke Papers, Prison Journals). No additional details about this incident were included in the record. The smoothness with which the event seems to have taken place perhaps implies the regularity of its occurrence or of events like it. In addition to violating the emphasis on privacy, such work assignments also violated the emphasis on solitude that was to be alleviated only by infrequent visits from official, sanctioned visitors like the administrators or members of the PSAMPP.

7.5.2 Inmate Rendezvous

Beyond chance encounters, out-of-cell work assignments sometimes enabled inmate rendezvous. The primary evidence for this comes from a collection of about a dozen letters in April and May 1862 from Elizabeth Velora Elwell, an inmate at Eastern, to her fellow inmate and lover Albert Green Jackson. These letters imply that on at least several occasions the two inmates got out of their cells and met together.¹¹ The letters indicate that some of their rendezvous were made possible by work assignments that took the inmates out of their cells. For example, Elizabeth wrote, “I will have to clean up stone to morow you not let them hear you speak of me my dear. There is but one thing that you must be careful not to let them catch you standing at the gate for they will mistrust us...” (Elwell to Jackson, April 18, 1862). Again, she indicated that being out of her cell for some unspecified reason (though presumably work, again) previously enabled conversation: “My dear love it is with pleasure and love that I answer your not for I am very lonely to night for I had to come up before I had time to talk to you” (Elwell to Jackson, April 28, 1862). That inmates on work assignment were able to speak to one another indicates some sort of failure on the part of their overseers in charge of supervising their activities, or possibly a complicit role for these guards. However, Elizabeth’s anxiety about being caught (revealed above) indicates that these were indeed clandestine meetings, unaided by complicit guards. On one occasion she was caught, apparently with other female convicts seemingly on their way to meet other inmates, too.

i have got the horror to day for juley and cate is all the time hollering to me and mr Samuel deal [an overseer] caught us so i am afridad they will shut me up... i can tell you who got the worden to have the gate shut up old wright was the one that done all of that good to us he was on the tower and saw you come to the window so he told old peck [the matron] of it and *the worden don't want to shut me up if he can helpe it* dam old deal if I had him by the neck he wood not never tell on eny of the rest of the prisnors and i could kill all of the rest of them so they will not make three horse carts of me if they try if it had not bin for you my dear i wood of told him to put his mark on my door but i said oh you wont do it this time mr deel *he told me if i wanted to keepe my situation i had got I had beter not be caught again* that is all he said to me... (Elwell to Jackson, May 11, 1862, emphasis added).¹²

¹¹In the first such letter, Elizabeth writes, “Dear Sir, It is with in my lonesome sell that I take my pen in hand to In form you that my heart was very sad after leaving you to Night but hope to see you every day but my dear albert there is a time coming when we will not have to run when anyone is coming. But my dear we can be like cats to play hide and seek and run when the dogs come to bark at us” (Elwell to Jackson, April 18, 1862). Similarly, in her next available letter, she wrote, “Dear Albert, I was glad to see you and get your note.... Oh dear one if we were out we wood not have to creap in the holes to talk one minet.... I am so fraid they will catch me I all most die” (Elwell to Jackson, April 22, 1862). And again, “My dear i am most dead every night When I come up to the old sell and leave you my dear honey.... But you are more and more to me every day that I see you.... [M]ay we see the time my dear that we will Not have to go to the cole seller to talk one word” (Elwell to Jackson, April 25, 1862). Such rendezvous appear to have continued at least into May 1862, when the letters are last available. Moreover, these later letters seem to indicate other possible rendezvous with another female inmate, but the information is sufficiently sketchy to prevent further detail.

¹²The listing of officers for that year’s Annual Report (Annual Report 1863) reveals that Samuel B. Deal was an overseer at the prison, while Abigail Peck was the prison’s matron in charge of female inmates (no employee by the name of Wright is listed in the reports for 1862 or 1863).

That several prison employees—Overseer Deal and Matron Peck—did turn the women in indicates that at least these employees were not complicit in the arrangement. Moreover, this passage *may* further indicate that Elizabeth’s “situation,” possibly referring to an out-of-cell work assignment but certainly a revocable privilege, enabled such meetings.

7.5.3 Inmate Intoxication

Out-of-cell work assignments also gave inmates access to contraband. A few references in the primary source material indicate that inmates had access to alcohol and became intoxicated while incarcerated. In her correspondence to her inmate lover, Elizabeth Elwell wrote, “[C]an you tell me where I can get a drop of gin” (Elwell to Jackson, April 18, 1862). Presumably, he told her or gave her some alcohol because in a later letter she wrote to him, “your liquer done me good to night for when i got up to my sell my head whirld like atope and i throde up all of my dinner and fell some what beter now dear” (Elwell to Jackson, May 7, 1862). The record does not indicate where Jackson obtained the liquor. However, another brief story of inmate intoxication indicates one possible source of alcohol within the prison. In his testimony for the legislative investigative committee on January 6, 1836, former overseer John Coxe explained, “I have seen one convict intoxicated. A yellow man who had been taken down to act as a waiter in front. He came up to the Center House slagging round the Center house, did not know where to go” (APS, Legislative Investigation, 1835, no page). As these episodes were several decades apart, we might expect that inmate intoxication was a fairly common consequence of out-of-cell labor assignments.

7.5.4 Escapes

Finally, and most dramatically, out-of-cell work assignments made escape possible. This was a far greater consequence than violating the prison’s emphases on anonymity, solitude, quiet reflection, and other such methods of confinement. Inmate escape violated the prison’s central command—to retain its inmates, whether to ensure social security from inmates or to reform them, which was only possible if they were present. During Inspector Bradford’s testimony to the legislative investigative committee in early 1835, he discussed five escapes from the prison that had occurred thus far. One of these “was that of No. 94, who was employed as a baker in the front building and who escaped over the top of that building” (APS, Legislative Investigation, 1835, no page). While that was the extent of the information given on this particular escape, the implication was that but for his assignment as a baker—which put him closer to the exterior of the prison and gave him access to a means by which he could get over the prison’s 30-foot walls—he would not have escaped. Escapes were not common at Eastern, and escapees were often returned. However, escapes rarely went unnoticed by those watching the prison.

7.5.5 Summary

The unintended consequences of administrators’ decisions to violate the Pennsylvania System by assigning inmates labor tasks outside of their cells were staggering. The prison was known for the complete separation, anonymity, and control of its inmates. In reality, inmates knew each other’s identities, as did unofficial personnel, while some inmates carried on passionate relationships, got drunk, and even escaped. Many of these additional ad hoc violations of the Pennsylvania System were unintended consequences of authorized violations. They presented problems for prison administrators, both by way of making prison management more challenging and by potentially

harming the prison's reputation. However, administrators appear to have tolerated these relatively infrequent problems of prison management as much as they tolerated the more likely negative impact on penal goals.

7.6 Conclusion: Organizational Influences on Practice

While these specific examples are unique to Eastern, and this roughly forty-year period of its history, they reveal several themes that are common across different kinds of organizations, themes that have consequences for actual practice. These themes include the practice of loose coupling, the presence of competing logics, and the unintended consequences of administrative behavior. I review each in turn.

7.6.1 Influence of the Environment Through Competing Logics

Neo-Institutionalists have long emphasized the influence of an organization's environment on organizational behavior. This influence may come from the organizational field specifically or from the larger setting in which that field is embedded (e.g. Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Edelman, 1990). Much of this influence, however, is at the level of formal structures and symbolic behavior (e.g. Edelman, 1992). More recently, inhabited institutionalists (e.g. Hallett and Ventresca, 2006) have demonstrated that these environmental influences do not seamlessly materialize into practice, but rather undergo a localized process of translation by organizational actors. In part as a consequence of human agency, but also in part due to structural issues, the impact on practice of institutional logics, for example, can vary within a single organization. The level of impact, moreover, may change over time as logics become more or less strongly coupled to practice by external mandate (Hallett, 2010). Variation in the impact of these influences can also occur across departments depending on the particular backgrounds organizational actors in those departments bring with them and the level of external supervision over each department (Binder, 2007). The strength of logics in determining outcomes can also vary simply depending on which actors are present at a decision making process, because different actors may be more or less dedicated to specific logics (Heimer, 1999). Thus, even logics that are dominant within the field may not shape an organization's actual practice. In the case of prisons, punishment as a social institution, its penal logics, may not control on-the-ground practice in prisons.

At Eastern, in particular, we observe multiple, competing influences, and the penal logic was rarely dominant in shaping decisions about actual practice. The logics of punishment and race, competed with organizational logics, including the preservation of inmate health and achieving cost-effectiveness. As is the case in other organizations, these logics had heterogenous impacts, as some logics were more influential on some practices than on others. However, which influence ruled was largely determined by the need to protect the reputation of the Pennsylvania System. Particularly in light of the uncertainty administrators faced in their job, this imperative would have been especially useful.

7.6.2 Loose Coupling and Symbolic Compliance

The Pennsylvania System constituted a formal structure; by claiming their devotion to this practice, but not fully adhering to it in practice, they only symbolically complied to this structure in which actual practice was "loosely coupled" to the formal structure's rules. Loose coupling, a commonly recognized phenomena in the literature, allows organizations to retain the benefits from publicly

appearing to adopt some legitimacy-conferring structure, while allowing the organization to pursue its organizational imperatives—efficiency, cost effectiveness, profit—without the constraint of the formal structures. (Edelman)

Eastern’s officials were primarily interested in protecting the reputation of the Pennsylvania System and less interested in its perfect implementation of the Pennsylvania System. As we observed in Chapter 4, officials were quick to complain when the legislature’s (in)actions caused violations of the Pennsylvania System in practice. However, they were quiet about deviations they themselves caused—including some of the same practices, like double celling. That is, when factors like underfunding or understaffing gave the Pennsylvania System less than a full chance to succeed (especially when these factors could have consequences for measureable outcomes like total expense) officials sought to ameliorate these conditions. However, if the Pennsylvania System had to be bent in practice for a small number of inmates to put the prison in the best light possible, officials were willing to do so. Rather than a dynamic phenomenon (Orton and Weick, 1990; Hallett, 2010), loose coupling at Eastern appears to have been a ready response to problems with the Pennsylvania System from the very beginning in the 1830s until complete decoupling in the late 1870s.

7.6.3 Unintended Consequences

What is particularly interesting when observing actual practice is the way in which administrators decisions had unintended consequences (Merton, 1936; Selznick, 1949). Selznick (1949) in particular has outlined a number of ways in which administrative attempts to preserve some unique aspect of an organization can backfire. Administrative alterations to their organization, with the intention of maintaining a functioning, ordered system, may “result in a deflection of their original goals” (256). For example, cooptation—adopting elements to appease powerful challengers to an organization—can ultimately lead an organization down a path that greatly deviates from its foundational purposes, often by limiting the available range of choices, but also if the element is directly at odds with these purposes (14–16).

Indeed, we see unintended consequences at multiple levels for Eastern’s administrators. Administrators’ alterations of the Pennsylvania System at Eastern had consequences for the prison’s internal manageability: at worse, some practices enabled inmates to escape. While problematic for inmate management, some consequences also had larger ramifications for the prison’s external legitimacy (and the legitimacy of the Pennsylvania System). When administrators were obliged to report the escapes, for example, or the public learned of these eventualities in other ways, the profile of the Pennsylvania System was not improved. The net effect of these decisions is unclear: for example, it is likely impossible to evaluate the impact of their decisions to loosely couple on the reputation of the Pennsylvania System, and weigh this impact against their negative consequences, the exact frequency of which is unclear. However, the effects of administrative decisions at least had the potential to defeat the goals not only of the Pennsylvania System, but also administrators’ own goal to preserve the reputation of the Pennsylvania System.

Chapter 8

Conclusion

8.1 Summarizing the Argument

This book has suggested that administrative support was crucial to the unlikely longevity of the Pennsylvania System at Eastern State Penitentiary between 1829 and 1875 (see Table 8.1). Despite significant field-level institutional pressures to adopt the Auburn System and other challenges, Eastern's administrators fought to preserve the Pennsylvania System through vehement rhetorical defenses of the Pennsylvania System and through strategic but marginal alterations of the Pennsylvania System. By contrast, this support was not forthcoming at other prisons that temporarily subscribed to the Pennsylvania System, and administrative opposition led directly to its decline at these prisons. Coercive and normative forces, specific to Eastern, that may have enabled the retention in theory had little influence over organizational behavior in practice. Moreover, other explanations are inconsistent with the data available.

This book has also argued that Eastern's administrators were motivated to retain the Pennsylvania System because it offered specific phenomenological benefits to them. Rhetorical defenses offered a source of status identity for the administrators, one that was reaffirmed in the process of defending the Pennsylvania System. Retaining the Pennsylvania System, necessary for maintaining this existential benefit, brought clarity to otherwise difficult decisions, which could be resolved through the imperative to do what is necessary to preserve the public image of the Pennsylvania System. Indeed, once these benefits were no longer available, the administrative position changed and the Pennsylvania System declined rapidly at Eastern.

8.1.1 Vehement Rhetorical Defense

Administrators spent large portions of each annual report defending the Pennsylvania System. They *characterized* their prison, its methods, the Pennsylvania System, and its personnel as "humane," "benevolent," and "progressive." In doing so, they not only rejected the calumnious myths from the field that described the Pennsylvania System as cruel and inhumane. These characterizations, however, also allowed the personnel to directly describe themselves in similarly cloying terms, ascribe to themselves a particular character, and generally benefit from the affiliation with what they called a humane prison.

Administrators also constantly *evaluated* the effectiveness of the Pennsylvania System at Eastern through statistical analyses, often in comparison to other prisons' information, and explained away any possible failures. These arguments also challenged the substance of the calumnious myths, particularly the focus on inmate health, the expense of the Pennsylvania System, and

its success in reducing crime. However, by claiming that Eastern was a superior prison, due to its reliance on the Pennsylvania System, administrators also supported their own status within the field through their affiliation with the Eastern.

Finally, Eastern's administrators claimed *special expertise* over the administration of punishment and the "penal science" which gave them, and not their critics, special authority to evaluate the propriety of the Pennsylvania System. While professionalization allowed them to reject the authority of those propagating the rational myths, as well as other challengers to the status quo at Eastern, it also allowed them to directly claim this special status for themselves.

Their rhetorical defenses of the Pennsylvania System at Eastern thus allowed the administrators a method to secure an exalted status identity. This status identity need not have been actually recognized within the field—that is, the defenses did not have to be convincing to others—for administrators to benefit. Moreover, the administrators need not have believed the arguments they were making, exactly. Instead, the public demonstration of status identity may have been enough to resolve any potential existential crises they faced privately in response to external claims that they were employing a normatively problematic system that was ultimately worthless.

8.1.2 Strategic, Marginal Alterations

Despite administrators' staunch defense of the Pennsylvania System at Eastern, administrators strategically altered the Pennsylvania System to make it structurally less vulnerable to criticism. Over the years, they *changed the definition* of the Pennsylvania System to decouple it from problematic associations with previous modes of confinement. Administrators also offered *policy recommendations* that, if followed, had the potential to improve the statistical evaluations of the Pennsylvania System at Eastern or to mitigate factors that caused obvious (i.e., necessarily public) contradictions in practice. Finally, administrators simply authorized actual implementation to be *loosely coupled* with the full plan of the Pennsylvania System: when a particular component of the Pennsylvania System proved inconvenient for its public assessment, it was changed in small ways or for a small population.

Each of these alterations reflected a central imperative that seems to have guided administrative behavior at Eastern: do whatever is necessary to display the Pennsylvania System at Eastern in the best possible light for public evaluation. For administrators who faced material challenges, ambiguities in the understandings of what the Pennsylvania System would look like in practice, and conflicting goals, this imperative potentially made decision making less burdensome. Indeed, adaptations would have been necessary simply to keep up with changing understandings of criminogenesis and broad understandings of crime prevention. The changing context in which Eastern existed, including a growing city and a changing population would require additional adaptations. Moreover, actually adhering to the letter of the law for the Pennsylvania System would have been impossible given the material constraints. However, focusing on the public image of the Pennsylvania System—which was foundational to the status identity they gained in its defense—offered a course for them to follow. If administrators were anxious about ambiguous goals and unknown technologies without an external model, this imperative may have gone a long way towards alleviating that epistemic uncertainty.

While the specific course taken at Eastern may have been unique to this exceptional organization, the lessons from this case can be extended to studies of other kinds of organizations and to the study of punishment and society. For organizational scholars, this study has illustrated a new limitation of institutional isomorphism, demonstrating the way in which agency can sometimes override structure. Below I outline some conditions under which administrative support may

Defensive Posture	Reactive	Proactive
Supportive Technique	Vehement Rhetorical Defense	Strategic Marginal Alterations
Examples of Technique	1. Positive characterizations 2. Evidence-based evaluations 3. Claims of professional expertise	1. Changing definitions 2. Policy recommendations 3. Loose coupling in practice
Target	Calumnious Myths	Structural Vulnerabilities
Administrative Benefit	Status Identity (existential)	Imperative (epistemic)
Institutional Pressure Mitigated	Normative Criticism	Uncertainty

Table 8.1: How and Why Administrators Supported the Pennsylvania System

override institutional pressures. For punishment and society scholars, this study has illustrated the value of examining prisons as organizations, including the utility of organizational theory, the importance of front-line workers, and the importance of an organization’s external legitimacy. Before discussing those specific extensions, however, I lay the foundations for a theory that combines organizational and criminological theory to extend the current analysis.

8.1.3 Towards a Theory of Organizational Deviance

Neo-institutional theory did not help explain the puzzling case of Eastern’s exceptional retention of its heavily criticized Pennsylvania System. However, I suggest that Eastern’s history provides new insights into the isomorphic diffusion of prisons—and other organizations or formal structures and policies. In this section, I briefly introduce a neo-institutional conception of organizational deviance.

Current understandings of organizational deviance examine criminal or unlawful organizational behavior, as in white-collar crime (Braithwaite, 1984; Monahan and Quinn, 2006; Benediktsson, 2010) or civil-rights violations (Kelly, 2010), or lawful organizational behavior that inadvertently results in negative consequences, as in technological disasters (Vaughan, 1999) or school shootings (Fox and Harding, 2005). Instead, I offer a conception grounded in *heterodox* organizational behavior. Here, neo-institutional theory’s (Meyer and Rowan, 1977; DiMaggio and Powell, 1983) emphasis on the importance of conformity within organizational fields is especially useful. While nonconformity can have fatal consequences for an organization and its legitimacy, I suggest it may also render an organization deviant. I define organizational deviance as organizational behavior that violates the norms, standards, or expectations of the organizational field or its larger environments, and is therefore treated as problematic. A deviant organization is one that engages in organizational deviance. I briefly explain how an exceptional organization can become a deviant organization, its relationship with isomorphism, and its response to the deviant label. This conception of organizational deviance offers insights into the process of institutionalization, highlighting the often-overlooked emotional, non-rational dimensions of diffusion.

Exceptional organizations like Eastern, which engage in overt structural nonconformity with an otherwise isomorphic field, are potential deviant organizations. Though nonconforming behavior need not be criminal nor have negative consequences, it exists beyond the norms of an organizational field. Social or organizational norms include two dimensions: first, they inhere in a group and therefore have some amount of generalizability across entities (a quantitative dimension); second, they direct how individuals or entities should behave (a qualitative dimension). By corollary, deviance consists not only in the quantitative difference from “normal” behavior (rarity), which may include innovation, but also in the qualitative difference, inviting normative critiques

of the behavior as undesirable. Organizational exceptionalism, by virtue of its rarity, renders an organization eligible for a deviance label, but the normative critique of the organization's structures constructs the organization as deviant.

Professionals are often sources of institutional isomorphism (DiMaggio and Powell, 1983). They can encourage organizations to adopt specific structures through rational myths, or pragmatic explanations about the structure's efficiency, cost-effectiveness, or other utility (see Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Heimer and Petty, 2010; Edelman et al., 1999). However, when an exceptional organization exists, professionals may use the opportunity to propagate calumnious myths to promote their preferred structure at the expense of the exceptional organization's structures. The more convincingly the exceptional organization's structures are constructed as deviant, the easier the decision to adopt the preferred structures becomes. Organizational deviance thus aids the diffusion of what become dominant, institutionalized models.

As I have discussed, Eastern's reliance on the Pennsylvania System was heavily criticized through calumnious myths throughout the period, especially the antebellum era. Calumnious myths were powerful forces in the nineteenth-century carceral field. As we have seen, pseudo-professional penal reformers argued the Pennsylvania System would cause insanity, illness, and death among inmates; it was cruel and inhumane; it was expensive and unprofitable; and it would be ineffective and impractical. These myths constructed Eastern as a deviant organization for its continued reliance. They also helped diffuse what became the dominant model. They were the basis for legislatures' decisions to adopt the Auburn System, while prisons following the Pennsylvania System cited the "incarnation" (Hallett, 2010) of these myths as reason for abandoning it.

Whereas calumnious myths help to galvanize the field against a subaltern structure, they may strengthen deviant-organizational actors' commitment to their deviant structure. As noted earlier, Selznick (1949, 48) has suggested that debate creates a crucible in which individuals' identities fuse with their organization. Similarly, actors within a deviant organization become living effigies of their organization's deviance, creating a necessity for them to challenge attributions of their deviance. Actors might deflect this understanding of themselves as deviants by deploying techniques of neutralization, accounts of their behavior that mitigate responsibility or blame (Sykes and Matza, 1957; Scott and Lyman, 1968). These techniques allow delinquents to reconcile their beliefs about their own virtue with the fact of their criminal behavior, and mitigate the shame of being labeled "deviant" (Sykes and Matza, 1957). Similarly, these techniques may offer deviant-organizational actors a way to challenge their deviant identity. Consequently, as with non-organizational deviants, techniques of neutralization may help to perpetuate organizational deviance—and overcome the institutional pressures to conform.

Eastern's administrators relied on the techniques of neutralization to challenge the deviant status attributed to their prison (and to themselves). This is primarily evident in their rhetorical defenses (Chapter 4, Chapter 5). I have emphasized the role of administrators' status identity in explaining these statements. I have also suggested that their statements sought to neutralize the claims of the calumnious myths and thereby defend the Pennsylvania System and their system. However, the techniques they used to deny the calumnious myths and to defend their system [map on to] the classic means of denying one's deviance. By characterizing their prison and themselves as humanitarian and benevolent individuals, they described their actions and their retention of the Pennsylvania System as serving as more important ends than those employed by other prisons ("appeal to higher loyalties"). Through their evaluations, they denied that their inmates were disproportionately going insane or dying, that their prison cost the taxpayers more than other prisons, that their system was less effective than other systems ("denials of injury"). By providing expla-

nations that blamed individuals and conditions for actual bad outcomes, they denied responsibility for these outcomes (“denial of responsibility”) (Chapter 4). Through their efforts at professionalization and their claims to knowledge expertise, they exalted their own authority as the proper judges of policy and their prison and disclaimed the authority of penal reformers and legislators who might interfere or critique their work (“condemnation of the condemners”) (Chapter 5). Such statements allowed the administrators to believe, or at least publicly describe, their own righteousness and even superiority over others. These statements, I suggest, helped secure administrators in their duties, and kept them from abandoning the Pennsylvania System despite strong institutional pressures and criticism. We can understand this through a phenomenological framework as I have suggested or through the classic understandings of criminology.

Technique of Neutralization		Administrative Support at Eastern		
Technique	Definition	Admin. Strategy	Example	
Appeal to Higher Loyalties	Attributing an outcome or behavior to more important values or goals (especially those of a more relevant audience)	Characterization	Describing the prison and its employees as humanitarian	
Denial of Injury	Rejecting the existence of harm	Evaluation	Quantitative examinations of health, mortality, and insanity; cost; and success in reforming and reducing recidivism	
Denial of Responsibility	Rejecting accountability for a bad action or outcome	Scapegoating	Blaming inmate mortality on racial, class, or prior health of inmates	
Condemnation of the Condemners	Undermining the validity of the accusers	Professionalization	Claiming ignorance of opponents	
Identity Switching	Changing status to avoid the need for an account	Marginal Adaptations	Abandoning “solitary or separate confinement at hard labor with religion” for the “Separate System”	

Table 8.2: Administrative Support as Techniques of Neutralization

While this project has focused on the administrators’ reactions to their deviant status, the true significance of this theory of organizational deviance comes from the deviant organization’s effect on the field. Future research should explore the extent to which legislators referenced the terrors promised by the myths about Eastern in their decisions to adopt the Auburn System. Did these legislators ever suggest the importance of emphasizing their difference from the deviant system?

8.2 Extending the Limits of Institutional Isomorphism: Structure v. Agency

Another way of asking the central question of this study is why does neo-institutionalism fail to explain this case when it explains what occurred in the rest of the field—the rapid and widespread diffusion, the factors behind it, and the field’s response to Eastern’s exceptionalism. Eastern State Penitentiary during the period 1829–1875 represents a significant exception to the theory of institutional isomorphism. For over 40 years, that organization resisted the institutional and other pressures that led other prisons to institutionalize the same set of formal structures that otherwise characterized the carceral field. I have suggested that this was largely possible because of administrative support for the structures that made their prison exceptional. Like the growing body of scholarship under the metric of inhabited institutionalism, this study emphasizes the importance of

agentic factors over structural factors, of personal interests over environmental forces. The findings of this study thus echo critiques of neo-institutional theory: I suggest that the emphasis on structure over agency diminishes neo-institutionalism's ability to explain single-point exceptions of its theory. Agency plays an important role in both the "old institutionalism" of Philip Selznick and in the emerging field of inhabited institutionalism (e.g. Hallett and Ventresca, 2006).

Neo-institutionalists have long been criticized for the generally non-existent role of agency, the ability of actors to affect outcomes (e.g. DiMaggio, 1988). In part, this results from an emphasis on the field level, rather than the organizational level, and thus an emphasis on formal structures over the meaning of these structures. Within neo-institutional theory, an individual or organization's ability to act is often viewed as somewhat constrained by its environment—one cannot think beyond existing cognitive frames; one realizes that violating certain norms is not only bad in its own right, but would also bring repercussions; and one also knows that not doing what is required will likely lead to fewer resources or loss of certain privileges. While scholars have begun to explain institutional change, pointing to the role not only of exogenous shocks, but also entrepreneurs, inhabited institutionalism (e.g. Hallett and Ventresca, 2006) has emerged to provide a bridge between these field-level forces and what happens on the ground, at the level of the organization. They emphasize the role of individuals' backgrounds in shaping their behavior (Binder, 2007), the challenges of needing to negotiate between multiple institutional logics (Heimer, 1999), and the countervailing force of local culture in shaping outcomes (Fine, 2006). Another theme is the influence of already institutionalized practices and culture in resisting new structures, imposed by institutional pressures (Hallett, 2010; see also Gouldner, 1954). Though with different motivations (conscious or not), local actors have been demonstrated to mitigate the influence of institutional forces, through the proxy of formal structures, on micro-level decisions and outcomes that may be invisible to the field. Inhabited institutionalism has not yet provided a full theory of agency, but it highlights an important factor that is left out of neo-institutionalism.

8.3 Bringing the Organization Back into the Study of Punishment

In the Introduction, I described the minimal focus on prisons as organizations and the general absence of organizational theory in the study of punishment. Below, I elaborate some of the characteristics of prisons as organizations that will improve the state of the research, particularly the role of organizational character, administrators, and external legitimacy. I begin, however, by addressing the special role that can be played by neo-institutional theory.

8.3.1 Neo-Institutional Theory

While the present study has largely focused on an exception to the neo-institutional prediction of isomorphism, it has also demonstrated the success of neo-institutional theory in explaining the rapid and widespread diffusion of early carceral forms. As discussed earlier, neo-institutionalism provides an important complement to the compelling cultural, political, social, or economic explanations by explaining why the prison enjoyed such widespread popularity despite the great heterogeneity across the states that adopted it. I am not the first to suggest the utility of neo-institutional theory in punishment studies (see especially Sutton, 1996) or to use it. At a macro-theoretical level, Hagan (1989) offered his own theory of punishment relying on neo-institutional theory, emphasizing the role of loose coupling within and across penal organizations. Relatedly, Wacquant (2010) has used its framework to interpret prisoner reentry. Sutton has used neo-institutional theory to explore several penal reforms and especially the role of penal reformers therein, focusing

on innovations in juvenile justice throughout history (Sutton, 1988), the diffusion of public and private facilities for juvenile incarceration during the Progressive Era (Sutton, 1990), and the diffusion of mental asylums in the same period (Sutton, 1991). At the level of prosecution, McGarrell (1993) and King (2008) have identified correlations between racial inequality and the level of coupling within and across penal organizations. Working at the level of criminal justice scholarship, Savelsberg (1994); Savelsberg et al. (2004) has exemplified the impact of organizational factors on the production of criminological knowledge. The general absence of neo-institutional accounts of punishment is thus rather surprising given not only its ability to explain quite well trends in punishment, but also the fact that several well-positioned scholars are aware of and have used this theory in their work.¹

8.3.2 Organizational Character

I have emphasized the importance of taking penal organizations seriously when exploring field-wide or more local penal trends. In particular, I emphasize Selznick's statement that an organization, once formed, develops "a life of its own" (Selznick, 1949, 10), generating its own momentum and motivations, and that prison administrators play important roles in this process. I argue that the unique character of Easterns and the role played by Easterns administrators was instrumental in that prisons' unexpected history; but the importance of prison character and administrators in shaping penal policy and practice is by no means unique to this historical and deviant case. There are likely many examples of prisons, like the California Institute for Women, in which the unique character of the prison, [molded] during the last rehabilitative era, continues to shape the way in which punishment is meted out and inmates' prison experience generally despite new generations of personnel (see Kruttschnitt and Gartner, 2005; Piacentini, 2004). Beyond local practice, the preservation of organizational values or their unique character can motivate prison administrators to gain legislative (or department of corrections) authorization of essential policies. Recently, beyond penal administrators, front-line workers have become active in lobbying for changes to penal policy (Page, 2011).

8.3.3 The Importance of Administrators (and Other Front-Line Actors)

Penal administrators are particularly important for theoretical considerations of penal trends. Rothman (1980) has demonstrated the importance of administrative support of Progressive-Era reforms, as well as their role in shaping these reforms for their own pragmatic ends (see also Sutton, 1988, arguing that the reforms had little impact on practice). But the role of prison administrators in shaping policy continues today even if wardens no longer have the same "fiefdom"-like control over their prisons as in earlier eras (see Jacobs, 1977). Despite post-Civil Rights courts reigning in this discretion (Feeley and Rubin, 2000), prison administrators continue to shape penal policy as courts continue to defer to the needs of the prison, which administrators are believed to understand better than supposedly interloping courts (*Bell v. Wolfish*, 1979). Moreover, this influence is particularly important to take into account because, in addition to having their own organizational motivations, recent empirical research had demonstrated gaps between field-wide penal logics and the penal logics on which penal actors rely. These go beyond pragmatic organizational imperatives, and

¹Indeed, a rich area of neo-institutional analyses of criminal justice is the examination of the police, which has been long examined as an organization (Reiss, 1992; Maynard-Moody and Musheno, 2003; Katz, 2001; Willis et al., 2007). The fact that punishment scholars often work with policing scholars makes the absence of organizational and neo-institutional theories even more puzzling.

can include the need to make their work meaningful to them (Lynch, 1998, 2000; Lucken, 1998). The retention of the moniker “correctional officer” by prison guards in an era of tough-on-crime punishment (Page, 2011) is one example. Finally, those closest to the front line will naturally have a significant impact on actual practice (Lipsky, 1980). Though not as close as correctional officers, prison administrators are closer to the ground than department of corrections bureaucrats and prison administrators throughout history have had immense discretion in implementing penal law (Jacobs, 1977; Oshinsky, 1997).

8.3.4 Legitimacy

The magnitude of the legitimacy problem within the field of punishment has not been neglected. The legitimacy of penal policies, technologies, practices, and organizations has been a significant focus of punishment and society scholars. In their work, however, punishment scholars have utilized a different conception of legitimacy, one rooted in the ability of power to justify itself (Beetham, 1991). Perhaps as a consequence, punishment scholars have been primarily interested in the legitimacy of power to punish. One focus has been on the conditions under which particular penal regimes, often associated with a particular technology of punishment, gain or lose their legitimacy. For example, Foucault (1977) suggests that a different political environment (a democracy in place of a monarchy) made spectacular displays of punishments unacceptable, and the more discipline-based punishment of the prison more acceptable. For Garland (Garland, 1985; see also Garland, 2001), crises of penalty brought the legitimacy of existing structures and technologies of punishment into question, necessitating a new system of penalty in the period between 1895 and 1915. Offering a somewhat Marxist account, Ignatieff (1978, xi) demonstrates political elites’ use of ideology to make the technology of the prison legitimate, meaning “just, reasonable, and humane.” More recently, the failure of penal strategies to succeed, and of the state to reduce crime, have been described as delegitimizing the state and the power to punish (e.g. Garland, 1996, 2001). These power-based accounts of penal legitimacy have largely been focused on the level of the field and on the governmental (rather than organizational) agents of punishment. Within this tradition of power-based accounts, however, scholars have also examined legitimacy at the level of the prison. Specifically, there has been great attention to the conditions under which inmates acknowledge the legitimacy of the prison and the impact this conferral has on prison order (Useem and Kimball, 1989; Sparks and Bottoms, 1995; Sparks et al., 1996; Carrabine, 2005). However, while acknowledging the impact of prison riots on the prisons legitimacy, they have offered limited attention to field-level legitimacy issues for the prison. Attention to the prison as an organization brings the question of organizational legitimacy within the penal field—what I call external legitimacy—into focus.

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Leading accounts of punishment have often focused on the economic and political powers that have shaped the landscape of punishment. By contrast, this book has offered institutional, organizational, and personal agentic factors that shaped the course of America’s prison history. Undoubtedly initiated by economic and political factors, the early prisons diffused across the country and rooted in very different climates, propelled by institutional pressures at the field level. These pressures helped to institutionalize the prison, and the Auburn System of prison discipline, in the

American penal landscape. These pressures are alive today and can be observed in the diffusion of penal legislation (e.g., the three strikes law, sex offender registries), new carceral forms (e.g., the supermaximum security prison), and the official rhetoric of penal agents and organizations (e.g., department of corrections' mission statements).

However, the diffusion of formal structures across the penal field need not be a story of an inescapable "iron cage." These pressures should have caused Pennsylvania to adopt the hegemonic Auburn System before the Civil War. The resistance of a few dozen prison administrators at Eastern buffered their Pennsylvania System from unwanted incursions and made possible the unlikely retention of a subaltern system. These organizational actors challenged the material and institutional pressures from the carceral field for over forty years. Likewise, individual administrators and their colleagues have shaped exceptional prisons and state departments of correction that buck the national trend. San Quentin State Prison is well known in California as a unique prison: despite that state's generally tough on crime demeanor (Zimring et al., 2001; Kruttschnitt and Gartner, 2005; Gilmore, 2007; Page, 2011), San Quentin offers over one hundred rehabilitative programs to its inmates and is generally conceded to be a good place to do one's time, to the extent that any prison can be described as "a good place." Likewise, for much of the twentieth century, while most states' prison systems endorsed correctionalism and rehabilitation, states in the Sunbelt and especially Arizona clung to their regionally and culturally preferred tough and cheap punishment (Lynch, 2010). Many of these decisions can be traced to individual organizational actors.

While economic and political incentives have captured most of the attention among punishment and society scholars, existential motivations are also important. Fligstein and McAdam (2012, 43) argue that "the human capacity and need for meaning and identity is as much a structuring force in social life as the material demands on the collective." If they are correct, the contours of punishment should be as heavily influenced by individuals searching for meaning and trying to make their lives meaningful as by individuals trying to turn a profit from prisons or to use prisons to oppress minorities. This existential motivation appears to be a much stronger explanation for the retention of Eastern's Pennsylvania System than any motivation of profit or minority oppression. The source of existential and epistemic benefits, their characters and reputation were irrevocably linked with the Pennsylvania System they so defended. Identifying other ways in which penal administrators bring meaning to their lives in ways that indelibly shape penal practices will be a vital agenda going forward as the United States begins to extricate itself from the grip of mass incarceration.

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Appendix A

Archival Sources

American Philosophical Society

Foulke, William. 1846–1852. Notebooks Concerning Prisons and prisoners, Box 7, William Parker Foulke Papers, American Philosophical Society.

Overseer's Roll. 1843, 1844. Series I, State Penitentiary for the Eastern District of Pennsylvania Records, American Philosophical Society.

Elwell, Elizabeth Velora. 1862. Elizabeth Velora Elwell Correspondence. Series III, State Penitentiary for the Eastern District of Pennsylvania Records, American Philosophical Society.

Pennsylvania. 1835. Legislative Investigation Testimony. State Penitentiary for the Eastern District of Pennsylvania, Committee. Series II, State Penitentiary for the Eastern District of Pennsylvania Records, American Philosophical Society.

Pennsylvania State Archives

E.S.P. 1829–1877. Wardens Daily Journal (#15.50). Volumes 1-2. Eastern State Penitentiary Collection, Record Group 15, Pennsylvania State Archives.

E.S.P. 1829–1875. Minute Books of the Board of Inspectors and Board of Trustees of the Eastern State Penitentiary (#15.44). [Volumes]. Eastern State Penitentiary Collection, Record Group 15, Pennsylvania State Archives.

Historical Society of Pennsylvania

Pennsylvania Prison Society. 1854–1885. Minute books. Series I, Vol. 27–29, Pennsylvania Prison Society Records (Collection 1946), Historical Society of Pennsylvania.

Primary Source Series

Annual Report of the Board of Inspectors of Eastern State Penitentiary. 1831–1876.

Annual Reports of the Board of Managers of the Boston Prison Discipline Society. 1826–1845.

Appendix B

Methods

To understand how Eastern retained its Pennsylvania System, I examined a variety of primary source materials produced primarily between 1820 and 1880. I selected materials that could illuminate the state of the carceral field, the arguments made by penal reformers on both sides of the debate, how Eastern’s administrators publicly defended and described their system, and what actually happened on the ground at Eastern. I thus reviewed both public and private, ephemeral as well as regularly produced documents. This body of primary sources was supplemented by a large secondary literature on the early prisons and penal reform that provided a greater understanding of the penal and social context.

Within the penal field, I was most concerned with states’ adoption of the prison—the timing, the content of the prison discipline, eventual alterations. To this end, I culled from the secondary literature a rough list of the proto-prisons and prisons that were built from the Revolution until the Civil War. As much of the information was contradictory and rather thin, I used this list as a guide to collect the foundational and significant statutes for each prison built in this period. This process resulted in a dataset (too small for quantitative analyses) of all the prisons built, with the relevant information. For Pennsylvania, in particular, I collected all statutes relevant to Eastern and Western State Penitentiaries from 1820 to 1880.¹

To get a sense of the arguments made by reformers, I reviewed penal reform–related articles from several sources. I relied on the very long-running digest, the *North American Review*, which commented on recent publications focused on a wide range of contemporary intellectual issues, including penal reform. These articles allowed a kind of snowball sampling, leading me to a number of influential pamphlets written by penal reformers. I also reviewed the annual reports of the Boston Prison Discipline Society and the PSAMPP. These groups represent the dominant penal reform groups engaged in the debate over the mode of confinement; the latter group was the lone private defender of the Pennsylvania System, while the former represented a major force behind the propagation of calumnious myths aimed at the Pennsylvania System. These groups used their annual reports to circulate arguments for their respective sides of the debate.

My primary interest, however, was to understand how Eastern’s administrators described and defended the Pennsylvania System and Eastern. I relied most heavily on the prison’s Annual Reports to the state legislature, which include reports from the Board of Inspectors, Warden, Physician, Moral Instructor, and later Clerk and School Teacher, what I identify as the prison administrators. These are the primary documents through which the administrators publicly defended

¹Many of these statutes were already collected in a volume allegedly containing all statutes relevant to Eastern until 1904, but this volume was incomplete.

their prison, and were their primary form of accountability to the legislature, their source of power, funding, and resources. Eastern's administrators were required to proffer these yearly reports to the legislature with certain relevant information.² These documents were also widely circulated to reformers and prison administrators across the country and in Europe; they were as much the intended audience as the legislature to which the administrators were legally required to report. I performed content analyses on these documents through the following process. First, I read the decadal reports from 1830 to 1930, and listed apparent themes within and across the documents, important changes in tone or substance, and other miscellaneous material. From this list, I constructed an initial list of codes that I supplemented with other codes I expected to observe based on the penal, historical, and organizational literatures. Over several months, I chronologically coded the annual reports published between 1831 to 1876, using both open and focused coding based on themes observed. As new codes emerged that I found important, I recoded earlier documents as needed. I also wrote memos regarding my impressions and questions raised by the data. Upon completion of the coding, I bundled relevant families of codes together and set aside others; the relevant codes formed the foundation of the central chapters in this book. As a check on my analyses, two undergraduate research assistants performed separate content analyses on the decadal reports to 1880, employing focused coding of the documents, which were analyzed in a random instead of chronological order; I utilized the output of this work to estimate the frequency of these trends over time and provide a more objective measure of change over time.

Understanding what actually happened on the ground at Eastern was (predictably) the most challenging. As is always the case with historical projects, what I think happened is heavily based on what was written down, what writings were preserved, and which preserved writings I could find. Selection bias and actual misinformation thus likely color my perceptions. Indeed, I largely understand my method of determining actual practice as following non-random sampling: I found some very detailed descriptions of practice and some very thin. For some practices, I have longitudinal records, and for others, entire periods are missing. Many of the accounts offer mere glimpses and therefore offer only superficial insights into what actually happened. Importantly, I had access to enough sources that I was able to triangulate the data. The Warden's Daily Journal (1829–1880) (PSA, Warden's Daily Journal) offered one of the richest sources. This source provided brief accounts of practice throughout the full period examined. Other sources were more temporally constrained but provided greater details for these shorter periods. Some of these other sources included a legislative investigation (testimony and official reports) into the prison (in 1834–1835) (APS, Legislative Investigation, 1835, no page, Pennsylvania 1835, (McElwee, 1835a)), some internal prison records (e.g., APS, Admissions Ledger A, APS, Overseer's Role), the diary of a prison reformer who frequently visited the prison in the 1840s and 1850s (APS, Foulke Papers, Prison Journals), and a about a dozen inmate letters from the 1860s (APS, Elwell Correspondence). I also relied on a non-random, in-the-archive sample of the meeting minutes of the PSAMPP, a reformer group charged with regularly visiting inmates (HSP, Prison Society Minutes) and the meeting minutes of the prison's board of inspectors (PSA, Inspectors' Minutes). (After this research, I learned of additional records from the Prison Society, as well the personal records of the prison's physicians and moral instructors, which I do not have access to.) These sources came from three archives: the Pennsylvania State Archives, the Philadelphia Historical Society, and the American Philosophical Society. While I do not claim to have anything near a comprehensive

²As the Inspectors themselves noted (Annual Report 1865, 92), "These reports constitute, collectively, the philosophy and developments of this system. It cannot be properly judged without reference to them, and should not, since otherwise it would be both an injustice and a neglect."

picture, the sources provide enough of a *sense* of what occurred. Combined with the legislation and annual reports, these sources provide insight into what was supposed to take place within the prison, what officials said took place, and a range of first-hand accounts about what did take place.

Finally, I was also interested in understanding how Eastern and its administrators were described by those not directly affiliated with the prison. To this end, I examined sources of popular media and the Pennsylvania governors' annual addresses between 1829 and 1880 (gathered into multiple volumes and edited by George Edward Reed, 1902). Few newspapers persisted throughout the entire period and I could not access the one that would have offered a consistent longitudinal source (Philadelphia's *Sunday Dispatch*). I searched the Library of Congress's database, "Chronicling America: Historic American Newspapers," which covered the years 1836–1922. The *Evening Telegraph* was the most frequently relevant newspaper. I also performed web searches, often through Google Books, for any reference to specific administrators, which returned scattered bits of Americana, including guides to specific cities and counties and town centennials, which offered biographies of those places' leading men. Newspapers and other forms of popular media also included obituaries of some of the prison's administrators, which offered minimal biographical information on some of the more well-known and well-connected administrators.

Appendix C

Dates of Prison Authorization

Table C.1: The Diffusion of Early State Prisons and their Systems of Prison Discipline, 1819–1860.

City and State	Name	Year	Discipline	Construction
Auburn, New York	Auburn State Prison	1819	hybrid	newly erected
		(1823)	silent	restructured
Jeffersonville, Indiana	Indiana State Prison	1822	hybrid	newly erected
Thomaston, Maine	Maine State Prison	1823	solitary	newly erected
		(1839)	silent	remodeled
Frankfort, Kentucky	Kentucky State Penitentiary	1825	silent*	restructured (f. 1798)
Ossining, New York	Mt. Pleasant State Prison (Sing Sing)	1825	silent	newly erected
Allegheny, Pennsylvania	Western State Penitentiary	1826	solitary	newly erected
		(1829)	<i>separate</i>	restructured
Wethersfield, Connecticut	Wethersfield State Prison	1827	silent	unknown
Washington, DC	Unknown	1828	silent	unknown
Richmond, Virginia	Virginia State Penitentiary	1828	silent	restructured (f. 1800)
Baltimore, Maryland	Maryland State Prison	1829	silent	additional cells (f. 1812)
Charlestown, Massachusetts	Massachusetts State Prison	1829	silent	restructured (f. 1805)
Philadelphia, Pennsylvania	Eastern State Penitentiary (Cherry Hill)	1829	<i>separate</i>	newly erected
Alton, Illinois	Illinois State Prison	1831	silent	newly erected
Nashville, Tennessee	Tennessee State Penitentiary	1831	silent	unknown
Windsor, Vermont	Vermont State Prison	1831	silent	additional cells (f. 1809)
Milledgeville, Georgia	Georgia Penitentiary	1832	silent*	restructured (f. 1817)
Columbus, Ohio	Ohio State Penitentiary	1834	silent	restructured (f. 1816)
Baton Rouge, Louisiana	Louisiana State Penitentiary	1835	silent	newly erected
Trenton, New Jersey	New Jersey State Prison	1836	<i>separate</i>	unknown
		1858	silent	restructured (f. 1798)
Jefferson City, Missouri	Missouri State Penitentiary	1836	solitary	newly erected
		(1842)	silent	remodeled
Providence, Rhode Island	Rhode Island State Prison	1838	<i>separate</i>	newly erected
		(1844)	silent	restructured
		(1852)	silent	remodeled
Jackson, Michigan	Michigan State Prison	1839	silent	newly erected
Fort Madison, Iowa	Iowa State Penitentiary	1839 (1841)	silent	unknown
Wetumpka, Alabama	Alabama State Penitentiary	1841	silent	newly erected
Jackson, Mississippi	The Walls	1843	silent	newly erected
Clinton, New York	Dannemora	1845	silent	newly erected
Clarksville, Indiana	Indiana State Prison	1847	silent	newly erected

APPENDIX C. DATES OF PRISON AUTHORIZATION

Huntsville, Texas	Huntsville Penitentiary	1849	silent	newly erected
Waupun, Wisconsin	Wisconsin State Prison	1851	silent	newly erected
Bay Area, California	San Quentin State Prison	1852	silent	newly erected
Stillwater, Minnesota	State Prison at Stillwater	1853 (1858)	silent	newly erected
Little Rock, Arkansas	Arkansas State Penitentiary	1858	silent	newly erected
Concord, New Hampshire	New Hampshire State Prison	unknown	silent	restructured (f. 1812)

Note: Dates shown represent the date of opening and alterations; in some cases, the legislative authorization is specified where I could not find a reference to the prison's opening. Hybrid systems refer to combinations of the solitary and congregate model at Walnut Street. Starred entries represent slightly hybridized versions of the silent system. While other prisons were built after 1860, Delaware and West Virginia both lacked state prisons as of 1867 (Wines and Dwight, 1967, 86, 100). *Source:* Lewis (1922); Barnes (1921); McKelvey (1977); Keve (1991); Carlton (1971); Shugg (2000); Keve (1986); Bookspan (1991). Some of the information from the secondary sources conflicted. Undergraduate research assistants verified and adjusted the dates and filled in additional data using the states' statute books. However, the statutes provided little insight into the actual design of most prisons.

Appendix D

Timeline

- 1787: The Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP) is founded, following the demise of an earlier prison society, Philadelphia Society for Assisting Distressed Prisoners. It is a major factor in initiating penal reform and ultimately the Pennsylvania System, and is a staunch defender of the Pennsylvania System well into the nineteenth century.
- 1790: Walnut Street Jail (Philadelphia) is remodeled and designated the State Prison; its model of classifying and separating inmates and its use of solitary confinement for some inmates is profoundly influential. It is the first iteration of the Pennsylvania System.
- 1796: Newgate Jail (New York) opens generally following the model established at Walnut Street. Other states follow over the next two decades.
- 1816: Construction begins on the first modern prison, Auburn State Prison, located in Auburn, New York.
- 1818: The Pennsylvania legislature authorizes the building of a state prison at Allegheny (later Western State Penitentiary) in which inmates would be housed in long-term solitary confinement (Pennsylvania, 1818).
- 1821: Legislation calls for the erection of a 250-cell prison in the vicinity of Philadelphia to be built like Western State Penitentiary and to follow “the principal of solitary confinement” (Pennsylvania, 1821, Sect. 3).
- 1821–1823: Auburn State Prison experiments with complete solitary confinement (without distractions) for a subset of prisoners with fatal consequences.
- 1823: The Auburn (or Congregate) System is initiated at Auburn State Prison.
- 1825: The Boston Prison Discipline Society, a penal reform society and defender of the Auburn System, is founded
- 1826: Western State Penitentiary opens on the Pennsylvania System but the system is not fully implemented due to architectural troubles until 1838 (Barnes, 1968, 303).
- 1829: Legislation alters the system of prison discipline at Eastern State Penitentiary and Western State Penitentiary; thence forth, inmates are to be “punishment by separate or solitary confinement at labor” (Pennsylvania, 1829, Sect. 2).

- 1829–1840: Samuel R. Wood is warden of Eastern.
- 1831: Legislation authorizes the addition of 400 cells to Eastern to hold inmates “in solitary confinement at labor” (Pennsylvania, 1831, Sect. 1).
- 1833: New Jersey adopts the Pennsylvania System at its penitentiary.
- 1834–1835: A legislative committee investigates various charges against Eastern’s administrators, focusing on misuses of power, including fraud and torture.
- 1835: Eastern hires a matron to supervise its female inmates.
- 1838: Legislation authorizes the hiring of a Moral Instructor at Eastern as a paid employee.
- 1838: The Pennsylvania System is fully implemented in practice at Western following architectural and other problems in earlier implementation.
- 1838: Rhode Island adopts the Pennsylvania System at its penitentiary.
- 1840–1845: George Thompson is warden of Eastern.
- 1842: Charles Dickens visits Eastern; on his return to England that year, his *American Notes*, including his critique of the Pennsylvania System at Eastern, are released.
- 1843: The staff physician at Eastern is required to be a resident physician at the prison.
- 1844: Prison Association of New York is formed.
- 1844: Rhode Island abandons the Pennsylvania System and joins in criticizing the Pennsylvania System.
- 1845–1850: Thomas Scattergood is warden of Eastern.
- 1845: A teacher is hired at Eastern to take over the education of inmates.
- 1846: The First International Penitentiary Congress (Frankfurt-et-Maine) endorses the principle of separate confinement of inmates.
- 1847: Legislation prohibits sentences to the state penitentiaries that would expire between November 15 and February 15, to better enable former inmates to find work (scare during winter months) upon completing their sentence.
- 1850–1853: John S. Halloway is warden of Eastern.
- 1852: Inmates at Eastern are now paid “overwork,” or a portion of the profit from their labor, “under improved regulations.”
- 1854–1855: Nimrod Strickland is warden of Eastern.
- 1856–1869: John S. Halloway is warden of Eastern.
- 1858: Pennsylvania State Legislature authorized a commission to alter the penal code (enacted March 31, 1860) (Pennsylvania, 1858).
- 1858: New Jersey passes legislation that begins to depart from the Pennsylvania System at its penitentiary after years of partial implementation.

- 1869: Prison Discipline convention held in Philadelphia in September.
- 1860: Legislation makes completing one's sentence equivalent to a pardon (Pennsylvania, 1860, Sect. 181, p. 426).
- 1861: Legislation (An Act Relative to Prison Discipline) offers inmates good time credit, reducing their sentences in exchange for good behavior (Pennsylvania, 1861), much to the chagrin of Eastern's administrators. The Prison Society had lobbied for the bill.
- 1862: The Pennsylvania Supreme Court strikes down the 1861 legislation in *The Commonwealth ex rel. Johnson v. Halloway*, citing the prison administrators' opposition to the law.
- 1866: Post-war crime increases bring overcrowding at Eastern and necessitates the double celling of inmates. Western publicly abandons the Pennsylvania System.
- 1866: Legislation allows the use of tobacco "to a limited extent, as a reward for good conduct."
- 1870–1880: Edward Townsend is warden of Eastern.
- 1869: New legislation re-authorizes the commutation law. Apparently, first inmates released under this act in July 22 (Pennsylvania, 1869a).
- 1869: Pennsylvania legislature creates Board of Public Charities, which is authorized to oversee the state's prisons and other "charitable" institutions (Pennsylvania, 1869a).
- 1871: Legislation alters the jurisdiction of Eastern, adding inmates from several counties (Cameron, Potter, Clinton, Centre, Juniata, Mifflin, and Fulton) to Western. It also orders the transfer of ESP inmates from these counties to WSP (Pennsylvania, 1871).
- 1874: Legislation (May 25) transfers the authority to appoint inspectors from the State Supreme Court to the Governor (Pennsylvania, 1874) as ordered by the 1873 Constitution.
- 1876: Legislation orders wardens to allow inmates "to subscribe for any daily, weekly or monthly paper or periodical of a moral, political or religious character" (officially ending the ban on outside contact) (Pennsylvania, 1876).
- 1881–1900: Michael J. Cassidy, formerly an overseer, is warden of Eastern.
- 1895: Inspector Richard Vaux dies.
- 1911: John J. Lytle, member of the Prison Society, dies; he was the penultimate defender of the Pennsylvania System from the "Old Guard" still remaining in the Society (Teeters, 1937, 209).
- 1913: Legislation authorizes inmates at Eastern to congregate in a variety of contexts, officially bringing the Pennsylvania System to an end at Eastern (Pennsylvania, 1913).

Appendix E

Inmates Over Time

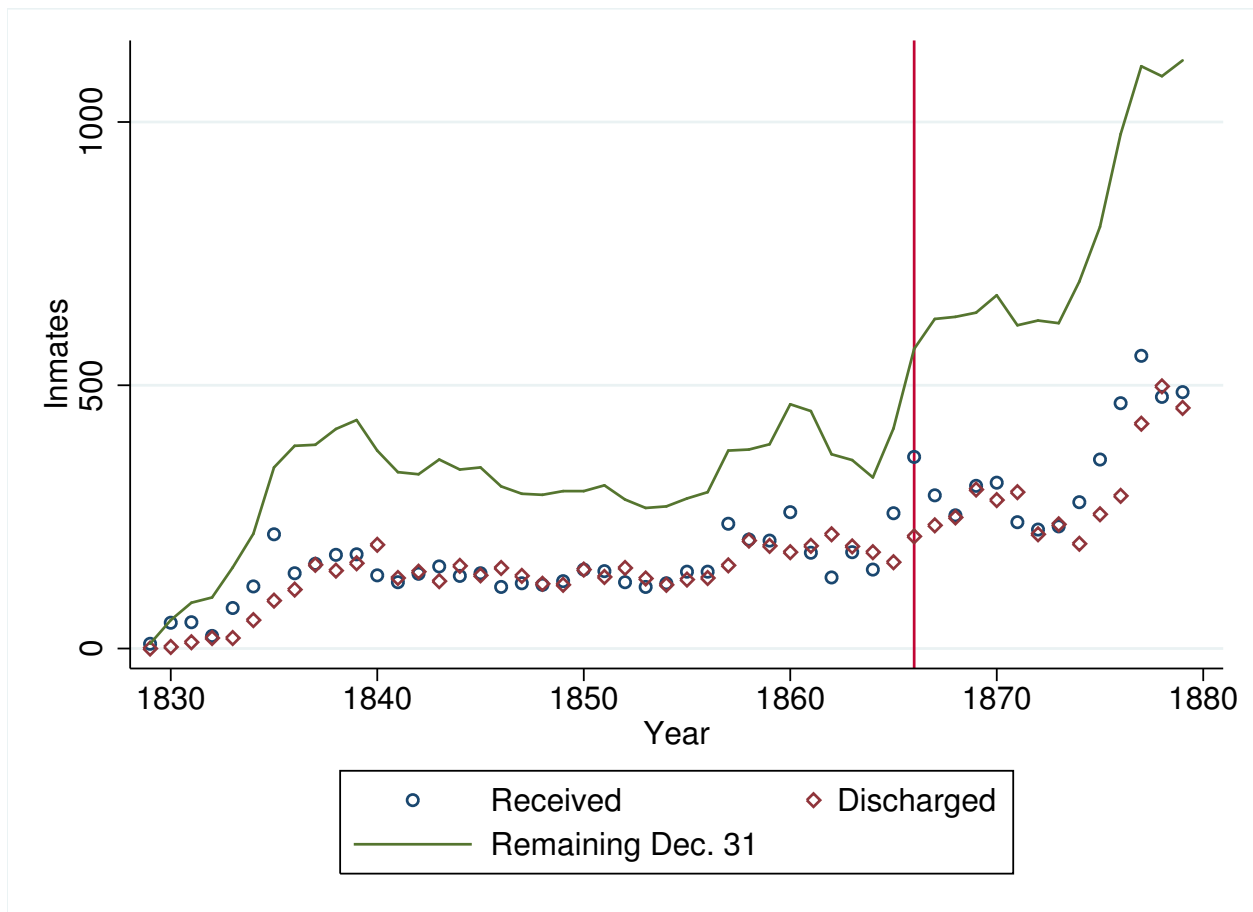


Figure E.1: Inmates at Eastern State Penitentiary, 1829–1880.

Line imposed at 1866. *Source:* E.S.P. Annual Reports.

Appendix F

Abbreviated Biographies of Eastern's Administrators

F.1 Inspectors

Twenty-seven men served as Inspectors of Eastern between 1829 and 1880. These were largely middle- and upper-class gentlemen of Philadelphia society. The vast majority of these inspectors worked as a businessman, lawyer, politician, or some combination of the three (see Table F.1). Over a third of the early inspectors (those joining before 1850) were members of the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP).¹ Below, I provide few details about these gentlemen; more influential inspectors receive a slightly lengthier treatment.

Roberts Vaux (1829)

Roberts Vaux had been extensively involved in the legislation, construction, and defense of the Pennsylvania System at Eastern. He was a Quaker and a member of the PSAMPP (signed 1808). According to his son, Richard Vaux,

Roberts Vaux was in no active business; he devoted his time to public institutions for education and benevolence. His labors on behalf of the separate system of prison discipline and public education art a part of the history of his time. (Vaux, 1872, 83)

Josiah Randall (1829)

Josiah Randall was a lawyer.

Judge Charles Sidney Coxe (1829–1835)

Charles Sidney Coxe was a lawyer and a judge (for the District Court of Philadelphia). He also served as President of Eastern's Board of Inspectors (1829–1835). Coxe appears to have disagreed with other inspectors about the severity of the violations discussed in the 1834–35 investigation and resigned his station for reasons related to this disagreement.

¹Teeters (1937, 507-509) offers a list of those who signed the PSAMPP's Constitution; while many names are recorded, he notes that not all members signed. The last signature was added in 1848.

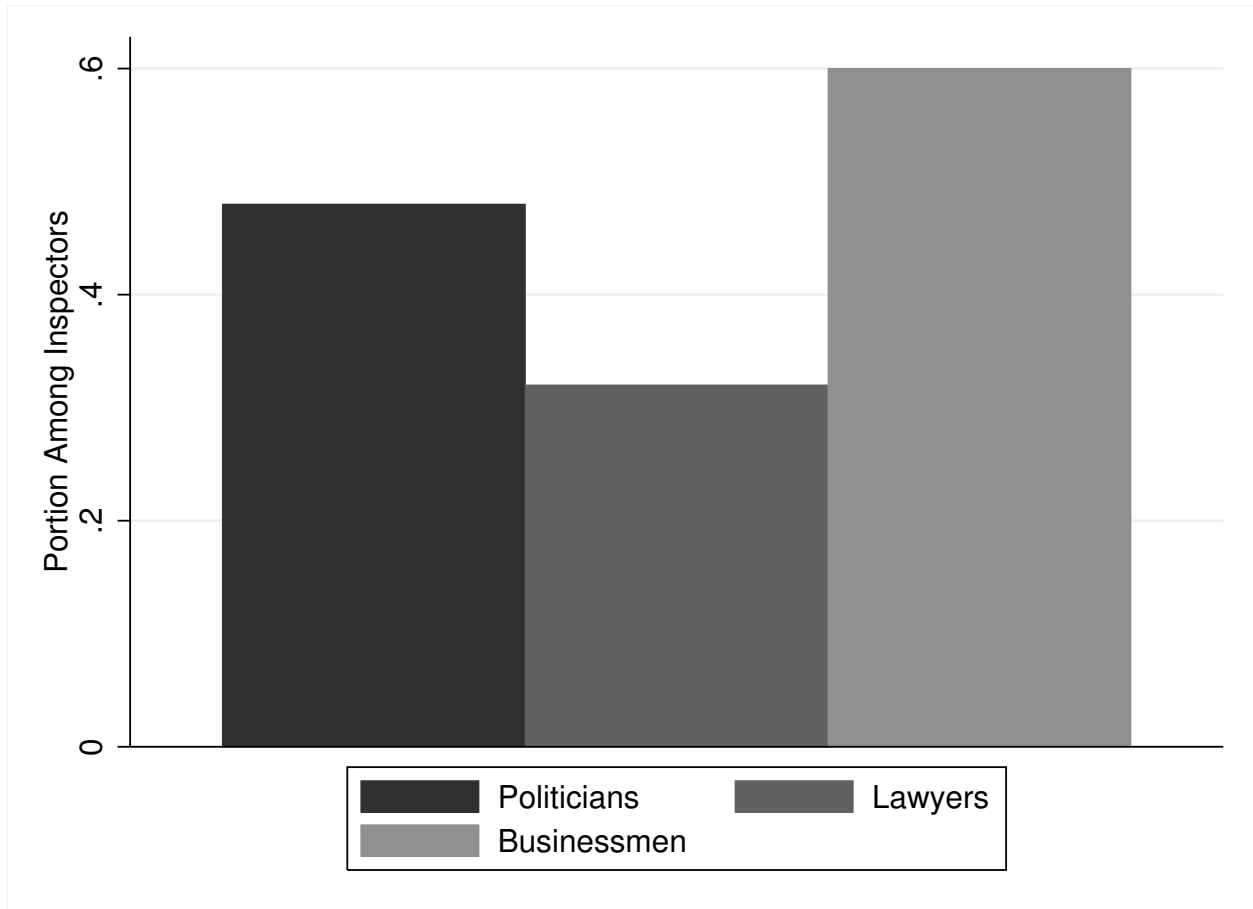


Figure F.1: Inspectors' Occupations, 1829–1870.

Many administrators pursued more than one vocation. *Source:* Vaux (1872) offers a chronological account of the officers of the institution (76–83) and a “sketch of the gentlemen who have served as Inspectors” (83–85). Inspectors are also listed in the beginning of each Annual Report, but these are incomplete in the early years of the prison.

John Swift (1829–1831)

John Swift was a lawyer, and served as Mayor (1839–1841, 1845–1849) and Alderman of Philadelphia.

Daniel H. Miller (1829–1831)

Daniel H. Miller was a merchant and Pennsylvania state senator (1823–1825, 1825–1829, 1831–1833).

Thomas Bradford, Jr. (1829–1851)

Thomas Bradford, Jr., was a lawyer. He was responsible for writing several Pennsylvania statutes introducing important penal reforms, including the 1829 statute establishing the Pennsylvania System at Eastern. He was a member of the PSAMPP (signed 1805) and served as an Inspector at Walnut Street Prison. (Bradford had a son, whom he named Benjamin Rush Bradford, after the famous Philadelphia penal reformer.) Bradford served as President of the Board (1835–1842) at

Eastern.

Benjamin H. Richards (1829–1835)

Benjamin H. Richards was a merchant and elected Mayor of Philadelphia (1829, 1830–1831).

John Bacon (1831–1859)

John Bacon was a merchant and served as Treasurer of Philadelphia. He was also a member of the PSAMPP (signed 1802). Bacon appears to have occasionally allied himself with Bradford during certain votes of the Board.

William Hood (1831–1842)

William Hood was a merchant and a member of the PSAMPP (signed 1829).

Matthew L. Bevan (1835–1849)

Matthew L. Bevan was a merchant, and, according to Vaux (1872, 84), he was a “member of one of the largest business firms in the city.” Bevan also served as President of the Board of Inspectors at Eastern (1842–1849). Vaux (1872, 79) wrote of Bevan, he “died full of years, having lived a blameless life.”

General Robert Patterson (1835–1847)

General Robert Patterson was a merchant and manufacturer. He fought in the War of 1812, the Mexican-American War, and the Civil War.

Richard Vaux (1842–1895)

Son of Roberts Vaux, Richard Vaux worked as a lawyer, but was also elected Recorder and Mayor (1856–1858) of Philadelphia. Vaux was perhaps the most influential and important inspector at Eastern in the nineteenth century. He served as President of the Board (1851–1895) and wrote a number of pamphlets and articles advocating the Pennsylvania System. Teeters (1937, 202) notes that Vaux joined the PSAMPP in 1842, but “there is no record that he served on any committee, and it is likewise doubtful that he ever attended a meeting.” Later, Vaux noted that he was not a member of the PSAMPP.

William A. Porter (1847–1851)

William A. Porter was a lawyer; he was also elected the High Sheriff of Philadelphia County and served as a judge of the Supreme Court of Pennsylvania. He served as President of the Board (1849–1851).

Hugh Campbell (1849–1853)

Hugh Campbell was a merchant.

Singleton A. Mercer (1851–1854)

Singleton A. Mercer was a merchant and a bank president. Mercer was the subject of some scandal, memorialized in George Lippard's (1844) *The Quaker City, or Monks of Monk Hall*. Mercer shot a man who seduced Mercer's sister; at trial, Mercer claimed the insanity defense.

Charles Brown (1851–1853)

Charles Brown was a businessman. He also served in the state's House of Representatives and Senate, as well as in the U.S. House of Representatives (1841–1843, 1847–1849). He was a Collector of the Port of Philadelphia and served on the Philadelphia City Council.

Andrew Miller (1853–1859)

Andrew Miller was a grocer and manufacturer. He served as the Recorder of Deeds for Philadelphia County and as Pennsylvania state senator.

Chambers McKibben (1853–1857)

Chambers McKibben was a hotelier. He also served as an Assistant Treasurer of the United States (working at the Philadelphia Mint).

Dr. Samuel Jones (1854–1864)

Dr. Samuel Jones was a teacher and a physician.

William Goodwin (1854–1859)

William Goodwin was a manufacturer and a Pennsylvania state senator.

Alexander Henry (1859–1883)

Alexander Henry was a lawyer. He was also elected Mayor of Philadelphia (1858–1866).

Thomas H. Powers (1859–1878)

Thomas H. Powers was a manufacturer.

Furman Sheppard (1859–1872, 1884–1888)

Furman Sheppard was a lawyer. He was also elected to be the District Attorney of Philadelphia (1868–1869, 1870–1871, 1875–1878).

Anthony J. Drexel (1865–1870)

Anthony J. Drexel was a particularly famous banker; J.P. Morgan was his financial partner.

John M. Maris (1870–1891)

John M. Maris was a merchant. He also served as “one of the Guardians of the Poor of Philadelphia” (Vaux, 1872, 85)

Charles Thomas Jones (1873–1883)

No information found.

George L. Harrison (1879–1885)

No information found.

F.2 Wardens

Six men served as Eastern’s warden between 1829 and 1880. Prior to their appointments, their experience with prison management was non-existent or limited to their voluntary association with the PSAMPP and voluntary positions as inspectors at Walnut Street Prison. This began to change in 1881 with the election of Michael J. Cassidy. Also distinctive to the nineteenth century, Eastern’s wardens typically experienced lengthy tenures (see Table F.2). Turnover became more frequent after Cassidy’s tenure.

Samuel R. Wood (1829–1840)

Samuel R. Wood was Eastern’s first warden. He was a Quaker and a member of the PSAMPP (signed 1816). He served as an inspector of Walnut Street Prison. To better understand the nature of incarceration and penal reform, he toured the jails of Europe in the early 1820s, which helped to cement his reputation as “the great apostle of Penitentiary reform” (Fry testimony McElwee, 1835a, 17). As another member of the PSAMPP noted, “Mr. Wood has devoted much time to the subject of prison discipline—he is considered as unusually well informed on the subject” (Yarnell testimony, McElwee, 1835a, 15). Wood then became a member of the Building Committee in charge of overseeing the design and construction of Eastern, one of the most impressive architectural projects of its time. When Eastern opened in 1829, he was “[s]trongly solicited to accept the appointment” as warden of the new penitentiary (Barclay testimony, McElwee, 1835a, 14), a position he held for over ten years. Upon his retirement, Wood “was congratulated on the imperishable honour he had obtained in being one of the originators of the system and so ably conducting it for the period of eleven Years an Institution which had excited the attention of Philanthropists of all Nations” (PSA, Warden’s Daily Journal, July 1, 1840). Despite his lengthy commitment to penal reform, his position as Warden of Eastern State Penitentiary was apparently his last sustained involvement with penal reform. After his tenure at Eastern, Wood went on to be “first Master” at the Northumberland Post Office (APS, Foulke Papers, Prison Journals, October 15, 1849).

George Thompson (1840–1845)

George Thompson was a merchant and Eastern’s second warden. During his first few years in office, Thompson was frequently absent on “business.” By the middle of his tenure, George Thompson had developed the habit of recording in his warden’s journal whether inmates had been well

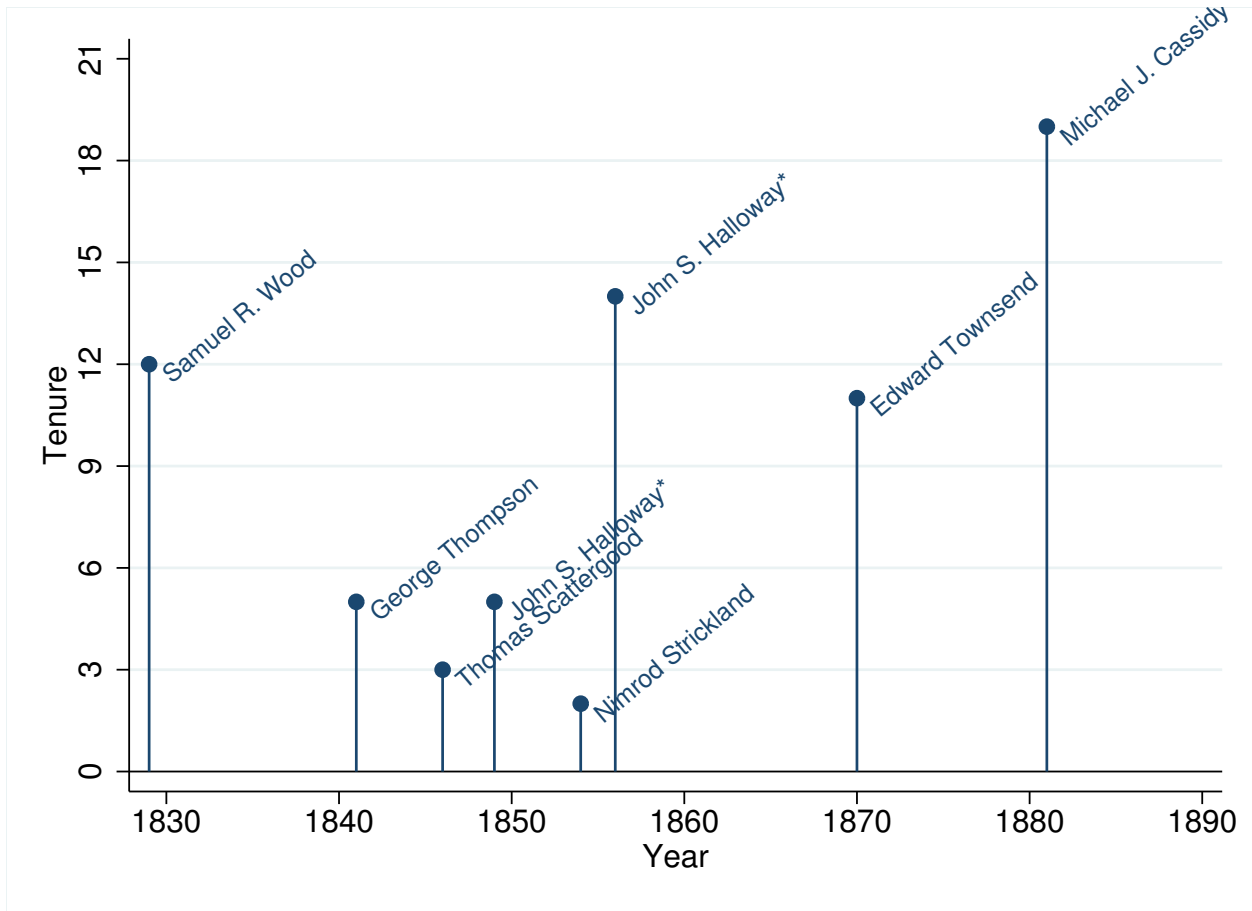


Figure F.2: Wardens' Tenure at Eastern, 1829–1899.

Source: Wardens' tenures are discernible from the Annual Reports. Vaux (1872, 76–83) offers select details about the election of each warden.

treated by their overseers, how much food they had received, how healthy they were upon exit, and occasionally whether they had improved themselves in any way during their visit (see PSA, Warden's Daily Journal). After Thompson had been away from Eastern for five years, he was re-elected as warden by the Inspectors in 1850; however, he never reentered office. The Board of Inspectors wanted Thompson to discontinue his "business engagements," which he could not, and a new election was held (APS, Foulke Papers, Prison Journals, September 16, 1850).

Thompson appears to not have gotten along with Inspector Bradford. During Thompson's reelection, Bradford and Inspector Bacon opposed his appointment. The prison's physician, Dr. Given, informed penal reformer William P. Foulke "that Thompson had gone out of office expecting that Mr. Bradford would be left out of the Board. Bradford was regarded by Thompson as the chief obstacle in the way of reform" (APS, Foulke Papers, Prison Journals, October 24, 1849).

Thomas Scattergood (1845–1850)

Thomas Scattergood was a Quaker and a member of the PSAMPP (signed 1843). Scattergood appears to have been a rather controversial warden. A former overseer of the prison informed penal reformer William P. Foulke that Scattergood had misappropriated goods from the prison. The overseer explained that Foulke had "skimmed the cream from the milk and gave the skimmed milk

to the infirmary, that he sent the cream to the city to some of his friends,” along with “vegetables from the Prison garden.” Another case involved a special “bathing apparatus” acquired to provide therapeutic cold baths for an inmate according to the prison physician’s orders. When the warden saw the device, he “had taken it from the prisoner and applied it to the use of a member of his own family”; the overseer “had to saw a barrel in half for the prisoner” to use instead (APS, Foulke Papers, Prison Journals, October 26, 1849). The overseer reporting these stories to Foulke had been fired and may have been disgruntled. However, additional evidence suggests the Board of Inspectors were eager to remove Scattergood. Following a recent visit to the prison on September 13, 1850, Foulke noted that he was “informed by Dr. Given that the incumbent T. Scattergood had held over and manifested an indisposition to leave his place” (APS, Foulke Papers, Prison Journals, September 16, 1850). However, Scattergood and the prison’s physician, Dr. Given, frequently butted heads. In the warden’s daily journal, Scattergood noted his “protest against this way of the Physician usurping the duties that properly pertain to the Warden. Admitting his undoubted right to order an invalid prisoner to have exercise in the open air. But when he directs the place &c. He assumes the duties of the Warden, and that officer should not be held responsible therefor (PSA, Warden’s Daily Journal, May 10, 1850). As Given left the employ of the prison in the same year as Scattergood, it is difficult to determine which was more in the wrong. In either case, however, several of the prison’s personnel did not like him, and the feeling was apparently mutual.

Despite these charges and personality conflicts, Scattergood appeared devoted to the institution. His journal entry closing the year noted, “. . . In the earnest hope that the blessings of health may still be continued, and the opening of the New Year may find us all sincerely desirous of promoting the best interests of the Institution we close our remarks for the year 1845” (PSA, Warden’s Daily Journal, December 31, 1845). The following day, he noted, “The New Year. May its end find all engaged in the administration of the affairs of the Institution harmoniously labouring for its good” (PSA, Warden’s Daily Journal, January 1, 1846). Other entries suggested he took his position quite seriously. Scattergood was also rehired by the Inspectors the following decade to collect the statistics for the prison’s annual report (PSA, Warden’s Daily Journal, January. 8, 1857).

John S. Halloway (1850–1854, 1856–1869)

John S. Halloway enjoyed the tenure (a total of sixteen years) of the wardens before 1880 and was the only warden to hold the office twice. Aside from Richard Vaux, Halloway also experienced the longest tenure of any of the administrators. As a long-time clerk of Eastern, Halloway often served as the person in charge while wardens left the prison for a business trip or vacation. Halloway was also the only warden to die in office; like the famous penal reformer John Howard, Halloway died of “typhoid pneumonia, contracted in the zealous discharge of official duty, in the 65th year of his age” (Dr. Klapp, PSA, Warden’s Daily Journal, March 9, 1870).

John Halloway was the son of one of Walnut Street Jail’s “principal keepers” (Teeters and Shearer, 1957, 90) and may have received his earlier position as clerk through his familial connection to penal reformers.

Nimrod Strickland (1854–1856)

Nimrod Strickland (1807–1880), a Baptist, held the shortest tenure as warden of all of the wardens in this period. His entries in the warden’s daily journal are the most pecuniary and business-oriented entries of the wardens, and yet he was not a businessman. Instead, Strickland was a judge

in Chester County prior to his appointment as warden at Eastern. As far as I can tell, Strickland was not a member of the prison discipline society, though he had visited the prison before on business as a judge, as many judges did. He was, however, a member of the fraternal and voluntary association, Odd Fellows. Associated with the Democratic party, he served as Recorder of Deeds, Register of Wills, a clerk in the U.S. Treasury Department, Judge in Chester County, and Warden at Eastern. He also worked as an editor or co-editor of the *American Republican* and *The Pennsylvanian* (1899, 45). Chester County's *Centennial Souvenir* memorialized him among other "prominent men, now deceased" (44), describing him as a "Journalist and Politician" (1899, Part II, p. 45).

Dr. Edward Townsend (1870–1856)

Dr. Edward Townsend began his career as a druggist, and then studied dentistry, which he gave up for his wardenship of Eastern, his last occupation. Townsend was the third Quaker warden in this period; however, unlike the other Quaker wardens and contrary to practice, Townsend did not write his dates with numbers (1st month, 1st day, etc.). Like each of the other Quaker wardens of Eastern, Townsend was a member of the PSAMPP (signed 1846). He served as that society's vice president (1881–1886, 1886–1896) and briefly as its president (1886). He was active in philanthropy, and was very active in caring for the blind "[f]or more than forty years" (Society, 1896, 31). He worked "as a manger of the Wills Eye Hospital, and for most of that time one of the managers of the Pennsylvania Institution for the Instruction of the Blind, and for many years its President. . ." (32). The PSAMPP's memorial for Townsend stated, "His memory. . . was stored with anecdotes of very man 'Old Philadelphians,' such as Stephen Girard, Roberts Vaux, Nicholas Waln, Samuel Fisher, etc., etc., which were listened to in wrapt attention by the younger generations" (32).

Michael J. Cassidy (1882–1900)

Cassidy had worked at Eastern for many years as an overseer before becoming warden in 1882. After Warden Halloway died in office, Cassidy became warden *pro tempore* (1869–1870), while the prison's physician, "Dr. Klapp was nominally Warden" (Vaux, 1872, 82). By this point, however, Cassidy had already served as the temporary warden many times during wardens' brief respites away from the prison. Teeters and Shearer (1957, 90) describe Cassidy as the first "'career' warden" at Eastern; though they largely refer to the way in which he rose through the ranks of the prison, it aptly describes the way in which Cassidy embraced prison management as his vocation. Thoroughly immersed in the wave of professionalization in this period, Cassidy published a book entitled, "Warden Cassidy on Prisons and Convicts: Remarks from Observations and Experience Gained During Thirty-Seven Years Continuous Service in the Administration of the Eastern State Penitentiary, Pennsylvania." It was "addressed to members of societies interested in prison management."

F.3 Physicians

Franklin Bache (1829–1837)

Franklin Bache was the first physician for Eastern. Bache was a member of the PSAMPP (signed 1825). He had also served as physician at Walnut Street Prison.

William Darrach (1837–1843)

William Darrach was the first physician at Eastern to discuss at length the racial differences in inmate health outcomes.

Edward Hartshorne (1843–1844)

Edward Hartshorne was the first Resident Physician. Before his appointment, the prison's physicians continued their own practice elsewhere, but regularly attended at the prison and were called to the prison for emergencies.

Robert A. Given (1844–1851)

Under Robert Given, the prison increasingly deviated from the rule of separate confinement to better prevent the further deterioration of mentally ill inmates.

D.W. Lassiter (1851–1856)

Thomas Newbold (1856–1862)

S. A. Woodhouse (1862–1863)

George L. Taylor (1863–1866)

Henry M. Klapp (1866–1872)

C. Bullard (1872–1873)

J.W. White (1874–1877)

Comegys Paul (1877–1883)

F.4 Moral Instructors

Before 1838

As no funding allocation existed to hire a Moral Instructor prior to 1838, the prison relied on voluntary services of local religious men. Among these, the most prominent was Rev. Charles Demmé, a Lutheran minister. Demmé was a member of the PSAMPP (signed 1831).

Thomas Larcombe (1838–1860)

Thomas Larcombe was the first Moral Instructor of Eastern and died while still holding that office. Larcombe was a Baptist minister (Annual Report 1839, 5).

Rev. C. M. Breaker (1861–1862)

Rev. C.M. Breaker was appointed to replace Larcombe; however, he died not long into serving that office.

Rev. John Ruth (1862–1879)

Rev. John Ruth was a Methodist minister.

Rev. J.Y. Ashton (1879–1890)

F.5 Clerks

The clerks at Eastern during this period included John Norvall (1829–1837?), John S. Halloway (1837–1850), William Marriott (1850–1858), Richard J. Predegrast (1858–1863), A. J. Ourt (1863–1870, formerly the teacher), and S. Sheneman (1870–).