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### Abstract

The history of incarceration in Colorado from the birth of the territory in the 1860s through the 1990s is a history of continuity. Coloradans invoked the criminal legal system as a symbol of the state's legitimate, effective governing powers and to define freedom as a product of race and class. The heart of Colorado's prison system lies in Fremont County, where 20% of its residents are captive in the county's nine state and four federal prisons. The county's economy, culture, and politics revolve around the practice and idea of incarceration. Since Fremont County's leaders pursued its first prison in the 1860s, local stakeholders have sought out and fought for carceral infrastructure. The history of incarceration in Colorado demonstrates the continuous presence of convict leasing, Jim Crow, and mass incarceration. Fremont County displays such recent developments as part of a longer, sustained history of carceral development in the United States, showing the punitive orientation that long undergirded America's political and economic systems.

The persistent notion that freedom requires unfreedom justified carceral development as a social welfare solution serving both racialized criminalized communities and economically depressed spaces. Throughout this long history, the carceral state's fundamental logics remained the same: that incarceration was a positive good that protected the free world and supported prison communities; and second, incarcerated people must provide labor for the state to offset the costs of incarceration and make the institution self-sufficient.

Despite the continuities in logics and practices, to be sure, the politics and processes of incarceration changed over time, especially as incarcerated people challenged the carceral state in new ways. Protest against the carceral state has been one of its persistent features. Incarcerated people and their allies protested in sanctioned and unsanctioned ways. Sanctioned protests, such



as through the courts, regenerated the carceral state's legitimacy by proving that it could reform itself without external oversight. Unsanctioned protests, such as work stoppages and escapes, provoked the state to develop new modes and architectures of incarceration.

In the 1860s, Fremont County and Colorado Territory leaders pursued a prison to prove to the country that they deserved statehood. An effective criminal legal system, they argued, demonstrated effective governance that protected its citizens. Over the state's next 150 years, the notion that the state's authority could be built and regenerated in strong criminal legal system that evolved continuously persisted. Colorado and the United States continued to expand its prison infrastructure—a women's facility in 1935, a medium- and maximum-security prison in the 1950s, three new state prisons in the 1960s, a new Colorado prison industries program in the 1970s, four new state prisons in the 1980s, four federal prisons in the 1990s, and two new state prisons in the 1990s. This sustained carceral development represents a society dependent on punishment. Prisons, exemplified by those in Colorado, are a key to a society convinced that freedom for some requires the unfreedom of others.

## Introduction



Figure 0.1: Fremont County, Colorado.

The carceral state defines American freedom.<sup>1</sup> The nexus of ideas and institutions that promotes, employs, and entrenches punishment as a social welfare solution is deeply rooted in United States history. The carceral state evolved in response to new claims on freedom in the 1860s. Since undergoing important shifts in the 1860s, the modern carceral state has largely persisted on the same underlying logics and practices.<sup>2</sup> *Prison Valley, U.S.A.* demonstrates how seemingly exceptional moments in American carceral history fit into a longer arc defined by continuity in growth and normalization of a punitive society. The growth of the state and its powers of policing, surveilling, and punishing rely on the foundation developed in the wake of emancipation.<sup>3</sup> This history frames the growth of the carceral state as a legacy of the project of

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<sup>1</sup> Some scholars choose to capitalize “Carceral State,” as Kayla Marie Martensen explains, “the same way nation states, and states/territories within the United States are capitalized.” I chose not to capitalize the term because, although the carceral state is embedded into the fabric of the United States, it is not a specific place or organization. Kayla Marie Martensen, “Review of Carceral State Studies and Application,” *Sociology Compass* 14, no. 7 (July 2020): 1-11.

<sup>2</sup> “Modern” refers to the era since the end of the Civil War.

<sup>3</sup> W.E.B. Du Bois, *Black Reconstruction: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York: Harcourt, Brace and Company, 1935).

freedom in a multiracial democracy: who deserves freedom, who does not, and what freedom looks like. The carceral state's logics and practice pervade state and non-state agencies as well as popular conceptions of freedom, morality, and criminality. This study of Fremont County, Colorado explores the development, durability, and consequences of a society oriented towards punishment by analyzing where the carceral state manifests most explicitly—prisons and their environs.

Prisons have always been job creation programs and places for elimination, and the history of incarceration in Colorado underscores that continuity. Within a decade of Colorado's first prison, approximately 65 people per 100,000 residents in the state were incarcerated. Aside from a few rare moments, the rate of people incarcerated in Colorado remained between 50 and 75 people per 100,000 for the next century, until the 1970s.<sup>4</sup> While the percentage of incarcerated people remained relatively consistent, the actual number of those incarcerated rose dramatically, mirroring the state's growing population.<sup>5</sup> Methods of imprisonment and resistance changed over the 150 years of Colorado's history, but the state never wavered from its commitment to using criminalization and incarceration to respond to social issues. Communities in which prisons were sited saw their communities and prisons as a necessary good: they received economic benefits from jobs and construction while also protecting society through eliminating "bad" people.

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<sup>4</sup> This is a relatively low rate when compared to the boom during the modern era of "mass incarceration." Between 2006 and 2008, the national U.S. prison population peaked at approximately 1,000 people per 100,000 adult residents. John Gramlich, "America's incarceration rate falls to lowest level since 1995," *Pew Research Center*, 8/16/2021, accessed at <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/>.

<sup>5</sup> Colorado Department of Corrections, "Annual Report, Fiscal Year 1982-83," page 64. accessed at <https://www.ojp.gov/pdffiles1/Digitization/109189NCJRS.pdf>.

Fremont County, Colorado, home to thirteen state and federal penitentiary facilities, exemplifies the long investment in and dependence on incarceration and punishment. Punishment, including popular conceptions about it, serves as a tool of state-building at local, state, and national levels. Fremont County's prisons, like those throughout the United States, have generated a spectacle of incarceration and deviance. This spectacle simultaneously naturalized prisons as necessary and justified the growth of the state. Punishment disciplined and eliminated people perceived as transgressive, and the United States social and political system employs punishment as a social welfare solution.<sup>6</sup> Prison administrators, elected officials, reformers, and incarcerated people contested the definition of freedom and who could be regarded as free. Prison development has been embraced by some, but it has not gone unchallenged. Resistance to the carceral state, and prisons in particular, has come in many forms, driven by a combination of ideological beliefs and material realities.

This study examines the history of Fremont County to deepen our understanding of the state, labor, and race. Asking questions of “where?” leads to insights of “why?” and “how?” Fremont County's history of incarceration reveals that the development of a carceral state, while occurring contemporaneously throughout the country, was local and contingent. In the shadows of Colorado's Sangre de Cristo Mountains and encompassing the Royal Gorge of the Arkansas River, Fremont County's economy depends entirely on incarceration. Such dependence has led

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<sup>6</sup> “Transgressive” and “transgressive acts,” like how sociologists beginning with Howard Becker have labelled “deviant acts” or “deviance,” refers to behaviors that society—or the dominant social group—labels as improper or contrary to normative social behavior. Deviant acts, although critics of the same may say such, are inherently neither immoral nor harmful. These deviant acts can be transgressions against law or proper behavior outside of the prison or against the rules established within the institution. Ashley T. Rubin argues: “deviance is socially constructed and contingent on strongly held norms.” Howard Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963); Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913* (Cambridge: Cambridge University press, 2021), xxxvii.

to its long social and political history as “Prison Valley.” Climate and natural resources in the area did not foreordain this region’s destiny, but the temperate climate conducive to agriculture and the valuable resources to be mined shaped local developments. Fremont County, although important to Colorado state politics because of the state prison(s), has never been a major population center. Developed far earlier than rural prison communities that blossomed in the 1970s and 1980s across the U.S., Fremont County staked its economic viability to the carceral state since the 1860s. It demonstrates the enduring continuities in and growth of the carceral state.

The story of Fremont County and its prisons is the story of Colorado and the United States. Brett Story argues that the landscape of prisons and the carceral state becomes clearer when observers turn their gaze away from prison facilities towards the external geographies that fuel and reproduce prison systems. The prison, Story contends, is an institution “both produced out of, and productive of the forces that govern and organize the existing social and economic order.”<sup>7</sup> In this history, we turn our gaze towards the prison, its boosters, its captives, and its immediate environment to understand how this system and these relations reflect the state and society Colorado built. The prisons and carceral culture in Fremont County serve as a window into the relationships and politics that structure a nation oriented towards punishment. To be sure, prisons offer but one of many starting points into understanding the structure and impact of punishment.<sup>8</sup> Colorado’s origin story often privileges narratives of mining and tourism. The

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<sup>7</sup> Brett Story, *Prison Land: Mapping Carceral Power across Neoliberal America* (Minneapolis: University of Minnesota Press, 2019).

<sup>8</sup> Stuart Hall et al., for example, take issue with analyzing the discrete act of mugging, arguing: “to use such a starting point—concrete events, practices, relationships, and cultures—to approach the structural configurations that cannot be reduced to the interactions and practices through which they express themselves.” Stuart Hall, Chas

growth of both of these industries relied on a burgeoning criminal legal system supporting a particular kind of order that defined citizenship and state power. The territory, then the state, asserted a monopoly on punishment to legitimize its power and shape the racial and class bounds of citizenship.

Fremont County's prison history begins in Cañon City in the 1860s. The Territory of Colorado organized itself as the nation was gripped by questions over whether and how the United States could be a multiracial democracy with universal birthright citizenship in the wake of the Civil War. Chapter One explores the relationship between Colorado Territory's early development and Coloradans lobbying for a prison and militia to establish the state's claims to enforce order. The territorial government chose Cañon City as the site of the Colorado Territorial Prison at the behest of local boosters and elected officials who envisioned a prison as a harbinger of long-term economic viability. While the criminal legal system allowed laborers who transgressed against company, social, or state norms to return to society, the militia expelled and murdered Indigenous people. The prison, in theory, offered the state a script of reform that, instead of eliminating people, made them fit for citizenship. Throughout the 1860s and 1870s, state and federal authorities leveraged the criminal legal system to expand government authority and define citizenship.

The U.S. Congress bestowed Colorado Territory with statehood in 1876 due, in part, to how effectively the territory claimed to administer its legal system. The state used the prison system to usurp extralegal violence such as lynching. The prison, as Chapter Two shows, faced difficulties in its early years. Administrative instability—ten different wardens oversaw the

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Critcher, Tony Jefferson, John Clark, and Brian Roberts, *Policing the Crisis: Mugging, the State, and Law and Order, 35<sup>th</sup> Anniversary Edition* (London: Red Globe Press, 2013), xi.

institution between 1876 and 1900—led to shifting policies and procedures. This instability hindered efforts to find consistent work for incarcerated people. Incarcerated people quarried stone and expanded the prison facility, as state legislators refused to appropriate funds that, according to prison administrators, were necessary for security. Prison labor helped develop Fremont County’s early infrastructure and businesses by providing materials and cheap labor. Organized labor objected when prisons hired out incarcerated people to local businesses because it presented unfair competition.

Colorado’s officials, including prison wardens and juvenile justice reformers, engaged in a national and international reform conversation in the early 1900s. Building on prison reforms from other penal institutions, as Chapter Three discusses, Colorado established an “honor guard” road building program that satisfied organized labor. Colorado’s prison administrators and elected officials promoted this form of convict labor in reform networks across the country, establishing the Colorado State Penitentiary as an innovative, progressive model. However, slowdowns in mining production in the 1920s soon pitted union workers against convict road laborers. Prison officials responded by pushing incarcerated laborers into an in-house prison license plate and road sign factory.

By the late 1920s, Colorado State Penitentiary was at a breaking point because of overcrowding caused by anti-alcohol law enforcement, discontent spurred by new indoor and limited labor opportunities, and administrative instability brought on by the retirement of a long-time warden and new policies from the state’s governor. Chapter Four examines the result of this disquiet: a failed escape attempt in October 1929 by two incarcerated men led to one of the prison’s deadliest events. A group of incarcerated men took over the prison, including holding guards captive, while the state activated local free-world residents and military personnel to

retake the facility. The state refused to negotiate, and the four incarcerated leaders killed eight guards before committing suicide. The aftermath of this challenge to authority reveals a hardening of prison security measures and a fracturing of the local community because of tension caused by blame cast on the guards. The state used a military leader to reestablish order, and the rebuilding of the facility included new labor systems, a separate women's facility, reinstatement of corporal punishment, and a new "modern" execution chamber.

Throughout the Great Depression and World War II, as Chapter Five lays out, the federal government and international events influenced the state prisons and their administration. The Federal Prison Industries (1935) and Prison Industries Reorganization Administration (1935) supported the growth and standardization of punishment. Federal guidance came against the backdrop of organized laborers again protesting the expansion of convict labor. Colorado's prison leaders refused to reduce convict labor activities, and they returned much of the work to within the facility's walls, out of the public gaze. During World War II, local Fremont County residents feared the loss of men available for agricultural work, so they lobbied the government to bring a Japanese American Internment Camp to the region using the physical infrastructure of a former Civilian Conservation Corps site. While the lobbying failed and the internment camp went to Prowers County, a 1947 prison break and film about it captured national attention and cemented Fremont County and its prisons in the country's imagination.

Between the 1950s and 1970s, Colorado and the United States' criminal legal system reckoned with powerful forces: the expansion of legal procedural rights, shifting demographics after World War II, the state's expanding policing and law enforcement powers, and a nationwide push for civil rights. Chapter Six explores these years of prison growth and protest. While incarcerated people in Colorado used newly granted legal rights and unsanctioned forms



of protest like strikes to challenge the prison system and pursue a politics of visibility, the state reformed its prison system to protect guards and quell that dissent. These reforms included isolating incarcerated people while also reducing public access and transparency into the prison facilities. Colorado tried to mitigate dissent by building new prisons that addressed longstanding critiques of overcrowding. These new facilities in Fremont County capitalized on both the goodwill of local residents towards prisons and the existing carceral infrastructure.

Beginning in the 1980s, Colorado and the United States faced crises of prison overcrowding because of legislation that had criminalized more actions and mandated longer sentences. At the same time, Fremont County, like many rural communities throughout the country, faced an economic downturn. Beginning in the 1980s, residents of Fremont County lobbied the United States Bureau of Prisons to select their county for the new federal complex, and the BOP chose to build four new prisons there, including the Administrative Maximum (“Super Max”). Colorado also constructed new prison facilities in Fremont County. These new prisons, as Chapter Seven argues, represented a new architecture of incarceration that abandoned pretenses of reform and instead prioritized discipline and isolation, a shift in response to incarcerated people organizing and challenging state authority. The state and federal government sold local residents on these new prisons based on the new jobs and economic stimulus that would accompany their construction. But, the promised jobs failed to materialize and a division between state and federal employees became more pronounced.

Since the 1860s, Fremont County’s prisons have been central to the story of Colorado and the United States. Fremont County, like many communities across the U.S., continuously sought the possibilities that state and federal prison spending could bring. Although a privately-operated prison did not come to Fremont County until the twenty-first century, the state prisons

there long depended on private businesses. Because the state could not provide all the services these prisons needed, the line between private profit and public operation has always been blurry. The government investment in prisons was always accompanied by promised jobs that never fully materialized and bitter local competition with convict labor. This rural and Western history responds to calls to diversify our understanding of where and how incarceration occurs. Heather Ann Thompson cautions us not to be “blinded by a barbaric South,” and Fremont County’s carceral history elucidates local systems, regional paradigms, and national patterns.<sup>9</sup>



While many histories of incarceration have focused on exceptional prison regimes and spaces, Colorado offers a history that largely clarifies national trends. Robert T. Chase’s history of incarceration in Texas uses the state with one of the highest and most racially disproportionate incarceration rates; Kelly Lytle Hernández’s study of Los Angeles analyzes the city and county with the greatest rate of incarceration per capita; David Oshinsky’s study of incarceration at Mississippi’s Parchman Farm reveals a prison regime built almost identically on the precedent, ideology, and infrastructure of enslavement; Ruth Wilson Gilmore’s study of California examines the state which led the greatest prison development project of the modern world.<sup>10</sup> Colorado, though, has long represented the United States’ carceral trajectories. Colorado’s

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<sup>9</sup> Heather Ann Thompson, “Blinded by a ‘Barbaric’ South: Prison Horrors, Inmate Abuse, and the Ironic History of American Penal Reform” in *The Myth of Southern Exceptionalism*, ed. Matthew D. Lassiter and Joseph Crespino (New York: Oxford University Press, 2010), 74–97.

<sup>10</sup> Robert T. Chase, *We Are Not Slaves: State Violence, Coerced Labor, and Prisoners’ Rights in Postwar America* (Chapel Hill: University of North Carolina Press, 2020); Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (Chapel Hill: University of North Carolina Press, 2017); David M. Oshinsky, *“Worse Than Slavery”: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1997); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

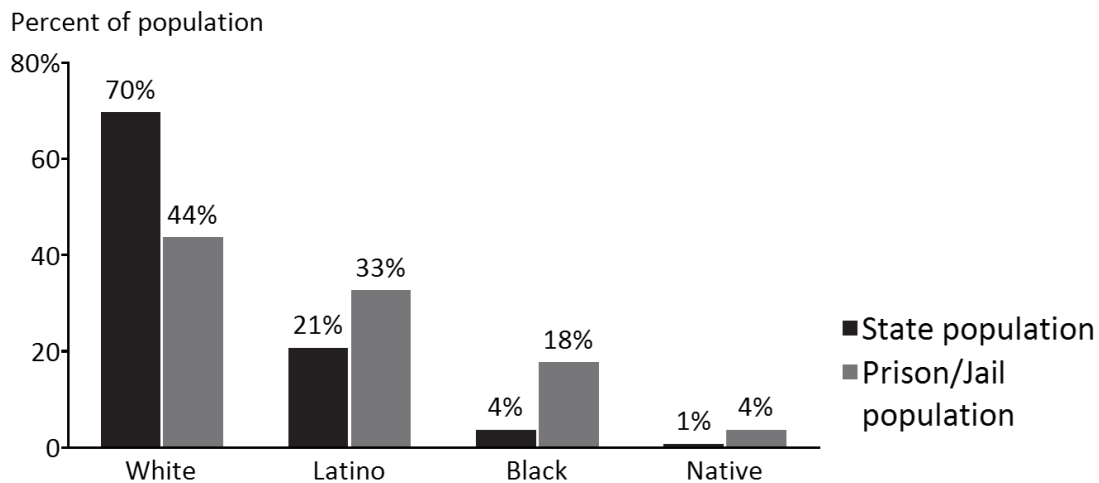


Figure 0.2: Racial and ethnic disparities in prisons and jails in Colorado, as of 2010 census. Data from Prison Policy Initiative, accessed at <https://www.prisonpolicy.org/profiles/CO.html>.

criminal legal system is not exceptional: the state’s incarceration rate per 100,000 population is 614, just below the United States average of 664 people per 100,000 people. Like in the rest of the United States, people of color are—and always have been—overrepresented in Colorado’s prisons (See Figure 0.2). Colorado prisons, like those across the United States, nearly always have exceeded their planned capacity.<sup>11</sup> People incarcerated in Fremont County, too, protested and organized in similar ways and at similar moments to incarcerated people across the country.

Yet, Colorado and Fremont County, also present a different case. They add new components to the story of punishment, politics, race, region, and labor in the United States. Coloradans built a self-consciously progressive image as a state, which led to reforms in its criminal legal system. In Colorado, like in much of the West, shifting demographics and fluid conceptions of race and identity were continuously negotiated and contested. Defining and re-defining freedom required Colorado’s carceral state to propagate and justify new targets of racial oppression with the state’s changing demographics. In Fremont County, unlike in other rural

<sup>11</sup> Prison Policy Initiative, “Colorado Profile,” accessed at: <https://www.prisonpolicy.org/profiles/CO.html>.

prison communities in the late twentieth century, residents have long courted prisons for economic stability. Eric Williams' study of prisons shows that in the late twentieth century non-metropolitan communities began to lobby for and subsidize prison construction, a shift from these communities' aversion to previous local prison siting.<sup>12</sup> Residents and leaders of Fremont County always lobbied for more punishment infrastructure, seeing it as a positive social and economic good, yet these people rarely, if ever, achieved those promises of economic prosperity.

The debate over freedom was intimately local and inextricably national. Indigenous people long inhabited the area that settlers defined as Colorado, but beginning this history of freedom in Colorado Territory during the Civil War demonstrates how the modern carceral state developed as the United States grappled with the extent to which it would use force to protect property and the ideal of a multiracial democracy.<sup>13</sup> Scholars of Reconstruction and post-Civil War incarceration, including Edward Ayers and Douglass Blackmon, argue that the South's criminal legal system developed in enslavement's wake as a system of race and class control. After emancipation, white Southerners relied on the state to enforce a racial order by criminalizing Blackness.<sup>14</sup> Henry Kamerling rejects the South-centric narrative of post-Civil War

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<sup>12</sup> Eric J. Williams, *The Big House in a Small Town: Prisons, Communities, and Economics in Rural America* (Santa Barbara: Praeger, 2011).

<sup>13</sup> Du Bois, *Black Reconstruction*; Eric Foner, *Nothing but Freedom: Emancipation and Its Legacy* (Baton Rouge: Louisiana State University Press, 2007), Stephen David Kantrowitz, *Ben Tillman & the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000); Stephen Kantrowitz, "White Supremacy, Settler Colonialism, and the Two Citizenship of the Fourteenth Amendment," *Journal of the Civil War Era* 10, no. 1 (March 2020): 29-53.

<sup>14</sup> Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (New York: Oxford University Press, 1984); Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008); Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (Columbia, South Carolina: University of South Carolina Press, 1996); Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996).

racialized freedom and convict labor. Kamerling compares Illinois and South Carolina to demonstrate how labor was at the center of carceral logic across the country despite programs' variations based on local demographics and political corruption.<sup>15</sup> Beginning the narrative in this moment of national debates over multiracial democratic participation allows a view of incarceration that bridges Western and Southern projects in defining freedom as well as the social and political order. Coloradans attempted to establish state authority in the moment of emancipation. National debates over the possibility of a multiracial democracy informed Colorado's legal development in a society with powerful Mexican and Mexican American blocs, significant communities of Indigenous people with long histories in the region, Euro-American settlers including both miners and capitalists looking to capitalize on natural resources.

“Incarceration,” Kelly Hernández concludes, “operates as a means of purging, removing, caging, containing, erasing, disappearing, and eliminating targeted populations from land, life, and society in the United States.”<sup>16</sup> Hernández's history of “human caging” in Los Angeles frames incarceration as a tool of racial control and elimination in a settler colonial regime, and this study of Colorado builds on Hernández's framework to show the ways Colorado is unique and also exemplary of Western and national trends. Colorado's goals were largely the same as those in Los Angeles. Unlike in Hernández's story of Los Angeles, this story of Colorado presents policing and imprisonment as only one of the tools in the carceral state's repertoire. For example, while the militia expelled and killed Indigenous people, the criminal legal system confined and disciplined unruly laborers who had, in theory, the potential to be “rehabilitated.”

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<sup>15</sup> Henry Kamerling, *Capital and Convict: Race, Region, and Punishment in Post-Civil War America*, The American South Series (Charlottesville: University of Virginia Press, 2017).

<sup>16</sup> Lytle Hernández, *City of Inmates*, 1.

Later on, during the 1930s, the governor tried to use the militia to police the state's border and deport impoverished people. Within both Los Angeles and Colorado the process of conquest by incarceration, to be sure, was not total. Targeted people challenged the system, and they left a "rebel archive" preserving dignity and community. This rebel archive, constituted of both written evidence (e.g., letters, articles, testimony, etc.) and recorded actions (e.g., protests and disruptive behaviors seen in punishment records or logbooks), allows a disentangling of layers of subordination and an understanding of how those who were incarcerated understood their world.

The United States carceral regime has been characterized variously as a tool of class warfare against racialized populations, a counterinsurgency against radical political actors, a racial genocide, and the edifice of domestic warfare against a racialized and dissenting population.<sup>17</sup> In concert, these conceptualizations of the carceral state underscore the great paradox, as Edmund Morgan calls it, at the center of United States history: American freedom was built on unfreedom.<sup>18</sup> Since its founding, the United States has long depended on two formal kinds of unfreedom to discipline its residents: enslavement and incarceration. These systems have created a distinction between a free world and that of the unfree. Understanding the centrality of these systems as simultaneously practical and ideological reveals how freedom has been constructed on unfreedom and how slavery's structuring of relations has evolved but fundamentally persisted. Dylan Rodríguez argues that while Reconstruction abolished chattel

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<sup>17</sup> Gilmore, *Golden Gulag*; Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016); Rodríguez, *White Reconstruction*; Orisanmi Burton, "Captivity, Kinship, and Black Masculine Care Work under Domestic Warfare," *American Anthropologist* 123, no. 3 (2021): 621-632.

<sup>18</sup> Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York and London: W.W. Norton & Company, 1975).

slavery, slavery persisted as a mode of social relations.<sup>19</sup> Slavery, as a form of exploitation and oppression that requires societal inclusion of its targeted people, offers one paradigm for thinking about the way that the carceral state has continued to oppress classes of people. Slavery required the inclusion and integration of Black people into U.S. society, capitalizing on their presence to extract value. Kelly Hernández, however, argues that the goal of the carceral state is the elimination of racialized populations.<sup>20</sup> This elimination, unlike enslavement, separated the targeted population from daily life of the free world.<sup>21</sup> While the differences between enslavement and incarceration are meaningful and important, the continuities of oppression by race and class are significant. The modern prison, built in conjunction with the myths of slavery and Reconstruction, legitimized punishment and separation as a progressive reform.

What does this approach to Fremont County's history reveal about community, Colorado, the United States, and the resilience of the carceral state? The carceral state propelled the development of the modern state, leveraging its logics and practices to entrench the state's monopoly on force. This story highlights how control and punishment, framed around race and class, have long been central to the United States' politics and economics. As part of these material systems, punishment provides American culture with fodder to stigmatize and criminalize classes of people. This punitive orientation has reformed over its long history, but into an ever expanding role. The carceral state has empowered elected officials, state law

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<sup>19</sup> Dylan Rodríguez, *White Reconstruction: Domestic Warfare and the Logics of Genocide* (New York: Fordham University Press, 2021).

<sup>20</sup> Hernández, *City of Inmates*.

<sup>21</sup> The "free world" or "free-world society" refers to people and spaces under less strict surveillance and targeting as those functioning within the confines of prison or plantations. People in the free world often retain their ability to move freely, choose their residence, decide with whom to interact, etc. (all, of course, to a degree and varying based on class, race, gender, and ability).

enforcement agents, and charitable organizations while simultaneously disenfranchising and attempting to dehumanize people.<sup>22</sup> The United States, Colorado, and Fremont County embraced the central role of punishment in society, because of a political and cultural consensus that transcended ideological orientations. Examining the details in Colorado reveals how the prison made itself and how it represented naturalized punishment as a social welfare solution.



While punishment and incarceration became naturalized in American society, they were also contested. For the carceral state to garner public support, as it did in Fremont County, people sent to prison for committing a criminal act had to be deemed worthy of restricted citizenship—of unfreedom. Michelle Brown argues that the prison itself was but one component of the carceral state that instructed Americans’ perceptions of citizenship and who deserved punishment. Brown contends: “many American citizens access punishment through cultural practices removed from formal institutions like prisons in a manner which, although largely unacknowledged, massively extends throughout our social foundations.”<sup>23</sup> Coloradans, for example, engaged the carceral state in film and media, political campaigning, employment policies and practices, and tourist experiences. The prison, as a tool reserved for punishing “bad people,” offered a myth of a benevolent, fair, and progressive country. It, in theory, exemplified

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<sup>22</sup> Walter Johnson challenges the ability of enslavers to dehumanize Black people because “Dehumanization suggests an alienation of enslaved people from humanity.” In an essay about the human qualities of enslaved people that enslavers depended on, Johnson asks: “Who is the judge of when a person has suffered so much or been objectified so fundamentally that the person’s humanity has been lost?” While the criminal legal system tried to represent incarcerated people as a spectacle to be observed as if non-human, this system lacked the ability to control whether these people felt and acted human. Walter Johnson, “To Remake the World: Slavery, Racial Capitalism, and Justice,” *Boston Review*, Feb. 20, 2018, accessed at: <https://bostonreview.net/forum/walter-johnson-to-remake-the-world>.

<sup>23</sup> Michelle Brown, *The Culture of Punishment: Prison, Society, and Spectacle* (New York: New York University Press, 2009), 4



right and wrong. The penitentiary, Caleb Smith argues, was “a theater for the performance of its society’s founding political myths.”<sup>24</sup> Smith and Brown both recognize, as the case of Fremont County demonstrates, how incarceration was a cultural process that occurred, in part, outside the prison’s walls. Within the prison, too, the people who were incarcerated experienced “carceral violence.” Robert Chase defines carceral violence as the “cumulative power of daily human degradation for years on end and is characteristic of how prisons deny prisoners not only civil rights and constitutional protections but their humanity.”<sup>25</sup> This form of violence was both material and psychological. In Colorado, for example, carceral violence employed prison authorities and journalists alike to present incarcerated people and the communities from which they came as fundamentally flawed. The stigmatization of these people justified the state’s continued surveillance and punishment of them and delegitimized many of their protests. The normalization of incarceration and acceptance of a punitive orientation required a narrative of the carceral project as necessary and beneficial.

The “criminalized” and “incarcerated” rejected these labels and the state’s violence. Resistance, collective and individual, was ideologically informed. Our powerful cultural notions about incarcerated people being marginalized and too weak to resist require different approaches to find and label resistance. Social work and education scholars offer paradigms for thinking of these people as mobilized and enacting strategies of resistance.<sup>26</sup> Recognizing how incarcerated

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<sup>24</sup> Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2011), 7.

<sup>25</sup> Chase, *We Are Not Slaves*, 14.

<sup>26</sup> Sophia P. Sarantakos and Shannon Silva, “Social Work for Social Movements: Using Movement Lawyering as a Frame for Action” presented at “Social Work, White Supremacy, and Racial Justice Symposium,” March 2021; Subini Ancy Annamma, *The Pedagogy of Pathologization: Dis/abled Girls of Color in the School-Prison Nexus* (New York: Routledge, 2018).

people mobilized redefines power of resistance and political action more broadly. Subini Annamma's analysis of targeted and criminalized youth demonstrates how strategies of resistance are not always obvious or clear externally but achieve individual, meaningful goals. Incarcerated activists and organizers in Colorado forged solidarity with people in the free world, used the court system, and disrupted prison routines to improve their conditions and to satisfy communal and personal needs. Within spaces of incarceration, redefining resistance allows us to read records to see dissent in state-sanctioned ways, like legal appeals in the courts, but also in unsanctioned ways, like labor slowdowns. Incarcerated people in Colorado recognized that protesting within and outside of the system offered different benefits. Legal protests offered the state opportunities to legitimize its function by reforming. While state-sanctioned protest accepted a punitive framework and fought for constitutional rights, other unsanctioned, transgressive protests interrogated that framework of punishment and power to imagine a more expansive practice of care and community. Orisanmi Burton challenges us to look at other less obvious "countertactics of war" to find how incarcerated people and their allies built intergenerational survival tactics. Burton frames intimacy, kinship, and care work as a form of both rebellion and solidarity.<sup>27</sup> In Colorado, for example, incarcerated Latino men serving life sentences formed an organization inside and outside the prison to unite the state's Latino activists and support men who were released from CSP with mutual aid—jobs, resources, and community.

By borrowing an analytical lens from scholars of early modern Europe and of slavery who analyzed actions to discern ideology, we can try to understand how incarcerated peoples'

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<sup>27</sup> Orisanmi Burton, "Captivity, Kinship, and Black Masculine Care Work."

actions represent informed statements of personal needs and beliefs.<sup>28</sup> Elizabeth Hinton’s history of Black uprising in the late 1960s and 1970s recasts “riots” as “rebellions” because of their political motivation in response to continued violence and harm.<sup>29</sup> That reframing, in concert with a deeper understanding of actors’ motivating ideology, helps us see how the prison system has attempted to delegitimize protests as brawls, riots, or misbehavior. Instead, as this story shows, looking for motivations behind incarcerated peoples’ actions often reveals defined targets and motivating grievances. Incarcerated people challenged the state’s system in many ways. Work stoppages and violent uprisings have been the most explicit and publicized forms of protest. The state, as Heather Thompson reminds us, attempts to destroy, hide, and recast prison organizing to maintain illusions of total control—over the narrative and over incarcerated people.<sup>30</sup>

A legal revolution in the 1950s and 1960s allowed incarcerated people to employ the courts—with varying degrees of success—for redress. Legal protests yielded material changes in Colorado and across the country. It also gave incarcerated people opportunities to testify publicly to systemic failures—a platform for dissent.<sup>31</sup> Public testimony empowered mobilized

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<sup>28</sup> For example, Stephanie M.H. Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004); Lee Palmer Wandel, *Voracious Idols and Violent Hands: Iconoclasm in Reformation Zurich, Strasbourg, and Basel* (Cambridge: Cambridge University Press, 1999).

<sup>29</sup> Elizabeth Hinton, *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s* (New York: Liverlight Publishing, 2021).

<sup>30</sup> Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: First Vintage Books, 2017).

<sup>31</sup> Garrett Felber, *Those Who Know Don’t Say: The Nation of Islam, the Black Freedom Movement, and the Carceral State* (Chapel Hill: University of North Carolina Press, 2020); Dan Berger, *Captive Nation*.

communities and made audiences, as Kidada Williams argues, “co-owners of trauma.”<sup>32</sup>

Incarcerated people, in the tradition of abolitionists and civil rights organizers, told their stories to expose carceral violence and to indict silence as complicity.<sup>33</sup> Incarcerated people used the platform the court offered—along with other tools of communication—to challenge state narratives of incarceration. Courtroom actors, such as juries, judges, and witnesses, were forced to bear witness. This public testimony, like the other forms of protest in carceral settings, came at personal risk to comfort, safety, health, and freedom. Those testifying to the system’s wrongdoings continued to live at the mercy of prison officials. In Colorado, for example, six men testified to the physical abuses of a warden in court in the early 1950s while the warden continued to reign over the prison and their daily lives.

Legal victories against state repression or individual prison officials in Colorado often proved pyrrhic because the system evolved to bolster its legitimacy. And, protest through the courts was fundamentally conservative: these legal challenges fought for rights within a constitutional framework and accepted the proposition that free society required punishment. Legal victories that changed laws and practices, as in Texas with *Ruiz v. Estelle*, grew out of a history of interracial organizing, documenting, and publicizing. David Ruiz sued the Texas Department of Corrections in a class action suit in 1972 alleging that the prison’s management constituted “cruel and unusual punishment” as prohibited by the Eighth Amendment, and after nearly nine years, the court ruled in the plaintiffs’ favor and ordered a sweeping overhaul of

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<sup>32</sup> Kidada E. Williams, *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I* (New York: New York University Press, 2012), 6.

<sup>33</sup> Examples of such testimony abound in the African American historiography; one such example is Fannie Lou Hamer as discussed in Keisha N. Blain, *Until I Am Free: Fannie Lou Hamer’s Enduring Message to America* (Boston: Beacon Press, 2021), especially 33-34.

Texas’s prison system.<sup>34</sup> Redress, as in Ruiz’s case and in cases throughout Colorado and the United States, was limited to what could be imagined within a system that believed it needed incarceration. Prisoner litigation, as Robert Chase concludes, emerged from the civil rights organizing tradition.<sup>35</sup> As such, incarcerated people in Texas, Colorado, and other states made prison life legible and understandable to federal courts, the media, and the public. Incarcerated peoples’ protests, sanctioned and transgressive, have left a contested record of material success, but offer a clear conclusion of their success in organizing against violence and reasserting their humanity.



A common lexicon—within this project and more broadly—facilitates a clearer understanding of the carceral state and American freedom. This study asks questions about complex systems. These systems, as my research shows, often gain power through obscurity and complexity. This power endures because the logic of unfreedom as a prerequisite for freedom becomes entrenched in society. A history of incarceration and those involved requires precise definitions and understanding—especially because these systems are dynamic. This clear understanding of the carceral state reveals the continuities that make its growth and existence durable. What is the “carceral state”? What are “carceral logics”? Who and what is “the state”? How do state and non-state actors enact the carceral state? What is “reform”? Why has the carceral state engaged in reform? What does it mean to think or act “radically”? Scholars

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<sup>34</sup> *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980).

<sup>35</sup> Chase, *We Are Not Slaves*.

disagree on these questions, but considering basic definitions helps us understand this complex system.

What is the “carceral state”? The carceral state employs both ideological and material systems to structure society around control. It cannot be confined to the state’s institutions of direct control: the criminal legal system and the public welfare system. Erica Meiners offers a useful definition: “The term *carceral state* is used to highlight the multiple intersecting state agencies and institutions—including not-for-profits doing the work of the state—that have punishing functions and effectively regulate poor communities.”<sup>36</sup> Ruby Tapia builds on this definition of the carceral state to note how “it encompasses logics, ideologies, practices, and structures, that invest in tangible and sometimes intangible ways in punitive orientations to difference, to poverty, to struggles, to social justices, and to the crossers of constructed orders of all kinds.”<sup>37</sup>

The carceral state, as a system of control that uses private and public levers, has a long history that built to the late twentieth century era of mass imprisonment. A focus on the longer history of the carceral state rather than the more recent iteration of mass imprisonment underscores how a punitive orientation transcended parties and both liberals and conservatives championed it.<sup>38</sup> David Garland pushes an expansive chronology of the carceral state, arguing that this penal-welfare state developed when the rise of capitalism and modernity led to a culture

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<sup>36</sup> Erica R. Meiners, “Offending Children, Registering Sex,” *WSQ: Women’s Study Quarterly* 43, no. 1 (2015): 246-263.

<sup>37</sup> Ruby Tapia, “What is the Carceral State,” University of Michigan Carceral State Project 2018-2019 Symposium, Oct. 3, 2018, available at [https://www.youtube.com/watch?v=4aGcm\\_MK3sU](https://www.youtube.com/watch?v=4aGcm_MK3sU).

<sup>38</sup> Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford University Press, 2014), 3.

of control.<sup>39</sup> There was a clear departure in the scale and scope of incarceration in the 1970s, so understanding the carceral state and its logics as distinct from mass imprisonment allows us to find continuities in the history of American social control.<sup>40</sup> Colorado's long experiment with punishment proves how the modern system of incarceration builds on ideologies, practices, infrastructure, and cultural assumptions that have been built since the territory began debating what citizenship meant.

What are "carceral logics"? The expansiveness and effectiveness of the carceral state depends on structuring and organizing society through punishment and control. Scholars who examine the nation's fundamental punitive orientation have employed various terms to identify the scale of governing punishing structures: prison-industrial complex, the new Jim Crow, neoliberalism, neo-slavery, golden gulag, mass incarceration, and prison nation. "Carceral state" differs from these terms because it emphasizes the expansiveness of the ideas of control. This carceral society uses threatened and actualized punishment, accepted by most citizens as necessary, as a social welfare solution.

Michel Foucault contends that a universal culture of control is governed through formal mechanisms of punishment and through informal cultural sanctions that prevent transgressive behavior. This "carceral archipelago," as Foucault calls it, normalizes and legitimizes institutions

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<sup>39</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 2012).

<sup>40</sup> On the rise and features of the post-1960s carceral system: Gilmore, *Golden Gulag*; Berger, *Captive Nation*; Felber, *Those Who Know*; Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016); Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006);

of control and discipline.<sup>41</sup> Jonathan Simon's recent history of the war on crime shows how the metaphors of crime and criminal justice have built a culture of fear that justifies the expansion of state power, particularly state punitive power in fields afar from those that have traditionally been under the purview of crime and law enforcement.<sup>42</sup> The war on crime, Simon argues, has recast many settings as battlefields of the war on crime and provided authority to regulate them, ever expanding the punitive state and non-state institutions. The carceral state continues to grow because it creates public support in a culture of fear whose only proposed solution is discipline and removal. At its heart, a carceral logic contends that punishment and unfreedom are necessary for freedom.

Who and what is "the state"? And, relatedly, how do state and non-state actors enact the carceral state? Police and prisons are the clearest manifestation of the state's punitive orientation, but control permeates society. The carceral state's punitive orientation is a crucial component of the modern state. Prisons and punishment helped secure state legitimacy and expand the state's scope and scale of responsibility. The state's authority to punish and control individuals and communities underscores Max Weber's definition of the state: "the modern state is a compulsory association which organizes domination. It has been successful in seeking to monopolize the legitimate use of physical force as a means of domination within a territory."<sup>43</sup> The modern state

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<sup>41</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2<sup>nd</sup> Vintage Book ed. (New York: Vintage Books, 1995).

<sup>42</sup> Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007).

<sup>43</sup> Max Weber, "Politics as Vocation" in *From Max Weber: Essays in Sociology*, H.H. Gerth and C. Wright Mills, eds. and trans. (New York: Oxford University Press, 1946), 77-128.



lent its capacities to the development of the criminal legal system in exchange for bolstering the state's legitimacy.<sup>44</sup>

Within prisons, a particular state bureaucracy must simultaneously maintain legitimacy for the carceral state and effectively run the institution. I label that group of officials as “prison administration” or “prison administrators.” Prison administrators, as Ashley Rubin argues, “were frequently *de facto* policymakers.”<sup>45</sup> This group excludes both rank guards and elected officials. It often includes the warden, a state oversight and management board, and high-ranking guards. This group, unlike elected officials, is responsible for day-to-day operation of prison spaces. They determine policies and procedures that range from quotidian, like menus and work schedules, to long-term solutions for persistent problems, like the demand to make facilities self-sufficient. Administrators must also maintain legitimacy in the public eye. Prisons are bureaucratic institutions that elide individual accountability. Progressive reformers, Colorado's history shows, used the prison to forge a system in which expertise and insular networks gained institutional control without much electoral accountability or oversight—a model that the carceral state would build on as it expanded.<sup>46</sup>

Prison development offered the state an opportunity to revitalize communities and shore up political support. Prison development reveals the state's priorities in economic investment. Mike Davis explores how prison and law enforcement boosters touted local economic benefits

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<sup>44</sup> George Rusche and Otto Kirchheimer argue that the capitalist state and its ruling class used punishment to control the working class. George Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939).

<sup>45</sup> Ashley T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913* (Cambridge: Cambridge University Press, 2021), li.

<sup>46</sup> Ruth Wilson Gilmore and Craig Gilmore, “Restating the Obvious,” in *Indefensible Space: The Architecture of the National Insecurity State*, Michael Sorkin, ed. (New York: Routledge, 2007).

and profit, and he calls the growth of these criminal legal systems “carceral Keynesianism.”<sup>47</sup> Residents of Fremont County long understood prisons as state investment in their community. Understanding why Coloradans and Americans invested in the carceral state offers a way for thinking about the root causes of incarceration and how spaces of incarceration are intimately connected to the spaces from which the captives arrive.<sup>48</sup> Coloradans always saw prison investment as a safe, long-term community asset. Prison development built state capacity and deployed state resources while also cementing the state’s legitimacy and its evolving use of force. From its territorial days, Colorado turned to its prison system as a symbol of effective governance.

The carceral state is also upheld by non-state actors because it is so deeply woven into society. Because carceral logic dictates that punishment is necessary for freedom, the carceral state gains supports from external institutions and individuals, generating support for its expansion. The support can be seen widely: from communities accepting surveillance and policing to the film industry propagating messages of right and wrong. The relationship, as scholars like Ashley Rubin and Aaron Griffith have noted, between non-state and state actors has long been a central feature of the carceral state.<sup>49</sup> Fremont County, too, saw the mutually constitutive relationship between private and state actors. Area residents were often the most vocal boosters of prison growth. The overwhelming support for the carceral state also emerged from the relationship between prison authorities and the media, which often privileged

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<sup>47</sup> Mike Davis, *City of Quartz: Excavating the Future in Los Angeles* (New York: Verso Books, 1990).

<sup>48</sup> Gilmore, *Golden Gulag*.

<sup>49</sup> Rubin, *Deviant Prison*; Aaron Griffith, *God’s Law and Order: The Politics of Punishment in Evangelical America* (Cambridge: Harvard University Press, 2020).

sensational and violent bits of incarcerated peoples' past actions, contributing to the lasting stigmatization of incarcerated people.

What is “reform”? And, why has the carceral state engaged in reform? A key feature of the carceral state is its ability to maintain legitimacy, and one of the primary ways it has done so is through reform. The carceral state recognizes and respects changing social norms and behaviors, and as such, it reforms itself to remain palatable and relevant. The modern prison, in fact, is itself a reform from a previous iteration of punishment: execution or enslavement. The prison has continuously undergone reforms to maintain progressive and modern forms of punishment and control, repackaging modes of control to assuage public opinion. These reforms maintain that the goal of the carceral state is rehabilitation of incarcerated people and safety for the free world. Robert Martinson, however, concluded in the 1970s that “nothing works” in the field of corrections when assessing “rehabilitation.”<sup>50</sup> While this conclusion provided evidence for indeterminate sentencing laws, it can be read as an indictment of the idea of rehabilitation and of the punitive system itself. Rehabilitation, no matter how many iterations of reform it undergoes, fails because it deals with symptoms of social problems rather than the causes. For example, after Colorado invested in a parole center to train incarcerated people to reenter the free world successfully, the rate of recidivism continued to track with national averages because the pre-parole center did not eliminate the roadblocks incarcerated people faced in employment and housing in the free world.

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<sup>50</sup> Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation* (New York: Praeger, 1975); Robert Martinson, "What works? - questions and answers about prison reform," *The Public Interest* (Spring 1974), pp. 22-54.

What does it mean to think or act “radically”? Radical, as employed in this study and by the actors herein, is used to frame a way of understanding: Can we trace manifestations of social issues to their roots?<sup>51</sup> Discussion of incarceration necessitates discussion of crime and criminality. Crime is a dynamic construct informed by shifting political and social values. The most glaring example of this notion is alcohol: while the manufacture and distribution of alcohol was legal in Colorado in 1915, it became a crime the next year. A criminal act, most often, is a symptom of a system that fails to care adequately for its communities, rather than a root cause. For example, Families and Friends of Convicts United for Support, a support and advocacy group in Fremont County, studied incarceration in the 1980s and 1990s, reporting that seventy-five percent of those incarcerated lived below the poverty line at the time of the arrest.<sup>52</sup> This report emphasizes how criminal actions are generally the result of shortcomings in the social welfare system. The carceral state redirects attention from failed social and political systems.

The carceral state attempts to anonymize and collectivize those within the criminal legal system, so a radical approach to this story requires rendering these people visible. Effective analysis of the carceral state necessitates an intersectional approach with precise language. The carceral state has disproportionately targeted people of color, and the overlapping identities of race, gender, class, disability, religion, and immigration status reveal interlocking layers of subordination.<sup>53</sup> A radical, intersectional approach to the history of Colorado’s prisons and its

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<sup>51</sup> Robin D.G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2003); Johanna Fernández, *The Young Lords: A Radical History* (Chapel Hill: university of North Carolina Press, 2020).

<sup>52</sup> “FOCUS Newsletter,” June 1991, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

<sup>53</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, “Identity Politics, and Violence against Women of Color,”* *Stanford Law Review* 43, no. 6 (July 1991): 1241-1299. For example: Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016); Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice* (New York: Beacon Press, 2012); Beth Lew-Williams, *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America* (Cambridge:

captives challenges us to cut through euphemisms and shift language to explore the lived experiences of incarcerated people and how those experiences reveal the carceral state's enduring power. Here, I use people-first language and neutral rhetoric when describing people and systems to allow a full understanding of the carceral state.<sup>54</sup>



The development of the prison system allowed Colorado—and the United States—to define which citizens deserved which social benefits. Colorado's unique demographics throughout settlement—initially with significant Indigenous and Latinx populations, then with more Black people after World War II—offers a case study to show how the prisons manifested a racialized freedom. Tyler Stovall argues: “to an important extent, although certainly not always, ideas of freedom in the modern world have been racialized. In particular, many have considered whiteness and white identity intrinsic to modern liberty ... To be free is to be white, and to be white is to be free.”<sup>55</sup> Prisons in Colorado were always disproportionately non-white, reflecting how choices over who was criminalized, what communities were policed, and which people received prison time were choices about which people deserved freedom. Liberalism and its principles, Adam Malka argues, supported Black oppression via both formal state power and

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Cambridge University Press, 2018); Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley: University of California Press, 2010).

<sup>54</sup> This study uses people-first language to emphasize that being incarcerated is only one component of a person's identity. For example, while “inmate” collapses a person's entire identity into the result of a prison sentence, “captive” conveys a physical state of being rather than an identity. Similarly, for example, referring to the system of policing, sentencing, and incarcerating as the “criminal legal system” rather than the “criminal justice system” challenges the state's notion that incarceration provides “justice.” Akiba Solomon, “What Words We Use—and Avoid—When Covering People and Incarceration,” *The Marshall Project* 4/12/2021, accessed at <https://www.themarshallproject.org/2021/04/12/what-words-we-use-and-avoid-when-covering-people-and-incarceration>.

<sup>55</sup> Tyler Stovall, *White Freedom: The Racial History of an Idea* (Princeton: Princeton University Press, 2021), 5.

informal white power that relied on assumptions of Black criminality and white freedom.<sup>56</sup> In Colorado, the prison system worked in concert with social scientists, journalists, reformers, and religious leaders to realize a white supremacist settler state. Data on race and incarceration, becoming more important through the twentieth century, fueled narratives of Latinx and Black criminality, cementing deleterious stereotypes that triggered increased criminalization, policing, and incarceration.<sup>57</sup>

The specific contours of Colorado's evolving prison system underscore how national projects of white supremacy and policing presented locally. The development of narratives about incarceration and prison policies was a local, contingent process, and scholars have explored how the carceral project varied in different locales. Exploring another western state, Mona Lynch excavates the unique policies, practices, and context in Arizona to show how their system of incarceration developed and offered a model for the nation. Keramet Reiter uses California and the reaction to George Jackson's resonant radicalism to demonstrate why the state turned to isolation and repression in the late twentieth century. Taking a comparative approach, Vanessa Barker uses a range of state examples to analyze the American prison regime as different systems responded to similar problems of democratic engagement and globalization. Connie Chiang's history of the Japanese American internment reveals how policies and practices within spaces of incarceration depended on their local contexts and environment.<sup>58</sup>

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<sup>56</sup> Adam Malka, *The Men of Mobtown: Policing Baltimore in the Age of Slavery and Emancipation* (Chapel Hill: University of North Carolina Press, 2018).

<sup>57</sup> Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010).

<sup>58</sup> Mona Pauline Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford: Stanford Law Books, 2010); Keramet Reiter, *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (New Haven: Yale University Press, 2016); Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way American Punishes Offenders* (New York: Oxford University Press, 2009);

In all these places, and in Colorado, unique contexts determined where and how prisons grew—natural resources, racial demographics, local and state economics, and shifting electoral politics. To be sure, Colorado prison administrators learned from and were in conversation with other developing prison systems across the country and globe. While local context mattered, the national zeitgeist of punishment permitted and shaped the broad contours of American incarceration. Local politicians and administrators argued that Fremont County’s carceral project differed from contemporaneous projects across the nation, reflecting their dissonance about their role in mass incarceration. Judah Schept similarly finds this dissonance in his study of how local leaders “were quick to offer informed criticism and a denunciation of the prison-industrial complex,” yet simultaneously “expressed a vision for local incarceration that attempted to distinguish it from the national narrative of prison growth” because of rhetoric of liberal benevolence offered locally through rehabilitation and therapeutic justice.<sup>59</sup> Local boosters in Colorado and elsewhere recognized the overall growth of the penal state as problematic while arguing that they did things differently and their iteration was a positive good. Even though Fremont County’s carceral leaders continuously insisted that that their efforts created positive imprisonment—rehabilitative and progressive—as an exception to the national norms, that very claim was hardly rare.



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Connie Y. Chiang, *Nature Behind Barbed Wire: An Environmental History of the Japanese American Incarceration* (New York: Oxford University Press, 2018).

<sup>59</sup> Judah Schept, *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of Carceral Expansion* (New York: New York University Press, 2014), 7

This study of Fremont County puts into conversation narratives of captives, their keepers, political officials, and the media. Patricia O'Brien, historian of French prisons, recognized the difficulties of understanding prisons and the carceral state: "Until we know what the prison was really like, as distinct from the rhetoric of what the prison ought to be, we are limited in the kinds of conclusions we can draw about its place in the social system."<sup>60</sup> Her call acknowledges that historians must interrogate state narratives, putting them in conversation with contextual clues and competing evidence. Just as a newspaper put out by incarcerated people in the 1970s contested the prison's claim that another man committed suicide by arguing that the suicide narrative was a cover for the guards' abuse that killed him, we must be careful when taking any claim at face value.

*Prison Valley, U.S.A.* relies heavily on public-facing state- and media-produced documents. While the study explores the lived experience of the incarcerated people, it also presents an institutional history of Fremont County's prisons and the community that developed around them. The prison system and media organizations generated a wealth of records representing the carceral state. These records do not offer a full picture of events in Fremont County; they are written from positions of power and intended to legitimize the carceral regime. Prison officials, local media, prison stakeholders, and elected officials constituted a "cultural power" structure that produced representations of the carceral system and its captives.

To combat this power, Stuart Hall and his coauthors argue that representation, such as that done by these stakeholders, is "the active work of selecting and presenting, of structuring and shaping; not merely the transmitting of an already-existing meaning, but the more active

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<sup>60</sup> Patricia O'Brien, *Promise of Punishment*, 8.



labour of making things mean.”<sup>61</sup> The political and biased nature of available sources forces a reading of the archives that recognizes silences, acknowledges ambiguity, and questions everything.<sup>62</sup> The archive itself is political, and traditional archives often have been curated to support existing power structures. Preserved and accessible documents are often preserved and accessible because they reinforce carceral logics or uphold power. The rebel archive exists in the form of court testimony, prison newspapers, individual letters, and petitions. This rebel archive, in the case of Fremont County, can also be seen by analyzing rebellious acts found in state documents. Punishment records, for example, reveal acts and strategies of dissent, and when read with a lens that estimates motivation, strategies and acts of resistance are legible.<sup>63</sup>

Within the prison and its environment, not all events were recorded. The archival gap challenges us to highlight commonalities extrapolated from individual experiences. At times, moreover, my sources illuminate events deeply connected to a prison community but only suggest—rather than prove—clear causal relationships. For example, oral interviews and some media accounts note that violence within prisons seep into the free world communities that surround them. Local rates of sexual violence, alcoholism, or drunk driving, all indicators of community pain, cannot always be linked definitively to the prison.<sup>64</sup> Such gaps leave the history

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<sup>61</sup> Hall et al, *Policing the Crisis*, 64.

<sup>62</sup> Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston: Beacon Press, 1995); Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2010); Lisa Moses Leff, *The Archive Thief: The Man Who Salvaged French Jewish History in the Wake of the Holocaust* (New York: Oxford University Press, 2015); Andrew Israel Ross, “Sex in the Archives: Homosexuality, Prostitution, and the Archives de la Préfecture de Police de Paris,” *French Historical Studies* 40, no. 2 (2017): 267-290; Lisa Wynne Smith, “Resisting Silences: Gender and Family Trauma in Eighteenth-Century England,” *Gender & History* 32, no. 1 (2020): 30-53.

<sup>63</sup> Wandel, *Voracious Idols and Violent Hands*.

<sup>64</sup> Popular and contemporary accounts of prison communities convey how working at a prison can yield violence and harm in the community: Dale Chappell, “Suicide Rate of BOP Guards Keeps Increasing, Sets New Record,” *Prison Legal News*, 4/1/2020, accessed at <https://www.prisonlegalnews.org/news/2020/apr/1/suicide-rate-bop->

and impact of the prison, unfortunately, incomplete. Other analytical approaches, too, could yield insights that are largely omitted from the approach undertaken here. For instance, an environmental historian could ask questions about the material impact of carceral facilities on the surrounding climate or look into the way health is maintained (or not) in relation to prison sanitation policies. Similarly, for example, a political historian could ask deeper questions about the structure of the state and its dynamic electoral politics by exploring more deeply the funding and administration of prisons. A scholar of race, too, could delve further into social dynamics in prisons to understand how race is constructed and how it is contested or reinforced.

Although the narrative cannot ever be complete, Fremont County offers a local, county-level history that underscores state and national systems of punishment. A prison offered Fremont County legitimacy and investment in the 1860s, and prisons since then have continued to promise local revitalization and community identity. Fremont County, a unique carceral capital, reflects the long history of how the modern United States developed. Fremont County has nine state and four federal prisons; the United States has 1,833 state prisons and 134 federal prisons.<sup>65</sup> Communities like Fremont County—lured by the promised investment of the carceral state—dot the American landscape. These prisons and the communities that support them further entrench a punitive state, normalizing punishment as a social welfare solution. In the end, using punishment as a racialized tool of social welfare, both for those incarcerated and towns relying on them, has come at a significant price.

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[guards-keeps-increasing-sets-new-record/](#); Wes Venteicher, “Correctional officer’s death exposes hazing, toxic culture at California prison,” *The Sacramento Bee* 4/17/2021, accessed at <https://www.sacbee.com/news/politics-government/the-state-worker/article250394361.html>.

<sup>65</sup> United States Bureau of Justice Statistics, “Census of State and Federal Adult Correctional Facilities, 2012 (ICPSR 37294), accessed at <https://www.icpsr.umich.edu/web/NACJD/studies/37294/datadocumentation>; Federal Bureau of Prisons, “Our Locations,” accessed at: <https://www.bop.gov/locations/list.jsp>. Federal data as of 1/18/2021.

### Chapter 1 - Building a Territory and Its Citizenry, 1861-1865

On 28 February 1861, President James Buchanan signed the Colorado Organic Act—a law that created Colorado Territory.<sup>1</sup> A gold strike and its rush of people produced this new territory. Rearranging borders, Colorado Territory drew land and people from Kansas Territory, Nebraska Territory, Utah Territory, and New Mexico Territory. Although the history of this land, its peoples, and its environs predate these new articulated borders, the population boom of Euro-American miners led to this mobilization of state power over the land and its people. At the time Colorado joined the United States as a territory, over 25,000 people resided in this space. This Act of Congress signed into law by the President, however, did not immediately establish structure, power, institutions, or order in the distant Colorado Territory. The process of state building was messy and contested. Settlers flocked to what would become Colorado in the midst of a gold rush and enacted a script that white Euro-Americans had written and performed through centuries of conquest and settlement.<sup>2</sup> This script included the erection of state authorities and establishing modes of social relations through cultural and legal apparatuses.

Miners and settlers had agitated for territorial organization prior to the 1861 Organic Act because legitimacy and support from the federal government could yield resources, increased settlement, and a path to establishing order. In 1859, however, the House of Representatives rejected attempts to form Colona Territory out of this sparsely settled area in the Pike's Peak region. Later that year, settlers still desired an organized state apparatus, so leaders in Auroria

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<sup>1</sup> *The Statutes at Large, Treaties and Proclamations of the United States of America from December 5, 1859 to March 3, 1863*, George P. Sanger, ed. (Boston: Little, Brown and Company, 1863), 12:172-177.

<sup>2</sup> For the long history of Colorado, Elizabeth A. Fenn, *Encounters at the Heart of the World: A History of the Mandan People*; For the process of settlement and conquest throughout the West and Colorado, Anne F. Hyde, *Empires, Nations, and Families: A New History of the North American West, 1800-1860* (Lincoln: University of Nebraska Press, 2011) and Elliot West, *The Contested Plains: Indians, Goldseekers, and the Rush to Colorado* (Lawrence: University Press of Kansas, 1998).

brought together fifty delegates from the region's leading locales—Fountain City, Eldorado, El Paso, Arapaho, and Denver City—to organize the State of Jefferson. Within a year of this constitutional convention, too many men had returned east from the goldmines, so the remaining delegates split between finalizing a state constitution or drafting a request to Congress for territorial status. Territorial status won the popular vote.<sup>3</sup> Lacking any authority from the U.S. Congress, the Pike's Peak region voters formed Jefferson Territory and elected Robert W. Steele their first governor. Historians Carl Ubbelohde, Maxine Benson and Duane A. Smith argue that the creation of Jefferson Territory and its elections, constitution, and (unenforced) taxes “were used to prompt congressional action.”<sup>4</sup> But Jefferson Territory's government proved inept, unable to enforce laws or collect taxes. Despite its impotence, Jefferson passed criminal and civil codes and established a judicial system that, in theory, legislated freedom through regulation and force.<sup>5</sup> In January 1861, the U.S. Congress voted in favor of Kansas statehood and established its western boundary excluding most of Jefferson's Euro-American residents who were concentrated in the Pike's Peak gold camps. Almost immediately after Kansas received statehood, Congress passed the Colorado Organic Act and Buchanan signed it.

The unfolding Civil War and the debate over a multiracial democracy in the United States shaded Colorado's early development. The federal government modeled the contours of territorial governance on its own structure—an executive, a legislative assembly, and a judicial system. The law establishing the territory provided guidelines for who would wield power by

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<sup>3</sup> Carl Ubbelohde, Maxine Benson and Duane A. Smith estimate that fewer than one-fourth of the residents of this Pike's Peak region actually cast ballots. *A Colorado History, Tenth Edition* (Portland: WestWinds Press, 2015), 10.

<sup>4</sup> *Ibid.*, 109.

<sup>5</sup> Eugene H. Berwanger, *The Rise of the Centennial State: Colorado Territory, 1861-76* (Urbana: University of Illinois Press, 2007), 3.

asserting that “every free white male citizen of the United States above the age of twenty one years” residing in Colorado Territory was eligible to vote in Colorado’s first elections.<sup>6</sup> From its start, authorities in Colorado established their power and legitimacy through writing and enforcing laws, often racialized, with the consent of the territory’s white citizenry. This racialized state formation offered the formal structures for establishing and perpetuating what Tyler Stovall calls “white freedom.” Stovall argues: “Belief in freedom, specifically in one’s entitlement to freedom, was a key component of white supremacy. In societies governed by racial hierarchy, the whiter one was, the more free one was.”<sup>7</sup> The racial boundaries to political participation established white freedom at the expense of non-white people’s liberties because of their inability to participate in the political system. The Colorado Organic Act omitted mention of slavery because Republicans, who controlled Congress, hoped to prevent border states from seceding. Despite this silence in the territory’s founding document, the Civil War and the question over whether a multiracial society was possible loomed over Colorado and the establishment of its judiciary and militia. Although Colorado lacked a history of race-based chattel slavery, it maintained a legacy in which white-sanctioned and state-perpetrated violence excluded peoples from the body politic and ensured and ordered economic capitalist system.<sup>8</sup>



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<sup>6</sup> *The Statutes at Large, Treaties and Proclamations of the United States of America from December 5, 1859 to March 3, 1863*, George P. Sanger, ed. (Boston: Little, Brown and Company, 1863), 12:172-177.

<sup>7</sup> Tyler Stovall, *White Freedom: The Racial History of an Idea* (Princeton: Princeton University Press, 2021), 11.

<sup>8</sup> For extralegal and state violence throughout Colorado during Euro-American settlement: West, *Contested Plains*; on the role of capitalism in the development of Colorado’s front range: Kathleen A. Brosnan, *Uniting Mountain & Plain: Cities, Law, and Environmental Change along the Front Range* (Albuquerque: University of New Mexico Press, 2002).

President Lincoln appointed William Gilpin to serve as Colorado Territory's inaugural governor. Gilpin had toured the West with John C. Frémont's expedition, served as a Major in the Mexican-American War, and commanded a volunteer force along the Santa Fe Trail that suppressed Indigenous uprisings. Gilpin's appointment, too, was shaped by the Civil War: Missouri Governor Frank Blair preferred Gilpin, and Lincoln accepted this recommendation as a concession to ensure that Blair's border state would not secede.<sup>9</sup> Upon appointment in 1861, Gilpin undertook the task of forming a territory. To build the state's legitimacy, Gilpin immediately began erecting the institutions of governance: courts, a census, and election procedures. Gilpin's focus on judicial administration built on a precedent of punitive law enforcement. The federally unrecognized Jefferson Territory had passed a criminal code in its first session in 1860. This code sought to curb extralegal violence and protect property by establishing systems of law enforcement and by codifying verdicts from preexisting miners' courts.<sup>10</sup> In this first 1860 criminal code, convicted murderers received death while those convicted of lesser felonies were punished with imprisonment in the penitentiary. Because no penitentiary existed at this point, the provisional legislature provided: "in the absence of a penitentiary, [a convicted man shall be] confined with 'ball and chain' firmly fastened to the ankle of the convict, who may be set and kept at hard labor ... or such convict may be in the discretion of the jury be punished by public whipping with a raw hide."<sup>11</sup> These early sentencing provisions tied together the importance of captivity, the public spectacle of punishment, hard

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<sup>9</sup> Colorado State Archives, "William Gilpin," accessed at: <https://archives.colorado.gov/collections/governors/william-gilpin>.

<sup>10</sup> David L. Erickson, *Early Justice and the Formation of the Colorado Bar* (Denver: Continuing Legal Education in Colorado, 2007), 12-21.

<sup>11</sup> Quoted in *Ibid.*, 13.

labor, and violence. Colorado's future judicial system built on this precedent, itself built on a longer history of American punishment that privileged spectacle and labor.<sup>12</sup>

Governor Gilpin's first proclamation in 1861 demonstrated his belief in judicial administration as the foundation of state power. Theorists of state power contend that the construction and praxis of the modern state is built on and can be assessed through judicial administration and tax extraction.<sup>13</sup> Gilpin organized three judicial districts across the territory.<sup>14</sup> As the land was divided into these districts in which law could be expeditiously and locally adjudicated, Gilpin also organized the territory's Supreme Court. The judicial system offered an early model for hierarchal power in which centralized authority was dispersed at increasingly localized levels yet accountable to higher, more influential bodies in the system.

With the courts organized, the territory prepared for its first election. In August 1861, nearly 11,000 Euro-American voters selected their Congressional Delegates and District Councils. In September, Governor Gilpin welcomed the newly elected territorial assembly to its first meeting. In his address to the Legislative Assembly, Gilpin emphasized the role of two particular departments—the judiciary and militia. “To a pioneer people,” Gilpin said, “entering upon the great work of establishing an harmonious commitment for themselves and their

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<sup>12</sup> For the connection between hard labor and punishment in the early American republic: Jen Manion, *Liberty's Prisoners: Carceral Culture in Early America* (Philadelphia: University of Pennsylvania Press, 2015); Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America* (New Haven: Yale University Press, 1992); Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996); Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993).

<sup>13</sup> For the argument on assessing the authority of a state: Osvaldo Raggio, *Feuds and State Formation, 1550-1700* (New York: Springer Berlin Heidelberg, 2018).

<sup>14</sup> “Governor of Colorado Territory—A Proclamation,” 7/11/1861, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, Colorado State Archives, Denver, Colorado (Hereafter: CSA).

posterity, the rigorous action of these two departments constitutes the bulwark of their liberties, their safety from disorder, and their plan processes to succeed.” The judiciary and militia secured freedom through force, thereby connecting freedom and repression. The governor argued: “Harmonizing judicious general laws, enjoining every where energy and uniformity of action, is to found a State where a basis of solid power and enduring strength, compatible with the generous enjoyment of freedom.”<sup>15</sup> From its start, the strength of the government required to secure freedom needed power, force, and elimination. Freedom for some required unfreedom or persecution for others.

In their initial legislative meeting in 1861, the governor and legislators began the process of defining the characteristics of a citizen in Colorado. From the beginning, citizenship was defined in opposition to people indigenous to the space now called “Colorado Territory.” Gilpin outlined two characteristics of citizenship. First, “Prominent among the principals which give order and stability in civilized society is Education,” but Gilpin also insisted, “The citizen must also be a soldier, and armed.” The citizen-soldier ideal was rendered necessary “by the presence of twenty-five thousand resident Indians, intermingled with our people.”<sup>16</sup> Territorial officials created a clear racialized distinction of belonging: “our people” and “resident Indians,” a differentiation that justified relational power.

Despite Gilpin’s success establishing state institutions, Lincoln dismissed Gilpin when he raised a force of Union soldiers and requested payment from the national government without

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<sup>15</sup> “Governor’s Message to Fellow Citizens of the Legislative Assembly of Colorado Territory,” 9/1861, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, CSA.

<sup>16</sup> Ibid.



prior authorization.<sup>17</sup> Governor John Evans, his successor, took up where Gilpin left off in building the criminal legal system and establishing a force of citizens to protect from perceived external threats. Laws offered legitimacy to state power and the ideals of property. Evans argued: “The only reliable protection of persons and property is the faithful observance and execution of the laws... to the end that the rights of every citizen may be secure against anarchy and misrule, and that the beneficent influence of order and good government may be enjoyed by all.”<sup>18</sup>

Laws were inherently political projects that were constructed to reflect the state’s ideals of civilization. Governor John Evans and Colorado Territory pursued a prison as a symbol and tool of an effective legal system and state government. Fred Harrison, writing the history of Western territorial prisons, argued: “The territorial prisons were born of stark necessity.” While Harrison defines that necessity as one of lawlessness, the legal system, as written by territorial and federal legislators, was a social invention thrust upon the residents of Colorado as a new construct. For example, in the midst of the Civil War, the first U.S. Marshal for Colorado Territory Copeland C. Townsend wrote to the Secretary of the Interior about the possibility of secessionist rebels overthrowing the territorial government and the need for funds to erect the territory’s first jail.<sup>19</sup> Territorial legislators and administrators, therefore, used the law and incarceration to define proper behavior as loyalty to the state.

But in the 1860s, both citizenship and freedom were contested. The backdrop of the Civil War and the Indian Wars loomed over Colorado Territory’s early projects. The Civil War years,

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<sup>17</sup> Berwanger, *Rise of the Centennial State*, 7.

<sup>18</sup> “Proclamation of Governor John Evans,” 6/1862, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, CSA.

<sup>19</sup> Harrison, *Hell Holes and Hangings*, vii, 138-140.

Duane Smith argues, catalyzed and informed the early existence of Colorado.<sup>20</sup> The issue of slavery forced a civil war between the South and North as the debate over freedom and citizenship reverberated across the United States. Although the Fourteenth Amendment (1868) granted universal citizenship to all born in the U.S. except Native Americans, states and localities restricted these freedoms to establish limitations on citizenship.<sup>21</sup> In Colorado, too, the law and its enforcement codified the contours of citizenship. Governors employed state resources in the form of militia, institutions, and law to contrast “Good Patriotic Citizens” with the “merciless savages.”<sup>22</sup> Native people represented the antithesis of citizenship, and Colorado erected institutions that defined what “patriotic citizens” would pursue—public school, land claims, business, and mining laws. Indigenous prosecution in the Native wars and the prison were mutually constitutive systems in which the state wielded the law to define and enact a social hierarchy.<sup>23</sup>

The history of people living in and occupying what became Colorado Territory predated the articulation of these newest state borders and governments. Archaeological evidence suggests

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<sup>20</sup> Duane A. Smith, *The Birth of Colorado: A Civil War Perspective* (Norman: University of Oklahoma Press, 1989).

<sup>21</sup> On the changing and contested definition of freedom throughout the 1860s and 1870s: W.E.B. Du Bois, *Black Reconstruction: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York: Harcourt, Brace and Company, 1935), Eric Foner, *Nothing but Freedom: Emancipation and Its Legacy* (Baton Rouge: Louisiana State University Press, 2007), Stephen David Kantrowitz, *Ben Tillman & the Reconstruction of White Supremacy* (Chapel Hill: University of North Carolina Press, 2000); Stephen Kantrowitz, “White Supremacy, Settler Colonialism, and the Two Citizenships of the Fourteenth Amendment,” *Journal of the Civil War Era* 10, no. 1 (March 2020): 29-53; Stovall, *White Freedom*.

<sup>22</sup> “Patriotic Citizens of Colorado,” 6/10/1864, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, CSA.

<sup>23</sup> In his analysis of the meaning of the penitentiary’s rise between the US Revolution and Civil War, Caleb Smith argues that the penitentiary, Indian removal, and slave plantation across the U.S. should be seen as mutually constitutive institutions “that represented the extremes of captivity and helped to determine the meaning of freedom.” *Prison and the American Imagination* (New Haven: Yale University Press, 2011), 18.

that humans have inhabited that space for over 13,000 years.<sup>24</sup> The Cheyenne, Arapaho, Kiowa, Comanche, Blackfoot, and Lakota peoples used the Royal Gorge region of what became Fremont County. The Ute reigned as the dominant people in this region.<sup>25</sup> In the 1860s, a moment of rapid settlement and westward expansion, settlers perceived these Indigenous populations as a threat to Euro-American culture and its economic dependence on resource extraction. This threat presented an opportunity to bolster the legitimacy and power of the fledgling territorial government because Indigenous people were neither legal citizens in the United States nor culturally accepted residents who retained the status of full members of society as judged by social relations.<sup>26</sup>

Governor Evans vigorously pursued railroad development and the removal of Native Americans to demonstrate the safety of Colorado Territory in the midst of Indian War. Evans' persecution of Indigenous people placed them outside the protections of citizenship and therefore undeserving of freedom. By August 1864, Governor Evans used the power of the state to take land and resources from Native people by supporting their removal, including by slaughter. In

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<sup>24</sup> Spear points and artifacts classified as Clovis confirm that people were in what is now known as Colorado by 11,500 BC. Sites in Saguache County with broken animal bones dated to 39,000 years ago suggest human interaction in the region at that time, but these potential people left no stone artifacts, so archeologists do not accept the broken bones as definitive evidence of human life. Douglas B. Bamforth, "Paleo-Indian Period," *Colorado Encyclopedia*, April 2020, accessed at <https://coloradoencyclopedia.org/article/paleo-indian-period>; David Kilby and Bruce Huckell, *Clovis Caches: Recent Discoveries and New Research* (Albuquerque: University of New Mexico Press, 2014).

<sup>25</sup> "Fremont County," *Colorado Encyclopedia*, December 2002, accessed at <https://coloradoencyclopedia.org/article/fremont-county>.

<sup>26</sup> On the legal and cultural meanings of citizenship and its responsibilities: Linda K. Kerber, "The Meanings of Citizenship," *Journal of American History* 84 no. 3 (December 1997): 833-854; Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997); Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Cambridge: Harvard University Press, 2002); Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill: University of North Carolina Press, 2009); Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009).

his second proclamation to “Citizens of Colorado,” he authorized these white settlers to “kill and destroy, as enemies of the country, wherever they may be found ... hostile Indians.”<sup>27</sup> This order set the immediate scene for 29 November 1864 when a volunteer militia unit attacked a village of Cheyenne and Arapaho families awaiting transport to a reservation.<sup>28</sup> The larger context of the Sand Creek Massacre, though, was decades of settlement in which American expansion created cultural and ecological distress across the Great Plains.

The “Indian Wars”—the offensive against Native Americans in the mid- to late-nineteenth century—came as Euro-American settlers reneged on previous treaties and expanded into new spaces. In 1851, in what Anne Hyde calls “the first major effort at controlling Native people,” the U.S. government signed the Fort Laramie Treaty which offered Plains Indians control of much of the Great Plains (allowing that the United States could build forts and roads through the land) and \$50,000 in annuities in exchange for safe passage for overland travelers and Native people organizing themselves into agencies. Much of Colorado Territory encompassed land that the United States had recognized as Cheyenne and Arapaho territory in the Fort Laramie Treaty. This treaty included few Native negotiators and was designed to fail, so “it would require force, both legal and military, along with significant shifts in ideology.” Throughout the 1850s, Euro-American settlers pressured the U.S. government to acquire the valuable land in the Pike’s Peak region and to remove the Indigenous people. The popular calls for Native removal justified the development of the state’s forceful authority. Hyde argues: “Elaborating just who could own property, who deserved citizenship, and who could marry

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<sup>27</sup> “Citizens of Colorado,” 8/11/1864, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, CSA.

<sup>28</sup> West, *Contested Plains*, 112-127; Stan Hoig, *The Sand Creek Massacre* (Norman: University of Oklahoma Press, 1974), 80-86; Hyde, *Empires, Nations, Families*, 492-496.

whom, however, demanded that the state take on considerable new powers to establish and enforce these ideas.”<sup>29</sup> Further exacerbating the conflict in Colorado and across the West, Congress passed the Pacific Railway Act in 1862. This law allowed the government to terminate “Indian titles to all lands falling under the operation of this act.” These territorial and federal laws founded a territory around protecting resource extraction; Euro-American settlers received priority for access to gold, silver, coal, land, and water.

While the federal government sent militia to the West and built forts to protect its citizens and investments, Euro-American residents throughout Colorado Territory heeded Evans’ call for volunteers to serve in the fight against Native people. The territorial and federal government required a system to extract land and resources from Indigenous people, and the militia, justified by a legal doctrine and popular support, served this purpose. These volunteers believed themselves rationalized by the entrenched beliefs of the supremacy of Euro-American political institutions, settlement, culture, and resource use practice. In sum, these volunteers believed that they, as white citizens of Colorado and the U.S., could more effectively extract the value of the land. And Evans used state authority to condone a white person killing any “hostile” Native person. This campaign against Native people climaxed at the vicious massacre of Native Americans who had surrendered to the U.S. government and were camping at Sand Creek. “Sand Creek,” Hyde concludes, “indicates how far the culture crafted by nineteenth-century Anglo-Americans would go to impose its vision of conquest.”<sup>30</sup> Indigenous people bore the result of a Euro-American culture that attempted to dehumanize Native people and prized land that Native people ostensibly controlled. The state did not prosecute the white citizens who viciously

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<sup>29</sup> Hyde, *Empires, Nations, Families*, 414, 419, and 421.

<sup>30</sup> *Ibid.*, 496.

violated Native people because the law protected them. The state's power to decide whether and how to enforce the law reflects who the state protects and values and how laws reflect dynamic power structures.



In Colorado, the penitentiary complemented the militia. While the militia sought to expel Indigenous people to create a Euro-American space, the penitentiary sought to define and shape proper behavior within that state. Literary scholar Caleb Smith argues that the “prison’s narrative of resurrection” required punishment to perform and reify “society’s founding political myths.”<sup>31</sup> State punishment served as a ritualized public symbol intended to educate. In the 1860s in Colorado, for example, the state publicly executed people convicted of murder in the jurisdiction of their conviction—as a punishment to the condemned and a theatrical spectacle to locals.

The United States settler project required institutions, such as a judicial system, and ideals that perpetuated settler culture’s myths of enlightened benevolence. The criminal legal system served as both symbol and tool of U.S. colonialism.<sup>32</sup> In stark contrast to how the militia expelled Indigenous people, the state allowed those sentenced to the penitentiary to, in theory, regain their status and citizenship within free society. An early settler, for example, remembered observing incarcerated men build a wall around Colorado’s territorial prison, and he remarked on

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<sup>31</sup> Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2011), 7.

<sup>32</sup> On the historiography of settler colonialism and colonialism: Nancy Shoemaker, “A Typology of Colonialism,” *Perspectives on History* (Oct. 2015), accessed at <https://www.historians.org/publications-and-directories/perspectives-on-history/october-2015/a-typology-of-colonialism>. For a discussion of how settler colonialism has been applied to early American history, see Ashley Glassburn, Allan Greer, Tiya Miles, Jeffrey Ostler, Susannah Shaw Romney, Nancy Shoemaker, Stephanie E. Smallwood, Jennifer M. Spear, Samuel Truett, and Michael Witgen, “Forum: Settler Colonialism in Early American History,” *William and Mary Quarterly* 76, no. 3 (July 2019): 361- 450. For a long history of settler colonialism, see Walter L. Hixson, *American Settler Colonialism* (New York: Palgrave Macmillan, 2013).

the contrast to his own work building a fort on Cherry Creek in the 1860s: “The work being done was the same, but the purpose was just the opposite. They were building to keep prisoners in. We built to keep Indians out.”<sup>33</sup> The state creation project mobilized public and private capacities and myths to enforce a hierarchy that excluded Native Americans and isolated—while purportedly rehabilitating—transgressive Hispanic, Black, and white citizens.

Hispanic people comprised the largest non-white and non-Indigenous bloc in the territory in the 1860s. In contrast to the way the state saw Indigenous people as incapable of citizenship and therefore a threat that needed to be permanently removed, the state saw Hispanic people in Colorado as having the potential to be citizens. This hesitant acceptance emerged largely because state leaders recognized Hispanic political and social power, particularly in southern Colorado long ago settled by Spanish Americans from New Mexico.<sup>34</sup> During the second session of the territorial legislature, for example, the body hired a Spanish interpreter to accommodate the Spanish-speaking representatives. The territory, furthermore, printed its laws in English, Spanish, and German.<sup>35</sup> This multilingual effort built the legitimacy of the legal system by supporting Spanish-speaking representatives and refuting claims that Spanish-speaking people could not be prosecuted under laws not printed in their tongue. This accommodation reflected the fact that the state saw incarceration, rather than expulsion, as proper for its Hispanic residents.

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<sup>33</sup> Trumon Blancett, “As I Saw the State Prison in 1872,” 1935, Folder: Prisons—General, Museum of Colorado Prisons, Cañon City, Colorado (Hereafter: MCP).

<sup>34</sup> Sarah Deutsch, *No Separate Refuge: Culture, Class, and Gender on an Anglo-Hispanic Frontier in the American Southwest, 1880-1940* (New York: Oxford University Press, 1987); Erickson, *Early Justice*, 49.

<sup>35</sup> *Leyes Generales* (Denver: Dyer, Chacon, Wilkins, 1877); *Allgemeinen Gesetze* (Denver: Dyer, Chacon, Wilkins, 1877).

Colorado's emerging social and political order drew from and contributed to national debates about political participation. In 1864, the Republican-led U.S. Congress needed to bolster the party's odds for the upcoming presidential election, so it passed enabling acts for Colorado, Nebraska, and Nevada territories, allowing these territories to draft a state constitution and fully join the union. The Colorado electorate overwhelmingly rejected the 1864 constitution in that bid for statehood because of concerns over corruption and taxes, conscription laws upon statehood, and the addition of more electoral votes in advance of the upcoming national election.<sup>36</sup>

In 1865, Coloradans drew up a revised state constitution which voters narrowly passed—by a margin of just 155 votes. In the same election, the drafters of the constitution put the question of Black suffrage to the Colorado electorate. Throughout the Civil War, Colorado's Black population grew tremendously with Black people flocking west. In 1860, only forty-six Black people lived in Colorado; by 1870, that number had grown to over 450. Typically divided politically between the "Denver Crowd" and the "Mountain Crowd," Colorado's white male electorate united to reject Black suffrage. This vote served as a popular referendum on the territorial legislature's 1864 disenfranchisement of Black residents. In response to the bid for statehood in which Colorado forbade Black suffrage, Radical Republicans in the U.S. Congress passed the Territorial Suffrage Act. The Territorial Suffrage Act stipulated that no territory could deny the right to vote based on race or color, laying the groundwork for the Fifteenth Amendment. In Colorado's 1867 elections this federal mandate was put to the test, and Coloradans largely accepted the federal rule to allow Black male suffrage without protest or

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<sup>36</sup> Ubbeholder et al., *A Colorado History*, 146-147.



violence.<sup>37</sup> Across the United States, Black men were given the legal right to vote in the wake of the Civil War, but the prison and its legal structures such as felony disenfranchisement would help pare back those suffrage rights.<sup>38</sup>

An established functioning criminal legal system and territorial government also helped Colorado Territory reinforce its presence and reputation within the United States beyond its push for statehood. Many of the territorial governors' communications dealt with extraditions. In January 1862, for instance, Colorado's Territorial Secretary wrote to the Governor of Minnesota about a resident of Minnesota being held in \$1,300 bond on the charge of stealing a horse from another Minnesota resident, and then fleeing to Colorado. Colorado's executive reached out to his counterpart in Minnesota to get that state to appoint a deputy and transport the accused back to the state to stand trial.<sup>39</sup> As Colorado Territory gained legitimacy by detaining people for other states and territories, it also requested other states to send Colorado men convicted therein to be "disposed of according to law." These transports and requests led territorial marshals and deputies to serve as some of Colorado Territory's first ambassadors across the U.S., collecting accused and convicted men from Kansas, Wisconsin, Iowa, Illinois, and other states.<sup>40</sup> This process should have underscored Colorado's effective development, but without a prison the territory had no capacity to hold captive and punish these men.

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<sup>37</sup> Berwanger, *Rise of the Centennial State*, 43n6 and 51-52.

<sup>38</sup> Jeff Manza and Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (Oxford: Oxford University Press, 2006).

<sup>39</sup> "Letter from Lewis Weld to Governor of Minnesota," 1/29/1862, Box 8840a "Executive Record July 8, 1861-May 29, 1870," Executive Record of Colorado Collection, CSA.

<sup>40</sup> Letter from William Gilpin to Governor of Kanas," 4/7/1862, Box 8840a "Executive Record July 8, 1861-May 29, 1870," Executive Record of Colorado Collection, CSA.



Building and funding a penitentiary was neither a foregone conclusion nor an inevitable part of creating a state. But Governor John Evans, who believed that the threat of punishment was supposed to deter crime and mediate social behavior, recognized the futility of laws and convictions without effective prisons. Colorado, moreover, wanted a penitentiary to manifest its legitimate power and authority. He reminded the territorial legislature in 1862: “The difficulty of securing from escape, persons charged with and convicted of crimes, is one of the greatest impediments in the way of making the certainty of punishment exert its salutary influence on the prevention of crime.” Evans advocated for the territorial legislators to “appeal to Congress for aid in the erection of a prison,” and the legislature did entreat Congress to fund a prison.<sup>41</sup> As the Civil War raged, the mounting expense of war meant that the federal government failed to appropriate funds for Colorado Territory’s prison. Despite repeated requests, the U.S. Congress refused to build Colorado’s prison for six years. In the interim, county jails and neighboring states’ penitentiaries provided space for Coloradans sentenced to incarceration. A penitentiary served two related aims for Colorado Territory: it furthered the project of state building and helped define the bounds of freedom and citizenship.

A penitentiary bolstered state authority by supplanting vigilante and extralegal forms of “justice.” Between the end of the Civil War and Colorado’s statehood in 1876, “Judge Lynch” executed 102 people in the territory.<sup>42</sup> The prevalence of lynching provided the territory an

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<sup>41</sup> “Governor’s Messages to the Legislature,” 7/18/1862, Box 8840a “Executive Record July 8, 1861-May 29, 1870,” Executive Record of Colorado Collection, CSA.

<sup>42</sup> Berwanger, *Rise of the Centennial State*, 101. This is calculated using W. Fitzhugh Brundage’s definition of lynching: the killing of a person illegally by a group “acting under the pretext of service to justice, race, or tradition.” But this number does not reveal a full accounting because the definition of lynching is ambiguous and records are poor. For example, this accounting fails to include Indigenous victims of the “Indian Wars.” W. Fitzhugh

opportunity to assert, as Max Weber argues, “the monopoly of the legitimate use of physical force within a given territory.”<sup>43</sup> Advocating for an expansion of state criminal powers, the *Colorado Chieftain* argued: “The people never lose confidence in the efficiency of the law for their protection. Can not some change be effected so that the people may not have occasion to resort to the court of Judge Lynch for the better protection of their lives and property?”<sup>44</sup> The editor here argued that lynching had been a necessary evil for the protection of person and property—necessary only because of the state’s failure to provide order.<sup>45</sup> Lynching, Stephen Leonard argues, “shed much of its negative baggage” as the practice moved westward, and westerners “routinely accepted the occasional necessity of executing transgressors” to protect so-called civilization.<sup>46</sup> Lynching flourished in Colorado Territory.

The Colorado Legislature approved and sent a memorial to the U.S. Senate and House of Representatives requesting an immediate appropriation of \$40,000 to build the prison: “A large majority of our counties are without a jail or prison of any kind, and in these a conviction amounts to an acquittal. Our people have been too often compelled to step beyond the limit of the statute and resort to the first law of nature, and administer summary punishment to

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Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana: University of Illinois Press, 1993), 17.

<sup>43</sup> Max Weber, “Politics as Vocation” in *From Max Weber: Essays in Sociology*, H.H. Gerth and C. Wright Mills, eds. and trans. (New York: Oxford University Press, 1946), 77-128.

<sup>44</sup> *Colorado Chieftain*, 7/20/1871.

<sup>45</sup> This justification echoes the racist and false justification of lynching of Black people in the decades after the emancipation. Ida B. Wells, *Southern Horrors: Lynch Law In All its Phases* (New York: 1892).

<sup>46</sup> It’s important to note that Leonard invokes “civilization” as the goal of lynching and the result of the state-making process, but “civilization” is undefined and assumed to be a Euro-American ideal of society. Stephen J. Leonard, *Lynching in Colorado, 1859-1919* (Boulder: University Press of Colorado, 2002), 3. See also John Phillip Reid, *Policing the Elephant: Crime, Punishment, and Social Behavior on the Overland Trail* (San Marino: Huntington Library, 1997), 193.

offenders.”<sup>47</sup> Colorado’s territorial leaders nurtured a culture of fear that justified investing in the criminal legal system’s infrastructure. Before the prison was built and for counties without sufficient jails, convicted men were transported by the U.S. Marshal to other states, especially to the House of Correction at Detroit, Michigan. The *Rocky Mountain News* asked: “Would not the Government save in the end by allowing our penitentiary to be built, rather than by transporting a batch of prisoners to the distant East every few months?”<sup>48</sup> The prison’s funding was framed as an investment, a paradigm of cost-saving employed to justify much subsequent prison expansion.

Some Coloradans argued that lynching bespoke civilization and was reasonable in the face of transgressive behavior. Lynching in Colorado, like elsewhere, became racialized.<sup>49</sup> The racialized nature of lynching in this period indicated that vigilantes wanted to enforce racial supremacy. Many victims of lynching outside of larger cities like Denver, Pueblo, and Leadville were Hispanic, and the coverage of these events perpetuated racist ideas: the victims were “almost universally called ‘Mexicans’ by Anglo Americans blind to the fact that the Spanish speakers of southern Colorado were just as much U.S. citizens as the English speakers of northern Colorado.”<sup>50</sup>

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<sup>47</sup> “A Joint Memorial and resolution relative to additional appropriations for the purpose of building a penitentiary in Colorado territory,” January 10, 1868, accessed at <https://lawcollections.colorado.edu/colorado-session-laws/islandora/object/session%3A4938>.

<sup>48</sup> “General Notes,” *Rocky Mountain News*, 2/3/1869.

<sup>49</sup> Brundage, *Lynching in the New South*; Rosen, *Terror in the Heart of Freedom*; Karlos K. Hill, *Beyond the Rope: The Impact of Lynching on Black Culture and Memory* (New York: Cambridge University Press), esp. 9-11.

<sup>50</sup> Leonard, *Lynching in Colorado*, 55. The racist character of lynching especially changed in the 1890s in Colorado, where it was an act of performing racial supremacy against Black Americans, Mexican Americans, Spanish-Speaking Americans, Chinese and Chinese Americans, and Italians and Italian Americans.

The state developed its own capacity for punishment in its efforts to supplant this extralegal system of so-called justice. Advocates of the penitentiary upheld state-administered punishment as a reform that changed the authority and mode of retribution. Coloradans wearied of lynching less because of the nature and implications of extralegal killing, and more because of the publicity that perpetuated the territory's reputation as lawless, which soured potential emigrants on the place.

On 22 January 1867, the U.S. Congress proposed and enacted a scheme that would raise the required funds for the Colorado Territorial Prison in hopes of establishing the state's monopoly on punishment. Congress appropriated up to \$40,000 from the proceeds of the territory's internal revenue (taxes) to build the penitentiary. Congress offered uniform procedures in the process of appropriating funds, overseeing construction, and managing prisons for the territories of Nebraska, Washington, Colorado, Idaho, Montana, Arizona, and Dakota.<sup>51</sup> Colorado developed its criminal legal system in tandem with those of other Western territories. Congress deferred to each state's territorial legislature on where to site the prison, but the Secretary of the Interior maintained responsibility for management and oversight of construction and subsequent operations.

The process of selecting a site for the state's prison was a local process that reflected the unique contours of territorial and national governance. Governor Frank Hall encouraged the legislature to choose "a central position... in order that all parts of the Territory may be

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<sup>51</sup> 17 Stat. 475, "An Act amendatory of an Act 'setting aside certain Proceeds of internal Revenue, for the Erection of Penitentiaries in the Territories of Nebraska, Washington, Colorado, Idaho, Montana, Arizona, and Dakota,' approved January twenty-second, eighteen hundred and sixty-seven."

accommodated by its use.”<sup>52</sup> However, other legislators and stakeholders brought their own interests into the siting debate. Thomas Macon, an attorney from Fremont County, spearheaded the drive to locate the prison in Cañon City.

Thomas Macon, his brother Augustus, and a group of about thirty other settlers arrived in Fremont County in September 1864. Macon, upon arrival, argued that the settlers of 1864 differed dramatically from the earlier settlement that was made up “of all classes, the vicious element predominating.”<sup>53</sup> When Macon arrived, his party constituted virtually the entirety of the settlement. Euro-Americans had originally settled Fremont County in 1859 when the first potential gold seekers built two cabins. These anonymous builders soon departed the city for the nearby mines. By the end of 1860, the town received significant traffic from miners, and it touted a population of 900 people with 150 buildings. But by 1862, the Civil War reduced the population, and Euro-Americans had all but deserted the city by 1864 when even the town company departed. But Utes remained in the area. Macon later recalled how, when his wife would play the piano in the 1860s, “Ute Indians used to pile by the hundreds into town and would go almost crazy with delight when she played it.”<sup>54</sup> In spite of the Indigenous presence, Macon’s party immediately established the settlement in accordance with their religious ideals. Macon declared that everyone would be able “to worship according to the dictates of his own conscience” provided that “the conscience was so far enlightened as to accept their theology.”

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<sup>52</sup> “Message to the Council and House of Representatives by Acting Governor Frank Hall,” Dec. 3, 1867, Box 66251B, Papers of Alexander Cameron Hunt, Collection 1007, CSA.

<sup>53</sup> Quoted in: Alice Polk Hill, “The Religious Wars” in *Tales of Colorado Pioneers* (Denver: 1884), Folder “Thomas Macon,” Family Files and Oral Interviews Collection, Royal Gorge Regional Museum and History Center, Cañon City, Colorado (Hereafter: RGRMHC).

<sup>54</sup> “Judge Macon Tells of Olden Times” 7/24/1902, Folder “Thomas Macon,” Family Files and Oral Interviews Collection, RGRMHC.

Beyond privileging Christian religion as the only enlightened practice, Macon declared the land conquered. He argued: “first, that the earth belonged to the saints; second, that they [Christians] were the saints.”<sup>55</sup> These dictates gave the immediate effect of justifying Macon’s party’s occupation of the homes abandoned by earlier settlers while also providing reasoning about who could occupy land—and therefore hold power—in Fremont County.

Both Thomas and Augustus practiced law, and they understood the connection between law and politics. They would both achieve local prominence by connecting their legal and political activities. Throughout the 1860s, Thomas was elected to the Territorial Legislature representing Fremont County, and he fought for the territorial prison to be sited in Cañon City, all part of the political scrum to site important and potentially profitable state entities. Supposedly, Macon traded his support for Denver as the territorial capital (instead of Golden) in exchange for Cañon City getting the penitentiary. Local legend also holds that Macon competed with Boulder’s representative for the prison, with the loser—Boulder—receiving the state college, but no evidence backs up this story. The legend, however, is revealing about what early settlers and subsequent residents saw as lucrative and sustainable public institutions that would make a community thrive. Fremont County benefitted by receiving the prison: its reputation was solidified, it received state investment, and it held political influence on the state level. Macon, too, benefitted. For example, the prison purchased supplies such as a penitentiary buggy for \$16.50 from him.<sup>56</sup>

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<sup>55</sup> Quoted in: Alice Polk Hill, “The Religious Wars” in *Tales of Colorado Pioneers* (Denver: 1884), 269, Folder “Thomas Macon,” Family Files and Oral Interviews Collection, RGRMHC.

<sup>56</sup> “Expenditures and Earnings of the Colorado Penitentiary,” July 1872, Folder “Reports –Office of the Penitentiary,” Box 66251C, Papers of Edward M. McCook Collection, CSA.

After Macon successfully bested other competing cities, the legislature passed and governor signed House Bill No. 11, which was an act to locate the site of the Colorado Territorial Penitentiary in Cañon City. J. A. Draper, a local resident, donated thirty acres of land to the United States for the penitentiary site. Draper recognized that this public institution would raise the value of his land and mercantile business, and he saw the prison donation as an investment in his and the community's future. Anson Rudd, like Draper, recognized the prison's benefits and offered to donate a different twenty-five acres, but the siting commissioner preferred Draper's land.<sup>57</sup> Although the penitentiary was a public institution, private citizens capitalized on it from the beginning.

The siting process reveals a shortsighted political maneuver rather than a deep analysis of what space would best achieve the purported goals of deterrence, removal, labor, and rehabilitation. The site of the prison, while politically and financially beneficial to individuals like Macon and Draper, proved difficult for the management of the prison, particularly finding labor to occupy incarcerated people's time and mitigating escapes. The commissioners who originally accepted the site praised its sandstone and limestone deposits because they would prove beneficial for construction and expansion. And the site also quickly added extra costs to incarceration because most prisoners came, obviously, from counties with the largest populations. By November of 1871, seventeen of the prison's twenty-three captives were from Arapaho County, requiring the state to pay for guards to transport these men from Denver to Cañon City. Historically, nearly half of Cañon City's captives have come from the Denver metropolitan area. Despite calls to site another facility in Denver dating to the 1870s, the state

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<sup>57</sup> "Notes," Folder: "00.011.091" Julie Whitmore Collection, RGRMHC.



would not do so until the early 1990s when it opened the Denver Reception and Diagnostic Center.<sup>58</sup>

Prior to the prison's siting in Cañon City, Fremont County had been written off as the latest of Colorado's many new ghost towns. Until 1868 Fremont County was too small to have its own courts.<sup>59</sup> The prison spurred the growth of Cañon City, and following the secure investment came new migrants, a building boom, and a fight for a railroad. By 1872, with the completion of the penitentiary, Cañon City enjoyed a "second Chance," as one journalist put it in a retrospective. One sign of this development was that by the end of 1872, the mail arrived daily. Moreover, in October 1872, the school board acquired four lots for a new building and received permission to borrow up to \$8,000 for its construction.<sup>60</sup> Within two years, the *Cañon City Times* asserted Cañon City's regional competitiveness: "Pueblo, which affected so much scorn a few months ago; whose merchants snubbed our merchants, whose papers gave our papers such deastic doses of wit, and whose citizens actually spoke disparagingly of our soda water, now begins to see that Cañon City may become a formidable rival."<sup>61</sup> This notion that Fremont County needed prisons to become competitive would recur throughout the county's history, reappearing as it sought to "become truly competitive" with Colorado's large cities as it hosted the federal prison complex in the 1980s.<sup>62</sup>

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<sup>58</sup> Leonard V. Ortiz—Denver Sheriff Department, "Early Prison," Folder: "Master Tall Wall," MCP.

<sup>59</sup> Alice Polk Hill, "The Religious Wars" in *Tales of Colorado Pioneers* (Denver: 1884), 272, Folder "Thomas Macon," Family Files and Oral Interviews Collection, RGRMHC.

<sup>60</sup> "Cañon City Was Once Written Off As A Colorado Ghost Town," *Cañon City Daily Record*, 7/20/1972.

<sup>61</sup> "Cañon City," *Cañon City Times*, August 13, 1874.

<sup>62</sup> "Editorial: Prison Site Fund Drive Success Doesn't Mean Our Work Is Done," *Cañon City Daily Record*, 8/12/1988.



The territorial prison was a federal project that was locally managed. The U.S. Department of Interior oversaw the construction of the territorial penitentiary. Secretary of Interior J.D. Cox appointed Samuel N. Hoyt of Colorado as the Superintendent of Construction. On 1 June 1869, Hoyt began advertising the project in newspapers throughout the territory, and he offered contractors and builders thirty days to submit bids. The advertisement laid out the penitentiary's design: one wing with forty-two cells spread across three tiers. The cells were to be six feet wide by eight feet deep by eight feet tall. Each tier of cells had one iron bathing tub and slop sink.<sup>63</sup> This plan offered one cell for every thousand citizens of the territory. Even though sentences were shorter and focused on hard labor, the initial number of cells relative to the total population represented a significant proportion. Thomas Mullen and Benjamin Woodbury of Central City bid \$36,340, and this low bid won them the recommendations of Hoyt and Governor Edward M. Cook. Cox appointed the pair.<sup>64</sup>

Overseen by Hoyt, Mullen and Woodbury began construction in late 1869. By December 1869, they had completed the first tier of cells and the outer walls of the penitentiary. In May

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<sup>63</sup> "Newspaper Advertisement for Bids for the Construction" and "Specifications for Penitentiary Building for the Territory of Colorado," in Letters Received Relating to the Penitentiary at Canon City, Interior Department Territorial Papers – Colorado, 18681-1868.

<sup>64</sup> "Bid and Appointment," Letters Received Relating to the Penitentiary at Canon City, Interior Department Territorial Papers – Colorado, 18681-1868.



Figure 1.1: First penitentiary opened June 13, 1871.  
Image X-2493, Denver Public Library.

1870, Samuel Hoyt inspected and accepted the completed construction project.<sup>65</sup> Upon completion, Hoyt turned the facility over to W. A. Shaffenburg, U.S. Marshal for Colorado Territory. The building received positive reviews for being secure but with attractive architecture. One journalist, who toured the prison before it opened in 1870, reported: “The penitentiary is now one of the attractions of the place [Cañon City] ... I consider it one of the most perfect and convenient buildings of the kind ever constructed.”<sup>66</sup> Similarly, a few years later, the *Pueblo Chieftain* reported: “The cells are about the size of those in eastern penitentiaries, but without the gloomy appearance peculiar to those.”<sup>67</sup> From the beginning, Colorado’s penitentiary entered into a competitive stance with existing penitentiaries, priding itself on the reformed aesthetic of the institution.

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<sup>65</sup> “Letter from Samuel Hoyt to Jacob Cox,” May 22, 1870, in Letters Received Relating to the Penitentiary at Canon City, Interior Department Territorial Papers – Colorado, 18681-1868.

<sup>66</sup> “On The Penitentiary,” *Daily News*, 5/16/1870, Folder “Territorial Prison – 1800s” RGRMHC.

<sup>67</sup> “Penitentiary Investigation,” [*Pueblo*] *Daily Chieftain*, 6/20/1873, Folder “Territorial Prison – 1800s” RGRMHC.

The infrastructure was in place, but the leadership and the legal mechanisms of incarceration and territorial-federal relations still required definition. Colorado Territory and the U.S. government entered into an agreement in early 1871 that governed territorial incarceration. The Marshal would care for the territory's incarcerated people at a cost of seven dollars per week per individual. The U.S. government operated the facility, charging the territorial government for each person from the territory held there. This arrangement continued for the next three years, until the roles reversed.

Before the new territorial penitentiary could accept its first captives, the U.S. Congress established the rules and regulations of the new federal penitentiary. The Senate and House passed legislation for these policies on 10 January 1871.<sup>68</sup> This process clarified rules for Colorado and for all territorial prison facilities that the national government operated. These rules represented an attempt to standardize the system of territorial governance and law enforcement, bringing Colorado in line with other territories and states. The rules delegated control of the penitentiary in any organized territory, including Colorado, to the U.S. Marshal. The act also delegated the job of laying out the minutiae of the prison's policies to the U.S. Attorney General. The precedent of elected officials deferring to law enforcement personnel established a pattern that would repeat. Lastly, the legislation deemed that all incarcerated people in the territorial prison would be treated and employed as federal prisoners.

Soon thereafter, the Colorado Territorial Penitentiary welcomed its first charge. John Shepler, convicted of larceny, entered the prison on 13 June 1871. Shaffenburg initially brought a staff of three men to guard the prison, which soon proved insufficient. Within a year of its

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<sup>68</sup> Chapter 15, 41<sup>st</sup> Congress, Session 3 in *United States Statutes at Large Volume 16* (Boston, 1871), accessed at <https://www.loc.gov/law/help/statutes-at-large/41st-congress/session-3/c41s3ch15.pdf>.

opening, the first captive escaped: Jo Ryan ran away on 6 December 1871 and was never recaptured. The first mass prison break occurred just a few years later under Warden Anson Rudd. Eight men fled. These eight men succeeded because of the lack of security in and around the facility. On 25 May 1874, John Ryan, an incarcerated man, came into possession of a key that unlocked the lower tier of cells, and then Ryan conned the guard into getting medicine from an upper tier. As the guard went to retrieve the laudanum, Ryan unlocked himself, George Witherell, and six other captives. This party beat, gagged, and jailed the guard, then they took the guard's weapon and fled.<sup>69</sup> The territory offered a \$500 reward for the return of these eight fugitives.<sup>70</sup> Prison administrators quickly recognized the facility's shortcomings. Although there was a wall around the penitentiary, it did not enclose the site fully. The surrounding mountains and the Arkansas River provided resources and shelter for men attempting to flee.

Few guards, a lack of walls, and no spotlight made escape relatively simple in these early years. The lack of walls, moreover, created tension between Cañon City's free-world residents and penitentiary administrators. In one case, the warden had to advertise in the *Cañon City Times* warning hog owners "to keep them off the Penitentiary grounds as they will not be tolerated here."<sup>71</sup> Because it was located in the town's center, from its beginning, the prison and its surrounding community could not be disentangled.

Shortly after the prison opened, Fremont County chartered Cañon City and charged the city's first Board of Trustees with establishing a local government. By its second meeting in

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<sup>69</sup> "The Prison Break," *Denver Daily Times*, 5/28/1874.

<sup>70</sup> "Jail Birds Escape," *Fort Collins Standard*, 6/3/1874.

<sup>71</sup> "Notice," *Cañon City Times*, 4/18/1872.

August 1872, the Board responded to entreaties from the local newspaper editor to combat threats to public order. The Board dictated a town policy and prohibited public nuisances (“bawdy houses” and “houses of ill fame”) within city limits. After this, the editor of the local newspaper stopped complaining about prostitution and armed assault within Cañon City. The newspaper had fomented a crisis over behavior the editor thought unbecoming and unattractive to potential migrants, and the town’s leadership responded by criminalizing such behavior. Beginning in 1868, Cañon City underwent a notable change in its law enforcement priorities and actions, as Richard Hogan argues: “The concern for public order, the predominant interest of boosters, was championed by the newspaper editor and defended by the city government.”<sup>72</sup> The new city, replete with federal investment and a growing nonlaboring class of merchants and farm owners, asserted the importance of local ordinances and enforcement to produce order. Local leaders, especially of the nonlaboring class, highlighted crimes against public order as representations of challenges against government authority.<sup>73</sup>

Part of the movement towards entrenching and expanding law enforcement within the community was stigmatizing crime and criminality. The local newspapers, such as the *Cañon City Times*, regularly updated the town by printing “a complete list of the prisoners now confined at this place, together with their crime and terms of imprisonment.”<sup>74</sup> The *Cañon City Times* captive lists, along with their printed lists of arrests within the county, mirror what other local newspapers throughout the West and the country were doing. The *Times* provided fodder for

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<sup>72</sup> Hogan, *Class and Community*, 192-194.

<sup>73</sup> For a parallel way urban spaces in the nineteenth century used nuisance and public order laws to criminalize the poor, Catherine McNeur, *Taming Manhattan: Environmental Battles in the Antebellum City* (Cambridge: Harvard University Press, 2014).

<sup>74</sup> One example can be seen: “U.S. Penitentiary Inmates,” *Cañon City Times*, 7/18/1872.

both the fear of crime and the development of policing. As part of the fight against crime in the city and county, Cañon City erected a jail—a “little red calaboose”—in 1873.<sup>75</sup> The next year, this city jail became the Fremont County jail. At the request of the county, the city improved the facility in 1875 by increasing its size and adding stone structures, which, as the *Cañon City Times* announced, represented the city’s success: “Let those who have been proclaiming Cañon a dead town, just ready to bury, read and ponder.”<sup>76</sup> The calaboose lasted until 1890 when four cells in the Fremont County Courthouse basement replaced it. The prison spurred city and county growth, and this growth centered on legitimizing the power of a carceral apparatus and using the carceral apparatus to legitimize and symbolize the growth of the state.



Predictably, the territorial prison quickly outgrew its forty-two cells. The first major problem presented itself in March 1873 when the penitentiary received its first female charge. The planners had not designed the facility to accommodate women and men because women were so rarely incarcerated.<sup>77</sup> Mary Salander was convicted of manslaughter stemming from her work as an abortionist in Boulder. In December 1871, Mrs. Frederick Braunn’s body was found in a river in Boulder County, and the coroner determined the cause of death to be “uterine hemorrhage caused by a procured abortion.”<sup>78</sup> Salander maintained her innocence. Beloved by much of the Boulder community, Salander remained free and practicing after community

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<sup>75</sup> Office of Town Clerk, “Bids on Town Calaboose,” April 30, 1873, Folder: “Sheriff’s Dept.—Jails, to 1986,” RGRMHC.

<sup>76</sup> “A Dead Town. Improvements for 1875,” *Cañon City Times*, 1/6/1876.

<sup>77</sup> Anne M. Butler, *Gendered Justice in the American West: Women Prisoners in Men’s Penitentiaries* (Urbana: University of Illinois Press, 1997), 66.

<sup>78</sup> Quoted in Elinor Myers McGinn, “Boulder Genealogical Society Quarterly” 31, no. 1 (February 1999).

members posted her \$8,000 bond. In June 1872, the jury failed to return a verdict. Six months after her first trial ended with a hung jury, the jury in a second trial found her guilty.<sup>79</sup> Salander entered Colorado Territorial Penitentiary on 19 March 1873 and was discharged just five months later after she received a pardon on 14 August 1873.<sup>80</sup> The one-building prison lacked space to segregate Salander from the incarcerated men; the prison would not expand to include a separate women's department until 1886. At the time of Salander's incarceration, all prison staff were men; the prison would not hire a female matron for another decade. What Salander's experience in prison was like remains a mystery. Unlike subsequent incarcerated women who served after the warden's residence was built, she did not act a maid for the warden. Salander may have done the laundry, or she may have been confined to her cell. For those months, though, we know that she lived in the same tier and building as the incarcerated men and was watched by male guards.

The prison outgrew its initial cells not only because of the challenge of incarcerating women but also because of the increasing number of men it housed. By 1873, the *Rocky Mountain News* reported: "Canon City Pen Full."<sup>81</sup> Just a few years after its opening, the governor called on the U.S. Congress to appropriate more money to enlarge the facility.<sup>82</sup> This was the first call in what would become a continuous pattern in the prison's history: the institution always needed more funds from the legislature to expand to accommodate the growing prison population. The prison certainly exceeded its capacity, but it is unclear whether

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<sup>79</sup> There is debate as to the correct spelling of Mary's last name, and I have chosen to follow the spelling on the prison inmate file at the Colorado Museum of Prisons. Elinor Myers McGinn, "Boulder Genealogical Society Quarterly 31, no. 1 (February 1999).

<sup>80</sup> "Salander, Mary #60," Inmate Identification Card Records, MCP.

<sup>81</sup> "Canon City Pen Full," 11/1873, Box 14794, Department of Corrections Collection, CSA.

<sup>82</sup> "The Governor's Message," 1/6/1874, Box 8840b "Executive Record II 1869-1875," Executive Record of Colorado Collection, CSA.



funding remained a fundamental problem or whether the funding was called for to benefit Cañon City. The perpetual growth benefitted Cañon City. For example, the incarcerated population required keepers, which meant jobs for local residents. When the prison opened applications for two positions in 1875, for instance, they received seventy-five applications.<sup>83</sup>

The prison administrators' challenges went beyond the need to find space for the captives; they needed to make captives work. Sentences in Colorado explicitly called for terms of "improvement and hard labor."<sup>84</sup> Hard labor served multiple purposes. First, the state sought to make the prison financially self-sufficient by forcing incarcerated people to produce value. Second, reformers and penologists alike believed that hard labor instilled work ethics and taught skills, in turn reducing recidivism. Third, hard labor was thought to rehabilitate people mentally and physically. Fourth, hard labor, in theory, exhausted incarcerated people and therefore rendered them easier to control and escape more difficult.

Prison administrators, including the Warden and the Board of Managers, sought a suitable means of labor. From the beginning, the prison labor question was connected to the prison's immediate environment. Incarcerated people mined, farmed, and hewed stone. But making them work, contrary to what some advocates of hard labor argued, enabled them to escape. Cañon City, sitting along the Arkansas River, receives agriculture benefits from the river's flow and has a relatively moderate climate due to its location in a valley. Fremont County also had rich coal, oil, and limestone deposits, which spurred a lucrative mining industry in the

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<sup>83</sup> *The Times* [Cañon City], 12/9/1875.

<sup>84</sup> Judges' orders of "imprisonment & hard labor in the Territorial Penitentiary" were repeated in nearly all sentences. Examples available in: Box 8840c "Criminal Record Vo. 3 1862-1876," Executive Record of Colorado Collection, CSA.

county through the 1920s. The penitentiary itself was bordered on the northwest hill containing good building stone. Incarcerated men expanded the makeshift lumber wall around the facility by quarrying the northwest hill and erecting a twenty-foot stone wall. Incarcerated people often performed the labor to expand the prison facility. By 1876, the governor called for the enlargement of the facility and walls due to overcrowding and the ways captives employed their knowledge of the environment to escape: “The inadequate space for their accommodation (seventy-five having been confined in a building intended for forty), the facilities for escape and concealment by reason of their proximity to the mountains, and the consequent difficulty of their recapture, render it imperative that the penitentiary should be enlarged and the walls to surround it completed.”<sup>85</sup> Incarcerated people, in turn, expanded the facility and built the walls.

The local community, too, relied on prison labor. Under the prison’s first territorial warden Anson Rudd, who was one of the earliest Euro-American settlers in Fremont County, incarcerated men were hired out to local businesses and individuals for a day’s work. Rudd set the price of one dollar per day per man, but there was no formal contract or regulations governing the leasing of incarcerated men and their treatment. This leasing system parallels models throughout the country in which people convicted of crimes were leased to local entities and individuals to extract labor. The Colorado system, unlike some of the most heavily critiqued systems of the South, set a definite price for the cost of daily labor rather than holding an auction for the highest bidder. This system also required that the lessee return their forced laborer(s) to the prison each evening.<sup>86</sup>

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<sup>85</sup> “Governor’s Message at the Eleventh Legislative Assembly.” 1/5/1876, Reel D.2 la 1861-1869, Box S221 “Governor’s Messages,” Executive Records Collection, CSA.

<sup>86</sup> Douglas Blackmon writes about the system of forced labor and racial oppression through convict leasing in Alabama that undergirded post-Civil War economic development in the U.S. in *Slavery By Another Name: The Re-*

Incarcerated men also built Fremont County infrastructure and individual businesses. In the summer of 1872, for instance, under Warden Rudd, incarcerated people worked a total of 240.5 days just on county roads.<sup>87</sup> In the spring of 1874, “Mr. Rudd and his striped brigade” improved and beautified the town’s Soda Springs to make the place a “far more inviting resort.”<sup>88</sup> In addition to public works, individuals, including Rudd himself as a private citizen, hired out convict laborers. Within the prison, convict laborers toiled in the carpentry shop, blacksmith shop, stone cutting shop, kitchen, and laundry.<sup>89</sup> This work served two purposes: it would yield material benefits to the prison (in both money and services) and would keep incarcerated people occupied so as to ease responsibilities of the four day guards and two night guards. The entity or individual that leased convict labor carried the responsibility for supervising the captives. Local landowners, in return, supported the prison’s growth: by the mid-1870s, the prison had expanded to forty acres, all of which was on land donated to the state.

The prison continued leasing incarcerated workers and working them within the facility. The Board of Managers, a group of three officials appointed by the governor and approved by the legislature who oversaw prison finances and policies, determined that the administration

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*Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008); Henry Kamerling compares Illinois and South Carolina convict labor systems after the Civil War to demonstrate how notions of white supremacy and capitalism shaped similarities in uses of forced labor in *Capital and Convict: Race, Region, and Punishment in Post-Civil War America* (Charlottesville: University of Virginia Press, 2017); Alex Lichtenstein explores the contours of convict leasing in Georgia after emancipation in *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996).

<sup>87</sup> “Table Showing Number of Days Worked by Convicts During the Administration of Anson Rudd,” Folder “Reports—Office of the Colorado Penitentiary,” Box 66251C “Papers of Edward M. McCook,” Collection 1008, CSA.

<sup>88</sup> “General News,” *Cañon City Times*, 5/21/74

<sup>89</sup> Expenditures and Earnings of the Colorado Penitentiary,” July 1872, Folder “Reports –Office of the Penitentiary,” Box 66251C “Papers of Edward M. McCook,” Collection 1008, CSA.

required a standard policy for convict labor leasing to avoid accusations of abuse, corruption, or favoritism.<sup>90</sup> In 1874, the Board resolved: “It is the wish of the Board that the Convicts be constantly employed. And as much as possible at out-door labor, the hours devoted to such labor should not be less than nine and the Board recommends that no prison labor be contracted out at less price than one dollar per day per convict and in squads of not less than eight.”<sup>91</sup> This policy affirmed the administration’s goal of keeping the captives occupied through labor. The policy benefitted larger businesses and contractors because of the requirement that any one entity must hire a “squad of not less than eight.” After this policy was instituted, incarcerated people worked more time for larger operations and institutions, such as the county constructing roads or ditches for irrigation projects.<sup>92</sup> These projects supported complementary state goals—developing infrastructure and working incarcerated people.

In addition to hiring out captives, prison administrators sold goods produced by incarcerated people, part of the effort towards financial self-sufficiency. For instance, after incarcerated men quarried stone to build their own facilities, the warden ordered convict laborers to quarry stone to sell to the public. David Prosser, warden in 1874, advertised in the *Cañon City Times*: “Dimension and building STONE in any quantity for sale at the Penitentiary. Having opened a new quarry from which is obtained the FINEST BUILDING STONE in the territory.”<sup>93</sup> This prisoner-quarried stone was a point of pride from which the territory’s administrators

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<sup>90</sup> Frank Hall, *History of the State of Colorado* (Denver: 1895), I:396-397

<sup>91</sup> “Letter from Board of Managers to Anson Rudd,” 3/14/1874, Folder “Reports: Office of the Colorado Penitentiary FF2,” Box 66245 “Papers of Samuel Hitt Elbert,” Collection 1009, CSA.

<sup>92</sup> “Table Showing Number of Days Worked by Convicts During the Administration of Anson Rudd,” Folder “Reports—Office of the Colorado Penitentiary,” Box 66251C “Papers of Edward M. McCook,” Collection 1008, CSA.

<sup>93</sup> “STONE,” *Cañon City Times*, 11/5/1874; see also: “Stone and Lime!” *Cañon City Avalanche*, 2/17/1875.

gained legitimacy, demonstrating that they worked captives to produce profits for the state. The *Times* reported that “frequent blasts show that the solid rock is struck and dimensions and building rock of all kinds will now be constantly at hand.” The work of a “large gang of his [Warden Prosser’s] wards,” the *Times* argued, would fuel the community’s development.<sup>94</sup>

Despite the policies regarding hiring out incarcerated laborers and the pursuit of economic self-sufficiency, not all projects benefited the public or served to rehabilitate. Corruption riddled the operation of the convict labor program. Warden Rudd, for example, demonstrates the ways locals profited from the prison. Rudd, a longtime Cañon City booster, yielded a great return on the government’s penal investment in the city. Rudd moved to Cañon City in 1860 and became a key booster in the postwar rebuilding of Fremont County. He served as sheriff and county commissioner before Governor Elbert appointed him as warden of the Colorado Territorial Penitentiary. At the time of his appointment, Rudd held an ownership stake in an unfinished irrigation ditch that crossed prison grounds. As warden, Rudd used convict labor to complete the ditch. In exchange for this labor that increased the value of the ditch by \$2,500, he compensated neither the territory nor the laborers. This arrangement inspired “malicious rumors [that] affected the penitentiary management.”<sup>95</sup> The charge of this corruption, publicized in the *Rocky Mountain News*, was that “Mr. Anson Rudd is using convict labor to aid in constructing a tunnel for the ditch of an irrigation company, in which Mr. Rudd is interested, and for which labor the territory does not receive any benefit.”<sup>96</sup> As newspapers and the general public became suspicious of this perceived self-dealing, Rudd produced a contract that detailed

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<sup>94</sup> “Town and County News,” *Cañon City Times*, 11/29/1874.

<sup>95</sup> “Cañon City,” *Rocky Mountain News*, 8/12/1874.

<sup>96</sup> “The Territorial Penitentiary,” *Rocky Mountain News*, 5/6/1874.

the fair exchange of prison labor for fifty inches of water per year for the penitentiary. This contract raised more suspicions than it settled. The contract was dated four weeks after the work began—and only after the journalist began asking questions. Moreover, reports on the penitentiary all emphasized the land's infertility, which rendered this irrigation water useless for any agricultural endeavors on the prison grounds.<sup>97</sup>



The belief that incarcerated people should labor intensively each day was both pragmatic and political. The labor program was supposed to prove the territory was capable of operating its own prison system, implying that Colorado was ready for statehood. Reports on prison labor circulated widely throughout the territory publicizing the prison's successes. In February 1875, for example, the *Pueblo Chieftain* and *Cañon City Times* reported on the allocation of the 315 days of work done at the penitentiary during the previous month (160 days grading prison ground, 40 days cutting and dressing stone, 37 ½ days in the shoe shop, etc.) and the exact amount of clothing manufactured (eight pairs of boots, ten pairs of pants, thirty-four shirts, and eighteen sheets).<sup>98</sup>

The prison and what it symbolized were vital when territorial legislators continued to agitate for statehood. They had to prove their territory was worthy of statehood, they had to demonstrate stability, economy, and order. The prison's competent management, they argued, showed a Colorado deserving of statehood that could manage its own affairs effectively. In 1873, the U.S. Marshals turned over operation of the prison to territorial government, and the territorial

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<sup>97</sup> Berwanger, *Rise of the Centennial State*, 131; *Colorado Tribune*, 4/27/1874; *Colorado Tribune*, 5/5/1874.

<sup>98</sup> *Pueblo Chieftain*, 2/18/1875; *Cañon City Times*, 2/18/1875.

government received the one dollar per day for federal prisoners. Congress released control to Colorado in the same act in which it released other territorial penitentiaries to their respective territorial authorities in Montana, Idaho, and Wyoming.<sup>99</sup> The territorial government used this opportunity to develop labor policies and build prison industries as a key plank in proving to Congress that they deserved statehood. Mining and tourism both helped build a functioning state and economy that showcased Colorado's potential, and the prison and criminal legal system played an important role.<sup>100</sup> The prison served as another key public institution to demonstrate the state's capacity for governance.

Just as the U.S. Congress debated whether Colorado had deserved statehood, Colorado's territorial legislature debated how to improve the penitentiary. The prison had failed to reduce crime in the territory and it struggled with discipline problems. In 1876, the assembly appointed a joint committee led by James Clelland of the Eighth District to inspect the penitentiary. On January 18, the committee traveled to Cañon City for the inspection, and they found the prison lacking. The committee responded by sponsoring Council Bill 46, "An Act to Promote better Discipline and Encourage Reformation in the Penitentiary." The committee recommended "an enlargement of the prison at an early day, which would be done with the prison labor, with comparatively small expense." The committee's report estimated the materials and costs for an additional cellhouse with sixty cells to accommodate the predicted growth to one-hundred

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<sup>99</sup> 17 Stat. 418, "An Act transferring the Control of certain territorial Penitentiaries to the several Territories in which the same are Located."

<sup>100</sup> On the role of tourism and railroads in the push for statehood and development of Colorado: Brosnan, *Uniting Mountain & Plain*; Thomas J. Noel, "All Hail the Denver Pacific: Denver's First Railroad," *The Colorado Magazine* 50 (Spring 1973): 91-116. On the role of mining in the development of Colorado: Duane A. Smith, *The Trail of Gold and Silver: Mining in Colorado, 1859-2009* (Boulder: University Press of Colorado, 2009); Henry A. Dubbs, "The Unfolding of Law in the Mountain Region," *The Colorado Magazine* 3 (October 1926): 113-132.

incarcerated men.<sup>101</sup> But by the end of the 1875-1876 biennium, the prison received over one-hundred new men each year—and that number of annual commitments only continued to rise.<sup>102</sup> The prison's demographics held relatively consistent for the institution's first two decades: approximately three-quarters of the prison population was born in the United States and the majority of people incarcerated were between nineteen and thirty-four years old.<sup>103</sup>

In the wake of the committee's report, the legislature passed the act to encourage reform in the penitentiary. This act represents the early beginnings of a new ideology of punishment sweeping across the country. This new national ideology responded to demands that incarcerated people ought to be rehabilitated. As such, Council Bill 46 offered a deduction of time from sentences for all "who shall have performed faithfully, and all who hereafter perform faithfully, the duties assigned to him or her." The warden was to keep a record of infractions of prison rules and regulations, for any incarcerated person that failed to abide by the rules would lose the good time earned. If anyone completed their sentence without violating the rules, the person "shall be restored to citizenship."<sup>104</sup> Although the state never had the power to strip incarcerated people of citizenship itself, the state stripped the privileges of citizenship from its captives and made them, as the courts permitted, "slaves of the state."<sup>105</sup> This national wave of reform manifested in

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<sup>101</sup> "House Journal of the Legislative Assembly of the Territory of Colorado, page 84-86, accessed at <https://lawcollections.colorado.edu/colorado-house-and-senate-journals/islandora/object/journals%3A63472#page/86/mode/2up>.

<sup>102</sup> Office of Research, Planning and Information Services, "Colorado Division of Correctional Services Statistics Notebook," Document No. 76-26, page 142.

<sup>103</sup> For a representative example of the demographics: "Table No. 16: Nativity of Prisoners Received" and "Table No. 20: Showing Age of Prisoners Received" 1894 Biennial Report, Biennial Reports, MCP

<sup>104</sup> "An Act To Promote better Discipline and Encourage Reformation in the Penitentiary," accessed at <https://lawcollections.colorado.edu/colorado-session-laws/islandora/object/session%3A2772>.

<sup>105</sup> *Ruffin v. Commonwealth*, 62 Va. 790, 21 Gratt. 790 (1871).



Colorado—like other territories and states—rethinking the procedures and policies for incarceration to provide rehabilitation rather than questioning the assumption that prisons were necessary or investigating why prison populations continued to rise in spite of increasing investment in law enforcement.

The territorial prison provided a foundation for Colorado's carceral systems. Two themes, evident from the earliest days of Colorado's territorial prison, emerged and persisted throughout the long history of Colorado and United States incarceration. First, the question over how to extract labor from incarcerated people to make the prison self-sufficient would plague politicians and administrations into the future. Second, since the prison began requesting funds to expand its capacity to punish and incarcerate in 1873, it never stopped; the prison system never met demands to house the charges it received from the court system.

## Chapter 2 - Establishing a State, 1876-1908

On 3 March 1875, the United States Congress passed the Enabling Act, empowering Colorado Territory to organize as the thirty-eighth state.<sup>1</sup> The process of imagining, defining, building, and enforcing the powers of the state followed a complex and nonlinear path. The history of state building and penal development in Colorado are inseparable. The state, building on lessons learned during the territorial era, employed the criminal legal apparatus to consolidate power. The first years of statehood provided an opportunity for various stakeholders to emerge and articulate their visions for state formation and judicial administration. Throughout this process, no one party or entity had totalizing control.

The Enabling Act outlined the broad contours of statehood. The state constitution had to be in accordance with the United States Constitution, and it “shall make no distinction in civil or political rights on account of race or color, except Indians not taxed.”<sup>2</sup> The United States required that Colorado form a republican government. This republic government would protect citizens, land, and property. The U.S., though, retained title over much public land in the new state. The first decades of statehood illustrate the way Colorado legislators and stakeholders erected a government and secured its legitimacy, and they employed the penitentiary as a symbol and tool of governing authority. The Colorado Territorial Penitentiary became the Colorado State Penitentiary (CSP), but this transition did not sever ties between the federal system and Colorado’s prison. Colorado continued to house men and women charged and sentenced by

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<sup>1</sup> “An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States,” Chap. 139 (1875).

<sup>2</sup> Timothy O’Connor, *Proceedings of the Constitutional Convention* (Denver: The Smith-Brooks Press, 1907), 10, accessed at [https://www.colorado.gov/pacific/sites/default/files/PROCEEDINGS%20OF%20THE%20CONSTITUTIONAL%20CONVENTION\\_0.pdf](https://www.colorado.gov/pacific/sites/default/files/PROCEEDINGS%20OF%20THE%20CONSTITUTIONAL%20CONVENTION_0.pdf).

federal courts and courts from other states. In particular, CSP housed women from the region because it provided one of the few penal spaces that accommodated them.

In December 1875, territorial legislators convened at the state's Constitutional Convention. These delegates detailed the state's future political outlook and enacted this vision by passing laws regarding land, education, crime, legal proceedings, and taxation. These laws and the institutions they created reinforced social education both positively and negatively through, respectively, public education and the criminal legal system.<sup>3</sup> Convention delegates, much like the leaders of the territory for the prior decade, focused their efforts on two primary pillars of state construction: financial administration and judicial administration. The new state constitution reflected the ideologies and politics of wealthy and well-connected stakeholders and boosters. This pro-business approach—especially promoting railroad, mining, and extractive industries—protected property as a tool to attract capital and labor to the state. This focus on growth and investment manifested in a clear directive for the state penitentiary: self-sufficiency.

The goal of an ordered society secured through negative and positive freedoms required a functional and effective judicial system as both a symbol and mechanism. Complementing the experience learned during the territorial phase, Colorado's leaders looked elsewhere for analogous processes that could inform their project of building a state. The penitentiary supported an effective judicial administration system in which a civil and criminal legal system won legitimacy and protected state interests. The state demanded and pursued a monopoly on captivity, violence, and punishment. The officials who shaped Colorado in its early years laid the

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<sup>3</sup> Ibid., 84-86.

rhetorical justification of a forceful and effective criminal legal system: an institution for the protection of law-abiding citizens and property.<sup>4</sup>

During the early years of statehood, the penitentiary stood as a beacon of progressive punishment and state power. To be sure, it also demonstrated the difficulties of establishing stable state institutions. Between 1876 and 1900, ten different wardens led the institution, none for more than four years. The perennial administrative turnover prevented consistency and also reflected rapidly changing politics and ideologies of incarceration. The governor held sole responsibility for appointing or dismissing the warden. The governor also appointed the Board of Managers, three citizens each from one of the state's judicial districts, to oversee the prison and make recommendations. The Board visited the prison every quarter to inspect it and report to the governor and warden. The managers' only power lay in their ability to advise; only the governor and warden could act. This system of management made for regular turnover within the prison administration and established a hierarchy in which the Board investigated and recommended but held little meaningful authority. This system also provided everyone—the warden, governor, and Board of Managers—a way to deflect blame and maintain the status quo.



While the state used the prison to establish its legitimacy, Fremont County boosters used the penitentiary to establish their region's importance. Having lost the territorial competition for regional relevance via a railroad link, Cañon City boosters used the prison to reassert the

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<sup>4</sup> Rhetoric about the purpose and goal of the criminal legal system, particularly spaces of incarceration, matter because they become entrenched as myths. For a modern example disproving the myth that prisons and incarceration protect free-world society: Victoria Law, *'Prisons Make Us Safer': And 20 Other Myths About Mass Incarceration* (Boston: Beacon Press, 2021).

county's role in statewide projects and politics.<sup>5</sup> The penitentiary not only brought attention to the Royal Gorge Region, but it also created a market exchange in which the prison consumed resources from elsewhere while producing materials to be used across the state. Such exchanges allowed Fremont County to define its economic role through agriculture and consumption rather than incarceration, and it helped spur one of the early successful efforts at attracting migrants and investors to the region.

Cañon City boosters and planners hailed the agricultural productivity of the region. Fremont County's relatively temperate climate allowed farmers to plant crops year-round. Early booster literature for the region, like much contemporaneous Western literature, hailed "Its Prolific farm lands, health-giving springs and climatic advantages."<sup>6</sup> Boosters advertised Cañon City as "The Centennial State's Orchard Home" for its apples, cherries, grapes, strawberries, and raspberries.<sup>7</sup> The climate supported an agricultural economy, seemingly independent of the prison, to develop. By the 1890s, local businessmen opened up a cannery that contracted with regional farmers to preserve and sell their goods. When the cannery opened, the *Clipper* reported: "The product of this factory, as put on the market, will be an advertisement not only for the fruit interests of Cañon but the attractions it presents to the tourists."<sup>8</sup> This particular cannery

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<sup>5</sup> On the fight over railroads in Fremont County and their importance to Cañon City's growth: Rosemae Wells Campbell, *From Trappers to Tourists: Fremont County From 1830 to 1950* (Cañon City: Fremont County Historical Society, 2013), 51-63; on the importance of railroads in regional development in Colorado: Kathleen Brosnan, *Uniting Mountain & Plain: Cities, Law, and Environmental Change along the Front Range* (Albuquerque: University of New Mexico Press, 2002).

<sup>6</sup> For Example: "Canon City, Colorado Illustrated. Compiled, Illustrated and Published Under the Supervision of the Canon City Board of Trade by the J.A. Ricker Illustrating Company," Item Number 87.001, Folder: "Booster literature—pamphlet on Canon City," Royal Gorge Regional Museum and History Center, Canon City, Colorado (Hereafter: RGRMHC).

<sup>7</sup> "The Cannery," n.d., Folder: "F. Canneries," RGRMHC.

<sup>8</sup> "The Canning Factory," *Canon City Clipper*, 5/16/1880.

would stand through the 1970s, and it played an important role in the development of the city, farming region, and prison.

As Cañon City boosters used the penitentiary and climate to boost its regional importance, prison administrators used the prison to simultaneously define citizenship based on industrial productivity and discipline while pursuing self-sufficiency. Caleb Smith contends that prison administrators used labor to ingratiate incarcerated people to their captors and teach skills: “the prisoner had not only to do his work; he had to embrace it as a life-saving gift from his keepers.”<sup>9</sup> Historians Dario Melossi and Massimo Pavarini elaborate on the capitalist goals of the penitentiary by showing how the institution’s primary aim was to condition the captive to “accept[] the state of subordination” in an industrial economy.<sup>10</sup> Self-sufficiency provided a framework and justification for convict labor that would, in theory, inculcate industrial discipline for a burgeoning capitalist economy.

In July 1876, the Board of Managers expanded on its earlier directions to lease squads of incarcerated people: “work all able bodied men in the Penitentiary, and to keep them all constantly employed at such work in and about the prison as may deem most advantageous to the interests of the Institution.”<sup>11</sup> While the region’s productive farming capacity would come to provide opportunities for settlers and incarcerated people alike, the agricultural boosterism (and success) revealed one of the failures of foresight in prison siting: the facility’s land was

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<sup>9</sup> Caleb Smith, *The Prison and the American Imagination* (New Haven: Yale University Press, 2011), 68.

<sup>10</sup> Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System*, trans. Glynis Cousin (London: Macmillan Press, 1981), 163.

<sup>11</sup> “Record of the Proceedings of the Board of Managers of Penitentiary at Canon City,” July 10, 1876, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, Colorado State Archives, Denver, Colorado (Hereafter: CSA).

constrained on one side by the city's Main Street and on the other by the Hogback Mountains that rose up as a western wall of the institution. The penitentiary therefore turned inwards to find new forms of labor and profit, beginning with having incarcerated people complete the needs of daily life—cooking, cleaning, and laundering. Then, the warden, “on the score of economy,” abolished the offices of the Deputy Warden and Clerk, turning instead to convict labor to perform those tasks.<sup>12</sup> These jobs were expendable because prison employees were neither organized nor protected. Because incarcerated people performed much of the labor to ensure that the prison continued to operate, staffing needs remained relatively low. In this way, the promised jobs for free-world citizens of Fremont County materialized only briefly.

The prison administration, particularly the Board of Managers, debated the extent to which the goal of hard labor for incarcerated people could displace free-world laborers. State administrators recognized that leasing out incarcerated people “has its opponents as well as its advocates.” On the one side, advocates sought to extract resources through the time, labor, and bodies of captive people to offset the costs of housing and feeding them. On the other side, opponents recognized the claims to employment and economic needs of free-world laborers that could be harmed by any unfair competition with convict labor.<sup>13</sup> CSP and the Board of Managers opted to pursue convict labor as extensively and profitably as possible.

In response to the push for hard labor, in September 1877, Warden M. N. Megrue undertook a two-pronged approach to extracting value from his captives. First, he advertised for

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<sup>12</sup> “Record of the Proceedings of the Board of Managers of Penitentiary at Canon City, Colorado.” July 11, 1877, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

<sup>13</sup> “Governor’s Message,” 1878, Box S221 “Governor’s Messages,” Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

proposals to lease incarcerated people outside the prison. Second, Megrue began reaching out to local industrialists and factory owners to operate within the prison and employ convict labor. These simultaneous approaches reflect what he had learned from his experience in Fremont County observing convict labor over the prior decade and from his colleagues across the United States when he had toured and studied other systems to find a suitable model.

Over the summer of 1877, Warden Megrue and A. Cohen, the owner of the local Boot and Shoe Manufacturing Company, drew up a contract.<sup>14</sup> This partnership offered mutual benefits: both would receive value from the goods that incarcerated people made. While the labor occupied incarcerated people's time and energies, the company received discounted labor. This work initially commenced at Cohen's downtown factory, but that soon proved unsatisfactory because workers could escape and because transporting men to and from the prison each day cost too much. Instead, the Board of Managers recommended that the convict laborers construct a shoe shop on the west portion of the penitentiary grounds. Fifteen captives immediately began work on the shoe shop, designed as a three-story factory. The state bore the cost of materials, which almost all came from the stone quarried by incarcerated men.<sup>15</sup>

The Boot and Shoe Company partnership proved successful for the state, and the Board of Managers renewed the annual contract with Cohen's business when it came up each fall. In 1882, the Board determined that a more long-term arrangement would provide increased stability, a key measure that these administrators used to judge the prison's management. On 4

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<sup>14</sup> Elinor Myers McGinn, *At Hard Labor: Inmate Labor at the Colorado State Penitentiary, 1871-1940* (New York: P. Lang, 1993), 56-67.

<sup>15</sup> "Minutes of the Proceedings of a Meeting of the Board of Commissioners," Sep. 3, 1878, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA.



August 1882, the Board entered into a five-year contract in which the state would supply eighty incarcerated men and space to manufacture boots and shoes. The state's responsibilities included guarding, feeding, and clothing these men. The company's responsibilities were overseeing and training the convict laborers and selling the product on the open market. The Boot and Shoe Manufacturing Company paid the state fifty cents per day (nine-and-a-half hours work) for every man employed at the penitentiary. If the company had to hire employees on the open market, they would have had to pay at least \$1.42 per laborer in 1882 per day and possibly up to \$2.42.<sup>16</sup> The convict laborer received no compensation for their time.

This first model of industrial partnership inspired other ventures. As the population held inside the prison increased from 42 charges in 1872, to 146 people in 1878, 226 in 1880, and 329 in 1882, the need grew to have more capacity for labor to offset higher costs and a greater administrative need for sufficient guards to manage the ever-increasing numbers of incarcerated people.<sup>17</sup>

Prison officials sought other industries that would employ even more men in hard labor—the manufacture of brick and the burning of lime. Beginning in the 1874 brickmaking season, Warden David Prosser entered into a seasonal contract with W.G. Catlin to make brick. The

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<sup>16</sup> This \$1.42 rate represents the average pay for unskilled labor in the United States in 1882. Edith Abbot, "Table X. Wages of Unskilled Labor—Summary," *Journal of Political Economy* XIII (Dec. 1904-Sep. 1905): 363. The *Bureau of Labor Statistics* published data for shoemakers in 1882 for only Illinois (\$2.00 average rate per day), Missouri (\$1.90), New Jersey (\$1.57), Ohio (\$2.11), and Pennsylvania (\$1.30). "Table H-1—Shoemakers, 1855-1899, by year and State" in *History of Wages in the United States From Colonial Times to 1928: Bulletin of the United States Bureau of Labor Statistics, No. 499* (October 1929), page 262.

<sup>17</sup> There is no archival data on who served as guards in the late nineteenth century, so the author is unable to determine whether these were local hires. Because the lack of roads and transportation in the late nineteenth century, the hires would have lived locally to have been able to work at the prison daily. "Biennial Message of Frederick W. Pitkin to the Legislature of Colorado," Jan. 5, 1881, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA; "Biennial Message of Frederick W. Pitkin to the Legislature of Colorado," Jan. 4, 1883, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

initial contract required the state to furnish the labor of twenty men.<sup>18</sup> Catlin, an early settler in Cañon City, established his brickmaking business in 1864 to supply brick for buildings constructed during that early boom.<sup>19</sup> His brickyard was about a mile from the prison, just across the Arkansas River to the south.<sup>20</sup> According to the contract with the prison, Catlin supplied all the material, machinery, and space. The penitentiary provided convict laborers and guards to oversee them. The guards were boarded at the brickyard at the state's expense.

Catlin embraced convict labor because it provided great benefits that free-world labor could not, particularly a captive labor force that could not quit because of the difficult work and low pay. Enoch Shepherd, who worked at the Catlin plant in 1875, recounted the difficult work and pay of only a dollar a day. Shepherd recalled: "Discouraged, I quit the brick yard, taking a job with Harry Barker [as a garden hand] for \$20 a month."<sup>21</sup> Recognizing the reality that profitability required consistent hard labor, Catlin turned to the state's captives. Heather Ann Thompson argues that industries and businesses often benefitted from the advantages that incarcerated laborers provided over free-world laborers: they could neither quit nor call in sick and they could not agitate (without repercussion) for better work conditions or pay.<sup>22</sup>

The Board of managers renewed a brick-making contract between CSP and Catlin for over a decade. After the Colorado Legislature passed a law in 1887 that required convict laborers

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<sup>18</sup> "Notes," July 17, 1873, Folder "Brickmaking—Catlin," RGRMHC.

<sup>19</sup> "Notes on Catlin," July 25, 1872, Folder "Brickmaking—Catlin" RGRMHC.

<sup>20</sup> "Map of Canon City and Catlin Brickyard," n.d., Folder "Brickmaking—Catlin" RGRMHC.

<sup>21</sup> "Pioneer Recalls Old Catlin Brick Yard in South Canon In The 1870s," *Cañon City Daily Record*, 8/6/1954.

<sup>22</sup> Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *The Journal of American History* 97, no. 3 (December 2010): 703-734.

to work on the grounds “except as incident to the business and management of the penitentiary,” Warden C.P. Hoyt leased the brickmaking plant, legally making it part of the prison’s grounds.<sup>23</sup> By 1887, the Board of Managers sought, in parallel to their efforts to make the shoemaking contract more long-term, stability in prison employment and revenue patterns. As such, in April 1887, the Board approved a contract with Catlin for a five-year term.<sup>24</sup> This arrangement and Catlin’s success seemed unfair to free-world laborers and businessmen. In the early 1890s, Catlin held the sole contract for captive workers to manufacture bricks while competing with at least four other brick manufacturers in Fremont County: S. Davis’s plant at Four Mile (est. 1888), A.C. Jensen’s plant on Douglas Ave. in South Cañon (est. 1890), H.A. Silsby’s Cañon City Fire Clay Manufacturing north of the city (est. 1890), and Cañon Brick & Tile Manufacturing Co. in South Cañon (est. 1893).<sup>25</sup> In 1893, Cañon City laborers founded the Cañon Brick and Tile Manufacturing company, which commanded the city’s brickmaking trade for the next two decades with non-prison labor.<sup>26</sup> The Cañon Brick & Tile Manufacturing Co. maintained a payroll of about twenty-five men and produced about two million bricks per year. Brickmaking, subsidized in its early years by prison labor, proved to be an enduring and central industry in the region’s growth.

The state’s political leaders harped on the importance of effective prison management, focusing on costs rather than rehabilitation. The governors’ annual messages regularly praised

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<sup>23</sup> “Warden Hoyt,” n.d. Folder “Prison History Research Canon City Public Library” Museum of Colorado Prisons, Canon City, Colorado (Hereafter: MCP).

<sup>24</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” April 6, 1887, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

<sup>25</sup> Various different records include either “Silsby” or “Silsbee.” “Brick Industry Notes,” n.d. Folder “Brickmaking” RGRMHC.

<sup>26</sup> “A Large Industry,” July 25, 1901, Folder “Brickmaking – Canon Brick & Tile,” RGRMHC.

the wardens for their “able business management” and ability to improve the value of the buildings. Throughout these years, though, the institution never became financially self-sufficient. The administration’s creative business deals, despite the politically advantageous rhetoric to the contrary, never made the prison self-sufficient; the penitentiary depended on state appropriations.



Overcrowding in the prison led state leaders to rethink criminal laws and punishments. For example, the state punished those convicted of murder with execution by public hanging in the jurisdiction in which the condemned was found guilty, except those who pled guilty to murder, who would be spared execution and instead given a long custodial sentence in the state penitentiary.<sup>27</sup> Overcrowding, rising prison costs, and a desire to assert the primacy of a progressive legal system led Governor Frederick Pitkin to recommend that the legislature change this law on execution to allow the state to inflict the death penalty on all those found guilty—by jury trial or confession—of murder. Pitkin argued: “A large number of persons who are now confined in the penitentiary at Cañon City who have pled guilty to the crime of murder, and are being supported at great expense to the State.” Despite this recommendation, the legislature maintained distinct punishments for those convicted and those who confessed. The benefits of confession arise from a Christian worldview that privileges confession into the state’s legal system. The governor’s call for harsher punishments for murder came at the same time that he

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<sup>27</sup> David L. Erickson, *Early Justice and the Formation of the Colorado Bar* (Denver: Continuing Legal Education in Colorado, 2007), 181.

rejected a “more liberal exercise of the pardoning power” because it would not have increased the safety of the public.”<sup>28</sup>

Prior to 1890, executions were not practiced at the penitentiary; the local jurisdiction in which the case was tried executed the condemned. Starting in 1890, the Colorado State Penitentiary carried out the state’s executions. When executions had been conducted in the jurisdiction of trial, they were public spectacles that served to supplant the popularity of lynching and visually assert the state’s power of force. The governor and warden urged the legislature to change this practice because “It is not the intention of the law to make the agonizing atonement of the condemned furnish forth an entertainment for the depraved.”<sup>29</sup> The legislature assented. Executions in Colorado became private: held in a closed chamber at CSP with only prison authorities and official witnesses in attendance.<sup>30</sup> The law also prohibited photographs of the event.<sup>31</sup> This switch from public hangings to private executions, as Michael Radelet argues, helped cement Colorado’s reputation as a state with a progressive, civilized execution system. Radelet contends that the state sought to control executions because “the perception of an ‘image problem’—a belief that public hangings were bad for Colorado’s national image—similarly

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<sup>28</sup> “Biennial Message of Frederick W. Pitkin to the Legislature of Colorado,” Jan. 5, 1881, Box S221 “Governor’s Messages,” Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

<sup>29</sup> “Message of Gov. Ben. H. Eaton,” 1887, Box S221 “Governor’s Messages,” Col. D.2 Reel, Executive Record of Colorado Collection, CSA

<sup>30</sup> Erickson, *Early Justice*, 181.

<sup>31</sup> “Executions,” Folder: “Death Penalty,” Acc. No. 2007.001.1, MCP.

drove the growing opposition to public executions.”<sup>32</sup> Limiting public hangings allowed the state to centralize its execution system in Cañon City.

As authorities debated punishments to help mitigate overcrowding, they also harked on the importance of convict labor in dealing with overcrowding. Prison officials, in turn, expanded the institution’s capacity for lime production.<sup>33</sup> In the early years of prison growth, convict laborers built numerous lime kilns on the northwest side of the prison tract, just below the Hogback mountains and outside the prison walls. One 1886 map of the prison labeled the lower part of “The Hog Back” as “The Lime-Stone Ridges,” which abutted the state penitentiary and its



Figure 2.1: Map of State Penitentiary, Author Unknown, 1886. Courtesy of Royal Gorge Regional Museum & History Center.

<sup>32</sup> Michael L. Radelet, *The History of the Death Penalty in Colorado* (Boulder: University Press of Colorado, 2017), 33.

<sup>33</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” Dec. 2, 1879, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

kilns (See Figure 2.1).<sup>34</sup> Quarrying stone and producing lime, like the manufacturing of bricks, was dangerous work. In 1877, for instance, Frederick Dowling was injured by a blast at the stone quarry so severely that he needed his leg amputated at the knee. After the amputation, Governor Routt pardoned Dowling because he considered the amputation sufficient punishment.<sup>35</sup> Prison authorities did not record or note accidents; the only evidence of possible accidents is from records of time off work, but there are other reasons to which the non-working days could be attributed. These workplace accidents occurred in an era that was increasingly dangerous for the American worker. Accident law that protected some laborers, as John Fabian Witt argues, developed in response to deadly working conditions and in answer to the calls of reformers and labor organizations.<sup>36</sup> Accident law, however, failed to protect the “slaves of the state” and prison officials did not reform the working environment to protect the incarcerated laborers. Perhaps because of the dangers and injuries, incarcerated people earned respect throughout the state for completing this work. A journalist who toured the prison for the *Fremont County Recorder* reported: “We were shown this week some very excellent work in lime stone and gypsum done by the convicts in the prison which reveals rare ingenuity and remarkable skill.”<sup>37</sup>

Incarcerated people won more than injuries and respect at the quarry; some gained freedom. Escapes from the quarry were more common than escapes from any other contemporaneous work site.<sup>38</sup> After a few escapees were recaptured, the local newspaper

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<sup>34</sup> “Map of State Penitentiary,” author unknown, 1886, Folder: “Quarries & Quarrying – Prisons” RGRMHC.

<sup>35</sup> “Frederick Dowling,” *Canon City Times*, 4/5/1877.

<sup>36</sup> John Fabian Witt, *The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law* (Cambridge: Harvard University Press, 2006).

<sup>37</sup> “General News,” *Fremont County Recorder*, 8/19/1882.

<sup>38</sup> “Book of Escapes,” MCP.

quipped: “To get out of the penitentiary seems to be no very difficult task, but to keep out after escaping seems almost impossible.”<sup>39</sup> In 1899, however, incarcerated people were ordered to labor to restrict these opportunities for escape; the warden ordered them to construct a thirty-foot high and three-foot thick wall around the lime kilns and brick yard.<sup>40</sup> At the same time, Warden C.P. Hoyt established an official policy for when escapes occur: “whenever a prisoner escapes, a signal will be given on the steam whistle at the State Penitentiary by continuous blowing for five minutes.”<sup>41</sup> The whistle served as a signal to all throughout Fremont County, and everyone there knew what it meant. While the wall tried to sever the prison from its surrounding community, the whistle ensured that such separation remained impossible. The prison administration called on the community to patrol for escaped people because the state, in prison leadership’s opinion, failed to provide resources to secure the facility. The prison’s Board of Commissioners investigated escapes and found “that no blame can attach to the Warden, that escapes occur in all Penitentiaries and that on account of the insufficient appropriation, it is, and has been necessary for all recent administrations to curtail expenses and manage to get along with a small number of guards and under officers.”<sup>42</sup> These regular escapes precipitated trading blame between prison administrators and elected officials that often resulted in greater appropriations for the institution.

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<sup>39</sup> “Local News,” *Canon City Times*, 2/15/1877.

<sup>40</sup> “Stone Wall,” *Canon City Record*, 7/13/1899.

<sup>41</sup> C.P., “Notice to the Public,” May 15, 1899, Folder “Territorial Prisons – 1800s,” RGRMHC.

<sup>42</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” Dec. 4, 1895, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA



These appropriations were supplemented by the proceeds from prison's sales of the goods that captives produced. Contractors throughout the state took over the advertising and selling of the product, formalizing another public-private partnership. In 1881, the Board of Managers entered into contracts with Smith & Stiff for the "exclusive right to the sale of the lime burned at the prison, in Leadville, Silver Cliff, and Pueblo" and M. N. Megrue (who just finished his term as warden in December 1880) for the same exclusive right in Denver. These agents purchased the lime from the penitentiary at a rate of seventeen cents per bushel, and they sold it throughout the state. This arrangement required a railroad switch to the kilns so that the lime could be transported easily, and the contract with Smith & Stiff arranged the cost of the switch's construction to be shared between them and the state. Smith & Stiff paid based on the going rate of convict labor at one dollar per day per laborer.<sup>43</sup> By 1886, the burning and sale of lime, not bricks or shoes, constituted the institution's principal source of revenue. The state, therefore, purchased additional rock and lime quarries from local Cañon City businessman B.F. Rockafellow and the Colorado Coal & Iron Company.<sup>44</sup>

Even with industrial manufacturing and quarrying ventures, the prison never became self-sufficient. Although wardens manipulated the data to present the institution as nearly self-sufficient by including the theoretical value of improved land and buildings, this value remained

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<sup>43</sup> "Minutes of the Proceedings of a Meeting of the Board of Commissioners," Sep. 1, 1881, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA; 1881; map showing the railroad track and the lime kilns in D.A. Bradbury, "Map of the Grounds of the Colorado State Penitentiary," 1889, Folder "Quarries & Quarrying – Prison," RGRMHC.

<sup>44</sup> "Minutes of the Proceedings of a Meeting of the Board of Commissioners," July 16, 1886, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA.

theoretical. In fact, the cost of improving the buildings required the institution to pay for the materials that could not be quarried freely.<sup>45</sup>

Captive laborers, moreover, pushed back against the schemes to make the prison self-sufficient. They objected to being both uncompensated for their labor and worked without protections. Beyond the prisoners self-emancipating and thereby removing their productive value from the prison's capacity, incarcerated people refused to work or slowed their work. In the first recorded instance of a labor stoppage at CSP—which the Board of Managers referred to as a “revolt”—Theodore Pryce refused “to perform the labor required of him” and failed “to yield to the punishment inflicted by the officers of the prison.” The Board ordered continued punishment until Pryce “yields and submits.” The punishment targeted both Pryce and other forced laborers who considered withholding their productive capacity. Pryce's work stoppage threatened the operation of the prison; incarcerated people, prison administrators, and the Board of Managers recognized that the prison's smooth operation required the labor of the captive people. The Board of Managers concluded this case with a broad directive to prison staff: “that perfect obedience to regulations be enforced in his—Pryce's case—and of all the other convicts who may at any time revolt.”<sup>46</sup>



Incarcerated people in Colorado fought for both emancipation and more humane treatment. The most effective challenges emanated from collective action—whether against labor

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<sup>45</sup> The financial data was presented in the biennial reports, and the data for the calculations is available in the logbook: “Financial Records of CSP,” MCP.

<sup>46</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” Jan. 7, 1880, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

conditions, officer brutality, or inhumane treatment. Incarcerated people in CSP organized within and beyond the institution. Newspapers linked incarcerated people across institutions and states by circulating information about conditions and protests. Prison administration recognized and fought the power of information in prison organizing: “as the newspapers are containing accounts of insurrections at other Penitentiaries, and that the reading of said accounts is creating a spirit of dissatisfaction among the convicts of this prison.”<sup>47</sup> The institution responded with repression to this dawning political consciousness and the perceived potential for rebellion, escape, or work stoppages. New policy, for example, dictated that all newspapers containing the news of the day shall not be permitted within the prison walls and the number of letters incarcerated people could write be limited to one per month.<sup>48</sup> Censorship insulated the system while isolating activists and organizers.

Beyond censorship, the administration quelled dissent through harsh punishment. The prison began keeping a centralized accounting of transgressions and punishments in the late nineteenth century, which allows for more description of captive behavior and institutional response. For example, after a guard reported one incarcerated person “for insolent back talk,” the warden sent Mr. Reagan to the cooler for four days, took away all privileges for thirty days, revoked the good time Reagan had earned, and confined him in his cell for thirty days after his term in the cooler.<sup>49</sup> In this case, Regan allegedly was “habitually insolent” in response to the

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<sup>47</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” March 6, 1883, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

<sup>48</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” March 6, 1883, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA; “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” Dec. 9, 1885, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

<sup>49</sup> Reagan #4215, 6/26/1897, “Offenses and Punishments, 1897,” Folder: “00.011.091,” Julie Whitmore Collection, RGRMHC.

guard's criticism of his work breaking rocks. In another case, a captive named Mitchell was accused of "laziness and talking." In this instance, Mitchell may have been purposefully working slowly to disrupt production or because of a physical ailment. The record does not provide any response from those men being punishment, so we cannot argue motive. Although the cause is unknown and went uninvestigated by the prison staff, Mitchell received the ball and chain—he had to walk between Tower No. 5 and the Warden's Office every five minutes while dragging the ball chained to his ankle. This punishment was physical and psychological, and it created a spectacle in the prison's open spaces that, in theory, deterred others from such acts against the state. The public ball and chain punishment was only half of the response to his purported laziness; Mitchell lost all his privileges for a month and his good time.<sup>50</sup> The warden regularly employed the ball and chain as punishment for, "refusing to work," acts that upset the labor routine in prison.<sup>51</sup> Incarcerated people understood the repercussions for their actions, yet they interrupted the prison's order regardless to fulfill some desire unknown to us.

While prison itself offered a punishment for breaking society's laws, additional discipline within the prison allowed administrators to force work, quell dissent, maintain decorum, and instill respect. One incarcerated man, for example, received four days in the cooler and had his grade reduced because he called another prisoner a "son of a bitch" at the breakfast table.<sup>52</sup> Many of the punishments employed in the late nineteenth century seemed to punish incarcerated people for breaking silence, such as Mr. Gillis who was punished for "dancing and making a general

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<sup>50</sup> Mitchell #4306, 1/20/1898, "Offenses and Punishments, 1897," Folder: "00.011.091," Julie Whitmore Collection, RGRMHC.

<sup>51</sup> "Report of Punishments for #5606" in "Record of Punishments, 1903-1906," MCP.

<sup>52</sup> "Report of Punishments for #5609" in "Record of Punishments, 1903-1906," MCP.

noise in the cell,” or another who was “reported for whistling,” or another who was “punished for talking in the wash house.”<sup>53</sup> Although Colorado professed to have abolished the silent system once in vogue in eastern U.S. prisons, CSP continued to limit conversation because it could threaten order and allow incarcerated people opportunity to plan.<sup>54</sup>

Some in-prison disciplinary records reveal continued violence within the institution that guards were supposed to eliminate. Mr. Jenkins, for example, received fifteen days in the cooler, among other lesser punishments, for striking another captive across the head with a broomstick.<sup>55</sup> Regular punishments were meted for violence or even possible violence (like keeping razor blades that had potential for later violence). The punishment logs indicate that the strictest discipline was meted out due to violence against guards and refusal to work. Refusal to work always resulted in the ball and chain for multiple days while violence resulted in punishment by paddling. Inculcating industrial ideals, maintaining productivity, and establishing order through a strict hierarchy lay at the heart of the punishment system. The punishments for violence, however, failed to mitigate the violence within the institution and, in fact, undercut the notion that the state maintained order and ensured safety.

The pattern of punishment was different for incarcerated women. Female prisoners, although punished far more infrequently, received harsher punishments than their male counterparts for the same transgressive acts. Ida Jones, for instance, received twenty-four hours

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<sup>53</sup> “Report of Punishments for #5539,” “Report of Punishments for #5622,” and “Report of Punishments for #5773” in “Record of Punishments, 1903-1906,” MCP.

<sup>54</sup> On the Eastern State silent system: Ashley T. Rubin, *The Deviant Prison: Philadelphia’s Eastern State Penitentiary and the Origins of America’s Modern Penal System, 1829-1913* (Cambridge: Cambridge University Press, 2021).

<sup>55</sup> “Report of Punishments for #5252” in “Record of Punishments, 1903-1906,” MCP.

in the cooler, loss of all privileges, and a reduction of grade for “using profane language, insolence.” Similarly, Lou Burns received indeterminate time in the cooler “until further orders,” then fifteen days locked in her cell after “using terrible language” and cursing “shamefully” at the matron.<sup>56</sup> The regulations on these transgressions reflect an attempt to restore Victorian sensibilities by disciplining women’s language.

Part of stigmatizing crime and justifying incarceration was making incarcerated people themselves a spectacle. Throughout much of the nineteenth and twentieth centuries, prisons across the United States were sites of paid entertainment.<sup>57</sup> In April 1877, CSP administrators introduced a policy that would last into the 1960s: visitors could pay twenty-five cents to enter the facility for a tour in which they observed incarcerated people working and living. Over the subsequent decades, the penitentiary became one of Cañon City’s primary tourist attractions, drawing visitors from across the state and particularly people visiting nearby Pueblo and Colorado Springs.<sup>58</sup> Allowing visitors to observe incarcerated people was a form of humiliation and violence against them that both invaded their privacy and intended to dehumanize them. The state simultaneously profited off their labor as workers and their performance as spectacles of antisocial behavior. Opening prisons made crime deviant and simultaneously mitigated any charges of inhumane treatment against the state.<sup>59</sup>

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<sup>56</sup> “Report of Punishments for #5399” and “Report of Punishments for #6009” in “Record of Punishments, 1903-1906,” MCP.

<sup>57</sup> Michelle Brown, *The Culture of Punishment: Prison, Society, and Spectacle* (New York: New York University Press, 2009), 85-121.

<sup>58</sup> “Minutes of the Proceedings of a Meeting of the Board of Commissioners,” April 11-13, 1877, in “Meeting Minutes 1874-1895,” Box 19382a, Department of Corrections Collection, CSA.

<sup>59</sup> Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: Free Press, 1963); Rubin, *Deviant Prison*, xxxvii.



Despite the work stoppages, protests, and failure to achieve self-sufficiency, the prison's administrators and boosters prided themselves on their progressive accomplishments—improving the facilities, handling employees and captives efficiently, and teaching incarcerated people trades. In 1883, the warden calculated the per diem cost of maintaining each captive at CSP at nine-and-three-tenth cents.<sup>60</sup> This cost decreased with increased scrutiny of prison supply contracts. The prison awarded quarterly contracts for foodstuffs and other necessities, and throughout the 1880s, the Board of Managers always gave the contract to the lowest bidder regardless of the quality of good or the company's track record.<sup>61</sup> The contracts favored producers closest to the Royal Gorge Region. Local growers offered cheaper goods because their transport costs were lower. Growers in other parts of the state complained of their unfair disadvantage. The administration also prided itself on completing new cell buildings, bath houses, a kitchen, a laundry, and extended walls, among other projects.

Even though prisons promised individual rehabilitation, local residents complained about the behavior of formerly incarcerated people, underscoring how prisons produced crime, and how the stigmatization of criminalization endured. Per state policy, each person incarcerated at CSP received ten dollars upon release. Legislators had intended these funds to pay for transportation away from Cañon City. But local residents complained that the money often went

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<sup>60</sup> For comparison, that same year, a coal miner in Colorado averaged a daily wage of sixty cents. "Table J-5. Miners, coal, 1840-1900, by year and State," in *History of Wages in the United States From Colonial Times to 1928: Bulletin of the United States Bureau of Labor Statistics, No. 499* (October 1929), page 331. "Biennial Message of Frederick W. Pitkin to the Legislature of Colorado," Jan. 9, 1883, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA

<sup>61</sup> "Gov. Eaton's Inaugural Address," Jan. 18, 1885, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA; "Minutes of the Proceedings of a Meeting of the Board of Commissioners," April 27, 1889, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA.

towards “intoxicating liquors”—something that was legal in Fremont County. The warden, in response to the complaints, suggested that instead of cash, the state pay to transport people back to the jurisdiction of their conviction.<sup>62</sup> The suggestion and ensuing reform failed to address the underlying issue of inequitable treatment, regardless of location, after release and the ineffectiveness of CSP’s rehabilitation project. The reform perpetuated restrictions on the individual’s ability to spend or move freely after gaining release, a long-standing signifier of freedom.<sup>63</sup>

State politicians used the prison administrators’ claims of efficiency and rehabilitation to help win political campaigns. Prisons and their administrators were supposed to showcase the state’s economic and administrative ability. Elected officials regularly harped on the effectiveness of convict labor. Throughout the 1880s and 1890s, convict labor programs included farming, burning lime, making brick, quarrying lime and sandstone, gardening, manufacturing



Figure 2.2: Colorado State Penitentiary about 1884. The image shows the three-story stone buildings surrounded by stone walls with a tower built into the wall. Image X-2497, Denver Public Library.

<sup>62</sup> “Biennial Message of Frederick W. Pitkin to the Legislature of Colorado,” Jan. 5, 1881, Box S221 “Governor’s Messages,” Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

<sup>63</sup> Jane McAdam, “An Intellectual History of Freedom of Movement in International Law: The Right to Leave as Personal Liberty,” *Melbourne Journal of Internal Law* 12, no. 1 (June 2011): 27-56.



shoes and boots, and working within the prison kitchen, shops, and laundry. Incarcerated people also continued to expand the prison's infrastructure. For example, they built a chapel, which was dedicated "with appropriate services" on 22 July 1883 and "has since hosted local clergymen for each Sabbath."<sup>64</sup> They also expanded the cellhouses, finished the library, and completed a stone wall within the first decade of statehood (See Figure 2.2). Annual reports from the warden quantified these improvements to the land to increase the reported value of convict labor to the state.

Elected officials, too, highlighted the reformatory and rehabilitative nature of the carceral system, especially in the context of the early progressive era. In the late nineteenth century, progressive social reformers argued that a separate legal system needed to be developed to address the specific and unique needs of youth. David Tanenhaus argues that a moral awakening gripped the nation due to the way that kids and adults were arrested, tried, and incarcerated in the same manner and spaces. In response, and most famously, a group of women in Chicago, particularly those associated with Jane Addams' Hull House, led the drive to establish the country's first juvenile justice system, which Illinois enacted in 1899.<sup>65</sup> Colorado's reformers also participated in this "child-saving movement" of the late nineteenth century. At this point, Colorado's courts did not discriminate by age: boys as young as eleven served sentences in Colorado State Penitentiary.<sup>66</sup> In response to concerns of reformers, Colorado determined that a separate space was necessary for incarcerated youth, and as such, CSP sent thirty-seven laborers to 1,000-acres of state-owned land in Buena Vista in 1891. These thirty-seven laborers built the

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<sup>64</sup> "Biennial Report of State Penitentiary, Nov. 30, 1884," page 14, Folder: "Prison—Chaplain," RGRMHC.

<sup>65</sup> David S. Tanenhaus, *Juvenile Justice in the Making* (Oxford: Oxford University Press, 2004).

<sup>66</sup> Anton Woode, CSP's youngest captive, arrived at the prison at eleven years old in 1893.

Colorado State Reformatory to house and educate youth. The Reformatory separated incarcerated people by age, but it largely maintained the same philosophy that hard labor would teach a work ethic and prepare people for free society. During its early years, most able-bodied youth at the Reformatory worked on ranching projects on the 1,000-acre facility.

Part of a national network of carceral facilities, all concerned about profit and rehabilitation, CSP's Board of Managers sent its President W. S. McCutchens to Chicago to "seek information as may be necessary for the purposes of making contracts for prison labor."<sup>67</sup> This 1885 trip to Chicago introduced McCutchens to the various models employed for convict labor and leasing throughout the country. He toured Illinois' prisons to understand how convict labor programs supported that state's industrial order and met with various businessmen to learn how their prison and its forced labor supported local and regional economic growth.<sup>68</sup> The legislature sent CSP wardens east on similar investigative trips. In 1888, Warden Hoyt traveled to Boston for a "congress of wardens" that discussed effective systems of control and employment.<sup>69</sup> A few years later, Warden John Cleghorn traveled east to tour established facilities while the Board of Charities met with "representatives of all labor organizations" to figure out ways to work incarcerated people acceptably. These fact-finding trips helped forge a network of prison experts that experimented and shared data throughout the country, and they helped Colorado officials establish the state's legitimacy through participation. After two decades of gathering comparative data from across the country, in April 1897, the legislature

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<sup>67</sup> "Minutes of the Proceedings of a Meeting of the Board of Commissioners," Dec. 9, 1885, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA.

<sup>68</sup> On Illinois prison system and the role of labor, see Kamerling, *Capital and Convict*.

<sup>69</sup> "Minutes of the Proceedings of a Meeting of the Board of Commissioners," March 5, 1888, in "Meeting Minutes 1874-1895," Box 19382a, Department of Corrections Collection, CSA.

appropriated \$10,000 specifically for the development of effective and efficient convict labor programs in the penitentiary.<sup>70</sup>

The other continuous puzzle that the state grappled with was the fact that CSP served men and women. Through 1891 the prison theoretically operated as a single-sex institution with regards to policies and procedures, but in practice, the prison included males and females. Since Mary Salander entered CSP in 1873, the prison's population regularly included a small minority of women. Despite this, prison officials and legislators refused to appropriate funds for female housing and care because they maintained that CSP was a male institution. In 1890, though, the state held nine women in CSP, and prison administrators requested \$10,000 from the state arguing that "the female department should be isolated as much as possible from the male wards."<sup>71</sup> Indeed, incarcerated men were often reprimanded for throwing letters into women's cells or for "turning the execution house into a house of prostitution."<sup>72</sup> The managers requested the appropriation for separate housing, work-rooms, and a kitchen, but the legislature denied it.<sup>73</sup>

While the state rejected funding new spaces for incarcerated females, the prison hired Mrs. M. A. Jordan in 1891 to oversee the care, instruction, and safety of captive women. The lack of space and care to that point for incarcerated women was common across the West.<sup>74</sup>

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<sup>70</sup> Letter to John Routt, April 17, 1897, in "Board of Charities and Corrections Correspondences – March 1894 to June 1897," Box 22106C, Department of Corrections Collection, CSA; "Minutes of the Proceedings of a Meeting of the Board of Commissioners," May 12, 1897, in "Meeting Minutes 1895-1907," Box 19382b, Department of Corrections Collection, CSA.

<sup>71</sup> "Women in Corrections," *Tall Wall Quarterly* 3 (September 2016): 2, MCP.

<sup>72</sup> Smith #4087, 9/16/1898 and Tellie Williams #3274, 9/3/1897, "Offenses and Punishments, 1897," Folder: "00.011.091," Julie Whitmore Collection, RGRMHC.

<sup>73</sup> "Women in Corrections," *Tall Wall Quarterly* 3 (September 2016): 2, MCP.

<sup>74</sup> Anne M. Butler, *Gendered Justice in the American West: Women Prisoners in Men's Penitentiaries* (Urbana: University of Illinois Press, 1997), 65-66.

Colorado decided that it could benefit from this larger regional problem, so they contracted with neighboring states and the U.S. Marshal to house women. Then, within a year of hiring Jordan and importing out-of-state captive women, Warden William A. Smith and Jordan presented the Board of Managers with plans to build a female department at CSP. The Board of Managers approved these plans, and incarcerated men began construction. But, the state, again, refused to appropriate extra funds for this project. Finally, in 1895, the state allotted \$2,500 for the female cellhouse, which was to pay for a sewing room, laundry, and kitchen. The women's department opened its doors in 1895. The opportunities in this new cellhouse, such as the sewing and laundry facilities, would, according to the warden, "give them ample opportunity for inculcating habits of neatness and industry which will be useful aids towards reformation."<sup>75</sup>



The project of finding acceptable forms of convict labor came in the face of increasing opposition to prison labor in Colorado and across the country beginning in the 1890s. Convict labor and particularly convict leasing across the United States, Rebecca McLennan argues, came under attack from free labor, humanitarians, and social scientists.<sup>76</sup> Humanitarians and social scientists objected to the fact that the convict laborer neither rehabilitated nor prepared people successfully cope with life after incarceration. In Colorado, for instance, the Board of Charities emphasized to an incarcerated person and the warden that the great failure of America's prisons were that upon release "convicts know no trade" after Charles A. Guetzloff, who was incarcerated at CSP, wrote to the Board of Charities and National Prison Congress requesting

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<sup>75</sup> Quoted in: "Women in Corrections," *Tall Wall Quarterly* 3 (September 2016): 2, MCP.

<sup>76</sup> Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008).

information for CSP's administration to encourage a more productive experience in the penitentiary.<sup>77</sup> Governor John Routt emphasized the critique of hard labor's shortcomings; he lamented the fact that the industrial skills learned in prison would not lead to a reduction in recidivism because the incarcerated people were not provided with "some trade by means of which they might thereafter earn their living." While critiquing the specifics of the program, Routt reiterated his overall support: "by means of their labor while under the sentence, earn to the fund of the Institution a sum which would go far towards reducing the tax imposed upon all classes of people for its support."<sup>78</sup> What trades Routt believed would be more useful than mining and construction remains a mystery. The labor performed in the prison that Routt critiqued was that which organized laborers objected to because it, as they argued, presented unfair competition.

Throughout the United States, and particularly in the West, laborers in the late nineteenth century both objected to political events that they believed harmed their competitive ability and organized to achieve some degree of power in the context of the shifting realities of industry.<sup>79</sup> Millions of wage laborers joined the Knights of Labor and the American Federal of Labor, among other more radical economic movements, to confront "the labor question" and ensure, as Michael Kazin puts it, "the survival of the braided ideals of a democratic government and a

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<sup>77</sup> Letter to Charles A Guetzlaff (No. 2877) c/o Warden Cleghorn, in "Board of Charities and Corrections Correspondences – March 1894 to June 1897," Box 22106C, Department of Corrections Collection, CSA.

<sup>78</sup> "Inaugural Address of Gov. John L. Routt," Jan. 1891, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

<sup>79</sup> For contemporary labor issues in the West: *Radicalism in the Mountain West, 1890-1920: Socialists, Populists, Miners, and Wobblies* (Boulder: University Press of Colorado).

society of free individuals.”<sup>80</sup> Free-world labor began organizing and gaining political influence just as Colorado built its prison into an industrial facility. As most Americans became wage laborers and poverty remained a fact of life, organized laborers across the West challenged the way the state unfairly hindered their ability to remain competitive—whether through nativist protests against Asian immigrants or through challenges to the legitimacy of prison labor.<sup>81</sup> Throughout the 1890s, free labor in Colorado began to complain about the prison’s brick and stone industries, and these programs became unprofitable because organized labor’s campaign mitigated the state’s ability to sell the products on the open market. Organized laborers argued that unpaid convict labor resulted in unnaturally inexpensive products which undercut their ability to sell their goods and make a living.

The issue of convict labor pitted seemingly irreconcilable visions, and the outcome held great political and economic stakes. On the one hand, businessmen and laborers saw the prison undercutting their ability to survive. On the other hand, prison administrators and elected officials believed that incarcerated people must be occupied with hard labor and that this labor should offset the institution’s expense. Colorado’s legislature responded to labor’s outcry. In 1897, it passed a bill that “provides that able-bodied convicts in the state penitentiary shall be employed in work, which may least conflict with the free labor of the state.”<sup>82</sup> The local Chamber of Commerce joined labor’s campaign against competitive prison industries. The

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<sup>80</sup> Michael Kazin, *American Dreamers: How the Left Changed a Nation* (New York: Alfred A. Knopf, Inc., 2011), 73-74.

<sup>81</sup> On anti-Asian economic protest and how these protests resulted in attempts at expulsions and exclusion: Beth Lew-Williams, *The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America* (Cambridge: Harvard University Press, 2018), especially 247-252.

<sup>82</sup> Jared Warner Mills, *Mills Annotated Statutes of the State of Colorado: Embracing All General Laws of the State in Force January 1, 1912, with Notes of All Colorado Decisions Construing or Affecting the Same* (Denver: Mills Pub. Co., 1912), 2:2361.

Chamber objected to competition in brickmaking and other labor projects throughout the county because its members suffered financially. The Chamber's 1900 annual report boasted: "We also entered an energetic protest against the competition then existing between convict and free labor, and the convicts have done no work along the line of our protest since."<sup>83</sup> In 1900, Warden C.P. Hoyt warned: "We are meeting with such competition from the outside that in the near future we cannot look to this industry for any revenue."<sup>84</sup> Compliance with the 1897 law proved difficult, so Hoyt invited leaders of the Colorado Federation of Labor to Cañon City for a meeting about labor's accusation that the prison continued to sell convict-made brick and stone throughout Fremont County.<sup>85</sup> Historian Elinor McGinn calls this the "most animated meeting ever held within the wall."<sup>86</sup> By 1902, the prison abandoned its industrial manufacturing project "owing to the opposition of free labor to any article made by convicts."<sup>87</sup> Prison administrators and legislators searched desperately for a new method of convict labor that was profitable and employed as many incarcerated people as possible.

Populists' successes in Colorado bolstered free labor's campaign against convict labor. Populist organizing had failed in the South largely due to the power of white supremacy that

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<sup>83</sup> "Annual Report of President Milsom Showing What the Chamber of Commerce has Done for Canon City During the Past Two Years, Jan. 8, 1900," Folder: "Assoc., Inst. – Chamber of Commerce 1900-1989" RGRMHC.

<sup>84</sup> "1899-1900 Biennial Report of the State Penitentiary of Colorado," Box 14794 "Parole and Reports," Department of Corrections Collection, CSA.

<sup>85</sup> "Warden Hoyt," n.d. Folder "Prison History Research Canon City Public Library," MCP.

<sup>86</sup> McGinn, *At Hard Labor*.

<sup>87</sup> "1901-1902 Biennial Report of the State Penitentiary of Colorado," Box 14794 "Parole and Reports," Department of Corrections Collection, CSA.

prevented multiracial democratic organizing.<sup>88</sup> Coloradans elected Davis H. Waite as governor. Waite, according to David R. Berman, was “known as the crusading anti-monopoly, pro-labor” leader of the state “who referred to the Populist Omaha platform as the basis of his beliefs.” Colorado’s Populist party platform called for free silver, regulation of the railroads, righting corruption, women’s suffrage, and the eight-hour workday. In his crusade against overpaid state officials and their challenge to labor, Waite argued that Populists found success in Colorado because of the abuses the laboring class had faced. Populist victories in 1892 and the next elections brought reform-minded leadership to the state, which was willing to encourage prison reform, end benefits to corporations, support labor’s fights against convict labor. Although Waite failed to win re-election and accomplish all that he laid out in his radical platform, Populists in Colorado thrived generally until 1896, especially with the formation of strong mining unions and the strengthening of the Western Federation of Miners.<sup>89</sup> The Western Federation of Miners won its first Colorado strike at Cripple Creek in 1893, and thereafter enjoyed popular success and led numerous other strikes in the state.<sup>90</sup> Although Populism failed at the ballot box when voters elected Democrat Alva Adams governor in 1896, the legacy of pro-labor organizing remained powerful. And, although Populists, especially in Colorado, were silent on the question of prisons, their positions on labor and corruption renewed a debate over CSP’s projects.



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<sup>88</sup> Omar H. Ali, *In The Lion’s Mouth: Black Populism in the New South* (Jackson: University Press of Mississippi, 2010); Gregg Cantrell and D. Scott Barton, “Texas Populists and the Failure of Biracial Politics,” *Journal of Southern History* 55, no. 4 (Nov. 1989): 659-692.

<sup>89</sup> Berman, *Radicalism in the Mountain West*, 47 and 66.

<sup>90</sup> Carl Ubbelohde, Maxine Benson, and Duane A. Smith, *A Colorado History, Tenth Edition* (Portland: WestWinds Press, 2015), 229-232.



The prison presented the state's executives a political problem beyond the labor question: pardon power. The state constitution vested pardon power in the executive, but Governor John L. Routt expressed unease with the lack of transparency or a defined process. Reforming the pardon process built state legitimacy, bureaucratized the system of incarceration, and made the sentenced punishment itself arbitrary. Bridging the moods of the Populist Era and early Progressive Era, these reforms responded to accusations of corruption by systematizing the process and recognized the ability of individuals humans to reform. Routt, the last appointed territorial governor and first elected state governor, turned to the warden, Board of Managers, and Board of Charities to establish a pardon process that seemed equitable. Routt complained to the legislature in 1878 that "no general rules [for pardons] can be adopted, no principles established," yet that did not prevent the public, "who are, of course, ignorant of the reasons governing his action," from heaping criticism on the governor. Arising out of consultation with state stakeholders in the criminal legal system and his counterparts in other states, Routt suggested that the legislature create a Board of Pardons to carry out this work, irrespective of political elections and the changes in leadership they bring. In recognizing the need for pardons, the state recognized that some incarcerated people need not endure their entire sentence. Routt argued: "Justice, rather than mercy, demands that in many cases a prisoner shall be set free, by reason of new evidence affecting his degree of criminality coming to light, or extenuating circumstances are shown which lessen his guilt or even his complete innocence is established."<sup>91</sup> The state seemed to admit the shortcomings of its legal system by endorsing pardons.

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<sup>91</sup> "Governor's Message," 1878, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

In 1893, the legislature established the State Board of Pardons as part of their push for professionalization and a consistent system. The Board of Pardons vested power in an unelected body unaccountable to any entity but the state's executive. The inaugural members of the Board of Pardons were the members of the existing Board of Charities and Corrections. The Board of Pardons met monthly beginning in June 1893 "to investigate all applications for executive clemency and lay the facts before the governor, with its recommendation."<sup>92</sup> In its first two years, captives at the penitentiary filed 317 petitions of which 124 were considered and voted on by the Board. They rejected seventy-three while recommending thirty-six cases for pardon, ten for commutation, and five for transfer to the Reformatory.<sup>93</sup> This process offered incarcerated people a way to circumvent or correct the perceived errors of the courts, but the captives' opportunity was still within the bounds of the system that incarcerated them. James Cassidy, for example, had served ten years of his sentence in CSP. In 1892, Cassidy applied for a pardon, and the Board recommended it because "He was sentenced on circumstantial evidence."<sup>94</sup> This case, along with similar cases, shows that the Board of Pardons considered a wide range of factors in deciding whether the incarcerated people were worthy, including an assessment of the trial evidence and jury conviction. The Board of Pardons, despite noting in cases the harshness of the sentence or the circumstance of the crime, never lobbied the legislature to modify the legal code based on its experience examining these cases. The Board of Pardons attempted to correct failures of the criminal legal system in order to bolster its overall legitimacy.

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<sup>92</sup> Colorado Session Laws 1893, page 355-6.

<sup>93</sup> John H. Gabriel, *Biennial Report of the State Board of Pardons, State of Colorado* (Denver: Smith-Brooks Printing Co., 1895), 12, accessed at: [https://books.google.com/books/about/Biennial\\_Report\\_of\\_the\\_State\\_Board\\_of\\_Pa.html?id=RIJIAAAAYAAJ](https://books.google.com/books/about/Biennial_Report_of_the_State_Board_of_Pa.html?id=RIJIAAAAYAAJ).

<sup>94</sup> *Ibid.*, 21.

As the governor lamented the lack of a clear process for granting pardons and commutations, the Board of Managers acknowledged that the appearance of unprofessional staff at the prison hindered the legitimacy of the institution and by extension the state. To rectify this, for example, the Board of Managers ordered all guards to wear uniforms at work. This allowed identification of guards as a distinct class of citizens within Fremont County. Uniforms, however, did not prevent a sheriff's posse from mistaking the identity of Thomas Tobin, a guard, while both the posse and Tobin separately searched for an escapee one evening in 1900. The sheriff's posse shot and killed Tobin.<sup>95</sup>

A shift in rhetoric about the purpose of incarceration helped foster support for the prison's reform project, such as the push for professionalization. Although the rhetoric of rehabilitation reached its apex in the early twentieth century, this earlier articulation helped define the ideals of citizenship and justify the state's criminal legal system. While Coloradans and Denverites in particular were trying to expel Chinese residents from the state, they offered the penitentiary as a path to proper social behavior for the assimilable working class. The Chinese, according to the governor speaking the year after Denver anti-Chinese riot of 1880, "not only reject our beneficent influences of our civilization, but they bring with them all the corrupting influences in which they have been reared."<sup>96</sup> On 31 October 1880, a mob killed Sing Lee, a Chinese resident of Denver's Chinatown, while destroying homes and businesses. The anti-Chinese rioters were fueled by a racist campaign in Denver's *Rocky Mountain News* and the

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<sup>95</sup> "1899-1900 Biennial Report of the State Penitentiary of Colorado," Box 14794 "Parole and Reports," Department of Corrections Collection, CSA.

<sup>96</sup> "Second Inaugural Address of Frederick W. Pitkin," Jan. 11, 1881, Box S221 "Governor's Messages," Col. D.2 Reel, Executive Record of Colorado Collection, CSA.

Democratic Party that openly spoke of driving out Chinese residents.<sup>97</sup> The popular racism against the Chinese contrasts with the way in which the state invested in incarcerating those seen as potential citizens and laborers. Labeling the Chinese as barbaric and uncivilized, rather than criminal, stigmatized them without due process and barred them from receiving protection, priming vigilante and state actors to expel them.

In contrast, the penitentiary privileged religious practice and education as a tool to rehabilitate captives. The United States prison system derived much of its procedures, such as communal eating in silence, from religious enterprises including the monastic system.<sup>98</sup> The battle over the role of religion in public institutions had emerged as a key debate at the state constitutional convention and in the early years of statehood. The bloc that favored the state supporting religion in schools and prisons won. The prison kept one chaplain on staff, but that did not satisfy the state's popular moral and religious fervor. The Board of Charities and Corrections in 1894 decried the single chaplain responsible for the institution while there were "at least one hundred people interested in this work" in the state. Despite efforts to secure additional funds for religious instruction, the penitentiary maintained the single position. The warden invited other religious groups to send volunteers to instruct incarcerated people and

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<sup>97</sup> Mark R. Ellis, "Denver's Anti-Chinese Riot," *Encyclopedia of the Great Plains*, accessed at <http://plainshumanities.unl.edu/encyclopedia/doc/egp.asam.011>.

<sup>98</sup> Rubin, *Deviant State*; Aaron Griffith, *God's Law and Order: The Politics of Punishment in Evangelical America* (Cambridge: Harvard University Press, 2020).

donate material for the library.<sup>99</sup> Religious instruction, then, offered one of the ways that private entities used the state institution to pursue their own goals.<sup>100</sup>

Religious instruction dovetailed with increased attention on recreational activities that were intended to uplift and reform incarcerated people. In the 1880s, for example, CSP captives started a prison choir. Members of the choir received special privileges. They performed throughout the city in their choir uniforms for local residents and at area events. The choir helped ingratiate the prison with the local community, presenting captives again as objects of entertainment. Despite the ways that the choir activities humanized the captives, the concerts continued the administration's practice of putting incarcerated people on show for the free world public's entertainment.

Carceral policies changed with political tides and elected officials; prison procedures responded to public outcries and events. In 1897, after popular efforts to abolish capital punishment, the legislature ended all state executions. This moratorium lasted only four years, until the legislature reversed itself after a spate of lynchings filled the void of condoned executions.<sup>101</sup> One such lynching occurred in Cañon City after a prison break. On 22 January 1900, four men escaped after fatally stabbing Night Captain William C. Rooney. The four men plunged the prison into darkness by sabotaging the engine and dynamo, and under cover of that darkness they escaped over the east wall. Three of the escapees were immediately captured and returned to the prison after the town had been notified by the alarm siren. The fourth, Thomas

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<sup>99</sup> Letter to V.N. Deforrest, April 9, 1894, in "Board of Charities and Corrections Correspondences – March 1894 to June 1897," Box 22106C, Department of Corrections Collection, CSA.

<sup>100</sup> For a more modern historical parallel: Griffith, *God's Law and Order*, 168-217; Tanya Erzen, *God in Captivity: The Rise of Faith-Based Prison Ministries in the Age of Mass Incarceration* (Boston: Beacon Press, 2017).

<sup>101</sup> Leonard, *Lynching in Colorado*; Erickson, *Early Justice*.

Reynolds, was caught later and was being returned to the institution when approximately 500 townspeople “overpowered the guards” and hung him at the corner of First Street and Main Street. News of Rooney’s murder had spread throughout town and spurred the mob’s exaction, and the townspeople were motivated by both the knowledge that the state would not execute Reynolds for the lack of the death penalty and the understanding that Rooney was a well-known local officer. Rooney, the town understood, could just as easily have been any other unfortunate officer, and the townspeople exacted their vengeance.<sup>102</sup> The *Denver Times* reported after this event: “The Cañon City citizens who took the law into their own hands felt that there has been too much leniency shown criminals in this state... The lynchers also had in mind a hint to the legislature that if the law does not provide adequate punishment for criminals the people will.”<sup>103</sup> Michael Radelet argues that “angry mobs viewed the abolition of the death penalty as a justification to return to lynching.”<sup>104</sup> The legislature reinstated hanging to death as the sentence for certain crimes; the issue was litigated until 1905 when the State Supreme Court offered its unanimous approval.<sup>105</sup>

By the late 1890s, the United States and Colorado focused fully on reforming its prison systems to offer uplift and rehabilitation, and throughout these reforms, work remained central. The state continued to face the challenge of finding a project that satisfied the humanitarians, union laborers, and constituents concerned about the public cost of incarceration. At the turn of the twentieth century, Warden John Cleghorn and his deputy Thomas J. Tynan proposed road

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<sup>102</sup> “Prison Escape of January 1900,” n.d. Folder “Riot Story 1929 & 1900” Acc. No. 2007.001.014, MCP.

<sup>103</sup> “Restore Capital Punishment,” *Denver Times*, 1/28/1900.

<sup>104</sup> Radelet, *History of the Death Penalty in Colorado*, 41.

<sup>105</sup> *Andrews v. People*, 79 P. 1031 (Colo. 1905); Radelet, *History of the Death Penalty in Colorado*, 41-52.

building as the solution to the labor issue. After the legislature passed a law that allowed incarcerated people to work on state and county roads, the *Cañon City Clipper* recognized the local benefit of this law: “Fremont county will derive the greatest benefits from the enactment of this law by reason of the close proximity of the convicts. They can be worked on the roads of Fremont county cheaper and to better advantage than they can in remote counties, and indeed it was not intended the convicts should be taken very far away from the penitentiary for the purpose of doing this work.”<sup>106</sup>

There was not yet a widespread clamor for roads that required mass labor because the automobile had not gained widespread popularity yet, so Cleghorn predicted that 100-250 incarcerated men could work on roads “in such a manner as not to interfere with free labor.”<sup>107</sup> He imagined that this program would operate as an extension of the farm and ranch program where a select number of men worked on farms and ranches relatively close to the CSP grounds, and he initiated a road program that worked a small proportion of the prison’s population. Between 1905 and his resignation in 1909, Cleghorn ordered CSP’s captives to build local roads: the world-famous Skyline Drive, Priest Canyon Road that led to the Royal Gorge, and a bridge across Mill Ditch that connected two sections of the city park.<sup>108</sup>

World-famous Skyline Drive was a feat of engineering and well-publicized tourist experience. The project illustrates how private interests leveraged convict labor to develop their town and create a tourist attraction. The first road construction crew of twenty-five men from

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<sup>106</sup> “Convicts To Work Public Roads,” *Canon City Clipper*, 4/18/1905.

<sup>107</sup> “1905-1906 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

<sup>108</sup> “Prison Labor Projects List,” n.d. Folder: “Prison—Labor,” RGRMHC.

CSP worked the road just above the prison. The cost of Skyline Drive amounted to \$6,400. Convict labor required no payment, but blasting powder, picks, and shovels were required for the work. Local residents raised money through subscription because of the touristic potential of the new highway. Upon its completion, what is now known as Skyline Drive provided a 3.2-mile drive into the Hogback Mountains providing an unobstructed 360-degree view of the plains extending east and mountains rising west.

One resident suggested naming the mountain which Skyline Drive rose in honor of the individual he believed made this feat of engineering possible: “Mt. Cleghorn.”<sup>109</sup> Although the mountain does not bear Warden John Cleghorn’s name, this proposal shows that the credit for the road development—and convict labor in general—was given entirely to the warden. The crew of men who labored on the road remain anonymous. The road snakes so that the prison institution itself was only visible from a small section and otherwise obstructed by the features of the mountain. In subsequent years, the community expanded on and invested in this product of prison labor. The Chamber of Commerce secured deeds to land surrounding Skyline Drive, and they erected a permanent lighting system on the top of the road.<sup>110</sup> The Chamber, along with other booster organs, advertised Skyline Drive as a prime regional attraction. The town, indeed, received and continues to receive much benefit from Skyline Drive, which remains a popular tourist destination for those driving Highway 50.

The bridge, the next major project completed as part of the campaign to employ incarcerated men for public improvement, stands out because Thomas H. Edwards, an architect

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<sup>109</sup> “Skyline Boulevard: New Driveway Has a Legal Name,” *Canon City Record* 11/26/1905.

<sup>110</sup> Chamber of Commerce Meeting Minutes, 3/19/1914 and 8/20/1914, Scrapbook: Minutes, Canon City Chamber of Commerce Collection, RGRMHC.



from Australia and “one of the best known and most useful prisoners ever confined in the Colorado State penitentiary,” designed it. The bridge design was a miniature reproduction of the famous structure across the Paramatta River at Sydney, New South Wales.<sup>111</sup> The labor extracted from incarcerated people capitalized on their skills, such as in the case of Edwards’ engineering skills. Upon his release a few years later, the local newspaper opined: “The state of Colorado has had value received of its enforced care of [Edwards] ... His services to the state have been manifold and of a lasting nature.”<sup>112</sup>

Fremont County residents, as the *Cañon City Clipper* had predicted, were the first to benefit from this new form of convict labor, and its potential seemed great for using forced labor on roads throughout the state to build good roads inexpensively, reform men through hard labor, and reduce the burden of the taxpayer for upkeep of the institution. In its early years under Cleghorn, however, the program remained limited. The road labor program built on decades of established ideology that connected hard labor with rehabilitation, yet unlike previous industrial ventures at the prison, it appeased organized laborers because it did compete with them on the open market.

In the decades after statehood, Colorado built a criminal legal system. That system faced the perpetual challenge of becoming financially self-sufficient, occupying captives’ time and energy, and not upsetting free labor and business interests. Through this period, the state experimented with convict labor programs and forged its role in a national conversation about prison administration and prison industries. The prison itself faced instability because of constant

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<sup>111</sup> “Pretty Rustic Bridge in Park Nearing Completion,” *Canon City Record*, 11/28/1907.

<sup>112</sup> “Useful Prisoner Released Monday,” *Canon City Record*, 6/23/1910.

administrative turnover and changing political tides, while the symbol of the prison as an institution offered the state legitimacy and bolstered its power. After the state experimented with brickmaking, shoe manufacturing, and convict leasing in Fremont County, road labor perhaps offered a solution.

Chapter 3 - Roads, Race, Region, Religion, and Reform, 1909-1927

In the early twentieth century, incarcerated people across Colorado and much of the United States labored on roads and highways. Convict road labor, in theory, solved the perennial concerns of prison management: occupying captives productively and returning value to the prison. In 1909 Thomas J. Tynan assumed wardenship of the Colorado State Penitentiary. Like every warden before him, the most pressing issues he faced were filling incarcerated peoples' time and achieving institutional self-sufficiency. The system of convict leasing and manufacturing that CSP used had long faced the ire of free-world laborers and humanitarian reformers around the turn of the twentieth century.<sup>1</sup> In 1906, Warden John Cleghorn, Tynan's predecessor, bemoaned: "For many years the unfortunate complications that have existed concerning labor conditions in Colorado have so moulded public sentiment as to render it impossible to give employment to the inmates of the Penitentiary to any considerable extent."<sup>2</sup>

Tynan responded to these concerns by expanding CSP's fledgling road construction program. Over the course of his tenure as warden from 1909 through 1927, incarcerated people built nearly 4,000 miles of road throughout Colorado. Although a complete and precise accounting of the number of incarcerated men who toiled on roads at self-governing road camps is lost to history, somewhere between 5,000 and 6,000 men constructed Colorado's road

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<sup>1</sup> The challenge to convict labor programs are apparent in letters to the executive and labor petitions, see especially: FF#9, Box 26782; FF#2, Box 26783; FF#12, Box 26789; FF#10, Box 26790; FF#5-6, Box 26799, Oliver H. Shoup Collection, FF#4-8 and FF#13, Box 26805, William E. Sweet Collection, Colorado State Archives, Denver, CO (Hereafter: CSA); For a comparative study of these challenges to convict labor programs by free-world laborers and humanitarians focusing on New York, see Rebecca M. McLennan, *Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008), 137-238.

<sup>2</sup> John Cleghorn, "Warden's Report to the Honorable Board of Penitentiary for the Biennial Period 1904-1906," Biennial Reports, Museum of Colorado Prisons, Cañon City, CO (Hereafter: MCP).

infrastructure.<sup>3</sup> The laborers who built the roads in the early twentieth century and the convict labor programs under which they toiled reveal the varied forms of progressive reform and regional and national power dynamics across the United States. The guard system programs in states like Georgia and North Carolina bolstered racial hierarchies and exploited coerced labor; the honor system program developed and propagated by Thomas Tynan in Colorado differed in its goals and practice. The honor system responded to reformers' concerns by asserting that hard labor in outdoor environments rehabilitated incarcerated people.

Warden Tynan, the person most responsible for developing and publicizing the honor system, argued that this program benefited both society and the incarcerated: "Instead of sending broken, revengeful men back into the world—in no wise reformed, but simply trained to greater cunning—we are restoring mended men, eager and willing to be of such use as Society will permit."<sup>4</sup> Historians have complicated our carceral history by showing how the goals varied by locality and context. Although the goals of maintaining racial supremacy, realizing financial profits, and training industrial workers are central to the "new penology," the context of Progressive reforms and Tynan's boosterism forces us to take seriously the rhetoric, ideals, and actions of prison reformers as a reflection and derivation of society's changing values.<sup>5</sup> "New penology," developed in the early twentieth century Progressive Era, was designed to reform the

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<sup>3</sup> Correspondence from Thomas J. Tynan to William E. Sweet, 10/02/1923, Folder: "Highway Department," FF#8, Box 26805, William E. Sweet Collection, Colorado State Archives, Denver, CO.

<sup>4</sup> Thomas J. Tynan, "Warden's Report to the Honorable Board of Penitentiary for the Biennial Period 1908-1910," Biennial Reports, MCP.

<sup>5</sup> On industrial reform and rehabilitation: Rebecca McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941* (Cambridge: Cambridge University Press, 2008); on white supremacy as a motivator: Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19<sup>th</sup> Century American South* (New York: Oxford University Press, 1984); on the economics of convict labor: Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996).

penal system and men through labor, education, and repression.<sup>6</sup> At the same time, new penology recast similar processes of convict labor as progressive and rehabilitative to assuage public concerns.

In both honor and guard systems, the state managed the programs. A state-administered labor program marked a reform from previous systems of convict leasing in which private entities determined the captive laborers' dress, food, healthcare, and schedule.<sup>7</sup> Unlike the guard system that developed in the South, the honor system originated in the West. Under the guard system, convict laborers wore striped uniforms and shackles, were overseen by armed guards, and generally lived in communal cages at the worksite. The honor system, however, did not differentiate people by dress, included no armed guards or overseers, relied on trust and self-discipline instead of physical abuse, and offered compensation in both pay and a reduced sentence.<sup>8</sup> The ideological variations in these purportedly progressive convict labor programs reveal much about how the politics of reform and race manifested across the United States. The tension between reformers who believed they could rehabilitate incarcerated men and the reality of a state institution justifying a program of forced labor exposes the gulf between ideals and practice. The downfall of the honor system road program and Tynan's reign at the CSP illustrate the power of public opinion and the futility of prison reform for both reformer and incarcerated.

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<sup>6</sup> Philip Goodman, Joshua Page, and Michelle Phelps, *Breaking the Pendulum: The Long Struggle Over Criminal Justice* (Oxford: Oxford University Press, 2017), 42-69.

<sup>7</sup> Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave,'" *The Journal of Southern History* 59, no. 1 (Feb. 1993): 85-110.

<sup>8</sup> Of the guard systems, New Jersey, New York, Oregon, Arizona, and Utah discontinued the use of identifiable striped clothing; Virginia forced convicts to wear brown. For a detailed overview of the guard system ("the chain gang") using Georgia's penal system as the object of study, see Lichtenstein, *Twice the Work of Free Labor*, 152-185; J.E. Pennybacker, H.S. Fairbanks, and W. F. Draper, "Convict Labor for Road Work," *United States Department of Agriculture Bulletin No. 414*. (Washington, D.C., 1916), 52-60.

Warden Tynan and his program faced critique from free-world laborers who sought lucrative road building contracts, Ku Klux Klansmen dismayed by state resources (prison labor and appropriations) supporting Catholic causes, captive laborers that contested the undemocratic system of favoritism and abuse within the prison by publicizing evidence of the warden as “arbitrary, inconsistent, and egotistical,” and national prison reform leaders who asserted Tynan’s honor guard system failed to rehabilitate men.<sup>9</sup>

In the first decades of the twentieth century, reformers and administrators articulated a new form of punishment that countered the models of penitentiary caging and of leasing to private entities. This new mode of punishment pursued reform by using honor convict labor programs to inculcate industrial breadwinner citizenship values.<sup>10</sup> This chapter deepens our understanding of reform, punishment, and race by exploring the ideologies, goals, and practices of these early twentieth-century prison reformers who constituted a diverse coalition of prison administrators, elected officials, social scientists, penologists, good roads advocates, moral reformers, and religious leaders. While this new program recognizes change in how incarcerated people and administrators offered and enacted new conceptions of the goal of the prison and convict labor, the honor guard system represents continuity in persistent ideas of capitalism and the futility of reforms.<sup>11</sup> This chapter argues that prison administrators inflamed rivalries among

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<sup>9</sup> Quoted in: “Confidential Report to the Governor,” Folder: “Reports and Miscellaneous Material Relating to Prison Investigation,” FF#39, Box 1 (27160), William E. Sweet Collection MSS.613, History Colorado Center, Denver, CO (Hereafter: HCC).

<sup>10</sup> On the theory that the state can use the prison and its policies to shape individuals’ modes of self-discipline by shifting the site of punishment from the body to the soul and mind, see: Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd Vintage Books ed. (New York: Vintage Books, 1995). Kevin Murphy argues that U.S. elites and laborers redefined manhood and masculinity in the early twentieth century as a product of virility and labor power, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York: Columbia University Press, 2010).

<sup>11</sup> Alexander W. Pisciotto’s history of the reformatory movement and especially Elmira Reformatory legitimized human engineering with continued corporal punishment and harsh conditions in *Benevolent Repression: Social*

incarcerated people to maintain control through constant suspicion and tension. Despite these strategies of division and quotidian acts of “carceral violence” by both state agents and incarcerated people, captive people continued to pursue self-emancipation and public testimony.<sup>12</sup>

Colorado’s prison reform efforts and the nationwide publicity they garnered offer a glimpse into representative trends in this moment in U.S. history. Four contemporaneous impulses provide the context for this development of nationwide convict road labor. First, Progressive Era reformers sought individual and national uplift through institutional social control, pervading nearly every facet of society, including penal reform.<sup>13</sup> Second, penal reform at the turn of the twentieth century reached a tipping point during which states across the country searched for a means of punishment more humane than leasing and contract labor. Throughout this turn-of-the-century reform, penologists maintained a belief in hard labor as the key to reform and rehabilitation.<sup>14</sup> Third, the scope and scale of state development expanded dramatically with new notions of federal and state authority. Enmeshed within this expansion of government

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*Control and the American Reformatory-Prison Movement* (New York: New York University Press, 1994); Rebecca McLennan’s history of prison reform movements in New York show the inherent chaos and disorder within prisons that limited rehabilitative reforms while prisons reflected the changing values of society that, during industrialization, focused on extracting profit in *Crisis of Imprisonment*.

<sup>12</sup> For an understanding of carceral violence as the “culmination of these separate acts of state violence” and “the cumulative power of daily human degradation” people and the ways Texas prisons used the law and their bodies to protest conditions and forced labor, see Robert T. Chase, *We Are Not Slaves: State Violence, Coerced Labor, and Prisoners’ Rights in Postwar America* (Chapel Hill: University of North Carolina Press, 2020), especially 14.

<sup>13</sup> Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (New York: Free Press, 2003); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge, MA: The Belknap Press of Harvard University Press, 1998).

<sup>14</sup> On turn-of-the-century prison reform: McLennan, *Crisis of Imprisonment*, 137-192; Heather Ann Thompson, “Blinded by a ‘Barbaric’ South: Prison Horrors, Inmate Abuse, and the Ironic History of American Penal Reform” in *The Myth of Southern Exceptionalism*, ed. Matthew D. Lassiter and Joseph Crespino (New York: Oxford University Press, 2010), 74–97; Ethan Blue, “The Strange Career of Leo Stanley: Remaking Manhood and Medicine at San Quentin State Penitentiary, 1913–1951,” *Pacific Historical Review* 78, no. 2 (May 2009): 210–41.

authority were new state and federal powers regarding crime and punishment, which, as historian Lisa McGirr contends, “constituted the formative years of the federal penal state.”<sup>15</sup> Finally, the context of the Good Roads Movement and the proliferation of the automobile led to state authority over infrastructure development. Good roads advocates called on the state to finance and oversee road development, which led to a shift to more centralized state-level road planning and a commitment to improved highways that linked prominent places.<sup>16</sup> Prison administrators and reformers employed the state’s convict labor programs to experiment with progressive reforms and to build good roads.

Colorado’s honor system and its downfall provide an opportunity to understand national trends as the system challenged regional paradigms regarding race, reform, and state power. The incarcerated population during these decades was not representative of Colorado’s free population: while Colorado’s population was over ninety-seven percent white, the prison population was disproportionately Black and Mexican American.<sup>17</sup> Countering race-based and hereditarian models of criminality with a system that privileged the potential for reform complicates our understanding of how carceral policies and bureaucratic definitions of race

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<sup>15</sup> Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (New York: W.W. Norton & Company, 2016), 221.

<sup>16</sup> On the Good Roads Movement: Bruce E. Seely, *Building the American Highway System: Engineers as Policy Makers* (Philadelphia: Temple University Press, 1987), 26-55 and 85-88; Wells, *Car Country: An Environmental History* (Seattle: University of Washington Press, 2012), 62-75; Martin T. Olliff, *Getting out of the Mud: The Alabama Good Roads Movement and Highway Administration, 1898-1928* (Tuscaloosa, AL: The University of Alabama Press, 2016).

<sup>17</sup> The intake binders refer to Mexican American prisoners as born in the U.S. under their nativity and Mexican as their racial classification. This chapter will refer to them as Mexican American because of their nativity and the lack of sources to differentiate identities, but the reader ought to recognize the oversimplification of ethnic and racial identities which the bureaucratic prison system conflated. U.S. Census Bureau, Colorado Resident Population, accessed at: <https://www.census.gov/dmd/www/resapport/states/colorado.pdf>. Campbell Gibson and Kay Jung, “Working Paper 56: Historical Census Statistics on Population Totals by Race, 1790-1990, and by Hispanic Origin, 1790-1990, for the United States, Regions, Divisions, and States,” (Washington, D.C.: U.S. Census Bureau, 2002), 48. Intake Records Binders from 1900 through 1920, MCP.



varied across the nation.<sup>18</sup> Honor system boosters assumed that three-quarters of incarcerated people in the U.S. could be reformed.

Religion, too, became important in the political history of the prison. The prison invited a local Catholic priest to offer services to incarcerated people and used convict labor to construct a Roman Catholic monastery in Cañon City. Tynan himself was a devout Catholic. The Ku Klux Klan targeted Tynan and the perceived state support for Catholic causes. The Klan gained power and prevalence in Fremont County in response to the prison as representative of what they saw as the greatest threats to the country: government supporting Catholic projects and a concentration of immoral and criminal people, especially immigrant, Hispanic, and Black people. The analysis of religion and Colorado's Klan builds on historian Robert Goldberg's argument that "real community tensions and neighborhood conflicts rather than distant dangers produced Klan growth" by showing how the Klan's power concentrated on threats and events in the immediate Fremont County environment.<sup>19</sup> The long fight about rehabilitative labor illustrates competing ideologies of punishment within the prison and how those operated in the prison's broader social and political contexts.




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<sup>18</sup> On the way race and region complicates an understanding of convict labor: Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (Chapel Hill: University of North Carolina Press, 2017); on the construction of views of criminality by social scientists: Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission and Its Legacy* (Cambridge, MA: Harvard University Press, 2018); on the connection between reform and eugenicists: Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics, and American Economics in the Progressive Era* (Princeton: Princeton University Press, 2016); on how punishment is used to support a racialized social order: David M. Oshinsky, *"Worse Than Slavery": Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1997).

<sup>19</sup> Robert Allen Goldberg, *Hooded Empire: The Ku Klux Klan in Colorado* (Urbana: University of Illinois Press, 1981), 11. On the 1920s Klan in the national context, see also Linda Gordon, *The Second Coming of the KKK: The Ku Klux Klan of the 1920s and the American Political Tradition* (New York: Liverlight, 2017).

The moral “crisis of imprisonment” at the turn of the twentieth century forced many states to abandon leasing and contract systems. The states that dismantled leasing and contract work needed to construct a new form of punishment that was economical and publicly acceptable. Reformers, according to historian Rebecca McLennan, articulated “a constitutionally viable, labor-based disciplinary order for the prisons ... and foster[ed] the articulation of a new, self-consciously progressive penology.”<sup>20</sup> States sought to use labor to mold the captive physically and mentally while erecting a simultaneously punitive and rehabilitative system that reinforced the state’s sociopolitical ideals. States, then, turned to public works by linking punishment and the movement for good roads. Although states reformed the systems under which incarcerated people toiled, the idea that hard labor could both punish and reform persisted. “It is necessary,” the Governor of Massachusetts opined in 1913, “if we are ever to have in America a sane and hopeful system of penology, that all able-bodied prisoners be given the opportunity to work at something that will help restore their sense of usefulness and responsibility.”<sup>21</sup> The greatest change from the hard labor programs of the late nineteenth century lay in who controlled them: the state, rather than a private entity, oversaw the labor and life of captive people. Colorado, like most states in the United States, promoted convict road labor as a form of punishment that was purportedly progressive, economical, rehabilitative, and labor-intensive.

As Colorado administrators and politicians crafted a plan to employ incarcerated people on road building, other states and the federal government undertook parallel efforts. Until the

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<sup>20</sup> McLennan, *Crisis of Imprisonment*, 191-192.

<sup>21</sup> Eugene N. Foss, “Reform Through Labor,” *The Annals of the American Academy of Political and Social Science* 46 (Mar. 1913), 38.

passage of the 1916 and 1921 federal highway acts, federal officials had little formal power over the development of roads or the labor programs used to build them. At that point, the U.S. entered, as historian of federal road policy Bruce Seely terms it, “the Golden Age of highway building.”<sup>22</sup> Despite this limitation, the federal government supported the nationwide move towards good roads and state-use of convict labor by offering advice and centralizing information.<sup>23</sup>

In 1914 and 1915, for instance, the Division of Road Economics of the Office of Public Roads and Rural Engineering and the U.S. Public Health Service carried out a national study of convict road labor.<sup>24</sup> All but four states used convict labor on roads in some form by 1913, so the authors noted the tremendous differences they encountered.<sup>25</sup> Responding to calls for more data on convict labor administration, the USDA and Office of Public Roads sent out questionnaires to hundreds of state and local administrators asking about the form of convict labor, the effectiveness of the program, the role of the engineer, the sanitation and housing of the convicts,

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<sup>22</sup> Seely, *Building the American Highway System*, 162; the historiography about the turn-of-the-century state is vast, but some classical works and recent reassessments demonstrate the foundation being laid for an early iteration of the bureaucracy: Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge: Cambridge University Press, 1982); Julian E. Zelizer, “‘Stephen Skowronek’s ‘Building a New American State’ and the Origins of American Political Development,’” *Social Science History* 27, no. 3 (2003): 425–41; William J. Novak, “The Myth of the ‘Weak’ American State,” *The American Historical Review* 113, no. 3 (June 2008): 752–72.

<sup>23</sup> For parallels on social scientists and the state: Benton-Cohen, *Inventing the Immigration Problem*; Smith-Howard, *Pure and Modern Milk*; Julie A. Cohn, *The Grid: Biography of an American Technology* (Cambridge, MA: The MIT Press, 2017).

<sup>24</sup> For the final report from this study: J.E. Pennybacker, H.S. Fairbanks, and W.F. Draper, “Convict Labor for Road Work,” *United States Department of Agriculture Bulletin No. 414*. (Washington, D.C., 1916).

<sup>25</sup> Connecticut, Kentucky, Rhode Island, and South Dakota had no convicts working on the roads in 1913; six states used convict labor only to crush rocks; see: State Aid Chart prepare by the Office of Public Roads in June 1913, “Tables – Dara RE Highway Systems of Nations of the World 1913” Folder, 30/530/21/23/5/Box 98, “Bureau of Public Roads Classified Central File 1912-1950” Series, Record Group 30, National Archives and Record Administration, College Park, MD.

and a cost-breakdown of the program. The OPR enlisted the Public Health Service to involve health and sanitation experts, explaining to the Surgeon General: “In order that the study may be exhaustive in character, and thereby useful in the highest degree, it is our desire to include in the scope of our investigations not only methods of management, construction, and maintenance, and the economic results of the convict labor, but also such intimately related subjects as sanitation, the health of the convicts, the facilities for the care of the sick and injured.”<sup>26</sup> These investigators visited camps around the country to conduct in-person reviews of the various programs. The final 1916 report, *Bulletin 414*, laid bare the details of convict labor programs, exposing conditions and recommending improvements. Of the six different forms of convict labor that existed in the U.S., the USDA report found that nearly all convict road laborers toiled under the Public Works and Ways System, the category for convict labor employed outside the prison on public infrastructure projects. The USDA’s data showed seventeen states using the guard system, fourteen using the honor system, and four using a combination.

*Bulletin 414* exhibits the nationwide shift to state-run convict labor road programs. The authors of the report approved of how, by the early 1920s, prisons employing incarcerated people on public roads had supplanted convict leasing to private enterprise. To be sure, the authors critiqued systems they saw as violent or inhumane while approving of systems that had clear procedures that comported with minimum required standards as defined by these social scientists and prison officials.<sup>27</sup> The approval of minimum standards of humane treatment parallels the way

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<sup>26</sup> Correspondence from Director of OPR to Surgeon General Rupert Blue, 22 June 1914, “Convict Labor 1913” Folder, 530/21/23/6/Box 111, “Bureau of Public Roads Classified Central File 1912-1950” Series, RG 30, NA-College Park.

<sup>27</sup> “Convict Labor in 1923.” *Bulletin of the U.S. Bureau of Labor Statistics*. Washington, D.C.: U.S. Bureau of Labor Statistics, January 1925.

Keramet Reiter argues that long-term solitary confinement was legitimized and normalized through “prison officials redefin[ing] minimum standards as establishing prisoners’ maximum privileges.”<sup>28</sup> While this shift allowed states to control incarcerated peoples’ time and bodies, states faced questions of whether they would adopt the honor system that purported to reform captive people and help prepare them to integrate back into society or the chain gang system that set them apart from society. Regardless of the model chosen, the turn to state-run convict labor sought to achieve two primary goals: efficient building of good roads and minimal cost to taxpayers. Both systems, moreover, relied on the entrenched logic that hard labor would benefit the incarcerated laborer. Reformers linked road work and rehabilitation by arguing that productive labor in a healthful environment reformed men. Writing to the prison reform leader and warden in New York, Thomas Mott Osborne, in January 1914, the New York Commissioner of Highways articulated this linkage between roads and rehabilitation: “I believe vast good can be done, not only for the men themselves but for the State, by the utilization of the services of the inmates of our penal institutions in this type of wholesome, healthy outdoor work.”<sup>29</sup>



Colorado’s new “honor guard” road system was part of the federal government’s convict labor study. In 1909, Thomas Tynan became warden of CSP, and in that role, he dramatically expanded his predecessor’s plans for convict road labor. Tynan developed an honor system program that he subsequently propagated within reform and penal networks across the U.S. and

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<sup>28</sup> Keramet Reiter, *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (New Haven: Yale University Press, 2016), 5.

<sup>29</sup> Correspondence from W.D. Washington to Thomas Mott Osborne, Folder “Corres. Jan. 1914,” Box 102, Osborne Family Papers, Special Collections Research Center, Syracuse University Libraries.

internationally. He promised that this system reformed incarcerated people by molding them into discipline laboring citizens. The argument for the honor system encompassed both financial and reform messages: “The value of road building to the State has been proven, and its benefits to the convicts fully attested. Not only have splendid highways been shot through regions hitherto almost inaccessible, but many men, under skilled overseers, have been taught scientific road work.”<sup>30</sup>

Colorado, Montana, New Mexico (as a territory), and Oregon all vie for the title of first honor program between 1909 and 1912, yet Colorado takes credit for propagating a model system on the national stage. Between 1909 and 1913, Tynan perfected the “honor system” into the “Colorado system,” and he employed lessons from his prior experience as a traveling mercantile salesman to astound his colleagues with the data he presented.<sup>31</sup> Promoting this model, Tynan declared: “This system has revolutionized penology and has demonstrated that through it the greatest good from financial, commercial and industrial vantage points can be gained for the community, as well as for the reformation and reclamation of the criminal element.”<sup>32</sup> The Colorado system, according to Tynan, succeeded on two levels: the system built much-needed roads inexpensively and it helped incarcerated people develop morally and physically. In 1915, one supporter summarized Tynan’s accomplishments: “If there is any man in Colorado who occupies a national position, and who has done splendid things to attract

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<sup>30</sup> Thomas J. Tynan, “Warden’s Report to the Honorable Board of Penitentiary for the Biennial Period 1908-1910,” pp 25, Biennial Reports, MCP.

<sup>31</sup> Elinor Myers McGinn, *At Hard Labor: Inmate Labor at the Colorado State Penitentiary, 1871-1940* (New York: P. Lang, 1993), 113.

<sup>32</sup> Thomas J. Tynan, “Prison Labor on Public Roads,” *The Annals of the American Academy of Political and Social Science* 46 (March 1913): 58.

favorable attention to Colorado, it is Tynan, not only because of the original and remarkable social experiment he is working out, but through his economical building of such excellent roads.”<sup>33</sup> Tynan explained how he rewarded good captives with the opportunity to work where they could earn a “good time” credit that reduced their sentence, how these men worked hard and did not attempt escape, and how the public benefitted from the road infrastructure built in the state.

Most everyone liked the honor system—except incarcerated people. The honor system relied on the work of “trusty” men. The system of selecting trusty captives to perform labor without strict oversight long existed throughout Colorado and other institutions. The trusty system in Colorado and across the U.S. was a method for separating incarcerated people for work, housing, and recreation based on the warden’s arbitrary assessment of a captive’s risk to escape or rebel. At the Colorado State Penitentiary, trusty prisoners had worked as servants at officers’ residences, chauffeurs to officers and guests, and laborers on the prison’s farms and ranches. With the expansion of the road program, the trusty system grew. Throughout the 1910s, CSP labeled over 300 men as trusty at a time—and that number grew to about 400 during the summer months with more road building opportunities. Trusties were awarded special privileges, including occupying a separate cell block and not mingling with the general population during recreation or meals. This system offered an enhanced reduction of one’s sentence by ten days for every month served as a trusty. In March 1909, the state legislature passed a law to codify this

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<sup>33</sup> Correspondence from James H. Causey to Governor George A. Carlson, May 27, 1915, Box #1 (13609) Colorado State Penitentiary Thomas J. Tynan, Warden, Administrative and Correspondence, Department of Corrections Collection, CSA.

additional good time benefit to trusty road laborers.<sup>34</sup> Benefit also came in less arduous systems of punishment, as one prisoner who served as a trusty for eleven months washing dishes and doing road work had not “seen the ball and chain” since being made a trusty.<sup>35</sup>

Incarcerated people and observers charged that the trusty system was arbitrary and encouraged deceit and lying. The warden selected the trusties. After entering the institution, anyone could apply for trusty status, and the warden then interviewed the candidate and made the final decision. No objective qualifications for becoming a trusty existed. An investigation into the prison in 1924 highlights the danger of this system: “When one considers the large reduction in sentence which a trusty receives, it is obvious that selection should not rest on the arbitrary judgment of one man, however wise he may be.”<sup>36</sup> This system encouraged incarcerated people to gain the warden’s trust and approval. As such, the system led to rivalries, distrust, and tension among incarcerated people. One paroled man said: “If a man wants to be a trusty, he tries to find something about the other prisoners or he invents lies about the prisoner, and the warden rewards him by making him a trusty.”<sup>37</sup> The singularly-vested power to accept or reject applications is but one of the ways in which Tynan exercised dominant control over prison functions. In response to a question from a mother of a man incarcerated at CSP, Tynan highlighted his power to execute punishments arbitrarily: “I will say that no two prisoners commit like offences or

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<sup>34</sup> Sec. 4881-A, “An Act Providing for the Granting of Additional Good Time to Inmates of the State Penitentiary Who May Be Engaged in Work Connected with Said Institution Outside the Walls of the Prison” (March 1909).

<sup>35</sup> “Digest of Governor Sweet’s Conversation with Andrew McKay,” 04/14/1924, Folder: “Reports and Miscellaneous Material Relating to Prison Investigation,” FF#37, Box 1 (27160), MSS.613 HCC.

<sup>36</sup> “Colored Reports—Report to Governor William E. Sweet on The State Penal Institutions of Colorado from the National Society of Penal Information,” 1924 Folder: “Reports and Miscellaneous Material Relating to Prison Investigation,” FF#36, Box 1 (27160), MSS.613 HCC.

<sup>37</sup> “Digest of Governor Sweet’s Conversation with a Paroled Prisoner,” 04/14/1924, Folder: “Reports and Miscellaneous Material Relating to Prison Investigation,” FF#37, Box 1 (27160), MSS.613 HCC.



receive like punishments.” Tynan went on to describe the various punishments based on the infraction from loss of privileges to solitary confinement to being “spanked with a wide leather strap.” Tynan’s letter justified his diverse range of punishment options by noting, “A doctor who prescribed the same medicine for all who came to him would be a poor doctor indeed and so it is here.”<sup>38</sup> The language of the expert or scientist disguised the arbitrary and undemocratic nature of punishment employed. Within the institution, the warden reigned supreme with nominal oversight. Indeed, in a letter that prison officials caught that a prisoner tried to smuggle out, captive Henry Fawley argued, “The people out side don’t have any idea how the prisoners are treated and the most of them don’t care.” Fawley recalls experiences of punishment from officers taking his possessions to being forced to work the lime kilns after being held in solitary and “so weak I couldn’t hardly walk.”<sup>39</sup>



Despite the internal dynamics and shortcomings of the system, Tynan boosted the honor system by welcoming visitors to Colorado and traveling across the country to present on it. Trustees, he maintained, were at the core of this reform project. Academic social scientists, government field investigators, humanitarian reformers, and politicians and penal administrators visited the Colorado State Penitentiary to see firsthand the benefits of the system.<sup>40</sup> Additionally, with his “two thousand feet of motion picture film and two hundred colored slides, illustrating

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<sup>38</sup> Correspondence from Warden Tynan to Mrs. H.B. Lee, 03/04/1921, Folder: “Penitentiary,” FF#3, Box 26800, Oliver H. Shoup Collection, CSA.

<sup>39</sup> Correspondence from Henry Fawley (1323) to Unknown, 01/17/1922, Folder: “Penitentiary,” FF#3, Box 26800, Oliver H. Shoup Collection, CSA.

<sup>40</sup> Correspondence from TJT to George Eisler, September 30, 1914; from TJT to Kate Bernard, Aug. 7, 1915; from TJT to Thomas Mott. Osborne, Nov. 25, 1914, Box #1 (13609) Colorado State Penitentiary Thomas J. Tynan, Warden, Administrative and Correspondence, Department of Corrections Collection, CSA.

the work that is now being done by our prisoners,” Tynan traversed the country giving speeches on convict labor and roads.<sup>41</sup> Within these road camps, groups of incarcerated people would typically camp along the section of the road they were working on and work in conjunction with county or state highway officials to build the roads. These incarcerated people on the road crew would work on a section of the road as long as the weather permitted for the season. Tynan’s efforts boosted not only his labor program and prison administration but also the town of Cañon City itself. With the film on the prison programs, he also carried films of Skyline Drive and the Royal Gorge, supplied to him by the Cañon City Business Men’s Association.<sup>42</sup> The Association, moreover, appointed a committee “to talk to Mr Tynan regarding the publicity to be given Cañon City.”<sup>43</sup> In this way, Cañon City’s business community recognized how the prison as an institution offered the city itself a platform to advertise and attract tourists, building a mutually beneficial partnership. Tynan solidified local support by supplying the city with ten to twelve incarcerated people each year to labor on local Cañon City roads, something supported by both local businessmen, tourist industries, and politicians.<sup>44</sup>

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<sup>41</sup> For one of the speeches he gave on his convict labor system, see: Ozark Trails Association National Meeting Information, April 7, 1915, Box #1 (13609) Colorado State Penitentiary Thomas J. Tynan, Warden, Administrative and Correspondence, Department of Corrections Collection, CSA.

<sup>42</sup> The Cañon City Business Men’s Association was the name of the Chamber of Commerce after it was reestablished in 1912 until the name was changed back to Chamber of Commerce on July 9, 1913. “Cañon City Business Men’s Association Meeting Minutes,” July 1, 1913, Scrapbook: Minutes. Cañon City Chamber of Commerce, Associations Collection, Royal Gorge Regional Museum & History Center, Cañon City, Colorado (Hereafter: RGRMHC).

<sup>43</sup> “Cañon City Business Men’s Association Meeting Minutes,” 7/1/1913, Scrapbook: Minutes. Cañon City Chamber of Commerce, Associations Collection, RGRMHC.

<sup>44</sup> “Cañon City Business Men’s Association Meeting Minutes,” 6/6/1916, Scrapbook: Scrapbook: Minutes. Cañon City Chamber of Commerce, Associations Collection, RGRMHC.

Tynan's boosterism fostered alliances between reformers, good roads advocates, politicians, and penal administrators. In 1914, for example, Tynan published "Convict Labor on Road Work" in *Good Roads Magazine* in which he made the case for spreading the honor system based on its proven success in Colorado, Oregon, Michigan, and Ohio.<sup>45</sup> Other states adopted the Colorado template. In Michigan, for example, Governor Chase S. Osborn declared: "The Colorado honor system seems to be especially good."<sup>46</sup> With support from a study by the Michigan State Board of Agriculture in 1915, Michigan adopted the system.<sup>47</sup> California, too, "adopted a duplicate of the Colorado law," which would "put a great many men on the roads." To ensure the success of the Colorado system in California, Tynan pushed George Asher, who had worked under Tynan as a road camp overseer, to get a job with the California State Highway Commission to oversee convict road camps and wrote Asher a recommendation.<sup>48</sup>

The Colorado system even won converts from reform-minded politicians in states that employed the guard system. Governor Benjamin Hooper of Tennessee, for example, found the conditions of his state's chain gangs contrary to his progressive ideals: "Confining fifteen or twenty men in a cage on wheels, with but little ventilation and sanitation, as has been done in

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<sup>45</sup> Thomas Tynan, "Convict Labor on Road Work," *Good Roads* 46 no. 23 (Dec. 5, 1914), 211-212.

<sup>46</sup> Prison Labor in the Governors' Messages, Number Three (pp. 16), Folder 1, Box 1, Collection 5966: National Committee on Prisons and Prison Labor Pamphlets and Leaflets, Kheel Center for Labor-Management Documentation and Archives, M.P. Catherwood Library, Cornell University.

<sup>47</sup> State Board of Agriculture, *State Farmers' Institutes Season of 1914-15, Institute Bulletin No. 21* (Agricultural College, MI: State Board of Agriculture, 1915), 258-259.

<sup>48</sup> Asher worked for five years under Tynan in the Colorado Department of Corrections as head overseer of a road camp, and Tynan lobbied on Asher's behalf to secure a position in California; Correspondences between Thomas J. Tynan and George Asher, April 1915, Box #1 (13609) Colorado State Penitentiary Thomas J. Tynan, Warden, Administrative and Correspondence, Department of Corrections, Colorado State Archives. For other examples of states working with TJT to introduce a similar honor system model, see correspondences with attorneys and politicians from Arizona or Illinois in Box #2 (13610) Colorado State Penitentiary Thomas J. Tynan, Warden, Administrative and Correspondence, Department of Corrections Collection, CSA.

several counties is brutal. I also doubt whether the working of men in stripes and chains before the public gaze is wholesome either for the men or public.” After a national investigation of convict road labor, Hooper concluded: “In Colorado, state convicts are worked on the public highways on the honor system. This plan has been successful.” Hooper lobbied, albeit unsuccessfully, for his state’s legislature to adopt the Colorado system.<sup>49</sup> Tynan propagated the honor system to a national audience by aligning it with two of the goals of the Progressive Era: economic efficiency and social reform.



The Colorado system differed from other convict road labor programs across the country. Demographic realities, local politics, and historical precedents informed the reception of penal reform. Despite how Colorado’s experience was premised on its status as a progressive Western state with strong labor and immigrant influences in its extractive economies, Tynan contended that productive labor had the power to transcend race and region. The honor system, he concluded, could Americanize the nation’s diverse body politic. Although many Southerners saw the chain gang as a progressive development in relation to the lease and contract systems, they differed from Tynan in that they subscribed to a Calvinist view of human depravity. This view bolstered an understanding of the government as the entity to discipline and control individuals, which informed the South’s convict labor programs.<sup>50</sup> Douglas Blackmon’s history of the

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<sup>49</sup> Prison Labor in the Governors’ Messages 1912-1913, Number Eight (pp. 74), Folder 1, Box 1, Collection 5966: National Committee on Prisons and Prison Labor Pamphlets and Leaflets, Kheel Center for Labor-Management Documentation and Archives, M.P. Catherwood Library, Cornell University.

<sup>50</sup> On the connection between religion and politics in the South: Paul Harvey, *Race, Culture, and Religion in the American South* (New York: Oxford University Press, 2015); Paul Harvey, *Freedom’s Coming: Religious Culture and the Shaping of the South from the Civil War through the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2012).

South's convict labor program argues that the post-emancipation legal system kept Black people living in slave-like conditions, and this system was upheld by government and private actors, establishing a form of personal control of Black workers, families, bodies, and time. This race-based view of criminality reinforced mechanisms for social control and a societal hierarchy. Another historian of the Southern post-emancipation penal system argues that "the Southern region leaps out as one with a distinctive way of handling prisoners" because of its brutal treatment of leased people in which labor and legal policies enforced a racial hierarchy with discipline.<sup>51</sup>

The Colorado system challenged the hereditarian, racialized view of criminality and religious view of depravity by contending that the environment, not natural endowments, led individuals to criminal behavior.<sup>52</sup> Coming from an environmentalist perspective, Tynan argued that the state ought to both prevent crime and rehabilitate individuals. Colorado honor system captive laborers worked on roads over 300 miles from the penitentiary without any armed guards, and about half of the prison's total charges, including men with life sentences, worked on roads under Tynan's tenure. In recommending his system, Tynan argued that "seventy-five per cent of all the prisoners in the different penitentiaries throughout the United States can be worked with perfect safety on the public highways under our system."<sup>53</sup> This view reveals Tynan's challenge to the South's system by affirming his belief that any man regardless of term

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<sup>51</sup> Douglas Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008); Mancini, *One Dies*, 3.

<sup>52</sup> For some of the significant contemporaneous works that illuminate the debate over criminality as environmental or hereditary: Cesare Lombroso, *Crime: Its Causes and Remedies*, trans. Henry P. Horton (Boston: Little, Brown, and Company, 1911); Daniel Right Miller, *The Criminal Classes: Causes and Cures* (Dayton, OH: U.B. Publishing House, 1903); George S. Dougherty, *The Criminal as a Human Being* (New York: Appleton & Co., 1924)

<sup>53</sup> Correspondence from Warden Thomas Tynan, Dec. 23, 1912, "Convict Labor 1913" Folder, 30/530/21/23/6/Box 111, "Bureau of Public Roads Classified Central File 1912-1950" Series, RG 30, NA-College Park.

of sentence, type of crime, or race and nativity could prove trustworthy and benefit from this system. While Tynan boasted the diverse sentences of trusties assigned to roadcrews, he never detailed their racial demographics. Although escapes were relatively rare in Colorado, they did occur. If the attempted escape failed and the man was returned to CSP alive, he would, at minimum, lose all his accrued privileges and good time.

While the Southern systems (both chain gang and leasing) helped maintain a racial hierarchy, some Western programs challenged popular racial thought.<sup>54</sup> Western prisons, including CSP, overall were comprised disproportionately of people of color, reflecting the racial hierarchies embedded in the structural legal systems governing society. Tynan contrasted the honor system with the Southern penal system to contest the goal of incarceration: reform versus maintaining social order. Historians have noted that the Southern penal system grew out of Reconstruction as a means of maintaining racial order and subjugating African Americans.<sup>55</sup> These programs exploited African American labor and time to maintain white racial supremacy. In the post-Civil War South, “southern whites responded to African American claims on freedom,” Heather Ann Thompson contends, “by redefining crime and imprisoning unprecedented numbers of black men.”<sup>56</sup> After Georgia abolished its lease system, Alex Lichtenstein argues, they turned to the more progressive form of chain gangs, but this system

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<sup>54</sup> Kelly Lytle-Hernández has complicated the historiography of convict labor with her analysis of Mexican convict labor in the West showing oppression and discrimination by race and class in *City of Inmates*. Her analysis focuses primarily on the City and County of Los Angeles’ prison system. California, unlike most Western states, used chain gangs under the guard system, which did not allow much opportunity to allow character to disprove racial assumptions, as was the case with the honor system.

<sup>55</sup> Mildred C. Fierce, *Slavery Revisited: Blacks and the Southern Convict Lease System, 1865-1933* (Brooklyn: Africana Studies Research Center, 1994); Lichtenstein, *Twice the Work of Free Labor*; Johan Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976).

<sup>56</sup> Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *The Journal of American History* 97, no. 3 (December 2010): 703-734.

“merely shifted from the private to the public sector” the effort of racial control and infrastructure development. In spite of how Georgians characterized their system as humanitarian, modern, efficient, and progressive, “The chain gang of mostly black convicts working the roads of the Deep South came to exemplify the brutality of southern race relations, the repressive aspect of southern labor relations, and the moral and economic backwardness of the region in general.”<sup>57</sup>

Mexicans and Mexican Americans occupied the prominent racialized place in the Western penal systems. Mexicans and Mexican Americans, alongside Euro-Americans, built roads primarily under the honor system. Tynan and his penological adherents, including wardens in Arizona and California, integrated work camps. This integration challenged racial stereotypes in the late 1910s and early 1920s. When a Bureau of Public Roads investigator visited an integrated camp, he remarked: “It is believed by the writer, that the prevailing opinion in this country regards the Mexican as highly untrustworthy, but it was practically the unanimous opinion of all prison and highway officials with whom we talked in the Western States that Mexican criminals are fully as worthy of trust as the average American criminal.”<sup>58</sup> When Progressive penologists approached criminality as contingent, they advanced a different view of race and the penitentiary.

While Colorado’s prison records obscure the races of individual captives in the honor program, the record does contain the race and/or nativity of incarcerated people on their intake

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<sup>57</sup> Lichtenstein, *Twice the Work of Free Labor*, 159-160.

<sup>58</sup> This report was part of the underlying investigation into what became *Bulletin 414*. Report of Convict Labor Conditions in Colorado, “Convict Labor—CO” Folder, 530/21/23/7/Box 112, “Bureau of Public Roads Classified Central File 1912-1950” Series, Record Group 30, National Archives and Records Administration, College Park, MD.

papers. While African Americans made up 1.4 percent of the total state population during the height of Tynan's road program, the prison intake records reveal a disproportionately high number of African American captives at 8.6 percent of the penitentiary population. This data also shows that beginning in 1910, a plurality of foreign-born prisoners received were born in Mexico. During the decade following 1910, an average of nearly thirty percent of captives received were foreign-born and nearly forty percent of the foreign-born were born in Mexico.<sup>59</sup> At the same time, the 1910 census shows that only 1.1 percent of those born outside the U.S. or with a parent born outside the U.S. were from Mexico.<sup>60</sup> The diversity of Colorado's incarcerated population can also be seen in the fact that at least three—and as many as nineteen in the 1911-12 biennium—staff teachers taught English as a second language at CSP through the 1910s.<sup>61</sup> Similarly, despite Protestants outnumbering Catholics in Colorado's free population, CSP held a disproportionate number of Catholic people. The prison's population in this era went beyond the racial and religious diversity; incarcerated people ranged in age from sixteen to

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<sup>59</sup> This data comes from the intake records of incarcerated people numbered 7,001 through 10,500, received during the beginning and height of the honor guard experiment, between 1/18/1908 and 5/1/1918; the intake papers can be found in Convict Intake Binders 14 through 20, MCP; the data on nativity of convicts comes from the Reports of the Chief Clerk filed in the Biennial Reports from 1910 through 1918, Biennial Reports, MCP. The intake forms fail to record race, except for "Negro," which narrows this research to nativity and Blackness as defining characteristics during this period in which notions of race, as connected to nationality, were fluid. The annual reports do provide race and nativity of incarcerated people in aggregate, yet these reports do not connect race and nativity data with the start or end of sentences, which makes analysis of shifting demographics difficult. On the context of the growing notion of Black criminality based in statistics: Muhammed, *Condemnation of Blackness*, 15-34; on the changing notions of race and Whiteness in the early twentieth century: David R. Roediger, *Working toward Whiteness: How America's Immigrants Became White; the Strange Journey from Ellis Island to the Suburbs* (New York: Basic Books, 2006); David A. Chang, *The Color of the Land: Race, Nation, and the Politics of Landownership in Oklahoma, 1832-1929* (Chapel Hill, N.C: University of North Carolina Press, 2010).

<sup>60</sup> Neither the 1910 nor the 1920 census have a separate category for "Hispanic" (or a similar characterization). The races in these censuses are only broken into: White, Negro, Indian, Chinese, Japanese, and All Other. The data for race and nativity in the census does not allow easy correlation or comparison to prison records.

<sup>61</sup> The prison averaged between 600 and 850 inmates over this decade, with an average of just over 100 taking classes and/or using the library at any point; data on teachers and courses taught, including English as a second language and foreign language courses, can be found in the Reports of the Chaplains filed in the Biennial Reports, 1910 through 1922, Biennial Reports, MCP.



eighty-one, with the majority being nineteen to thirty years old.<sup>62</sup> Colorado's overwhelmingly white population with significant Black and Latinx prison populations, coupled with the historical lack of institutionalized slavery, allowed Tynan to introduce reforms that allegedly empowered incarcerated people and put them in public positions. In the decades following statehood, Colorado failed to pass extensive Jim Crow laws to assert a racial hierarchy that had not previously existed in the territory.<sup>63</sup>

Honor system proponents in Colorado invoked the significant Hispanic population of the prisons to show that trust and honor were universal values that could be instilled through hard labor. In Southern penitentiaries, however, the population was overwhelmingly African American, and where integrated facilities existed, treatment by race was unequal. Take, for example, a Bureau of Public Roads investigative report into the housing conditions in one South Carolina camp: "The beds for the white prisoners consisted of wire springs and iron frames supported one foot above the ground ... The tent for the negro convicts was provided with a flooring consisting of loose boards laid across small logs on the ground. The beds were made up by spreading a tarpaulin over the floor and laying the mattresses and blankets on it."<sup>64</sup> Tynan, like some Progressives in this moment, believed the power of integration and labor transcended views of inherent criminality.

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<sup>62</sup> "Table No. 22: Ages of Prisoners," 1911-1912 Biennial Report, Biennial Reports, MCP.

<sup>63</sup> In contrast to Western states like California and Nevada that enacted education segregation and voting restrictions, Colorado (like nearly every state) only enacted miscegenation laws.

<sup>64</sup> This report was part of the underlying investigation into what became *Bulletin 414*. Report of Convict Labor Conditions of South Carolina, "Convict Labor" Folder, 530/21/23/7/Box 112, "Bureau of Public Roads Classified Central File 1912-1950" Series, Record Group 30, National Archives and Records Administration, College Park, MD.

Honor system boosters emphasized the stark differences between their system and the guard system, and in doing so, they articulated a form of competitive regionalism. Although the South characterized the switch from lease to chain gang as progressive, Tynan and his fellow honor system boosters contrasted their program with that of the South, invoking the South's historical form of brutal punishment. Warden Tynan, for instance, distanced the Colorado system from the Southern system "where," as he put it in 1913, "men are sold at auction to the highest bidder." This trope represents a greater struggle amongst the honor system states: they attempted to distance their program from the South. Unlike under the Southern "slave" system, men in Colorado "worked with an energy and a zeal that has never before been equaled ... because they felt they were working for themselves."<sup>65</sup> Morally distancing themselves, honor system supporters evoked conscious ideals of competitive regionalism as measured by "progress." Edward Ayers and Peter Onuf write, "the development of regional consciousness was predicated on awareness of *other* regions in a competitive political context."<sup>66</sup> Progressive ideals of efficiency and better humans manifested differently based on local conditions and precedent, yet they operated in a nationwide competitive cultural context. Colorado's Progressives, for example, differed because the state lacked the racial diversity of other states.<sup>67</sup> Colorado's honor road labor experiment offers a case study in local conditions that took on national importance as Thomas Tynan became enmeshed in a national network of progressive penal reformers helping

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<sup>65</sup> Tynan, "Prison Labor on Public Roads," 58-59.

<sup>66</sup> Edward L. Ayers et al., *All Over the Map: Rethinking American Regions* (Baltimore: The Johns Hopkins University Press, 1996), 8.

<sup>67</sup> McGerr, *A Fierce Discontent*, 182-218.

define state-run convict labor systems. Regardless of Tynan’s rhetoric of uplift, his guiding ideology maintained the importance of hard labor, discipline, and infrastructure development.

While Tynan boosted a contested vision of racial rehabilitation and Americanization through hard labor and self-governance, he, like his predecessors and the politicians who conducted oversight, never lost sight of the costs of penal institutions to taxpayers (See Figure

| Biennial Period | Cost of Road Work | Value of Road Work | New Miles Built |
|-----------------|-------------------|--------------------|-----------------|
| 1909-1910       | \$56,700          | \$212,160          | 50              |
| 1911-1912       | \$46,805.44       | \$270,285          | 157             |
| 1913-1914       | \$58,237.00       | \$330,603          | 149             |
| 1915-1916       | \$45,596.30       | \$465,000          | 145             |

Figure 3.1: Table of data from Warden's Biennial Report. Table by author

3.1) He complemented the rhetoric of reform with the data of cost effectiveness. Every other year, Tynan delivered a report to the governor of Colorado that calculated the return on investment of the road program compared to the appropriations for the penitentiary. These reports, as Elinor McGinn reminds us, need to be read critically because they were embellished to serve two political purposes: increase the penitentiary’s appropriation and build support for the honor system.<sup>68</sup> “This,” Tynan concluded after his calculations in the 1910 Biennial Report, “is the result in dollars and cents of the present system of handling prisoners. But there has been a greater saving the men themselves. We have not only had a smaller actual per cent in the loss from escapes, but the men are being paroled at the end of their terms, healthy and without the usual prison pallor, in a better condition to earn their living and with the habit of industry

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<sup>68</sup> For a fuller discussion of how Tynan embellished the financial records and the difficulty of precisely calculating the financial records of the Colorado State Penitentiary, see: McGinn, *At Hard Labor*, 113-118.

acquired.”<sup>69</sup> The data in Figure 3.1 shows how Tynan presented the honor system as providing the state a cost-effective service by comparing the costs of the convict labor with the calculated value of the road work based on paying free laborers the prevailing wages for the same time. Indeed, there were only twenty successful escapes from road crews during Tynan’s administration.<sup>70</sup> To stave off critiques that convict road labor diminished opportunities for free laborers, Tynan noted how counties could not otherwise have afforded the work and thus free laborers would not have had this opportunity.

Tynan paired finances and reform, showing how both factors motivated the new penology. Historians have asked important questions about convict labor and prison reform including: what is the goal of incarceration, and are prison reforms fundamentally capitalistic or do they exist to achieve the goal of rehabilitation?<sup>71</sup> Because Tynan’s contemporaries invoked reform, it ought to be recognized as a legitimate motivator of policy changes and site of analysis for historians. Some reformers convinced themselves and the public of the good done for the captive people. Some incarcerated people, moreover, appropriated the language of reform and citizenship to contest their captivity and assert their humanity. Costa Nestoroff, who was pardoned after serving as a trusty at CSP, wrote to the governor: “While I was at Canon [sic] City I met a number of men in the penitentiary who, I am confident, if released, would make good citizens, and are honest men. They made one slip, and the punishment they have received is

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<sup>69</sup> Thomas J. Tynan, “Saving in Manhood” in “Warden’s Report to the Honorable Board of Penitentiary for the Biennial Period 1908-1910,” Biennial Reports, MCP.

<sup>70</sup> McGinn, *At Hard Labor*.

<sup>71</sup> For an overview of the ways that the prison historiography remains “fragmented” with the many questions for scholars to probe: Mary Ellin Curtin, “State of the Art: The New Prison History,” *Labor: Studies in Working-Class History of the Americas* 8, no. 3 (September 1, 2011): 97–108.

sufficient to correct the error of their ways for the future.”<sup>72</sup> The undemocratic nature of pardons, paroles, commutations, and trusty assignments led prisoners to employ the language of reformers and define themselves as the idealized citizen-subject.

Hard labor was the vehicle to mold productive citizens, and this effort complemented efforts to rehabilitate men into the ideal citizen. In a Bureau of Labor Statistics report on convict labor, the section on rehabilitation notes that prison administration “is coming more and more to recognize the value of education, both academic and industrial, as at least a coordinate factor in promoting good citizenship.”<sup>73</sup> Similarly, ideals of outdoor physical activity pervaded Tynan’s penal ideology beyond the convict road labor camps. He expanded the penitentiary’s farm and ranch work opportunities, and in 1916 he successfully lobbied for funds to expand recreational facilities at the prison.<sup>74</sup> Tynan believed that men who worked effectively, did not agitate or run from camps, and learned construction skills could return to society.

Beyond using physical activity to reform captives, Tynan argued that incarcerated people could be Americanized and achieve social uplift through education and religious instruction. Tynan’s biennial reports demonstrate how much he investigated the details of captives’ lives, including religion, marital status, degree of education, and habits (tobacco, alcohol, morphine, and/or cocaine usage) as part of a holistic approach to individual reform.<sup>75</sup> Beginning in the early

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<sup>72</sup> Correspondence from Costa Nestoroff to Governor Sweet, 09/06/1924, Folder: “1924 Correspondence Pertaining to Prison Investigation,” FF#7, Box 1 (27160), MSS.613 HCC.

<sup>73</sup> “Convict Labor in 1923.” Bulletin of the U.S. Bureau of Labor Statistics. Washington, D.C.: U.S. Bureau of Labor Statistics, January 1925, pp. 16.

<sup>74</sup> Thomas J. Tynan, Warden’s Reports from 1914 and 1916, Biennial Reports, MCP.

<sup>75</sup> Although no list that corresponds the honor system convict laborers to the crimes committed exists, Tynan notes repeatedly the convicts’ diversity in nativity, education, type of crime, and sentence length.

1910s with the purchase of a motion-picture projector, Tynan exhibited films that “ha[d] been carefully selected along educational lines, with enough of the comic to render a great deal of enjoyment.”<sup>76</sup> The prison library and school also educated captives and taught them to read and write, especially those born outside of the U.S. “There is a large number of Mexicans, several Italians, three Japanese, and representatives of several other nationalities,” the prison chaplain wrote in 1916, “learning to read and write the English language.”<sup>77</sup> The prison chaplain conducted Protestant services every Sunday and the local Catholic priest offered mass one Sunday each month. The success of the education program led the chaplain to recall one account of a motivated man who epitomized the successful honor convict: “One of the men at the [road] camp, who had attended school last year, requested to be brought back to the prison and forego his good time to again gain that advantage.”<sup>78</sup>



The rhetoric of reform must be balanced with the reality of economics and politics, especially as the reform drive of the 1910s faded after World War I. By the 1920s, free laborers in Colorado began agitating for road contracts. In the economic downturn immediately following World War I, organized laborers sought those jobs because of the ever-expanding investment in road construction. Beginning in 1920, Warden Tynan reported that the State Highway Commission “has been so liberal with money that some of the Board of Commissioners have preferred to let contracts to private individuals for the construction of these public highways ...

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<sup>76</sup> Thomas J. Tynan, “Warden’s Report to the Honorable Board of Penitentiary for the Biennial Period 1910-1912,” Biennial Reports, MCP.

<sup>77</sup> F. E. Cain, “Chaplain’s Report,” Biennial Reports, MCP.

<sup>78</sup> J. G. Blake, “Chaplain’s Report,” Biennial Reports, MCP.

even though we have been doing work with prisoners for 21 percent of the cost of contractor's prices."<sup>79</sup> The statewide push against convict road labor manifested locally, too: Cañon City's unemployment rate had written, so labor and business there united against prison labor as a way, as one petition wrote, "to give employment to men of families."<sup>80</sup> Throughout the 1920s, Colorado's Highway Commission and legislature began to favor private contractors. Convict road labor had previously been supported by major labor unions because it did not compete with union labor, but that view shifted by the 1920s across the U.S. and in Colorado.<sup>81</sup>

Convict road labor drew labor unions' ire because it was the most visible of the prison labor programs. Throughout the state, county commissioners offered contracts for local roads. These county commissioners were beholden to local politicians who were beholden to the electorate. The commissioners, therefore, privileged local free-world laborers over the warden and convict road labor. In December 1920, for example, the commissioners of Weld County wrote to Warden Tynan and Governor Oliver Shoup informing them of their plan to discontinue the prison road camp's work in Weld County. Tynan, of course, took exception to this, but his complaints to the commissioners and protest to the governor failed to reverse the decision. Tynan's response to the commissioners noted, "The part of the letter which strikes the writer as peculiar to say the least, is the fact that not one word of commendation or thanks is extended to the men who have labored for years for no wages whatever, or for the institution that furnishes

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<sup>79</sup> Thomas J. Tynan, "Warden's Report," Dec. 20, 1920, Biennial Reports, MCP.

<sup>80</sup> E.A. Bradbury, "Unemployed Situation," Jan. 4, 1921, Folder: "1920 Chamber of Commerce Meeting Minutes" Acc. No. 1987.001, Associations Collection, RGRMHC.

<sup>81</sup> Jon Axline, "Building Permanent and Substantial Roads: Prison Labor on Montana's Highways, 1910-1925," *Montana: The Magazine of Western History* 62, no. 2 (2012): 59-66, 95-96; Virgil Caleb Pierce, "Utah's First Convict Labor Camp," *Utah Historical Quarterly* 42 (Summer 1974); Ingram, *Dixie Highway*, 129-162.

this labor.”<sup>82</sup> The warden felt that the county commissioners and their constituents ought to be grateful, beholden to the man who forced the labor and ran the institution that ensured its continuity. Weld County established a trend as other countries followed suit in rejecting convict road labor. In 1927, El Paso County declined the warden’s offer for convicts to build highways with the explanation that “there are too many unemployed men in the county who need work to use convicts.” Pueblo, too, rejected all highway work that same year.<sup>83</sup>

The decline of convict road labor left the prison with a growing incarcerated population and not enough labor projects. After the two-decade experiment in working captives on roads outside the prison, CSP officials turned back inwards. In 1925, Tynan organized a License Plate Department within the prison. This industrial plant offered few of the benefits of road labor. Incarcerated people particularly took issue with the lack of trusty good time offered to the men who worked this factory. The legislature’s revision of laws to extend good time to trusties specifically excluded any incarcerated people, even if they were classified as trusty, who labored within the prison’s walls. This left fewer opportunities to reduce one’s sentence dramatically through laboring. As the state organized the plant to manufacture license plates, it also purchased a canning factory in Cañon City. The factory’s operations began with the 1926 crop, and it allowed the prison to expand its market for its farm and ranch products beyond the prison’s kitchens and local vendors.

As the canning factory and automobile license plate factory replaced road construction, that change further diminished the stability of the prison and Tynan’s influence in state politics.

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<sup>82</sup> Correspondence from Thomas J. Tynan to Commissioners of Weld County, 12/11/1920, Folder: “Penitentiary,” FF#3, Box 26800, Oliver H. Shoup Collection, CSA.

<sup>83</sup> “News of the Month,” *Colorado Highways*, July 1927.



From the perspective of the incarcerated population, the new system was flawed because it offered fewer opportunities to gain trusty status and to be released for good time. The population housed at CSP, moreover, ballooned because of the elimination of over 300 positions on road camps outside the walls, exacerbating the institution's overcrowding problem. Incarcerated workers, too, surely recognized the deep irony of their position: from a place that restricted their mobility and surveilled their every move, they created license plates which enabled automotive travel that promised unmitigated freedom on the open roads. From an administration standpoint, incarcerated people were more restless because of the change in labor programs. Rather than toiling on roads all day and exhausting themselves, captive men still had unspent energy with these new indoor activities, which, according to the administration, would be channeled into fights, riots, and escapes. These worries were realized in the 1920s; there was an increase in escapes and increase in beatings, especially floggings for unruly behavior or political dissent.<sup>84</sup> The Civil Service Commission concluded that the prison needed more industries to adequately employ all men and a less arbitrary and regressive means of punishment.



As Tynan's power diminished because of the reduced use of the honor road labor system throughout Colorado, he simultaneously faced two other political threats. Both the Ku Klux Klan in Fremont County and Governor William Sweet's administration in Denver challenged Tynan's dominant grasp on the penitentiary. Cañon City's Ku Klux Klan targeted the prison because it perceived the administration as bowing to the strength of Catholic forces. Initially, the Colorado KKK's strength, membership, and influence concentrated in Denver's lodge, but it lost its

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<sup>84</sup> Civil Service Testimony and Reports, 03/12/1925, Scrapbook 3, MSS.613 HCC.

strength there because of bad behavior from the Denver lodge leader, which, in turn, corresponded to the Denver Klan losing respect and its ability to influence policy. At that point, the Colorado Klan concentrated on Fremont County, where it successfully recruited and made inroads into local politics. The Klan of the 1920s, threatened by Catholic, Jewish, and Black success, lashed out at the purported dangers presented to the American way by all those groups. The Klan re-emerged in the late 1910s and 1920s as a national organization in which it reached approximately four to six million members. The “second Klan” was still committed to white supremacy, but it differed from its namesake organization in important ways: it was a national organization; it was never secret, organizing large events and publishing a newspaper; it achieved public support and seemed respectable; it targeted Black people, Catholics, Jews, immigrants, and bootleggers. The Klan, Linda Gordon concludes, was “mainstream” because it responded to and exaggerated the threats of modernity: “claiming the country was being led to moral depravity.”<sup>85</sup>

In Colorado chapters, the Klan focused on, as Robert Goldberg argues, one major perceived threat to the political order—the firm belief that Catholic power would turn Colorado into a Papist state.<sup>86</sup> KKK members believed that these threats bubbled up from local issues and needed to be controlled through local political advocacy. The Cañon City Klan sought an overhaul of what they saw as an elitist political order and the end of the state support for Catholic causes. Klan members feared that the Pope planned to make Cañon City his summer residence and thereby the center of his American operations. This dissent based on religious and political grounds came in the context of, as Aaron Griffith writes, “the broader denotation of crime as a

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<sup>85</sup> Gordon, *The Second Coming of the KKK*, 6.

<sup>86</sup> Goldberg, *Hooded Empire*.

distinctly *religious* national issue.”<sup>87</sup> Newspapers and preachers sensationalized crime and punishment, framing the nation’s crime as representative of secular moral decline. As such, Cañon City controversy regarding Tynan and the prison reflected the new attention paid to crime, particularly through a religious lens.

Although Colorado had few Catholic people, the prison was disproportionately comprised of them, particularly because the prison population was disproportionately European or Latin American immigrants. Tynan, a Catholic himself, drew fire from Klansmen by supporting Catholics within and outside the prison. The Klan’s observers regularly publicized disciplinary and labor issues at the prison and with prison guards, insisting: “One concludes that where there is so much smoke there must be some fire.”<sup>88</sup> Of course, these same Klan authors were largely responsible for constructing and publicizing that “smoke.” Longstanding prison policy held that a local Catholic priest conducted one service a month for incarcerated people while the Protestant prison chaplain conducted the other three and was responsible for tending to the prisoners daily and overseeing the education program. At that time, the Catholic priest worked without pay while the Presbyterian Resident Chaplain Frederick Arnold received the entire \$1,000 annual salary for overseeing religious duties. In response to this inequity, Tynan requested in 1921 that Reverend Edmond Butts—the Catholic priest—receive one-quarter of the salary of the chaplain and correspondingly reduce Arnold’s salary. This proposal sought to split the salary to reflect the duties performed: \$750 to the Presbyterian Chaplain and \$250 to the

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<sup>87</sup> Aaron Griffith, *God’s Law and Order: The Politics of Punishment in Evangelical America* (Cambridge: Harvard University Press, 2020), 15. Emphasis in original

<sup>88</sup> “The Problem of the State Prison,” *The Fremont County Daily News*, Aug. 26, 1924

Catholic Priest.<sup>89</sup> Although the state failed to act on this proposal, it provided fodder for the anti-Catholic conspiracy, now being spread in local papers with KKK editors, that Tynan sought to support Catholic activity with public resources.

Finally, Cañon City offered “proof” of the Catholic plot when it became the home to a Roman Catholic monastery. Catholics long had a presence in Cañon City, since the Roman Catholic mission there was organized in 1880. In 1890, the Benedictine Sisters in Cañon City opened the Mount Saint Scholastica Academy.<sup>90</sup> In May 1923, the Benedictine Society of Colorado purchased ninety acres of orchard land from Benjamin Franklin Rockefeller’s estate in Fremont County to make, according to Father Cyprian Bradley, “Cañon City the center of the activities of the Benedictines of the West.”<sup>91</sup> Beginning in 1923, incarcerated men from CSP worked that land to build a chapel and boy’s schools. These institutions opened in 1925, and in 1926 the Holy Cross was elevated to the status of Abbey and Father Bradley was appointed the first Abbot. “The construction of the monastery, warned the Klan, was an ominous sign.”<sup>92</sup> To Klansmen this all demonstrated that Catholic forces and influence already shaped state policy and resource allocation.

The area surrounding Cañon City also had a disproportionate number of Catholic and immigrant families, drawn to the area by the mining opportunities. John Molletti, who grew up in

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<sup>89</sup> Correspondence from Thomas J. Tynan to Oliver Shoup, 01/08/1921, Folder: “Penitentiary,” FF#3, Box 26800, Oliver H. Shoup Collection, CSA.

<sup>90</sup> “Historical Chronology of Events in Fremont County,” n.d., Fremont County General History Collection, RGRMHC.

<sup>91</sup> Quoted in LaDonna L. Gunn, “The Protestant ‘Kluxing’ of Cañon City, Colorado” (Local History Center—Cañon City Public Library, 2003).

<sup>92</sup> Golberg, *Hooded Empire*, 120.

Cañon City in the 1920s, remembers that at the local public elementary school most of the kids from the “nearby coal camp communities” were Catholic. He recalls: “During those grade school years it was fashionable for the boys to wear bib overalls. Those of us who had converted to ‘true Americanism’ would write ‘KKK’ in large letters on the bibs of our overalls.”<sup>93</sup> Because of the nearly fifty coal mines in operation around Fremont County and the immigrants they attracted, the number of Catholics in Fremont County tripled between 1916 and 1926.<sup>94</sup> Protestant Klansmen saw Catholicism as a real, immediate, and growing threat.

In response to these perceived threats, the Klan built its organization in Fremont County. The Klan in Cañon City focused on Catholic activities—a highly local concern. This reflected the fact of the county’s small free Black population and the sizable and established Catholic bloc. In fact, Klan members even donated \$25 to the small Olive Baptist Church, the local Black church, after giving a speech dressed in regalia about the Klan’s “friendly feeling toward the negro,” and before burning a massive cross that evening.<sup>95</sup>

The threat of Catholic forces commandeering the government in Cañon City seemed real. In 1923, the first “kleagle” arrived in Cañon City and recruited the minister of the First Baptist Church Rev. Fred Arnold, the county sheriff, and several officers at CSP. These initial recruits became responsible for further recruitment.<sup>96</sup> Fred Arnold, the Protestant chaplain at CSP and leader of the First Baptist Church, was one of the Klan’s first converts in Cañon City and went

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<sup>93</sup> Interview of John Molletti, July 14, 1992. Ku Klux Klan Collection, RGRMHC.

<sup>94</sup> LaDonna L. Gunn, “The Protestant ‘Kluxing’ of Cañon City, Colorado” (Local History Center—Cañon City Public Library, 2003).

<sup>95</sup> “Cañon City Klan Gives \$25—Burns Fiery Crosses,” *Cañon City Daily Record*, 1/1/1925.

<sup>96</sup> A “kleagle” is a recruiter.

on to lead the local chapter and become Grand Dragon, which was the highest official of the organization in Colorado.<sup>97</sup> By January of 1924, the Grand Dragon provided Cañon City Klan No. 21 its charter during a ceremony with 500 members of the Cañon City Klan at which five crosses were burned in the streets of Cañon City.<sup>98</sup> That week, the Klan's official organ, *The Rocky Mountain Klansmen* made its appearance by general distribution in Cañon City.<sup>99</sup> The Klan thrived in Fremont County, growing to 1,800 members or about 25 percent of the free-world population.<sup>100</sup> In 1924, Klan candidates won every election in the county but two. The Klan incorporated a bank in Cañon City and launched effective boycotts against Catholic businesses. In 1925, the Colorado realm named Cañon City its capital and established a headquarters just off Main Street, a stone's throw from CSP's walls. By 1925, the Cañon City Directory publicized the Monday night Ku Klux Klan meeting at Klavern Smith's Hall at 5<sup>th</sup> and Main led by Fred G. Arnold, "Exalted Cyclops."<sup>101</sup> The Klan officials succeeded in paving the streets, building modern schools, and extending park acreage.

Of course, the Klan had also focused on Tynan and the prison. Klansmen helped illuminate some of the ills—real and imagined—of the prison, pushing Governor William Sweet to launch an investigation into conditions there and Tynan's administration. In 1923, Fred

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<sup>97</sup> The "Grand Dragon" is appointed by the Imperial Wizard, who is the supreme ruler (i.e., chief executive) of the Klan.

<sup>98</sup> "Cañon City Klan Organized," *The Rocky Mountain Klansman*, Jan. 30, 1924; "Fiery Crosses are Burned Here Saturday Night," *Cañon City Daily Record*, 1/28/1924.

<sup>99</sup> *Rocky Mountain Klansman*, 1/31/1924, Ku Klux Klan Collection, RGRMHC; "Klan Paper Makes Appearance in Cañon City," *Cañon City Daily Record*, 1/31/1924.

<sup>100</sup> Goldberg, *Hooded Empire*.

<sup>101</sup> The "Exalted Cyclops" is the head of a local chapter elected by its membership. Cañon City Directory, November 1925, "Miscellaneous Organizations," Folder: "Ku Klux Klan – Misc," Ku Klux Klan Collection, RGRMHC.

Arnold, prison chaplain and Klan leader, wrote to Sweet in support of the governor's attempts at reform and in an effort to undermine Tynan: "I see no way to improve conditions from the social and reform standpoint under the present administration. The whole system is punitive. If this is to be the ideal then Warden Tynan does the work well."<sup>102</sup> Upon hearing reports of abuse in the prison and seeing the uptick in escapes in the early 1920s, Governor Sweet launched an investigation. Arnold continued to provide information and testimonies charging wrongdoing and mismanagement.<sup>103</sup> Sweet opposed the Klan, even losing his re-election bid in 1924 to Klan candidate Clarence Morley, but the Klan made a convenient bedfellow in his efforts to remove Warden Tynan. Sweet admitted that he bargained with Klansmen, despite his negative opinion of them and their endorsement of his opponent, to help oust Tynan.<sup>104</sup>

Actually removing Tynan proved particularly difficult because of Colorado's civil service system that protected the warden from removal without cause. The Civil Service Commission found the charges, largely based on Klan members' testimony, against Tynan untrue in their trial.<sup>105</sup> After the Civil Service Commission's trial, during which it came out that Arnold provided information on the prison and Tynan to the investigators and governor, the State Board

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<sup>102</sup> Correspondence from Frederick Arnold to William Sweet, 04/19/1924, Folder: "1924 Correspondence Pertaining to Prison Investigation," FF#4, Box 1 (27160), MSS.613 HCC.

<sup>103</sup> See, for example, correspondence between Frederick Arnold and William Sweet on 09/12/1923, 11/08/1923, 02/21/1924, 05/23/1924, 06/16/1924, 11/15/1924, Box 1 (27160), MSS.613 HCC.

<sup>104</sup> "Ex-Governor Says He Conferred With Klansmen, Despite Opinion of Them, to Oust Warden Tynan," *Cañon City Daily Record*, 2/27/1925

<sup>105</sup> One of Morley's main political issues was the elimination of civil service protections for most state employees, which would enable the governor to appoint and remove state employees at will. Morley's first legislative lobbying effort centered on this, yet these reforms ultimately failed. Goldberg, *Hooded Empire*, 84-89; "Tynan Fully Exonerated," *The Daily Record*, 3/19/1925.

of Penitentiary Commissioners relieved Arnold of his post as chaplain.<sup>106</sup> The trial investigation revealed how the Klan had taken root within the prison's staff, proving particularly troubling for Tynan. One guard, Fletcher J. Homan, admitted to carving the guard room table with the line: "To hell with the pope and with all Catholics."<sup>107</sup>

Sweet asked national prison reformer and leading penologist Thomas Mott Osborne to investigate the CSP in 1924. Osborne served as warden in New York's prison system then at the U.S. naval prison. After his service as warden, he led the National Society of Prison Information and conducted tours and investigations of prisons across the country.<sup>108</sup> By hiring Osborne, Governor Sweet challenged Tynan's status as and projects of reform. After visiting Cañon City, Osborne complained to Sweet that Tynan and his staff resisted the probe and lied to the investigators. Tynan's officers refused to provide Osborne free access throughout the prison and private conversation with the incarcerated.<sup>109</sup> In an article written to members of the National Society of Penal Information after his visit to Cañon City, Osborne charged that Tynan was "a typical warden of the old school: self-satisfied, autocratic, a drunkard, administering an abominable system – a mixture of special privilege for favored 'trusties' and of brutal punishments (floggings, dark cells, ball and chain, etc.) for those who incurred the Warden's hostility."<sup>110</sup> This finding reveals a split among progressive reformers, for Osborne and Tynan

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<sup>106</sup> "Rev. Arnold Is Relieved As Chaplain," *Cañon City Daily Record*, 6/13/1925.

<sup>107</sup> "Commission Commands Tynan To Take Stand In Hearing," *Rocky Mountain News*, 2/20/1925.

<sup>108</sup> See boxes 268-278: Prisons (Inspections & Correspondence), Osborne Family Papers, Special Collections Research Center, Syracuse University Libraries, Syracuse, New York. (Hereafter OFP-SCRC).

<sup>109</sup> Confidential Report to Governor of Colorado, n.d., Folder: "State Prisons: Colorado," Box 271, OFP-SCRC.

<sup>110</sup> Memorandum from National Society of Penal Institutions, February 1925, Folder: "National Society of Penal Institutions—Memoranda," Box 271, OFP-SCRC.



had both spent decades leading prison reform movements. What did Osborne find that turned him against Tynan and the CSP program?

Osborne's report to the governor found that the prison needed more industries, a full-time physician, adequate employment for women, a real school building, a discipline system that was neither harsh nor repressive, and a trusty program that was not arbitrary.<sup>111</sup> Reports of abuse and arbitrary administration were confirmed by former captives, including from Robert E. Lee, who served seven years at CSP under Tynan and "knows something about the brutality which has been practiced at the prison." Lee wrote: "I have long prayed that some step would be taken to move this incompetent brutal warden from the position he now holds. It is miraculous that no one has beheaded that animal before now."<sup>112</sup> Osborne's report detailed that Tynan's punishments included being deprived of privileges, dark cells, solitary cells, striped clothing, having half of one's head shaved, and flogging.<sup>113</sup> This bombshell report led the governor to bring charges against Tynan and reorganize the Civil Service Commission because he concluded that the warden's methods "were wholly unnecessary and extremely cruel."<sup>114</sup>

Colorado's newspapers covered the charges against Tynan with front-page exposes. The *Cañon City Daily Record* defended the prison, but Fred Arnold had warned that "The Record is under [Tynan's] domination and publishes nothing relative to prison matters without his

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<sup>111</sup> National Society of Penal Information, "Report to Governor William E. Sweet," Folder: "Reports and Miscellaneous Material Relating to Prison Investigation," FF#36, Box 1 (27160), MSS.613 HCC.

<sup>112</sup> Correspondence from Robert E. Lee to William E. Sweet, 01/05/1925, Folder: "1925 Correspondence Pertaining to Prison Investigation," FF#12, Box 1 (27160), MSS.613 HCC.

<sup>113</sup> National Society of Penal Information, "Report to Governor William E. Sweet," Folder: "Reports and Miscellaneous Material Relating to Prison Investigation," FF#36, Box 1 (27160), MSS.613 HCC.

<sup>114</sup> Correspondence from William E. Sweet to Frank Fenn, 01/31/1925, Folder: "Correspondence Pertaining to Prison Investigation," FF#12, Box 1 (27160), MSS.613, HCC.

approval.”<sup>115</sup> Other papers, such as Denver and Pueblo papers, were less generous to Tynan’s regime.<sup>116</sup> In response to the charges and investigation, incarcerated people suffered for their cooperation. The warden eliminated prisoners’ trusty status and doled out punishments to those who spoke with investigators and reporters. Despite this policy against cooperation, incarcerated people continued to testify to their experience by speaking openly or smuggling out accounts of their experiences.<sup>117</sup>

As Governor Sweet challenged Tynan’s hold on the prison, he also ran for re-election. He faced Clarence Morley, who was backed by the Klan coalition. During the election, Sweet denounced the Klan stating that he was “unreservedly opposed to the attempt on the part of the Ku Klux Klan to secure political power and control by capitalizing religious prejudice and race hatred.”<sup>118</sup> Morley garnered a majority of the votes in the November election to defeat the incumbent. During his final months as governor, Sweet continued to prosecute Tynan in the Civil Service Commission suit. Ultimately, Tynan prevailed over the charges, which Sweet carried on after his term ended. Despite triumphing over Sweet, Tynan’s power and control diminished significantly.



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<sup>115</sup> Correspondence from Frank Arnold to William Sweet, 05/23/1924, Folder: “1924 Correspondence Pertaining to Prison Investigation,” FF#5, Box 1 (27160), MSS.613 HCC.

<sup>116</sup> For examples see: Folder: “Newspaper Clippings on Prison Investigation,” FF#34, Box 1 (27160), MSS.613, HCC.

<sup>117</sup> Report of Frank Arnold, 11/15/1924, Folder: “Correspondence Pertaining to Prison Investigation,” FF#8, Box 1 (27160), MSS.613 HCC.

<sup>118</sup> Untitled Campaign Speech, 1924, Folder: “Speeches 1924,” FF#23, Box 1 (27160), MSS.613 HCC.

Over the course of the 1920s, Tynan lost his ability to oversee the prison effectively. He faced challenges from incarcerated people, prison officers, local residents, state politicians, and national prison reformers. The abolition of the convict road labor program eliminated a source of pride and support for Tynan. Without the ability to boost his honor guard program and provide locales with road infrastructure, Tynan's supporters wavered. Under continued pressure and facing another wave of civil service charges, he resigned in 1927.<sup>119</sup> The changes under his wardenship reflect how conceptions of labor, self-sufficiency, and reform worked in concert to legitimize a convict road building program. In Colorado, unique history and demographics, combined with a warden who believed himself a reformer and public clamor for good roads, led to an honor convict road labor model. Penologists, citizens, and reformers all believed that incarcerated people owed a debt to society, and they believed that convict road labor could simultaneously allow the captive to repay his debt while gaining dignity and skills. These reformers reflect a moment in which the model of the penitentiary was debated due to new ideals of human behavior and criminality. Because of the lack of data on recidivism, it is impossible to say whether this new penology and labor program proved rehabilitative. This program, though, did relieve some of the overcrowding, a perennial issue and offered opportunities outside of the prison walls to labor and gain good time credit. This innovation still relied on forced labor and the fracturing of prisoner alliances. It led to a renewal of free-labor opposition to convict labor, which pushed incarcerated people to work behind walls. This new model of factory work led to dissent and overcrowding. The reforms of the 1910s and 1920s primed the prison population for

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<sup>119</sup> Gov. William E. Sweet filed charges against Tynan in 1924, but Tynan was acquitted. Gov. Clarence J. Morley, in the final days of his term, likewise filed charges against Tynan, yet Tynan resigned to Morley's successor before those charges could be heard, with the resignation taking effect Feb. 10, 1927.

an uprising that challenged ideas of criminality and pushed the state to modernize systems of control and repression.

#### Chapter 4 - Uprising and Aftermath, 1927-1931

Thomas Tynan's political battle was but one of the changes facing incarcerated people. The end of the honor guard road labor system led to an increased number of people held within the Colorado State Penitentiary. In addition, county and state prosecutors enforced Prohibition laws. These prosecutions led to a dramatic increase in the prison population and stretched the state's resources. "In 1931," Harry Barnes and Negley Teeters determined, "76 per cent of all the inmates of federal and state prisons had been incarcerated for committing acts that had not been crimes 15 years earlier."<sup>1</sup> The inability to care for this influx of captives fomented discontent, compounded by institutional instability that arose in the late 1920s. The prison's shifts in leadership left guards and incarcerated people with uncertainty about policies and procedures. Incarcerated people in 1920s Colorado faced this unstable situation created by forces far beyond the walls of the institution.

Incarcerated peoples' experience was shaped by the broader social and political context. Yet, they undertook dramatic actions to restore their agency by disrupting prison routines. In October 1929, a poorly executed escape attempt resulted in a prison uprising. The events of the Cañon City uprising emerged from institutional and national transformation. This uprising was but one of several that occurred throughout the United States in 1929: Dannemora, New York; Auburn, New York; and Leavenworth, Kansas.<sup>2</sup> Uprisings inspired uprisings. After the events at Auburn Prison, coming one week on the heels of uprising at Dannemora, *The Day* reported on

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<sup>1</sup> Harry E. Barnes and Negley K. Teeters, *New Horizons in Criminology* (Englewood Cliffs, N.J.: Prentice-Hall, 1959), 74.

<sup>2</sup> "3 Convicts Killed, 20 Hurt, 1,300 Riot at Dannemora, Set Fire and Storm Walls; Scene of the Fatal Prison Riot and Fire Set by the Convicts," *New York Times*, 7/23/1929; "1,700 Convicts in Auburn Prison Riot, Two Killed," *The Day*, 7/29/1929; "Prison Riots Due to Heat," *United Press*, 8/2/1929.

this connection: “Following the example set by their fell-convicts at ... Dannemora last Monday, more than 1,700 inmates of the Auburn state prison battled for more than five hours yesterday.”<sup>3</sup>

Until the late 1920s, according to G. David Garson, “prison riots” had been quite rare.<sup>4</sup>

On 3 October 1929, two men tried to escape from CSP. Their plan went awry when they were forced to shoot a guard inside the prison. They took thirteen guards hostage while exchanging gunfire with the guards stationed in the towers along the prison’s perimeter. The prison descended into chaos: some incarcerated people joined the two men leading the escape, others supported the state by putting out fires that had been started, and others still just milled about ignoring their responsibilities. Outside the prison, the state mobilized area residents and the National Guard to restore order. When the warden refused to negotiate with the ringleaders, the incarcerated leaders began killing guards and sending out their bodies. The incarcerated men leading the rebellion recognized their goal of escape was futile, and they ended the events by killing themselves and the guards they held hostage.

In the hours after Danny Daniels and James Pardue attempted escape from CSP, incarcerated people and guards responded. Incarcerated people organized for self-preservation, destroyed property, and saved property. The reactions of people incarcerated at CSP during this momentary collapse of the prison power structure reflects informed expressions of their ideologies. Without sources explicitly stating how these incarcerated people understood their situation, we must read their actions as representative of their beliefs and outlooks. For example,

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<sup>3</sup> “1,700 Convicts in Auburn Prison Riot, Two Killed,” *The Day*, 7/29/1929.

<sup>4</sup> G. David Garson, “The Disruption of Prison Administration: An Investigation of Alternative Theories of the Relationship Among Administrators, Reformers, and Involuntary Social Service Clients,” *Law & Society Review* 6, no. 4 (May 1972): 531-562.

while a group of incarcerated people set ablaze the spaces that represented oppressive labor and social policies, another group of incarcerated people extinguished these fires, working to help authorities regain authority and save the prison infrastructure. Although prison uprisings have been interpreted as organized challenges to state authority and as examples of solidarity amongst captives, the CSP uprising was spontaneous and divided the incarcerated population in surprising ways.<sup>5</sup> In 1929, incarcerated people reacted to the moment based on their own best interests and individual ideologies, some making pragmatic choices based on the assumption that the state would regain control and others exercising their newfound independence to target symbols and spaces of harm. This event refuses simple categorization because the collapse in routinized power structures required incarcerated people to respond immediately, and it forced the state to sacrifice life to maintain carceral control.

The state's response to the events of 3-4 October 1929 showcased the enduring features of the carceral system: repression and fear. First, lives of individual officers upholding the system were considered expendable. The administration refused to negotiate with the faction of incarcerated people holding thirteen guards hostage, instead sacrificing these keepers' lives in pursuit of its policy of force that, in theory, deterred any future rebellion. Any perceived weakness in the carceral project, the administrators argued, represented a liability. Second, the response reveals how the state saw the threat to its carceral order in the same lens as the threats to its economic order. In the preceding decades, Colorado corporations faced stoppages and

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<sup>5</sup> On the complex motivations and actions of those involved in prison uprisings and prison organizing, see: Orisanmi Burton, "Organized Disorder: The New York City Jail Rebellion of 1970," *The Black Scholar* 48, no. 4 (2018): 28-42; Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy* (New York: Vintage Books, 2016), 3-40; Dan Berger, *Captive Nation: Black Prison Uprising in the Civil Rights Era* (Chapel Hill: university of North Carolina Press, 2014), 139-176; Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (New York: Routledge, 2018), 72-107.

demands from united laborers.<sup>6</sup> The state responded to the CSP uprising with the same tactics and reasoning with which it responded to labor solidarity. Together, these events reveal the state's unwavering dedication to exercising a policy based on control and power—a policy the state wielded through lethal force. Following the use of force, the state rebuilt its power by controlling information and the narrative of events. In the aftermath of the uprising, the warden and governor received widespread praise from free-world onlookers, newspaper reporters, politicians, and prison officials across the United States who approved of the forceful response to the rebellion.

In the years after the uprising, the prison expanded its capacity to repress and punish. Ignoring grievances of incarcerated people and their allies that had come to the fore during the uprising, state officials orchestrated a publicity campaign that cast themselves as the heroes of this tragic event and justified an expansion of carceral capacity. The state's response failed to meet the incarcerated peoples' grievances—overcrowding, lack of activities, favoritism—and instead responded to the fear of another uprising that would threaten the reputation and legitimacy of the carceral system.



Understanding the uprising of 1929 and the state's response to it requires seeing a longer arc. In general, the uprising grew out of administrative instability and a major shift in captives' work opportunities. As counties stopped hiring incarcerated people to work on roads, the prison turned to two main sources of convict labor: the automobile license factory and the cannery. The

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<sup>6</sup> For most detailed history of Colorado's infamous strike and massacre at Ludlow, particularly on how the state and capital responded to labor concerns with violence: Thomas G. Andrews, *Killing for Coal: America's Deadliest Labor War* (Cambridge: Harvard University Press, 2010).



automobile license factory opened on prison grounds in October 1925. By September 1929, the *Cañon City Daily Record* reported: “Prison License Factory Proves Very Efficient.” The journalist wrote: “The motor vehicle license plate factory under the direction of Warden Crawford has been brot [sic] to a state of perfection in its equipment and in the quality of its work never previously attained and is in equal to any plan of its kind in the country.”<sup>7</sup> The factory produced 3,600 pairs of license plates per day, and its capacity was nearly double that. However, the efficient factory employed only sixty men, a significant decrease from the number employed at convict road labor camps—each camp requiring about sixty-five incarcerated laborers.<sup>8</sup> The license plate factory had other comparative disadvantages: the labor was indoors under worse conditions than road labor across the state and it failed to provide the same good time credit that road work had. The conditions in the factory were cramped and did not offer any unsupervised time, as the road camps had. The factory, though, was profitable. The automobile license factory proved, from an administrative standpoint, to be one of the most successful labor programs at the prison, continuing into the twenty-first century despite attempts by legislators from other parts of the state to open the contract to private manufacturers. For the next eight decades, the plant remained one of the prison’s most profitable ventures.<sup>9</sup>

The other new convict labor program was the cannery. In 1925, the penitentiary purchased a cannery, which sat a few blocks outside the prison in downtown Cañon City at 8<sup>th</sup>

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<sup>7</sup> “Prison License Factory Proves Very Efficient,” *Cañon City Daily Record*, 8/27/1929.

<sup>8</sup> “Prisoner Road Camp at Five Points Is the Largest in Colorado” *Florence Citizen*, 1/28/1915.

<sup>9</sup> “They’ve got your number...License-plate plant is gem of prison industries program,” *Pueblo Chieftain*, 4/12/1993.

St. and Water St. Within four years, the state had paid off the cannery.<sup>10</sup> Farms and ranches around Cañon City, operated by prison and free-world farmers, produced plums, rhubarb, cherries, beets, apples, tomatoes, and other fruits and vegetables that incarcerated people canned. The factory provided much of the canned food for the prison and other state institutions. In the biennium ending November 1930, Warden F.E. Crawford reported sales of over \$125,000 in canned goods from the Colorado Packing Plant. The cannery employed an average of only eighteen men, all of whom worked indoors.<sup>11</sup> The canning factory, like the license plate program, provided fewer job opportunities and did not offer the same benefits to the laborers as the road program had. The prison canning plant continued to operate and produce a small profit of about \$12,000 per year over the next decade.<sup>12</sup> The changing labor policies were one part of the dissent fomenting in the 1920s.

The second major issue that exacerbated tension in CSP was overcrowding. The last cellhouse before the 1929 uprising had been completed in 1905 when the prison's population was 681 people. Twenty-five years later, that same space now housed 1,081 captives.<sup>13</sup> The prison population had held relatively stable through the 1900s and 1910s. In 1918, the average daily count was 635 incarcerated people. In the years after, the population rose dramatically,

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<sup>10</sup> "27<sup>th</sup> Biennial Report of the State Penitentiary of Colorado, Ending November 30, 1930," page 17, Box 14794 "Parole and Reports," Department of Corrections Collection, Colorado State Archives, Denver, Colorado (Hereafter: CSA).

<sup>11</sup> "27<sup>th</sup> Biennial Report of the State Penitentiary of Colorado, Ending November 30, 1930," page 18 and 43, Box 14794 "Parole and Reports," Department of Corrections Collection, CSA.

<sup>12</sup> Elinor Myers McGinn, *At Hard Labor: Inmate Labor at the Colorado State Penitentiary, 1871-1940* (New York: P. Lang, 1993), 140.

<sup>13</sup> Not all of the people incarcerated at CSP were held in the penitentiary in cells. Some, dependent on their status, were on farm labor, road labor, or other outside labor crews. But, in theory, CSP should be able to hold all men under its care.

breaking 1,000 people for the first time in 1927.<sup>14</sup> This type of spike in prison population occurred across the United States in the 1920s, and it reflects a new definition of crime and an expanded mechanism for enforcement. In 1916, Colorado's legislature enacted Prohibition laws.<sup>15</sup> Shortly thereafter, the U.S. ratified the Eighteenth Amendment prohibiting the sale, transport, and manufacture of alcohol. The U.S. Congress passed the Volstead Act to enforce this new law. Lisa McGirr argues that the bureaucratic system that developed around the racist and classist enforcement of Prohibition laws constitutes the roots of the carceral state.<sup>16</sup> State and federal authorities demonstrated their ability to criminalize behaviors, and the enforcement of this criminalization disproportionately hurt marginalized populations.

An average of 230 of the people incarcerated at CSP at any moment in the 1920s were there because of bootlegging or other alcohol-related crimes.<sup>17</sup> The expanded prison population stretched CSP's resources. Bed space was limited, which forced authorities to be creative, and they turned the barn into another cellhouse by adding cots. This action generated immediate dissent among incarcerated people, as it had material consequences on the captives' health and the facility's sanitation. In 1928, the Colorado State Board of Health inspected all state public institutions. The Board found that CSP's plumbing, as a whole, was "very poor." The report also concluded that the quality of handling and preparing foods was satisfactory, and "there may be

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<sup>14</sup> "Average Daily Count," Julie Whitmore Collection, Royal Gorge Regional Museum and History Center, Cañon City, Colorado (Hereafter: RGRMHC).

<sup>15</sup> Ted Richtofen, "Prohibition," *Colorado Encyclopedia*, accessed at <https://coloradoencyclopedia.org/article/prohibition>.

<sup>16</sup> Lisa McGirr, *The War on Alcohol: Prohibition and the Rise of the American State* (New York: W.W. Norton & Company, 2016).

<sup>17</sup> "Average Daily Count," Julie Whitmore Collection, Royal Gorge Regional Museum and History Center, Cañon City, Colorado (Hereafter: RGRMHC).

some question as to the quality of meats.”<sup>18</sup> The concerns over food quality come from the fact that the penitentiary’s budget remained relatively stagnant as the prison population had nearly doubled.

The third major change that contributed to instability was the changing political and administrative situation in Colorado. Governor William H. “Billy” Adams, inaugurated in 1927, won as a reform candidate who accused the prison of mishandling state funds and coddling captives. After insisting that prison ought to be a place for punishment, Adams rejected all requests for pardons or interventions into the death penalty. He held that he “would grant no pardons to inmates during his administration” in order to “never compromise with crime.”<sup>19</sup> True to his word, he never signed any pardon. In fact, after the 1929 uprising, he had qualms about whether to reward the incarcerated people who supported the state during the event. The fact that Adams refused to support any pardons, coupled with the shifting labor policies that reduced opportunities for extra good time, meant incarcerated people had little hope of earlier releases.

After Thomas Tynan resigned, Governor Adams replaced him with Boone Best, a strict disciplinarian. Best, however, died six months into his tenure under suspicious circumstances. In August 1927, Best’s chauffeur, a man incarcerated at CSP, was driving the warden home from Rocky Ford when a Denver & Rio Grande freight train struck their vehicle at the Ninth Street crossing. The accident sent Best into a coma; he died from complications a few weeks later. The

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<sup>18</sup> “First Annual Inspection of All State Institutions by the Colorado State Board of Health,” 1928, Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

<sup>19</sup> Quoted in Wayne K. Patterson and Betty L. Alt, *Slaughterhouse in Cell House 3: The Anatomy of a Riot* (Indianapolis: Dog Ear Publishing, 2010), 13.

chauffeur, who managed to escape the car before the crash, was uninjured.<sup>20</sup> While he claimed that the car failed on the tracks and Best did not have time to escape, speculation abounded throughout the prison and community that the chauffeur had killed Best by stopping on the tracks.<sup>21</sup> Governor Adams replaced Best with F. E. Crawford, who maintained Best's strict discipline policy. Operation of the institution largely depended on the penal philosophy of the warden, so the rapid succession of leaders from Tynan to Best to Crawford created chaos within the ranks of the prison staff and among the incarcerated people.



Despite the changing dynamics within the institution, the keepers tried to maintain a regular routine for themselves and their captives. The consistency and predictability of daily life allowed keepers to surveil and control more efficiently. Bells dictated each day's routine within the Colorado State Penitentiary, telling captives and keepers alike where they needed to be and what they ought to be doing. In the years between the demise of the convict road labor program and the October 1929 uprising, the prison day began with a bell at 6:00 am. Then, incarcerated people dressed in their cells and stood with one hand on the door for the day's first count. Two bells marked a successful count, and another bell told a guard to open the cell doors for a communal breakfast. The 8:00 am bell signaled the start of the workday. Those incarcerated men who earned trusty status could hold work assignments outside the facility grounds, such as on farms, ranches, or local infrastructure projects, where they could accrue extra good time. The

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<sup>20</sup> "Warden Best Dies This Morning," *Cañon City Daily Record*, 8/30/1927.

<sup>21</sup> "General Clippings" in Folder "Best Family," RGRMHC.

non-trusty men worked within the facility doing jobs such cooking, laundry, cleaning, shoveling coal, repairing the facility, breaking stone, or manufacturing license plates.

The 11:00 am bell then told the trusty laborers to go to the dining hall for their dinner meal. The 11:45 bell ended the trusty meal and sent the non-trusty laborers back to their cells for a count before their meal. The 11:55 bell signaled a successful count and told guards to release these men to the dining hall for their meal. During the mid-day meal, like with all meals at CSP, guards strictly enforced the silent system. During these meals, one guard would lock himself in the “crow’s nest,” a cage elevated above the dining room, with a rifle. This guard’s role was to ensure the dining room, where the most men were gathered at one time, remained orderly and silent. The rifle, which remained locked in the crow’s nest at all times, was the guards’ only weapon within the facility. At 12:20, another bell signaled the end of this meal. After the men left the dining hall, the guard in the crow’s nest unloaded the rifle, descended the ladder, and locked the cage.

The bells continued to ring throughout the day. They told men where to go and indicated successful counts of the prison population. Each day included four full counts of the captives. At the end of every day, the 9:00 pm bell told incarcerated people to return to their cells and stand for final count, and the final ring at 10:00 pm told the keepers to extinguish the lights. This routine was rarely interrupted. Only punishments, escapes, illnesses, and releases freed prisoners from the daily routine marked by these bells and the four full counts.



The day of the uprising began like all others.<sup>22</sup> But 3 October 1929 would not proceed like those days prior. A complete count on this day totaled 786 captives. Barring anything unexpected, guards should have accounted for those 786 incarcerated people four times that day. The first morning count was the day's only count with 786 people.

On 3 October 1929, two captives—James Pardue and Danny Daniels—planned to escape. At the age of twenty-one, Pardue had been sentenced to serve twenty to thirty years for a series of robberies with a dangerous weapon. In October 1929, Pardue's work assignment at CSP was to move coal from the yard's coal pile to the prison's boiler room. The 1929 escape attempt was not his first. He had successfully escaped from Missouri's penitentiary years prior, and he had attempted to escape from CSP in 1925. Daniels arrived at CSP after being convicted on two counts of attempted murder only two years before he and Pardue would attempt their escape. A veteran of the Oklahoma State Penitentiary and wanted by the United States Attorney for Tulsa, Daniels, like Pardue, was no stranger to law enforcement and incarceration. At the time of the uprising, Daniels worked in the prison laundry. Because of their history of escape attempts and violence, both men were under strict scrutiny. Neither attained trusty status. Indeed, in October 1929, Warden Crawford and Deputy Warden W.H. "Billy" Green warned officers on duty to keep a close eye on the pair. A few weeks earlier, Captain Clyde Smith had warned his

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<sup>22</sup> This account is drawn from: "Statement of O.A. Earl, Oct. 19, 1929," "Statement of George E. Colgate," and "Statement of M.J. Conway," all in Folder "Statement—Report from OFFICERS 1929 Riot," RGRMHC; "Account of Inmate Paul Kuehn," Folder "1929 Riot Eyewitness Acct.," RGRMHC; "Recommendations and Statement From Warden F.E. Crawford," Folder "Statement from Warden F.E. Crawford," RGRMHC; Report of the Investigation of the Riot at Colorado State Penitentiary, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA; Patterson and Alt, *Slaughterhouse in Cell House* 3. There is some contradictions within these reports, but the overall narrative is consistent; where contradictions arise in the narrative below, specific citations are offered.

colleagues to watch Daniels and Pardue carefully because he suspected the two of “trying to smuggle or actually smuggling guns and ammunition into the prison.”<sup>23</sup>

During the count before the non-trusty meal on October 3, Daniels and Pardue were absent from their cells. Their cell-house keeper, who should have alerted the Shift Captain of this absence, failed to notify anyone. When they should have been in the dining hall eating silently, Daniels and Pardue waited for the meal to end in a dormitory just above the dining hall. While they waited, they changed into civilian clothing and readied the revolver they had smuggled in. Most investigators and incarcerated people believe that Pardue had smuggled in the weapon by having a free-world ally hide the weapon in the coal delivery, which Pardue would then uncover and hide in the course of his regular prison work assignment.<sup>24</sup> After the 12:20 bell rang to clear the dining call, E. G. “Shorty” Erwin, who was on duty in the crow’s nest, climbed down the ladder into the dining hall. As Erwin descended, Pardue and Daniels waited below. The two men wanted to subdue Erwin without attracting attention, take the rifle from the crow’s nest, and exit the prison without drawing attention due to their civilian clothing.

The plan went awry immediately. Pardue shot Erwin twice, fatally wounding the guard. Although Erwin may have tried to fight off Pardue and Daniels, by following orders to lock the rifle in the crow’s nest when he descended, he had eliminated his most effective form of defense. Pardue and Daniels unlocked the cage and took the rifle.

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<sup>23</sup> Patterson and Alt, *Slaughter*, 16; “Pardue, James #12822,” Inmate Identification Card Records, MCP; “Daniels, Albert A. #14277,” Inmate Identification Card Records, Museum of Colorado Prisons, Cañon City, Colorado (Hereafter: MCP).

<sup>24</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, Folder 18 “Penitentiary Committee to Investigate Riot,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.



The two shots in the dining hall echoed throughout the penitentiary. They warned captives and guards that something extraordinary was afoot. Pardue and Daniels then rushed towards the front of the building and tore out the telephone apparatus, eliminating any flow of information from the inside. Pardue and Daniels then went to the second floor of the building to shoot the tower guards who could prevent their movement across the yard to the gate. While the guards' only gun within the prison was the rifle in the crow's nest, the tower guards carried arms and had permission to shoot. From the second floor of the building, Pardue shot and killed Walter Rinker, who was stationed in the tower above the Administration Building. Moving, then, to another window, Pardue shot and killed Raymond Brown, who was stationed in North Tower #9. From his position, Pardue could also aim and fire at James Pate, who was stationed in the West Gate Tower. Pardue and Pate traded shots, yet none hit their target. Pardue then traded shots with Myron Goodwin. Goodwin's position in Tower #1 oversaw the West Gate, making him a crucial defense in any escape attempt. Goodwin shot Pardue during this exchange. The shot did not kill Pardue, but it fractured his pelvis and made him a liability to the escape plan.

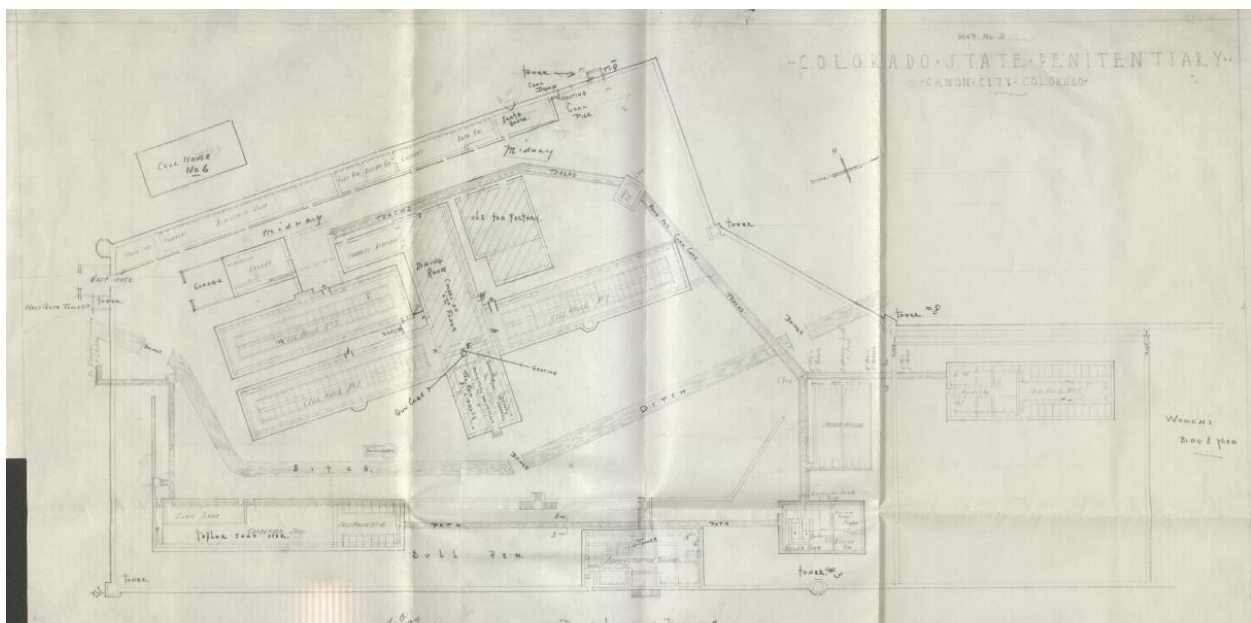


Figure 4.1: Map of Colorado State Penitentiary, 1929. Map created during the investigation of the October 1929 uprising. Courtesy of Colorado State Archives.

While Pardue was shooting at the guards in the tower, Daniels took control of the prison. During the firefight, the inside guards left their posts and took refuge in Cell House One. At the same time, incarcerated people reacted to their newfound freedom by taking cover, joining the escape attempt, or causing damage. Some remained in their cells or continued to perform their work duties. Others wandered around the prison yard to investigate the commotion. A.R. Davis and Leo McGenty joined with Daniels to subdue guards. They rounded up the thirteen guards within the prison and went to Cell House One, using the guards as well as other assembled prisoners as a protective screen against the threat of fire from the towers. In Cell House One, Daniels ordered the hostages to dig a hole in Pardue's previous cell. From this hole, Daniels recovered another gun and ammunition, which had been smuggled in previously.

Another incarcerated person George "Red" Reilley took advantage of the unintended opportunity of collapsed authority and set the place on fire. Reilley took gasoline from the kitchen and set fire to the chapel, only after breaking all the furniture. The fire ultimately gutted the chapel, dining room, deputy warden's section, and dormitory. Reilley could have started the fire where he collected the fuel—the kitchen. Instead, he started the fire in the chapel. The chapel symbolized the longstanding efforts to shape incarcerated people through religion, music, and education programs. Next, Reilley set fire to the auto tag factory, surely an action that represented his own deep discontent with that new system of labor. After lighting the blazes, Reilley joined Daniels' crew in controlling the masses of captives—incarcerated people and guards.

Daniels, Davis, McGenty, and Reilley recognized a successful escape would be nearly impossible with Goodwin in Tower #1 and Pate in the West Gate Tower. To gain a better shooting position, this group again used their hostages as cover to move to the tailor shop. From

there, Davis shot Goodwin who would succumb to the wound a week later. Davis failed, however, to hit Pate. Daniels now recognized the difficulty of an easy escape per the original plan. Improvising, he made a new plan to trade the guards he held hostage for safe passage. Daniels and his co-conspirators took the officers to Cell House Three to begin negotiations. By this point, Cell Houses One and Two were ablaze after the fires that Reilley started spread.

The guards on the outside had secured a bullhorn and ordered the incarcerated people to wait in the “bullpen” (a subsection of the yard). Many incarcerated people walked around the bullpen shouting and cursing at both prison authorities and their fellow captive, Daniels. Maybe 400 people followed orders to wait; hundreds more refused. Instead, they remained around the yard or cells, starting small fires, breaking furniture, and yelling. Even in this chaos, fights among incarcerated people never materialized.<sup>25</sup> Instead, they focused their ire on the infrastructure of incarceration, not their fellow captives. As the sun began to set, Daniels organized the prison for his negotiations. He held the hostage guards in Cell House Three. Many prisoners continued to wait in the bullpen or create chaos throughout the facility, until they filed into Cell House Three to hunker down for the night.

While instability within the prison allowed Daniels to gain control, Cañon City mobilized outside the facility. After the first two shots rang out from the dining hall just after 12:20 pm, the Colorado Power Company got word from Captain Clyde Smith to sound its siren. The siren summoned both off-duty guards and hundreds of area residents. Those on the outside had very little information about what was going on within the prison. O. A. Young, who had just moved to Cañon City a year earlier, was having lunch at home when he heard the siren and noticed the

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<sup>25</sup> Statement of O.A. Earl, Oct. 19, 1929,” Folder “Statement—Report from OFFICERS 1929 Riot,” RGRMHC; “Account of Inmate Paul Kuehn,” Folder “1929 Riot Eyewitness Acct,” RGRMHC.

commotion. He and another neighbor walked over, and when they arrived, they were each handed a rifle and told to “report to one of the walls and shoot any convict they saw trying to escape.” Despite Young not being an employee of the prison and not wanting to shoot, he was deputized and remained at his post until after 10:30 that evening, when the state militia took over from him.<sup>26</sup>

Deputy Warden Green called Warden Crawford, who was in Colorado Springs that day. Crawford immediately returned to Cañon City, some sixty miles south. Green notified Governor Billy Adams and the National Guard. By 3:00 pm, the Howitzer Company 157<sup>th</sup> Infantry of the Colorado National Guard arrived at the prison with their rifles, machine guns, and a 155 mm howitzer. When the National Guard arrived, they offered to invade the prison but were instead directed to assist local police with crowd management. Hundreds of people had gathered outside the prison gates. When Crawford arrived about half an hour after the National Guard, he met with the prison’s officers, local police, and the National Guard. Because no one knew how many guns the prisoners held or who the leaders were, developing a plan was difficult.



Figure 4.2: Pen riot National Guardsmen. National Guard member pictured after the uprising with wheel-mounted artillery. Windows and stone in the wall in background are broken. Image X-17896, Denver Public Library.

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<sup>26</sup> Oral History of O.A. Young, Transcribed by Julie Whitmore, Folder: “00.011.091”, Julie Whitmore Collection, RGRMHC.

From the outside, observers could see the flames and destruction, but the destroyed telephones limited any further information. As afternoon turned to evening, fire had gutted the dining room, the deputy warden's office, the chapel, and the dormitory above the dining room. It had also done "great damage" to Cell House One and Two and the automobile license shop.<sup>27</sup> Throughout the afternoon, two guards and several incarcerated men fought to contain the fire. Cell House Three filled up with most of the prison's population. Daniels and his crew maintained control of the cellhouse, including the thirteen guards.

At this point, ring-leader Danny Daniels turned to negotiating his escape. At about 5:00 pm, Daniels sent two guards, Thomas and Schill, out to the warden with a message: "That three cars were to be sent in, in good condition, with plenty of gas and oil, that the west-gate was to be left wide open, that all the guards there should be withdrawn, that they would take the captive guards with them as shields but that they would be turned loose at a safe distance from the penitentiary; this this should be done about as darkness came on; and if the demand was not met I [Daniels] am going to kill every God Damn one of them [the guards]."<sup>28</sup> After hearing this message, Warden Crawford sent into the prison a Black prisoner named Jones who had been working in the administration building with the warden's response: "No deal." At about 8:00, Daniels shot and killed guard J. J. Eeles, and then had incarcerated men carry Eeles' body to the west gate. No response came from the warden. Half an hour later, Daniels shot and killed another

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<sup>27</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, page 22, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

<sup>28</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, page 23, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

hostage, guard Robert A. Wiggins, whose body was brought to the gate. As the night wore on, Daniels sent another guard, alive, to renew his demands.

As the guards' bodies arrived at the gate, the warden's fears were realized: Daniels' threats were not empty. Warden Crawford, however, continued to insist that he would not negotiate. The only ending that Crawford would accept was complete surrender. Crawford met with police, guards, and area residents to brainstorm how to retake the institution. Father Patrick O'Neill, a pastor at the local Holy Cross Abbey, and James Byrne, a miner from Pueblo, suggested that the warden use dynamite to gain access to Cell House Three. Under cover of gunfire, O'Neill and Byrne carried fifty pounds of dynamite to the side of the cellhouse. The explosion, however, failed to open up Cell House Three, though it shattered windows throughout Cañon City. To regain control, Marion Keating, a local World War I veteran, suggested tear gas as a way to flush out the rebels. Keating threw tear gas through the broken windows.



Figure 4.3: Mutiny at Colo. State Penitentiary Oct. 3 1929. Smoke billowing from the prison during the events of Oct. 3. Image X-17894, Denver Public Library.

The tear gas incited action. Daniels ordered the remaining guards out of the cell, and he shot them. Although two died from their gunshot wounds, six ultimately survived. Daniels, however, did not shoot one guard, O. A. Earl. He needed Earl to take a message outside—that after killing all those guards, the ringleaders would take their own lives. Earl recalled that Daniels told him: “We are going to bump ourselves off pretty soon. We are at the end of our rope. I want you to go out and tell the folks outside that we are all dead... And don’t go before daylight. They can’t start business until daylight, and at daylight they will tear this building down and kill a lot of innocent fellows, if there aint something done.”<sup>29</sup> After hearing the gunshots and waiting, Earl lit a match to look around, and he saw that Pardue, Davis, Reilley, and Daniels were dead. As daylight broke, Earl went out to the west gate and told the crowd that Danny Daniels, James Pardue, A. H. Davis, and Red Reilley were all dead. National Guardsmen searched the cellhouses and found another dead incarcerated man, Albert Morgareidge, who the investigation determined, “was probably struck by a stray bullet from either inside or outside while on one of the upper tiers, and his body fell to the floor.”<sup>30</sup> With this, the uprising at CSP ended. The final accounting brought the total casualties to thirteen men killed and ten wounded.



The state’s attempts to end the uprising clearly revealed the single-minded logic of the carceral state: the use of fear and force to maintain power. Refusing to negotiate, then using dynamite and tear gas on a building with hostages, underscores how the state opted to martyr

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<sup>29</sup> Statement of O.A. Earl, Oct. 19, 1929,” Folder “Statement—Report from OFFICERS 1929 Riot,” RGRMHC.

<sup>30</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, page 26, Folder 18 “Penitentiary Committee to Investigate Riot,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

individual guards for the sake of showcasing state power. To be sure, the facility had been set ablaze and some tower guards had been killed before the takeover effort. The refusal to negotiate was not abnormal with challenges to state authority in this era. Authorities generally refused to negotiate in cases of either prison uprisings or labor strikes. The structure, incarcerated people, and guards constituted collateral damage in the pursuit of power.

The end of this uprising brought a new contest—over the future of the institution, its policies, its leadership, and the legacy of the event. Garrett Felber argues general carceral logic dictates that prison administration and captives within these institutions enact a “dialectic of discipline” in which freedom work by incarcerated people is met with new, harsher forms of discipline, which subsequently spurs new forms of freedom work, and so on.<sup>31</sup> Colorado, in turn, used this uprising to justify its new projects. The rebuilding efforts prioritized hardening defenses of the facility and resurrecting the productive spaces. The institution fortified walls and towers, segregated incarcerated people, expanded convict labor, and built a 300-foot tunnel between the Administration Building and the new Central Building “for the purpose of affording guards with protection from rifle fire in the event of a riot, such as was experienced at the penitentiary here in October 1929.”<sup>32</sup> These new construction projects represented, in the eyes of the state, a proportionate and logical response to the human and property loss suffered.

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<sup>31</sup> Garrett Felber, *Those Who Know Don't Say: The Nation of Islam, the Black Freedom Movement, and the Carceral State* (Chapel Hill: University of North Carolina Press, 2020).

<sup>32</sup> While excavating for the tunnel, the incarcerated laborers discovered a “dungeon” that was 20 feet long, eight feet wide, and ten feet high. Those at the prison reported that it had been part of the federal structure originally built, but the author has found no evidence of when the dungeon was constructed, what it was used for, or when its service ended. “Tunnel Built To Connect Buildings At State Prison,” *Cañon City Daily Record*, 2/21/31; “Tunnel Is Found Under Old Hall At Prison Here,” *Cañon City Daily Record*, 4/11/30.



The state carefully cultivated a narrative of events to build support for the carceral state, ever aware of the importance of public opinion. Newspapers from across the country reported on the events at CSP. Warden Crawford attempted to control the news coverage by releasing information favorable to the state's actions, such as lurid descriptions of incarcerated peoples' crimes or photos showing destruction within cellblocks. Crawford, moreover, immediately released recommendations that would, in his estimate, have prevented such a catastrophe. Most of the recommendations focused on the guards—increasing their pay, training them better, establishing a pension fund, and instituting an age limit of forty-five. Other recommendations included new laws that would make sentences more equal, provide more work opportunities (e.g., agriculture and road building), and fund new facilities.<sup>33</sup> Crawford's reports and recommendations served to deflect blame and build support for the carceral state's continued legitimacy. Elected officials, district attorneys, and businesspeople from across the state lauded Warden Crawford's firm stance. Governor Adams, for example, praised Crawford for "his resistance of the demands of the ring leaders in seeking freedom."<sup>34</sup>

Public reporting during and immediately after the event shaped perceptions of the uprising and the carceral system. Many reports, such as that of the *Florence Daily Citizen*, published while the crisis was still unfolding on the afternoon of October 3, invented some details: "The worst mutiny in the history of the Colorado state penitentiary at Canon City with 600 prisoners participating broke out ... when the large dining room was filled with prisoners

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<sup>33</sup> "Recommendations by F.E. Crawford, Warden, after 1929 Riot" Folder: "Statement from Warden F.E. Crawford," MCP.

<sup>34</sup> Quoted in Patterson and Alt, *Slaughter*, 3, 61.

who were partaking of the noon day meal.”<sup>35</sup> Although over 600 men were inside the facility, not all of them participated. The dining room, too, was empty at the start of the event save for Daniels, Pardue, and Erwin. Adding that “There is so much turmoil and confusion among the populace of Cañon City who are terrorized by the reports from the prison” heightened anxiety and increased chaos. Calling the event a “mutiny” rather than a “riot” or “rebellion” laid the groundwork for the militarization of the prison. The United Press contributed dramatized details to heighten and sensationalize the violence of the incarcerated people: “Guards were savagely murdered by the blood-thirsty leaders... dynamite barrages of machine guns and rifle bullets and tear bombs failed to vanquish the rioters.”<sup>36</sup> As prison administrators developed their narrative of the uprising, reports from across the country echoed their rhetoric. These reports failed to question the information and bias of their sources. The reports, moreover, used visuals to showcase the destructive abilities of incarcerated people. Within a week of the uprising, for example, New Yorkers watched the ruins of the state penitentiary on the screens of theaters, which Paramount news photographers M. G. McCairol and J. R. Johnson had taken and rushed to distribute in time for upcoming performances.<sup>37</sup> Reporters and the public accepted the purportedly violent and savage nature of all incarcerated people as fact.

While a few accounts insisted that Warden Crawford should have negotiated with the incarcerated men to save officers and infrastructure, the overwhelming majority praised his decision. Crawford’s defenders used four approaches common in carceral logic. First, they

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<sup>35</sup> “Mutiny Breaks Out in State Penitentiary,” *Florence Daily Citizen*, 10/3/1929.

<sup>36</sup> “Daniel’s Suicide Ends Penitentiary Mutiny,” *United Press*, 10/4/1929.

<sup>37</sup> Clipping “Motion Pictures of Prison Ruins,” 10/7/1929, Binder: “Index of Prisoners Involved in Riot, Escape, Etc. Oct 1929-1931 with Transcripts of the Actual Articles,” RGRMHC.

argued that negotiating with incarcerated people would set a precedent that other imprisoned people would press to their advantage. This argument acknowledged how information flowing among incarcerated people was a danger because it showed that violent rebellion could yield results. Second, Crawford's defenders argued that the warden and guards within the prison "had volunteered their lives toward any time of necessity as surely does the enlisted soldier." An editorial from the *Portland Oregonian* continued: "Regrettable as the murders of the four [sic] prison guards, they died—even as they were pledged to die—for the protection of the state they served."<sup>38</sup> This editorial and the type of argument it represents privileged the protection of "the state" as the goal of the prison and reinforced the military metaphor. Third, they made the argument that Crawford lacked the legal authority to release captives. Fourth, writers argued that Crawford's decision protected the surrounding population. This argument rested on the assumption that those who escaped would commit harm to people in the free world. The argument was not unfounded in the case of Daniels and his coconspirators, who had killed guards, but it was extended generally to the entire prison population. It simultaneously legitimized a vision of punishment as for "bad people" and stoked fear within the population of incarcerated and formerly incarcerated people.

While Colorado's political leaders made the case publicly that Crawford acted appropriately and the officers died for the protection of all people, political fighting over the episode contributed to more institutional chaos. Accounting for the damage went beyond the material damage to the property, which was immense, but included figuring out how and why this event transpired. The legacy of the uprising cast a shadow over state politics, guards' jobs,

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<sup>38</sup> *Portland Oregonian*, 10/9/1929.

prisoner trust, convict labor, and administrative stability. In the aftermath of 3 October 1929, distrust spread and finger-pointing ran rampant. The immediate consequences played out in local, state, and national arenas.

People living in Fremont County and working at CSP, including incarcerated people, all worried. The uprising hastened a reckoning over the future of a community dependent on incarceration. Some residents urged the governor to move the prison away from Cañon City. Mrs. Gryndene-Smith of Cañon City, for example, wrote to Governor Adams with her idea: “I most earnestly ask that the State Penetentiary [sic] be moved from Canon City. I have lived under its menace for forty three years and realize that it has outgrown its environment.” She even offered the state \$1,000 to move the prison.<sup>39</sup> Another local, A.L. Taylor, concurred: “The people of Canon City and Fremont County feel that they are entitled to some protection and they are not getting it and it would seem like the City will have to move or the Penn taken away from here.”<sup>40</sup> Other communities capitalized on the reactive fear in Fremont County, recognizing the economic rewards they could reap if they won the prison. The Fort Morgan County Chamber of Commerce, for example, suggested that the governor move the prison to Morgan County where “the prisoners be employed in the raising of beets for the reason that in such employment a large number of men may be concentrated under very few guards.”<sup>41</sup> The interest of other counties

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<sup>39</sup> Letter from Mrs. Greyndene-Smith of Canon City to Governor Adams, 10/6/29, Box 26818 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

<sup>40</sup> Letter from A.L. Taylor (of Canon City) to Governor Adams, 2/7/1930, Box 26818 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

<sup>41</sup> Letter from Judge Alfred Dulweber (of Fort Morgan) to Governor William Adams, 10/7,1929, Box 26818 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

across the state reveals the extent of public dissent within Fremont County and how communities saw carceral facilities as economic buoys.

Although some in Cañon City argued that the prison should be removed, most residents recognized that the local economy depended on it. David Robinson voiced the “Tax Payers point of view” when he argued: “As a resident of Canon City and the largest individual tax payer in Fremont County, my interests all being in or near Canon City, am very much in favor of the State purchasing a farm [for convict labor] in this section and hope you will pay no attention to petitions signed by people in this vicinity.”<sup>42</sup> Robinson’s view confirmed that local elites viewed the prison as a positive good and actively sought its expansion. His economic argument challenged the emotional plea of residents who worked to block the prison’s expansion in Fremont County. In the aftermath of the uprising, Fremont County, as David Robinson expected, received some benefit: a building boom that employed suppliers, overseers, planners, and contractors.<sup>43</sup>

Despite the state’s redoubled investment in Fremont County prisons, fears about safety roiled the community. In the aftermath of the event in which eight prison employees were killed and ten wounded, families worried about the safety of these prison jobs. Families and guards worried that they would be sacrificed to maintain the facility’s security. The guards’ salaries were not extravagant, but they provided a stable income. This dissent was exacerbated when guards received some of the blame for the uprising. The state’s investigation into the uprising

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<sup>42</sup> Letter from David L. Robinson (Cañon City), 2/5/1932, Box 26818 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA. Robinson had lived within the four blocks of the penitentiary for forty-eight years.

<sup>43</sup> “1929-1930 Biennial Report of the CO Board of Commissions and Warden,” Box 14794 “Parole and Reports,” Department of Corrections Collection, Colorado State Archives, Denver, Colorado (Hereafter: CSA).

castigated the guards' lack of preparation, fitness, and action. All guards involved were over fifty years old, and the oldest was seventy-nine. The investigation concluded: "We believe that if men in the prime of life and health, of the proper standard of courage and resourcefulness, each possessing confidence in the others, drilled for emergencies, ready to risk their lives as do soldiers, had been on duty upon the day of the riot it may have been soon suppressed."<sup>44</sup> The repeated analogy between officers and "soldiers" in various comments on the events represented an underlying militaristic logic in which guards needed to defeat their captives.

The state's investigation started with a defensive note, labeling the two instigators as "possessed of reckless courage, determined to escape or to die in the attempt" and having "confidence that the guards could be killed or captured."<sup>45</sup> The blame lay, in part, with the guards who failed to secure the prison, compounded by the recognition that guards knew Pardue and Daniels were missing from the mid-day count. The guard responsible for the count acknowledged that the episode may have been prevented had he alerted his superior about the two men's absence.<sup>46</sup> As part of the campaign both to blame the guards and to prepare officers capable of dealing with subsequent rebellions, newspaper reporters emphasized guards' salaries, \$100-105 per month. This salary, the investigation argued, "does not attract men of the right type," implying that a greater investment would secure better guards.<sup>47</sup> Part of a broader

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<sup>44</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, page 32, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

<sup>45</sup> Ibid.

<sup>46</sup> "Reveals He Knew Pardue Was Missing," 10/22/1929, Folder 16 "Newspaper Clippings," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

<sup>47</sup> Report of the Investigation of the Riot at Colorado State Penitentiary, page 32, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

nationwide campaign to professionalize law enforcement, the recommendations from the report harked on the impact of poorly trained officers.<sup>48</sup>

As free-world residents of Fremont County expressed concerns, conditions deteriorated for those who were incarcerated. The uprising left much of the prison infrastructure destroyed: Cell Houses One and Two were uninhabitable and the automobile license factory was inoperable. Before the incident, Cell House One had a full capacity of 195 people and Cell House Two of 293 people. The destruction of the cell houses left hundreds of men without shelter, so the state erected army tents for temporary housing. The incarcerated people crammed into these tents in late fall during the nights and spent their days laboring to rebuild the prison. Discontent among incarcerated people did not diminish. One report noted: “With the rebuilding of the cell houses at the penitentiary progressing rapidly, authorities at the institution reported Wednesday that special watch has to be maintained to keep prisoners from setting fire to the new buildings and to the old buildings which were undamaged in the fires during the prison riots.”<sup>49</sup>

Hard labor combined with poor conditions spurred continued dissent. The prison’s fear of sabotage was realized when, only six months later in February 1930, someone set the carpentry shop ablaze. This fire caused \$15,000 in damage to the property, and in the subsequent melee and chaos four incarcerated people were injured. One of the injured was Danny Reardon, who had given information to the committee investigating the 1929 uprising. He was stabbed while trying to extinguish the blaze. Although prison authorities questioned over fifty people in the

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<sup>48</sup> On parallel efforts to professionalize law enforcement during the early twentieth century, particularly August Vollmer’s efforts California: Sarah A. Seo, *Policing the Open Road: How Cars Transformed American Freedom* (Cambridge: Harvard University Press, 2019), 106-108; Alex S. Avitale, *The End of Policing* (New York: Verso Books, 2017)

<sup>49</sup> “Arson Plots Are Rampant in Prison Officials Report,” 11/7/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

case, the men who started the fire and stabbed Reardon were never identified.<sup>50</sup> The targeting of the carpentry shop, the center of the rebuilding efforts, and the killing of Reardon, who was viewed as a traitor to incarcerated people, was an informed protest against specific conditions of confinement rather than random uncontrolled violence.

Organized labor, such as the Colorado Conference of Bricklayers and Masons, objected to the use of convict labor in rebuilding the prison. As the Great Depression began deepening and its impacts were felt acutely by construction workers, the unions used this opportunity to broaden their objections to convict labor by challenging the “use of convict labor on any other state owned or maintained building.”<sup>51</sup> Despite these objections, incarcerated people continued to construct the cells that would house them and the factories in which they would toil. The decision to work these captives immediately on the rebuilding was a response to some who argued that the root cause of the uprising was idleness within the facility. J. A. Webb, for example, wrote the governor two days after the uprising that when he visited the penitentiary previously he had seen many men “whiling away their time in idleness” which is “a mighty poor way to reform men.” Webb continued: “Nothing so helps to humility and a contrite heart as hard work. Nothing breeds trouble like idleness, and outside influences.”<sup>52</sup> The observers who saw the lack of work as the cause picked up the mantle of a long-held belief that labor reforms men. A letter to the governor from the Commissioner of the United States on the International Prison

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<sup>50</sup> “Blaze Believed of Incendiary Origin Sweeps Through Large Portion of Prison This Afternoon,” *Cañon City Daily Record*, 2/1/30; “Investigation of Pen Fire Continues,” *Cañon City Daily Record*, 2/3/1930.

<sup>51</sup> Letter from the Conference of Colorado Bricklayers and Masons to Governor and Board, Oct. 28, 1929, Folder 17 “Penitentiary,” Box 26831 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

<sup>52</sup> Letter from JA Webb (of NY) to Governor, Oct. 5, 1929, Folder 17 “Penitentiary,” Box 26831 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.



Commission re-iterated this goal of the penitentiary: “The general aim of the American prison system during the past half century, has been to get away from the idea that a prison is solely a place of punishment and to emphasize the need of physical and mental reconstruction.”<sup>53</sup>

“Physical and mental reconstruction” constituted hard labor that would inculcate industrial values.

In addition to facing poor living conditions and long laboring hours, incarcerated people tried to rebuild a community in a time of mass distrust.<sup>54</sup> During the investigation that followed the uprising, chaos reigned within the prison. Few incarcerated people knew anything about Daniels and Pardue’s original plot. Nevertheless, state authorities demanded answers. In the days after the escape attempt, investigators found two more weapons smuggled into the prison and believed, based on the testimony of incarcerated people, that seven others were still hidden within the grounds.<sup>55</sup> Although this rumor never panned out, it led to intense scrutiny on all incarcerated people and a deep, intrusive search of prison grounds and individual cells.<sup>56</sup> Amidst heightened concerns of captives and keepers alike, investigators sought evidence about what transpired before and during the uprising, and incarcerated people faced a choice of whether to

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<sup>53</sup> Letter from the Commissioner of the U.S. on the International Prison Commission “About Prisons,” n.d., Folder 17 “Penitentiary,” Box 26831 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

<sup>54</sup> For examples of a sociological perspective into the social structure and community of prisons: Theresa A. Severance, ““You Know Who You Can Go To”: Cooperation and Exchange Between Incarcerated Women,” *The Prison Journal* 85, no. 3 (2005): 343-367; Alison Liebling and Helen Arnold, “Social relationships between prisoners in a maximum security prison: Violence, faith, and the declining nature of trust,” *Journal of Criminal Justice* 40, no. 5 (2012): 413-424; Miranda Sentse, Derek A. Kreager, Anouk Q. Bosma, Paul Nieuwebeerta and Hanneke Palmen, “Social Organization in Prison: A Social Network Analysis of Interpersonal Relationships among Dutch prisoners,” *Justice Quarterly* (2019): 1-23.

<sup>55</sup> “Two Weapons Found and Seven Others Are Believed Hidden,” 10/7/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

<sup>56</sup> “Two Weapons Found and Seven Others Are Believed Hidden,” 10/7/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

cooperate. Even if they chose to cooperate, few knew anything. Contradictory stories increased suspicion already abounding in the prison, and it had material consequences. For example, in the days after the uprising, testimony from incarcerated people led prison authorities to move Leo W. McGenty and Charles Davis into solitary confinement on suspicion of being involved in smuggling in weapons.<sup>57</sup> In addition to Davis and McGenty, ten others were placed in solitary confinement on suspicion of having been involved. After a week, the warden cleared those ten of involvement and released them from solitary confinement.<sup>58</sup> Within the prison, the warden and administration could arbitrarily deem incarcerated people innocent or guilty without legal process. The state required some culpability, and this bred infighting. Incarcerated people faced scrutiny from fellow captives and state authorities for being untrustworthy. Incarcerated people threatened their fellow captives who acted as witnesses in the probe. Witnesses were “afraid to eat prison food” because of the threats of poison.”<sup>59</sup> Reardon’s murder provided fodder for these fears.

In response to such rampant fear and accusations, tensions rose. Some of this tension stemmed from the decisions that incarcerated people made during the uprising. At least thirty incarcerated people helped to extinguish fires, feed the prison population, or convey information to guards. After the uprising ended, those helpers hoped to receive compensation from the state in good time credits or a parole, but such a decision lay solely in the hands of Governor Adams

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<sup>57</sup> “Two Convicts in Confinement on Rioting Charge,” *United Press*, Oct. 7, 1929.

<sup>58</sup> “All But 2 Convicts of 12 Held Cleared of Prison Mutiny,” *United Press*, Oct. 11, 1929.

<sup>59</sup> “Poison Plotters Threaten Convict Witnesses In Probe,” 10/12/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

who had committed to not doing so. The question generated controversy across the state and country. This fight represented a debate over the goals and meaning of incarceration.

Letters and telegrams poured into the governor's office arguing both sides of whether these captive men deserved relief. Warden Crawford took the side of the loyal incarcerated people, contending that rewarding this loyalty would set a precedent that incarcerated people would benefit from loyalty to the prison rather than to their fellow captives.<sup>60</sup> In this process, the list of who was considered loyal and deserved good time was politicized and dynamic because of the uncertainty around who did what.<sup>61</sup> On the other side, some argued that rewarding these loyal men would create a precedent where incarcerated people would expect rewards for performing what, these critics contended, was a basic condition of their captivity—fealty to the state. Moreover, some district judges wrote to the governor against leniency because, they argued, it would erode the court's ability to determine fair sentences and could endanger the public.<sup>62</sup> Finally, in January 1930, the governor awarded thirty-five men one-hundred days off their sentences for support of state efforts. Ten of the men who received this reward held life sentences, which to the governor meant "100 days less than life," a symbolic reduction that had no practical impact.<sup>63</sup>

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<sup>60</sup> "Mercy for 31 in State Pen Asked; Warden Urges Adams to Reward Convicts for Loyalty in Riot," n.d., Folder 16 "Newspaper Clippings," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

<sup>61</sup> Crawford sent lists that advocated for 30, 31, 35, and 39 men to be rewarded.

<sup>62</sup> Letter from Gov. to Hon. WC Swinewart, Dec. 18, 1929, Folder 17 "Penitentiary," Box 26831 "Correspondence," Office of the Governor—William H. Adams Collection, CSA.

<sup>63</sup> "35 Convicts Rewarded for Prison Riot Aid," 1-15-30, CSA WHA

The search for accomplices, instigators, and further plots led guards and administrators to call for stricter discipline, particularly the reinstatement of physical punishment. Guards concluded that disciplinary issues persisted because of their inability to punish prisoners physically. Earlier, during Best's and Crawford's administrations, strict discipline relied on isolation in an empty dark cell and given only bread and water, the ball and chain, and loss of privileges; their policies prohibited whipping. Guards charged that the prohibition on physical punishment led to "unruly convicts not adequately disciplined" and called for permission to resume "old system of whipping prisoners for breaking rules."<sup>64</sup> This desire was realized in 1931 when three men were lashed until "red and sore" for allegedly attempting to murder two guards.<sup>65</sup>

The guards' demands for harsher punishment came out of their desire to show who controlled the prison. In the months after the uprising, public reports and the state's investigation emphasized the guards' failures. One observer wrote to the Governor Adams: "As folks are folks, in or out of jail, it is obvious that the trouble is within the jail, with those in charge, and not with the inmates."<sup>66</sup> Ultimately, the state charged one guard as an accomplice for assisting the incarcerated people in smuggling in the gun. H. H. McCauley was accused of knowing that Pardue possessed a pistol and failing to report it, and the Civil Service Commission subsequently

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<sup>64</sup> "Guard Says Unruly Convicts Not Adequately Disciplined," 11/15/1929, Folder 16 "Newspaper Clippings," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

<sup>65</sup> "Convicts Who Attempted to Slay Guards Soundly Whipped at Prison Monday Night," *United Press*, June 31, 1931.

<sup>66</sup> John J. O'Brien (CPA in Tulsa) to Governor, Oct. 7, 1929, Folder 17 "Penitentiary," Box 26831 "Correspondence," Office of the Governor—William H. Adams Collection, CSA.

ordered his dismissal after finding him guilty of negligence.<sup>67</sup> The intense focus on the guards' conduct during the uprising contributed to tensions within the Cañon City community. Guards and their families debated the value of a prison job. These workers now feared for their safety. Demands to reinstate physical punishment and further repression surely came from fear and public ridicule. These guards, too, were dealing with the trauma of an event in which their colleagues were killed. In spite of their fears and because of the ongoing worry about further violence, the state required guards to continue working. In fact, prison authorities doubled the number of guards at the institution in the days after the uprising.<sup>68</sup>



At the state level, Warden Crawford and Governor Adams felt political pressure to explain the uprising. A week after the escape attempt, Adams appointed W.W. Grant, Jr. (former Civil Service Commissioner and Denver Bar Association president), Henry “Harry” McAllister (former District Attorney for the Fourth District), and B.C. Hilliard (Colorado Supreme Court Justice and former Representative to the U.S. Congress) to a “Special Committee ... to make a full complete investigation of all phases of the uprising, the suppressing thereof, and of the management and administration of said institution.”<sup>69</sup> None of the men were experts in prison administration, but they had long been attorneys involved in other aspects of the criminal legal system. These three men spent two months reviewing prison records, interviewing guards and

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<sup>67</sup> “Charges Against Prison Guard To Be Heard Tuesday,” 12/5/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

<sup>68</sup> “Prison Seethes with Unrest; Force of Guards Doubled,” *United Press*, Oct. 7, 1929.

<sup>69</sup> “Executive Order,” Oct. 12, 1929, Folder 18 “Penitentiary Committee to Investigate Riot,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

incarcerated people, and compiling their report. On December 9, Grant and McAllister submitted a ninety-five-page report with a narrative of the uprising and recommendations to prevent such occasions in the future. Hilliard refused to sign that report and issued his own minority report, with the main point of contention around awarding time-served credits and shortening sentences.<sup>70</sup>

Although the commission interviewed incarcerated people and studied the complaints of poor living conditions, they concluded that the immediate cause of the uprising was two “hardened criminals” attempting escape. The report flattened the actions of incarcerated people: there were the perpetrators of violence and those that supported state efforts. “Many fought long and earnestly to extinguish the fire, many denounced the riot, and the great mass sought places of safety either in or out of cell houses and maintained good order.” While Daniels and Pardue bore blame for the riot’s spark, the report charged the guards for failing to suppress the event. Concluding the section on the causes, the report acknowledged the underlying conditions that contributed to the uprising—“increased numbers, rapidly changing wardens, personnel of employees, inadequate and improper housing, and idleness, among other things”—but failed to generalize the actions of Pardue, Daniels, or other incarcerated people in connection to these conditions.<sup>71</sup>

The majority report’s recommendations reflect their understanding of how the general conditions of the institutions contributed to the scope and scale of the uprising. They made

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<sup>70</sup> “Wheels Turn in Prison Mutiny Prosecution,” 12/9/1929, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

<sup>71</sup> Majority Report of the Investigation of the Riot at Colorado State Penitentiary, Folder 18 “Penitentiary Committee to Investigate Riot,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

recommendations in numerous categories, implicitly acknowledging the link between conditions and resulting discontent.<sup>72</sup> First, they recommended changes in prison structure and housing procedures. They suggested that the state purchase a large tract of land to segregate repeat-offenders, first-timers, and trusties. This segregation, in theory, would prevent hardened criminals from corrupting first-timers. Complementing this recommendation, they argued for the abolition of the two-man cell. Leading penologists had long condemned the two-man cell, but the failure to expand the institution's capacity led to one-man cells being transformed into two-man cells through the 1920s.

Their next set of recommendations regarded the administration of the prison. The commission argued that salaries for administrators and guards should be increased and that the state should establish a pension fund for the warden, deputy warden, and guards. They recommended that the state establish a new board of pardons to periodically review all incarcerated peoples' files, especially those under indeterminate sentences. On the point of increased clemency, Hilliard disagreed and offered his own view in the minority report: "I conclude that no governor, in the absence of evidence which the courts are powerless to hear, should consider for a moment the release of a prisoner whom the law, a district attorney, 12 jurors and a judge have said must be confined during the period of his life."<sup>73</sup> Hilliard recommended that the laws and sentences should be changed rather than increasing opportunities for arbitrary releases. The point was especially important regarding Prohibition, which the

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<sup>72</sup> Ibid.

<sup>73</sup> Minority Report of the Investigation of the Riot at Colorado State Penitentiary, Folder 18 "Penitentiary Committee to Investigate Riot," Box 26964 "Governor's Reports 1927-1933," Office of the Governor—William H. Adams Collection, CSA.

majority report seemed to classify as a separate, less meaningful crime, but Hilliard conflated all crimes and invoked the legitimacy of the legal system.<sup>74</sup>

The recommendations then turned to how life inside the prison should look. The investigators suggested that every new arrival to CSP should be examined by a psychiatrist and physician to help maintain a healthy environment and classify incarcerated peoples' needs. As part of this effort to ensure health, they recommended that the prison should expand its hospital and procure adequate equipment for on-site medical treatment. They also recommended better religious instruction with a full-time chaplain. The report, in contradiction to what guards advocated for, determined that corporal punishment and the ball and chain should be abolished permanently. The report also recommended that the state investigate and establish vocational training, extension courses, and citizenship classes. Incarcerated people, the report argued, should spend more time occupied—especially laboring. These new labor opportunities, the recommendations advised, should provide incarcerated people with a per diem of twenty-five cents per day work—half going to the man's family and the rest paid upon release.

The governor and legislators in Denver responded to these recommendations and general pressures by enhancing security and militarizing the prison. In February 1930, the governor attempted to restore discipline and stability by appointing Colonel Patrick J. Hamrock as Special Deputy Warden “to have full charge of all guards and inmates of said institution within the penitentiary walls” and Louis N. Scherf to assist Hamrock in enforcing discipline.<sup>75</sup> Although Crawford remained warden, Crawford's position was that of a figurehead. Hamrock wielded

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<sup>74</sup> Grant opposed Prohibition laws.

<sup>75</sup> Statement of Colonel P.J. Hamrock, Box 19382d “Commission Record, 1918-1930,” Department of Corrections Collection, CSA.



authority at CSP. Hamrock had become famous in Colorado history for suppressing labor strikes, particularly with the Ludlow massacre. At the time of the Ludlow Massacre, Hamrock was adjutant general of the Colorado National Guard.<sup>76</sup> His experience and training in military settings shaped how he approached restoring discipline to the prison after the “mutiny.”

Letters and telegrams poured in from labor organizations protesting Hamrock—not because of his draconian policies but because of his past repression of labor movements. “We believe the record of Patrick J. Hamrock, in his connection with the state police force, over a long period of years has been marked with brutality and disregard for human life in industrial controversies. And we further believe that the massacre of Ludlow, should be sufficient in our opinion to keep this man from public office forever.”<sup>77</sup> Laborers, already upset that the state had opted to reconstruct the prison using convict labor instead of union labor during the worsening depression, saw this appointment as another attack against them. Laborers were not the only ones to protest Hamrock’s actions: civil rights organizations in Denver opposed Hamrock’s discriminatory tactics. Within the prison, Hamrock segregated prisoners by race and offered distinct jobs for Black and white prisoners.

Hamrock’s goal at the prison was to institute military discipline, and he had absolute authority to do so.<sup>78</sup> Hamrock immediately changed the prison’s organization. He forced officers to wear a uniform of “semi-military character” because, as he argued: “A uniform commands respect.” He suspended visitors to the prison, and forced incarcerated people “to stand at

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<sup>76</sup> Andrews, *Killing for Coal*, 271; “Adams Seeks Personal Control of Prison,” *United Press*, 2/6/30.

<sup>77</sup> Letter from Bakery and Confectionery Workers International Union to Governor, Feb. 27, 1930, Folder 17 “Penitentiary,” Box 26831 “Correspondence,” Office of the Governor—William H. Adams Collection, CSA.

<sup>78</sup> “Military Discipline for Canon Prison,” *United Press*, 2/7/30.

attention with folded arms when in the presence of prison officials.” Hamrock flexed his power, declaring: “Whatever methods are needed to bring these men under the yoke of discipline will be instituted. They can expect to receive such treatment as their conduct merits.”<sup>79</sup> Hamrock insisted that this strict operation was necessary to ensure safety, and he argued that the state’s harsh response was only required because of the incarcerated peoples’ own conduct. Hamrock stayed on for over a year until he offered his resignation after he restored order and wanted to “allow[] the new board of corrections a free hand in the reorganization of prison reform.”<sup>80</sup>

Complementing Hamrock’s use of force and discipline, the state militarized the prison. In the months after the uprising, the penitentiary board authorized the purchase of thirty-five Winchester Carbine Model 95 Calibres, ten Colt revolvers, and more arms.<sup>81</sup> The prison also purchased outdoor lights and a new telephone system to improve visibility and communication. By the end of 1930, the state had constructed a cellhouse, a new dining room for segregating prisoners by classification, new gun towers, and a new exercise yard for men who were separated from the general population on discipline.<sup>82</sup> When incarcerated laborers finished Cell House Six in 1930, it provided enough space to house men in individual cells.

One of the major projects of building and modernization was to retire the system of execution by hanging and replace it with “the more humane hydrocyanic gas” in an injection

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<sup>79</sup> “Visitors Barred from Prison as Strict Military Rule Instituted,” *United Press*, 2/8/30.

<sup>80</sup> “Hamrock Resigns as Deputy Warden at Colorado Pen,” 1/6/1931, Folder 16 “Newspaper Clippings,” Box 26964 “Governor’s Reports 1927-1933,” Office of the Governor—William H. Adams Collection, CSA.

<sup>81</sup> Resolution of the Meeting of Feb. 24, 1930, Department of Corrections General Journal, Box 19382d “Commission Record, 1918-1930,” Department of Corrections Collection, CSA.

<sup>82</sup> “27<sup>th</sup> Biennial Report of the State Penitentiary of Colorado, Ending November 30, 1930,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

chamber.<sup>83</sup> At the warden's behest, the state legislature appropriated funds to build the new execution chamber in 1934. To demonstrate the efficacy of the new gas execution chamber and deter incarcerated men from future crimes, Warden Roy Best, who would replace Hamrock, invited CSP's captives to watch a demonstration of the new gas chamber. With the gray-clad men around the windows of the execution chamber, a hog was brought in. All the openings were then sealed, and a guard pushed a lever that submerged a cloth bag containing fifteen cyanide eggs into a can containing water and sulfuric acid. At that moment, "a wisp of gray fumes, like smoke, arose from a pail in which cyanide pellets were mixing with acid to form a deadly gas." The hog immediately fell unconscious, and it was declared dead within ten minutes. Two days later, Otis McDaniel was executed in the same way, and as one reporter noted, "many of his fellow prisoners had a very clear vision in their minds of how the criminal's final account is settled in Colorado."<sup>84</sup>

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<sup>83</sup> Henry M. Booth, Jr. and James W. Ross, "Colorado Department of Corrections History and Mission Statement," May 1985, Folder "Prisons—General to 1989," RGRMHC.

<sup>84</sup> "'Crime Doesn't Pay' Lesson Driven Home to Convicts In Unusual Way by Colorado's Unusual Police Chief" *The Knickerbocker Press*, 3/1/36.

### Chapter 5 - Depression and War Years in Fremont County, 1932-1952

After the violence of 1929, the Colorado State Penitentiary persisted through the Great Depression and World War II years with remarkable stability. A new administration maintained control for two decades and pushed for modernization, which, in this era, meant expanding facilities and labor programs. The context of the Great Depression, in which penologists and policymakers sought to minimize expenditures and maximize the value extracted from incarcerated people, informed these goals. Throughout the Great Depression, CSP administrators encountered three challenges to this modernization program: capital, labor, and the incarcerated laborers. These challenges, connected to the broader rethinking of social welfare, shows one of the ways in which prison administration, at its heart, was a political project shaped by the pressures of a global economic downturn.

Warden Roy Best, who served from 1932 until 1952, was the son of former warden Boone Best. Like his 1920s predecessor, Thomas Tynan, Roy Best used the platform of the prison and his status as a progressive warden to capture state and national attention. His progressive reputation grew from his incorporation of social science findings that encouraged rare but harsh punishment, convict labor, and public infrastructure development. Best ran for Colorado's governorship in 1944, and though he narrowly fell short at the polls, he had launched his campaign on the attention he and the prison received. Prisons, including CSP, captured state and national attention, and Best leveraged the interest in the criminal system and crime to build a narrative of the carceral state. After a traumatic escape attempt in 1947 that captured the country's interest, he forged a partnership with the movie industry. This partnership, emerging in an era when films about national heroes using legitimate violence to protect society captured the country's attention, provided mutual benefit: the media gained material for dramatic events

based on true (though sensationalized) stories and the carceral state won support and legitimacy through the media's popular moralistic representations of it.

Best brought administrative stability after a period of turmoil and turnover. The Best era represents a clear shift in prison administration and oversight in which legislators deferred to so-called experts and experts, such as the warden himself, restricted public information about processes and projects within the prison. When the governor appointed Best as warden, Best had received support from local community businesspeople and politicians across the state because of his family history with the prison, his political involvement with the Democratic party, and the fact (especially pleasing to labor) that he was not Hamrock. Best, the youngest warden serving in any state or federal penitentiary and the only warden whose father also served at the same institution, began his tenure in 1932. He began on a familiar note—requesting more funds to build industrial facilities to rehabilitate incarcerated men via hard labor and to save the state money.

The political climate under which Best served differed, too, from that of his predecessors. The economic collapse beginning in 1929 exacerbated the difficulties of Colorado's two major economic sectors—mining and agriculture. Neither sector had returned to the prosperity of pre-World War I before the onset of the Great Depression. Many farmers and miners moved to cities and towns, but industrial behemoths in those cities began falling: Colorado Fuel and Iron entered receivership in 1933, The Denver and Rio Grande Railroad did so in 1935.<sup>1</sup> Voters first re-elected Democrat William Adams in 1930 to deal with the effects of the Depression, then they elected Democratic Edwin C. Johnson in 1932 and re-elected him as governor until he won a

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<sup>1</sup> Carl Ubbelohde, Maxine Benson, and Duane A. Smith, *A Colorado History, Tenth Edition* (Portland: WestWinds Press, 2015), 303.

U.S. Senate seat in 1937. The lack of either a state income tax or sales tax left the state's elected officials without money to enact a large relief spending program. In response to joblessness and work insecurity, laborers joined unions. The federal government supported the union movement, and organized labor gained power in Colorado and the U.S.<sup>2</sup> Although Ed Johnson did not support Franklin Roosevelt's New Deal because of an aversion to centralized government, government-sponsored social welfare projects gained popularity throughout the Depression years and offered stability. Johnson enacted relief programs on a state level. His state-level reforms included highway construction projects, civil service reform, and a prohibition against importing migrant workers.<sup>3</sup>

The economic downturn created instability, but a prison facility requires regular order to function effectively. In 1933, after years of the state's prison system being a political disaster in which appointed overseers and domineering wardens restricted any outside assessment or overhaul, the state's elected officials reorganized the system. The Colorado legislature abolished the Department of Charities and Corrections, which had held power of prison oversight and was responsible to the governor.<sup>4</sup> In its stead, they established a Division of Public Welfare.<sup>5</sup> This switch from "charities" to "public welfare" represents a new relationship between resident and

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<sup>2</sup> For an overview of how the federal government and labor unions replaced other institutions to strengthen capitalism: Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919-1939* (Cambridge: Cambridge University Press, 2008).

<sup>3</sup> During the 1930s, anti-immigrant sentiment thrived in Colorado. Although the percentage of foreign-born residents shrunk from 15.9% to 8.2% between 1910 and 1930, migrant workers from Mexico in the sugar beet fields drew the ire of white farm laborers and organized laborers. In response, Johnson proclaimed martial law along the southern Colorado border and called the National Guard to patrol highways entering the state to prohibit incoming laborers.

<sup>4</sup> In 1923, the General Assembly replaced the Board of Charities and Corrections with the Department of Charities and Corrections.

<sup>5</sup> In 1936, the Division of Public Welfare became the Department of Public Welfare.

government that was being forged across the country. The Colorado Division of Public Welfare—responsible for child services, care of needy persons, care of incarcerated people, and assistance to the aged—offered state authorities new ways to provide security for residents.<sup>6</sup>

The governor served as the head of the Division of Public Welfare, leading a three-member board. The power of the Division over CSP, however, was largely nominal. “Control of the institution,” a federal study in 1939 determined, “is vested in the warden subject only to concurrence of the governor.”<sup>7</sup> Because civil service laws protected the warden’s position and Best maintained a solid grip over CSP personnel and policies, the warden retained nearly complete control over the prison’s day-to-day administration. Chapter 143 of the laws that established the Division of Public Welfare gave it the power, within their appropriation from the state legislature, “to buy land, build, and acquire, install and equip prison plants” to employ incarcerated people.<sup>8</sup> This power proved vital in supporting Best’s goals for the facility—expanding the facility and working incarcerated people.

One of the enduring consequences of the October 1929 prison uprising was the fear it instilled. Administrators, policymakers, and lawmakers used the terror caused by the violent event to establish a more repressive system. The repressive backlash—beginning with Hamrock’s military discipline and continuing with Best’s labor and punishment policies—

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<sup>6</sup> On the national context of changing ideas and policies regarding public welfare: David M. Kennedy, *Freedom from Fear: The American People in Depression and War, 1929-1945* (New York: Oxford University Press, 2001), 249-287; Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (New York: Liveright, 2013), 227-275.

<sup>7</sup> “The Prison Problem In Colorado. A Survey by the Prison Industries Reorganization Administration,” 1940, Acc. No. 1988.001.088, Museum of Colorado Prisons, Cañon City, Colorado (Hereafter: MCP).

<sup>8</sup> “An Act Relating to the Administration of the State Government,” House Bill 30, Sec. 143, 1933, accessed at <https://lawcollections.colorado.edu/colorado-session-laws/islandora/object/session%3A12447>.

parallels the same tactics used after other violent events in which policymakers leveraged terror to suppress rights, such as with slave revolts or other prison uprisings.<sup>9</sup> Best increased suppression by consolidating power within his position as warden, building a more militarized facility, and occupying incarcerated people's time and energy with labor. Couched in terms of progressive ideals and as a way to save the state money, as previous labor projects had been, intensive convict labor also mitigated captives' ability to plan and execute an escape or uprising. While other prison regimes relied on intellectual and spiritual rehabilitative programs such as Bibliotherapy, Colorado's prison administration unequivocally employed convict labor for control.<sup>10</sup> Roy Best's philosophy was simple, as one journalist reported: "Working on the principle that the devil finds work for idle hands, Warden Best set about to develop employment for the prisoners."<sup>11</sup> Best summarized his policy as such: "We have a rule at the prison 'no work, no play,' and today we have no idle men."<sup>12</sup>



Throughout Best's tenure, then, incarcerated people expanded the facility's infrastructure so that they could work more. Traditionally, incarcerated men began their terms at CSP, regardless of conviction or sentence length, by working thirty days in the quarry. After those

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<sup>9</sup> On reactions to Black freedom movements and uprisings during enslavement: Herb Boyd, "The Revolt In New York" in in *400 Souls*, Ibram X. Kendi and Keisha N. Blain, eds. (New York: Penguin Random House, 2021), 82-84; Wesley Lowery, "The Stono Rebellion" in *400 Souls*, Kendi and Blain, eds. 111-114.

<sup>10</sup> On Bibliotherapy: Donald F. Tibbs, *From Black Power to Prison Power: The Making of Jones V. North Carolina Prisoners' Labor Union* (New York: Palgrave Macmillan, 2012), 6.

<sup>11</sup> "Warden Best's Efforts In Transforming 'Riot Prison' Win National Recognition," *International News Service*, n.d., "Roy Best Scrapbook," Acc. No. 2013.002.004, MCP.

<sup>12</sup> Quoted in: "Best Advocates Five Means for Stopping Crime" n.d., "Roy Best Scrapbook," Acc. No. 2013.002.004, MCP.



thirty days, the convict laborer could request to be considered a trusty or administrators could move the individual to a different task. In the early 1930s, however, few opportunities for labor existed within the prison because many of the facilities had been destroyed by the uprising and continued pressure from free laborers to take over work formerly conducted by incarcerated people. In 1932, the prison's biennial report laid out the problem:

“In the first place the public must decide for what purpose the penitentiary exists. If it is there merely for punishment of the offender and the protection of society then the most economical thing to do is to keep the prisoners within the walls until their time expires... Eighty per cent of those imprisoned will return to society after their terms expire. It seems obvious that the rehabilitation of the prisoner is a vital matter in the conduct of a prison. The two questions that arise in this connection are those of segregation and employment.”<sup>13</sup>

Because the vast majority of men would return to the free world and because sentences were relatively short (as compared to sentences beginning in the 1970s), the administration needed to consider what rehabilitation meant how to achieve that goal.<sup>14</sup>

Rehabilitation, as Best and leading penologists determined, meant the ability to work. Best argued: “When we put a man to work in the knitting mill or the tag plant we are teaching him a trade. It is true that when he gets out he may never again see a knitting mill or a tag plant, but we at least have taught him to work.”<sup>15</sup> This argument resonated with the public. The public, like it did in the 1870s, understood extracting labor value from incarcerated people was both a method to alleviate the costs of incarceration and to rehabilitate those incarcerated. In a 1932

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<sup>13</sup> “1931-1932 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, Colorado State Archives, Denver, Colorado (Hereafter: CSA).

<sup>14</sup> Nancy Gertner, “A Short History of American Sentencing: Too Little Law, Too Much Law, Or Just Right,” *Journal of Criminal Law and Criminology* 100, no. 3 (Summer 2010): 691-707.

<sup>15</sup> Quoted in: “Best Advocates Five Means for Stopping Crime” n.d., “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

paper entitled “Convict Labor As Part of An Educational and Socializing Program,” Robert Tallman, the General Secretary of the Colorado Prison Association, argued: “the future of our industrial system, as well as our social order, depends to a large extent as much upon the way we train and employ our prisoners as the manner in which we provide employment facilities for persons outside.”<sup>16</sup> Journalists and policymakers parroted these ideas.

Achieving the goal of maximum labor participation in prison was nearly impossible in the context of the Great Depression because of pressures from both labor and capital. The rising unemployment rate, the growing number of farm failures, and the collapse of business across the state led to renewed, more forceful calls that convict labor presented unfair competition. The 1932 biennial report acknowledged the problem: “the opposition of capital and labor as well as statutory limitations narrow the field of such employment very greatly.” In the end, the administration recommended “several small shops, offering diversified employment and educational vocations would fit the needs of such an institution as the penitentiary.”<sup>17</sup> Warden Roy Best ran with these plans and created “Industry Row” within the Colorado State Penitentiary.

Industry Row—the heart of the prison’s modern labor factory program—developed rapidly. By the mid-1940s, it included an electric shop, a peeling room, a rug plant, a laundry plant, a soap plant, a plumbing shop, a metal working shop, a blacksmith shop, a furniture shop,

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<sup>16</sup> Robert Tallman, “Convict Labor As Part of An Educational and Socializing Program,” 4/28/1932, Folder #4 “Prison Reform,” Box 2689 “Correspondence 1933,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>17</sup> “1931-1932 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

a license plate and road sign factory, a tailor shop, and a knitting shop.<sup>18</sup> Best chose these industries because the products could be used within the prison or sold to other state agencies. The choices, too, were modeled on established prison industries across the country. Throughout the expansion of these facilities and activities within CSP, the problems identified in the 1932 biennial report were realized. While resurrecting the destroyed automobile license factory, the administration, as the governor explained, was “trying to find some kind of industry that can be installed in the state Penitentiary at Canon City that will not compete with free labor, and will at the same time produce a revinue [sic] for the state.”<sup>19</sup> Nicholas Nickel wrote to Johnson with a recommendation based on his research into San Quentin’s convict labor program: incarcerated people in Colorado could manufacture grain bags with Henequin fiber imported from South America—something not being done in the United States.<sup>20</sup> The prison went with another proposal: to build a sewing and tailor shop to manufacture clothing for all state institutions.

The proposal to employ the state-use system for convict labor was not without its detractors. The Colorado State Federation of Labor protested. It argued that the contract for supplying clothing (and other goods) to state institutions—such as the clothes worn by people incarcerated at CSP—go to Colorado’s free-world organized firms.<sup>21</sup> Other union laborers, however, approved of the plan. Earl Murdock, a union clothing manufacturer, wrote: “I have

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<sup>18</sup> “Detailed Inventory of Buildings as at June 30, 1946,” Folder “Colorado State Penitentiary Survey of Buildings and Land,” Box 31689 “Civil Service and Planning, Department of Corrections Collection, CSA.

<sup>19</sup> Letter from Governor Edwin Johnson to Nicholas Nickel, n.d., Folder #2 “Penitentiary,” Box 2689 “Correspondence 1933,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>20</sup> Nickels explained that San Quentin produces Jute Bags, which aren’t produced in the US (only India). Letter from Nicholas Nickel to Governor Edwin Johnson, 12/2/1932, Box 2689 “Correspondence 1933,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>21</sup> Letter from Colorado State Federation of Labor to Gov, 4/29/1933, Folder #2 “Penitentiary,” Box 2689 “Correspondence 1933,” Office of the Governor—Edwin Johnson Collection, CSA.

talked with fellow union craftsmen working at the trade and can see no real reason why prisoners shouldn't make what clothes that is needed for the various correctional and this state institutions so long as it is not to be placed upon the open market."<sup>22</sup> Murdock repeated whole cloth the state's justification that incarcerated people could learn a skill and return some revenue to the prison. The key point was that products not be sold on the open market, which would have, in theory, depressed the value of free world labor and their products. In the end, the governor and warden approved this plan, and people incarcerated at CSP began producing clothing for state use. The debate over whether products of incarcerated people could be sold on the open market had flared since the end of enslavement and the rise of prison labor, and the Great Depression heightened the stakes of this question.

The devastation of the Great Depression instigated a national and global conversation about capitalism and its challenges, and the debate over whether prison-made goods could compete on the open market was a national problem because of interstate commerce. In the 1930s, many saw unfettered capitalism as unfair and corrupting while regulated, effective capitalism could serve as a tool of social regeneration. Critics of capitalism emphasized the way that the unrestricted economic system was both unstable and undemocratic.<sup>23</sup> The federal government appeared responsive to such complaints by limiting prisons' ability to sell goods across state lines. The Hawes-Cooper Act of 1929 mandated that prison-made goods transported

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<sup>22</sup> Letter from Earl Murdock to Governor Ed Johnson, 12/7/1932, Folder #2 "Penitentiary," Box 2689 "Correspondence 1933," Office of the Governor—Edwin Johnson Collection, CSA.

<sup>23</sup> For examples of radical critiques of capitalism and structuring the U.S. economy during the 1930s: Robin D.G. Kelley, *Hammer and Hoe: Alabama Communists during the Great Depression* (Chapel Hill: University of North Carolina Press, 1990); Alan Brinkley, *Voices of Protest: Huey Long, Father Coughlin and the Great Depression* (New York: Vintage Books, 1983); Mary Stanton, *Red, Black, White: The Alabama Communist Party, 1930–1950* (Athens: University of Georgia Press, 2019).

between states be subject to the existing laws of the importing states and that a state had the right to refuse any prison-made goods from other states. The Hawes-Cooper Act's implementation was deferred for five years from its passage until 1934, providing institutions ample time to plan.<sup>24</sup>

Throughout the Hawes-Cooper deferral period in the early years of the Depression, states expanded restrictions on trading prison-made goods, restricting markets further to support competitive capitalism.<sup>25</sup> Many states turned to the state-use system to placate constituents within their state and conform to the federal law. These restrictions limited Cañon City's ability to sell products from the cannery. The prison reported in 1934: "This industry [canning] is somewhat handicapped in this Biennial due to the passage of the Hawes-Cooper Bill, therefor the profits derived are not as great as in former years."<sup>26</sup> In 1935, Congress passed the Ashurst-Sumners Act. This act made the interstate shipment of prison-made goods a federal crime and offered federal aid in the enforcement of state laws.<sup>27</sup> Over the next decades, CSP's ability to profit continued to decline. In the 1935-36 biennial report, the administration lamented the new law's impact: "The loss in the canning factory is entirely due to the enforcement of the Hawes-

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<sup>24</sup> *Whitfield v. Ohio*, 297 U.S. 431 upheld the principle that a state has the right and power to regulate or prohibit the sale or distribution of prison-made goods within its borders; Hawes-Cooper Act of 1929 (H.R. 7729).

<sup>25</sup> A report on state laws regarding convict labor was compiled by Prison Industries Reorganization Administration. Luis N. Robinson, "Prison Industries Reorganization Administration. Bulletin No. 1: Chart and Comment on Laws Affecting the Labor of Prisoners and the Sale and Distribution of Prison-Made Products in the United States," 1937, accessed at <https://hdl.handle.net/2027/mdp.39015047746071>.

<sup>26</sup> "1933-1934 Biennial Report of the State Penitentiary of Colorado," Box 14794 "Parole and Reports," Department of Corrections Collection, CSA.

<sup>27</sup> Ashurst-Sumners Act 1935 (18 U.S.C. §1761). This was upheld in the case of *The Kentucky Whip and Collar Company v. The Illinois Central Railway Company R. Co.*, 299 U.S. 334 (1937).

Cooper Bill, which curbs the activities this plant has enjoyed in the past.”<sup>28</sup> The most restrictive federal limitation on prison-made goods came with the Sumners-Ashurst Act of 1940 that made it a federal crime to knowingly transport prison-made goods in interstate commerce against state laws and required that prison-made goods be labeled as such.<sup>29</sup> Colorado’s prison offers but one case in which federal restrictions limited production. Labor organizations generally supported the state-use system, for it prohibited the sale of prison-made goods on the open market and, in theory, supported free-world competition and economic production.

Despite the federal restrictions on shipping prison-made goods across state lines, CSP’s industry row expanded because it capitalized on the support of the state-use system. Wisely, industry row stayed out of the public eye; it was contained entirely within the prison walls and offered its goods to state agencies rather than on the open market. The most contentious prison labor projects were the ones where free-world laborers saw the convict laborers or their products, such as road labor. Secrecy protected convict labor programs. Public projects, such as road labor, could infuriate free laborers.

In 1934, as unemployment deepened and government investment in infrastructure projects began to ramp up, Roy Best received Ed Johnson’s approval to restart the convict labor program on highways.<sup>30</sup> Popular anger at the government in Colorado and across the United States shaded the reaction to this decision. For example, in October 1934, a thousand laborers in

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<sup>28</sup> “1935-1936 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

<sup>29</sup> Sumners-Ashurst Act of 1940 (18 U.S.C. § 1761).

<sup>30</sup> For an overview of the new political economy of infrastructure investment and public works during the Great Depression: Jason Scott Smith, *Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956* (Cambridge: Cambridge University Press, 2006); James F. Wickens, “The New Deal in Colorado,” *Pacific Historical Review* 38, No. 3 (Aug. 1969): 275-291.

Denver demanded more work in a “strike and riot.”<sup>31</sup> Allowing incarcerated people to build roads appeared to take available work from free-world laborers and give it to incarcerated people. The Workers and Unemployed Council of Colorado, for example, officially condemned “Governor Johnson’s action relating to the employment of convict labor on our state highways.”<sup>32</sup> Johnson, however, fired back. He made an economic and moral argument in his response to the Council: “The contemplated employment of convicts on our highways in no way affects free employment, as they will not be paid wages. The State has to keep them anyway so they might as well be doing something useful. It is not humane to keep men locked up in their cells with nothing to do.”<sup>33</sup> Laborers continued to contest incarcerated people working on highways, but Johnson’s rhetoric—reminiscent of rhetoric employed in the previous struggle between convict labor and organized labor in the 1890s—resonated with some. The debate over whether captives ought to have labor opportunities reflected a broader conversation about how to treat them and what they deserved. The challenges to convict labor contributed to a hierarchy of citizenship that would persist after individuals were released from prison. The prison administration and policymakers emphasized that the problem was simply about lack of funds: “There is enough work needed on our highways to keep every able bodied man in the State employed for five years, but there is no money available to pay for this work.”<sup>34</sup>

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<sup>31</sup> James F. Wickens, “The New Deal in Colorado,” *Pacific Historical Review* 38, No. 3 (Aug. 1969): 275-291.

<sup>32</sup> Letter from Workers and Unemployed Council of Colorado to Governor Ed Johnson, 3/31/1934, Folder #16 “Penitentiary,” Box 26884 “Correspondence 1934,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>33</sup> Letter from Ed Johnson to Workers and Unemployed Council of Colorado, 4/6/1934, Folder #16 “Penitentiary,” Box 26884 “Correspondence 1934,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>34</sup> Letter from Ed Johnson to Charles Seip, 4/18/1934, Folder #16 “Penitentiary,” Box 26884 “Correspondence 1934,” Office of the Governor—Edwin Johnson Collection, CSA.

Convict labor advocates boosted their programs as contributing to rehabilitation, revenue, humanity, and progress. These boosters argued that convict labor used throughout CSP's history epitomize progress and the successful development of the state. In the 1938 Blossom Day Festival Parade—an annual event in Cañon City celebrated during the first weekend of May—the prison sponsored a float entitled “Steps of Progress.” This float visually demonstrated the state’s “progress” by presenting the timeline of convict labor endeavors: rock in 1876, cannery in 1925, license plates in 1934, knit goods in 1935, road signs in 1936, soap in 1937, and furniture in 1938 (See Figure 5.1).<sup>35</sup> This float, echoing prison administration’s rhetoric, posited that the prison system ought to be judged primarily on the way it occupies incarcerated peoples’ time. Roy Best had reimagined industry within the prison facility to employ modern industrial



Figure 5.1: Steps of Progress. Float created for the Blossom Day Festival Parade highlighted convict labor in CSP. Acc. No. 90.13.03, Museum of Colorado Prisons.

<sup>35</sup> Interestingly, the date for license plates represents the date the plant was re-opened after it was destroyed and rebuilt following the October 1929 uprising.



methods out of sight of the public and selling entirely to state agencies. His ideas of rehabilitation via labor fit within a long tradition of tying hard labor to training and reform.



Convict labor was not the only way that Roy Best's administration sought order. Previous wardens and governors had debated the legality, morality, and effectiveness of corporal punishment, but Best, without hesitation, restored whipping as punishment. He claimed it would only be used for the most flagrant offenses—attacks on guards, attacks on other captives, escape attempts, and perversion. Corporal punishment, he concluded, helped maintain order. Corporal punishment was both individual and communal. Each whipping was conducted with “Old Gray Mare,” a leather strap used to flog incarcerated people who were bent over a wooden sawhorse. The entire prison population watched, creating a spectacle that, in theory, deterred future dissent or transgressive behavior. Best punished potential transgressions as severely as the transgressive acts. For example, after guards discovered two pistols that had been smuggled into the prison, Best brought the lash on the suspected men.<sup>36</sup> The threat of violence or escape proved equally dangerous as the exercise of violence or escape. Under Best's regime, escapes from CSP dropped dramatically.<sup>37</sup> This drop could be due to Best's escalating system of punishing escape attempts: for the first attempt, 100 days on the chain gang; a year for the second offense; and life for the

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<sup>36</sup> Leo J. Sterling, “Five Convicts Placed In Solitary and Prepared for Lashings After Two Pistols are Found in Masonry,” *Denver Post*, 8/26/1936.

<sup>37</sup> “Book of Escapes,” MCP.

third attempt.<sup>38</sup> No person was caught three times, so no individual suffered life. Perhaps, too, the bloodhounds and their incarcerated handlers helped mitigate escapes.<sup>39</sup>

Physical punishment was the purest exercise of the administrative dominion over incarcerated people, and it received mixed reactions. Some press accounts claimed incarcerated people understood the punishment as a fair reaction to transgression. *Time* quoted one man who had been lashed after attempting escape as saying, “We gambled and lost.”<sup>40</sup> Others, however, protested the use of corporal punishments, which as we will see below, the governor ultimately outlawed in 1951. Critics of corporal punishment began popularizing the idea that it was antithetical to progressive, modern penology and that it reflected a poor administration. Eve Bennett, for example, wrote: “I do not believe the best standards of intelligent psychology could possibly condone a whipping post. I believe that resorting to such a practice is an admission of weakness in the system of correction.”<sup>41</sup> Yet, Best bolstered his image as a fair disciplinarian through complementary efforts at building recreational opportunities at the prison. On Labor Day, for instance, prison administrators hosted a mile race, barrel race, relay race, tug of war, baseball game, and band concert for the prison and community population.<sup>42</sup> Best, too, sponsored

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<sup>38</sup> “Prison takes steps to prevent break similar to that in California,” *Cañon City Daily Record*, 9/21/1937.

<sup>39</sup> Little information is known about the bloodhounds employed at CSP. This topic has been explored in prisons elsewhere, such as at Parchman by David M. Oshinsky in “*Worse Than Slavery*”: *Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1997), 193-196. The only known evidence of the incarcerated handlers and their bloodhounds at CSP is in photographs from the 1930s: “Bloodhound with inmate handler” Photo, Album: “Photos 33-34 (Photographs Improvements at CSP),” Acc. No. 2003.16.126, MCP.

<sup>40</sup> “Understandable Language,” *Time*, July 30, 1951.

<sup>41</sup> Eve Bennett, “Prison Whipping Post Sign of Weakness,” “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

<sup>42</sup> Album: “Photographs of Sports & Events at CSP, From August 1933 – ” Acc. No. 90.13.4, MCP.



Figure 5.2: C.S.P. Ball Club, Sep. 2, 1935. Note the possessive team name on the jerseys—"Roy's Best." Acc. No. 90.13.4, Museum of Colorado Prisons.

a baseball team named "Roy's Best" that would play against schools in the area that had teams (See Figure 5.2).<sup>43</sup>

Best's reputation as a competent and modern leader was most heralded by the erection of a separate women's prison, which was completed in 1935. The desire to place women outside of the walls came from a perception of female offenders as innocent. Best believed that they were not a threat to society and would not attempt escape. The new women's facility was built to reflect the latest medical and penological views on women: that they could not have committed the crimes on their own, so their criminal proclivity was fleeting and influenced by men. The women's department, then, was constructed to reflect this rehabilitative model. Unlike the men's

<sup>43</sup> "Baseball game" Photo, Album: "Photographs of Sports & Events at CSP, From August 1933 –" Acc. No. 90.13.4, MCP.

cells, women's had windows that opened because fresh air was important to good health. Women's cells, moreover, were larger than men's cells. CSP was one of the few institutions in the country with a separate space designed for women, and until 1951 this women's division took incarcerated women from Utah, Wyoming, and South Dakota for \$1.00 per day. The contracts with the other states were cancelled because of the rising number of Colorado women being incarcerated.

Best put his beliefs about gender roles into practice throughout his tenure, beyond separating women and men. Any incarcerated man caught in homosexual relations was forced to wear a dress and push wheelbarrows filled with rocks as punishment.<sup>44</sup> Photographic evidence confirms that this emasculating punishment had long been standard practice at CSP, since at least the early 1900s.<sup>45</sup> Aside from photographs depicting this punishment, no evidence reveals what happened to captives who transgressed in this very common way throughout the prison's tenure, despite penal reformers regularly opining on the corrupting influence of homosexual actors.

During the course of Best's tenure, the institution retired the original nineteenth century cellhouse with stone cells in order to build new modern facilities. Incarcerated people quarried stone for and built three new cellhouses—Cell House Six (1935), Cell House Seven (1939), and the new Cell House One (1951).<sup>46</sup> The administration solicited positive reviews of these cellhouses from journalists. After Cell House One was completed, for example, one reporter

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<sup>44</sup> "'Sandstone Cut,' Colo. State Pen., 4-26-35," MCP, accessed at: [https://upload.wikimedia.org/wikipedia/commons/3/30/Homosexual\\_Punishment\\_at\\_Colorado\\_Territorial\\_Correctional\\_Facility.jpg](https://upload.wikimedia.org/wikipedia/commons/3/30/Homosexual_Punishment_at_Colorado_Territorial_Correctional_Facility.jpg).

<sup>45</sup> "Homosexuals being punished by wearing dresses and wheeling heavy rocks," X-7770, Denver Public Library Special Collections, accessed at: <https://digital.denverlibrary.org/digital/collection/p15330coll22/id/7289/rec/258>.

<sup>46</sup> Colorado Territorial Prison Museum, "This is the Prison. A History: 1871-1955. Souvenir booklet. 50 cents," 1992, MCP.

wrote: “Embodying the latest developments in the science of prison confinement, the new cell house boasts escape-proof windows and fool-proof control systems.”<sup>47</sup> Few reporters unpacked what exactly they meant by “the latest developments in the science of prison confinement,” and prison administrators controlled narratives about modernity and progress.

This consistent expansion of facilities, paired with increased criminalization of certain activities during the Depression, made incarceration a depression-proof industry. The expanding facilities continued to require staffing and to receive state funding. One Cañon City resident’s father, for example, lost the family ranch during the Depression then worked for a grocer, who subsequently went out of business. At that point, he found a job with the prison—the only institution hiring that provided stable pay.<sup>48</sup> Throughout this process of expanding the facility, the per capita daily cost was reduced from \$1.032 in 1932 to \$0.81 in 1940.<sup>49</sup> In reality, the expansion of prison labor revenue contributed only negligibly to this cost reduction. The cost reduction largely came from the overcrowding of the institution. Costs went down when more incarcerated people were kept in the same space.



Throughout the 1930s, part of the campaign to modernize CSP and to maximize benefit from incarcerated people included a medical campaign. The prison offered its captives as

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<sup>47</sup> “CF&I Steel For New Cellhouse: New Addition at Colorado Prison,” n.d., “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

<sup>48</sup> Oral Interview of Benny and Phyllis Johnson, 8/7/2012, Folder “Johnson, Andrew & fam.,” Royal Gorge Regional Museum & History Center, Cañon City, Colorado (Hereafter: RGRMHC).

<sup>49</sup> “1931-1932 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA; “1939-1940 Biennial Report of the State Penitentiary of Colorado,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

“volunteers” for medical experience and subsequently launched a publicity campaign to capitalize on the prison system’s dedication to science. This practice of medical testing, especially on incarcerated people, was common across the country in this era. Bernard E. Harcourt, though, argues that volunteerism in carceral spaces cannot be taken at face value. His analysis of incarcerated people who assumed the risk and volunteered to be infected with anti-malarial drugs concludes that the consent offered by the incarcerated was manufactured and must be understood in the context of prison power relations. Incarcerated people, Harcourt argues, were perfect test subjects because there “were as close to lab animals—to caged lab animals—as one could possibly hope.”<sup>50</sup> While the experimental programs to cure drug addiction and tuberculosis in CSP won the prison’s medical system fame, the prison failed to invest in expanding or updating its treatment facilities for incarcerated people.

Beginning in 1935, CSP’s physician, Dr. R. E. Holmes, began using inter-muscular injections of serum to cure “dope addicts.” We do not know if these treatments were voluntary or forced, but the approximately twelve men who went through Holmes’ treatment at CSP and reportedly were cured contributed to the political and scientific reputation of the prison and its leadership. The idea that the men were cured is a problematic proposition from which a causal relationship or conclusive result cannot be determined. The program determined success when observing the subjects in the prison, a somewhat regulated environment. And, no one checked whether any drug use restarted after release.

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<sup>50</sup> Bernard E. Harcourt, *Making Willing Bodies: Manufacturing Consent Among Prisoners and Soldiers, Creating Human Subjects, Patriots, and Everyday Citizens*, U of Chicago Law & Economics Olin Working Paper No. 544; U of Chicago Public Law Working Paper No. 341 (2011): 5.

While under Holmes' care, the incarcerated men would have a fly blister on their abdomen for twenty-four hours.<sup>51</sup> After that, Holmes would withdraw the blister fluid and inject it hypodermically into the buttocks or arm every other day until four injections were administered. He claimed that these four injections would eliminate the craving for drugs. He boasted: "Because of this new cure, the problem of drug addicts is a minor one inside the prison walls."<sup>52</sup> His boast of curing twelve men, however, reveals significant failure or few men willing to trust Holmes, for the intake forms revealed hundreds of men who used drugs.<sup>53</sup> The treatment also helped Holmes and Best elevate their reputations as progressive men committed to rehabilitation. Holmes distributed details of his treatment and the success to medical journals and newspapers across the country, and journalists reported on this project. Holmes received and responded to numerous letters about the treatment program.<sup>54</sup>

Bernard Harcourt's history of medical experiments on Statesville (Illinois) prisoners shows, as he writes, "Human experimentation on prisoners also turned out to be a remarkably efficient and productive way of conducting medical research."<sup>55</sup> Researchers from the University of Chicago working at Statesville were not the first to conduct experiments on "consenting"

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<sup>51</sup> A fly blister is a painful blister produced by the medical attendant by the application of dried beetles (Spanish flies) to the skin.

<sup>52</sup> Quoted in "Prison Has Used Dope Fiend Cure For Three Years," n.d., "Roy Best Scrapbook," Acc. No. 2013.002.004, MCP.

<sup>53</sup> "Intake Binders, 1933-1938," MCP.

<sup>54</sup> Selection of letters from 1937-8 can be found in: Box 31690 "Miscellaneous Penitentiary," Department of Corrections Collection, CSA.

<sup>55</sup> Bernard E. Harcourt, *Making Willing Bodies: Manufacturing Consent Among Prisoners and Soldiers, Creating Human Subjects, Patriots, and Everyday Citizens*, U of Chicago Law & Economics Olin Working Paper No. 544; U of Chicago Public Law Working Paper No. 341 (2011): 5.

captives.<sup>56</sup> With no explicit promise of freedom, over 800 captives at CSP in the early 1930s volunteered to be inoculated with a new serum designed to prevent tuberculosis.<sup>57</sup> Researchers had the ability to control and monitor this population’s habits, consumption, and exercise. Reflecting on the decision to offer this “opportunity” to incarcerated people, Governor Edwin Johnson wrote: “When the plan to use Colorado convicts as human laboratories for testing the serum was explained to me I gladly gave my permission for the convicts to volunteer to take the serum.”<sup>58</sup> The language of volunteerism proved vital to the project’s moral standing.<sup>59</sup>

Of the 800 men who volunteered, three were chosen—Mike Schmidt, Carl Erickson, and Harry Rose. They were selected because they were past middle age, in prime physical condition, and had not been convicted of forgery or conning.<sup>60</sup> Each of the three was serving a life term. Although no one had promised freedom in exchange for volunteering, the specter loomed, and the prison administration therefore refused to include in the trial men who “were congenital criminals and would again seek crooked avenues to make a living.” Schmidt, Erickson, and Rose each signed a “Statement and Release” saying that they “Do hereby voluntarily, of my own free will, consent that such experiments and tests may be made in and upon my body...And I do hereby release the State of Colorado ... from any and all claims for damages of every kind and

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<sup>56</sup> A.M. Hornblum, “They Were Cheap and Available: Prisoners as Research Subjects in Twentieth Century America,” *British Medical Journal* 315, no. 7120 (1997): 1437-1441.

<sup>57</sup> “Three New Lives the ‘Lifers’ Won,” 5/3/1937, “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

<sup>58</sup> Telegraph from Governor to Charles Martin, 7/27/1936, Folder #14 “Penitentiary—General,” Box 26910 “Correspondence 1936,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>59</sup> It is unclear whether the language of volunteerism was required for the project’s legal standing. There were no laws explicitly banning medical experimentation on the incarcerated in Colorado, and the Supreme Court did not determine that the Eighth Amendment applied to states until 1962 in *Robinson v. California*, 370 U.S. 660 (1962).

<sup>60</sup> “Three New Lives the ‘Lifers’ Won,” 5/3/1937, “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.



character on my part.”<sup>61</sup> These experiments and their ethical standing relied on volunteerism while assuming that incarcerated people could freely give informed consent separate from other oppressing or motivating factors.

With that, Dr. H. J. Corper of the National Jewish Hospital at Denver had his subjects. The three men were inoculated with the serum, and fortunately for them, they all survived the exposure to tuberculosis. After the experiment concluded, Governor Johnson offered commutations, explaining: “Because he voluntarily and of his own free will gave and submitted his body as a subject for various experiments and tests to be made by H. J. Corper and those associated with him, in an endeavor to bring about the prevention and eradication of tuberculosis.”<sup>62</sup>

Best’s efforts at modernizing and expanding the facility won him national recognition. In 1935, the Warden’s Association of the United States elected him as its president.<sup>63</sup> In subsequent years, other states hired him to investigate their prison systems after major disturbances, acts of violence, or escapes, such as at Statesville Prison in Joliet, Illinois.<sup>64</sup> Best launched a career in politics based on his national reputation that he gained through his wardenship. He ran for

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<sup>61</sup> Releases for Harry Rose, Mike Schmidt, and Carl Erickson, all available in Folder “State Penitentiary Statements & Releases From Prisoners Undergoing Experiments,” Box 26854 “Penitentiary Records,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>62</sup> Commutation of Sentence for Carl Erickson, 12/12/1934, Folder #14 “Penitentiary—General,” Box 26910 “Correspondence 1936,” Office of the Governor—Edwin Johnson Collection, CSA.

<sup>63</sup> Letter from Governor Johnson to Lyman C. Baldwin, 1/20/1936, “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

<sup>64</sup> “Best’s Record Qualifies Him To Help Probe Loeb Slaying,” n.d., “Roy Best Scrapbook,” Acc. No. 2013.002.004, MCP.

governor of Colorado in 1944. He narrowly lost. Despite losing the state-wide race, Best maintained significant influence over Fremont County politics.



The trajectory of prison growth mirrored the growth of the federal government. In response to the Great Depression and the exposed failures of America's capitalist system, Franklin D. Roosevelt and Congress offered a new model of democratic governance and support.<sup>65</sup> The federal government forged a new relationship with its constituents and individual states by doling out both money and information. The federal prison system itself was still relatively small in the 1930s. While it managed only three facilities itself, the federal government helped guide state systems by offering to investigate and providing recommendations. The national government's comparative analysis of state systems throughout the United States offered Colorado as a model program.

In the Great Depression era, as the government revamped its labor system in response to the concerns of free-world labor, it cemented its role investigating, advising, and overseeing state prisons. In the 1920s, as Chapter Three demonstrates, the federal government began to assert a limited role as an advisor and data collector. Judith Johnson argues that federal intervention into state penal systems began in 1931 with the publication of the Wickersham Law Commission's findings.<sup>66</sup> To be sure, the federal government had already investigated and advised state penal systems as well as passed the Hawes-Cooper Act by this point. The Wickersham Commission,

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<sup>65</sup> On the systemic, enduring changes the New Deal brought to American life: Eric Rauchway, *Why The New Deal Matters* (New Haven, Yale University Press, 2021); on the new role of government and a detailed overview of the New Deal: Kennedy, *Freedom From Fear* and Katznelson, *Fear Itself*.

<sup>66</sup> Judith Johnson, "Crisis in Corrections: Penitentiaries in the Far Southwest during the Great Depression," *New Mexico Historical Review* 60, no. 1 (Jan. 1994): 35.

formally the National Commission on Law Observance, produced fourteen volumes on issues of crime, law, and punishment as part of Herbert Hoover's expansion of the federal government as related to the criminal legal system.<sup>67</sup> The Wickersham Report conducted in-depth investigations that exposed the failures of state penal systems and expanded the government's role in state and local law enforcement. The report concluded that state prisons in the U.S. neither reformed people nor protected society nor treated captives humanely.<sup>68</sup> These failures, and the broader social collapse stemming from the Great Depression, continued to wreak havoc and spur the national government to expand its scope.

President Franklin Roosevelt established a committee to study the problem of convict labor competing with free world labor. In November 1934, the Ullman Committee, chaired by Judge Joseph N. Ullman and comprised of nationally renowned penologist Frank Tannenbaum and longtime labor advocate who had worked on previous government investigations W. Jett Lauck, began holding hearings on the problem of convict labor's unfair competition. They reported to the National Recovery Board that the problem of competition "is insoluble without reorganization of prison industrial systems and that the Federal Government should aid the states with advice and financial grants in reorganizing their prison systems" to avoid open-market competition.<sup>69</sup> This conclusion represented a broader shift in American governance: the federal government needed to support state projects to reorganize their economic systems.

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<sup>67</sup> James D. Calder, *Origins and Development of Federal Crime Control* (Westport, CT: Praeger, 1993);

<sup>68</sup> National Commission on Law Observance and Enforcement, *National Commission on Law Observance and Enforcement Reports* (Washington, D.C.: U.S. Government Printing Office, 1930-1931).

<sup>69</sup> United States Prison Industries Reorganization Administration, "Progress Report, May 15, 1937," page 3, accessed at <https://babel.hathitrust.org/cgi/pt?id=uc1.b5006716&view=1up&seq=1&skin=2021>.

Nobody acted on the Ullman Committee's recommendations for nearly a year, but by September 1935, Roosevelt was ready to engage. He issued Executive Order #7194 to create the Prison Industries Reorganization Administration. This Order commissioned the PIRA to "conduct surveys, studies, and investigations of the industrial operations and allied activities carried by the several penal and correctional institutions of the states" and "to initiate, formulate, and recommend ... a program of projects with respect to replanning and reorganizing the existing prison industries system."<sup>70</sup> The PIRA investigations offered a wealth of data about the state of prisons across the country, allowing for a comparison and some standardization. Like studies of the previous decades, this commission recognized the diversity of state programs and varying political realities. Despite this diversity, the commission presented uniform recommendations to all states based on an ideology rooted in the rehabilitative power of convict labor; they recommended more work for incarcerated people to help rehabilitate, improve morale, ease overcrowding, and reduce the cost of imprisonment.<sup>71</sup> The Administration's first bulletin in 1937 endorsed the state-use system supplemented by work "on public roads, farms, forestry and soil conservation projects for the benefit of the state."<sup>72</sup>

The contemporaneous federal project to overhaul the national government's own prison industry system informed the PIRA's recommendations. In 1934, Roosevelt used an Executive Order to establish Federal Prison Industries, Inc., a corporate body that held power over

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<sup>70</sup> Executive Order #7194, 9/26/1935.

<sup>71</sup> A bibliography with digitized reports issues by the Prison Industries Reorganization Administration can be found at: <http://onlinebooks.library.upenn.edu/webbin/book/lookupname?key=United%20States.%20Prison%20industries%20Reorganization%20administration>.

<sup>72</sup> Prison Industries Reorganization Administration, "Bulletin No. 1 – Chart and Comment on Laws Affecting the Labor of Prisoners and the Scale and Distribution of Prison-Made Products in the United States," 1937, accessed at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015047746071&view=1up&seq=1&skin=2021>.

industrial operations in U.S. penitentiaries.<sup>73</sup> This project came on the heels of the federal government laying the foundations for its own prison system's expansion; the Federal Bureau of Prisons was established in 1930.<sup>74</sup> FPI overhauled the federal system by establishing four categories of effective labor: institutional (prison operations support such as cooking, maintenance, and janitorial), farming, public services (highway construction, public lands work, or support for federal agencies), and prison industries (factories to produce goods for sale by the government). The majority of incarcerated people in these early years and since the transition to UNICOR, the brand under which federal prisons produce goods, have labored in industrial projects.

As the federal government established its own convict labor program, it used that model to shape how it advised states. In 1936, Governor Johnson requested that the PIRA provide guidance for his state's prison system. By the time the PIRA issued its final report on Colorado, it had already reviewed twenty-three other states' systems, allowing investigators to make useful comparisons. The report, for the most part, congratulated Colorado on its "well-planned program of industrial and maintenance activities at the Penitentiary which gives employment to every available prisoner."<sup>75</sup> The recommendations for prison labor were few: establish standards for articles of state use and provide vocational training activities. The more important recommendations were political. The U.S. investigators suggested creating a centralized Department of Corrections to oversee the various state institutions and retain more control than

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<sup>73</sup> Executive Order #6917, 12/11/1934.

<sup>74</sup> Gottschalk, *The Prisons and Gallows: The Politics of Mass Incarceration* (Cambridge: Cambridge University Press, 2006), 42.

<sup>75</sup> Prison Industries Reorganization Administration, "The Prison Problem In Colorado. A Survey by The Prison Industries Reorganization Administration," 1939, Acc. No 1988.001.088, MCP.

the broader Division of Public Welfare. The report also recommended strengthening the formal roles and procedures of the bureaucracy, such as a more precise clarification system and better trained staff.

These reforms, they argued, would eliminate abuse and instill a stable environment. The report also took a shot at the use of corporal punishment: “Occasionally corporal punishment, now condemned by most penologists, is used on runaways or other unruly types.” The report suggested instead using solitary confinement as an acceptable and productive punishment. The report, finally, lauded the Colorado legislature for providing a law that mandated “every able-bodied convict shall be put to and kept at the work most suitable to his or her capacity, and most advantageous to the people of the State of Colorado.” Investigators calculated that on average for 1939, 179 men were involved in industrial production, 284 in land improvement, 347 in the construction of new prison facilities, and 298 for institutional maintenance and operations.<sup>76</sup> This data revealed that over seventy-five percent of the people incarcerated at CSP were employed, a high rate for prisons relying on the state-use system during this period. Although the federal government offered few novel recommendations for Colorado’s systems, its role as expert and advisor solidified.

State prison institutions were not under federal control, especially as federal courts refused to intervene during the “hands off” period, yet states recognized that federal funding and information was a useful benefit. Prior to World War II, courts and federal officials generally

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<sup>76</sup> Prison Industries Reorganization Administration, “The Prison Problem In Colorado. A Survey by The Prison Industries Reorganization Administration,” 1939, Acc. No 1988.001.088, MCP.

deferred to legislative and executive control over incarceration.<sup>77</sup> The federal government took advantage of these benefits to help direct states' prison industrial development. Although, as Marie Gottschalk notes, state and local administrators held primary responsibility for penal policy in this era, "crime and punishment were nationalized and politicized early on in American political development, and many of the early debates over law and order hinged on differing views about the proper extent of state power." Beginning with Herbert Hoover, a progressive interested in federal crime control policy, federal officials recognized the way federal policies and procedures could serve as a model for state and local projects. Hoover's administration, Gottschalk continues, "stressed the need for choosing strong, innovative people to manage the federal prisons, eliminating abusive and unprofessional prison practices like corporal punishment and torture, reducing crowding by building new facilities, and expanding prison industries to reduce idleness."<sup>78</sup> In Colorado and other states, federal leadership filtered into state practice. This federal project brought together various stakeholders of the carceral state. Academics, farmers, manufacturers, investors, union leaders, construction workers, and penologists all testified about their relation to the carceral state in front of the Ullman Committee and the PIRA. This wide-ranging testimony reveals the interconnected institutions and actors vested in the trajectory of the carceral state.



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<sup>77</sup> On the hands-off doctrine: J.C.K., "Decency and Fairness: An Emerging Judicial Role in Prison Reform," *Virginia Law Review* 57, no. 5 (June 1971): 841-884; "Note, Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts" *Yale Law Journal* 72 (1963): 506-558.

<sup>78</sup> Gottschalk, *Prison and Gallows*, 52 and 62.

World War II presented new opportunities for prison labor, volunteerism, and Fremont County. Like in many counties across the state and country, young men volunteered in mass to defend the United States abroad after the attack on Pearl Harbor in 1941. The first man to enlist from Cañon City, Thomas Black, served as a guard at CSP.<sup>79</sup> Men incarcerated within CSP, too, attempted to volunteer for military service, presenting a dilemma for the government akin to when interned Japanese Americans volunteered for the army.<sup>80</sup> Military service conferred patriotic status, and men at CSP sought to regain their citizenship status and respect by contributing to the body politic through such service. Roy Best boasted: “Three hundred or more Colorado state prison inmates have offered to serve their country at war in exchange for release from the penitentiary.”<sup>81</sup> Unlike previous medical experiments where no explicit promise of freedom was requested or offered, these men tried to strike a deal: in exchange for risking their lives for the U.S., they would earn their freedom. These volunteers, however, were not given the opportunity.

Best immediately dismissed the idea. He explained his logic: “As I understand it, a man cannot join the army unless he is a citizen. When an inmate is freed from the prison, he is not a citizen until his period of parole is finished.”<sup>82</sup> The state’s lead prison administrator displayed his

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<sup>79</sup> “Prison Guard First Man to Enlist Here,” *Cañon City Daily Record*, 12/9/1941.

<sup>80</sup> On how Japanese Americans used their service to claim U.S. citizenship and respect: Robert Asahina, *Just Americans: How Japanese Americans Won a War at Home and Abroad: the Story of the 100<sup>th</sup> Battalion/442<sup>nd</sup> Regimental Combat Team in World War II* (New York: Gotham, 2006); Brenda L. Moore, *Serving Our Country: Japanese American Women in the Military during World War II* (New Brunswick, NJ: Rutgers University Press, 2003).

<sup>81</sup> Quoted in “300 State Prison Inmates Offer To Fight for Nation,” 12/11/1941, Folder “Military History—WWII,” RGRMHC.

<sup>82</sup> Quoted in “300 State Prison Inmates Offer To Fight for Nation,” 12/11/1941, Folder “Military History—WWII,” RGRMHC.



assumptions about the legal role of his charges. If incarcerated men were not citizens, they in theory did not receive many protections of the Constitution.<sup>83</sup> The policy established by the courts in 1871 in *Ruffin v. Commonwealth* still reigned: an incarcerated person “not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords him” and becomes a “slave of the state.”<sup>84</sup> So, during World War II, incarcerated people could not volunteer in the armed forces.

While incarcerated people were prohibited from serving, many other young free men from Fremont County joined the war efforts. The mass enlistment left a shortage of laborers on farms throughout the state, so Roy Best sent approximately 350 incarcerated people across the state to harvest crops each year of the war.<sup>85</sup> This labor force received no extra benefit or commendation, such as the patriotic respect of military service that many who volunteered received. However, there were not enough trusty captives to harvest crops or maintain grazing land. This labor shortage became particularly acute in Fremont County after Parkdale, a Civilian Conservation Corps Camp, was abandoned because of the growing military mobilization. Just as the county faced this labor shortage, the government called on growers to increase their cultivated acreage and production.

In February 1942, the federal government approached county leaders and farmers regarding using Japanese and Japanese American labor to support farmers during the war. Fremont County was not yet a national carceral capital with its two facilities, but the proposal to

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<sup>83</sup> M.W.S., “Constitutional Rights of Prisoners: The Developing Law,” *University of Pennsylvania Law Review* 110, no. 7 (May 1962): 985-1008.

<sup>84</sup> *Ruffin v. Commonwealth*, 62 Va. 790, 21 Gratt. 790 (1871).

<sup>85</sup> “Cowboy Warden Makes Range Philosophy Work,” Leif Erickson, n.d. Folder “Roy Best,” Acc. No. 2007.001.039, MCP.

build a Federal Concentration Camp at Parkdale would have bolstered the locale's carceral reputation.<sup>86</sup> Local reporting on the proposal reveals the deep racism about using laborers of Japanese descent: "After the war, it is possible the Japanese may decide to remain here to live. This would mean that local, American growers would be facing a serious problem of competing against farmers to whom wage scale and American standards of living are of secondary importance."<sup>87</sup> These locals feared that Japanese Americans, unlike incarcerated laborers who would leave after their sentences expired, would remain in the area. In response to the proposal, a group of forty area growers and United Mine Workers members met to debate it. The debate recognized the need to increase agricultural production to support national war mobilization efforts, but this was overshadowed by the fear of Japanese and Japanese American people. They voted to reject the proposal: "We don't want Japs here and we don't want them harvesting our crops unless no other alternative is possible."<sup>88</sup>

The dissent around building an internment center at the old Parkdale facility proved to be one of the only times a significant faction of local people rejected plans to construct a new carceral facility. While laborers and farmers dissented, others in Cañon City supported the efforts. In May 1942, the Cañon City Chamber of Commerce held its first discussion about the internment camp proposal. Foreshadowing language that the Chamber and other prison boosters would return to when advocating for new prisons, the Chamber argued: "It is understood that

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<sup>86</sup> On the connection between the national security state's roots in the central welfare programs of the New Deal: Jason Scott Smith, "New Deal Public Works at War: The WPA and Japanese American Internment," *Pacific Historical Review* 72, no. 1 (Feb. 2003): 63-92.

<sup>87</sup> "Fremont County Considered As Site for Japanese Alien Camp," 2/14/1942, Binder: "World War II Local Involvement," RGRMHC.

<sup>88</sup> Quoted in "Fremont County Growers and Miners Protest Proposal to Intern Japanese Aliens Here," *Cañon City Daily Record*, 2/17/1942.

such a camp would provide a considerable payroll for guards as well as construction.” Local business support, too, was overwhelming because of the purported economic benefits: in a survey conducted by the Chamber of 111 businesses, 75 were in favor of having such a camp in Cañon City, 25 were opposed, and 9 had no opinion.<sup>89</sup> The Chamber’s membership voted to get in touch with the Provost Marshal General, who was in charge of controlling “enemy aliens” and specifically the Japanese American internment camps, to inform him of the agricultural and infrastructural benefits of Cañon City. Cañon City already had the basic infrastructure for a camp at the Parkdale site, and as the “garden of Colorado,” it would provide ample opportunity for agricultural production. The Chamber launched a campaign targeting representatives from the U.S. Army and lobbying state and federal elected officials, but this campaign to secure county’s third carceral facility fell short. In 1942, the Army selected a site in Granada, in far eastern Colorado, to house the region’s camp. The Granada Relocation Center, renamed Camp Amache after the daughter of Cheyenne Chief Ochi-nee, at its height held over 7,500 Japanese and Japanese American people, making it the tenth largest city in the state.<sup>90</sup> When the government selected Granada in June, it abandoned the CCC Camp at Parkdale.



Despite the fact that Fremont County did not receive a federal internment camp in the early 1940s, the community became a nationally recognized prison town in early 1948. The growth of Cañon City’s reputation shows how the media amplified the sensational drama of the

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<sup>89</sup> Board Meeting, 5/4/1942, Scrapbook: “Minutes. 1927-1943,” Box 1987.001.003 “Chamber of Commerce,” RGRMHC.

<sup>90</sup> Melyn Johnson, “At Home in Amache: A Japanese-American Relocation Camp in Colorado,” *Colorado Heritage* 1 (1989): 2-11; Bill Hosokawa, *Colorado’s Japanese Americans: From 1886 to the Present* (Boulder: University Press of Colorado, 2005).

carceral system and how local leaders cultivated the region's image. Once again, an escape made the news. On 30 December 1947, twelve men escaped from the isolation section of the prison, "Little Siberia." At about 5:30 pm, at the end of the supper hour, James Sherbondy and John Klinger jumped two guards and took them captive in Cell House 6. Unaware that anything amiss occurred, Guard McLean then entered the cellhouse; he, too, was struck and taken hostage. Klinger and Sherbondy leveraged the threat of violence against their hostages to force Tex Layton, a trusty with access to the door controls, to open all cell doors.<sup>91</sup> After Layton opened the isolation cell doors, nine more men joined the original duo: R. L. Freeman, Harold Hathaway, Ricard F. Heilman, Billy New, Ernest LaVergne, Werner Schwartzmiller, John Smalley, A. B. Tolley, George Trujillo, and Orville J. Turley.<sup>92</sup> For some, who had not been in on the plan from the beginning, they left only when the opportunity presented itself.<sup>93</sup> Those who had been in on the plan had prepared by making shotguns—making real the threat of violence. These twelve men made their way into the midway using Clark, McLean, and Williams as shields to prevent tower guards from shooting. They escaped through the north gate and headed into the hogbacks and Cañon City.

As they escaped, the prison blew its whistle three times, signaling to the community that incarcerated people were on the lam. In response, according to Roy Best, over one hundred volunteers gathered at the prison gates. Most of these men, according to the *Denver Post*, were "ranchers who poured into town armed with rifles and offered to aid in the search." Although

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<sup>91</sup> Each tier of each cellhouse had a trusty—a barman—who was charged with closing the cell doors in the evening and opening them in the morning.

<sup>92</sup> "Dec. 30, 1947," Folder "Prison Escapes—1940-1949," RGRMHC.

<sup>93</sup> Robert W. Fenwick, "Zero Hour for Break Set Long in Advance," n.d., Folder "Prison Escapes—1940-1949," RGRMHC.

these volunteers sought out the danger and came prepared for violence, they were able to claim self-defense and the ethical backing of the situation to justify their use of force. The prison also activated its plan to contain and capture the escapees. First, they set up checkpoints on the roads in and out of town—Highways 115 and 50. Next, the prison authorities coordinated with local law enforcement agencies to enhance their ability to search the area. The Colorado National Guard stood at the ready to assist as needed. Governor William Lee Knous and Adjutant General Irving O. Shaefer ordered a tank company of the Guard to prepare to join the hunt.<sup>94</sup> Finally, officers and volunteers received permission to shoot. Roy Best later recalled: “The guards all know this order [to search Cañon City] means that they should take care of themselves and shoot at the first sign of resistance.”<sup>95</sup>

After leaving the gates, the twelve men scattered. A raging blizzard hindered the escaping men’s ability to travel far and cover their tracks. John Klinger had made it to northwest Cañon City, a residential section of the town near Fifth and Burrage, when Cañon City police officers caught up to him. Klinger had prepared for the escape by making his own shotgun using the material available within CSP. When he fired his home-made gun, the shotgun shell exploded, blowing out of the back of the gun and striking him in the head. That narrative of an accident, at least, is the story that the Grand Jury accepted when they classified the death as an accident due to the “explosion of a home-made gun which was held in his own hand.” However, the first reports from the scene indicated that officers shot Klinger or that Klinger committed suicide.<sup>96</sup>

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<sup>94</sup> “Tank Unit Alerted by Knous,” *Denver Post*, nd., Folder “Prison Escapes—1940-1949,” RGRMHC.

<sup>95</sup> Warden Best, “The Inside Story of the Canon City Prison Break,” *Denver Post*, 6/1948.

<sup>96</sup> Coroner’s Jury Report, 1/3/1948, Folder “Prison Escapes—1940-1949,” RGRMHC; This article refers to “Oliver J. Turley” instead of “Orville J. Turley.” “Jury clears officers in deaths of escaped convicts,” *Cañon City Daily Record*, 1/5/1948.

Orville J. Turley and Richard Heilman, two other escapees, hid in a trailer outside of Florence. On Wednesday, 31 December 1947, officers located the two men by following their tracks through the fresh snow, and upon arriving at the trailer called for the men to surrender. According to the testimony of Officer William Searcy, the police and guard search team was fired upon, so they returned fire. Turley was mortally wounded and Heilman was shot in the hand. The Grand Jury cleared the officers of any wrongdoing, concluding that the bullets that resulted in Turley's death "were fired by officers of the Colorado state penitentiary in line of duty.... The officers returned the fire [of Turley], bringing about the death of Turley."<sup>97</sup>

R. L. Freeman was captured by a posse after he was shot in both legs. Although no member of the posse had been deputized, none was charged with any crime. The District Attorney respected the idea that the safety and security of the free world community required deadly force against escapees, so violence against them was permissible. Werner Schwartzmiller, in his escape, recognized the sirens and understood that he could not run. He tried to bide his time by taking some Cañon City locals hostage on their ranch. Mrs. Lawrence Oliver, however, saw an opportunity and struck him in the head with a hammer, after which her husband and another hostage subdued and restrained Schwartzmiller. Oliver and her husband became local legends for standing up to the armed kidnapper.

Another group of four—R. L. Freeman, A. B. Tolley, George Trujillo, and Billy New—commandeered a car after leaving the north gate. They planned to go to New Mexico, but they had to stop at a farmhouse on the way to get chains for the car to power through the blizzard. At the farmhouse, police and guards exchanged fire with the crew. New and Trujillo were

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<sup>97</sup> Coroner's Jury Report, 1/3/1948, Folder "Prison Escapes—1940-1949," RGRMHC.

recaptured while Tolley and Freeman escaped that close call. The trauma of the escape, recapture, and reprisal took its toll on the twenty-four-year-old Trujillo, who in mid-February hanged himself in his isolation cell, where he had been confined since the escape.<sup>98</sup> Freeman escaped on foot and was followed by a crew on “a half-mile foot race through the darkness of a mountain blizzard” before being shot and captured. As Freeman was chased down by one posse, another posse found Tolley who “lay throughout most of the night near death from frostbite.”<sup>99</sup>

Lavergne and Hathaway made their way together. A posse captured them at Garden Park. They were captured without injury; they surrendered before being brought down by rifle fire. The recapture of these two was exceptional because of the lack of violence and injury. Reports on the escape and the men involved elevated the threat that they posed; reporting focused on what the men had done to earn their conviction and their stay in Little Siberia. The morning after the escape, for example, the *Denver Post* reprinted the mug shots of the twelve men along with the details of their convictions under the headline “Escaped Convicts Have Vicious Crime Records: Felons Convicted For Kidnapings [sic], Murders, Thefts.”<sup>100</sup>

With those eleven captured, only one remained at large after twenty-fours: James Sherbondy. Sherbondy was serving a life sentence that he had received at seventeen years old. Upon escaping the prison, Sherbondy fled to a nearby farm where he held the family hostage to wait out the search. However, when the family’s seven-year-old became deathly ill, Sherbondy surrendered peacefully to allow the child to receive medical attention.

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<sup>98</sup> “One of Pen Escapees Takes Life By Hanging,” *Pueblo Chieftain*, 2/15/1948.

<sup>99</sup> John Snyder, “Posse Fires, Fells Cons” *Denver Post*, n.d., Folder “Prison Escapes—1940-1949,” RGRMHC.

<sup>100</sup> “Escaped Convicts Have Vicious Crime Records: Felons Convicted For Kidnapings [sic], Murders, Thefts,” *Denver Post*, 12/31/1947.

Like the 1929 episode, this prison escape and recapture made national headlines. Warden Best capitalized on the fear and hysteria to build his own reputation and the reputation of Colorado's penal system. Within three months of the escape attempt, Eagle Lion Hollywood Movie Studio began producing "Cañon City," a film based on the frightening event. The company hired actors and traveled to Cañon City where they used CSP and its captives as a realistic backdrop. The company boasted: "Prison officials, from Warden Roy Best down, gave every aid in making the picture. Sequences were shot in cell blocks, the hospital, dining room, everywhere that actual action took place. Convicts who wanted to—about 800 in all—worked in the production."<sup>101</sup> Roy Best, who played himself in the film, leveraged the opportunity to elevate his national profile and boost the reputation of modern penology. On a tour of the prison's many work facilities, the narrator informs the viewers: "modern penology recognizes man's need to work," reflecting Best's dedication to industrial activity and the state's interest in extracting value from incarcerated people.

Beyond capitalizing on the fear of the prison break, the producers and their supporters in the institution leveraged the public's interest in crime and the drama of fictional crime heroes. The film offered a voyeuristic look into the routine and violence of incarceration. The American public has long been fascinated by deviance and death, and the film industry made the most of this fascination.<sup>102</sup> "Cañon City" built on two precedents: the Western and the true crime drama. Western films reconstructed a frontier drama to teach Americans about national heroes by defining what violence was legitimate and what form of civilization ought to be protected. For

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<sup>101</sup> Eagle Lion Publicity and Advertising Packet for "Cañon City" Movie, Folder "Motion Pictures—'Canon City,'" RGRMHC.

<sup>102</sup> Karen Halttunen, *Murder Most Foul: The Killer and the American Gothic Imagination* (Cambridge: Harvard University Press, 1998).



example, John Ford's *Fort Apache* (1948) idealizes violent vengeance against Indigenous people in a story inspired by the Battle of Little Bighorn and George Armstrong Custer.<sup>103</sup> Fred Zinnemann's *High Noon* (1952) illustrates one marshal's pride and courage in facing a gang while the town fails to support the law.<sup>104</sup> True crime films, which emerged from a long historical interest in true crime literature and took root in Hollywood in the 1950s, used shocking murders to transform the killers into irredeemable monsters.<sup>105</sup> Richard Fleischer's *Compulsion* (1959) dramatizes the Leopold-Loeb case in which two wealthy young men attempted to commit the "perfect crime" wherein they brutally murdered a fourteen-year-old victim.<sup>106</sup> Filming "Cañon City" in the prison offered the opportunity for viewers to see inside its walls, and it reflected people's understanding of right and wrong.

Producer Brian Foy invoked Cañon City's legacy as a settler town with frontiersmen to frame this story of good versus evil, of order and law versus crime and lawlessness. The production used the real scene, the inclusion of incarcerated people, and Best's role to offer a dramatized version of prison life and the possibility of reform. Advertising posters claimed it was "filmed with the naked fury of fact!" and "Where it actually happened... with the people!" The critics who covered the film echoed this realistic sentiment: "As with every factual picture, there were enough changes in the story to add spice and to bind the continuity, but generally the

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<sup>103</sup> *Fort Apache*, directed by John Ford (1948, Phoenix: Argosy Pictures Corp.)

<sup>104</sup> *High Noon*, directed by Fred Zinneman (1952, Los Angeles: Stanley Kramer Productions)

<sup>105</sup> Harold Schechter, *True Crime: An American Anthology* (New York: Library of America, 2008).

<sup>106</sup> Interestingly, after Richard Loeb was killed in Statesville Prison in Joliet, Illinois in 1936, Illinois officials invited Roy Best to investigate the prison system and offer recommendations. *Compulsion*, directed by Richard Fleischer (1959, New York: Darryl F. Zanuck Productions, Inc.)

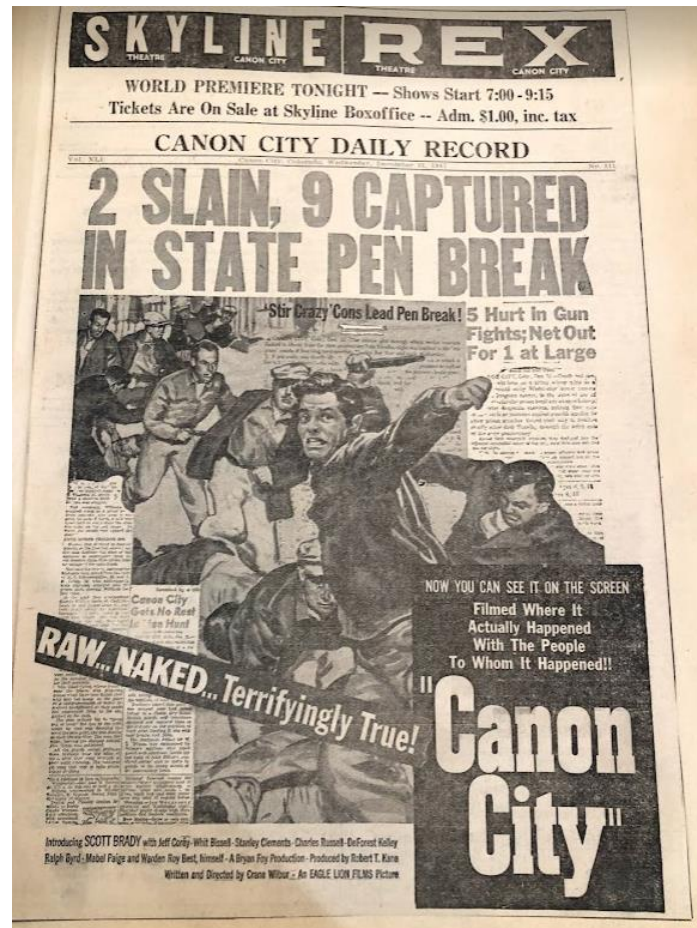


Figure 5.3: Skyline Theater Advertisement in Cañon City Daily Record, July 2, 1948. Royal Gorge Regional Museum & History Center.

December 30 break at Colorado state prison was filmed with a marked degree of authenticity.”<sup>107</sup>

(See Figure 5.3.)

The film’s promotion and success put Cañon City on the map as a carceral center. Jerry Pickman, Director of Advertising and Publicity for Eagle Lion Films, had expansive plans for distribution: it would premiere in Cañon City on 2 July 1948, just six months after the escape attempt while the event and accompanying news coverage was still fresh in people’s minds, then it would play in 12,500 theaters across the country for an estimated audience of 75 million

<sup>107</sup> “3,500 Thrill To ‘Canon City’ At World Premiere on Friday,” *Cañon City Daily Record*, 7/3/1948.

viewers. Later in the year, the company planned to add a foreign language soundtrack and it “will be shown in every civilized country in the world.”<sup>108</sup> Eagle Lion’s publicity and advertising packet highlighted the film’s major themes: the realism of the events; the modern penology illustrated by the prison; the success and importance of vigilantes. The Penal Association offered an endorsement of the film, arguing that it was a great way to “sell” ideas of modern penology and build public and political confidence in their work.<sup>109</sup> The film provided a sanitized version of the carceral system as a positive good for society. Without cost, the carceral state won propaganda from a situation that had originally seemed disastrous for its reputation.

When the film premiered in July 1948, Roy Best and CSP won the acclaim for which they had hoped. The Cañon City Chamber of Commerce and the City Council declared July 2 as “Roy Best Day.”<sup>110</sup> The premiere was preceded by a parade down Main Street honoring Roy Best, the prison officials, and the Eagle Lion Company. The prison band performed in the parade.<sup>111</sup> The Skyline Theatre in Cañon City was at capacity with about 2,500 people, including dignitaries such as Governor W. Lee Knous and Senator Edwin C. Johnson, in attendance. Another 1,000 viewers saw a showing of the film that same evening at the prison auditorium.<sup>112</sup> The benefits of the film location and local support won over the prison industry, and shortly

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<sup>108</sup> Board Minutes, 6/14/1948, Scrapbook: “Minutes. 1927-1943,” Box 1987.001.003 “Chamber of Commerce,” RGRMHC.

<sup>109</sup> Eagle Lion Publicity and Advertising Packet for “Cañon City” Movie, Folder “Motion Pictures—‘Canon City,’” RGRMHC.

<sup>110</sup> Board Minutes, 6/14/1948, Scrapbook: “Minutes. 1927-1943,” Box 1987.001.003 “Chamber of Commerce,” RGRMHC.

<sup>111</sup> Picture of World Premiere on Main Street, 7/2/1948, Acc. No. 1992.024.064, Folder “Motion Pictures—‘Canon City,’” RGRMHC.

<sup>112</sup> “World Premiere Picture Viewed By Notables,” *Pueblo Chieftain*, n.d., Folder “Motion Pictures—‘Canon City,’” RGRMHC.

thereafter Eagle Lion announced plans to use Cañon City to film “Woman-Hunt,” a film about women’s prisons featuring the women’s ward there.

“Cañon City” offered views of the daily routine and exceptional experiences of incarceration. The film opened with text that framed the story: “This is a true story of a prison break and the reign of terror that followed it. The events depicted in this film are the actual events that transpired at the Colorado State Prison in Cañon City on the night of December 30<sup>th</sup> last.” The narrator then used the opening of the film to show the quotidian of the prison: the prison industries, the cross-armed march of prisoners moving across the campus, the silent chow hall, the return of men to their cells, the weekly film screening, and the use of a metal detector to search men for contraband. Roy Best, who played himself, used this as an opportunity to explain the great responsibility of the warden to protect the free citizenry and rehabilitate the incarcerated. Through interviews with unnamed, anonymized incarcerated people—not actors—the film tried to provide insight into their lives. With one man who had been incarcerated there for over fifty years, the narrator asks about the possibility of parole and he quips: “Where would I go? Who would want me? That’s the worst punishment of all—when no one wants you.”<sup>113</sup> The film balances the isolation of the prison with the relationships fostered there, such as those between the men plotting the escape.

Written and directed by Crane Wilbur, the film offered a dramatized version of the event that emphasized the role of the community in maintaining safety against disorder. It highlighted the responsibility of all citizens to uphold civilization. Even in the film, the carceral logic of violence and fear was included. When directing the search teams to find the men, Best told them:

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<sup>113</sup> *Canon City*, directed by Crane Wilbur (1948, Los Angeles: Eagle-Lion Films, Inc.).

“If possible, bring them in alive, but don’t take any chances.” The only major variation from the actual events was the end in which Sherbondy surrendered after a dramatic shootout atop the Royal Gorge Bridge. Perhaps the dramatic landscape was too great a draw for the producer to pass up on in the film or perhaps this ending simply provided a more dramatic scene for the viewers, but it combined Cañon City’s two most recognizable features: the touristic draw of the bridge and law enforcement. The escape and film made Cañon City famous as a prison community in which citizens supported the efforts of lawmen.

While the film illustrated how Fremont County supported the prison, the attempted escape led to increased isolation of the prison from its surrounding community. Interviews with residents and incarcerated people invoke two periods in prison-Fremont County history: before and after the 1947 escape. After the escape, security took precedence. Up until that point, work details left the prison compound with regularity and incarcerated people would remain away from the facility for days at a time to conduct their work. After the escape attempt, the state focused on enhancing security by isolating the prison and its captives.<sup>114</sup>

By the end of the 1940s, Roy Best had left a deep imprint on the Colorado State Penitentiary. His focus on stability, order, and convict labor presented the culmination of a national and international debate over the best practice for modern penology. Perhaps more important than the practices within the institution, Best transformed the perception of punishment and prisons. He capitalized on a growing national interest in the salacious and

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<sup>114</sup> Oral Interview with Loretta Bailey, 3/23/2021, in possession of author; Oral Interview of Benny and Phyllis Johnson, 8/7/2012, Folder “Johnson, Andrew & fam.,” RGRMHC.

sensational to highlight the clear distinction between good and evil—and the need for the carceral state to protect good from evil.



Although Roy Best’s professional success seemed unshakeable after the publicity he garnered in the wake of the 1947 mass prison break and the subsequent film, his tenure at CSP ground to a bitter end in the early 1950s. As was the case in the downfall of Thomas Tynan in the 1920s, captives and their allies spurred Best’s demise while also transforming the states’ prison system.

Incarcerated people demanded recognition and protection of their civil rights as citizens in the context of a major shift in legal history and activist history. In post-World War II America, marginalized and mobilized people fought for—and to some extent received—a role in the democracy that the U.S. sought to model for the world.<sup>115</sup> Incarcerated people and their allies challenged an increasingly powerful carceral state with the tools and tactics emerging in the arsenal of the long civil rights movement: legal organizing, striking, political education, and general mobilizations. In 1944, the Supreme Court reversed the “slave of the state” doctrine in *Coffin v. Reichard* (1944) and began chipping away at the “hands-off doctrine” in which courts and federal officials deferred to executive and administrative control over prison, opining: “A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication taken away from him. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not

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<sup>115</sup> Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2011); Brenda Gayle Plummer, *Rising Wind: Black Americans and U.S. Foreign Affairs, 1935-1960* (Chapel Hill: University of North Carolina Press, 1996); Kevin Gaines, “The Civil Rights Movement in World Perspective,” *OAH Magazine of History* 21, no. 1 (Jan. 2007): 57-64.

deny his right to personal security against unlawful invasion.”<sup>116</sup> This case, however, did not fully restore legal rights; it determined that the incarcerated person has no legal recourse when their rights interfere with the safety and administration of prisons. *Coffin v. Reichard* and the context of mobilized people building solidarity and fighting for rights offered incarcerated people new ways to challenge the state’s carceral control. Scholars have debated the chronology and geography of the Civil Rights Movement, and incarcerated people at CSP confirm that a broader approach to where and when civil rights struggles occurred reveals a more complete picture of the actors and results.<sup>117</sup>

In May 1951, five incarcerated men decided to pursue their freedom but failed. This failed escape attempt opened the door for a new front in the Civil Rights Movement and led to Best’s—and the type of domineering penology he represented—downfall. Lee Mora, Charles W. Garton, John W. Davis, John D. Henebry, and Arthur Fisk fled their cells with a gun they had smuggled in.<sup>118</sup> During the escape, Garton shot guard captain Chet Yeo and Davis shot at guard Amon Murley. Yeo was injured but survived the incident. Murley was not hit. All five men were captured almost immediately and returned to the institution.

In the aftermath, on 16 July 1951, Warden Best punished these five men as well as a sixth, William C. Murray, who had allegedly “booed” the guards. “The entire surface of their

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<sup>116</sup> *Coffin v. Reichard*, 132 F.2d 443 (1944).

<sup>117</sup> Scholars have debated the chronology and geography of the (long) Civil Rights Movement: Jacquelyn Dowd Hall, “The Long Civil Rights Movement and the Political Uses of the Past,” *Journal of American History* 91, no. 4 (2005): 1233-1263; Kevin Gaines, “The Historiography of the Struggle for Black Equality Since 1945,” *A Companion to Post-1945 America*, Jean-Christophe Agnew and Roy Rosenzweig, eds. (Hoboken, NJ: Blackwell Publishing Ltd, 2006).

<sup>118</sup> An investigation found that a former captive who had recently been released planted the firearm in the railroad switch. “Report on July 16, 1951 Riot”, Folder: “00.011.123-136”, Julie Whitmore Collection, RGRMHC.

[the six punished men's] buttocks," according to two *Denver Post* reporters, "was a reddish purple. Their faces bore the imprint of blows. Their feet were blistered."<sup>119</sup> Flogging had not been a rare occurrence at the prison. Some guards had even spoken out—motivated by a contract dispute with the warden—about how Best tied up and strapped inmates "at almost the slightest pretext."<sup>120</sup> What had changed by the 1950s was neither public opinion nor the law, but rather the fact that incarcerated people asserted that the law's protections had been interpreted and applied too narrowly, precipitating a major legal shift.

These six men sought recourse for this punishment with their legal counsel, who, in turn, engaged the Federal Bureau of Investigations to investigate the beating as a possible federal civil rights violation. The punishment was so severe and the investigation so novel that the case made national headlines.<sup>121</sup> Leading criminologists across the country turned on Best because changes in penology now questioned the efficacy and morality of corporal punishment. Joseph Fulling Fishman, the former inspector of prisons for the U.S. government, published an article in *Authentic Detective* entitled "The Brutal Case of the Warden's Whip" that argued Best's "flogging regime" was futile and anachronistic.<sup>122</sup> Best's betrayal by his colleagues represents

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<sup>119</sup> Robert Stapp and Bernard Kelly, "Five Cons Give Statements on Lash Whippings," *Denver Post*, 7/19/1951.

<sup>120</sup> "Morale at State Pen Hot Issue," *Rocky Mountain News*, 4/1/1951.

<sup>121</sup> This wasn't the first time the federal government had investigated physical abuses by prison authorities, but it was one of the earliest cases in the postwar era premised on civil rights. Douglas Blackmon shows how some U.S. Attorneys investigated, albeit with limited success, the brutal convict leasing system in the early twentieth century. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books, 2008), 155-180.

<sup>122</sup> "Best's Tactics Rapped: Noted Criminologist Hits Pen Floggings As 'Futile'" *Denver Post*, 10/18/1951; Joseph Fulling Fishman, "The Brutal Case of the Warden's Whip," *Authentic Detective*, n.d.



their attempt to preserve the legitimacy of the carceral state by distancing themselves from what he had been caught doing.

The men brutalized at CSP leveraged not only their understanding of the law but their understanding of public opinion. They contacted news journalists to tell their story of alleged brutality and undertook a hunger strike to help maintain attention on their charges against Best's brutality. The context of the Cold War's emphasis on American exceptionalism and the Civil Rights Movement's gains allowed incarcerated men to find a public sympathetic to their plight in the 1950s. Colorado's penal system illuminates two interdependent narratives that emerged in the 1950s and would persist for decades to come. First, incarcerated people found and leveraged new forms of activism such as political education, civil rights, violent rebellion, and strikes to protest the conditions of their confinement. Second, in response, the state established new systems of control to repress organizing, education, and solidarity within the carceral system or embarrassment to it. These impulses responded to advances in the other narrative—creating a perpetual cycle of repression and organizing.

Journalists Robert Stapp and Bernard Kelly traveled to CSP in 1951 to write about this case. They interviewed the harmed men—while in their cells and in the presence of Best and four other guards. All five men gave statements with a variation of the sentiment Charles Garton voiced: “We got rough with them and they got rough with us.” Best, too, offered a similar interpretation of what happened: “We understand each other. If they try to dish it out they know they have to be prepared to take it. We're playing on opposite sides and they lost.”<sup>123</sup> In their reporting, the *Denver Post* reached out to all forty-seven other states and the federal Bureau of

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<sup>123</sup> Robert Stapp and Bernard Kelly, “Five Cons Give Statements on Lash Whippings,” *Denver Post*, 7/19/1951.

Prisons to confirm that “Colorado is the only state in America where such a thing could happen solely on the order of a prison warden.”<sup>124</sup>

The issue at the heart of this case that precipitated the involvement of state politicians and FBI agents was not the brutality of the punishment, but instead whether the warden alone held the authority to adjudicate transgressions and execute punishments. An editorial in the *Denver Post* argued that if the prisoners were shot or beaten in the course of their escape attempt, that would have been acceptable, but because they were beaten up the day following the escape attempt, it represents “a case of deliberate brutality under the direction of an intemperate and insensible warden.”<sup>125</sup> In the immediate aftermath, the State Institutions Board voted to discontinue “whipping, flogging, lashing, beating” or other similar acts at the prison. The Board further recommended that “isolation and confinement be substituted for whipping as punishment.”<sup>126</sup> In this way, the Board upheld the prison’s ability to punish and torture, but they sought a way—*isolation*—that did so without leaving visible marks. Importantly, incarcerated activists in these decades won rights based on process and procedure rather than the underlying questions of punishment and rehabilitation.<sup>127</sup>

After the newspaper coverage, in January 1952, the FBI announced that they were investigating the floggings of captives at CSP.<sup>128</sup> One agent described this issue simply as “a

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<sup>124</sup> “Here’s How Post Got Cons’ Photos,” *Denver Post*, 7/20/1951.

<sup>125</sup> “Society Takes a Beating at the Prison,” *Denver Post*, 7/20/1951.

<sup>126</sup> “Board Orders Best Discontinue Floggings at Canon City Prison,” *Rocky Mountain News*, 7/24/1951.

<sup>127</sup> Legal scholars have shown how the “Rights Revolution” of the 1960s was largely a protection of legal processes: Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York: Oxford University Press, 2016).

<sup>128</sup> “FBI Agents Probe Floggings at Pen,” *Rocky Mountain News*, 1/22/1952.

civil rights issue.”<sup>129</sup> After two months, the Department of Justice’s civil rights section determined that Roy Best had violated federal law by flogging the six men. “In the opinion of the department,” the Justice Department’s statement read, “no prison warden, or jail keeper, or patrolman has any right to punish any prisoners except according to ‘due process’ of law.”<sup>130</sup> The investigation and case still centered on who had authority to punish, not the punishment itself. Because Colorado’s statutes did not explicitly allow flogging at the warden’s command, Best’s actions violated the victim’s civil rights. This case hinged on the application of the Fourteenth Amendment, and it came at a new moment in jurisprudence as this Amendment was applied to incarcerated people. For the “brutalities” at the state penitentiary, the federal authorities sought a one-year prison sentence for Best and his accomplices.<sup>131</sup> The Department of Justice convened a grand jury to weigh their charges against Best. All six flogged men testified about that July 16 incident as well as the general use of the lash at the penitentiary. Courtroom testimony, as Dan Berger has argued, ought to be seen as performance that combats state narratives and the isolation of the carceral system, enabling captives to gain legitimacy and to protest the carceral system.<sup>132</sup>

On 22 April 1952, after the testimony of incarcerated people and their keepers, a grand jury indicted Best, his former deputy warden, two guard captains, one lieutenant, and four guards for the physical punishment they inflicted on these six prisoners. A biographical retrospective of

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<sup>129</sup> “FBI Investigates Prison Floggings,” *Denver Post*, 1/22/1952.

<sup>130</sup> “Best Violated Federal Law, Justice Dept. Decides,” *Rocky Mountain News*, 4/8/1951.

<sup>131</sup> “Federal Prosecutors Will Try to Send Best to U.S. Prison” *Rocky Mountain News*, 4/6/1952.

<sup>132</sup> Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016), 78.

“The Cowboy Warden” after his death recounted the allegations: “Best and his men, it was charged, violated the convicts’ civil rights by conspiring to strip the convicts and stand them barefoot on hot pavement; striking them, kicking, stomping and torturing them; shackling them and tying them to a gymnasium horse where they were beaten unconscious, slapped, whipped, and choked.”<sup>133</sup> Just prior to the Grand Jury unveiling its indictment, Best warned that a riot might break out in Cañon City. This thinly veiled threat of inaction in the face of prisoner uprising was his second mention of a riot breaking out in the penitentiary during the FBI probe.<sup>134</sup> No such disturbance occurred.

Despite the prosecution, Best—and the practice of flogging—had its defenders. Colorado Senator and former Governor Ed Johnson, for example, went on record saying “if the FBI wants to find out and put in jail whoever is guilty of violating civil rights through the floggings of prisoners at Cañon City penitentiary, the government is going to need a mighty big jail... It was never secret that prisoners were flogged for grave infractions.”<sup>135</sup> The *Pueblo Chieftain* offered a front-page editorial in support of Best. The *Chieftain* published two color photos side-by-side: one was an image of a man shot dead and the other was “of a convict spanked that the Colorado State Penitentiary for attempting to escape when two guards were seriously wounded.” Under these images, the *Chieftain* asked its readers: “Which, it is respectfully submitted, is entitled to have his ‘CIVIL RIGHTS’ protected? The man who got killed by a convict, not the one pictured herewith, but by a convict who attempted to escape and who did but who was later captured or the convict who was given a few slaps by a broad strap on a part of his anatomy where the welts

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<sup>133</sup> “The Cowboy Warden,” *Colorado Heritage* (Winter 1996).

<sup>134</sup> “Warden Best, 8 Others Indicted By Federal Jury,” *Denver Post*, 4/22/1952.

<sup>135</sup> “Senator Johnson Defends Warden,” *Rocky Mountain News*, 2/1/1952.

disappeared with a day or two? But the dead guard is still dead and his ‘civil rights’ are dead with him.”<sup>136</sup> These images, paired with this inflammatory rhetoric, argued that incarcerated people deserved what they got. This article appealed to emotion by juxtaposing images of a dead man and a bruised buttocks. But, in reality, no guard was killed in this escape. The paper had published an image of a carpenter who had shot and killed his wife then himself the August before—a man who had never worked at the prison. The *Denver Post* even called out the paper for its misleading photo and article.<sup>137</sup> The article provides an example of how newspapers used their power to distort knowledge and justify repression of incarcerated people.<sup>138</sup>

While awaiting their trial after the grand jury indictment, Best and the eight other indicted officials received the fiscal support of local businessmen who had raised \$2,000 to sign the nine men’s bonds. Upon receiving bond, Best returned to the penitentiary. Throughout this process, he remained in his position as warden, controlling the destiny of all men in his charge, including the men who had testified against him.<sup>139</sup> During the months leading up to the trial, these incarcerated men sought legal advice about how to protect themselves. Longstanding custom at CSP prohibited private communications between captives and their lawyers, but in this case a judge reversed that rule. In another win for incarcerated people, District Judge Joseph D. Blunt held that “A state prison inmate has the legal right to confer with his attorney in absolute

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<sup>136</sup> “Let’s Have the Whole Picture In Considering ‘Civil Rights’” *Pueblo Chieftain*, 4/16/1952.

<sup>137</sup> “Paper’s Photo of ‘Slain Pen Guard’ Proved False,” *Denver Post*, 4/19.1952.

<sup>138</sup> For epistemic violence: Rosalind C. Morris, ed., *Can the Subaltern Speak?: Reflections on the History of an Idea* (New York: Columbia University Press, 2010).

<sup>139</sup> “Best to Keep Job at Prison Until His Trial,” *Rocky Mountain News*, 4/25/1952.

privacy without guards being in attendance.”<sup>140</sup> The Supreme Court would not codify the right of confidential correspondence between prisoners and their attorneys until 1972 with the decision *In re Jordan*.<sup>141</sup> When the trial began in June, all nine officials pled innocent. After evidence was presented, the federal jury deliberated for six hours and found every official not guilty of violating the prisoners’ civil rights.<sup>142</sup>

In spite of his defenders, Best had lost the support of the governor and the majority of the legislature. These state elected officials generally supported the FBI’s probe and were concurrently conducting investigations of their own. The key factor in Best’s demise was not simply his flogging his charges, for that was well known and had long been carried on, but the turning tide of state politicians and public outcry against both the practice and the power the warden held.



Within the month of his federal acquittal, the state Civil Service Commission would suspend Best for two years. The state government’s various investigations into Best had lasted since August 1950 when Governor Walter Johnson, in the final weeks of his reelection campaign, and District Attorney John Stump Witcher launched simultaneous investigations into Best’s conduct.<sup>143</sup> Both investigations concerned Best’s use of state property, not his treatment of

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<sup>140</sup> “Convict In Prison Whipping Gets Right To Confer With Attorney,” *Cañon City Daily Record*, 5/27/1952; “Judge Blunt Denies Venue Change for Pen Inmates,” *Cañon City Daily Record*, 1/29/1952.

<sup>141</sup> *In re Jordan* 7 Cal.3d 930 (1972)

<sup>142</sup> “Acquitted,” *Cañon City Daily Record*, 7/3/1952.

<sup>143</sup> “Witcher Launches Probe; Blasts Gov.” *Cañon City Daily Record*, 8/30/1950; “Campaign Year Trickery,” *Rocky Mountain News*, 7/30/1950.

CSP captives. The governor and DA accused Best of using penitentiary supplies and labor for his personal ranch, Hitchrack Ranch. Although a lack of evidence forced the governor to suspend his inquiry, DA Witcher brought five charges of embezzlement against Best.<sup>144</sup>

Best's conduct became an election issue. Republican gubernatorial candidate Dan Thornton called for Best's suspension.<sup>145</sup> Throughout this ordeal, Best predicted a quick acquittal. Witcher's investigation stalled out when the court ruled that Witcher did not have the authority to impound the penitentiary's financial records.<sup>146</sup> Despite testimony from the ranch's foreman that Best had used convict labor and state goods on the ranch, Witcher failed to win a conviction on the charge that best embezzled \$230 worth of state plywood.<sup>147</sup> But, in a small political world, Best had lost his reputation and grip on power.

Dan Thornton ran his gubernatorial election campaign on reform. He promised to clean up state government and assert power over once-powerful bureaucrats and politicians that had allowed corruption to persist. Once inaugurated as governor, Thornton demanded Best step down as warden. Best continued to refuse. After Best won an acquittal on the embezzlement charges, Governor Thornton and the state auditor discovered new evidence against Best: the first audit in Best's nineteen-year tenure revealed that he broke the law that prohibited a state official from purchasing for a state institution goods sold by a firm in which he has financial interests. Best was the president of the Wann Motor Company (renamed the Dozier Best Motor Company in

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<sup>144</sup> "Five Embezzlements Charged to Warden," *Pueblo Chieftain*, 9/30/1950; "Lack of Evidence Suspends Governor's Prison Inquiry," *Cañon City Daily Record*, 10/3/1950.

<sup>145</sup> "Thornton Calls For Suspension of Warden Best," *Cañon City Daily Record*, 10/30/1950.

<sup>146</sup> "Plea for Best's Records Denied," *Denver Post*, 1/18/1951.

<sup>147</sup> "Verdict Reached After 19 ½ Hours Deliberation," *Cañon City Daily Record*, 2/3/1951.

Aug. 1949) when the prison paid nearly \$22,000 to the company for supplies and repairs.<sup>148</sup> With the evidence of embezzlement paired with the evidence of physical abuse, the Civil Service Commission took action.<sup>149</sup> They held hearings against Best, and after eleven days of testimony, Commissioner Welsh announced: “We find that sufficient evidence of the charges filed have been sustained by competent and material evidence to warrant the discipline of the warden and it is hereby ordered that he be suspended from state service without pay for a period of two years beginning 29 May 1952.” Roy Best waited out the suspension on his ranch. He was slated to return to the penitentiary 29 May 1954. But, in a strange twist of fate, Roy Best died of a heart attack three days before his planned return.<sup>150</sup>

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<sup>148</sup> “New Proof of Warden’s Law Violations,” *Denver Post*, 10/25/1951.

<sup>149</sup> “The Cowboy Warden,” *Colorado Heritage* (Winter 1996).

<sup>150</sup> “Roy Best Dies of Heart Attack: Death Comes 3 Days Prior To Return To Prison Post,” *Cañon City Daily Record*, 5/27/1954.



Chapter 6 - Carceral Resistance and Carceral Expansion, 1954-1976

Harry Tinsley, who began as Deputy Warden of Colorado State Penitentiary in 1951 and retired as Chief of Corrections in 1971, offered a succinct reflection on how incarceration changed throughout his tenure: “I feel that the major differences between the inmates of today and 25 years ago when I first became Warden is the increased awareness of their ‘rights’ as individuals, brought on by various supreme court rulings, which is not necessarily all bad, but certainly it has provided many more problems for correctional workers. Inmates used to accept firm treatment, if it was fair. Now it appears that they have begun to question any and all orders that are issued regarding their stay in an institution.”<sup>1</sup>

The state and its captives in the 1950s, beginning with the case that led to Best’s downfall, forged a new relationship. Incarcerated people and their allies employed tactics and tools of the civil rights movement to challenge the conditions of their captivity: legal actions, withholding labor, political education, and mass mobilization. Within this new relationship, incarcerated people increasingly considered themselves both political prisoners and racialized. Now, they challenged systemic societal issues of which the prison was but one manifestation, while the state responded to these assertions of rights by pioneering forms of repression to maintain control. The state managed its “crisis of hegemony” and justified its coercive powers by racializing and stigmatizing a criminal other.<sup>2</sup> The state’s new methods at control expanded and entrenched a carceral system that attempted to make the prison and its captives opaque.

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<sup>1</sup> “Questionnaire of Tinsley,” n.d., Folder “Tinsley Family,” Royal Gorge Regional Museum & History Center, Cañon City, Colorado (Hereafter: RGRMHC).

<sup>2</sup> Stuart Hall, Charles Critcher, Tony Jefferson, John Clarke, and Brian Roberts, *Policing the Crisis: Mugging, the State, and Law and Order* (London: Macmillan, 1978); Jordan T. Camp, *Incarcerating the Crisis: Freedom Struggles and the Rise of the Neoliberal State* (Berkeley: University of California Press, 2016).

The legal, political, social, and educational shift in prison society reflected the context of a changing state and country in the decades after World War II. Organizers challenged race-, gender-, and class-based forms of oppression in freedom struggles across the country. During this long civil rights movement, mobilized people refined tactics of protest in politics, non-violence, direct confrontation, and economic non-participation that helped secure some civil rights victories and representation.<sup>3</sup> Emanating from this movement for rights was a pronounced assertion of racial and ethnic pride.<sup>4</sup> This pride helped forge solidarity among oppressed people across geographic and racial divides. The post-World War II demand for a participatory and equitable democratic system grew out of longer struggles for liberation as well as the values propagated against fascism and oppression during the war.<sup>5</sup>

World War II's mobilization and production efforts had also rearranged the nation's demography: millions of Black people traveled to production centers across the West, including Denver.<sup>6</sup> The newfound diversity in many spaces led to increased tension that resulted in non-

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<sup>3</sup> On the tactics and tools of organizers during the civil rights era: Lance Hill, *The Deacons for Defense: Armed Resistance and the Civil Rights Movement* (Chapel Hill: University of North Carolina Press, 2004); John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana and Chicago: University of Illinois Press, 1994); Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance, a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Alfred A. Knopf, 2010); Max Krochmal, *Blue Texas: The Making of a Multiracial Democratic Coalition in the Civil Rights Era* (Chapel Hill: University of North Carolina, 2016).

<sup>4</sup> On the context of growing ethnic and racial pride and identification in the 1960s and 1970s: David Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995); Peniel E. Joseph, *Waiting 'Til the Midnight Hour: A Narrative History of Black Power in America* (New York: Macmillan, 2007); Cedric Johnson, *Revolutionaries to Race Leaders: Black Power and the Making of African American Politics* (Minneapolis: University of Minnesota Press, 2007); Juan Gómez-Quiñones and Irene Vásquez, *Making Aztlán: Ideology and Culture of the Chicana and Chicano Movement, 1966–1977* (Albuquerque: University of New Mexico Press, 2014); Troy R. Johnson, *The American Indian Occupation of Alcatraz Island: Red Power and Self-Determination* (Lincoln: University of Nebraska Press, 2008).

<sup>5</sup> Daniel Kryder, *Divided Arsenal: Race and the American State During World War II* (New York: Cambridge University Press, 2000); Stephen Tuck, *Fog of War: The Second World War and the Civil Rights Movement* (New York: Oxford University Press, 2012).

<sup>6</sup> James N. Gregory, "The Second Great Migration: A Historical Overview," *African American Urban History: The Dynamics of Race, Class and Gender since World War II*, eds. Joe W. Trotter Jr. and Kenneth L. Kusmer (Chicago:

state and state-led forms of violence, control, and segregation.<sup>7</sup> These struggles for freedom occurred in prisons as they did across free society, in Colorado and the United States.<sup>8</sup> Racialized demands on freedom, paired with the presence of people of color throughout the West, contributed to a backlash in which the state reinforced racial supremacy.<sup>9</sup> In this process, Colorado's prison population began to reflect the state's shifting demographic picture. In 1955, for every 1,355 white persons in the state, 1 was in prison; for every 307 "Spanish" persons in the state, 1 was in prison; for every 190 "Negro" persons in the state, 1 was in prison.<sup>10</sup> In 1980, for every 1,684 white persons in the state, 1 was in prison; for every 500 "Chicano" persons in the state, 1 was in prison; for every 177 Black persons in the state, 1 was in prison.<sup>11</sup> Racial inequities persisted because they were a feature of the carceral system in the United States.

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University of Chicago Press, 2009), 19-38; Carl Ubbelohde, Maxine Benson, and Duane A. Smith, *A Colorado History, Tenth Edition* (Portland: WestWinds Press, 2015), 324-325.

<sup>7</sup> On post-World War II issues of racial discrimination in the free world: Richard Rothstein, *The Color of the Law: A Forgotten History of How Our Government Segregated America* (New York: Liverlight Publishing, 2018); Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership* (Chapel Hill: University of North Carolina Press, 2019).

<sup>8</sup> On the context of prison organizing in the U.S. in the decades after World War II: Robert T. Chase, *We Are Not Slaves: State Violence, Coerced Labor, and Prisoners' Rights in Postwar America* (Chapel Hill: University of North Carolina Press, 2020); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016); Garrett Felber, *Those Who Know Don't Say: the Nation of Islam, the Black Freedom Movement, and the Carceral State* (Chapel Hill: University of North Carolina Press, 2020); Donald F. Tibbs, *From Black Power to Prison Power: the Making of Jones v. North Carolina Prisoners' Labor Union* (New York: Palgrave Macmillan, 2012).

<sup>9</sup> Heather Ann Thompson, Austin McCoy, Carl Suddler, and Max Felker-Kanter, among others, challenge the idea of a "backlash," instead arguing that the moments in which marginalized people successfully made demands on the state should be seen as an aberration in a longer sustained history of racialized oppression. Heather Ann Thompson, Austin McCoy, Carl Suddler, and Max Felker-Kanter, "Urban Uprisings Against Racist Police Terror in Historical Context," Urban History Association, 7/7/2020, accessed at: <https://www.youtube.com/watch?v=QgKUOGpSd48>.

<sup>10</sup> "Colorado State Penitentiary—Past, Present, and Projected Planning," n.d., Box 14794 "Parole and Reports," Department of Corrections Collection, Colorado State Archives, Denver, CO (Hereafter: CSA).

<sup>11</sup> U.S. Department of Commerce, *1980 Census of Population: General Population Characteristics, United States Summary* (Washington, D.C.: U.S. Government Printing Office, 1983); Colorado Department of Corrections, "Annual Statistical Report 1980-1981," page 27, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/83618NCJRS.pdf>.

Colorado's trajectory tracks with the United States'. In 1950, 34.7 percent of the U.S. prison population was Black whereas they made up 10 percent of the total U.S. population. In 1970, 40.7 percent of the U.S. prison population was Black; at the same time, Black people comprised 11.1 percent of the total U.S. population.<sup>12</sup> The carceral state targeted people of color within a broader American sociopolitical system that reproduced the same racial inequity.

The carceral state grew in Colorado as part of the growth of the national state and its individual state counterparts. In post-World War II America, national security concerns spurred the growth of a persistent militarized and violent government.<sup>13</sup> This growing military industrial complex complemented the increasing scope of domestic welfare and social programs.<sup>14</sup> The global Cold War challenged the United States to fulfill its proclamations of democracy, and to do so, it emphasized the process of protecting rights and expanding policing powers.<sup>15</sup> Jordan Camp argues that mass criminalization "took hold as part of a continuum of Cold War racial

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<sup>12</sup> The data for these nationwide data includes only adult incarcerated people. Although Calahan does not provide data for Spanish-speaking prisoners in the post-World War II era, she argues that the proportion of *both* Black and Spanish-speaking captives rose disproportionately. Margaret Cahalan, "Trends in Incarceration in the United States since 1880: A Summary of Reported Rates and the Distribution of Offenses," *Crime & Delinquency* 25, no. 1 (Jan. 1979), 40.

<sup>13</sup> James Sparrow argues that the scope of the state's powers grew dramatically during wartime crisis in *Warfare State: World War II Americans and the Age of Big Government* (New York: Oxford University Press, 2011); the continued growth of the militarized state after the World War II as central to the country's political economy: Paul A.C. Koistinen, *State of War: The Political Economy of American Warfare, 1945-2011* (Lawrence: University of Kansas Press, 2012); Melvyn P. Leffler, *A Preponderance of Power: National Security, the Truman Administration, and the Cold War* (Stanford: Stanford University Press, 1992).

<sup>14</sup> For examples of the growth of government welfare and social programs post-World War II: Christopher Wells, *Car Country: An Environmental History* (Seattle: University of Washington Press, 2012); David Ekbladh, *The Great American Mission: Modernization and the Construction of an American World Order* (Princeton: Princeton University Press, 2010); Joanna Grisinger, *The Unwieldy American State: Administrative Politics Since the New Deal* (Cambridge: Cambridge University Press, 2012).

<sup>15</sup> Mary Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (Princeton: Princeton University Press, 2000).

liberalism's strategy of containment in the postwar period."<sup>16</sup> A postwar moral panic of conformity, sexuality, and American exceptionalism legitimized the expansion of state capacities of criminalization, control, surveillance, and incarceration.<sup>17</sup> The state, with its naturalized power of force, expanded its capacity to enforce such control.<sup>18</sup> In Colorado, like states across the country, the state's responsibilities grew, and the state invested in new facilities—a pre-parole center, a medium security institution, a new women's facility, etc.—to realize reforms and shore up legitimacy.

In postwar America—in the context of the long civil rights movement and the criminalization of these freedom struggles—marginalized and mobilized people challenged an increasingly powerful and entrenched carceral state. Incarcerated people used the state's own mechanisms to challenge the state, which legitimized the carceral state by offering examples of the state effectively responding to critics and reforming without external intervention. Incarcerated people also worked in unsanctioned ways to oppose various forms of oppression and exploitation, such as by refusing to comply with institutional mandates and conducting political education programs. Incarcerated organizing constituted both dramatic moments of rebellion and quotidian acts of organizing. At the same time, however, the state responded to freedom struggles and the new model of a “political prisoner” with increased repression. This

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<sup>16</sup> Camp, *Incarcerating the Crisis*, 15.

<sup>17</sup> Elaine Taylor May, “Cold War-Warm Hearth: Politics and the Family in Postwar America,” *The Rise and Fall of the New Deal Order, 1930-1980*, eds. Steve Fraser and Gary Gerstle (Princeton: Princeton University Press, 1989), 153-181; Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009); Tom Engelhardt, *The End of Victory Culture: Cold War America and the Disillusioning of a Generation* (Amherst: University of Massachusetts Press, 2007).

<sup>18</sup> Elizabeth Hinton, *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s* (New York: Liverlight Publishing, 2021).

repressive backlash reflected the enduring relationship between Black and Latinx people fighting for freedoms while facing increasingly harsh punishment—both inside and outside the prison.



Prior to World War II, state and federal courts deferred to legislative and executive control over incarceration. But, beginning in the 1940s and 1950s, that deference began to change. Americans increasingly found redress through a legal system that protected some privacy and procedural rights.<sup>19</sup> As civil rights movement leaders and organizations, such as the NAACP's Legal Defense Fund, focused on the courts to win civil rights, incarcerated people likewise took cases to the courts. The federal courts began to extend protections to incarcerated people.

In 1962, the courts determined that the Eighth Amendment's prohibition against cruel and unusual punishment applied to state governments.<sup>20</sup> Two years later, the court ruled that Thomas X Cooper, a Muslim man imprisoned in Illinois, could not be barred from accessing the Koran.<sup>21</sup> Cooper's victory ushered in a new era of prison organizing and activism across the U.S., for it showed that incarcerated people could find some relief in the federal courts. The court's decision in *Cooper* set off a legal revolution, reversing the "hands off" policy precedent.<sup>22</sup> After *Cooper v. Pate*, the number of federal prisoners' rights suits ballooned across

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<sup>19</sup> Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

<sup>20</sup> *Robinson v. California*, 370 US 660 (1962).

<sup>21</sup> Toussaint Lossier, "...For Strictly Religious Reason[s]," *Souls* 15, no. 1-2 (2013): 19-38.

<sup>22</sup> James B. Jacobs, "The Prisoners' Rights Movement and Its Impacts, 1960-80," *Crime and Justice* 2 (198): 429-470.

the nation: from 218 in 1966 to 2,030 in 1970 to 11,195 in 1979 and to almost 18,477 in 1984.<sup>23</sup>

Due to the success of Muslim litigation, as Garrett Felber notes, “prisoners won a dramatic increase in visibility and recognition of their rights.”<sup>24</sup> This pattern held true in Colorado.<sup>25</sup>

In the lawsuits filed in the 1960s and 1970s, incarcerated activists in Colorado used the courts to challenge policies and procedures related to mail, speech, searches, visitation, haircuts, labor, food, and general conditions of confinement. They sued wardens and other prison administrators personally. Before the Supreme Court created the rule of “qualified immunity” in 1967 and extended it to correctional officers in the subsequent decades, public officials could be held personally responsible for unconstitutional conduct.<sup>26</sup> Randy Henderson, administrative assistant to the prison director in the 1970s, noted: “The line officer has now always got in the back of his mind, ‘Am I going to get sued?’”<sup>27</sup> While attorneys received years of training in understanding the law and the judges who interpreted the law spent years researching and writing the decisions, the guards expected to enforce the laws received minimal, if any, legal training. Guards often learned the extent of their powers through summaries of legal decisions, such as those distributed by prison industry organizations that provided the bare bones of the case and the procedures required for guards to shield themselves legally.

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<sup>23</sup> Jacobs, “The Prisoners’ Rights Movement and Its Impact,” 434-440; Chase, *We Are Not Slaves*, 6; Turner, “When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts,” *Harvard Law Review* 92, no. 3 (1979): 610-663; Opinion of District Judge Kane in *Ramos et al v. Department of Corrections*, 12/12/1979, Folder “Ramos vs. Dept of Corrections Dec. 20 1979,” Acc. No. 1988.001.094, Museum of Colorado Prisons, Cañon City, Colorado (Hereafter: MCP).

<sup>24</sup> Felber, *Those Who Know*, 11.

<sup>25</sup> “Activism Behind Bars,” *The Empire*, 11/14/1971.

<sup>26</sup> *Pierson v. Ray*, 386 US 547 (1967).

<sup>27</sup> “Guards Must Cope With Violence, Lawsuits” *Gazette Telegraph*, 10/25/1973.

Lawsuits, beyond seeking redress and forcing officials to change their behavior, also exposed the practices and logics of incarceration. Everett Small, a jailhouse lawyer who was incarcerated at CSP, filed one of the many lawsuits against the institution, their leaders, and the state in 1969. Jailhouse lawyers, oftentimes people without formal training in the law, use resources within the prison while incarcerated to familiarize themselves with the legal system to, as Mumia Abu-Jamal argues, “act to challenge how the joint is run. Jailhouse lawyers force prisons to change their formal rules and regulations.”<sup>28</sup> Small, also a correspondent with *Fortune* Society, an advocacy organization for incarcerated people that increased public awareness of America’s prisons and their conditions, sued Warden Wayne K. Patterson and the State of Colorado for the ongoing practice of censorship. Small contended that his mail was being opened, read, and censored by the prison authorities, mail was being copied and kept in his file, magazines and papers were destroyed instead of delivered, mail was subjected to unnecessary and retaliatory delays of over two weeks, prisoners were restricted in who they could write to, and letters describing penal practices and litigation were subject to censorship. Small argued that this was both a violation of his civil rights and counterproductive to rehabilitation: “It is the secrecy of prison life coupled with restrictions of communication which does the most harm to progress, self-motivation and rehabilitation. The enormous obstacle of censorship and limitations on mail actually creates an artificial alienation, eventually resulting in recidivism.”<sup>29</sup> Small’s argument illuminated the contradictions inherent within the legal punishment system: isolating individuals to prepare them to reintegrate with society.

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<sup>28</sup> Mumia Abu-Jamal, *Jailhouse Lawyering: Prisoners Defending Prisoners v. The U.S.A.* (San Francisco: City Lights Books, 2009).

<sup>29</sup> Arthur Everett Small, “Small’s World” *The Interpreter* 6, no. 3 (Summer 1971), 25, Folder “Interpreter Summer 1971,” Acc. No. 1987.006.358, MCP.



Small was not the only one fighting for the right to free communication, and he was not the only one who invoked both civil citizenship protections and the power of communication to help people. In 1969, incarcerated people sent an open unsigned letter to the warden explaining: “We object to the idea of Censorship on books and magazines by the Associate Warden of Treatment; and beseech you to protect our privilege, to order and receive books and magazines, allowed through the United States Mail... Very little is accomplished in a free County, by supresing [sic] the Rights of the person to indulge in the practice of seeing and reading what he may desire.”<sup>30</sup>

CSP’s censorship went beyond individual letters, books, and magazines; it restricted political education and organizing. During the 1972 election campaign, Patterson prohibited candidates from the Socialist Workers Party and from La Raza Unida to address incarcerated people. This prohibition resulted in an uproar by captives’ outside allies—another vehicle by which incarcerated people made their ideas heard. For example, during a lecture at the University of Colorado Denver Center, SWP members heckled Patterson and asked him to pledge that candidates could campaign at the prison. Patterson refused. The activists at this event, along with at other events and through letters to state and prison officials, also complained about the censorship on political magazines within the prison.<sup>31</sup> The SWP’s official newspaper, “The Militant,” had been returned by the prison’s censors for advocating violence in spite of the paper not advocating violence.

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<sup>30</sup> Letter to Warden Patterson from Prisoners, 4/17/1969, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>31</sup> “Patterson Urges Drive on Violence,” 2/17/1972, Folder: “Penology,” MCP.

Patterson responded to the allegations of censorship by admitting that the prison opened and inspected mail to ensure no contraband—including potentially inciting ideas—entered the facility.<sup>32</sup> The legal system sided with the warden on the grounds that safety trumped privacy. Despite his loss, Small maintained his belief that “Lawsuits can bring many reforms in the day-to-day treatment of prisoners as something other than human trash.”<sup>33</sup> He believed that legal action and publicity could remove the “anonymity” of the prison system and thereby encourage reform. The censorship case dragged on for about two years, representing, as Small wrote, “the pre-eminent example of prisoner frustrations in obtaining judicial redress of penal grievances.”<sup>34</sup> Small ultimately lost. The court concluded that institutional safety trumped the concerns over unrestricted communication. Filing, arguing, and deciding a case often dragged on for years, offering the prison system the opportunity to delay reform. But, these delays, paired with long sentences, offered incarcerated people an opportunity to learn how to employ the legal system. Jailhouse lawyers and writ-writers became increasingly popular and important in prison society.<sup>35</sup>

In another case filed in 1970, Frank Frensey Moore charged that “prison shakedowns,” searches of prison cells and incarcerated people’s belongings, were illegal under the Fourth

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<sup>32</sup> “Activism Behind Bars,” *The Empire*, 11/14/1971.

<sup>33</sup> Arthur Everett Small, “Small’s World” *The Interpreter* 6, no. 3 (Summer 1971): 24, Folder “Interpreter Summer 1971,” Acc. No. 1987.006.358, MCP.

<sup>34</sup> Arthur Everett Small, “Small’s World,” *Interpreter* 7, no. 2 (June-July-August 1972): 32, Folder “Interpreter Summer 1972,” Acc. No. 1988.012.031, MCP.

<sup>35</sup> On the history and legacy of write writing and jailhouse lawyers: John F. Myers, “The Writ-Writers: Jailhouse Lawyers Right of Meaningful Access to the Courts,” *Akron Law Review* 18, no. 4 (1985): 649-665; Jessica Feierman, “The Power of the Pen: Jailhouse Lawyers, Literacy, and Civic Engagement,” *Harvard Civil Rights Civil Liberties Law Review* 41, no. 2 (2006): 369-390; Aleyah Gowell, “‘The Most Eloquent Dissents:’ Writ Writing at Parchman Penitentiary,” B.A. Honors Thesis, (William & Mary, 2020); Abu-Jamal, *Jailhouse Lawyering*.

Amendment's prohibition against warrantless searches of a person's private property. Moore, who was penalized for unlawful possession of narcotics found in a shakedown, appealed his discipline by challenging that the narcotics found in his cell were inadmissible because the guard who searched his cell did not have a warrant. He reframed how cells should be understood—as private homes. Over the course of the twentieth century, Fourth Amendment jurisprudence had shifted to accommodate police discretion.<sup>36</sup> This deference to authority under the auspices of clear, fair procedures and public safety also occurred within the prison. In its ruling, the Colorado Supreme Court emphasized the distinction between civil rights under the Fourth Amendment in the free world and prison: “It is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office or a hotel room.” The Colorado Supreme Court unanimously ruled that a cell did not constitute a home and searches were part of the prison routine: “constant surveillance is the order of the day.”<sup>37</sup> Courts, such as in Small's and Moore's cases, often sided with prison officials who claimed threats for their safety and the institution's wellbeing justified intrusions on civil rights.



The legal system offered incarcerated people an opportunity to challenge conditions and tell their story. Incarcerated people also brought attention to conditions of confinement by publicizing and communicating their narrative via a prison-produced newspaper and individual letters. Incarcerated people used the prison press to communicate amongst themselves and voice their ideas to others. The opening editorial of the third issue of *The Interpreter*, a newspaper run

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<sup>36</sup> Sarah A. Seo, *Policing the Open Road: How Cars Transformed American Freedom* (Cambridge: Harvard University Press, 2019).

<sup>37</sup> Quoted in “A Man's Cell Isn't His Home,” *Denver Post*, 3/30/1970.

by the men incarcerated at CSP founded in 1966, laid out the vision and logistics of CSP's longest-lasting prisoner-operated newspaper:

“They [CSP Officials] would have INTERPRETER be a force to assist in overcoming many of the attitudes, misconceptions and stereotyped images the community holds regarding its penal institutions, prisoners, ex-convicts—not a tool for ‘needling.’ On the other end of the pole, prisoners usually expect a ‘con magazine’ to be an outlet for inmate gripes—real, exaggerated or imagined. It is to function, in their opinion, as a whip against their oppressors, as a champion of their causes, an administration critique.”

This editorial described the tensions inherent in any prison press, and *The Interpreter* was not entirely free of censorship. It had the approval of the warden and associate warden. In balancing these two opposing views of the role of the press, the editor further explained: “The INTERPRETER will remain objective and call it like it is (where the Administration permits it).”<sup>38</sup> The crucial parenthetical here explicitly denotes the constraints of editorial choices. The American Correctional Association published its manual of standards in 1966 that argued: “when officials and inmates appreciate each other’s position ... there is little need for strict censorship.”<sup>39</sup> Because of the existing power relationships, there was often little need for censorship across the country’s prison newspapers because, as James Morris writes, “the administration sent a clear message to the inmate-editor.”<sup>40</sup>

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<sup>38</sup> “Editorial,” *Interpreter*, vol. 2, no. 3 (May-June 1967), Folder “Interpreter 5-6, 1967” Acc. No. 1992.008.002, MCP.

<sup>39</sup> *Manual of Correctional Standards* (New York: American Correctional Association, 1966).

<sup>40</sup> James McGrath Morris, *Jailhouse Journalism: The Fourth Estate Behind Bars* (New Brunswick, N.J.: Transaction Publishers, 2002), 10.

*The Interpreter* was CSP's first approved prison newspaper.<sup>41</sup> Since *Forlorn Hope* was first published in March 1800 from New York City debtors' prison, incarcerated people have used their facilities' presses to communicate. Approved prison newspapers proliferated across the nation beginning in the late 1960s, offering administrations a way to manage circulating ideas while presenting incarcerated people an outlet. Incarcerated editors and journalists have had to please two audiences: the captives reading their newspapers and the prison administration's censors. Tom Runyon, longtime editor of Iowa's *Presidio*, wrote: "Being a prison editor means walking a tightrope between officials and convicts, unable to tell the whole truth about either."<sup>42</sup> Prison newspapers have provided incarcerated people, as Thurgood Marshall wrote, "a medium for self-expression."<sup>43</sup> A full accounting of prison newspapers across the U.S. remains incomplete, but available records show that these publications' heyday was in the 1970s and 1980s, contemporaneous with *The Interpreter*.<sup>44</sup>

Despite the constraints on what *The Interpreter* could publish, its editors retained some leeway. The journal published fiction and non-fiction essays, poems, drawings, and musings from incarcerated people at CSP and other Cañon City institutions. It also welcomed free-world writers who wanted to contribute. The newspaper helped forge solidarity and an information network among incarcerated people that transcended individual institutions. The magazine

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<sup>41</sup> Rumors of earlier written circulars exist, but neither issues nor definitive references remain.

<sup>42</sup> Quoted in Morris, *Jailhouse Journalism*, 14.

<sup>43</sup> Justice Thurgood Marshall, Concurring Opinion, *Raymond K. Procnier, Director, California Department of Corrections, et al. vs Robert Martinez, et al.* 416 US 396 (1974).

<sup>44</sup> Morris, *Jailhouse Journalism*.

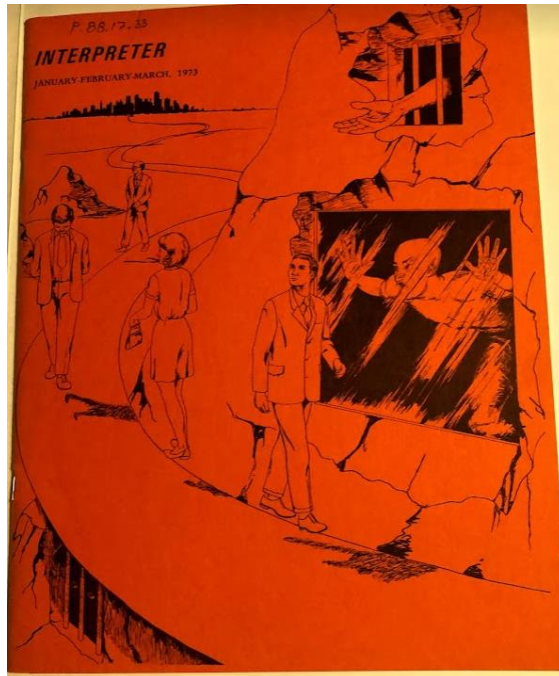


Figure 6.1: Interpreter Jan-Feb-Mar 1973. Acc. No. 1988.012.033, Museum of Colorado Prisons.

helped alleviate the isolation created by the carceral system. To be sure, the magazine also included political advocacy, such as incarcerated journalists arguing for conjugal visits or higher wages. For example, Bob Newman and Bob Warren, two men incarcerated at CSP in the 1970s, sent surveys to prisons in fifty states, Puerto Rico, and the Canal Zone asking about the wages prison laborers were paid, living costs, and financial aid upon release. They published the data from their survey and found that Colorado's average wages for incarcerated men totaled \$4 per month, which was less than every state but one (Wyoming).<sup>45</sup> *The Interpreter* also updated the readership on various clubs and self-help groups within the prison, reporting on their purposes, their leadership, and their membership activities, and where they met.<sup>46</sup>

<sup>45</sup> Bob Neman and Bob Warren, "The Poor in Prison," *Interpreter* vol. 4 no. 2/3, March-June 1969, Folder "Interpreter March-June 1969," Acc. No. 1988.012.026, MCP.

<sup>46</sup> Craig Coomber, "Encyclopedia of Self Help," *Interpreter* vol. 5, no. 3, Summer 1970, Folder "Interpreter Summer 1970," Acc. No. 1988.012.028, MCP.

Much of *The Interpreter*'s pages were dedicated to political education, broadly conceived. This political education included discussion of criminal laws in Colorado, the difference between political and criminal imprisonment, the importance of cultural and ethnic pride, and ideas regarding penology. The newspaper presented a range of opinions—oftentimes competing—that show how incarcerated people's ideology was not monolithic. In 1971, for example, the magazine dedicated an entire issue to the theme of politics because "Convicts are more affected by the whims of politics than perhaps any other group in society; to survive, therefore, we feel it is important for each of us to know a little about politics and politicians."<sup>47</sup> In his opening editorial, Jerry Nemnich offered a justification for his radical position of abolition: "If the physical structure of every prison in this country was to be demolished overnight, the major stumbling block hampering prison reform would disappear. With no convenient place to stash us away, the System would be forced to admit it has never seriously considered alternatives to imprisonment... Radical action is desperately needed to jolt the System out of the narrow, restrictive premise: *We now have prisons, where do we go from here?*"<sup>48</sup> The issues in this volume analyzed different aspect of politics, such as Arthur Everett Small's meditation on law. In another piece in the politics issue, Bob Warren and Jerry Nemnich argued that people incarcerated in the United States are political prisoners because "the political system offered them no alternative to a life of crime... Crime is a logical solution to problems of

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<sup>47</sup> *Interpreter* vol. 6, no. 1 (Jan-Feb. 1971), Folder "Interpreter Jan-Feb 1971," Acc. No. 92.08.01, CMP.

<sup>48</sup> Jerry Nemnich, "Editorial," *Interpreter* vol. 6, no. 1 (Jan-Feb. 1971), Folder "Interpreter Jan-Feb 1971," Acc. No. 92.08.01, CMP.

immediate need.”<sup>49</sup> These were nuanced and informed critiques of how criminality related to the country’s broader sociopolitical system.

Framing incarcerated people as political prisoners, regardless of the individual crime committed, offered a systemic critique of the American political system. This political identity of incarcerated people emerged in the 1960s and 1970s. The Black Panther Party, as Donald Tibbs contends, popularized ideas regarding the politicization of incarceration. “Black prisoners,” he argues, “understood that they were political prisoners, not solely because of their political activism, but also because of everything about racism, governmental power, and the globalization of punishing the black body was a political enterprise against them.”<sup>50</sup> Incarcerated Coloradans saw the way punishment was used to further political aims and therefore also took up the label of political prisoner.

Nemnich employed Huey P. Newton’s definition of political prisoners from Newton’s seminal 1970 article “Prison, where is thy victory.” In the essay, Newton argued that there were two forms of political prisoners: those who, like the Black Panthers, “do not accept the legitimacy of the social order” and those “illegitimate capitalists... the unemployables, the Blacks, Browns and poor Whites who have no choice, no real method of partaking of the good things in life except by ripping off the system.”<sup>51</sup> The second group’s attack upon the capitalist system, Newton concluded, ought to be considered political. Nemnich, Newton, and others

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<sup>49</sup> Bob Warren and Jerry Nimnich, “Political Vs. Criminal Imprisonment,” *Interpreter* vol. 6, no. 1 (Jan-Feb. 1971), Folder “Interpreter Jan-Feb 1971,” Acc. No. 92.08.01, CMP.

<sup>50</sup> Tibbs, *From Black Power*, xvii.

<sup>51</sup> Tibbs, *From Black Power*, 97-98. Huey P. Newton, “Prison, where is thy victory,” 18-21, accessed at <http://www.freedomarchives.org/Documents/Finder/Black%20Liberation%20Disk/Black%20Power!/SugahData/Books/Newton.S.pdf>.



trying to frame their struggle as systemic rather than individual recognized that understanding incarceration as part of a system mattered; they saw themselves incarcerated because of broader issues in the sociopolitical system. These authors argued, as Newton wrote, that “prison cannot gain a victory over the political prisoner because he has nothing to be rehabilitated from or to.”<sup>52</sup>

The state recognized and responded to this politicization. The American Correctional Association, later that year, determined that the political prisoner was worthy of discussion as “a topic which causes deep concern and alarm.”<sup>53</sup>

The civil rights movements and race-conscious freedom movements of the 1960s and 1970s manifested in prison organizing and activism. The character of incarcerated people—their histories and the crimes for which they were imprisoned—shaped the contours of the prison system and their activism within the carceral state. The Nation of Islam, for example, long offered a model of how to organize incarcerated and free-world people for mutual goals based on shared religious beliefs.<sup>54</sup> Incarcerated activists’ history with various freedom movements, ethnic struggles, and protests during the 1960s shaped how they approached their time inside. In the postwar world, as Johanna Fernández demonstrates, policies for social change were informed by ideas of decolonization abroad, informing domestic politics of Black, Native, and Chicano Americans as “internal domestic colonies, politically and economically underdeveloped and dispossessed of their right to self-determination.”<sup>55</sup> This broader understanding acknowledges

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<sup>52</sup> Newton, “Prison, where is thy victory.”

<sup>53</sup> Quoted in Felber, *Those Who Know*, 179. On the politicization of incarcerated people in the 1960s: Johanna Fernández, *The Young Lords: A Radical History* (Chapel Hill: University of North Carolina Press, 2020); Tibbs, *From Black Power*.

<sup>54</sup> Felber, *Those Who Know*.

<sup>55</sup> Fernández, *Young Lords*, 10.

the context in which Black and Chicano people in prisons organized around their identities as part of larger political and social movements.<sup>56</sup> Prison authorities, in response, oftentimes labeled these racial and ethnic groups within prisons as “gangs,” conferring ideas of violent danger.

*The Interpreter* offered incarcerated people one vehicle to express themselves and their beliefs to a wider audience. Its distribution was national. The magazine, however, also reveals the limited means by which incarcerated people could communicate their informed ideology because of the regulations on ideas, time, and communication. Because of these constraints, incarcerated people communicated through other methods: journalists at CSP printed and distributed underground unsanctioned newspapers. These papers, such as the *Zenger Press*, offered an unfiltered discussion of prison operations. The founders of this paper chose their name to honor John Peter Zenger, an eighteenth century journalist who was acquitted of libel, a symbol for freedom of the press.<sup>57</sup> Although issues are no longer extant and very little data exists on the content, sources do reveal that in 1971 the *Zenger Press* ran a series of articles questioning the alleged suicide of Joseph Chavez. While the administration labeled Chavez’s death as a suicide, journalists writing for the *Zenger Press* argued that his death was the result of being beaten by three guards. The suicide, they contended, was only a story to cover up for misconduct.<sup>58</sup>

In addition to circulated papers, incarcerated people communicated through individual letters and arts. Led by the “Walled-in Artist Guild,” captives created art and exhibited their

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<sup>56</sup> Robert T. Chase, “Cell Taught, Self Taught: The Chicano Movement Behind Bars - Urban Chicanos, Rural Prisons, and the Prisoners’ Rights Movement,” *Journal of Urban History* 41, no. 5 (2015): 836-891.

<sup>57</sup> R.B. Bernstein, “Telling Stories of Freedom of the Press,” *Reviews in American History* 45, no. 4 (2017): 565-569; Richard Kluger, *Indelible Ink: The Trials of John Peter Zenger and the Birth of America’s Free Press* (New York: W.W. Norton & Company, 2016).

<sup>58</sup> “Underground Plan Seen in Jail Paper,” 9/27/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

work to the public in shows.<sup>59</sup> These shows allowed incarcerated people to express themselves and raise money by selling their artwork. Individual letters, too, despite censorship, were a powerful tool to maintain human connections and expose conditions of imprisonment. Up until the 1970s, the prison only allowed letters to be sent or received that were written in English. Incarcerated people protested this prohibition on non-English letters especially because it discriminated against the nearly one-third of the prison’s Spanish-speaking population, plus any other captives who did not write or read English.<sup>60</sup> This policy also prohibited correspondence with anyone on the outside who could not read or write in English. In the late 1970s, incarcerated people and their allies on the outside won a victory in forcing the prison to reverse its policy. Letters built communication and communities that transcended walls and prevented a “social death.”<sup>61</sup> Orisanmi Burton contends that letter writing is “a technology of social life” that constitutes an important part of intimacy and care work within the “countertactics of war.”<sup>62</sup>



Incarcerated people employed their experience with and understanding of race-conscious freedom movements to organize within the prison system. By the 1960s, Black and Latinx people disproportionately populated the Colorado prison system—incarcerated at rates unequal

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<sup>59</sup> “CSP Inmates To Exhibit Art Works March 12-13,” 2/23/1966, Folder “Prison – Arts & Music, etc.,” RGRMHC.

<sup>60</sup> Opinion of District Judge Kane in *Ramos et al v. Department of Corrections*, 12/12/1979, Folder “Ramos vs. Dept of Corrections Dec. 20 1979,” Acc. No. 1988.001.094, MCP.

<sup>61</sup> Scholars of the prison have employed Patterson’s theorization of slavery as “social death” to incarceration and policing as such. Orlando Patterson, *Slavery and Social Death* (Cambridge: Harvard University Press, 1982); Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: New York University Press, 2012).

<sup>62</sup> Orisanmi Burton, “Captivity, Kinship, and Black Masculine Care Work under Domestic Warfare,” *American Anthropologist* 123, no. 3 (2021): 621-632.

to their share of the state population.<sup>63</sup> Ideas of racial liberation, ethnic pride, and civil rights permeated prison organizing within the Fremont County penal institutions. One such organization founded in 1968 that built solidarity within the prison system and throughout Colorado was the Latin American Development Society. LADS held its charter meeting 27 August 1968 at which the sponsor, Al Chavez, argued: “by developing interest in our operations, we can help bring pride to all Latin Americans.”<sup>64</sup> LADS coordinated with allies on the outside, and they received significant media attention. Toby Gallegos helped found the group and served as its president for its first years. All outside news coverage of Gallegos and LADS’s work caveated the organizing with the facts of Gallegos’ incarceration. His criminal history overshadowed his subsequent organizing.<sup>65</sup> In contrast to this outside reporting, *The Interpreter* put LADS in the context of the prison’s racial disparities: “In the Colorado State Penitentiary at Cañon City the Mexican-American makes up thirty-three percent of the convict population. This is unusual in the fact that citizens of the same nationality make up only ten percent of Colorado’s population.”<sup>66</sup>

Gallegos organized the group primarily to assist Latin American men after their release. In so doing, he sought to unite Chicanos and uplift them. For example, he secured a visit from Luis Media, a professor of behavioral science at Southern Colorado State College, to speak to

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<sup>63</sup> “Colorado State Penitentiary—Past, Present, and Projected Planning,” n.d., Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

<sup>64</sup> “August 27,” *The Interpreter* 4, no. 4 (October 1968), 20, Folder: Interpreter Sept. Oct. 1968, Acc. No. 1987.006.359, MCP.

<sup>65</sup> For example: “Inmate Group Organized to Help Prisoners Stay on Outside,” 6/20/1969, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>66</sup> Bob Warren, “Time to Space,” *The Interpreter* 4, no. 2/3 (March-June 1969), page 7, Folder “Interpreter March-June 1969,” Acc. No. 1988.012.026, MCP.

incarcerated people at CSP about the history of the Mexican in the United States. Gallegos noted: “We, not only as convicts, but as Chicanos, must learn the culture, [sic] change our standards and develop into useful productive citizens able to compete with the modern world.”<sup>67</sup> Although Gallegos was serving a life sentence, he wanted to establish a community-based group that would support men where Colorado’s parole system failed them. This approach emerged from an analysis of the root causes of incarceration, recidivism, poverty, and discrimination. LADS understood that many parolees left prison with no money and few opportunities to get gainful employment because of their record, and that recognition spurred LADS to step in to prevent recidivism where the state’s efforts fell short.

By the end of 1969, LADS boasted 147 members with another 100 on the waiting list—over one-quarter of CSP’s population. Prison policy limited the size of groups, regardless of the group’s favor with the administration or its undertakings. LADS’s primary goal was to assist men upon release, so Gallegos and other LADS leaders reached out to Denver’s business community. Unlike with the Cañon City business community that had long shunned competition with incarcerated or formerly incarcerated workers, LADS found sympathy in Denver. LADS’s sister organization on the outside, Latin American Development Society Support Organization, helped LADS build bridges within Colorado’s business community. LADS and LADSSO helped find jobs and raise funds. LADSSO received an initial donation of \$1,000 from which they offered seventy-five-dollar loans to men upon release. These loans, albeit small, helped provide money for transportation, housing, and food until paychecks came. LADS members’ experience had shown that parole violations often occurred within the first few weeks of release because of

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<sup>67</sup> Bob Warren, “Time to Space, *The Interpreter* 4, no. 2/3 (March-June 1969), page 8, Folder “Interpreter March-June 1969,” Acc. No. 1988.012.026, MCP.

the need to wait for a paycheck. The seventy-five dollars provided, importantly, was in the form of a loan, which LADS believed would instill dignity and responsibility while making the organization sustainable. Beyond immediate financial support, LADS and LADSSO sought pledges from businessmen to hire incarcerated individuals 80-120 days before their release. The pledge had two significant benefits. First, it supported the incarcerated person's case with the parole board by proving the individual had connections and opportunities that would reduce the chance of recidivism. Second, it provided incarcerated people an opportunity to train for their upcoming job during the last few months in prison. LADS offered incarcerated people mutual aid, community, and work opportunities.

In the midst of LADS' organizing, uprisings across the country—in the free world and in prisons—erupted.<sup>68</sup> In September 1971, over 1,300 incarcerated people took over the Attica Correctional Facility in New York. These rebels were protesting longstanding mistreatment. Incarcerated people held guards and civilians hostage for four days at Attica. On September 13, the state retook the prison by force. New York law enforcement agents killed thirty-nine men—both hostages and incarcerated—in this invasion. In the aftermath, as Heather Ann Thompson demonstrates, the state repressed dissent, fortified the prison, controlled the narrative, and increased criminalization and punishment in New York.<sup>69</sup> While Attica captured the nation's attention because of the clear demands of incarcerated rebels and violent state response, prison uprisings occurred across the country in the late 1960s and early 1970s: Ohio State Penitentiary and Oregon State Penitentiary in 1968 are but two of the many examples of incarcerated people

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<sup>68</sup> For the free-world uprisings: Hinton, *America on Fire*, 313-338.

<sup>69</sup> Heather Ann Thompson, *Blood in the Water: The Attica Prison Uprising of 1971 and its Legacy* (New York: Vintage Books, 2017).

using force to change their conditions; another glaring example came at the Oklahoma State Prison in McAlester in 1973. This spate of uprisings led to a renewed focus on securing facilities and protecting guards. “Attica,” as Orisanmi Burton argues, “remained a touchstone for the kind of collective rebellion that penal authorities sought to prevent through modernized infrastructures.”<sup>70</sup>

It was in the extraordinary context of Attica and other prison rebellions that LADS program director Jose Gaitan sought permission from Warden Wayne K. Patterson to hold a conference at CSP to discuss issues related to Chicano life in the United States. Gaitan invoked this context and warned of the potential for disaster: “It [Attica] can very easily happen at Cañon City.” Gaitan, however, said that this was unlikely because the warden allowed prisoner self-help groups and organizations, such as LADS.<sup>71</sup> Gaitan received permission from Patterson to host a two-day conference for 300 free-world people and incarcerated LADS members at CSP on 24-25 September 1971, just three weeks after Attica.

LADS promoted this as a unity conference for Chicano organizations across Colorado, recognizing that “there is no single Chicano Rights Movement, but rather a number of Chicano organizations, each with their own unique aspects as well as traits shared with other Chicano organizations.” Gaitan wrote that it was now time “to close the gap” between these groups and “present a solid unified front to the super-conservative who is denying us the right to equal

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<sup>70</sup> Orisanmi Burton, “Captivity, Kinship, and Black Masculine Care Work under Domestic Warfare,” *American Anthropologist* 123, no. 3 (2021): 621-632.

<sup>71</sup> Ron Martinez, “LADS Preparing to Host Chicano Meet in Canon City,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

opportunity.”<sup>72</sup> Bringing together representatives from over seventy organizations, the conference sought to unify Chicano organizers across the state and across the barriers of the penitentiary. LADS members organized the conference because they felt that they, too, were part of the Chicano movement. In the run-up to the conference, one LADS member said: “We feel that we are locked up, away from society, but we don’t want to be away from anything that has to do with our brown brother.” LADS organizers received help from the outside, particularly from Marcella Trujillo, director of the Mexican-American Education Program at the University of Colorado Denver Center, who coordinated with outside educators and organizers for the conference.<sup>73</sup> Beyond forming a coalition with Chicano organizations around the state, this conference served as a rebuke to stereotypes of violence, individualism, and disunity.

The conference occurred without any disturbance. Alfredo Archer, president of LADS, placed this conference within the context of broader contemporaneous social issues. In his opening address, Archer refuted racist stereotypes and argued that systemic issues were the reason for the disproportionate rate of Chicano incarceration. He argued that Chicanos were thirty-three percent of the prison population while only twelve percent of the total state population because of language barriers, poverty, poor education, the court system, and “the acceptance of deals with the state.”<sup>74</sup> The conference hosted workshops about crime, education, unity, women, rural and urban employment, and unity. Emphasizing the idea of unity in light of

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<sup>72</sup> Jose Gaitan, “Introduction,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

<sup>73</sup> George Lane, “Lads Planning Chicano Unity Meet in Colo. Prison,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

<sup>74</sup> John Espinosa, “Penitentiary Concilio Outcome Promising,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).



distrust sowed by the carceral state, attendees of the Crime Workshop resolved that “there should be no rewards to informers, that is to apply to informers both within the prison and outside.”<sup>75</sup> Participants, both of the free world and the prison, committed to organizing permanent committees, communication centers, and educational institutions to continue the work after the conference ended. For example, the Women Workshop created a permanent organization, Las Valentinas, “to promote awareness among Chicanas, to nationalize them, and to instill in them the pride that is the Chicano movement.”<sup>76</sup> Ethnic unity remained the dominant theme throughout the conference: working together, they argued, would raise the tide of all Chicano people. Lupe Briseno, the keynote speaker on Saturday morning, emphasized this fact when she spoke of the difficulty in unionizing floral workers in Brighton: “We were struggling for better conditions for the workers—nearly all chicanos—and it was the chicanos who crossed the picket line.”<sup>77</sup> This conference delved into issues of Anglo-oriented versus Chicano-oriented schools and culturalism versus assimilation to underscore the importance of Chicano pride and unity.

Gaitan summarized Warden Patterson’s philosophy thusly: “Before I help you, you must help yourself.”<sup>78</sup> Gaitan and LADS took this message to heart and acted on it. Helping themselves, they argued, also meant helping Chicano people across the state inside and outside of prisons. In return, outside organizers helped incarcerated people. Rudy Garcia, a student at the University of Colorado Denver Center who attended the conference, juxtaposed the events of

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<sup>75</sup> “Crime Workshop,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

<sup>76</sup> “Women Workshop,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

<sup>77</sup> John Espinosa, “Penitentiary Concilio Outcome Promising,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

<sup>78</sup> George Lane, “LADS Planning Chicano Unity Meet in Colo. Prison,” *Concilio de Unidad, September 24-25, 1971, State Penitentiary* (Colorado: LADS, 1971).

Attica with that of the *Concilio de Unidad*: “The same month that brought the slaughter at Attica also brought one of the most progressive and humanistic events ever to occur in an American prison.” While the specter of Attica dominated media coverage and justified increasing state repression, *Concilio de Unidad* went virtually unnoticed by state and national news. Garcia continued: “They [incarcerated people] are human” rather than “the stereotyped MGM version of the hardened criminal.” Garcia also illuminated the depravity of the system he witnessed at the conference: “The difference between a prison and a zoo is that the animals in a zoo don’t live under the fear of harassment, racism or extermination.”<sup>79</sup> LADS showed the folly of separating organizing within the prisons from organizing in the free world because they shared oppressive systems and structures. LADS—in its political education and its organizing activities—was a radical prison organization focused on systemic root causes of social issues. Incarcerated people recognized the systems in which they lived and how those systems structured both the free world and incarcerated world.

Working towards similar systemic analysis and change as LADS, Black captives at CSP also established a self-help organization in 1968. The Black Cultural Development Society, their application for institutional approval read, “will endeavor to erase the stigma and stereotyped image of the black man.”<sup>80</sup> BCDS sought to uplift Black youth, in and out of prison, and instill racial pride. This work was both intellectual and material. For example, the BCDS sought to establish a library dealing with history and knowledge “essential to the black man’s existence as a human being and fellow American” and required that its members maintain cleanliness in

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<sup>79</sup> Rudy Garcia, “Observations from Canon City Prison,” *Concilio de Unidad*, September 24-25, 1971, *State Penitentiary* (Colorado: LADS, 1971).

<sup>80</sup> Craig Coomber, “Encyclopedia of Self Help,” *Interpreter* vol. 5, no. 3, Summer 1970, Folder “Interpreter Summer 1970,” Acc. No. 1988.012.028, MCP.

body, dress, speech, living quarters, and character habits. The group expelled any member who engaged in acts of violence.

BCDS, like LADS, also hosted cultural events. In May 1969, for example, they brought in Becky Cook, entertainer and president of Afro-Angels, to perform while also staging a “dramatic portrayal of the History of the Black man in America.”<sup>81</sup> By its third year, the BCDS even had a historian, Sinuhe (state name Alonzo Britton), to teach other Black captives about their culture and history. Sinuhe, who spent his youth picking cotton and most of his life thereafter incarcerated, reflected on what prison gave him in the context of this Black movement: “One thing that prison has done, it has given me a cold-blooded philosophy.”<sup>82</sup> In 1972, he began offering a Black Studies class. The prison’s Education Department provided the class with materials and a meeting place, and Sinuhe organized and led the class. Originally intended as a Black History class, the class also became about the Black present. As M. D. Bass later wrote: “It is an experience in learning—where Black prisoners have been coming together and starting to make certain connections between who they are and how it came to be where they are.”<sup>83</sup> Even after Sinuhe was transferred to the medium security institution, the class continued. In 1973, Sandolius (state name Robert Wells) began teaching it. Sandolius reported that his class was always full, and his class “Then and Now” covered information from Ghana to Watergate. He believed the connections between history and present are important: “I think that if the

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<sup>81</sup> “May 31—Intercoms,” *The Interpreter* 4, no. 2-3 (March-June 1969): 60, Folder “Interpreter Sep.-Oct. 1968,” Acc. No. 1987.006.359, MCP.

<sup>82</sup> “Profile,” *Interpreter*, vol. 8, no. 1 (Jan-Feb-Mar 1973): 5, Folder “Interpreter Jan-Mar 1973,” Acc. No. 1988.012.033, MCP.

<sup>83</sup> M.D. Bass, “Black Studies. On Becoming Aware,” *Interpreter* vol. 8 no. 2 (April/May/June 1973), Folder “Interpreter April-June 1973,” Acc. No. 1988.012.034, MCP.

convicts are given an opportunity to broaden their learning scope, they should take advantage of that opportunity – because there are things they need to know.”<sup>84</sup>

In 1968, the co-founder and president of BCDS Salaam (state name Al Johnson) called a unique meeting between white and Black prisoners. *The Interpreter*, edited at the time by a white man, reported: “For the first time in the history of this penitentiary an organized group of Whites and Negroes sat down to discuss the issues of racial strife in America.” This discussion focused on “racial problems” inside and outside the prison. The purpose of the meeting, Salaam explained, was to introduce white leaders to leaders of BCDS to mitigate racial strife and produce stability. Most of the questions asked in the session were focused how the BCDS expressed of Black solidarity, Black power, and the civil rights movement within the prison system. After the meeting, one white attendee reflected on what he learned about Black nationalism: “The movement has gone beyond civil rights. If you’ll notice organizations are asking for separatism, not just civil rights that should be ours automatically. The Negro will not sit back and take the handouts of the ‘White Brother’ any longer. The Negro is ready to fight for what is his.” In response to a question by a white attendee, one BCDS member explained the rise of Black militant action:

“Are we aware of all forms of revolution? There was one stage of Martin Luther King; non-violent. Nothing really happened. Now we have the riots. What are a people to do? We tried the non-violent, the intelligent way. Are we supposed to wait patiently until the White Man gets around to recognizing us as human beings?”<sup>85</sup>

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<sup>84</sup> “Black Studies. On Becoming Aware.” By M.D. Bass. *Interpreter* vol. 8 no. 2 (April/May/June 1973), Folder “Interpreter April-June 1973,” Acc. No. 1988.012.034, MCP.

<sup>85</sup> “The Nation Within,” *The Interpreter* 4, no. 4 (October 1968): 20, Folder “Interpreter Sept. Oct. 1968,” Acc. No. 1987.006.359, MCP.

The participants left this meeting wanting more interracial discussions to help build dignity and empathy between the races. These interracial discussions also helped reduce racialized violence within the facility, and incarcerated people took the initiative to organize and lead this discussion. Similarly, LADS and BCDS led joint programming, including seminars about the aims and goals of the ethnic groups' projects and opportunities for joint progress.<sup>86</sup>

Prison officials responded to the civil rights movement's organizing by offering aesthetic changes that rarely addressed incarcerated peoples' complaints. For example, in the late 1960s, in the context of the national push for desegregation, prison officials formally desegregated the dining hall, which had always been segregated by race.<sup>87</sup> Because various racial groups continued to congregate together in spite of their liberty to sit anywhere, the officers forced desegregation by seating the captives in the order in which they entered the chow hall. In response, incarcerated people simply entered the dining hall in line next to the three other people they wanted to occupy their table.<sup>88</sup> LADS and BCDS members argued that the prison's racist outcomes reflected larger systems of racism in society. They pointed towards prison labor discrepancies in which minority people were relegated to less desirable jobs as evidence of this discrimination. For example, in 1973, twenty-one of the twenty-seven incarcerated hospital employees at CSP and twenty-six of the forty-nine workers at the tag plant were white. The incarcerated janitorial staff, though, was comprised of nineteen Black and "Spanish-Surname"

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<sup>86</sup> "VIVA LADS!," *Interpreter* vol. 5, no. 3 (Summer 1970): 43, Folder "Interpreter Summer 1970," Acc. No. 1988.012.028, MCP.

<sup>87</sup> "Recreated Tour of CSP as was in 1955, told by Henry Burton," transcribed by Kathleen M. Hudson, 1/10/1994, Folder "Burton Family" RGRMHC.

<sup>88</sup> "Questionnaire of Tinsley," n.d., Folder "Tinsley Family," RGRMHC.

people on a staff of twenty-seven; the boiler house employed seven “Spanish-Surname” people, five Black people, and three white people.<sup>89</sup>



Direct action against carceral conditions supplemented the organizing, political education, and legal action. Incarcerated people, individually and collectively, protested in unsanctioned ways. Direct action at CSP was part of a larger movement of similar transgressive protests across the country challenging oppressive systems, within prison facilities and outside of them. Between 1964 and 1972, “every major urban center in America,” according to Elizabeth Hinton, experienced “rebellions” involving political violence, and in the years from 1968 to 1972, Black communities in the U.S. witnessed and participated in 1,949 distinct uprisings.<sup>90</sup> These forms of protests manifested in prisons and jails across the U.S., illustrating that the state-approved method of finding redress was insufficient.

Incarcerated people were creative in using their power and understanding of the prison system to disrupt. The prison system employed strict and regular routines to support ordered operations, but the predictability of the days and jobs within the prison offered incarcerated people opportunities to use their knowledge to disrupt the system and protest. The schedule, bells, and counts broke time into predictable routines: fifty-six hours per week sleeping, thirty hours in work or education, twenty-four hours watching television or doing self-help work, twenty-three hours of indoor leisure time, seventeen hours of recreation, ten hours in the dining

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<sup>89</sup> Colorado Advisory Committee to the U.S. Commission on Civil Rights, “Colorado Prison Study,” September 1974, pages 141-145, accessed at <https://www.ojp.gov/pdffiles1/Digitization/32433NCJRS.pdf>.

<sup>90</sup> On direct action outside of prisons: Hinton, *America on Fire*. On contemporaneous uprisings within the prison system: Toussaint Losier, “Against ‘Law and Order’ Lockup: the 1970 NYC Jail Rebellion,” *Race and Class* 59, 1 (2017): 3-35.

hall, and up to eight hours of visitations.<sup>91</sup> Routines allowed incarcerated people to gain a deep understanding of the prison and how to disrupt the system.

In 1966, for example, prison laborers in the press shop produced \$14,000 worth of phony canteen tickets.<sup>92</sup> If successful, this event would have “throw[n] the prison canteen into bankruptcy” and thrown the prison into turmoil because of the inability to tell real from fake tickets.<sup>93</sup> In part, this emerged out of the complaint of how the prison controlled captives’ finances: incarcerated people were restricted in how much money they could withdraw at a time and the prison functioned not on cash but on an internal currency of canteen tickets. In another such rebellion, county clerks across the state received boxes of license plates with “help” notes tucked inside.<sup>94</sup> The authorities failed to identify the individual conspirators, so they punished the entire shop crew. However, prison administrators refused to mete out the typical punishment of solitary confinement “because that backlog of work still had to be finished.”<sup>95</sup> Instead of solitary confinement, each laborer in the print shop lost twenty-five days of good time. The rebellions with license plate notes and canteen tickets were small acts of protest against state control, and they were largely confined to only a few incarcerated people. These printers and laborers used their knowledge of the process and their access to space and materials to undermine the prison’s systems of financial stability and production.

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<sup>91</sup> “CSP Typical Inmate Week Breakdown,” Folder 00.011.137-141, Julie Whitmore Collection, RGRMHC; 1971-1980 Daily Log Books, MCP.

<sup>92</sup> The prison used its own currency instead of cash.

<sup>93</sup> “Prison Plot Stops the Presses,” *Denver Post*, 9/22/1966.

<sup>94</sup> “License Plate Mixup Laid to Convicts,” 1/16/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>95</sup> “Prison Plot Stops the Presses,” *Denver Post*, 9/22/1966.

On 2 November 1971, 700 of Colorado State Penitentiary's captives refused to go to supper or work. Just weeks after Attica's uprising and LADS's *Concilio de Unidad*, incarcerated captives rebelled against the system in mass. It was not a spontaneous event. In the days preceding this general strike, incarcerated people prepared by stockpiling candy and cookies from the vending machine. On the night of the strike, the men neither incited violence nor took hostages. Instead, they returned to their cells and sat down. These strikers provided clear demands: better food and the hiring of an additional civilian chef, more pay for prison work, five additional days a month for good behavior, and better consideration from the parole board. Aside from the last one, each of these demands carried an actionable material request to which the administration could be held accountable.

Immediately upon hearing of the general strike, the warden instituted a general lock-up—the first such lock-up in twenty-five years. By calling this lock-up, the warden planned to wait out the strikers. He used food to gauge their commitment to the strike; when incarcerated men started accepting the sandwiches that prison guards made and delivered to cells, prison officials knew that the solidarity was breaking. Guards performed a new job during this strike that prisoners had previously done: they donned aprons and gloves and made sandwiches.<sup>96</sup> The general lock-up also prevented, as the warden said, “another Attica.” Attica continued to loom, and the lock-up eliminated the chance for incarcerated people to wrest control of the prison and its staff. This general lock-up, though, had the unintended effect of increasing grievances and solidarity: because the consequence fell evenly on all, the prison administration became the common enemy.

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<sup>96</sup> “Photos of Guards in Kitchen and Rolling Food Cart,” Folder “Guards Cooking – 1971,” MCP.



The lockdown at CSP never prevented news from getting out, and support grew outside that institution. Upon hearing about the strike, over 200 men at the medium security institution in East Cañon established a “Freedom City” in the yard. They constructed his make-shift city with whatever materials they could salvage, and that night they refused to return to their cells, instead sleeping outside with their community (See Figure 6.2). The next morning, as journalist Bill Gagnon observed, “In a sudden show of force Thursday, state patrolmen dressed in full riot gear and prison guards swooped down on the medium security facility six miles east of here [CSP] and rounded up 258 striking convicts.” Colorado State Patrolmen destroyed Freedom City and moved the men to CSP. That same day, the Colorado State Patrol also moved fifty-two men from the Pueblo Honor Farm to CSP after they, too, participated in a sympathy strike.<sup>97</sup> With these sympathy strikes, over one thousand men participated in this protest.

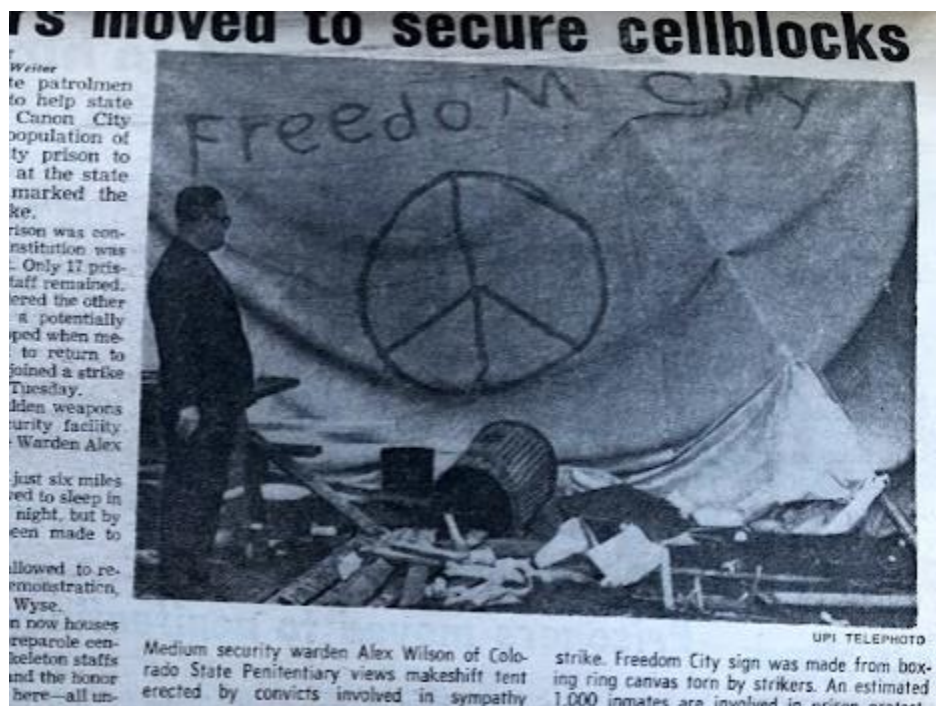


Figure 6.2: Remnants of Freedom City, Rocky Mountain News, 11/5/71.

<sup>97</sup> “Prisoners Moved to Secure Cellblocks,” *Rocky Mountain News*, 11/5/1971.

In addition, free-world allies flocked to Cañon City in support. By the time the State Patrol busses arrived at CSP with the men from the honor farm and medium security, over thirty allies picketed outside the prison. These demonstrators came from the University of Colorado at Boulder, about 150 miles away, to show support. Most were members of United Mexican American Students, demonstrating racial solidarity that transcended degrees of freedom and cohered ethnic organizing.<sup>98</sup> Both the new transfers and men locked up at CSP could hear chants outside of “Viva la Raza” and “Chicano Power.”<sup>99</sup> Juan Gomez, who acted as a spokesman for the protestors, said that many demonstrators had friends or family in the penitentiary. Most demonstrators, too, had been present for *Concilio de Unidad* in September. Gomez said he and other organizers went to Cañon City because they feared for the men inside: “I was afraid that the situation being what it is inside that people might over-react and this could become another Attica.”<sup>100</sup> Not only were these demonstrators showing support to the incarcerated people, but they showed the administration that independent observers would watch and report on any misstep. Attica continued to shade the perspective of both prison authorities and incarcerated peoples’ allies.

To quell such support for the strikers, the prison administration cut off press and visitor access. Despite this, eight men at CSP smuggled out a letter with another demand: publication of

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<sup>98</sup> “Chicano Demonstrators Back Convict Strikers,” 11/4/1971, unattributed scrap, Folder “Nov 1971 Prisoner Strike,” MCP.

<sup>99</sup> “Violence Rises in 4-Day Prison Strike,” 11/5/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>100</sup> “Most of Demonstrators Had Family, Friends In Prison,” n.d., unattributed scrap, Folder “Nov 1971 Prisoner Strike,” MCP.

reasons for parole denial.<sup>101</sup> The eight men who signed the letter—which was read on the radio and reprinted in the region’s leading newspapers, claimed that they feared for their lives. They were right to fear retribution. Prison administration moved these men to solitary confinement to stop further communication and to punish them for what they had already accomplished. By the third day of the strike, the administration gained control of the narrative. The press accepted their version of the story, rarely questioning law enforcement statements and assisting administration by dramatizing the events. One headline, for example, announced: “Bats, Pipes Gathered at Prison.” Despite this headline, both in prison records and in the newspaper reporting to that point, there was no such violence. Some mattresses and paper fires were started “but quickly extinguished without serious damage.”<sup>102</sup> The next day, another headline declared simply: “Violence Rises.” By this point, the only serious injury that had occurred was from an incarcerated person attempting suicide.<sup>103</sup>

In a public press conference that day, Warden Patterson displayed knives recently seized at the prison—all contraband taken well prior to the strike. The effort shows how carceral logic plays: the state uses its bullhorn to stigmatize a population and place blame on them while ignoring legitimate grievances and forbidding incarcerated people from communicating their perspective. In the coming days, Crusade for Justice, a Denver organization that took part in *Concilio de Unidad*, released a second letter smuggled out of CSP. This letter, unlike the first

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<sup>101</sup> “Gonzalez Supports Striking Inmates,” 11/4/1972, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>102</sup> “Bats, Pipes Gathered at Prison” 11/5/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>103</sup> “Violence Rises,” 11/5/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

one, was unsigned because of the retribution against the signatories of the first letter. This letter stated that non-violence was because of prisoners not the administration: “If we wanted it [violence] we could have it.”<sup>104</sup> This letter underscores why this event was a strike rather than a riot or uprising: incarcerated people rebelled against their conditions by withholding their labor and their time, as they said, to stop the prison’s ability to function until change occurred.<sup>105</sup>

On November 7, five days into the strike and general lock-up, Warden Patterson met with a committee of five incarcerated people elected by their respective cellblocks. They presented an expanded set of demands: civilian chef, civilian cooks, educational programs as their work assignments, pre-release meetings with parole officials, a review of wage schedules and inflated canteen prices, more people on the kitchen force, conjugal visits, better recreational facilities, and a complete revision of rules and regulations governing captives. The warden, as he later told the press, “tried to get it in their heads that those demands wouldn’t be met.”<sup>106</sup> The next day, as the press reported a “stalemate,” the warden decided that the strike had gone on long enough. So, at 4:00 pm on November 8, Warden Patterson declared the strike over. He made no concessions whatsoever and demanded a slow return to normal prison life. In a news conference announcing the end of the strike, a reporter asked if any of the prisoners’ demands were granted, and Patterson responded: “None will be granted, not at the present time.”<sup>107</sup>

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<sup>104</sup> “Prison Officials, Inmates Stalemated,” 11/8/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>105</sup> On the history of strikes and the definition of these actions: Erik Loomis, *A History of America in Ten Strikes* (New York: The New Press, 2020).

<sup>106</sup> “Prison Officials, Inmates’ Group Talks,” 11/7/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>107</sup> “Prison Strike Ends Peacefully,” n.d., unattributed fragment, Folder “Nov 1971 Prisoner Strike,” MCP.

The prison would not return to a semblance of normalcy for over a month. Incarcerated people had not accepted a resolution to the strike. Declaring the strike over, however, pushed the media away and offered the administration respite from intense public gaze. The facility remained on lockdown, with only a slow and gradual release of some men from their cells to return to their work assignments. Patterson blamed a few “militant prisoners” that he sought to identify and remove from the general population. Although some men had been at the forefront of the strike, this strike was not isolated to only a few men. Nearly every person incarcerated at CSP participated as did incarcerated people at two other institutions. By casting the blame on a select few “militants,” Patterson absolved the prison of responsibility and delegitimized the strikers’ demands. In the aftermath, as the press was allowed to interview incarcerated people in the presence of prison officials, praise for Patterson’s handling of the events, especially in contrast to the reports of Attica, was widespread. An editorial in the *Denver Post* argued: “The prisoners will have learned that, despite the fashionable talk about revolutionary tactics they hear from the outside, in that penitentiary Patterson is boss.”<sup>108</sup>

In the aftermath, Patterson himself acknowledged that some reforms were necessary and cast himself as a reformer. Patterson eventually backed a pay hike for convict laborers and a slight change in prison food service. He declared that his aim was to “work toward a goal of prison reform on an evolutionary basis instead of a revolutionary basis.”<sup>109</sup> Despite these moves, incarcerated people argued that this reformist impulse was worthless. Jerry Nemnich, the editor of *The Interpreter*, offered his view on the newfound support for reform: “Reform, no matter

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<sup>108</sup> “Warden to Remove Militant Prisoners,” *Denver Post*, 11/5/1971.

<sup>109</sup> “Warden Reveals Prison Strike End,” 11/9/1971, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

how sophisticated, only sets the stage for further reforms. It does nothing to alter the basic underlying structure. In the case of prisons, the flaws lie within the basic structure... And destruction will continue as long as prisoners are caged, herded about like cattle under the watchful eyes of armed guards and segregated from their families, friends and society in general. It will continue as long as prisons exist.”<sup>110</sup>

The week-long strike in November 1971 set the stage for the beginning of a decade of direct action. These actions, like with the general strike, challenged the prison’s claims of what the criminal legal system and its reforms accomplished. The prison claimed to protect incarcerated people, offer opportunities for rehabilitation, provide adequate needs of daily living such as food and clothing, and prevent escapes. Events during the 1970s laid bare that no one was being rehabilitated, fed, protected, or secured. Incarcerated people took their conditions into their own hands, and throughout the 1970s, CSP was marred by annual riots, uprisings, strikes, and brawls.

In 1972, a “racial brawl” took place, which resulted in injuries, segregation, and offenders sent to solitary confinement.<sup>111</sup> In this 1972 “racial riot,” as Associate Warden John Griffin called it, off-duty officers were summoned to the institution as Deputy Jack Warden fired a sub-machine gun to disperse prisoners in the yard.<sup>112</sup> The Department of Corrections labeled this as a “racial brawl” and brought charges against twenty-one Black captives, fourteen Chicano captives, and fourteen white captives. By labeling these actions—and others—as “racial brawls”

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<sup>110</sup> Jerry Nemnich, “Prison Reform Viewed From Within a Prison,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>111</sup> “Group Protests Prison Hearing,” 2/29/1972, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>112</sup> “Sate Pen Struck by Racial Violence,” Folder “Penology,” MCP.

or “racial riots,” the prison administration asserted racial tension as a natural condition rather than interrogating what about the specific context led to the discontent. In response, a member of the Black Cultural Development Society in the prison penned an open letter, which was reprinted in the *Denver Post*, challenging the prison to permit ethnic groups, such as LADS and BCDS, to function as they had before the November 1971 strike. Pew argued that the November 1971 strike that led to the prohibition on these groups “was an excuse rather than the real reason for stopping the meetings.... The administration was becoming uncomfortable about the fact that we were gaining too much prominence with people outside the walls of the prison.”<sup>113</sup>

The next year, another work strike took place, which again resulted in another general lock-up and an investigation that recommended reforms to better separate and control captives.<sup>114</sup> Later in 1973, seven incarcerated men staged a hunger strike beginning on Thanksgiving, but riot-equipped guards forced the strikers into solitary cells to ensure the disturbance did not spread. Each of these disturbances should be seen as symbols of poor living conditions unfit for men to live safely. Tension was exacerbated by poor living conditions. In that Thanksgiving 1973 strike, for example, the demands were basic: longer television viewing hours, milk at every meal, and the elimination of cockroaches in their cells.<sup>115</sup> Rather than engaging these demands in good faith, prison authorities saw these uprisings as a sign of radical and violent rebellion, which had to be quelled with force.

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<sup>113</sup> Elliot Pew, “Ethnic Group Society at State Penitentiary,” Folder “Prisoners,” MCP.

<sup>114</sup> “Sep. 1973 Inmate Strike,” Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

<sup>115</sup> “7 Inmates End Hunger Strike,” 11/27/1973, Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

In the midst of these uprisings and work stoppages, some captives used their knowledge of the prison system to disrupt it. Employment within the prison gave incarcerated people intimate knowledge of the system, and some used this knowledge to contest authority. Jose Gaitan, who worked in the prison's central records room, smuggled documents out of the prison. He furnished the press with prison records that "show [Acting Warden Fred] Wyse and other officials requisitioning foodstuff and household items for their personal use."<sup>116</sup> This action differed from strikes and garnered attention for two reasons. First, the smuggling out of documents did not provide the administration an opportunity to paint the incarcerated people as violent or radical. Second, the action focused attention on the administration and its corruption, providing hard evidence. The allegations of corruption resonated with a public who was weary of the issue; Gaitan dropped this bombshell in the context of President Richard Nixon fighting to protect his Oval Office tapes while being investigated by the U.S. Senate and a Special Prosecutor.

Within a week of publication of the records, the governor fired Fred Wyse. In a subsequent story, a panel of incarcerated people told reporters: "there's more than misappropriation of prison supplies... there's mistreatment by guards and officials, disappearing inmate funds, special favors for some, harassment of some, and a killing" to cover up wrongdoing by prison administration.<sup>117</sup> The allegations launched a wide-ranging investigation including an audit of the penitentiary books that reveals misuse of prison supplies and foodstuffs dating to

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<sup>116</sup> "Officials Used Prison Supplies," 8/29/1973, "Scrapbook 3," Box 14803 "Scrapbooks of Penitentiary," Department of Corrections Collection, CSA.

<sup>117</sup> "Deeper Probe Urged By Prisoner Panel," 8/6/1973, "Scrapbook 2," Box 14803 "Scrapbooks of Penitentiary," Department of Corrections Collection, CSA.



1967.<sup>118</sup> Marcella Trujillo, an ally on the outside and outspoken advocate for prison reform, warned what would happen if official misconduct went unpunished: “In order to avoid another Attica, the prisoners’ views must be known for as Gaitan and some other inmates have stated, they have been ‘oppressed by the hypocrisy of white collar criminals in the administration who plead ignorance of the law and who enforce a double standard of justice in the state penitentiary.’”<sup>119</sup> An eight-month grand jury investigation ended with a thirty-four page report and indictments of Wyse and three other officials. These four officials were indicted on two counts each of theft, embezzlement, and conspiracy. The report led to sweeping changes, not least of which was more political oversight and the removal of Wyse and his top deputies. Wyse and his deputies, however, received no punishment: they received deferred prosecution in which all charges were dropped after staying out of trouble for a year.<sup>120</sup>

Prison officials, even after the grand jury investigation, retaliated against Gaitan. In his first acts as acting warden after Wyse was fired, Gordon Heggie removed Gaitan from the institution’s central records room and increased cell searches. Heggie’s priority was not reform of the institution but ensuring that Gaitan or others were not in a position to further damage the institution’s reputation.<sup>121</sup> When Gaitan next came before the state executive clemency board, Robert Trujillo, the Colorado Department of Corrections Chief, switched his vote for Gaitan’s

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<sup>118</sup> “A Hard Look at Penitentiary Practices,” 9/10/1973, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>119</sup> Marcella Trujillo, “State Prison Investigation,” 9/18/1973, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>120</sup> “Wyse Gets Deferment,” 6/22/1974, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>121</sup> “Heggie Initiates Small but Important Changes,” 9/7/1973, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

clemency to an additional two years behind bars. Journalists recognized this blatant retaliation: “A force behind the change in recommendation was the Colorado corrections chief, Robert Trujillo—a man profoundly embarrassed and troubled by the prison scandal.”<sup>122</sup> Although Gaitan succeeded in bringing publicity to the prison and overthrowing the acting regime, it was a pyrrhic personal victory because he served another two years before being able to make his case to the clemency board again.

Two years after Gaitan’s rebellion, the next major uprising that captured attention revealed the hollowness of the claim that guards protected incarcerated people. In May 1975, in a “fight” between rival Black and Chicano men in Cell House One, one captive, David Hault, died from multiple stab wounds and fifteen other men were wounded.<sup>123</sup> On the morning of May 18, brothers James and Reuben Montoya, who led a Chicano group in CSP, fought in the bathroom with two Black men (who remain anonymous in the record). After guards broke up this fight, all parties returned to their work or the cellhouse’s recreation area. Around noon, there was an altercation between eleven Chicano and fourteen Black men in the yard. To break up this second fight, officer Russell Harding of Tower 9 fired two warning shots. Officers on the ground then forced the Black and Chicano leaders involved to participate in a “peace talk,” which convinced the officers of a final resolution. All parties involved were sent to Cell House One, a maximum-security unit. No lockup was ordered; no controls were placed on captives’ movement; no additional security staff was alerted or requested; no precautions were taken in the cellhouse. The final pre-uprising physical altercation came at about 6:00 pm when James Montoya was stabbed

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<sup>122</sup> “Inmate May Face Longer Term After Stirring Probe,” 2/13/1974, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>123</sup> “AULT, David Hurley (#41172),” Death Book, MCP.

in this cellhouse. Montoya was then taken to the prison hospital and later transferred to the local city hospital, St. Thomas More. Guards continued to do nothing to calm tensions.

After about an hour of yelling with no officer intervention, a fight broke out when someone on the upper tier of Cell House One threw a glass object. Per the captain's orders, the guards left Cell House One. That order was given to ensure guard safety. Despite the prison's propaganda regularly highlighting the threat against officers, officers were ordered to leave a potentially dangerous situation and allow a fight to occur. After about an hour, guards returned to the cellhouse with reinforcements. Using batons, a fire hose, and about six warning shots, the officers regained control. In the aftermath, the prison was placed on a general lock-up until the end of May. All inhabitants of Cell House One were transferred to Cell House Three, which created an overcrowding problem there. Overcrowding got so bad that the administration reopened Cell House Seven, which had been closed and slated to be torn down.

The Governor ordered the Attorney General to investigate this May 1975 "riot." The investigating team conducted over 400 interviews and administered polygraph tests to multiple incarcerated people. The Attorney General's report began by declaring: "This report must be read in the context of prison life. Like violence, racial polarization is a part of prison life."<sup>124</sup> This statement belies a misunderstanding about prison and confinement that ignores root causes of violence and racial strife, instead declaring these natural conditions of incarcerated people. The report's declaration normalized competing factions within prisons, providing fodder for increased force to deal with "gangs." The Department of Correction's own data shows that violence was not always a feature of carceral life: while the state recorded eight investigations

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<sup>124</sup> "Report of the Attorney General on the Events and Causes of the May 18, 1975 Riot at the Colorado State Penitentiary," Folder 00.011.123-136, Julie Whitmore Collection, RGRMHC.

into violence within CSP in 1970 and 1970, that number had jumped to twenty-seven and twenty-three in 1974 and 1975, respectively.<sup>125</sup>

The report offered generic recommendations—similar to recommendations that had been repeated in the aftermath of major prison disturbances since the 1920s—about better training for guards, controlling contraband, reviewing staffing, expanding prison facilities, and eliminating incarcerated peoples’ idleness through programs and work. The report did note that the territorial prison facility was “antiquated” and “insecure.” One of the recommendations stands out as novel: dealing with racism by hiring more minority counselors. This recommendation echoed some of the issues that incarcerated people, as well as civil rights advocates in the free world, had voiced repeatedly in this era. Men incarcerated at CSP had long requested a less homogenous staff and wanted a staff that better reflected the disproportionately Black and Chicano population. The Colorado Advisory Committee to the U.S. Commission on Civil Rights in 1974 echoed the racial discrepancy in staffing: “Minority staff, for instance, are represented in very small numbers.”<sup>126</sup> This request, while important for encouraging diversity, misunderstands the role of the individual within a system. A commitment to diversity within large entrenched systems, as sociologist James Thomas shows within the university system, simultaneously institutionalizes ideals of diversity while entrenching and magnifying racial inequity.<sup>127</sup> The investigation and its recommendation, however, did not sit well with the warden at the time, who

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<sup>125</sup> Investigations, of course, do not reflect violent events, but the data for every event has been obscured to focus only on these “major incidents” that precipitated investigations. “Summary of Major Investigations Involving Violence at Maximum, Medium, and CWCI,” 1/17/1977, Department of Corrections Statical Document Batch, 14.

<sup>126</sup> Colorado Advisory Committee to the U.S. Commission on Civil Rights, “Colorado Prison Study,” September 1974, page iii, accessed at <https://www.ojp.gov/pdffiles1/Digitization/32433NCJRS.pdf>.

<sup>127</sup> James M. Thomas, *Diversity Regimes: Why Talk Is Not Enough to Fix Racial Inequality at Universities* (New Brunswick, NJ: Rutgers University Press, 2020).

rejected this outside interference into his fiefdom. Warden Alex Wilson recalled his feelings about the investigation: “A major inter inmate riot occurred and it was subsequently investigated by untrained investigators and arbitrary conclusions reached.”<sup>128</sup>

In response to yet another “riot” in 1976 that garnered state attention, Colorado’s legislature and executive became fed up with the cycle of embarrassing news stories, drawn-out investigations, and inaction. Colorado was not alone; this cycle was repeating in prison facilities across the county. Despite the fact that only fifty-five men were involved in this 1976 event, the entire institution remained on a multi-month lockdown. This uprising started after Governor Richard Lamm, who ran as a politician promising to restore order and discipline to the prison, ended privileges for over 600 incarcerated people. He eliminated physical contact with visitors, ended the use of money, and ordered the removal of pay telephones, personal furniture, and clothing.<sup>129</sup> In a move that was particularly upsetting to the incarcerated population, Lamm abolished the elected “inmate council,” which had served as a body that communicated concerns to the administration, though it had been technically powerless. The council, Lamm argued, was “disruptive.”<sup>130</sup> Lamm challenged the prison administration to overhaul the rules of the prison, and he oversaw that project. Lamm sought to go back to prisons that cost less, worked captives, and maintained strict discipline. In a memo about new rules and procedures, the administration announced: “In order to assure that the facility is controlled more by the administration, rather than the inmate population, it is apparent that drastic steps need to be taken. Inmates committed

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<sup>128</sup> “Responses of Alex Wilson to Request for Information,” n.d., Julie Whitmore Collection, RGRMHC.

<sup>129</sup> “Lamm Cracks Down on Prison,” 8/15/1976, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>130</sup> “Prison Won’t Recognize Inmate Council,” *Denver Post*, 7/12/1978.

to the care and supervision of the State have the right to a safe environment, which can be accomplished only through a controlled and disciplined program.”<sup>131</sup> Lamm’s crackdown, in response to the uprisings and activism of the 1970s, eliminated many of the privileges incarcerated people had enjoyed: *The Interpreter* was shut down, the prisoner-run radio station ended, and incarcerated photographers were no longer allowed access to document prison life.

Lamm invoked the events of Attica and CSP prisoners’ actions to justify the changes. The 1971 Attica uprising dramatically changed the course of prison history: worries over another such event persisted and justified repressive actions. “Frankly,” Lamm said in 1976, “I felt we were heading for an Attica in that Prison.” During the lockup, Lamm said it would last “30 days, 45 days, 60 days, or whatever it takes to let them know we mean business and that it’s [the new rules] not going to be reversed.”<sup>132</sup> After some men had not left their cells for three months in the lock-up, they challenged it as illegal.<sup>133</sup> Similar to previous court cases, the court ordered some minor relief for prisons without ending the lockdown because, in the court’s logic, the prison administration understood best how to maintain order. Chief Judge Robert Kinglsey argued that Lamm and other state officials were justified: “There was a genuineness in the testimony of state officials here that they feared for the safety of guards and inmates if the lockup weren’t ordered.”<sup>134</sup> The state legislature complemented Lamm’s and the court’s efforts to maintain discipline: a special session made it a felony to participate in a riot in the prison, punishable with

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<sup>131</sup> “Memo: Changes at Maximum Security,” Folder “1988.014.590 – Julie Whitmore Notes,” MCP.

<sup>132</sup> “Lamm: Prison Lockup Will Stand,” 8/19/1976, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>133</sup> “Lockup at Prison ‘Illegal,’ Suit Says,” 9/16/1976, “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

<sup>134</sup> Quoted in “Court Rejects Inmate End-Lockup Request,” “Scrapbook 3,” Box 14803 “Scrapbooks of Penitentiary,” Department of Corrections Collection, CSA.

a sentence of 2-10 years.<sup>135</sup> The new law expanded the definition of participating in a riot to inciting, participating in, or failing to disperse. Under this new law, the fifty-five men involved were charged with additional felonies retroactively. Lamm's justification relied on pinning issues of the prisons to the incarcerated population, not to failures of the institution, and reiterating a tough-on-crime ideology. In 1975, he told the press that if there must be a choice, "I will choose—and so will the public—to punish and to isolate."<sup>136</sup>

Isolation, punishment, and repression took its toll on incarcerated people. Incarcerated people could attempt to escape from the facility. In the 1970s, incarcerated people found the system's weakness: transfers to the hospital created the greatest opportunity for escape. Escapes, some successful and some not, continued through the era. The other form of escape from incarceration came through self-harm. Suicides, especially by hanging, climbed dramatically in the late 1960s and through the 1970s.<sup>137</sup> Suicide can only be interpreted as the ultimate expression of hopelessness and rebellion. The prison had attempted to claim ownership of an individual's body and time, and suicide offered the individual a way out. The incarcerated person sacrificed life to reclaim control over their body, time, and autonomy. No explanations or notes exist that can offer insight into the reason for these suicides, so we can only proffer assumptions about what drove these people to end their lives.



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<sup>135</sup> Office of Legislative Legal Services, "1976 Digest of Bills," 6/30/1976; "Charting a New Course for Corrections in Colorado," 1/23/1977, "Scrapbook 3," Box 14803 "Scrapbooks of Penitentiary," Department of Corrections Collection, CSA.

<sup>136</sup> "Lamm Takes Hard Line on Prisons," 12/9/1975, "Scrapbook 3," Box 14803 "Scrapbooks of Penitentiary," Department of Corrections Collection, CSA.

<sup>137</sup> Colorado State Penitentiary Death Book, MCP

The protests and uprisings reveal only one side of Colorado's postwar carceral project. Complementing, subverting, and squashing this story of protest is one of reform and growth of the state's carceral project. For this complementary narrative, we must turn back to the 1950s, the years following Roy Best's demise, to follow the system's development. It developed as both a reaction to and a cause of the protests and politicization of incarcerated people. Colorado's electorate favored reformist, progressive politicians, who offered a veneer of reform while enlarging the Colorado Department of Corrections' power. In 1961, Colorado spent \$4.3 million financing its prison system; by 1979, it appropriated \$37.9 million. In 1980, the Department of Corrections sought \$46 million for its annual operating budget. This growth came in the early stages of states across the country rethinking their prison systems and investing in them to counteract surpluses in land, capital, and people.<sup>138</sup> Incarcerated peoples' activism and rebellion, to an extent, spurred the reform and growth, yet these reforms altered the technologies and mechanisms of punishment rather than underlying logics.

At the end of Roy Best's tenure in 1952, Colorado had two prisons: the Colorado State Penitentiary and the Colorado State Penitentiary—Women's Division.<sup>139</sup> Yet, by that time, the state had undergone a dramatic transformation. World War II, industrial growth, and westward migration spurred Colorado's postwar growth.<sup>140</sup> In 1955, the Colorado General Assembly and Colorado State Planning Commission wanted to know how the state's recent changes would

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<sup>138</sup> Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

<sup>139</sup> The Colorado State Reformatory at Buena Vista, as Chapter Two discusses, had been in operation since the late nineteenth century, but it was not opened as an adult prison until 1978. It traditionally served as a reformatory for juvenile offenders.

<sup>140</sup> Carl Ubbelohde, Maxine Benson, and Duane A. Smith, *A Colorado History, Tenth Edition* (Portland: WestWinds Press, 2015), 322-333.



affect its prison system. Colorado's incarceration dipped from its Depression-era high of 1,749 total incarcerated people in 1937 to a post-WWII prison population of 1,211 people in 1945. From there, the population grew steadily: 1,490 people in 1950, 1,800 in 1955, 1,978 in 1960, and 2,766 in 1965. This trend reversed with changing laws and the expansion of the state's parole system—by 1970, the prison population was down to 2,066 people—before rising again in the mid-1970s with longer minimum sentences.<sup>141</sup>

The fluctuating prison populations, coupled with persistent issues of overcrowding that led to both dissent and legal challenges, generated reforms in the state's prison program that accounted for Colorado's statewide carceral growth. Warden Harry C. Tinsley, along with other prison administrators and state planners, drafted a report in the early 1950s with a ten-year projection for crime in the state and a program for the state's prison system to proactively deal with this expected spike. At the time the report was completed in 1955, CSP and the Women's Division had capacity for 1,200 people. The report predicted—based on birth rates, population trends, Cold War tensions, industrial production, and a strong economy—that by 1965, CSP would need the capacity for 2,000 captives.<sup>142</sup>

The planning report declared: “Just as Colorado's educational, mental and other institutions are planning for the growing population of Colorado, we of Colorado State Prison are trying to project our growth in the same fashion.” The projections employed statistical models that used past data, relying on the assumption that expanding the carceral state and prisons would

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<sup>141</sup> U.S. Department of Justice—Bureau of Justice Statistics, “Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-1986,” May 1988, NCJ-111098, pages 6-11, accessed at <https://www.ojp.gov/pdffiles1/Digitization/111098NCJRS.pdf>.

<sup>142</sup> “Colorado State Penitentiary—Past, Present, and Projected Planning,” n.d., Box 14794 “Parole and Reports,” Department of Corrections Collection, CSA.

continue to fail to deter criminal acts. For example, the majority of CSP's charges historically had come from three urban counties (Denver, El Paso, and Pueblo), so the planners had assumed Colorado's "heavier growth trend in these [urban] areas will continue to show heavier commitments." The report omitted any discussion of why urban areas may have produced more incarcerated people. Complementing the geographical history that could predict future incarceration levels, the report used race to do the same. The report noted the disproportionately racialized incarceration in 1955: for every 1,355 white persons in the state, 1 was in prison; for every 307 "Spanish" persons in the state, 1 was in prison; for every 190 "Negro" persons in the state, 1 was in prison; for every 150 "Indian" persons in the state, 1 was in prison.<sup>143</sup> This planning process shows, as Muhammad Khalil Gibran has demonstrated, how social science and data criminalized communities of color by condemning certain areas and people, which, in turn, increased policing and surveillance of those communities.<sup>144</sup>

The ten-year building plan had two components: upgrades to the existing infrastructure and opening new facilities. These plans reiterated the long-held desire to make the prison productive with convict labor, both in the way convict labor would be used to complete the projects and with expanded opportunities for it in the updated facilities. Tinsley requested \$530,000 for upgrades: expanding the canning factory that the state had purchased in the 1920s, remodeling the heating plant and distribution lines, renovating the prison hospital, and updating Cell House Five. Tinsley's committee proposed two new facilities: a medium security prison and a pre-parole center. Using convict labor for construction, the two facilities were projected to cost

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<sup>143</sup> Ibid.

<sup>144</sup> Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010); Elizabeth Hinton, *From the War on Poverty to the War on Crime: the Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2017).

the state \$3.1 million over ten years.<sup>145</sup> Tinsley accompanied the report with plans from Jamieson and Williams, Architects and Engineers. Jamieson and Williams planned a medium security facility to accommodate 400 people initially and eventually expand up to 900 people. Planning for the future, the design of the medium security prison included “buildings [that] are the type which could be expanded should additional room be needed.”<sup>146</sup> They planned the facility to be self-contained, producing its own foodstuffs in its ranches and gardens.<sup>147</sup>

The second new facility was a pre-parole center representing an investment in an expanded and improved parole system. The parole system and its new center would represent Colorado’s progressive view of penology. The center opened in 1959 as a manifestation and expansion of the state’s 1951 parole reform. In the late 1930s through the early 1950s, states across the country reformed their parole system with increased resources, policies, and personnel. Colorado also transformed its system. Colorado initially created a parole system in 1909 with the “Redemption for Offenders Act.” Until the early 1950s, Colorado’s governor held sole paroling authority. The state, moreover, lacked a sufficient parole system; there was no supervision of parolees. Colorado’s initial parole system came one year before the federal government established its parole system in 1910 in which the power of parole was given to the Superintendent of Prisons as well as the warden and physician of each prison facility.<sup>148</sup> These

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<sup>145</sup> This cost is construction, not operation.

<sup>146</sup> Jamieson & Williams, “Medium Security Penitentiary,” Oct. 31, 1955, Folder “Summary Bldg Program 1955,” MCP.

<sup>147</sup> Medium Security Penitentiary and Parole Center Memo from Jamieson & Williams to Harry C. Tinsley, Nov. 10, 1955, Folder “Summary Bldg Program 1955,” MCP.

<sup>148</sup> Peter B. Hoffman, “History of the Federal Parole System,” U.S. Department of Justice—United States Parole Commission (May 2003), accessed at: <https://www.justice.gov/sites/default/files/uspc/legacy/2009/10/07/history.pdf>.

early parole models reflected progressive ideals of efficient government and human improvement. Just like many states, including Colorado, the federal government dramatically overhauled its parole system in the early 1950s.

Colorado's 1951 reform established a State Board of Parole (Governor, Lieutenant Governor, and Attorney General) to vote on recommendations from their staff. This law, in theory, allowed the state to grant more parolees because the governor did not bear the sole risk and responsibility for the actions of freed people. The State Board of Parole hired a staff to research, vet, and recommend people for parole.<sup>149</sup> The Parole Board acknowledged the persistent problem of recidivism, and members of the Parole Board laid the blame with the men instead of systemic failures. In its first report, the State Department of Parole justified their failures by castigating "criminals": "Many criminals spend most of their lives in institutions. They are so lacking in self-control or judgment that they commit new offenses soon after each release."<sup>150</sup> The parole operation—for both men and women—was met with skepticism by some lawmakers, law enforcement agents, and members of the general public because they believed that anyone who got themselves into Cañon City was "no damn good."<sup>151</sup>

The new pre-parole center, as one report noted, responded to a perennial critique: "It is a known fact that men passing from the confines of prison life to the walk of self-reliance and personal decision need a period of de-institutionalization."<sup>152</sup> The failure of the parole system

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<sup>149</sup> "An Act Relating to Paroles; Providing for the Creation of a State Department of Parole and for the Administration of the Parole Laws of Colorado and of the Interstate Compact on Probation and Parole," Chapter 147, 1951, accessed at <http://hdl.handle.net/10974/session:12689>.

<sup>150</sup> "First Activity Report of the State Department of Parole, May 1, 1951 to Oct. 31, 1953," MCP.

<sup>151</sup> "Interview of Margaret Lenora Curry by Joanne Reese and Vivian Bardwell," 6/21/1982, page 20, MCP.

<sup>152</sup> "Colorado State Pre-Parole Release Center," n.d. unfiled pamphlet, MCP.

represented the successes of a carceral system that disconnected individuals from their community. Gilbert Eugene, for example, was paroled from CSP on 1 February 1951, but he returned to the prison ranch shortly thereafter and asked to remain there because he “couldn’t find his relatives or work.” The prison and parole system failed Gordon: he could not survive outside of the institution after years inside. Despite the prison’s records having a name and address of his sister, Gordon either did not have the funds to travel to her home in Mississippi or did not have a relationship that endured the traumas of murder, conviction, and incarceration.<sup>153</sup> The institution had supplanted all that Gordon knew. And within the year, he died at the prison ranch.<sup>154</sup>

Warden Tinsley and the State Parole Board designed the pre-parole center to reform the way incarceration prepared people for life after institutionalization. The center was designed to accommodate 120 men and could be expanded to accommodate an additional 40 people.<sup>155</sup> This center opened before the medium security facility, becoming the third prison in Fremont County’s history.<sup>156</sup> The center had two dormitory wings, a chapel, commissary, kitchen, dispensary, a recreation room, and administrative offices. It employed counselors, chaplains, and trustees. The facility welcomed its first “good risks” on 25 February 1959. Despite the investment in parole and prison administrators’ lofty goals, Colorado remained behind the rest of the

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<sup>153</sup> It is unlikely that he did not have the funds to travel because he had enough funds to pay for his own burial at Lakeside Cemetery. Gordon, Gilbert Eugene (#23793) Record, Fingerprint Files, MCP.

<sup>154</sup> “Jan. 1, 1951 to Dec. 31, 1951,” Colorado State Penitentiary Death Book, MCP.

<sup>155</sup> Medium Security Penitentiary and Parole Center Memo from Jamieson & Williams to Harry C. Tinsley, Nov. 10, 1955, Folder “Summary Bldg Program 1955,” MCP.

<sup>156</sup> Although some consider pre-parole as the second facility because the women’s prison opened (1935) was a division of the CSP, I am treating the women’s facility as the second institution because it opened as a facility outside the walls of the CSP.

country: of those paroled in 1968 in Colorado, thirty-three percent were reincarcerated within two years while for the U.S. as a whole, only twenty-eight percent were reincarcerated in that same time frame. This pattern held for each year the state compiled this data.<sup>157</sup>

The center received new admissions every Wednesday. These men then underwent a five-week course to prepare them for parole.<sup>158</sup> The course included work assignments, discussions about employment, lessons on the law, information on spending and finances, discussions about family, time for religious worship, and excursion trips. The instructional programs used films to help teach, including such films as: “Good Table Manners,” “How To Keep a Job,” “Installment Buying,” “Better Use of Leisure Time,” “Why We Respect The Law,” and “Handling Strong Feelings.”<sup>159</sup> The education program stressed the importance of parolees’ choice in determining their own path. Although recognizing that, as one packet said, some people “will judge you, condemn you,” this same pamphlet said that “Every man is endowed with free choice. Don’t kid yourself into believing people and circumstances make these choices for you.” Scholars and formerly incarcerated people, however, have shown that the root causes of criminal acts, such as poverty and post-release discrimination, maintain barriers to success despite a person’s ability to “think and choose.”<sup>160</sup>

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<sup>157</sup> “Reincarcerated” refers to both technical violations of parole and new commitments. Office of Research, Planning and Information Services, “Colorado Division of Correctional Services Statistics Notebook,” Document No. 76-26, page 112.

<sup>158</sup> “Colorado Pre-Parole Release Center” Pamphlet, March 1967, Folder 00.011.142-153, Julie Whitmore Collection, RGRMHC.

<sup>159</sup> “Colorado Pre-Parole Release Center,” n.d., Acc. No. 2010.014.002, MCP.

<sup>160</sup> On barriers to re-entry after release: Reuben Jonathan Miller, *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration* (New York: Little, Brown and Company, 2021); Jeffrey D. Morenoff and David J. Harding, “Incarceration, Prisoner Reentry, and Communities,” *Annual Review of Sociology* 40 (July 2014): 411-429; Stephen C. Richards and Richard S. Jones, “Beating the Perpetual Incarceration Machine: Overcoming Structural

The center was a reform that did not alter underlying social conditions such as employment discrimination, poverty, inadequate medical care, race and gender discrimination, and deficient housing. Regardless, the reform received wide popular acclaim. The Department of Institutions curated data that supported claims of success. In April 1960, the *Pueblo Star-Journal* argued that “results of the Colorado State Penitentiary pre-parole center are proving its worth.”<sup>161</sup> In that first year, as compared to those released directly from CSP, only five percent fewer of those released from the pre-parole center were reincarcerated. Despite these statistics that the *Star-Journal* parroted, a broader examination of that decade’s data reveals that the success of the pre-parole center that first year was within the margin of normal variation of recidivism by year for the state.<sup>162</sup> Because the state never released the number they offered as a goal to mark their success and no critics ever determined what percent return rate would constitute success, the pre-parole center’s data went unchallenged.

Despite the alleged success of the pre-parole center, the center’s fate reveals the limits of reform. As the state’s prison population spiked dramatically in the early 1970s, overcrowding again became an acute problem. And in July 1975, Rudy Sanfilippo, the Division Head of the Department of Corrections, ordered the pre-parole center’s activity to end. Instead of operating a center for 40-60 men preparing for parole, the facility would house up to 100 people assigned to

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Impediments to Re-Entry,” *After Crime and Punishment*, Shadd Maruna and Russ Immarigeon, eds. (London: Wilan, 2004).

<sup>161</sup> Linda Schierse, “Pre-Parole Center Proving Its Worth,” *Pueblo Star-Journal*, 4/10/1960.

<sup>162</sup> During the first complete year of the center’s operation, 376 parolees were released from the Colorado State Penitentiary and 450 were released from the pre-parole center. Fifty-two parole violators were released from CSP while 43 had been released from the pre-parole center. Studies have also shown the ways that “recidivism” is a category constructed and largely enacted by technical violations of parole regulations rather than new criminal convictions. Katherine Beckett and Naomi Murakawa, “Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment,” *Theoretical Criminology* 16 (2012): 221-244.

either medium security or the reformatory. Dick Spur, Department of Institutions' Information Officer, argued: "The facility is grossly underutilized as a pre-parole center and this is a luxury we just can't afford."<sup>163</sup> This order undercut the previous justifications that the pre-parole center was a positive good for parolees that saved the state money in their housing and in the lower rate of recidivism. For the next fourteen years, Colorado would not have a pre-parole center, instead releasing men directly from the institution in which they had been held.<sup>164</sup>



While the pre-parole center was being built, the first medium security institution in Colorado was also under construction. The chronology of prison building is complicated because it was a piecemeal process.<sup>165</sup> As soon as housing was completed in 1957, the incarcerated laborers building the facility occupied it. The dormitories, laundry, and boiler house were completed in 1957, then the kitchen and dining areas were finished in 1959. It could house about 400 people.<sup>166</sup> That same year, the second half of the institution opened. Shortly thereafter, as the department reorganized to streamline staffing for the institutions, the two facilities merged into the Fremont Correctional Facility—cutting the raw number of prisons but maintaining the same number of beds. The renaming in the merger foregrounded what the state articulated publicly as the purpose of these institutions—corrections.

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<sup>163</sup> Quoted in: Chris McLean, "Pre-Parole Activity Shut-Down Ordered, Center Extends MS," *Cañon City Daily Record*, 7/17/1975.

<sup>164</sup> In April 1987, the state opened an 82-bed pre-release center within Fremont Correctional Facility.

<sup>165</sup> Colorado Department of Corrections lists the opening date for Fremont Correctional Facility (a/k/a Medium Security) as 1962.

<sup>166</sup> "Fremont Correctional Facility" Booklet, Feb. 1985, MCP.



The differences in the two sections of Fremont Correctional Center reveal an important evolution in prison ideology and architecture. The first facility held its 400 captives in large three-tier cellhouses. This architecture was reminiscent of the “Big House” style of prison planning that gained popularity in the 1930s.<sup>167</sup> Within this “big house,” everything was internal; incarcerated people did not leave the building to go to chow or recreation. On the other side, smaller pod-style dormitories comprised the second facility. People incarcerated in this facility, for example, had to leave their dormitories to go to a communal chow or recreation area. Prevailing penal theories argued that the dormitory style encouraged rehabilitation and control because it fostered movement while also making safety more controllable because each separate wing had fewer people than a large tier.

Pre-Parole Center and Fremont Correctional nearly doubled Cañon City’s carceral capacity. The growth alleviated some of the major problems plaguing CSP, particularly the inability to separate incarcerated people based on their security classification. This issue of not being able to segregate people was further mitigated by the next facility, Skyline Correctional Facility. Skyline, sited less than a mile from Fremont Correctional, welcomed its first captives in 1964. It was a minimum-security prison with room for sixty residents, which its population soon exceeded. People incarcerated there could have individual rooms, could wander the grounds freely until dark, and had less than twenty months to serve before being paroled.<sup>168</sup> Placing Skyline in the vicinity of Fremont allowed the Colorado Department of Institutions to develop the east Cañon prison complex, where most of the area’s subsequent state prisons would be

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<sup>167</sup> Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the ‘Big House,’ 1920-1955* (Ann Arbor: University of Michigan Press, 1996).

<sup>168</sup> “Skyline,” n.d., Folder: “Prisons-Skyline” RGRMHC.

located, on the hundreds of acres of land that the state owned in east Cañon. The proximity of facilities in one complex allowed for more efficient surveillance to enhance security, and it allowed the prison to explore cost-cutting measures such as cooking meals for all in the complex at one central kitchen rather than individual kitchens in each institution. As the Department of Institutions and Colorado went all-in on Fremont County with this prison complex, there was no discussion of moving any of the facilities to Denver County or El Paso County, where most of the captives had been convicted.

The proliferation of different prisons with varying levels of security represents a progressive view of rehabilitation, one that had been advocated for since the early twentieth century. Prison administrators and reformers had long argued that separating incarcerated people would reduce violence and allow some to rehabilitate without deleterious influences around them. Rather than new “fish” spending thirty days at the quarry to introduce them to the prison system and give guards an opportunity to observe and classify them, as had been done since the nineteenth century, new captives were now sent to a diagnostic receiving unit in which their history and psychological profile would dictate their classification and placement.



The third major construction in this period that allowed the state to provide experiences more aligned with their progressive penology was the development of the new women’s prison—Colorado Women’s Correctional Institution.<sup>169</sup> Beginning in 1960, the state needed to modernize and expand its women’s facility. Prior to this, the women’s facility was a building

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<sup>169</sup> The facility was renamed Colorado Women’s Correctional Facility in Jan. 1978. For sake of consistency throughout the dissertation, “CWCF” will be the acronym used for the facility except in direct quotations.

outside the walls of CSP governed by CSP's warden and overseen by matrons within their ward. Overcrowding, unlike at the men's facility, was less of a problem, and as Margaret Curry of the State Parole Board remembered, incarcerated women "were given necessary things, but certainly nothing unnecessary."<sup>170</sup> Governor John Love, along with Warden Harry Tinsley, explored possible sites in Cañon City, Cripple Creek, Alamosa, Lamar, Holley, and Walsenburg. Love selected Cañon City because the region's infrastructure already supported the needs of a new prison and because residents were not averse to a new prison facility. Locals argued, again, that prison development would bring more jobs and local business.<sup>171</sup>

The new CWCF's original plans, like those for Fremont and Pre-Parole, allowed the state to expand the original ninety-person capacity should the need arise.<sup>172</sup> Having learned its lesson from the experience with the territorial prison and original women's facility in which restricted space hampered growth and worsened overcrowding, the state favored this expandable design. Associate Warden May Gillespie, who had started as a matron at the old women's prison and worked her way up, directed CWCF under Warden Wayne Patterson's supervision. The first cohort of captives arrived at CWCF on 14 January 1968, and the facility was formally dedicated two months later in a grand ceremony with visiting dignitaries.<sup>173</sup> The informational pamphlet published for the dedication provided data on how the facility met the state's definition of being modern and progressive: "The modern \$1.2 million Colorado Women's Correctional Institution,

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<sup>170</sup> "Interview of Margaret Lenora Curry by Joanne Reese and Vivian Bardwell," 6/21/1982, page 16, MCP.

<sup>171</sup> "Colorado State Pre-Parole Release Center," n.d. unfiled pamphlet, MCP.

<sup>172</sup> "Bill Establishing Women's Prison In Fremont County Is Introduced," *Cañon City Daily Record*, 1/9/1963.

<sup>173</sup> "Colorado Pre-Parole Release Center" Pamphlet, March 1967, Folder 00.011.142-153, Julie Whitmore Collection, RGRMHC.

located on 20 acres five miles east of Cañon City, is a model of its kind in the region. The new facility is equipped to provide comfortable and attractive living conditions, extensive education and rehabilitant opportunities, plus meet the necessary security requirements.”<sup>174</sup>

The new women’s prison included a kitchen, sewing shop, educational facility to pursue a GED or take typing classes, a hospital with twelve beds and two private rooms, an auditorium with a 240-person capacity, an industrial laundry room, a beauty shop, a hobby room, and a yard that had facilities for softball, tennis, and basketball.<sup>175</sup> The facility cost \$1.2 million to build, and the state used convict labor for its construction. Its initial staff boasted thirty-seven women, “chosen for their extra abilities and their willingness to use them.” The old facility had only eight women on staff. Florence Shellerberg, who had worked at both the old and new facility offered a contrast: at the old facility, “the concentration then was more on confinement, and not on education or rehabilitation.”<sup>176</sup> The old operation was “purely punitive” for women because the lack of investment in programs, infrastructure, and personnel.<sup>177</sup> The new CWCF had “new, modern facilities and programs available for women prisoners in Colorado.” It was designed to rehabilitate women and prepare them for life after incarceration. For example, when discussing the kitchen’s design, the state argued: “In the kitchen the women learn to prepare menus for the week ahead, and to do large scale baking, or preparing of salads, vegetables or meats. All this is under the supervision of a competent professional who helps the women prepare for potential

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<sup>174</sup> “Colorado State Penitentiary Dedication Ceremony—The Colorado Correctional Institution for Women,” page 3, Folder: “Co. Prisons – Women – General,” RGRMHC.

<sup>175</sup> “Colorado Pre-Parole Release Center” Pamphlet, March 1967, Folder 00.011.142-153, Julie Whitmore Collection, RGRMHC.

<sup>176</sup> “Women’s Now & Then,” Acc. No. 1990.031.003, MCP.

<sup>177</sup> “Interview of Margaret Lenora Curry by Joanne Reese and Vivian Bardwell,” 6/21/1982, page 17, MCP.

employment, or become a better homemaker.”<sup>178</sup> CWCF even operated a program parallel to that of the Pre-Parole Center, but its program lasted for nine months prior to release instead of the condensed five weeks at Pre-Parole.<sup>179</sup>

Although public officials and local reporting hailed CWCF as an unmitigated success, outside reporting said otherwise. Marilyn Holmes, a reporter for the *Longmont Daily Times-Call*, spent three days at CWCF in July 1975 speaking with incarcerated women and officers while observing the institution’s routines. She concluded: “Anyone who thinks incarceration at CWCI provides anything more than a dismal, suspended existence is either on the payroll or fooling himself. For 10,128 consecutive hours of the average sentence, an inmate does little more than sit and wait.” Holmes observed the seemingly-excessive dependence on medicine and tranquilizers and the general feeling of distrust and suspicion. She noticed that the only productive moment was for the few women who were able to go to the maximum-security facility for college extension classes, but this moment soured upon the return when the women were subjected to a strip search. Holmes quoted one woman saying: “it’s humiliating. If we wanted to get something in here, we could. It’s dumb to make us strip all the time. For someone so moralistic, you wonder why they want to see us naked all the time. It almost makes me want to give up the classes.”<sup>180</sup>

Holmes’ reporting caused an uproar within Cañon City and correctional circles, and throughout its first decades, CWCF was at the center of constant controversy. In August 1971,

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<sup>178</sup> “Colorado Women’s Correctional Institution Pamphlet,” n.d., Julie Whitmore Collection, Folder 00.011.142-153, RGRMHC.

<sup>179</sup> “Colorado Pre-Parole Release Center,” Acc. No. 2010.014.002 MCP.

<sup>180</sup> Marilyn Holmes, “What is story inside women’s state prison?,” *Longmont Daily Times-Call*, Folder: “Women’s Now & Then,” Acc. No. 1990.031.003, MCP.

the first two women escaped from the facility, but they were returned later that day. The next year, Ruth Reed became the facility's first woman to be awarded a furlough to visit her husband. Within a year, another woman was awarded furlough, and then Ola Mae Nance became the institution's first woman to fail to return from furlough. After the November 1973 strike at medium and maximum security, the women of CWCF were given a new grand piano as a reward for not participating and not damaging the facility. In July of 1975, women staged a sit-down strike in the main yard. During this strike, Gillespie heard their grievances in the yard as officers from maximum security were called in to patrol the fence. Throughout this period, CWCF was one of the few prisons in the country that could accommodate significant numbers of female captives. As such, it held over 150 federal prisoners from 1968 through 1979, when the federal government began investing in its own female carceral capacity.<sup>181</sup> CWCF continued to house hundreds of women until it was closed in 2009 due to budget-cutting measures and its 202 residents were transferred to other facilities throughout the state.<sup>182</sup> CWCF, complemented the other facilities in Fremont County, by enabling the region's "correctional" facilities to accommodate incarcerated people of both genders and three security classifications.



Fremont County in 1973 was "almost totally dependent" on the prisons and their support operations, according to Representative Tom Farley (D-Pueblo). The new prison landscape, paired with the growing budget and captive population, spurred the state to reorganize and expand the bureaucracy that governed the criminal legal system. After the tumultuous early

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<sup>181</sup> "Timeline of Events Beginning with 1/29/68," Folder: "Women's Now & Then," Acc. No. 1990.031.003, MCP.

<sup>182</sup> Debbie Bell, "Final Closure: Women's prison closes its doors after 40 years," *The Daily Record*, 6/5/2009.

1970s with violence, corruption, and critical investigations, the state legislature organized the Department of Corrections to consolidate power and personnel. Prior to July 1975, CSP, Fremont, CWCF, and Pre-Parole were each administered by associate wardens who reported to the warden that worked out of CSP. After 1 July 1975, the director of each of these facilities became a “superintendent” who reported to the Chief of the Department of Corrections, who was based in Denver. This came as part of a long push since the late 1960s to establish an autonomous Department of Corrections, separating the Division of Corrections from the Department of Institutions.

More than a symbolic name change, the Department of Corrections and its new organizational structure represented a shift in political power and sovereignty of the facilities’ directors. Gordon Heggie told an interviewer that “by necessity the prison became public property—as opposed to warden’s fiefdom.”<sup>183</sup> The Chief of the Department worked out of Denver and answered to both the governor and legislature, in their oversight roles. Transferring power made the captives’ conditions and the administration subject to changing politics in the state, creating new problems for both captives and their keepers. The individuals who were present at the sites and dealt with the state’s captives most directly had little ability to enact meaningful change after this reform. The reorganization shifted power from the superintendents to the chief. Alex Wilson, who presided over CSP from 1974 to 1975 during this change, said that one of the biggest problems of his tenure was that of “administration not familiar with prison problems.”<sup>184</sup> The unfamiliar “administration” was that of people working in Denver far removed from the day-to-day operations of the facilities. The reorganization, however, attempted

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<sup>183</sup> “Responses of Gordon W. Heggie to Request for Information,” n.d., Julie Whitmore Collection, RGRMHC.

<sup>184</sup> “Responses of Alex Wilson to Request for Information,” n.d., Julie Whitmore Collection, RGRMHC.

to alleviate what a statewide grand jury in 1973 had called the problem of “Warden syndrome” or “emperor complex” in which “the warden has virtually a free hand in establishing the programs, policies, and administrative structure of ‘his’ prison... The office of the warden became the court to which all individuals paid their respects, to which all made known their complaints, and from which came no consistent policy other than the personal beliefs of the warden of the penitentiary.”<sup>185</sup>

This shift in power was part of the politics of the moment: elected officials exerted greater power over the criminal legal system as law and order became a high profile electoral issue.<sup>186</sup> As Governor Richard Lamm, who in the 1970s placed the facility on lockdown and eliminated many privileges within, lambasted criminality and the legislature sought to defray the cost of incarceration, the prison system became a key target for reform. By the 1970s, many reforms still centered on the issue of convict labor. In 1969, for example, the legislature passed a landmark work release program bill that would allow incarcerated people, especially pre-parole and minimum security, to work within the local community. In exchange for working and earning money, the laborer would then pay a portion of the earnings to the prison for room and board.<sup>187</sup> But the work release program faced community backlash. Although the prisons themselves had brought jobs and economic activity to the area, one concerned barber in Cañon City feared that he lost business because the incarcerated barber on the work release program

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<sup>185</sup> “A Report on the Colorado State Penitentiary by the State of Colorado Grand Jury,” 1974, Folder “Grand Jury and Corrections Report,” Acc. No. 97.08, MCP.

<sup>186</sup> Hall et. al., *Policing the Crisis*; Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997); Hinton, *From the War on Poverty*.

<sup>187</sup> Frank Hogan, “Into the Mainstream?,” *The Interpreter* 3, no. 3 (May-June 1968), Folder “Interpreter May-June 1968,” Acc. No. 1988.012.025, MCP.



undercut his price and business. The incarcerated barber, Felix Padia, rented a chair in Cañon City to give haircuts, and at the end of each day, the prison mandated he return immediately and undergo a search. Padia paid the prison \$6.90 of his daily earnings for the privilege of staying there and being allowed to cut hair. Free-world barber Bill Wagner argued: “Why is this person so special that he can work outside and make more money in a day than he could in a month by cutting the officers’s hair and everyone else still confined. I sometimes wonder if there is any justice for the law abiding tax payer to get a job without having to compete with inmates of our institutions.”<sup>188</sup> Because of the outrage over this competition, Padia lost his job on August 26. Convict labor itself was not targeted, but its visibility, again, drew rebuke.

In the 1970s, with a renewed focus on crime and a state- and nation-wide economic scare, convict labor became a political flashpoint. Many of the rebellions and uprisings of the 1960s and 1970s, for example, had demanded equitable work opportunities for all incarcerated people who wanted and better wages. In 1977, the Colorado legislature passed a bill that established the Colorado Correctional Industries, inc. CCI was a statewide public corporation that contracted with prison facilities to manufacture goods to be sold across the state.<sup>189</sup> Federal laws from the Great Depression still prohibited the interstate sale of prisoner-made goods, but CCI sold (and sells) these goods within the state. CCI hired full-time free-world salespeople to reach out to business communities across the state. They produced fancy brochures that hailed both the quality of the goods manufactured and the rehabilitation offered through the program. (See Figure 6.3). Incarcerated people made dairy products, heavy machinery, desks, soap, and many

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<sup>188</sup> “Letter to the Editor,” *Cañon City Daily Record*, 8/23/1969.

<sup>189</sup> Colorado Revised Statutes, 17-24-101, 1977.



Figure 6.3: Colorado Correctional Industries Advertising Brochure, n.d. Acc. No. 2019.035.046, Royal Gorge Regional Museum & History Center.

other goods consumed in Colorado. In this way, the state centralized control of convict labor, as it did with the entire prison system.

Colorado's carceral landscape in the 1970s differed dramatically from the one that emerged in the years following World War II. New prison facilities represented a new understanding of how men and women ought to be punished and housed, shifting away from the "big house" model and the single facility for all captives. Incarcerated people, too, had been part of what spurred this change: through legal, non-violent, and violent methods, they registered their discontent. Oversight of the prisons, too, had modernized as part of the wave of political reforms that sought to eliminate corruption, reduce costs, mitigate recidivism, and assert oversight. The organization of the Department of Corrections underscores the way crime and incarceration became a political flashpoint; Cañon City and its captives' fortunes were inseparable from the dictates of Denver's politicians. Previous wardens like Best and Tynan had recognized had always seen and worked within the politics of state-level power, but now elected officials made crime and punishment central concerns of their political careers.

## Chapter 7 - A Carceral Capital Realized, 1977-1994

Cañon city homed thousands of captives across its five penal institutions—Colorado State Penitentiary, Colorado Women’s Correctional Institution, Pre-Parole Release Center, Skyline Correctional Center, and Fremont Correctional Facility. The Department of Corrections measured its capacity euphemistically in beds, and in 1979 these five facilities offered 2,550 beds.<sup>1</sup> In spite of the dramatic increase in prison capacity over the prior decades, the prisons remained overcrowded. Across the United States, beginning in the 1970s and climaxing in the 1990s, new laws incentivized incarceration and funded systems of state targeting which led to what many have called “mass incarceration.”<sup>2</sup> This era of mass incarceration represented a departure in the scope and scale of American incarceration, but it built on the ideological and infrastructural foundations of the carceral state laid over the previous century. In the mid-1970s, Colorado’s Office of Research, Planning and Information Services projected, based on new laws and rising incarceration rates, that the state’s prison population would double between 1975 and 1980. Nearly all that growth would come from “non-violent” crimes, landing those incarcerated in minimum- and medium-security institutions.<sup>3</sup>

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<sup>1</sup> Colorado Department of Corrections, “Annual Statical Report, Fiscal Year 1978-1979,” Oct. 1979, Folder “00.001.137-141,” Julie Whitmore Collection, Royal Gorge Regional Museum and History Center (Hereafter: RGRMHC).

<sup>2</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, New Press, 2010); Elizabeth Hinton, *America On Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s* (New York: W.W. Norton, 2021), especially 204-205.

<sup>3</sup> Office of Research, Planning and Information Services, “Colorado Division of Correctional Services Statistics Notebook,” Document No. 76-26, page 31-32. For the changing conception and enforcement of “crime”: Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016); Donna Murch, “Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs,” *Journal of American History* 102, no. 1 (2015): 162-173.

In the two decades following this projected growth in prison population, similar to developments across the United States, Fremont County's prison infrastructure boomed, ballooning to thirteen facilities. By 1990, Colorado's state prisons were designed to hold a capacity of 4,799 "beds," but that capacity did not meet the incarcerated population of 5,722 people that year.<sup>4</sup> Like the rest of the nation, those thousands of Colorado captives did not reflect the state's racial demographics. For 1980-1981 the average Colorado prison population was 52.6% Anglo, 25.2% Chicano, and 20.9% Black; the census data for 1980 showed the state as 82.7% white, 11.7% Hispanic, and 3.4% Black.<sup>5</sup> By the late 1970s and 1980s, Colorado prison administrators and legislators, like those throughout much of the U.S., could not meet the insatiable demands for carceral capacity despite their ongoing efforts.

The calls for increased prison capacity came from multiple sectors. First, prison administrators lobbied for more prisons by producing statistical projections about a prison population primed to grow, supported by the fact that the state's prison population already had risen steadily throughout the 1970s. A diverse group of stakeholders in this expanding carceral landscape—including administrators, elected officials, contractors and construction workers, and guards—incentivized and defended the building, staffing, and planning of the carceral system. Second, legislators and politicians rarely questioned the prison administration's projections.

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<sup>4</sup> Department of Corrections, "Statistical Report, Fiscal Years 1990 and 1991," March 1992, page 14, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/137260NCJRS.pdf>.

<sup>5</sup> It is important to note that the U.S. Census Bureau and Colorado Department of Corrections used different terms for races (e.g., "Anglo" vs "White" and "Chicano" vs "Hispanic." These differences represent the ways that bureaucratic systems, such as the prison, racialize their captives and, by extension, society. U.S. Department of Commerce, *1980 Census of Population: General Population Characteristics, United States Summary* (Washington, D.C.: U.S. Government Printing Office, 1983); Colorado Department of Corrections, "Annual Statistical Report 1980-1981," page 27, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/83618NCJRS.pdf>, page 27. For context on an anti-Black punitive tradition and the state's racialization of crime, Khalil Gibrain Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010).

Instead, they accepted now-entrenched tough-on-crime rhetoric and a carceral system that needed to grow for public safety. Third, with the rollback of the welfare state, Colorado continued to divest from social programs. Again, like the nation, Coloradans turned towards policing to manage and individualize the symptoms of societal failures.<sup>6</sup> Structural crises created by the new neoliberal order, including stagnant workers' wages, disinvestment from social services, and deindustrialization, also contributed to mass criminalization and incarceration.<sup>7</sup> Fourth, free residents of Fremont County—and of other economically depressed areas throughout the state—sought new prison contracts to reverse their economic decline. Fifth, incarcerated people themselves joined the ranks of those calling for greater investment in the carceral system. They sought an overhaul of the current, outdated system that provided inhumane punishment.

The diverse—and largely unchallenged—calls to increase carceral capacity were premised on the notion that empowering law enforcement experts would make communities safer. Because of this empowerment, prison building and administration in Colorado and the United States took on a new character during the post-1970s boom reflective of an institutionalized approach to statecraft. A coterie of Colorado Department of Corrections officials in Fremont County and Denver entrenched systems, regulations, and processes of

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<sup>6</sup> Julilly Kohler-Hausmman, *Getting Tough: Welfare and Imprisonment in 1970s America* (Princeton: Princeton University Press, 2017); Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Security* (Duke University Press, 2009); Jordan T. Camp, *Incarcerating the Crisis: Freedom Struggles and the Rise of the Neoliberal State* (Berkeley: University of California Press, 2016).

<sup>7</sup> Between 1973 and 1985, the U.S. prison population doubled, and through the 1990s, the prison population averaged an annual 8% increase. Wacquant, *Punishing the Poor*, 2009. For some of the ways scholars across disciplines have connected neoliberalism, criminalization, and incarceration: Bernard E. Harcourt, "Neoliberal Penalty: A Brief Genealogy," *Theoretical Criminology* 14, no. 1 (Feb. 2010) 74-92; Noah De Lissovoy, "Pedagogy of the Impossible: Neoliberalism and the Ideology of Accountability," *Policy Futures in Education* 11, no. 4 (Aug. 2013): 423-35; Brett Story, *Prison Land: Mapping Carceral Power across Neoliberal America* (Minneapolis: University of Minnesota Press, 2019).

imprisonment that, in theory, created a more equal carceral state by removing individual biases and discretion. The new system, generated by the political interest in and oversight of law and order, revealed the potential of the carceral state's bureaucratic functions. By the late 1970s, the CDOC and its decision-making process had become the very definition of bureaucracy. After the CDOC moved its headquarters to Denver, its administrators controlled prison operations and policies from over 100 miles away from most of the state's incarcerated people. This shift to Denver diminished the power of each individual warden over the institution they controlled while simultaneously enhancing the power of a system concerned with public perception, financing, rules and regulations, and supply chains.

The centralization of power with administrators in the CDOC represents a shift in approach to prison management that manifested in less transparency, a standardized architecture, a deference to experts and social scientists, and the prioritization of officers' safety. A standard approach to prison administration both removed authority from individual wardens and limited power of incarcerated people. Unlike previous versions of progressive modernization, this iteration of the penal project limited rehabilitation by restricting incarcerated people within a system that focused on discipline and institutional safety above all else. While policymakers, prison administrators, prison officers, voters, and prison scientists conspired to engrain an expert-driven prison policy, few questioned if prisons were a positive good—for the state or for those incarcerated. Few, moreover, questioned the role of prison administrators who presented themselves as experts and therefore indisputable leaders of the state's prison policy.



Throughout the 1960s and 1970s, the courts refined the procedures by which incarcerated people could protest their treatment within the criminal legal system. Incarcerated people in

Colorado, like throughout the rest of the United States, used the courts to testify and force reform. Captives' testimony, as scholars such as Danielle McGuire, James Jacobs, Dan Berger, and Garret Felber have demonstrated, made them visible as they lodged complaints against cruelty and oppression.<sup>8</sup> The courts could offer material benefits, like improved housing and higher pay, but also the humanity and dignity of a platform for expression. Because the conditions in Cañon City institutions had become dire by the late 1970s, incarcerated people turned to the courts.

Longer sentences and new categories of crime exacerbated overcrowding by incarcerating more people for more time. While the average stay in a Colorado prison in 1971-1972 was 21.2 months, that length had risen to 27.0 months in 1978-1979.<sup>9</sup> Throughout the 1970s, the rate at which people were committed in Colorado rose nearly twice as fast for "property" crimes as compared to "violent" crimes because of new categories of crime.<sup>10</sup> And, once in prison, many stayed longer because the 1976 special legislative session raised criminal penalties for violating prison rules, such as possession of weapons or other contraband. Instead of incarcerated people receiving a disciplinary report in their file (which could impact parole hearings) and punishment at the discretion of the warden, they would have time added to their sentence with new charges, pushing back the possibility of a parole hearing. The laws from this

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<sup>8</sup> Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance; A New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Vintage Books, 2010); James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977); Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2016); Garret Felber, *Those Who Know Don't Say: The National of Islam, the Black Freedom Movement, and the Carceral State* (Chapel Hill: University of North Carolina Press, 2020).

<sup>9</sup> Colorado Department of Corrections, "Annual Statical Report 1980-1981," page 27, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/83618NCJRS.pdf>, page 36.

<sup>10</sup> Office of Research, Planning and Information Services, "Colorado Division of Correctional Services Statistics Notebook," Document No. 76-26, page 10 and 20.

special session also invested money in policing on the outside, which resulted in more arrests and convictions.<sup>11</sup>

By the late 1970s, most people could see that prison conditions constituted a crisis. An American Correctional Association taskforce found the CSP facility “outdated” and “unmanageable” in 1973. The State Attorney General’s office concurred with the ACA findings in its own report two years later. Two years after that, a legislative committee recommended phasing out CSP entirely because it was irredeemable.<sup>12</sup> Although politicians and the public agitated for prison reform during the decade, it failed to materialize. Malcolm Freeley and Edward Rubin point to the constant turnover in CDOC administration and facility wardens, the Democratic governor sparring with a Republican-led legislature, and a tumultuous period within the facilities that created fear among guards and the public as causes of the state’s failure to transform Fremont County’s institutions. “Throughout the early and mid-1970s,” they conclude, “Old Max remained heavily studied, widely condemned, and largely unchanged.”<sup>13</sup>

Incarcerated people, who spent longer in these institutions and became more familiar with the legal process, used the court system to protest overcrowding and mistreatment, especially in the context of elected officials’ inaction. Incarcerated people challenged conditions with increasing frequency: while prisoners filed 2,030 cases in federal courts in 1970, they filed

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<sup>11</sup> “Charting a New Course for Corrections in Colorado,” Jan. 1977, “Scrapbook 5,” Box Number 14803, Department of Corrections Collection, Colorado State Archives, Denver, CO (hereafter: CSA). The majority of people incarcerated in the U.S. have not been convicted of any crime, but rather most accept pleas. Emily Bazelon, *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration* (New York: Random House, 2019).

<sup>12</sup> U.S. Court of Appeals, “Background Information,” 713 F.2d 546 (10<sup>th</sup> Cir. 1983), accessed at: <https://law.justia.com/cases/federal/appellate-courts/F2/713/546/149671/>.

<sup>13</sup> Malcolm M. Freeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America’s Prisons* (Cambridge: Cambridge University Press, 2000), 100.



11,195 in 1979.<sup>14</sup> In the District of Colorado, for the 1978-1979 term, state captives filed 155 civil rights cases compared to just 51 in 1976-1977 and 107 in 1977-1978.<sup>15</sup> These cases in Colorado involved individuals demanding, for example, better housing, better food, cleaner facilities, easier access for visitors, fair treatment by guards, and equal policies for recreation time. Their protests, as had been the case for the last century, were structured by the system they were protesting. The petitioners sought redress from the courts, which was the state, against the Department of Corrections, which was another branch of the same state. How could the state be expected to chastise, regulate, and find fault with itself? Sara Mayeux’s history of the public defender explores the same contradictions about whose interests the state represents and protects: “the public defender caused intolerable conceptual difficulty... How could a lawyer be hired by the government and also oppose the government in adversarial proceedings?”<sup>16</sup>

In the 1970s, the courts began recognizing claims under 42 USC 1983. These claims invoked the Reconstruction era law Congress passed in 1871 that mandated:

“Every person who, under color of statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution

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<sup>14</sup> William Bennett Turner, *When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts*, *Harvard Law Review* 92, no. 3 (Jan. 1979): 610-663.

<sup>15</sup> “Administrative Office of the United States Courts Annual Report of the Director, 1976,” accessed at: <https://www.ojp.gov/pdffiles1/Digitization/37005NCJRS.pdf>; “Administrative Office of the United States Courts Annual Report of the Director, 1977,” accessed at: <https://www.ojp.gov/pdffiles1/Digitization/43679NCJRS.pdf>; “Administrative Office of the United States Courts Annual Report of the Director, 1978,” accessed at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/director-administrative-office-united-states-courts-annual-report>; “Administrative Office of the United States Courts Annual Report of the Director, 1979,” accessed at <https://www.ojp.gov/pdffiles1/Digitization/62506NCJRS.pdf>.

<sup>16</sup> Sara Mayeux, *Free Justice: A History of the Public Defender in Twentieth-Century America* (Chapel Hill: University of North Carolina Press, 2020), 12-13.

and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”<sup>17</sup>

A few states saw these Section 1983 claims force prisons to overhaul themselves because the courts found violations in “totality of conditions” of the prisons’ system. Beginning with *Holt v. Sarver* in 1970, federal district courts began using the “totality of conditions” test to determine whether an institution violated the Eighth Amendment. Rather than assessing individual policies or complaints for specific redress, the court examined the institution as a whole—housing, health, sanitation, recreation, discipline, labor, etc. This initial case in 1970s led to the court directing an overhaul of Arkansas’ state prison.<sup>18</sup> The courts were able to provide redress with court-ordered changes to the facility and continued court oversight.

Colorado, too, faced a Section 1983 claim that came to challenge the “totality of conditions” in the state’s incarceration project. This case started with one person, Fidel Ramos, complaining about the prison’s labor policy, but it became much larger as a class action lawsuit that challenged the prison as a whole. While the court ultimately sided with Ramos and the class of those incarcerated at CSP, redress was limited because the outcome and solutions worked within the criminal legal system whose sole solution was incarceration. After the court required minimum standards for humane treatment of incarcerated people, the state redefined those minimum standards of treatment and instituted reforms that did not fundamentally alter the punitive system to appease the court which the court then accepts and legitimates, in a pattern that scholars have called “legal endogeneity.”<sup>19</sup>

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<sup>17</sup> 42 U.S. Code § 1983.

<sup>18</sup> *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970)

<sup>19</sup> Lauren B. Edelman, Christopher Uggen, and Howard S. Erlanger, “The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth,” *American Journal of Sociology* 105, no. 2 (Sep. 1999): 406-54.

On 30 November 1977, Fidel Ramos filed a suit in forma pauperis (i.e., he could not afford the filing fees) under 42 USC 1983. When Ramos filed this action, he was being held at “Old Max” (CSP) on a bank robbery conviction. Until Ramos died of a brain hemorrhage while incarcerated at Sterling Correctional Facility in 2010, he was a tireless advocate for improving prison conditions. In the vein of a number of jailhouse lawyers and writ writers that served facilities across the United States in the 1970s, Ramos used the courts to legitimize his experience and agitate for better treatment. Ramos’ 1977 complaint focused narrowly on the fact that he was a transitional worker without a permanent job assignment. Transitional workers were incarcerated people that were eligible for employment but unemployed; the majority of incarcerated people at Old Max were transitional workers in the 1970s. He argued this narrow issue was indicative of a larger constitutional question about the right to work, as opposed to staying idle one’s cell all day. The state legislature had mandated all incarcerated people work, so his unemployment, he argued, was a violation of the law. He filed this suit against the Colorado Department of Corrections.

Judge John L. Kane of the District Court for Colorado received Ramos’ case. As a federal judge for this district, Kane was aware of the complaints coming from people incarcerated in Cañon City. Incarcerated people had sent him many pro se petitions (i.e., petitions filed on behalf of oneself) describing the conditions and seeking redress. Kane appointed James Hartley and Hugh Gottschalk of the Colorado American Civil Liberties Union to Ramos’ case. With the resources and aid of the ACLU and the National Prison Project, Ramos filed an amended complaint that alleged the “totality of conditions” at CSP violated the constitution.<sup>20</sup> In this new

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<sup>20</sup> The “totality of conditions” approach allowed courts to analyze the “cumulative impact of conditions of incarceration to determine whether the conditions constitute cruel and unusual punishment” as opposed to examining each condition separately. The first case that applied the totality of conditions analysis was *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970) where the court found that all conditions “exist in combination; each

case, *Ramos v. Lamm*, Ramos included Governor Richard Lamm and Commissioner of Corrections Allen Ault as defendants. The ACLU and NPP, moreover, helped Ramos style his amended complaint as a class action suit to emphasize the systemic, rather than the individual, problems. In Ramos' first major victory, Kane certified the class. The certified class included "all persons who are now or in the future may be incarcerated in the maximum-security unit of the Colorado State Penitentiary at Cañon City, Colorado."<sup>21</sup>

The certification of the class was a major victory for Ramos and people incarcerated at the institution because it generalized the problem. While the state had long employed a strategy of individualizing problems and experiences, the certification of the class put the entire prison system on trial. As the district court certified the class, it also stayed seven other cases alleging constitutional violations at CSP pending the outcome of this class action trial.<sup>22</sup> In light of the class certification and the staying of the concurrent cases, the judge denied the defense's motion to dismiss.<sup>23</sup>

Over the next year-and-a-half, the plaintiffs undertook an extensive discovery process. They deposed over 150 people, taking testimony from incarcerated people, prison administrators, and correctional officers. Because this was a "totality of conditions" allegation, the discovery

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affects the other; and taken together they have a cumulative impact on the inmates." Candace Ada Mueller, "The Evolving Standards in Prison Condition Cases: An Analysis of *Wilson v. Seiter* and the Cruel and Unusual Punishment Clause," *Boston College Third World Law Journal* 13, no. 1 (1993): 155-187.

<sup>21</sup> District Judge John L. Kane, "Class Action Certification Order," Folder: "Prisons," Museum of Colorado Prisons, Cañon City, CO (Hereafter: MCP).

<sup>22</sup> U.S. Court of Appeals, "Background Information," 713 F.2d 546 (10<sup>th</sup> Cir. 1983), accessed at: <https://law.justia.com/cases/federal/appellate-courts/F2/713/546/149671/>.

<sup>23</sup> District Judge Kane, "Order," May 17, 1978, Fremont Combined Court—Records Department, Cañon City, CO (Hereafter: FCC).

sought to uncover all abuses within the prison system: personnel, classification, facilities, labor, discipline, health care, and food. Investigators and newspapers had long recognized and publicized the ills of the prison, but local editorials related to the suit generally urged reform rather than revolution through a “totality of conditions” case, oftentimes decrying judicial intervention as inhibiting penologists’ long-term projects and ignoring their expertise.<sup>24</sup> As the ACLU and NPP dedicated more resources to investigating constitutional violations in Colorado, they broadened their complaint to violations of the Eighth Amendment because of the “totality of conditions” of the institution, of the First Amendment because of unnecessary censorship of communication, and of the Sixth Amendment because of restricted access to counsel.

As the October 1979 trial date neared, Governor Richard Lamm tried to reach a settlement with the plaintiffs. State administrators often sought settlements rather than trial for multiple reasons. Not only did it expedite the process and quell potential for discontent within the institution, but also settlements did not produce binding precedent like court decisions did. Lamm, however, failed to settle. He blamed the legislature for not committing to the costs needed to modernize the facility; the legislature had already committed over \$22 million to new prison facilities in the state.<sup>25</sup> Lamm, moreover, also sought legal victory over incarcerated people as a symbol of his punitive tough-on-crime politics.

The trial began on 15 October 1979. Over the next few weeks, the plaintiffs brought national experts and a few abused captives to testify in Judge Kane’s courtroom. The defense,

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<sup>24</sup> For example: “Editorial: No Country Club,” *Rocky Mountain News*, 10/28/1979; “Editorial: The Prison Suit,” *Rocky Mountain News*, 19/29/1979.

<sup>25</sup> Richard Lamm, “Letter Concerning Unsuccessful Settlement Efforts,” Oct. 1979, Folder: “Ramos vs. Dept of Corrections Dec. 20 1979,” MCP.

which did not have the burden of proof, provided a simpler argument that depended on precedent. For the most part, the defense did not contest the facts of the case. Instead, they argued that the Supreme Court had long reiterated a “policy of substantial deference to prison officials.” *Procunier v. Martinez*, *Jones v. North Carolina Prisoners’ Union*, and *Bell v. Wolfish* all provided precedent for the argument that the courts supported deference to prison officials.<sup>26</sup> However, in spite of these select cases, the so-called “hands-off doctrine” era of judicial deference had gradually diminished over the prior decades. The Nation of Islam, as Garrett Felber writes, “successfully brought about the first constitutional legal standing for incarcerated people since the nineteenth century” in *Cooper v. Pate*.<sup>27</sup> What had been initially framed as a legal right to practice religion, had expanded slightly to include other civil protections and rights for incarcerated people. The success of the Nation of Islam’s litigation strategy had opened the door to prisoners’ rights cases. The legal precedent that the defense relied on in *Ramos v. Lamm* had been overturned or narrowed.

The plaintiff’s witnesses ran the gamut, offering a wide-ranging indictment of the prison system and its administration. On the first day of the trial, David Fogel, a prison expert and professor of “criminal justice” at the University of Illinois, testified that CSP “is the filthiest institution I have ever seen” and has “no redeeming qualities.”<sup>28</sup> The next day, Dr. Frank Rundle, a prison psychiatrist who practiced in New York, lambasted the state of the prison’s mental healthcare system and its psychologist, George Levy. Levy, Rundle contended, was an abusive

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<sup>26</sup> *Procunier v. Martinez*, 416 U.S. 396 (1974); *Jones v. North Carolina Prisoners’ Union*, 433 U.S. 119 (1977); *Bell v. Wolfish*, 441 U.S. 520 (1979).

<sup>27</sup> Felber, *Those Who Know*, 82; *Cooper v. Pate*, 378 U.S. 546 (1964).

<sup>28</sup> Trial Transcript of *Ramos v. Lamm*, 10/15/1979, FCC.

man who called incarcerated people names and provided little meaningful mental health service.<sup>29</sup> Rundle’s investigation showed that CSP’s suicide rate was sixteen times the national average.<sup>30</sup> In subsequent testimony, Carl Clements, professor of psychology at the University of Alabama, similarly described Levy as having “an extreme degree of cynicism” and “a high degree of hostility” regarding prisoners.<sup>31</sup> Mental health proved an especially salient issue because of the number of incarcerated people with mental health issues—in Colorado and throughout the U.S. When nearly eighty percent of long-term psychiatric care facility beds in the U.S. were decommissioned between 1960 and 1980, the population of people with mental health problems was essentially transferred to jails and prisons.<sup>32</sup>

Although plaintiff’s lawyers formulated their argument around the specific categories of abuse and maltreatment they had collected from incarcerated people during discovery, they chose to put very few incarcerated people on the stand. The ACLU and NPP trial attorneys recognized the risks and limitations of putting incarcerated people on the stand. Although the courtroom offered an opportunity for public legitimization of one’s experience while incarcerated, the process also served to reinforce the witness’ criminality, which had been stigmatized as an indictment of the entire individual over the course of the previous centuries.

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<sup>29</sup> An oral interview with a drug and alcohol counselor who worked within the CSP at the same time as Levy confirms that Levy was sadistic. For example, he blew cigar smoke in incarcerated peoples’ faces while speaking and threatened to put glass shards glass in the doughnuts he brought to counseling sessions with incarcerated people. Interview audio in author’s possession.

<sup>30</sup> “Prison Mental Climate Blasted,” *Canon City Daily Record*, 10/17/79

<sup>31</sup> Trial Transcript of *Ramos v. Lamm*, 10/24/1979, FCC.

<sup>32</sup> James Gilligan calls this transition from mental health facilities to locked carceral spaces “trans-institutionalization” in “The Last Mental Hospital,” *Psychiatric Quarterly* 72 (2001): 45-61. See also: Keramet Reiter and Thomas Blair, “Punishing Mental Illness: Trans-Institutionalization and Solitary Confinement in the United States,” *Extreme Punishment*, Keramet Reiter and Alexa Koenig, eds. (London: Palgrave Macmillan, 2015), 177-196.

The defense's strategy to counter incarcerated witnesses was to reinforce their criminality, implying both the deservingness of punishment and the unworthiness of the individual. When one of the only incarcerated people who testified took the stand, the cross-examination put him and his life on trial. In the second week of the trial, Ronald Sarvis took the stand. Sarvis was a twenty-year-old man who had been sentenced to the Colorado State Reformatory at Buena Vista because of his youth before being transferred to the diagnostic unit at CSP for an evaluation. Because of overcrowding at Buena Vista, Sarvis and seven other captives who were minors were assigned to a cellhouse in the maximum-security CSP. Sarvis testified to being assaulted and raped by older men incarcerated in that unit. During cross examination, the defense asked whether Sarvis had been a homosexual before going to prison. The implication of this question was that it may not have been rape, and the question put Sarvis' character on trial. The judge ruled the question out of order.<sup>33</sup>

The majority of testimony over the five-week trial came from experts with credentials in academia, law enforcement, or both. John Conrad of the Criminal Justice Institute in Sacramento testified that some of the prisons' rules, such as denying visitation, were "foolish" and that "there is no evidence that it has any constructive effect as a deterrent and it creates needless antagonism"<sup>34</sup> An expert from the U.S. Environmental Health Agency testified that CSP "is not fit for human habitation."<sup>35</sup> Part of relying on expert testimony was a way to combat the idea that CDOC officials held sole power of expertise over the carceral project. As part of the inquiry into the prison's conditions, Judge Kane toured the prison to confirm the testimony offered in his

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<sup>33</sup> Trial Transcript of *Ramos v. Lamm*, 10/22/1979, FCC.

<sup>34</sup> *Ibid.*, 10/23/1979.

<sup>35</sup> *Ibid.*, 10/26/1979.



courtroom. He planned to arrive unannounced for a surprise visit, but someone leaked his plans to prison administrators. In the day before his arrival, officials prepared for his visit by initiating rapid repair and maintenance in Cell House 3. On the day Kane toured the prison, the incarcerated population, as the reporter who toured with Kane noted, was “treated to a special lunch, which featured chicken on the menu.”<sup>36</sup>

In its publicity about the possible ramifications of the case’s outcome, the ACLU argued that Colorado’s prison conditions were “about mid-range in inmate conditions.” Because they were neither as barbaric as some states like Texas nor as progressive as some states like Minnesota, “a court decision in their favor would set precedence in about half of the states.”<sup>37</sup> Despite the ACLU’s vision, the trial and case garnered little attention outside of Colorado. The sensational accounts of assault, murder, and sexual violence coming from Texas in *Ruiz v. Estelle*—Texas’ “totality of conditions” case that further eroded the court’s hands-off doctrine—overshadowed *Ramos* in national media.<sup>38</sup> But within Colorado, local newspapers published daily dispatches of courtroom proceedings.<sup>39</sup> While reports about the case oftentimes included quotations from the plaintiff’s attorneys, journalists rarely included quotations from incarcerated people or their families, rendering them invisible subjects.<sup>40</sup>

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<sup>36</sup> “Judge Kane Tours Prison to Check Trial Testimony” *Pueblo Chieftain*, 11/6/79.

<sup>37</sup> “Settlement Reached in DOC Suit,” John Lemons, *Canon City Daily Record*, 2/25/1992.

<sup>38</sup> For more on Texas and *Ruiz v. Estelle*: Robert T. Chase, *We Are Not Slaves: State Violence, Coerced Labor, and Prisoners’ Rights in Postwar America* (Chapel Hill: University of North Carolina Press, 2020).

<sup>39</sup> The newspapers that published daily updates and trial testimony include: *Denver Post*, *Pueblo Chieftain*, *Rocky Mountain News*, *Cañon City Daily*

<sup>40</sup> For more on the idea of invisibility within the criminal legal system: Reuben Jonathan Miller, *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration* (New York: Little, Brown and Company, 2021).

In November, Judge Kane handed the plaintiffs a victory, establishing both clear minimum standards of treatment and the court's oversight authority. He determined that "the conditions at the Cañon Correctional Facility [sic] deprive persons incarcerated there of rights clearly protected by the United States Constitution and violate numerous rules of state law."<sup>41</sup> Elected officials, appointed officials, and public comments in newspaper editorials roundly denounced the judge's decision. First, they argued that the judge had crossed the sacred barrier between state and federal issues. Second, they argued that the decision was essentially moot because the state was already constructing new prisons to alleviate the overcrowding. State officials promised these facilities would be open within two years, but those two years of maintaining the status quo offered those incarcerated no relief. Third, many argued that prisoners were undeserving of the protections of the court and the standards they sought. In an editorial for the *Rocky Mountain News*, for example, Patti Kay Dunlap argued: "I, for one, am tired of hearing about the prisoners' rebellion and demands that they put on the prison system. Granted, I am not naïve enough to believe that the prison system is completely right or proper, but I also fail to understand why the criminals are running the prison facility as they want it and not the officials in charge want it."<sup>42</sup> Similarly, J. Alef simultaneously lambasted judicial overreach, liberalism, and the leniency of incarceration in his editorial: "That's just the kind of impractical stupidity we can expect from our present crop of liberal judges. If a prisoner is so dangerous to society and to

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<sup>41</sup> Bench Ruling quoted in: Lindsey Sue, "Judge Rules Maximum Security Unit Illegal," *Rocky Mountain News*, 11/16/1979.

<sup>42</sup> Patti Kay Dunlap, "No Country Club" *Rocky Mountain News*, 10/28/1979.

other inmates that he has to be put in maximum security then, instead, he should be executed to save taxpayers' money and to ensure he never would get out to prey on the public again."<sup>43</sup>

Kane further won the ire of politicians and many observers when he supplanted his bench ruling with his formal opinion on 20 December 1979. In a nearly 100-page opinion, Kane summarized the evidence and laid out the case against the prison's condition. His opinion, however, reiterated the ideas that prisons exist for punishment, prisons are necessary, and only minimum standards need to be met. Within that logic and within the established punitive system, options remained limited to establishing a minimum of standards and forcing the state to meet such standards. He wrote: "No one seriously suggests that prisons should be a desirable place to be. They exist to confine as punishment those who have violated the criminal law." The plaintiff class required redress, he contended, because they suffered from violations of their federally protected rights against cruel and unusual punishment. But, given the constraints of the criminal legal system and the realities of American politics, the redress Kane could offer was limited to ordering the state to reform the practices of incarceration. Kane concluded:

"the evidence in this case shows that prisoners in the Cañon Correctional Facility are housed under conditions which fall below all recognized constitutional and professional standards. Those conditions include insufficient living space with inadequate sanitation, ventilation, light, heat, noise control and fire safety; lack of protection from violence; massive and pervasive idleness because of lack of productive activity; inadequate medical care (both mental and physical); and unnecessarily restrictive classification of prisoners into security classifications which exacerbate physical and mental deterioration."<sup>44</sup>

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<sup>43</sup> J. Alef, "Argument Against Prisoners' Rights," n.d., Folder: "Ramos v Lamm," MCP.

<sup>44</sup> John L. Kane, *Ramos v. Lamm*, 485 F. Supp. 122 (D. Colo. 198), accessed at: <https://www.courtlistener.com/opinion/1376997/ramos-v-lamm/>.

This ruling ordered the state to make “immediate” changes to address the facility’s shortcomings rather than wait for two years until the new facilities were completed. Kane ordered that CSP must be closed unless the state begin major improvements, such as enlarging cells and reducing the number of people held in the facility, within forty-five days. Although the forty-five-day timeline set a pace for prison overhaul never achieved in the state’s history, the people incarcerated in the facility would have to experience these “unlivable” and unconstitutional conditions for at least another forty-five days.

The state immediately appealed Kane’s order, further extending the timeline for possible relief. Lamm called the order “unreasonable.” Lamm and other legislators denounced the ruling as an overreach of federal power into state authority.<sup>45</sup> As the state was going through the appeals process, Colorado officials unveiled a multi-million-dollar plan to fulfill Kane’s order. The plan’s most important plank was funding seventy new full-time state employees at the prison and updating the facilities.<sup>46</sup> The state moved, albeit slowly, to comply with Kane’s order, but the state was focused more on dragging its feet until either the appeal could be heard or the new facilities opened in the next few years. Kane issued his ruling on Old Max in spite of the fact that the state was in the process of building new facilities to replace Old Max because he saw the problem as part of a system. “His actions,” as scholars of the case have noted, “were clearly designed to force officials to develop programs and appoint staff-institutional arrangements that could be transferred to the new facility. Undoubtedly, he was concerned that a shiny new facility would be ready for occupancy, but that it too would lack staffing, programs, and the resources

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<sup>45</sup> “State to Appeal Prison Work Deadline,” *Cañon City Daily Record*, 12/27/1979.

<sup>46</sup> “Prison Plan Calls for 73 New Positions,” *Cañon City Daily Record*, 1/29/1980; “Prison Improvement Plan Proposed,” *Rocky Mountain News*, 1/30/1980.

necessary to overcome the problems he identified.”<sup>47</sup> Kane, too, may have recognized that a lengthy legal process and a wait for new facilities to open left incarcerated people toiling in the conditions he had decried.

Politicians were infuriated by Kane’s stinging decision. State Representative Steve Durham, for example, introduced a proposal in the Colorado House of Representatives that would amend the U.S. Constitution to allow removal of federal judges. Kane’s decision, Durham said, “was a factor” in proposing this amendment. The state, too, appealed on a number of constitutional and jurisdictional grounds, and the Tenth Circuit Court of Appeals issued its opinion on 25 September 1980.<sup>48</sup> The Appeals Court first agreed with the District Court that “there was no error or abuse of discretion by the district court in declining to abstain from hearing this constitutional case and the substantial constitutional claims asserted.” Similarly, the Appeals Court agreed with the Kane’s application of Eight Amendment principles regarding health care, sanitation, mail censorship, access to legal material, or safety. This court did, however, set aside the ruling on visitation regulations. Ultimately, the Appeals Court vacated the remedial order regarding the immediate closing of Old Max.<sup>49</sup>

This decision gave the state more time to appeal and await the opening of the facilities under construction. The state found further remedy after the Supreme Court ruled in a separate case, *Rhodes v. Chapman*, that housing two captives in a one-man cell did not violate the Eighth

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<sup>47</sup> Freeley and Rubin, *Judicial Policy Making*, 106.

<sup>48</sup> Court of Appeals for the Tenth Circuit No. 79-2324, *Ramos v. Lamm*, 639 F.2d 559, accessed at: <https://www.courtlistener.com/opinion/386316/fidel-ramos-david-lee-anderson-sadiki-lisimba-ajamu-aka-eugene/>.

<sup>49</sup> Court of Appeals for the Tenth Circuit No. 79-2324, *Ramos v. Lamm*, 639 F.2d 559, accessed at: <https://www.courtlistener.com/opinion/386316/fidel-ramos-david-lee-anderson-sadiki-lisimba-ajamu-aka-eugene/>.

Amendment.<sup>50</sup> Colorado legislators hailed this decision; Senate Majority Leader Ralph Cole said that this was an indication that that “the pendulum is finally swinging the other way.”<sup>51</sup> In 1982, CDOC double-bunked Cell House 3 at CSP to increase the stated capacity of the facility by 88.<sup>52</sup> The opening of new facilities, combined with the new precedent on doubling up prisoners, gave the Department of Corrections the upper hand in continued negotiations. During these continued negotiations, the range of remedies presented never solved the problem of prisons or crime because they addressed symptoms rather than causes of a social welfare system that depends on punishment. *Rhodes v. Chapman*, paired with the differing decisions expected by judges in other courts, underscores the subjectivity of the law; just as crime was a construct subject to changing politics, the interpretation and application the law was subject to the views of the presiding court’s judges.

Finally, in February 1982, the state settled the class-action lawsuit. For the years that this issue was litigated, CDOC Commissioner Ault leveraged the court’s order to increase the CDOC’s budget. The settlement conditions largely covered actions the state had already initiated or completed—doubling-up prisoners, opening two new facilities, and hiring new staff. Although Kane’s decision and the changes undergone from this decision to expedite the closing of Old Max were a victory for the incarcerated people, the settlement was a victory for the state. The settlement left the ACLU and other incarcerated people without a precedent to employ elsewhere. The *Ramos* case forced the federal courts and Colorado to respond to incarcerated

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<sup>50</sup> *Rhodes v. Chapman*, 452 U.S. 337 (1981)

<sup>51</sup> Quoted in: “State Officials React to Court’s Two-In-Cell Ruling,” *Pueblo Chieftain*, 6/16/1981.

<sup>52</sup> Colorado Department of Corrections, “Annual Report, Fiscal Year 1982-83,” accessed at: <https://www.ojp.gov/pdffiles1/Digitization/109189NCJRS.pdf>.

people as a class. The case's most glaring legacy, though, was that it failed to shift power structures: the state redefined and reengineered systems of control with modern technologies in new facilities and increased staff to satiate the court's oversight.



The state's solution to remediate the ills adjudicated in *Ramos* was building more prisons. At the outset of the trial, the legislature had planned and funded two new facilities. After multiple reports throughout the 1970s condemned CSP and after overcrowding continued to rise with expanding criminalization, the state legislature appropriated \$200,000 in 1976 to hire Touche Ross & Co., an international consulting and accounting firm, to draft a Corrections Master Plan that would chart the future of the state's prison development.<sup>53</sup> Touche Ross represented one of the new entities that capitalized on the increasing investment in carceral systems across the U.S. The year prior to the contract with Colorado, Touche Ross had drafted a similar plan for Kansas' prison system; the firm also had ongoing projects with the North Carolina Department of Crime Control and Public Safety, the Florida Department of Offender Rehabilitation, and Alaska Division of Corrections.<sup>54</sup> Touche Ross gained renown as the expert on prison development, and states deferred to the firm for plotting their trajectories. Although

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<sup>53</sup> State of Colorado, "Digest of Bills Enacted by the Fiftieth General Assembly" (Denver, Colorado Legislative Drafting Office, 1976); "Colorado—Corrections Master Plan Due," *Golden Transcript*, Jan. 24, 1977.

<sup>54</sup> Touche Ross & Co., "Touche Ross Report on Progress and Perspectives, 1978," Touche Ross Publications, Deloitte Collection, Archival Digital Accounting Collection, University of Mississippi, accessed at: [https://egrove.olemiss.edu/dl\\_tr/](https://egrove.olemiss.edu/dl_tr/); Allan R. Barnes and Richard McCleary, "Alaska Correctional Requirements: A Forecast of Prison Population through the Year 2000" (Anchorage: School of Justice & School of Engineering at University of Alaska, 1986), 9.

scholars have argued that prison architecture and development often relied on local concerns, experts, like those consultants at Touche Rosse, helped standardize expansion.<sup>55</sup>

In February 1977, Touche Ross presented their recommendations. Their plan called for substantial investment in renovations to existing facilities, including repurposing CSP into a medium-security facility with modern technologies of control. State legislators balked at the cost—one estimate, for example, estimated the full-scale renovation of Old Max at \$38 million—and rejected the Touche Ross Master Plan.<sup>56</sup> The legislature turned to the CDOC to complete the state’s planning. The CDOC presented their plan to the legislature one year later. They presented their plan with the Colorado District Attorneys Association’s endorsement. This proposal offered a vision for modernization that centered on building two new facilities over the next five years. Instead of renovating Old Max, the CDOC wanted to tear it down and build a new maximum-security facility in its stead. The legislature adopted the CDOC’s master plan with minimal debate.<sup>57</sup>

While the most expensive and publicized features of the state’s master plan were the expansion of the state’s carceral facilities, the plan also proposed new means of managing them. New disciplinary regulations and standardized procedures emphasized the system’s purported fairness and professionalism. Anecdotal evidence and court filings show that abuse remained, but

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<sup>55</sup> Keramet Reiter, *23/7: Pelican Bay Prison and the Rise of Long-Term Solitary Confinement* (New Haven: Yale University Press, 2016); Vanessa Barker, *The Politics of Imprisonment: How the Democratic Process Shapes the Way America Punishes Offenders* (New York: Oxford University Press, 2009); Mona Pauline Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford: Stanford Law Books, 2010); Heather Schoenfeld, “Mass Incarceration and the Paradox of Prison Conditions Litigation,” *Law & Society Review* 44, no. ¾ (Sep./Dec. 2010): 731-767.

<sup>56</sup> Freeley and Rubin, *Judicial Policy Making*, 98-99.

<sup>57</sup> Journal of the House of Representatives State of Colorado: Fifty-first General Assembly Regular Session, William A. Wise Law Library, University of Colorado—Boulder.



these new guidelines limited state and institutional liability and furthered ideas of a just carceral system. For example, the revised 1978 employee manual for the CDOC detailed the way officers should conduct themselves to maintain order, appear impartial, and control the captive population. The manual informed officers: “Employees must give the appearance of strength and competence.”<sup>58</sup> The manual’s final section, moreover, included an annotated version of Colorado and federal statutes related to officers’ rights in their professional conduct. This section implicitly recognized that officers may need to use force, and it provided the information they could invoke to justify such use. Tim Chase, who began working as a guard in the 1970s, reflected on this change in the guards’ professionalism over his career. His original training, he recalled, was minimal: “Working at the prison, originally, in 1974... they didn’t have basic training... Walking. Like you’re walking the prison and that was your whole training, walking with seasoned staff.” He remembered that when he started his badge and position title referred to him as “guard,” yet that position changed to “correctional officer” with the emphasis on public relations and professional reform. Chase interpreted the simple change from “guard” to “correctional officer” as symbolic of changing ideas about the carceral system and the work being done: “I like correctional officer a lot better because we’re not just guarding people; we’re trying to influence behavior.”<sup>59</sup>

The prison used the increased emphasis on professionalization to garner support for and rehabilitate the CDOC’s image in the midst of lawsuits and investigations that exposed harms and abuses. The press towed the CDOC’s line in propagating this: “The movement from guard to

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<sup>58</sup> “Colorado State Penitentiary Employee Manual,” 4/20/1978, Folder 00.0011.142-153, Julie Whitmore Collection, RGRMHC.

<sup>59</sup> Tim and Renee Chase Oral Interview, 12/6/2011, Folder “Chase/Chace,” Family Files and Oral Interviews Collection, RGRMHC.

corrections officer,” the *Pueblo Chieftain* reported, “came about as a result of emphasis on training, education and a change in attitude.”<sup>60</sup> The switch to “officer,” along with the addition of “Corrections” to the name of the Department and new facilities, as discussed in Chapter Six, was part of the rhetorical shift that changed the carceral state’s image without offering any material reform. Emphasizing professionalism bolstered the prison system’s public image and allowed officers and the system to retain power. The master plan’s reform program, in theory, standardized procedures for officers and captives to showcase the system as fair and necessary.

Although professionalism and discipline were important parts of the master plan, the overall goal was to expand carceral capacity to meet the needs of a state increasingly criminalizing and incarcerating its population. In 1985, for instance, the Mielke Bill doubled the maximum sentences for most felony crimes and gave the parole board more discretion, which resulted in longer sentences and fewer paroles.<sup>61</sup> A state legislative council found that within two years of this bill’s passage, the average sentence length increased by over forty percent and the average time served in prison increased by nearly seventy percent.<sup>62</sup> The state’s master plan to expand housing for the growing incarcerated population proved prescient: in 1987, in the midst of a national wave of criminalization and incarceration, Colorado’s prison population grew faster than in any other state: from 3,804 to 4,808 incarcerated people, 26.4 percent growth.<sup>63</sup>

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<sup>60</sup> “Prison Staffs Have Become Professional,” *The Chieftain*, 5/27/1991.

<sup>61</sup> Mielke-Arnold Bill (House Bill 85-1320, 1985).

<sup>62</sup> “Colorado Legislative Council Research Publication No. 487: An Overview of the Colorado Adult Criminal Justice System” (January 2001), 62-63.

<sup>63</sup> U.S. Department of Justice—Bureau of Justice Statistics, “Bulletin: Prisoners in 1987,” April 1988, accessed at: <https://bjs.ojp.gov/content/pub/pdf/p87.pdf>.

In order to deal with this dramatic increase in incarceration, the state funded two new prisons in Fremont County: a maximum-security prison and a close-security prison. A close-security prison is a prison at the level between maximum and medium, employing most of the technologies, architecture, and procedures of a maximum-security facility. Eric Williams, among others, has shown that since the 1970s prison siting switched from a process of “decide, announce, defend” to “lobby, lobby, celebrate” as economically depressed—typically rural—places no longer eschewed prison building and instead actively advocated for this purportedly job-creating industry.<sup>64</sup> Despite the promised economic prosperity of prison building, this uplift often fell short.<sup>65</sup> Prisons, as Fremont County’s long history demonstrates, did not offer long-term economic success. Fremont County had fought for prisons since the 1860s, and this project ramped up in the 1970s when the state legislature and CDOC were planning its new facilities. Harold McCormick (the state senator representing Fremont County) and local business leaders lobbied, virtually without any local detractors, to bring prisons to Fremont County. The state legislature had deferred to the CDOC to determine the site of these new prisons, and the CDOC already had infrastructure, personnel, land, and popular support in Fremont County. The CDOC decided to build its new facilities in Cañon City.

Centennial Correctional Facility welcomed its first captives in December 1980.

Centennial, according to journalist Len Gregory, was “nothing like the old territorial prison. It

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<sup>64</sup> Eric J. Williams, *The Big House in a Small Town: Prisons, Communities, and Economics in Rural America* (Santa Barbara: Praeger, 2011).

<sup>65</sup> Tracy Huling, “Building a Prison Economy in Rural America,” *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, Marc Mauer and Meda Chesney-Lind, eds. (New York: The New Press, 2002); Judah Schept, *Progressive Punishment: Job Loss, Jail Growth, and the Neoliberal Logic of Carceral Expansion* (New York: New York University Press, 2014).

looks more like a complex of modern dormitories or a small hospital.”<sup>66</sup> Completed at the cost of nearly \$11.5 million and with a capacity of 336 beds, Centennial opened as a maximum-security facility that immediately eased CSP’s overcrowding. Not only was Centennial’s initial construction expensive, its cost to hold each captive was nearly one-third higher than the average cost at all the state’s other facilities: \$16,691 compared to an average in Colorado of \$12,727.<sup>67</sup> Twenty-nine percent of men incarcerated in Centennial were there for homicide, sixteen percent for robbery, and twelve percent for sexual assault in its first full operational year; these three categories represent the three crimes for which the facility had the most men.<sup>68</sup> The design—a dramatic departure from the “big house” architecture that was popularized in the 1930s—fostered segregation.<sup>69</sup> It ensured that only small groups of incarcerated people interacted. The facility was broken into twenty-one pods, each holding sixteen men. Six of the pods were maximum security/administrative segregation, nine were for general population, and six were used for captives requiring protective custody.<sup>70</sup> Rather than have a central dining hall that would permit the gathering of much of the incarcerated population at one time, meals were prepared at a remote location in the East Cañon Complex and served within individual housing units. When prisons, such as Colorado Women’s Correctional Institute, opened in the 1950s and 1960s, the state lauded their ability to rehabilitate and reform, but by the time Centennial opened in 1980, the state’s highlights focused on safety and security. “It is designed for officer safety,” the

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<sup>66</sup> Len Gregory, “A Clean, Well-Lighted Penitentiary” *Pueblo Chieftain* n.d., Folder: “Prison Admin,” MCP.

<sup>67</sup> Colorado Department of Corrections, “Annual Statical Report, Fiscal Year 1981-1982,” page 25, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/88730NCJRS.pdf>.

<sup>68</sup> *Ibid.*, page 24.

<sup>69</sup> Charles Bright, *The Powers That Punish: Prison Politics in the Era of the ‘Big House,’ 1920-1955* (Ann Arbor: University of Michigan Press, 1996).

<sup>70</sup> “Administrative segregation” is a euphemism for solitary confinement.

*Denver Post* reported based on interviews with CDOC administrators and officers.<sup>71</sup> The *Pueblo Chieftain*'s report emphasized the switch in penology from rehabilitation to punishment: “[Centennial] was designed to hold and control criminals, not to entertain them. It does its job very well.”<sup>72</sup> The facility employed the fewest percentage of its captives of any Cañon City institution—about eleven percent its first two years, just in a print shop and sewing shop.<sup>73</sup> For the 336 men to be incarcerated there, Centennial boasted a full-time staff of 141 employees. Centennial represented the latest in prison design, and it won accreditation from the American Correctional Association in 1983, showing that the leading national authority on prisons respected the facility.<sup>74</sup> With this accreditation, Centennial secured its spot as a national model and the CDOC gained respect as a leading state agency.

The second prison in this building-spree to open was Shadow Mountain Correctional Facility. In 1981, Shadow Mountain opened as Colorado's close-security prison, which is the designation for the prison security level between maximum and medium that largely reflected the maximum-security institution. This facility, for instance, employed the same model of pod housing that each held a maximum of sixteen men, but these pods were less isolated than in Centennial because at Shadow Mountain each pod represented a tier within four larger living units. The categories of crime captives in the facility had committed was the same as Centennial, except robbery was the leading crime, homicide was second, and burglary tied sexual assault for

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<sup>71</sup> “New Prison Raises Questions of Safety” *Denver Post*, 12/25/1980.

<sup>72</sup> Len Gregory, “A Clean, Well-Lighted Penitentiary” *Pueblo Chieftain* n.d., Folder: “Prison Admin,” MCP.

<sup>73</sup> Colorado Department of Corrections, “Annual Report, Fiscal Year 1982-83, page 48, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/109189NCJRS.pdf>.

<sup>74</sup> American Correctional Association, “Centennial Accreditation,” 4/29/1983, Folder: “Prison—Centennial,” RGRMHC.

the third greatest category at 13 percent.<sup>75</sup> The distinct classification categories largely depended on conduct once incarcerated—how one acted and was judged within the various prisons and the reception center. Shadow Mountain had a capacity of 384 prisoners, but by 1991 it merged with Fremont Correctional, its neighbor at the East Cañon Complex, to form the largest CDOC prison in Colorado with a capacity of 1,085 beds. Although the capacity was greater than that of Old Max, the prison was really an amalgamation of smaller housing units that were put together to provide simpler and more cost-effective administration at an average of \$11,392 per person per year.<sup>76</sup>

The legislature had given approval and funds for the facility as part of the master plan it approved, then the CDOC ran construction and operation with minimal accountability. Legislature deferred to experts who claimed a monopoly on knowledge and experience. When Centennial, for example, was nearing completion, its construction was almost halted because of a lack of funds. The CDOC requested funds directly from Governor Richard Lamm, who continued to campaign and win on his tough-on-crime positions, so Lamm transferred the \$2.5 million in unspent state funds to the construction project. Although the legislature chastised Lamm for transferring money that was not appropriated for such a task, no one questioned the CDOC's budget or request. The legislature never stopped the project.<sup>77</sup> Marie Gottschalk notes that the public did not debate or consent to the expansion of the carceral state; it was built up

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<sup>75</sup> Colorado Department of Corrections, "Annual Statistical Report, Fiscal Year 1981-1982," page 24, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/88730NCJRS.pdf>.

<sup>76</sup> Colorado Department of Corrections, "Annual Statistical Report, Fiscal Year 1981-1982," page 25, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/88730NCJRS.pdf>.

<sup>77</sup> "Short Funds Almost Halted New Prison," *Denver Post*, 9/21/1980.

“largely outside of the public eye and not necessarily planned out.”<sup>78</sup> Kerament Reiter, too, found that California’s supermax, Pelican Bay, was “an administrative innovation—designed, built, and operated with hardly any legislative, judicial, or executive oversight.”<sup>79</sup> For years, across the U.S., in the wake of George Jackson’s killing, Attica, and numerous other prison uprisings, prison officials had amassed power over their charges and the contours of the prison system by arguing that incarcerated people were violent and dangerous—and the only people with the expertise to control the captives and provide safety for officers and the community was the officers and administrators themselves. At the same time as sentences were lengthened, prisons were built, and crime dominated national news in the 1980s, violent crime rates declined.<sup>80</sup>



As prisons came to dot the Fremont County landscape, visible as the first landmark entering Cañon City from either direction on Highway 50, some members of the local community responded by building support systems for the families of incarcerated people. A key feature of the carceral landscape is the vast distance between prison locations and population centers, which compounds the burden on people who want to visit incarcerated relations.<sup>81</sup> Since the territorial prison opened in the nineteenth century, the majority of Cañon City’s captives

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<sup>78</sup> Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006), 2.

<sup>79</sup> Reiter, 23/7, 92.

<sup>80</sup> The violent crime rate begins to rise again in 1990. It declined or remained virtually the same every year in the 1980s except 1986. Colorado Department of Public Safety, “Crime Rates 1980-2012,” Colorado Information Marketplace, accessed at <https://data.colorado.gov/Public-Safety/Crime-Rates-1980-2012/mb89-xnkg>.

<sup>81</sup> Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007); Story, *Prison Land*; Reiter, 23/7.

came from Denver County and El Paso County. The distance between incarcerated peoples' communities and the facilities in which they were held placed a significant strain on visitors and organizers. It also, as scholars like Heather Ann Thompson have noted, shifted the political geography by giving rural places such as Fremont County more representation through boosting their population figures in "prison gerrymandering."<sup>82</sup> Despite the hardships caused by the isolation of prisons, people from across the state and country found their way to Fremont County to express solidarity. With longer sentences and the elimination of furloughs, the prison system expected visitations, and therefore part of the standardization process included procedures and rules for these events. Because the state had failed to provide information to incarcerated peoples' families or provide childcare options while families with children visited, grassroots organizers took on these projects.

In the early 1980s, the first local support organization launched in Fremont County to assist friends and families of incarcerated people. In 1982, Dorothy Plocher moved to Cañon City and saw the lack of support in this prison community. In a subsequent interview, she related her motivations for starting Families and Friends of Convicts United for Support "When I knew we were going to move to a city where there was a state prison [sic], it seemed I should find something to do that would be responsible Christian behavior. If you don't do that in a town that has all these prisons, it's on your conscience."<sup>83</sup> Plocher founded FOCUS initially to provide childcare services for those visiting people incarcerated there.

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<sup>82</sup> In March 2020, Colorado became the eighth state in the U.S. to end prison gerrymandering. Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History* 97, no. 3 (2010): 703-734; "Colorado Governor Jared Polis Signs Law Ending Prison Gerrymandering," *Prison Policy Initiative*, 3/23/2020, accessed at: <https://www.prisonersofthecensus.org/news/2020/03/23/colorado/>.

<sup>83</sup> "Meet Dorothy Plocher," *FOCUS Newsletter*, Oct. 1988, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.



In the beginning, the organization survived on only volunteer time and donated space. Plocher organized community members to provide time and resources for this undertaking, which was no easy undertaking. At no charge to families of incarcerated people or to the state, volunteers picked up children at the Skyline lobby or the Fremont gate after these youth visited their fathers, then took the kids to a separate space for childcare during the rest of the visiting hours. In May 1982, their first month of operation, FOCUS cared for 65 children; in June, 100; and by July, 134.<sup>84</sup> Establishing a childcare program was simultaneously pragmatic and symbolic. The lack of attention or thought paid to children visiting their fathers testified to the way the state individualized incarceration rather than recognizing the generational and systemic consequences. While this program offered material benefits to children and their families, FOCUS leaders simultaneously deployed children as symbols in their argument about incarceration's nexus of impact. The symbolic focus on youth, as other movements had done throughout U.S. history, reflected an ideal of a more caring future.<sup>85</sup>

Because FOCUS relied on community donations, they kept local people abreast of their operations and responded to inquiries. In April 1983, Plocher sent out a fundraising newsletter with an extensive Q&A section in which she responded to questions and concerns about the program. Her responses reveal the derision some local community members cast on the project and the limitations of the state's provisions for family care. Perhaps the most revealing question

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<sup>84</sup> Dorothy Plocher, "FOCUS Childcare Project," Fundraising Letter, Aug. 1982, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>85</sup> Cynthia Y. Levinson documents that the role of children protesters in Birmingham, Alabama was symbolic and important in *We've Got a Job: The 1963 Birmingham Children's March* (Atlanta: Peachtree Publishers, 2012). Similarly, the Young Lords' use of children in the offensive against the First Spanish United Methodist Church proved crucial: Johanna Fernández, *The Young Lords: A Radical History* (Chapel Hill: University of North Carolina Press, 2019), 172.

about prevailing ideas on punishment and opposition to this service was: “Why do you pamper law-breakers?” Plocher responded simply: “Wives and children have broken no laws.”<sup>86</sup>

Providing childcare to allow wives, partners, and children, who often travelled hours for the short period that visitation was allowed, was seen by some to be “pampering” and excessive for those who had been convicted. The Q&A provided her an opportunity to expound on the state’s shortcomings. The need for childcare, she explained, arose from situations where “after patience is exhausted in the restrictive visiting room,” a restless child needs activity. Beyond not providing entertainment such as board games, which would be a target of subsequent prisoner protest, rules prohibited children from visiting family in Centennial, the maximum-security prison. Their community fundraising was moderately successful: after operating in 1982 on a budget of just \$2,000 with which thirty-one volunteers cared for over 950 children, their 1987 budget had more than tripled to \$6,500, all of which came from community donations.<sup>87</sup>

As incarceration became a national crisis in the 1980s and 1990s, FOCUS joined a network of organizations across the country that provided services to incarcerated people and their free-world allies. In the FOCUS newsletter, for instance, the editors reprinted a letter from Centerforce, a group from San Quentin Prison in California, about the plight of prison visitors: “Prison visitors are a rare breed, a people entirely misjudged and fatally overlooked. A people who know the depths of Love and Hate because we are victimized by both.”<sup>88</sup> In 1987, FOCUS sent delegates to the first National Conference on the Family and Corrections in Sacramento,

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<sup>86</sup> Dorothy Plocher, “Friends of FOCUS,” April 1983 Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

<sup>87</sup> “FOCUS 5<sup>th</sup> Anniversary Report,” 5/22/1987, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

<sup>88</sup> Quoted in: Dorothy Plocher, “FOCUS Newsletter,” Oct. 1983, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

California to discuss how to best support friends and families of incarcerated people.<sup>89</sup> Prison families and visitors needed support because they, too, experienced the trauma of incarceration. Megan Comfort argues that female partners of incarcerated men experience “secondary prisonerization.” Women suffer, Comfort concludes, from the collateral effects of incarceration in addition to the harms of the broader social context facing partners—most of whom are Black—of incarcerated men.<sup>90</sup>

FOCUS knew that providing free childcare hardly met the burdens that these families bore. By 1985, at which point they had cared for nearly 1,400 children the year prior, FOCUS expanded to providing crucial information to visitors. FOCUS helped organize carpools for those traveling to Cañon City, worked with motels to secure reduced rates for prison visitors, erected road signs directing visitors to the prisons, and provided information on low-cost housing around Cañon City. The organizing was both tedious and mundane, but it was necessary to simplify and clarify the complex visitation process. As part of their program, FOCUS’ officers began exploring low-cost housing for families.<sup>91</sup> This search was realized in October 1989 when John and Cathy Goodman donated a house in Cañon City for FOCUS to rent to families that needed low-cost housing, and FOCUS began offering this house for short-term (one to two month) rentals.<sup>92</sup> In 1987, FOCUS’ leadership team, including Clara Klemm who had a degree in early childhood education from the University of Southern Colorado and had long helped Plocher run

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<sup>89</sup> Dorothy Plocher, “FOCUS Newsletter,” Sep. 1987, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

<sup>90</sup> Megan Comfort, *Doing Time Together: Love and Family in the Shadow of the Prison* (Chicago: University of Chicago Press, 2008).

<sup>91</sup> Dorothy Plocher, “FOCUS Newsletter,” Feb. 1985, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

<sup>92</sup> “FOCUS Newsletter,” Oct. 1989, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

the childcare program, expanded their organization's offerings. They established a support group for wives and girlfriends of incarcerated people, and they began offering a free parenting class to those interested.<sup>93</sup> In June 1988, FOCUS inaugurated one of its most important programs: GREETERS. First time visitors, as the FOCUS newsletter noted, "often feel out of place and even frightened."<sup>94</sup> This program stationed FOCUS volunteers in the visiting room of the prison facility each visiting day to assist with the registration "of first-time visitors for newly admitted prisoners, answering questions, helping with forms, reassuring anxious people."<sup>95</sup> This was an important program because it helped individuals navigate the complex regulations and procedures for visiting. During summer months, for example, greeters provided clothes to visitors to comply with the prison's modest dress regulations; during winter, greeters provided coats and jackets for those who came unprepared to deal with cold.<sup>96</sup>

FOCUS dedicated time and resources to these other support avenues instead of childcare because of ongoing legal and financial issues with that program. In 1985, the childcare project stopped for nearly six months because it lacked liability insurance. They needed state certification as a day care facility to purchase liability insurance.<sup>97</sup> After receiving certification and restarting operations, FOCUS' childcare program was again halted because Church Mutual, the insurance company that held the policy on the Baptist church vans that FOCUS used, refused to cover the vans unless FOCUS was part of the direct outreach of the church, as opposed to an

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<sup>93</sup> "FOCUS Newsletter," Dec. 1987, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>94</sup> "FOCUS Newsletter," Jan. 1989, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>95</sup> "FOCUS Newsletter," June 1988, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>96</sup> "FOCUS Newsletter," Jan. 1989, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>97</sup> Dorothy Plocher, "FOCUS Newsletter," Oct. 1985, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

independent organization.<sup>98</sup> On a shoestring budget, volunteers were unable to purchase and insure their own transportation. Eventually, FOCUS leaders Plocher and Klemm worked with the CDOC to secure space in CSP for childcare during visiting hours, which eliminated the need for transportation.<sup>99</sup>

As FOCUS provided material benefits to families of incarcerated people that made Cañon City and the prisons more accessible, they also ventured into traditional political advocacy work. Their first foray into direct political action came when they relayed concerns about strip and pat searches to prison officials.<sup>100</sup> Invasive strip searches had long been challenged in court, but the prison continued to resist any major modification because of purported security concerns. The newsletter, too, became more of a political education tool as opposed to an organizational update. They reprinted important articles that debated the impact of incarceration, such as Cal Thomas' "More Prisons Not the Answer to Crime."<sup>101</sup> FOCUS even began publishing data on incarcerated people, trying to identify the root cause of so-called antisocial behavior. In June 1991, they reported that thirty-eight percent of incarcerated people in Colorado were unemployed and seventy-five percent of those incarcerated were below the poverty line at the time of the arrest. FOCUS' research concluded "more prisons won't solve social problems."<sup>102</sup>

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<sup>98</sup> "FOCUS Newsletter," June 1988, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>99</sup> "FOCUS Newsletter," March 1990, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>100</sup> Dorothy Plocher, "FOCUS Newsletter," March 1984, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

<sup>101</sup> Cal Thomas, "More Prisons Not the Answer to Crime," *FOCUS Newsletter*, Oct. 1989, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC (original appeared in *Denver Post* May 30, 1989).

<sup>102</sup> "FOCUS Newsletter," June 1991, Folder: "Assoc., Inst-F.O.C.U.S.," RGRMHC.

One major piece of advocacy that FOCUS undertook centered on the growing tourism industry in Cañon City and city boosters' desire to capitalize on its prison history. In 1988, the Museum of Colorado Prisons opened its doors to narrate the history of incarceration in Colorado. Prison museums, as Kevin Walby and Justin Piché argue, communicate meaning about punishment, criminality, and incarceration.<sup>103</sup> As early as 1984, the Cañon City Chamber of Commerce had begun working on securing a state prison museum in Cañon City. The Chamber of Commerce, along with the nonprofit organization that would oversee the museum, sent out circulars trying to raise money for the museum that contended the “community needs to show support.”<sup>104</sup> This museum, the request for funds argued, would boost tourism in the city and increase business opportunities. The museum, moreover, allowed for prison boosters to tell their own story about the progress of and need for incarceration. The state legislature agreed to a ninety-nine-year lease at a nominal price for the old women's prison building. In the old women's facility, museum authorities built a testament to the experiences of keepers and captives. While the prison museum includes relics of abuse and violence, such as a table of knives and weapons that have been confiscated, the museum's exhibits offer a progressive narrative in which reform has triumphed over past abuses and prisons are necessary.

When the museum was dedicated in December 1987, FOCUS tried to shift attention to the experience of the incarcerated people and the traumas of incarceration. FOCUS, for instance, sponsored a prayer from Rev. George R. Qualley of Trinity Evangelical Lutheran for the dedication of the museum:

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<sup>103</sup> Kevin Walby and Justin Piché, “The Polysemy of Punishment Memorialization: Dark Tourism and Ontario's Penal History Museums,” *Punishment & Society* 13, no. 4 (2011): 451-472.

<sup>104</sup> Chamber of Commerce, “Circulars” *The Chamber* XI, no. 18 (Nov./Dec. 1984).

“On this day of new beginnings of the Colorado Territorial Prison Museum Foundation, we remember all who are incarcerated, especially those prisoners who are facing long sentences, those who have lost faith in themselves and in society, and those who have little hope for the future. May this museum help us all remember the prison population, that they may be treated with humane care and concern.”<sup>105</sup>

In the year after the museum opened, FOCUS continued to pressure the Museum Foundation to include the voices and experiences of incarcerated people. Although the museum glorified prisons and the violence within them, they did work to include the effects of incarceration within some exhibits. By exploring the quotidian, the museum showed the labor and losses of incarcerated people. Yet, at the same time, the museum offered a clear distinction between past and present—



Figure 7.1: Museum of Colorado Prisons. The prison is housed in the old women's division. Note the adjoining guard tower and wall, which are part of CSP, still a functioning prison. Photo by author, 4/27/21.

<sup>105</sup> “FOCUS Newsletter,” Dec. 1987, Folder: “Assoc., Inst-F.O.C.U.S.,” RGRMHC.

made clear by the dissonance between exhibits on forced labor and the fact of the gift shop where visitors could buy curios made by incarcerated people.

Historian Robin Kelley has argued that organizers' most important legacy is perhaps not the material successes of the immediate project, but the intellectual legacy of the movement.<sup>106</sup> In this case, FOCUS ultimately dissolved in 2004, but it raised enduring questions about what support incarcerated peoples' families needed, what responsibility a community dependent on incarceration ought to provide, and what services the state ought to offer. Arguably the organization's most important legacy is that it reveals how the prison fails to isolate and separate the incarcerated from society. FOCUS was just one on the many organizations—both local within prison towns and nationally—that fought the same perpetual battles to ensure continued relations between incarcerated people and their communities. The incarcerated person, they show, is not and cannot be removed from the free world. Historians have noted the rise of political prisoners since the 1960s—and earlier in the case of the Nation of Islam—and the families and communities of the incarcerated ought to be considered similarly political and similarly affected by the carceral state.<sup>107</sup> By illuminating the trauma of incarcerated peoples' families and the connections that incarcerated people maintained, this group of organizers and supporters showed ways that community persisted against state violence and how incarceration affects the community.



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<sup>106</sup> Robin D.G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Boston: Beacon Press, 2003).

<sup>107</sup> Berger, *Captive Nation*; Felber, *Those Who Know*; Orisanmi Burton, "Organized Disorder: The New York City Jail Rebellion of 1970," *The Black Scholar* 48, no. 4 (2018): 28-42.



Fremont County's position as Colorado's carceral capital was cemented with the presence of seven state prison facilities there. Over the preceding century, infrastructure both tangible and intangible had been erected in support of this penal community. Prisons required popular support wherein residents embraced both the practice and theory of a punitive state in exchange for the possibility of economic security. Because Fremont County was Colorado's prison capital and its people largely supported incarceration, the site acquisition coordinators for the Federal Bureau of Prisons found the county attractive. In the 1980s, the national government began expanding its prison infrastructure in response to a rising federal prison population. Although most incarceration occurred at the state and local levels, the federal government began prosecuting and incarcerating more individuals in the 1980s and 1990s. Between 1980 and 2013, the federal prison population grew by 720%.<sup>108</sup>

In January 1987, the monks of the Holy Cross Abbey announced that they were putting their 225-acre facility up for sale. The facility, built by incarcerated laborers in the 1920s, was a Cañon City landmark. They wanted \$12.7 million for the land and the twenty buildings on their property. The timing was perfect for the federal government because the BOP was searching out potential sites for the massive national prison development project it was starting. In May 1987, the BOP sent federal officials to Cañon City to study the feasibility of turning the Abbey into a low-security federal prison. James Jones, the Site Acquisition Coordinator for the United States Department of Justice, acknowledged the historical and cultural value of the Abbey to the community but found local support strong. Local support hinged on the economic benefits;

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<sup>108</sup> For example, the Sentencing Reform Act of 1984 reduced opportunities for parole and good time while establishing determinate sentencing laws; the Anti-Drug Abuse Act of 1986 enhanced minimum sentences for controlled substances. Between 1980 and 2010, the federal prison population grew 721%. Nathan James, "Congressional Research Services Report – The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options," May 20, 2016, accessed at: <https://sgp.fas.org/crs/misc/R42937.pdf>.

according to BOP plans, 125 people would staff the planned facility, with 50-65 percent coming from the local labor pool.

As the BOP entered preliminary discussions with Abbey and Cañon City stakeholders, Reverend Kenneth Hein of the monastery reflected: “Generally, I think, the local people supported the idea. Of course, Cañon City is used to prisons.”<sup>109</sup> Despite general support for the project, some locals, according to journalist Claudia Merlino, “expressed concern about physical changes to the historic campus.” In spite of these reservations, Cañon City’s political leaders all emphasized the BOP’s claimed economic benefits. State Senator Harold McCormick of Fremont County argued: “in a county where there is 17%-plus unemployment, we need to seriously take a look at employment-producing proposals.” U.S. Congressman Joel Hefly similarly argued: “Turning the Abbey into a federal facility might be a very good use – particularly considering the employment aspect.” And Cañon City Councilman Steve Steward said: “I’ve had an overwhelming response in favor... We certainly need the new jobs in the community.”<sup>110</sup> The planning, however, came to a sudden halt in June 1987 when Abbey officials announced that they had received a sizable donation to maintain the Abbey as a monastery, so they took the property off the market.

These preliminary discussions about the construction of new facilities reveals a pattern that would be repeated for how prison development would be narrated. First, reports uncritically accepted prison officials’ arguments about the need for prisons, never questioning why more prisons were needed, what root social issues precipitated the need for prison expansion, or why

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<sup>109</sup> Dick Foster, “Canon City Abbey studied as prison,” *Rocky Mountain News*, 5/22/1987.

<sup>110</sup> Claudia Merlino, “Area leaders cite reservations about federal prison at Abbey,” *Cañon City Daily Record*, 5/30/1987.

prison and police spending had failed to eliminate crime. Questioning the need for prisons would require a deeper examination of how the neoliberal order dealt with social problems through increasing criminalization and punishment. Second, newspaper coverage and local support centered on claimed economic benefit to the local community. Fremont County was in the midst of an economic downturn, and nearly all coverage of and public remarks regarding prison development emphasized the jobs that would be created and the annual payroll and tax base provided. Reports failed to examine critically these benefits by looking, for example, at the precedent of promises unfulfilled in prison communities or the economic projections' definition of "local" when accounting for jobs. Third, Cañon City pressed its competitive advantage when asserting that it should house future prisons. Congressman Joel Hefley (CO-5), for example, did just that when he told the BOP: "the people of Cañon City have learned to live with prisons very well."<sup>111</sup>

Although the plan for turning the Abbey into a federal prison fell through, Fremont County had impressed the BOP. The BOP recognized that Fremont County checked off its requirements for a good site: a community that actively sought and supported prisons, vast amounts of land, and relatively close to a major airport. In the months after the Abbey proposal fell through, the BOP continued to search for new sites, so it asked the Fremont County Economic Development Corporation to submit a bid for a new prison.<sup>112</sup> The FCEDC served in a similar role as a Chamber of Commerce, dedicated to attracting and retaining businesses, all

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<sup>111</sup> Ibid.

<sup>112</sup> The FCEDC was organized in 1977 by local Chambers of Commerce, Fremont County businessmen, and local elected officials. The name has since been changed to Fremont Economic Development Corporation. For more on the FCEDC and its local stakeholders, see: Folder: "Florence Chamber of Commerce: 2016.68," Box 5, Chamber of Commerce Collection, Florence Historical Archives, Florence, CO (Hereafter: FHA).

funded by business support and state and federal grants. The business community would continue to offer seemingly unqualified support for the prison throughout its construction and opening. For example, the Florence Chamber of Commerce honored BOP employees three years straight with the guest speaker spot at their annual banquet.<sup>113</sup> The FCEDC, moreover, would advertise for donations and membership based on its key accomplishment: “Helped attract interest in Fremont County for a federal prison complex.”<sup>114</sup>

The FCEDC submitted a proposal in 1987, and talks between local stakeholders and federal officials restarted. Elected officials aided the FCEDC and local stakeholders’ campaign. On 24 February 1988, Senator Tim Wirth (CO) sent a letter to Director of Federal Bureau of Prisons Michael Quinlan emphasizing the key points from the FCEDC proposal. Wirth wrote:

“The county offers strong local support for a new federal prison, people and officials experienced with prisons, a work force skilled in prison management, land available to the prison at no cost, and excellent educational facilities. Most of the correctional facilities in the state of Colorado are in Fremont County. Not only does this provide a local labor force skilled in prison management, it also means the surrounding community is experienced and comfortable with prisons.”<sup>115</sup>

After this spurt of lobbying, the BOP sent two planners in March 1988 to scout four different sites throughout Fremont County. These investigators reported back positively, and the BOP

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<sup>113</sup> The 1991 speaker was Tony Belaski (Warden at FCI Englewood since 1987); the 1992 speaker was William J. Patrick (Deputy Assistant Director, Administrative Division, Bureau of Prisons); the 1993 speaker was Patrick W. Whalen (new warden of Florence’s US Penitentiary). “I’ll Take Friendly Florence, Florence Chamber of Commerce 78<sup>th</sup> Annual Banquet, February 20, 1991” Pamphlet; Florence Chamber of Commerce 80<sup>th</sup> Annual Banquet, February 19, 1992” Pamphlet; Florence Chamber of Commerce 81<sup>st</sup> Annual Banquet, February 17, 1993” Pamphlet, all in Chamber of Commerce Collection, FHA.

<sup>114</sup> Fremont County Economic Development Corporation, “My Future Depends on YOU! Pledge Form” 1989, Folder “Newsletter Fremont County Economic Development Corporation,” Acc. No., 22009.009.340, Fremont County Economic Development Corporation Collection, RGRMHC.

<sup>115</sup> Quoted in: Folder: “Florence Chamber of Commerce: 2016.68,” Box 5, Chamber of Commerce Collection, FHA; “Wirth Makes Written Pitch to Get Federal Prison Here,” *CCDR*, 2/25/1988.

began to initiate the process on conducting an environmental impact survey. The competition for this new federal facility was stiff; Fremont County competed against Taft, California, Three Rivers, Texas, Perkin, Illinois, Greenville, Illinois, Manchester, Kentucky, and Minersville, Pennsylvania. The initial federal plan—a significant investment that garnered this national competition—called for a 500-bed medium-security facility and a 200-bed minimum-security facility. By June 1988, the federal government hinted that “the Bureau could double the size of the initial proposal.”<sup>116</sup> One reporter noted the tough competition: “Economic development groups across the United States are wining and dining federal prison officials in hopes of landing an employment boon. Federal prisons are popular because they don’t pollute the air and they don’t fail for lack of prisons.”<sup>117</sup>

State Senator Harold McCormick proposed that the Colorado legislature transfer unused state land to the BOP for the prison site. But, the legislature killed this resolution because of, according to McCormick and other Fremont County residents, a political vendetta. In response, a *Cañon City Daily Record* editorial railed against the politics and asserted Cañon City’s right to this project:

“Fremont County has already given virtual unanimous support to the initial proposal based on extensive surveying and community contact completed last fall. We know it will be a huge economic boost to our area.... I’m not about to sit back and watch it go to another community just because some legislator thinks his district should have it. We don’t go around stealing other communities’ economic development projects – where are the ethical and moral

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<sup>116</sup> “Federal prison moves closer,” *Cañon City Daily Record*, 5/18/1988.

<sup>117</sup> “County Joins Dozens for Federal Prison. Bureau may build nine prisons in ’89,” 7/17/1988, Folder: “Prison—Federal Support for Prison,” Prisons Collection, RGRMHC.

values of those legislators who are suggesting their community should have this project?”<sup>118</sup>

Where the legislature failed to provide land to the BOP, local boosters took on the challenge. In June 1988, Fremont County locals, led by the FCEDC, launched a campaign to raise over \$100,000 to purchase 400 acres for the BOP—the land that the State of Colorado refused to gift. In just two weeks, this campaign raised \$142,000. “This fund drive,” Bill Paolino, President of the FCEDC Board of Directors, reported, “far exceeded our wildest dreams.”<sup>119</sup> Through phone banking, corporate outreach, and bake sales, Fremont County residents and businesses supported the BOP’s project. This fundraising was perhaps the first time that a community offered to buy the federal government land to build its penal institution, demonstrating the perceived economic importance of the project to the local community. The *Cañon City Daily Record* conducted a survey that confirmed support shown in the outpouring of money: of the 586 surveys returned, 576 showed support.<sup>120</sup> BOP reports and statements, as well as articles about the process, repeated the claim that over 98 percent of Fremont County residents supported the federal prison project. The qualitative comments of the survey reveal the overwhelming belief, as expressed by one resident, that “Fremont County must learn to be willing to ‘invest’ in the future, not sit back and wait for it to be handed to them.” The survey, too, offered an opportunity for people to reflect on prisons, revealing conceptions about the meaning and role of punishment in American society. Bernice Stranton of Cañon City, for example, wrote: “we wouldn’t need so many [prisons] if our lawmakers would take the

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<sup>118</sup> “Letter to the Editor: Federal Prison,” *Cañon City Daily Record*, 5/20/1988.

<sup>119</sup> Susan Barnard, “Fed Officials Laud Prison Fund-Raising,” Folder: “Prison—Federal Support for Prison,” Prisons Collection, RGRMHC.

<sup>120</sup> This was not a poll conducted according to any accepted scientific standards. Dwight Jurgens, “Federal Prisons Have 98 Percent Support Here,” *Cañon City Daily Record*, 5/25/1988.

prisoners' rights away the minute the gates shut behind them. Make them work and punish them more severely."<sup>121</sup>

Other Cañon City residents supported the prisons because they believed their own CDOC salaries would be increased because of the proximity of competitive federal salaries for similar jobs. Roland K. Mar penned an editorial arguing: "The arrival of the Federal Bureau of Prisons in the area would be a godsend for us... Many of us who are sick of the way the legislature chooses to run the prison system will have the opportunity to change employers, stay in our field, and keep our home."<sup>122</sup> In reality, as Eric Williams shows, there was a competitive division between federal and state employees upon completion of the federal facilities. Federal employees, he argues, seemed more "aloof" due to the fact most employees transferred into the area, held higher educational credentials due to the BOP's hiring requirements, and received better pay than state employees.<sup>123</sup>

The community's support for the project was overwhelming, and public meetings that the BOP held showed nearly "unqualified support."<sup>124</sup> The question that came up in nearly every public meeting or gathering that betrayed some concern about the federal project was the question of whether the families of incarcerated people would move to town. The specter of families of incarcerated people—people who had been convicted of no crime—scared residents because of their association with criminal elements of society. Florence Councilwoman Barbara Gonzales, for example, dismissed "the idea of criminals' extended families hanging around

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<sup>121</sup> Dwight Jurgens, "Federal Prisons Have 98 Percent Support Here," *Cañon City Daily Record*, 5/25/1988.

<sup>122</sup> Roland K. Mar, "Editorial: Federal Prison," *Cañon City Daily Record*, 5/26/1988.

<sup>123</sup> Williams, *Big House in a Small Town*.

<sup>124</sup> Walter Rubel, "Federal Prison Officials Find Support in Florence," *Pueblo Chieftain*, 8/15/1988.

town.”<sup>125</sup> This particular concern shows the stigmatization of crime extended to communities and those associated in any way with the incarcerated person.

The overwhelming community support for the federal project boosted Fremont County’s chances at securing the facility, and in August 1988 the BOP hired Louis Berger and Associates to conduct an environmental impact statement for the 400-acre site in Florence. The report relieved major concerns by determining that there were no black-footed ferrets, which were on the endangered species list, in the area. The impact statement also reiterated the potential local financial benefit. The statement concluded that a \$110,000,000 investment in construction over three years would produce 684 jobs. After these 684 construction jobs expired, there would be 450 permanent jobs at the complex and an additional 227 in the community from spinoff businesses.<sup>126</sup> In public hearings and newspaper articles about the environmental impact statement only positive comments were offered because of these job numbers. However, as Deborah L. Scarpa notes in her thesis, a careful reading of the statement proves the estimated percentage of “local” employment is deceptive because the local project area was designed to include the seven counties surrounding Fremont County, which included the population centers of Denver, Colorado Springs, and Pueblo. Moreover, as she notes, most contractors hired had their own labor force or network of subcontractors, and the hiring of those people would not yield new local jobs.<sup>127</sup>

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<sup>125</sup> Quoted in: “Crime Pays for Fremont County as Prisons Bring in Jobs,” *Denver Post*, 4/17/1994.

<sup>126</sup> “Table 19—Construction Employment and Income Generation Associated with the Proposed Correctional Complex,” Environmental Impact Statement, Chamber of Commerce Collection, FHA.

<sup>127</sup> Deborah L. Scarpa, “The Regional Economic Effect of the New Federal Correctional Facility in Florence, Colorado” (B.A. Thesis, Colorado College), May 1992.



In 1989, the U.S. House and Senate both approved the \$115.5 million appropriation for the prison project in Florence, Colorado. Announcing the final approval for the site, Patricia Sledge of the BOP remarked: “Bureau officials said they were extremely impressed with the personal community support for this project. It’s virtually unheard of to have individual citizens donate funds towards the purchase of land for a prison project.”<sup>128</sup> Senator Tim Wirth echoed the sentiments about the importance of community support for the prison project in his press release regarding the selection of the Florence site: “Everyone was tremendously impressed by the outpouring of community support. It was probably the single most important factor in getting the bill passed... Since 1871, most of Colorado’s correctional facilities have been located in Fremont County. Its citizens are used to living, working and playing in a prison environment and have shown overwhelming support and enthusiasm for the prison.”<sup>129</sup> After the formal announcement and appropriation, business and community leaders in Fremont County held a celebration at the Cañon Inn. By this point, the federal prison project had been expanded to a first-of-its-kind prison complex. This complex would include four prisons—minimum-security camp, medium-security, maximum-security, and administrative maximum-security—and a training center. Despite the immediate optimism about the expanded facility, some problems arose: in part, some residents feared their safety because of the infamous “Super Max” (Administrative Maximum) that would hold the nation’s most dangerous—as classified by the BOP—captives and be the “Alcatraz of the Rockies.” But of greater concern to the city was that the expanded project placed a greater burden on infrastructure, especially sewage. The Fremont Sanitation District

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<sup>128</sup> Quoted in: *Ibid.*

<sup>129</sup> Senator Tim Worth, “Press Release: Federal Bureau Intends to Select Fremont County Site for Prison,” 9/13/1989, Folder: “Prisons—Federal—Construction,” RGRMHC.

faced an unanticipated \$1.3 million bill for expanding the sewage district, revealing one of the ways that prisons tax local economies.<sup>130</sup> The prison would not contribute to local property taxes, so they would not bear the ongoing burden of municipal utilities upkeep.

In anticipation of the federal prison complex's opening, twenty-six people from Florence, Penrose, and Cañon City traveled to Sheridan, Oregon to view that city's federal prison facility and to better understand how to prepare for the new prisons. Upon their return, members of the group were excited about the job prospects, but they worried that many federal employees might live outside of the county, as was the case in Sheridan. In response, they and the Florence Chamber of Commerce launched a "Live in Fremont County" campaign. Their goal was to have eighty percent of transfers and new hires live in the country.<sup>131</sup> Despite their efforts, they failed to achieve this goal; many people chose to commute from Colorado Springs or Pueblo.

The FCEDC invited the community to the groundbreaking ceremony in 1990. Following the ceremony, the FCEDC hosted a barbecue in the city park, and the day's celebration culminated with a BOP job fair at the local high school.<sup>132</sup> On 14 July 1990, construction began, and the architectural master plan described the project thusly: "The plan balances environmental and operational concerns by incorporating such issues as security, public image, climatic conditions, utility development, efficient operations, soil conditions, and visual observation of high security facilities into a cost effective design."<sup>133</sup> At its peak, the project employed over 800

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<sup>130</sup> "Sanitation District Will Study Report," Folder: "Prisons—Federal—Construction," RGRMHC.

<sup>131</sup> "I'll Take Friendly Florence, Florence Chamber of Commerce 78<sup>th</sup> Annual Banquet, February 20, 1991" Pamphlet, Chamber of Commerce Collection, FHA.

<sup>132</sup> FCEDC, "Special Invitation to the Ground Breaking Celebration," Florence Pioneer Museum, Florence, CO (Hereafter: FPM).

<sup>133</sup> Department of Justice—Bureau of Prisons, "Federal Correctional Complex—Florence Master Plan," FPM.

construction workers.<sup>134</sup> The project was the second most significant construction project in recent Colorado history—behind the Denver International Airport. But much to the disappointment of Fremont County boosters, the construction boom did not benefit their county as anticipated. The housing boom, for example, failed to materialize because most construction workers commuted daily or lived in motels or trailers in the area. The hospitality industry, though, did see some success. In July 1992, for example, a motel down the road from the prison complex broke ground.<sup>135</sup> The motel served construction workers during this phase, then it transitioned its business to service families, friends, and attorneys visiting people incarcerated next door.

While construction was underway, the BOP prepared to staff the facilities. Various plans and reports estimated that up to 1,000 people might work at the complex of which over 50 percent would be local hires. These optimistic estimates went unrealized because the BOP transferred in many officers and administrators from other facilities and the BOP's regulations on the maximum hiring age (35) precluded much of Fremont County's unemployed population. A persistent script of prison development surprisingly—to those in Fremont County—repeated itself: boosters hailed the economic impact of the project to garner support, then the local community faced an unrealized boom. In spite of this, Barbara Gonzales conducted seminars at Pueblo Community College about the job opportunities at the complex. Most of the seminars described the various roles that the prison would need to be filled, the training required to work in a federal prison, or the experience necessary to be a successful applicant. One particular seminar, though, focused on how the community's culture would change. Gonzalez and her guest

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<sup>134</sup> "Crime Pays for Fremont County as Prisons Bring in Jobs," *Denver Post*, 4/17/1994.

<sup>135</sup> "Nation's worst cons coming to Colorado," *Denver Post*, 5/17/1992.

speaker noted the implications of the government's diversity initiatives that would privilege hiring minority staff members. She warned attendees: "Fremont County, for probably the first time in history, will see an influx of minorities moving to the area. Those minorities will be predominantly employees and their families. Only a small percentage will be inmates' families."<sup>136</sup> Although the prisons in Fremont County had long held a disproportionate number of minority citizens and although the census had counted them as residents for funding and representation, Gonzales discounted these people as not part of the community, contributing to the process that rendered them invisible and separate.

In March 1992, the first of the four facilities opened. The 500-bed federal prison camp was completed at a cost to the U.S. government of \$11,598,140.00. Relative to state facilities in the area built in the previous decade, this facility was much more expensive on a per-bed basis. In May, it welcomed its first captives. By November, however, captives at the prison camp protested the lack of programs, restricted use of phones, lack of indoor recreation and education, being transferred away from families and friends, and confusion on personal property policies.<sup>137</sup> These incarcerated people staged a hunger strike to raise awareness and disrupt prison operations. Next, they organized democratically and sought to negotiate with Warden Tom L. Wooten. In their letter to Wooten, they acknowledged the administration's challenges: "We as the inmate population understand the difficulties in opening this facility" (See Figure 7.2). Demonstrations often occurred shortly after new facilities and cellhouses opened—at a time when policies and populations were in flux. Prisons foster movement of people and ideas

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<sup>136</sup> Barbara Gonzales, "Federal prison complex will attract minorities," 4/25/1991, Folder "1990," Collection "Federal Pen," FPM.

<sup>137</sup> "Email from inmates to Warden Wooten," 11/1/1992, Folder: "Prisons—Federal—Riots," RGRMHC; Tracy Harmon, "Half-day food strike 'disruptive,'" *Pueblo Chieftain*, 11/3/1992

11/09/92 09:28 7468 920 2885 SJ MERCURY CLASS Q001 1472

DATE: 1 NOVEMBER, 1992  
 TO : Warden, Tom L. Wooten.  
 THROUGH: Camp Administrator, Whitney LeBlanc  
 FROM: Inmates  
 SUBJECT: Encouraged Meeting

Gentlemen:

We would like to express our sincere appreciation for the recent opening of the Gymnasium, the extension of the hours of recreation access, and the noticeable improvement of food portions in food service.

We as the inmate population understand the difficulties in opening this facility. We recognize the above mentioned improvements as a genuine concern and willingness to improve the conditions at the camp. Therefore, we as a group have outlined some specific areas of concern as requested by Unit Manager Anderson and Camp Administrator LeBlanc, that would further improve Work, Living, Morale, and Inmate-Staff Relations.

The below list of concerns (not listed in order of importance), are the areas we feel need to be resolved. We are hopeful this can be done in a timely fashion. Due to the complexities involved with these issues, we the inmates, request a personal meeting to formally address and discuss the following:

I. EDUCATION:  
 A. Post Secondary Studies (Program Statement 5354.01)  
 B. G.E.D.'s  
 C. Allow inmates to Tutor Classes.  
 D. Self-help Tapes and Programs.  
 E. Leisure Library.  
 F. Vocational Training (Program Statement 5300.13)

II. RECREATION:  
 A. Track Expansion and Extended hours.  
 B. Weights, additional equipment.  
 C. Problem with Volleyball Court and Basketball Court, in Gym. *resolved operate at same time*

Figure 7.2: Letter to Warden Tom L. Wooten from Inmates, Nov. 1, 1992. Royal Gorge Regional Museum & History Center.

between institutions, and the opening of new facilities created opportunities for dialogue and solidarity among incarcerated people.<sup>138</sup>

The demands in this action, focused on the lack of organization and clarity at the new facility. These demands reveal that the incarcerated people sought to leverage the fact that the facility was new and unsettled. For instance, one key demand was play equipment for visiting kids and other visiting room activities such as board games or cards. This demand underscores the way the incarcerated people thought of the comfort of their visitors, hoping to maintain ties and connections with their relations. In response to the demonstration, the incarcerated people

<sup>138</sup> Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (London: Routledge, 2017).

who organized the food strike and the letter were transferred to other federal facilities to await their disciplinary hearings. The state used movement—and the threat of movement—to quell dissent and maintain discipline; at the same time, movement of incarcerated people to this new facility had generated the protest.

In 1993 and 1994, the Federal Correctional Institution—Medium Security and U.S. Penitentiary High Security opened, respectively.<sup>139</sup> These two prisons followed architectural models with security plans that existed in other U.S. penitentiaries. They relied on relatively small units and maintained some cells for isolation. The medium security facility, completed in August 1993 had 818 beds and cost the government \$45,189,440 in construction. The high security facility, completed in September 1994 had 586 beds and was completed at a cost of \$52,293,000.

The final prison in the complex, the U.S. Penitentiary Administrative Maximum, was a novel model in federal penitentiaries. This facility, mostly underground, was the most expensive facility in the complex on a per square foot basis—a total construction cost of \$59,397,565. Its designers innovated to rely on isolation units that had been pioneered with Pelican Bay in California and the Arizona State Prison Complex. Keramet Reiter shows how pelican Bay embodied a new architecture of incarceration that used repression and isolation in response to perceived threats of violence and radicalism within prisons as opposed to violence against the free-world public.<sup>140</sup> The Administrative Maximum, colloquially called the Super Max or Alcatraz of the Rockies, had 562 beds. These beds were split into six different security levels that

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<sup>139</sup> Department of Justice—Bureau of Prisons, “Federal Correctional Institution—Florence Master Plan,” FPM; Department of Justice—Bureau of Prisons, “Federal Correctional Complex—Florence Master Plan,” FPM.

<sup>140</sup> Reiter, 23/7.



Figure 7.3: BOP Uniform Patch for Administrative Maximum. Note the perpetuation of a culture of fear and lack of pretense about reform in the guards' motto: "We secure what most fear." Royal Gorge Regional Museum & History Center.

determined time out of cell, amenities within the cell, and programmatic opportunities. Most cells, however, had a bed, a sink-toilet combination, and a desk with a television.

While some boosted the region because of the prisons, others protested. The Super Max, in particular, drew critics from across the United States. Because the federal government funded and oversaw the project, the issues it presented were of national concern. In fact, most protesters were not from Colorado. Protestors alleged that the system of isolating people for an average of twenty-three hours a day constituted psychological torture and a human rights violation. The organizers at the forefront of challenging this facility came from the Committee to End the Marion Lockdown. Emerging from local protests in Marion, Illinois, where the U.S. had previously held its most secure prison facility, these organizers came to Colorado and argued that, as Mariel Nanasi, the group's lawyer, said: "We think this will be the worst prison in the

world. They will try to slowly kill people there in very high-tech ways.”<sup>141</sup> Nanasi reinterpreted the high-tech tools of control and surveillance—the tools that the prison officials boasted made this prison the best and most modern—as signs that it was “the worst prison.” The committee, moreover, offered an argument that had not been used previously in trying to challenge this facility or other prisons: they tried to dissuade individuals from working at the facility. Steve Whitman, a member of the Committee, argued: “We are aware of the financial situations in the area, but I think people have to take responsibility for their actions. Working in this place [penitentiary] will be like working in a slave ship. People will have to decide if that is what they want to do.”<sup>142</sup> The committee received significant news attention from across the state, but they failed to stop the prison’s construction and opening. In fact, newspaper reporting often failed to engage with their arguments. The *Denver Post*, for example, reported: “Civil rights activists have complained saying that the idea of confining someone to a cell for 23 hours a day is a form of torture that should be abolished.” In response, the *Denver Post* reiterated minimum standards of treatment as determined by U.S. courts and pointed to the features of cells—the window access, bed frames, television—that complied.<sup>143</sup>

Upon completion of the four federal facilities and as the BOP began to transfer incarcerated people from across the country to these facilities, the Florence Chamber of Commerce began to use the prisons to promote the region. The prisons, particularly the Super Max, had literally “put Florence on the map” and primed it for an economic boom. In 1994, the Chamber of Commerce released their advertising pamphlet, “Florence Colorado. Gateway to the

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<sup>141</sup> Quoted in: John Lemmons, “Group vows to stop FBP penitentiary,” 10/29/1990.

<sup>142</sup> Quoted in: John Lemmons, “Group seeks to block building of Level 6 federal prison here,” 10/26/1990.

<sup>143</sup> “Protesters Against Super Max, *Denver Post*, 4/17/1994.



Sangre de Cristo Range and Vacationland.”<sup>144</sup> Reprinting images of beautiful Florence, Colorado, the Chamber wrote: “Colorado is probably the most beautiful state in the nation, and Florence is the gateway to some of the most breathtaking scenery within a short drive... Your time will be well spent in learning more about the promise of Florence’s growth and your opportunity to develop your own rewarding lifestyle.” The pamphlet emphasized three main highlights of Florence as reasons to visit or settle: schools (19 full time teachers/counselors for 1,830 students), churches (10), and prisons. The meaning of prisons as related to community development is telling: “The new corrections complex joins with the state prisons in Fremont County which have been in the area for over 100 years. Nine of the state’s thirteen prisons are located in Fremont County... F[ederal] C[orrectional] C[omplex] Florence will have 1,000 employees at the complex, of which about 60 percent will be hired locally. The complex is projected to have an annual payroll of \$10 million.” This promoted the multitude of prisons in the region to symbolize that it is a successful and enduring industry promising stability for the future. While local journalists (again) recognized that the boom had failed to materialize and often profiled local real estate speculators or bank managers whose expectations had not been met, they also obtained optimism that the prison would yield local jobs over the long-term.



In April 1990, as Florence prepared for the federal prison complex’s groundbreaking, the *Pueblo Chieftain* declared: “Fremont County Welcomes ‘Prison-Town Label.’” The author went on to write: “Cañon City is acquiring the image of ‘Prison Town U.S.A.’ But no one’s

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<sup>144</sup> Florence Chamber of Commerce, ““Florence, Colorado: Gateway to the Sangre de Cristo Range and Vacationland” Pamphlet, Chamber of Commerce Collection, FHA.

complaining.”<sup>145</sup> This puff piece about how Fremont County accepts and capitalizes on its role as a carceral capital came on the heels of the county winning the contract for the four-facility federal prison complex and in the midst of a simultaneous campaign to win state contracts for more new prisons. Like the federal government, the state of Colorado expanded its carceral capacity to hold the ever-growing incarcerated population. This crisis came to a head in the late 1980s as the state, once again, faced lawsuits over prison conditions that centered on too few opportunities and too much overcrowding. At the same time the state faced a carceral crisis, many rural communities faced economic depression. New prisons, city boosters and elected officials argued, could solve both problems simultaneously. Mike Davis calls the idea that prisons provide government investment in a community “carceral Keynesianism,” and Ruth Gilmore argues that these prison development projects are ways that the state mitigates issues of surplus land, people, infrastructure, and capital.<sup>146</sup>

The state prioritized a minimum-security facility to house men incarcerated for non-violent crimes. The state’s drug enforcement laws had criminalized a new class of people who had no history of violent behavior but were sentenced to long terms in prison. The state, therefore, classified most of these men as low security risks, and it needed a minimum-security center to house them. In 1988, Colorado finished Four Mile Correctional Center, a 300-bed minimum-security facility, in the East Cañon Complex. Four Mile’s capacity quickly increased

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<sup>145</sup> “Fremont County Welcomes ‘Prison-Town’ Label” *Pueblo Chieftain*, 4/28/1990.

<sup>146</sup> Mike Davis, *Ecology of Fear: Los Angeles and the Imagination of Disaster* (New York: Metropolitan Books, 1998), 416; Gilmore, *Golden Gulag*.

when administrators began double-bunking captives there.<sup>147</sup> This solution proved insufficient, so the state worked towards siting and building another medium-security facility.

Mayor-turned-lobbyist George Turner went to Denver to whip support for the siting of this proposed 500-bed facility in Fremont County. After having served three terms as Cañon City's mayor, Turner received \$15,000 plus expenses for the lobbying trip from the Cañon City Council, Florence municipal government, Cañon City Chamber of Commerce, and the FCEDC.<sup>148</sup> Fremont County and the state's history made questioning prisons nigh impossible. Despite the overwhelming support for the carceral apparatus, there was still an absence of public debate over what type of prisons ought to be constructed at this moment. Turner recognized that the legislature regarded CDOC recommendations as authoritative, so Turner focused on enlisting their support for developing the new projects in Fremont County.

The support of the community again helped Fremont County's case. After their success winning the federal contract, the FCEDC launched another campaign to fundraise for the CDOC. They distributed a pamphlet at all Fremont County commercial banks, Penrose Plaza Kwik Stop Food Store, Wal-Mart in Cañon City, Greeley Gas Offices, and the FCEDC Office. This pamphlet argued: "Support a Growing Fremont County Economy. Contribute to the Department of Corrections Medium Security Prison Pledge Fund." It informed the reader that they were raising \$50,000 to pay for utility extension costs for the CDOC Medium Security Facility that

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<sup>147</sup> Department of Corrections, "Statistical Report, Fiscal Years 1990 and 1991," March 1992, page 11, accessed at: <https://www.ojp.gov/pdffiles1/Digitization/137260NCJRS.pdf>.

<sup>148</sup> John Lemmons, "City Council Approves \$5,000 To Aid Prison Lobbying Effort," *Cañon City Daily Record*, 2/2/1998.

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|---|---|
| <p><b>WHAT</b><br/>Raise \$50,000 To Help Pay For<br/>Utility Extension Costs</p> <p><b>WHY</b><br/>Fremont County Needs To Provide<br/>A Large Portion of the Infrastructure<br/>Costs To Show Our Desire For This<br/>Facility</p> <p><b>WHEN</b><br/>We Need To Have The Pledges<br/>Turned In By Noon, Monday<br/>October 16, 1989</p> <p><b>HOW</b><br/>Funds Will Be Raised By:<br/>Personal Contact<br/>Thursday, October 12<br/>Thru Monday, October 16</p> <p><b>WHO</b><br/>Fremont County Economic<br/>Development Corporation<br/>(F.C.E.D.C.)</p> <p><b>Pledge Forms May Be Signed At:</b><br/>All Fremont County Commercial Banks<br/>Penrose Plaza Kwik Stop Food Store<br/>Wal-Mart<br/>FCEDC Office<br/>Greeley Gas Offices in both Cañon City<br/>and Florence.</p> | <p style="text-align: center;"><b>DEPARTMENT OF<br/>CORRECTIONS<br/>MEDIUM SECURITY<br/>FACILITY FACTS</b></p> <p style="text-align: center;">480 or 900 Bed Medium Security<br/>Facility</p> <p style="text-align: center;"><i>This Complex Should Result In</i></p> <p style="text-align: center;">\$40 Million Dollar Expenditure For<br/>The Facility</p> <p style="text-align: center;">\$8,580,000 to \$11,400,000<br/>Per Year Payroll</p> <p style="text-align: center;">286 to 380 New Jobs</p> <p style="text-align: center;"><i>Spin-Off Job Formation</i></p> <p style="text-align: center;">286-380 New Jobs Should Create<br/>Another 1000 Jobs<br/>In Places Like:</p> <p style="text-align: center;">Schools, Retail, Service,<br/>and Construction</p> |
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**PLEDGE FOR MEDIUM SECURITY  
UTILITY EXTENSION COSTS**

A Suggested Pledge Could Be 50% of Your Pledge Amount For The Federal Prison Complex.  
Pledge Amount \$ \_\_\_\_\_

Company/Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Authorized Signature \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
**VOLUNTEER**

Pledges Payable Only Upon Award of Bid To Fremont County and Scheduled Construction Date  
(Sometime After January 1, 1992)

Figure 7.4: FCEDC DOC Pledge Fund Drive, 1989. Courtesy of Royal Gorge Regional Museum & History Center.

would create 386-380 direct jobs, another 1,000 spinoff jobs, and have a payroll of \$8.5-11 million per year. “Fremont County,” the FCEDC argued, “needs to provide a large portion of the infrastructure costs to show our desire for this facility The campaign raised \$43,562.<sup>149</sup> This campaign helped because the process of prison siting had changed dramatically—it was now very competitive. Fremont County competed against more than twenty-five other communities seeking this project as a form of economic stimulus. The state and economically depressed communities recognized that prisons had the potential to alleviate poverty that manifested both

<sup>149</sup> John Lemmons, “FCEDC campaign raises \$43,562,” *Cañon City Daily Record*, 10/28/1989.

in urban and non-urban spaces: in the former, criminalization of poverty mitigated the visibility of this social issue while in the latter the business of storing those men and women offered economic possibility.

In 1989, then, the state followed the CDOC's advice and appropriated funds to build a new facility in Cañon City during a special legislative session. Joining CWCI, Centennial, Skyline, Four Mile, the Pre-Release Center, Fremont, Shadow Mountain, Colorado State Penitentiary, and the four federal facilities under construction in the county, Arrowhead Correctional Facility received captives beginning in February 1990.<sup>150</sup> And by the end of June, just four months later, the CDOC had filled Arrowhead to capacity.<sup>151</sup> Arrowhead consisted of four two-story dormitory buildings with communal restrooms. Most cells had the capacity for the captives to be double- or triple-bunked. The CDOC used familiar tactics to build public support and confidence. John Lemmons, who long had covered prisons in Fremont County, reported that Arrowhead is "the newest and most technologically advanced prison" when the CDOC offered him a tour before the facility opened. Arrowhead, he found, used technologies to monitor incarcerated people and officers. These technologies supplanted personal interaction with technological distance, contributing to a system of depersonalization of incarcerated people that made violence more permissible. Officers, for instance, could open and close doors electronically to allow incarcerated men to reach showers or other areas without interacting with them.

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<sup>150</sup> "Arrowhead Prison: 11 Inmates and Growing," Feb. 1990, Folder: "Prisons—Arrowhead," RGRMHC.

<sup>151</sup> John Lemmons, "DOC: Arrowhead Will Soon Be Full," *Cañon City Daily Record*, 6/1/1990.

These technological developments won Arrowhead approval from the American Correctional Association. The accreditation was more than a symbolic gesture that allowed progressive administrators and politicians to laud the state's penal program. "The benefits of the accreditation process," the CDOC explained, "include improved management, increased accountability, enhanced public credibility, a defense against lawsuits, a safer and more humane environment for personnel and offenders."<sup>152</sup> The accreditation was part of a process that used bureaucracy and expert-derived standards to legitimize the carceral system and its expansion. However, just three months after the facility opened, despite its new technologies, the first captives held there escaped, underscoring again the vulnerability of new facilities.<sup>153</sup>

The CDOC foresaw Arrowhead filling up and the need to create another facility. In May 1990, the legislature approved a 500-bed close-security facility. This bill, however, did not determine the location of the prison. Twenty-seven rural Colorado communities put in bids for the new facility. In December, though, the CDOC and the legislative committee recommended the prison be sited in Cañon City because the community already had a maximum-security prison making transfers easier and had the infrastructure to support new prisons. In October 1991 construction began on a 504-bed four-level snowflake-shaped prison to be visible off Highway 50 on the east side of Cañon City.<sup>154</sup> The construction of the prison provided space and infrastructure for another pod to be built to increase capacity to 756 captives. On 1 August 1993,

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<sup>152</sup> Quoted in: John Lemmons, "Arrowhead Seeks ACA Accreditation," *Cañon City Daily Record*, 10/9/1992.

<sup>153</sup> "Arrowhead Escapees Recaptured Near Gorge," May 1990, Folder: "Prisons—Arrowhead," RGRMHC.

<sup>154</sup> "Construction to begin on Canon-area prison," *Pueblo Chieftain*, 10/22/1991.

Governor Roy Romer dedicated the new Colorado State Penitentiary (CSP II) and its residents began arriving just over two weeks later.<sup>155</sup>

Although the legislature appropriated funds for CSP II to be a close-security prison, the CDOC had determined later that this facility ought to be maximum-security. The CDOC did not consult with the legislature before making change—a change that required a different architecture and increased staffing levels. The administration of a maximum-security facility is more expensive than close-security because of the increased staffing costs, so the CDOC needed to request more funds for the administration. When making this request to the legislature, a few legislators chastised the CDOC for making this decision unilaterally, but none voted to withhold funding. This is a process similar to what occurred in California and across the nation in the late 1980s and early 1990s when bureaucratic and administrative officials amassed uncontested power over the future of state prison systems.<sup>156</sup> In this new prison, the captives lived in 80-square-foot cells 23 hours a day on average. Their only view of the outside was through a two-inch wide window. Whenever a person left a cell, they were shackled and escorted by two guards. The design of this prison encompassed the latest ideologies of penology regarding administrative segregation, and this architecture “helped the penitentiary earn recognition in 1998 from the American Correctional Association as the nation’s best designed prison.”<sup>157</sup> The prison, they found, provided security for the staff of the facility by restricting movement and using technology while exceeding the minimum standards required for the size of each cell. The

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<sup>155</sup> Colorado State Penitentiary (the one first build in 1871 and at the end of Main Street) was renamed “Colorado Territorial Correctional Facility.”

<sup>156</sup> Reiter, 23/7.

<sup>157</sup> “State Penitentiary Wins Recognition As America’s Best Designed Prison,” *Pueblo Chieftain*, 8/18/1998.

ACA had accredited fewer than ten other maximum-security prisons, so the label for CSP II had meaningful consequences as a model for subsequent prison construction.



By the end of 1994, Fremont County was the carceral capital of the country with both state and federal prisons. Fremont County had thirteen prison facilities: Colorado Territorial Correctional Facility, Colorado Women’s Correctional Institute, Skyline Correctional Facility, Four Mile Correctional Center, Fremont Correctional Facility (Fremont and Shadow Mountain merged to become just one facility), Arrowhead Correctional Center, Colorado State Penitentiary, Federal Prison Camp, Federal Correctional Institution-Medium Security, U.S. Penitentiary High-Security, and the U.S. Penitentiary Administrative Maximum. These new prisons of the 1980s and 1990s represent a departure in architecture, rhetoric, and practice. Now, the state largely abandoned its stated goal of rehabilitation, and instead turned towards defending the carceral state as a means of deterrence and punishment. Unlike the region’s early prisons that were integrated into the community and attracted thousands of tourists each year, the new model and infrastructure of incarceration sought invisibility. The invisibility mitigated oversight and contestation, yet the invisibility of the infrastructure stood counter to the ubiquitous and self-sustaining carceral state. Despite these departures in the practice of incarceration, the carceral state and its continued growth depended on the same logics it had invoked for over a century.

After winning the contracts for the state and federal prisons, the FCEDC chairman Larry Schwarz acknowledged that the “community is recession-proof.”<sup>158</sup> While the latest prisons had new features and designs, the process of siting building support for them in Fremont County

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<sup>158</sup> John Lemmons, “FCEDC board elects Schwarz new chairman,” *Cañon City Daily Record*, 4/16/1990.



showed little change. The script about the benefits of prison development repeated. Since the 1860s, boosters for prison development in Fremont County—and across the nation—had argued that prisons do not (ideally) cost the state money, the prison is a good investment for local communities, and more prisons produce a safer and freer society. Why did this script, in spite of overwhelming evidence of its inaccuracy, continue to resonate? In large part, Fremont County residents continued to support prison development because little other industry was interested in moving to the region and it was difficult to admit failure. They, too, saw themselves as doing a necessary service to the United States; prisons, they believed, were necessary for America's freedom. Generations of Fremont County families had built their livelihood in relation to the prison, and they were natural boosters for the system while also creating a generational pipeline into prison work.

Rural prison investment, Brett Story argues, reveals the attachment to an ideology of punishment is secondary “compared to attachments to work and wages” in which local people privileged their own wellbeing and dignity over concerns about the impact of incarceration. Fremont County was but one of the economically depressed regions that vied for and received federal prisons in the 1990s that also includes west Texas, south-central Georgia, central Appalachia, and the Mississippi Delta.<sup>159</sup> Similarly, rural counties across Colorado fought for the new state prisons. Proponents of prisons in Fremont County and elsewhere viewed prisons detached from the harm these institutions caused throughout the state and country; they instead focused on the imagined benefit for their own communities and the broader free world. In this way, the state's response to poverty in rural white spaces was investment whereas in urban poor

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<sup>159</sup> Story, *Prison Land*, 85.

spaces it was policing. Proponents of prisons, who focused on the economic benefit of the prison town, were unable to imagine a world without prisons, a world in which the state did not invest so heavily in punishment and confinement. The local attachment to and dependence on incarceration had entrenched the notion that prisons make society safer. “Townsppeople,” the *Rocky Mountain News* similarly acknowledged, “rely on penitentiaries to keep economy thriving.”<sup>160</sup> A different article reported: “It’s criminal, but it’s good for business... From pens and paper to pumps and pipes, from shoe repairs to shellac, Cañon City merchants sell and supply practically anything and everything the prison complex may need.”<sup>161</sup>

Despite this optimism about the economic power of prisons, a 1998 study by the FCEDC showed that the local economy had been in decline since 1970—at the same time Fremont County’s prison capacity expanded dramatically. Since 1970, Fremont County’s economy had declined at a greater rate than that of the rest of the state, and the county’s per capita income averaged just over sixty percent of that of the rest of the state’s over this period.<sup>162</sup> Steve Jenkins reported: “the majority of these [correctional] employees live outside the County and therefore we do not receive the direct or indirect economic benefits of the facilities.” Continuing, Jenkins warned: “Dependence on the correctional systems’ employment also creates an imbalance and

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<sup>160</sup> “Prisons Don’t Scare Canon City Residents,” *Rocky Mountain News*, 9/6/1992.

<sup>161</sup> “It’s Criminal, but it’s good for business.” *Rocky Mountain News*, 9/6/1992.

<sup>162</sup> Steve Jenkins, “Study on Fremont County Economy,” Fremont County Economic Development Corporation, 1998, Folder: “Co. Economic Development—FCEDC,” Fremont County Economic Development Corporation Collection, RGRMHC.

lack of diversity in the local economy.”<sup>163</sup> Unexamined, too, in this report about the economic failures of incarceration was the idea that imprisonment generates safety and fosters freedom.

National and state government had invested in Fremont County by building prisons, promising to revitalize a depressed rural area. Relying on precedent, they invested in incarceration. The new prisons they built relied on technology and architecture to mitigate rebellions and dissent. The new technologies of incarceration reduced the staffing requirement. Levels of incarceration skyrocketed in the 1980s and 1990s. At the same time, the Bureau of Prisons and Colorado Department of Corrections shifted their approach to incarceration; the new prisons focused on repression, isolation, and physical safety. Incarceration presented an opportunity to remove and eliminate transgressive people, offering free society a version of justice mediated and defined by the state’s use of retribution, isolation, and violence. This state-defined project of justice promised both free-world freedom and free-world prosperity. But, its investment in prisons failed to deliver economic revitalization to the spaces of incarceration and the spaces of removal. It, too, failed to offer a solution that eliminated the root causes of transgressive behavior. The carceral state, promising rehabilitation and safety, could not eliminate the reason for its own existence.

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<sup>163</sup> Steve Jenkins, “A job is a job ... Not necessarily!” 9/14/1998, Folder: “Economic Development—FEDC—Columns,” Fremont County Economic Development Corporation Collection, RGRMHC.

## Conclusion

Fremont County's economy and culture became dependent on its prisons. At the same time, politicians and business leaders in the local community waged a campaign to rebrand the region not as the world's "correctional capital" but as a capital of rafting, climbing, and biking—outdoor activities that epitomize a white freedom premised on engagement with nature.<sup>1</sup> When I asked a resident who was born in Fremont County in the 1940s and lived there her whole life what it was like to live in a "prison town," she rejected that question's premise: "living in a prison town, well... we're more than a prison town. This is a beautiful spot, you know, as far back as the Native Americans knew it was. The weather is mild. We've got a river running right through our town. Five or ten minutes you can be in the mountains." Despite this assertion, she recognized that when she traveled, people knew where she was from because she was "neighbors" with the prisons, and she admits "I wasn't doing much to promote our climate and our scenery."<sup>2</sup>

While local stakeholders vigorously fought for state investment by way of prison development, many tried to distance themselves from the "prison town" reputation. The Fremont County Economic Development Corporation held an event on 25 February 1988 at the state capital in Denver advertising their county. They hoped to attract new residents and investment. The brochure for the "Come Shake Hands with Fremont County" event emphasized the "five fingers" on which the county's economy stood: mining & industry, retirement, tourism &

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<sup>1</sup> Carolyn Finney, *Black Faces, White Spaces: Reimagining the Relationship of African Americans to the Great Outdoors* (Chapel Hill: University of North Carolina Press, 2014); Kevin DeLuca and Anne Demo, "Imagining Nature and Erasing Class and Race: Carleton Watkins, John Muir, and the Construction of Wilderness Source," *Environmental History* 6, no. 4 (2011): 541–60; William Cronon, "The Trouble with Wilderness: Or, Getting Back to the Wrong Nature," *Environmental History* 1, no. 1 (1996): 7–28.

<sup>2</sup> Interview conducted and held by author, March 23, 2021.



Figure 0.1: "Come Shake Hands with Fremont County," Feb. 1988. Royal Gorge Regional Museum & History Center.

recreation, corrections, and agriculture. The brochure boasts: “As home of the world-famous Royal Gorge Bridge, Fremont County opens its arms to thousands of visitors each year. We’ve got beautiful mountains, ... majestic nature parks, hiking trails and nearby ski slopes.”<sup>3</sup> From the 1980s through the 2000s, the Cañon City Chamber of Commerce and the FCEDC waged campaigns to highlight the outdoor tourist opportunities in Fremont County: rafting down the Arkansas River, walking across the Royal Gorge Bridge, hiking up the Hogback Mountains and Skyline drive, biking the Oil Wells Flats and Shelf Road, driving Phantom Canyon Road, and riding the Royal Gorge Route Railroad along the most famed portion of the old Denver & Rio Grande line. A community built and dependent on the unfreedom of some invoked the outdoors to appeal to a sense of freedom engendered not by incarceration but by engagement with nature.

<sup>3</sup> “Come Shake Hands with Fremont County,” Folder “Newsletters—Fremont County Development Corporation,” Acc. No. 2009.009 340 a-p,” Royal Gorge Regional Museum & History Center, Cañon City, CO.

The recent push for tourism, which came as the same organizations lobbied for state and federal prisons, recognizes the precarity of depending on a single industry and the shifting conversation about the excesses of American incarceration. It assuages the town's role in the rise of mass imprisonment. Judah Schept argues that local stakeholders in prison communities embody a "dis/juncture" in which they condemn the prison industrial complex while simultaneously supporting the local iteration of it. This tourism and outdoors project, too, contributes to the obfuscation of the carceral state. Local boosters want to supplement the prison economy with tourist money rather than deconstruct the prison economy. The Museum of Colorado Prisons, for example, offered the community a way to capitalize on its reputation to entice more visitors. Fremont County could leverage its reputation as a carceral capital to draw people into its new suite of offerings.

Tourism provided Fremont County an opportunity to rebrand, but its primary economic driver remained incarceration. Since the 1860s, Fremont County has depended on incarceration. After Cañon City had been abandoned in the midst of the Civil War, its second wave of Euro-American settlers in the late 1860s staked its future to government investment. The investment they chose came in the form of a prison. The prison offered the local community economic stimulus while simultaneously allowing Coloradans to invoke the burgeoning criminal legal system as a symbol of effective governance and order in the territory. From its territorial era, Colorado used the prison to gain legitimacy as a state and define freedom as a product of race and class.

Coloradans invoked their administration of the prison to convince the U.S. Congress that they deserved statehood. However, the administration of the prison was not as effective as territorial and early state legislators claimed. Constant turnover in administration and restrictive

infrastructure generated chaos within the institution. The prison and its stakeholders, though, defined what they saw as the mark of effective prison administration: a self-sufficient institution. Hard labor, they argued, would yield both self-sufficiency and rehabilitation of the incarcerated. This logic undergirded the history of Fremont County and the United States' prison development.

Colorado's prison administrators quickly learned the power of organized, free labor in the state and how organized labor could hamper their goal of self-sufficiency. Participating in a national conversation about reform, these prison administrators developed a system of road labor that would occupy incarcerated peoples' time and energy while giving the state good, improved roads. The program came under fire, however, when a mining downturn forced free-world laborers to look elsewhere for work, particularly the roads. The reform project, championed by Thomas Tynan, further lost steam when the forces of politics—anti-Catholic Klansmen and a governor bolstering his political reputation—turned their attention on the prison. Prison administration and reform, regardless of intentions, must contend with realpolitik.

By the end of the 1920s, internal and external events conspired to create discontent within the prison: overcrowding caused by new anti-alcohol laws and instability caused by a new political outlook and constant prison staff turnover. This simmering discontent set the stage for the reactions to a failed escape attempt. Incarcerated people made spontaneous decisions that reveal their diverse ideologies and needs. In response to the most deadly and destructive night in the prison's history, the state reasserted its right to use force and repression. The state, in a pattern repeated in Colorado and elsewhere, met dissent with force and fortification.

As the prison fortified in the wake of the 1929 uprising, fear of another such event persisted. This ongoing fear led to the expansion of the carceral state and the stigmatization of

incarcerated people. The federal government, during the New Deal and World War II years, took on more responsibility and authority. While its own federal prison system remained small, the national government began exerting power of investigation and guidance, helping states expand their carceral systems and prison labor programs. In the wake of World War II and in the context of popular concerns over transgressive behavior, the media and carceral state capitalized on a national interest in deviance and violence to strengthen the carceral state's image and reputation. After an attempted prison escape that captured national headlines, a film about the event sensationalized the violence and life of incarceration while putting Fremont County on the map as a carceral capital.

As Fremont County won national attention as a carceral capital, its prison infrastructure grew—but not without dissent. Carceral growth and protest of it happened in conversation. During the 1960s and 1970s, as mobilized free-world people agitated for recognition and rights, incarcerated people employed the methods and tactics of their counterparts in the civil rights movement. Incarcerated people won some recognition from the courts for redress, and they also disrupted the prison system's functioning with unsanctioned protests. At the same time, the prison system expanded by building new facilities with distinct security classifications and new semantic notions that delegitimized and discredited incarcerated people. These reforms helped cement the prison system's legitimacy as an institution that could respond to critiques without external oversight.

While Colorado built new prisons in the 1960s and 1970s in Fremont County, the state could not keep up with the ever-increasing prison population. The incarcerated population grew as a result of state and national decisions: rather than investing in social welfare, the state criminalized manifestations of neoliberal disorder and increased punishments. As incarceration



became the solution for free-world urban disorder, prison development, in theory, solved economic depression in rural areas. Fremont County competed with dozens of other depressed rural areas for new federal and state prisons. Local prison boosters enacted a script they wrote over a century earlier: a promise of the stimulus of prison investment galvanized locals to fight for the contract. However, as was the case over Fremont County's history, the promised jobs and stimulus never materialized. While the architecture and scale of incarceration in the late twentieth century was new, it followed the same script and invoked the same logic it had for the past century-and-a-half.

The history of incarceration in the United States is a history of continuity. Fremont County's long story shows a pattern of development that reflected changing sociopolitical ideals, but the fundamental belief in the carceral state as a positive good that needs to be supported persisted through this history. A punitive outlook that seeks to remove and eliminate populations reflects dynamic ideas of race, class, and freedom. In 1867, Fremont County's representatives argued that a prison there would not only bolster the state's and region's legitimacy, but it would help ensure freedom for all its residents. This notion—that freedom requires unfreedom—regenerates the carceral state. The penal system continues to restrict how we can imagine justice and freedom, limiting the conversation to projects of reform guided and accepted by its own stakeholders.

Incarceration is a process that cannot be divorced from the rest of society. Incarceration has depended on ideas entrenched in society: not only is it a positive economic good for the prison town that benefits from the state investment, but it benefits by protecting the rest of free-world society. Elizabeth Hinton argues that “a semantic habit that hides a deeper reality” is a

critical consequence of the expanded policing system of the late twentieth century.<sup>4</sup> The image and rhetoric of the carceral state in this story has been as important to its sustained legitimacy as anything else. Institutions within a democratic society, in theory, need popular support. The state and non-state actors have elected to use their resources and power to support the carceral system by creating an “other” undeserving of freedom and delegitimizing their challenges to the system. The American state, as other historians demonstrate, possesses awesome power to uplift when it directs its resources to dealing with roots of social unrest rather than the symptoms.<sup>5</sup> The United States, instead, elected to prioritize the carceral state as a social welfare solution. The impact of the carceral state as a welfare solution goes beyond feeding and housing the approximately 2.3 million people in prisons, jails, and detention centers in the U.S. and its territories; it also supports the million more people who work in and live around prison and jail communities.<sup>6</sup>

In 1971, Jerry Nemnich urged radical change by asking an important question in *The Interpreter*: “Radical action is desperately needed to jolt the System out of the narrow, restrictive premise: *We now have prisons, where do we go from here?*”<sup>7</sup> Nemnich understood that the existence of the prison sustained a state built on punishment. Fremont County and the United States have long framed their prison infrastructure as a solution to social disorder and

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<sup>4</sup> Elizabeth Hinton, *America on Fire: The Untold History of Police Violence and Black Rebellion Since the 1960s* (New York: Liverlight Publishing, 2021), 4.

<sup>5</sup> For examples of how the state can provide uplift and create a better society in non-punitive ways: Willie Lee Nichols Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (Athens, GA: University of Georgia Press, 1999); Daniel T. Rodgers, *Atlantic Crossings: Social Politics in a Progressive Age* (Cambridge: The Belknap Press of Harvard University Press, 1998); Eric Rauchway, *Why The New Deal Matters* (New Haven, Yale University Press, 2021); Jason Scott Smith, *Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956* (Cambridge: Cambridge University Press, 2006)

<sup>6</sup> Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2020,” 3/24/2020, accessed at <https://www.prisonpolicy.org/reports/pie2020.html>.

<sup>7</sup> Jerry Nemnich, “Editorial,” *Interpreter* vol. 6, no. 1 (Jan-Feb. 1971), Folder “Interpreter Jan-Feb 1971,” Acc. No. 92.08.01, CMP.

transgressive behavior. But, Nemnich argues the reverse is true: the prison—and the punitive outlook it represents—perpetuates disorder and harm while limiting freedom. Since Nemnich argued that the American political system needs a new, non-punitive outlook and that the conversation should not be informed by the fact of the prisons existing, the United States, Colorado, and Fremont County have built and populated more such institutions.

Nemnich and this history force us to confront what prisons do and what prisons do not do. Prisons, as Victoria Law argues, do not make society safer and do not correlate to rates of violence in the United States. She concludes: “many myths persist—often justifying an expansion of the same policies that caused the explosive growth in the first place.”<sup>8</sup> Interrogating the myths of incarceration force us to ask, who and what do prisons serve? Prison boosters have convinced society that we need prisons for jobs and safety—for freedom. But, as Fremont County’s long history shows, prisons safeguard neither free-world society nor those entrapped in the system. This history of incarceration challenges us to rethink how harm can be reduced and what freedom can mean. Answering those questions forces us to begin by questioning the assumption of whether prisons are necessary.

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<sup>8</sup> Victoria Law, *Prisons Make Us Safer’: And 20 Other Myths About Mass Incarceration* (Boston: Beacon Press, 2021), 2.

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- Papers of Oliver H. Shoup
- Papers of Samuel Hitt Elbert

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- Chamber of Commerce Collection

#### Florence Pioneer Museum

- Federal Pen Collection

#### History Colorado Center

- William E. Sweet Collection

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- Book of Escapes
- Daily Log Book
- Death Book

- Images & Photographs
- Intake Binders
- Miscellaneous Folders & Files
- Roy Best Scrapbooks
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- American Prison Association Papers
- American Social Science Association Records
- National Prison Association Papers
- Prison Periodicals Collection

#### **Newspapers & Magazines:**

*Cañon City Avalanche*

*Canon City Clipper*

*Cañon City Daily Record*

*Canon City Record*

*Cañon City Times*

*Colorado Heritage*

*Colorado Highways*

*Colorado Magazine*

*Daily Chieftain [Pueblo]*

*Daily News [Canon City]*

*Denver Daily Times*

*Denver Post*

*Florence Citizen*

*Florence Daily Citizen*

*Fort Collins Standard*

*Fremont County Daily News*

*Fremont County Recorder*

*Gazette Telegraph*

*Golden Transcript*

*Longmont Daily Times-Call*

*Portland Oregonian*

*Rocky Mountain News*

*Tall Wall Quarterly*

*The Chieftain*

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**Oral Interviews:**

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Henry Burton

John Molletti

Loretta Bailey

Margaret Lenora Curry

Tonya Sandoval