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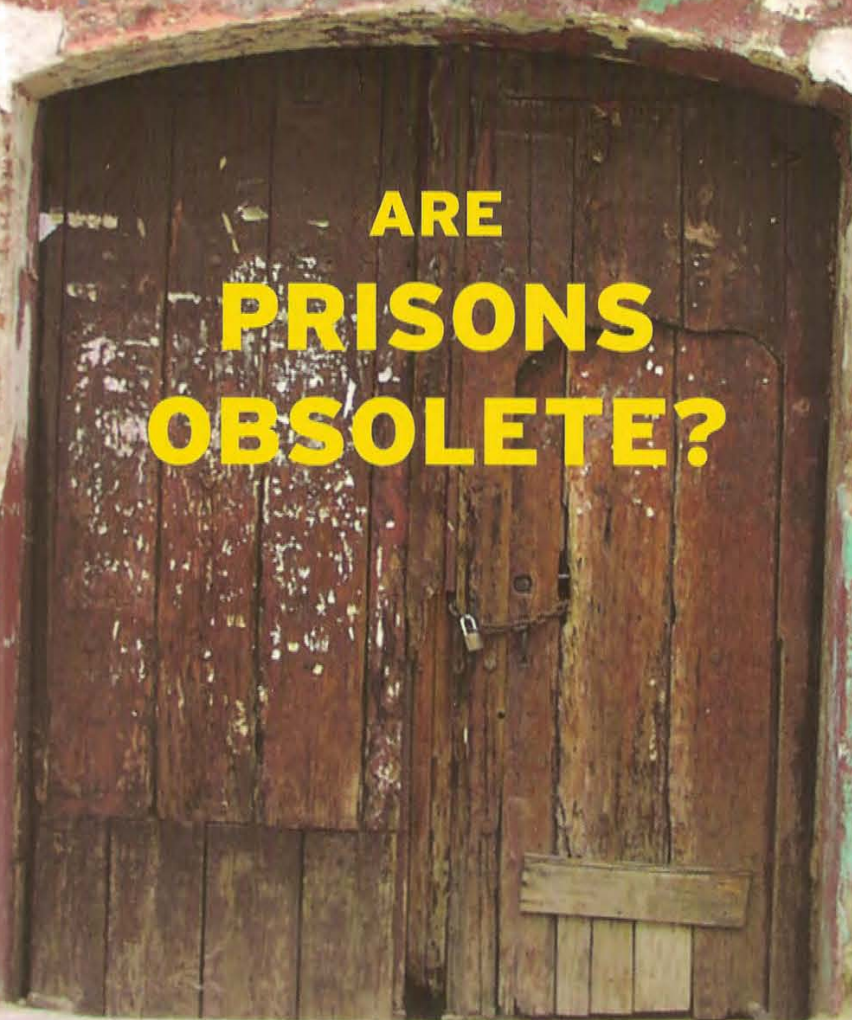
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DAVIS

ARE PRISONS OBSOLETE?

# ANGELA Y. DAVIS

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**Angela Y. Davis**

**An Open Media Book**

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## Slavery, Civil Rights, and Abolitionist Perspectives Toward Prison

“Advocates of incarceration . . . hoped that the penitentiary would *rehabilitate* its inmates. Whereas philosophers perceived a ceaseless state of war between chattel slaves and their masters, criminologists hoped to negotiate a peace treaty of sorts within the prison walls. Yet herein lurked a paradox: if the penitentiary’s internal regime resembled that of the plantation so closely that the two were often loosely equated, how could the prison possibly function to rehabilitate criminals?”

—Adam Jay Hirsch<sup>15</sup>

The prison is not the only institution that has posed complex challenges to the people who have lived with it and have become so inured to its presence that they could not conceive of society without it. Within the history of the United States the system of slavery immediately comes to mind. Although as early as the American Revolution antislavery advocates promoted the elimination of African bondage, it took almost a century to achieve the abolition of the “peculiar institution.” White antislavery abolitionists such as John Brown and William Lloyd Garrison were represented in the

dominant media of the period as extremists and fanatics. When Frederick Douglass embarked on his career as an anti-slavery orator, white people—even those who were passionate abolitionists—refused to believe that a black slave could display such intelligence. The belief in the permanence of slavery was so widespread that even white abolitionists found it difficult to imagine black people as equals.

It took a long and violent civil war in order to legally disestablish the “peculiar institution.” Even though the Thirteenth Amendment to the U.S. Constitution outlawed involuntary servitude, white supremacy continued to be embraced by vast numbers of people and became deeply inscribed in new institutions. One of these post-slavery institutions was lynching, which was widely accepted for many decades thereafter. Thanks to the work of figures such as Ida B. Wells, an antilynching campaign was gradually legitimized during the first half of the twentieth century. The NAACP, an organization that continues to conduct legal challenges against discrimination, evolved from these efforts to abolish lynching.

Segregation ruled the South until it was outlawed a century after the abolition of slavery. Many people who lived under Jim Crow could not envision a legal system defined by racial equality. When the governor of Alabama personally attempted to prevent Arthurine Lucy from enrolling in the University of Alabama, his stance represented the inability to imagine black and white people ever peaceably living and studying together. “Segregation today, segregation tomorrow, segregation forever” are the most well known words of this politician, who was forced to repudiate them some years later when segregation had proved far more vulnerable than he could have imagined.

Although government, corporations, and the dominant

media try to represent racism as an unfortunate aberration of the past that has been relegated to the graveyard of U.S. history, it continues to profoundly influence contemporary structures, attitudes, and behaviors. Nevertheless, anyone who would dare to call for the reintroduction of slavery, the organization of lynch mobs, or the reestablishment of legal segregation would be summarily dismissed. But it should be remembered that the ancestors of many of today's most ardent liberals could not have imagined life without slavery, life without lynching, or life without segregation. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances held in Durban, South Africa, divulged the immensity of the global task of eliminating racism. There may be many disagreements regarding what counts as racism and what are the most effective strategies to eliminate it. However, especially with the downfall of the apartheid regime in South Africa, there is a global consensus that racism should not define the future of the planet.

I have referred to these historical examples of efforts to dismantle racist institutions because they have considerable relevance to our discussion of prisons and prison abolition. It is true that slavery, lynching, and segregation acquired such a stalwart ideological quality that many, if not most, could not foresee their decline and collapse. Slavery, lynching, and segregation are certainly compelling examples of social institutions that, like the prison, were once considered to be as everlasting as the sun. Yet, in the case of all three examples, we can point to movements that assumed the radical stance of announcing the obsolescence of these institutions. It may help us gain perspective on the prison if we try to imagine how strange and discomfiting the debates about the obsolescence of slavery must have been to those who took the "peculiar institution" for granted—and especially to those

who reaped direct benefits from this dreadful system of racist exploitation. And even though there was widespread resistance among black slaves, there were even some among them who assumed that they and their progeny would be always subjected to the tyranny of slavery.

I have introduced three abolition campaigns that were eventually more or less successful to make the point that social circumstances transform and popular attitudes shift, in part in response to organized social movements. But I have also evoked these historical campaigns because they all targeted some expression of racism. U.S. chattel slavery was a system of forced labor that relied on racist ideas and beliefs to justify the relegation of people of African descent to the legal status of property. Lynching was an extralegal institution that surrendered thousands of African-American lives to the violence of ruthless racist mobs. Under segregation, black people were legally declared second-class citizens, for whom voting, job, education, and housing rights were drastically curtailed, if they were available at all.

What is the relationship between these historical expressions of racism and the role of the prison system today? Exploring such connections may offer us a different perspective on the current state of the punishment industry. If we are already persuaded that racism should not be allowed to define the planet's future and if we can successfully argue that prisons are racist institutions, this may lead us to take seriously the prospect of declaring prisons obsolete.

For the moment I am concentrating on the history of antiblack racism in order to make the point that the prison reveals congealed forms of antiblack racism that operate in clandestine ways. In other words, they are rarely recognized as racist. But there are other racialized histories that have affected the development of the U.S. punishment system as

well—the histories of Latinos, Native Americans, and Asian-Americans. These racisms also congeal and combine in the prison. Because we are so accustomed to talking about race in terms of black and white, we often fail to recognize and contest expressions of racism that target people of color who are not black. Consider the mass arrests and detention of people of Middle Eastern, South Asian, or Muslim heritage in the aftermath of the September 11, 2001 attacks on the Pentagon and World Trade Center.

This leads us to two important questions: Are prisons racist institutions? Is racism so deeply entrenched in the institution of the prison that it is not possible to eliminate one without eliminating the other? These are questions that we should keep in mind as we examine the historical links between U.S. slavery and the early penitentiary system. The penitentiary as an institution that simultaneously punished and rehabilitated its inhabitants was a new system of punishment that first made its appearance in the United States around the time of the American Revolution. This new system was based on the replacement of capital and corporal punishment by incarceration.

Imprisonment itself was new neither to the United States nor to the world, but until the creation of this new institution called the penitentiary, it served as a prelude to punishment. People who were to be subjected to some form of corporal punishment were detained in prison until the execution of the punishment. With the penitentiary, incarceration became the punishment itself. As is indicated in the designation “penitentiary,” imprisonment was regarded as rehabilitative and the penitentiary prison was devised to provide convicts with the conditions for reflecting on their crimes and, through penitence, for reshaping their habits and even their souls. Although some antislavery advocates spoke out

against this new system of punishment during the revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens.

In many ways, the penitentiary *was* a vast improvement over the many forms of capital and corporal punishment inherited from the English. However, the contention that prisoners would refashion themselves if only given the opportunity to reflect and labor in solitude and silence disregarded the impact of authoritarian regimes of living and work. Indeed, there were significant similarities between slavery and the penitentiary prison. Historian Adam Jay Hirsch has pointed out:

One may perceive in the penitentiary many reflections of chattel slavery as it was practiced in the South. Both institutions subordinated their subjects to the will of others. Like Southern slaves, prison inmates followed a daily routine specified by their superiors. Both institutions reduced their subjects to dependence on others for the supply of basic human services such as food and shelter. Both isolated their subjects from the general population by confining them to a fixed habitat. And both frequently coerced their subjects to work, often for longer hours and for less compensation than free laborers.<sup>16</sup>

As Hirsch has observed, both institutions deployed similar forms of punishment, and prison regulations were, in fact, very similar to the Slave Codes—the laws that deprived enslaved human beings of virtually all rights. Moreover, both prisoners and slaves were considered to have pronounced proclivities to crime. People sentenced to the penitentiary in

the North, white and black alike, were popularly represented as having a strong kinship to enslaved black people.<sup>17</sup>

The ideologies governing slavery and those governing punishment were profoundly linked during the earliest period of U.S. history. While free people could be legally sentenced to punishment by hard labor, such a sentence would in no way change the conditions of existence already experienced by slaves. Thus, as Hirsch further reveals, Thomas Jefferson, who supported the sentencing of convicted people to hard labor on road and water projects, also pointed out that he would exclude slaves from this sort of punishment. Since slaves already performed hard labor, sentencing them to penal labor would not mark a difference in their condition. Jefferson suggested banishment to other countries instead.<sup>18</sup>

Particularly in the United States, race has always played a central role in constructing presumptions of criminality. After the abolition of slavery, former slave states passed new legislation revising the Slave Codes in order to regulate the behavior of free blacks in ways similar to those that had existed during slavery. The new Black Codes proscribed a range of actions—such as vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts—that were criminalized only when the person charged was black. With the passage of the Thirteenth Amendment to the Constitution, slavery and involuntary servitude were putatively abolished. However, there was a significant exception. In the wording of the amendment, slavery and involuntary servitude were abolished “except as a punishment for crime, whereof the party shall have been duly convicted.” According to the Black Codes, there were crimes defined by state law for which only black people could be “duly convicted.” Thus, former

slaves, who had recently been extricated from a condition of hard labor for life, could be legally sentenced to penal servitude.

In the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many as a reincarnation of slavery. The Mississippi Black Codes, for example, declared vagrant “anyone/who was guilty of theft, had run away [from a job, apparently], was drunk, was wanton in conduct or speech, had neglected job or family, handled money carelessly, and . . . all other idle and disorderly persons.”<sup>19</sup> Thus, vagrancy was coded as a black crime, one punishable by incarceration and forced labor, sometimes on the very plantations that previously had thrived on slave labor.

Mary Ellen Curtin’s study of Alabama prisoners during the decades following emancipation discloses that before the four hundred thousand black slaves in that state were set free, ninety-nine percent of prisoners in Alabama’s penitentiaries were white. As a consequence of the shifts provoked by the institution of the Black Codes, within a short period of time, the overwhelming majority of Alabama’s convicts were black.<sup>20</sup> She further observes:

Although the vast majority of Alabama’s antebellum prisoners were white, the popular perception was that the South’s true criminals were its black slaves. During the 1870s the growing number of black prisoners in the South further buttressed the belief that African Americans were inherently criminal and, in particular, prone to larceny.<sup>21</sup>

In 1883, Frederick Douglass had already written about the South's tendency to "impute crime to color."<sup>22</sup> When a particularly egregious crime was committed, he noted, not only was guilt frequently assigned to a black person regardless of the perpetrator's race, but white men sometimes sought to escape punishment by disguising themselves as black. Douglass would later recount one such incident that took place in Granger County, Tennessee, in which a man who appeared to be black was shot while committing a robbery. The wounded man, however, was discovered to be a respectable white citizen who had colored his face black.

The above example from Douglass demonstrates how whiteness, in the words of legal scholar Cheryl Harris, operates as property.<sup>23</sup> According to Harris, the fact that white identity was possessed as property meant that rights, liberties, and self-identity were affirmed for white people, while being denied to black people. The latter's only access to whiteness was through "passing." Douglass's comments indicate how this property interest in whiteness was easily reversed in schemes to deny black people their rights to due process. Interestingly, cases similar to the one Douglass discusses above emerged in the United States during the 1990s: in Boston, Charles Stuart murdered his pregnant wife and attempted to blame an anonymous black man, and in Union, South Carolina, Susan Smith killed her children and claimed they had been abducted by a black carjacker. The racialization of crime—the tendency to "impute crime to color," to use Frederick Douglass's words—did not wither away as the country became increasingly removed from slavery. Proof that crime continues to be imputed to color resides in the many evocations of "racial profiling" in our time. That it is possible to be targeted by the police for no other reason than the color of one's skin is not mere specu-

lation. Police departments in major urban areas have admitted the existence of formal procedures designed to maximize the numbers of African-Americans and Latinos arrested—even in the absence of probable cause. In the aftermath of the September 11 attacks, vast numbers of people of Middle Eastern and South Asian heritage were arrested and detained by the police agency known as Immigration and Naturalization Services (INS). The INS is the federal agency that claims the largest number of armed agents, even more than the FBI.<sup>24</sup>

During the post-slavery era, as black people were integrated into southern penal systems—and as the penal system became a system of penal servitude—the punishments associated with slavery became further incorporated into the penal system. "Whipping," as Matthew Mancini has observed, "was the preeminent form of punishment under slavery; and the lash, along with the chain, became the very emblem of servitude for slaves and prisoners."<sup>25</sup> As indicated above, black people were imprisoned under the laws assembled in the various Black Codes of the southern states, which, because they were rearticulations of the Slave Codes, tended to racialize penalty and link it closely with previous regimes of slavery. The expansion of the convict lease system and the county chain gang meant that the antebellum criminal justice system, which focused far more intensely on black people than on whites, defined southern criminal justice largely as a means of controlling black labor. According to Mancini:

Among the multifarious debilitating legacies of slavery was the conviction that blacks could only labor in a certain way—the way experience had shown them to have labored in the past: in gangs,



subjected to constant supervision, and under the discipline of the lash. Since these were the requisites of slavery, and since slaves were blacks, Southern whites almost universally concluded that blacks could not work unless subjected to such intense surveillance and discipline.<sup>26</sup>

Scholars who have studied the convict lease system point out that in many important respects, convict leasing was far worse than slavery, an insight that can be gleaned from titles such as *One Dies, Get Another* (by Mancini), *Worse Than Slavery* (David Oshinsky's work on Parchman Prison),<sup>27</sup> and *Twice the Work of Free Labor* (Alex Lichtenstein's examination of the political economy of convict leasing).<sup>28</sup> Slave owners may have been concerned for the survival of individual slaves, who, after all, represented significant investments. Convicts, on the other hand, were leased not as individuals, but as a group, and they could be worked literally to death without affecting the profitability of a convict crew.

According to descriptions by contemporaries, the conditions under which leased convicts and county chain gangs lived were far worse than those under which black people had lived as slaves. The records of Mississippi plantations in the Yazoo Delta during the late 1880s indicate that

the prisoners ate and slept on bare ground, without blankets or mattresses, and often without clothes. They were punished for "slow hoeing" (ten lashes), "sorry planting" (five lashes), and "being light with cotton" (five lashes). Some who attempted to escape were whipped "till the blood ran down their legs"; others had a metal spur riveted to their feet. Convicts dropped from exhaustion, pneumonia,

malaria, frostbite, consumption, sunstroke, dysentery, gunshot wounds, and "shackle poisoning" (the constant rubbing of chains and leg irons against bare flesh).<sup>29</sup>

The appalling treatment to which convicts were subjected under the lease system recapitulated and further extended the regimes of slavery. If, as Adam Jay Hirsch contends, the early incarnations of the U.S. penitentiary in the North tended to mirror the institution of slavery in many important respects, the post-Civil War evolution of the punishment system was in very literal ways the continuation of a slave system, which was no longer legal in the "free" world. The population of convicts, whose racial composition was dramatically transformed by the abolition of slavery, could be subjected to such intense exploitation and to such horrendous modes of punishment precisely because they continued to be perceived as slaves.

Historian Mary Ann Curtin has observed that many scholars who have acknowledged the deeply entrenched racism of the post-Civil War structures of punishment in the South have failed to identify the extent to which racism colored common-sense understandings of the circumstances surrounding the wholesale criminalization of black communities. Even antiracist historians, she contends, do not go far enough in examining the ways in which black people were made into criminals. They point out—and this, she says, is indeed partially true—that in the aftermath of emancipation, large numbers of black people were forced by their new social situation to steal in order to survive. It was the transformation of petty thievery into a felony that relegated substantial numbers of black people to the "involuntary servitude" legalized by the Thirteenth Amendment. What Curtin suggests is that these

charges of theft were frequently fabricated outright. They “also served as subterfuge for political revenge. After emancipation the courtroom became an ideal place to exact racial retribution.”<sup>30</sup> In this sense, the work of the criminal justice system was intimately related to the extralegal work of lynching.

Alex Lichtenstein, whose study focuses on the role of the convict lease system in forging a new labor force for the South, identifies the lease system, along with the new Jim Crow laws, as the central institution in the development of a racial state.

New South capitalists in Georgia and elsewhere were able to use the state to recruit and discipline a convict labor force, and thus were able to develop their states’ resources without creating a wage labor force, and without undermining planters’ control of black labor. In fact, quite the opposite: the penal system could be used as a powerful sanction against rural blacks who challenged the racial order upon which agricultural labor control relied.<sup>31</sup>

Lichtenstein discloses, for example, the extent to which the building of Georgia railroads during the nineteenth century relied on black convict labor. He further reminds us that as we drive down the most famous street in Atlanta—Peachtree Street—we ride on the backs of convicts: “[T]he renowned Peachtree Street and the rest of Atlanta’s well-paved roads and modern transportation infrastructure, which helped cement its place as the commercial hub of the modern South, were originally laid by convicts.”<sup>32</sup>

Lichtenstein’s major argument is that the convict lease was not an irrational regression; it was not primarily a throwback to precapitalist modes of production. Rather, it

was a most efficient and most rational deployment of racist strategies to swiftly achieve industrialization in the South. In this sense, he argues, “convict labor was in many ways in the vanguard of the region’s first tentative, ambivalent, steps toward modernity.”<sup>33</sup>

Those of us who have had the opportunity to visit nineteenth-century mansions that were originally constructed on slave plantations are rarely content with an aesthetic appraisal of these structures, no matter how beautiful they may be. Sufficient visual imagery of toiling black slaves circulate enough in our environment for us to imagine the brutality that hides just beneath the surface of these wondrous mansions. We have learned how to recognize the role of slave labor, as well as the racism it embodied. But black convict labor remains a hidden dimension of our history. It is extremely unsettling to think of modern, industrialized urban areas as having been originally produced under the racist labor conditions of penal servitude that are often described by historians as even worse than slavery.

I grew up in the city of Birmingham, Alabama. Because of its mines—coal and iron ore—and its steel mills that remained active until the deindustrialization process of the 1980s, it was widely known as “the Pittsburgh of the South.” The fathers of many of my friends worked in these mines and mills. It is only recently that I have learned that the black miners and steelworkers I knew during my childhood inherited their place in Birmingham’s industrial development from black convicts forced to do this work under the lease system. As Curtin observes,

Many ex-prisoners became miners because Alabama used prison labor extensively in its coalmines. By 1888 all of Alabama’s able male prisoners were leased

to two major mining companies: the Tennessee Coal and Iron Company (TCI) and Sloss Iron and Steel Company. For a charge of up to \$18.50 per month per man, these corporations "leased," or rented prison laborers and worked them in coalmines.<sup>34</sup>

Learning about this little-acknowledged dimension of black and labor history has caused me to reevaluate my own childhood experiences.

One of the many ruses racism achieves is the virtual erasure of historical contributions by people of color. Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment—together with the racist erasure of the significant contributions made by black convicts as a result of racist coercion. Just as it is difficult to imagine how much is owed to convicts relegated to penal servitude during the nineteenth and twentieth centuries, we find it difficult today to feel a connection with the prisoners who produce a rising number of commodities that we take for granted in our daily lives. In the state of California, public colleges and universities are provided with furniture produced by prisoners, the vast majority of whom are Latino and black.

There are aspects of our history that we need to interrogate and rethink, the recognition of which may help us to adopt more complicated, critical postures toward the present and the future. I have focused on the work of a few scholars whose work urges us to raise questions about the past, present, and future. Curtin, for example, is not simply content with offering us the possibility of reexamining the place of mining and steelwork in the lives of black people in Alabama. She also uses her research to urge us to think about the uncanny parallels between the convict lease sys-

tem in the nineteenth century and prison privatization in the twenty-first.

In the late nineteenth century, coal companies wished to keep their skilled prison laborers for as long as they could, leading to denials of "short time." Today, a slightly different economic incentive can lead to similar consequences. CCA [Corrections Corporation of America] is paid per prisoner. If the supply dries up, or too many are released too early, their profits are affected . . . Longer prison terms mean greater profits, but the larger point is that the profit motive promotes the expansion of imprisonment.<sup>35</sup>

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex. If the prison continues to dominate the landscape of punishment throughout this century and into the next, what might await coming generations of impoverished African-Americans, Latinos, Native Americans, and Asian-Americans? Given the parallels between the prison and slavery, a productive exercise might consist in speculating about what the present might look like if slavery or its successor, the convict lease system, had not been abolished.

To be sure, I am not suggesting that the abolition of slav-

ery and the lease system has produced an era of equality and justice. On the contrary, racism surreptitiously defines social and economic structures in ways that are difficult to identify and thus are much more damaging. In some states, for example, more than one-third of black men have been labeled felons. In Alabama and Florida, once a felon, always a felon, which entails the loss of status as a rights-bearing citizen. One of the grave consequences of the powerful reach of the prison was the 2000 (s)election of George W. Bush as president. If only the black men and women denied the right to vote because of an actual or presumed felony record had been allowed to cast their ballots, Bush would not be in the White House today. And perhaps we would not be dealing with the awful costs of the War on Terrorism declared during the first year of his administration. If not for his election, the people of Iraq might not have suffered death, destruction, and environmental poisoning by U.S. military forces.

As appalling as the current political situation may be, imagine what our lives might have become if we were still grappling with the institution of slavery—or the convict lease system or racial segregation. But we do not have to speculate about living with the consequences of the prison. There is more than enough evidence in the lives of men and women who have been claimed by ever more repressive institutions and who are denied access to their families, their communities, to educational opportunities, to productive and creative work, to physical and mental recreation. And there is even more compelling evidence about the damage wrought by the expansion of the prison system in the schools located in poor communities of color that replicate the structures and regimes of the prison. When children attend schools that place a greater value on discipline and security than on knowledge and intellectual development,

they are attending prep schools for prison. If this is the predicament we face today, what might the future hold if the prison system acquires an even greater presence in our society? In the nineteenth century, antislavery activists insisted that as long as slavery continued, the future of democracy was bleak indeed. In the twenty-first century, antiprison activists insist that a fundamental requirement for the revitalization of democracy is the long-overdue abolition of the prison system.