

# Introduction

## *The Idea of Leavenworth and the Prison of Democracy*

The grid lines of the nation's capital city stretch out like a fan from the front of the White House and the back of the US Capitol Building. The streets form radial axes that extend from these centers of federal power, creating places where things come together in central nodes and then radiate out again on the other side of those meeting places. The radial shape is a map of federal power that extends to the center of the nation, to a place that looks like the Capitol Building but is actually a prison. The prison that mimics the capitol was also built on the radial design and was also one of those meeting places. The US Penitentiary at Leavenworth, Kansas, was built in the 1890s as the nation's first prison and the beginning of a federal prison system that radiates from the center of the nation. It was the flagship institution of a carceral state always grounded in a politics of mass incarceration, one that reorganized understandings of the prison's relationship to democracy. It was always a place at the borders.

The building itself was a map of federal power that emerged when federal control over crime and punishment was supposed to be weak. Yet the nation's largest prison construction project, which spanned nearly thirty years, used the front facade of the prison to replicate the image of the Capitol Building as it existed just a short time before in 1850. The prison's argument about federal power was articulated in a front facade made of limestone columns and a massive dome that hovered above two seven-story wings. This facade echoed the architecture of a bicameral legislature, with separate "chambers" for House and Senate.<sup>1</sup> The prison extended over five city blocks and was anchored in walls built forty feet high and buried forty feet below the surface. Those walls were decorated by barred windows and forty-three stairs flanked by stone lions, and were interrupted only by two sally ports, "great bolt-studded portals," that once allowed for the entrance of the

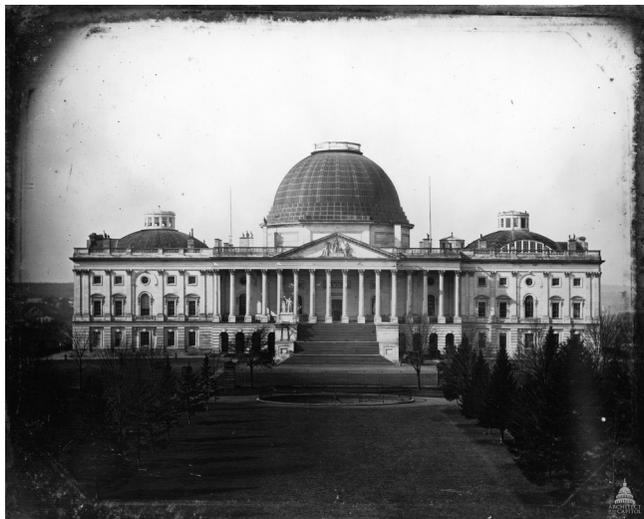


FIGURE 1. John Plumbe, East Front of the Capitol Building, Washington, D.C., 1846. Copyprint from glass negative. Prints and Photographs Division, Library of Congress.

prison train.<sup>2</sup> The train moved symbolically from east to west, introducing ideas about national geography and regionalism into the context of federal punishment. The prison turned “the people’s house” into the Big House by radiating a claim to federalization from the nation’s capital to the nation’s center. In imitating the capitol, Leavenworth created an icon that recalled for the spectator one of the ultimate monuments of American democracy, yet contained freedom’s inverse on its inside.

Leavenworth was an idea about the carceral state set down in brick and mortar in the 1890s, but it was part of a much longer story of the federalization of punishment. The emergence of a national apparatus for dealing with crime occurred long before the 1930s, when the establishment of the Federal Bureau of Prisons supposedly turned federal attention to the matter of punishment, and long before the 1890s, when the prison was built at a very particular set of regional borders. The idea of Leavenworth was born in Indian Territory, survived slavery and abolition in Bleeding Kansas, and finally stood as a post-Reconstruction monument to a certain kind of racial state.<sup>3</sup> It represented in architecture a state that was carceral in its origins, even as state and local jurisdictions assumed, in theory, the burden of crime and punishment. The federal law-and-order project that preceded Leavenworth operated in the shadows of administrative law, increasing in power and capacity through structures and institutions of territory, slavery, and political culture. In the study of mass incarceration, this other shadow carceral state offers lessons not just in the history of state building but in the cultural history of democracy.<sup>4</sup>

Placed at the edges of the city map, Leavenworth was a “city within a city” where the prison became part of a way of life.<sup>5</sup> This was reflected in how the prison was built into the local visual economy. The architects, William Eames and Thomas Young, required in the construction specifications that the prison’s lines be coordinated with the already existing grid lines of the town.<sup>6</sup> The meaning of these radial lines was transmitted through the local newspaper, which followed the prison’s progress from 1896 until the dome’s completion in 1927. The *Leavenworth Times* explained that when “viewed from a distance the building will carry almost identical lines of the central structure of the nation’s capital. Flights of broad stone steps will further carry out the similitude of architectural design.”<sup>7</sup>

The divergence between the idea of Leavenworth and the prison it became grew from disagreements over the meaning of its architecture. Eames and Young proposed to “let the prison face the city” on Metropolitan Boulevard, a landscaped and “beautiful” road that would “open up that section of the town and make it a perpetual and growing thing.”<sup>8</sup> The attorney general’s preference, however, for “plainness and severity” led the architects to abandon these plans for “monumental gateways” connecting the nation to its prison town.<sup>9</sup> Eames and Young wanted a building “as impressive as other national institutions” that would generate praise as a “marvel of custodial architecture.”<sup>10</sup> The final design was praised by the government for its “somewhat Federal appearance.”<sup>11</sup> Eames and Young later cowrote in the *American Architect* only that they were instructed to “ignore all precedent in prison architecture” and to “give to their design . . . the character of the usual Departmental building . . . , consistent with the purposes of the building, and expressive of the dignity of the Federal Government.”<sup>12</sup>

The prison required an audience who would understand its message of democracy and terror. The curious language of Leavenworth’s architecture had cultural and political power as a familiar symbol and as a terrifying inversion. According to Native American political prisoner Leonard Peltier, “The overwhelming size of the place is frightening, made even more bizarre by its silver-painted dome, mockingly reminiscent of the Capitol Building in Washington, D.C.—along with its phalanxes of stone walls and cyclone fences and coils of razor wire, and its empty-eyed stone lions guarding its front steps beneath a looming gun tower—all of it seemingly the work of some demented and sadistic architect, every detail arranged, no doubt, for the sheer nauseating terror of it.”<sup>13</sup>

The prison’s relationship to terror and democracy relied on a connection between the prison’s inside and outside. Letters from the warden describe the tradition of prison tourism and the custom of admitting citizens to Leavenworth in “excursion parties” of fifty to five hundred at a time.<sup>14</sup> In 1910, the Kansas City Railway Company chartered four railroad cars for two hundred “excursionists” who “poured out to the prison.”<sup>15</sup> “The desire to see the New Prison,” the warden wrote, was part of a tradition as old as the 1830s, when Gustave de Beaumont and Alexis de Tocqueville documented how “the people” waited in lines and paid fees

to see buildings “considered [as] belonging to all. . . . The prisons are open to every one who chooses to inspect them.”<sup>16</sup> As crowds “poured out” to Leavenworth, the warden sought to restrict tourism to the “lowest limit compatible with affording the public a reasonable knowledge of what is going on inside.”<sup>17</sup> When public visits were limited to Thursdays by 1907, “crowds” of five hundred to eight hundred people still “besieged the entrance,”<sup>18</sup> and the practice “interfere[d] seriously with the running of the institution.”<sup>19</sup>

When the prison was closed to the public in 1910, the direct relationship between the prison and the citizen was severed and replaced by the more mundane but no less important sound of the prison siren, which extended a full ten miles in each direction to warn of escapes. Local citizens were given printed cards with patterns of blasts as a kind of code. The escape signal was five blasts, fifteen seconds long with five seconds in between, a pattern that was repeated every ten minutes during an escape. The choreographed auralty of the ritual was explained in an accompanying pamphlet that reminded the citizenry that escaped convicts could be “legally arrested by any citizen” and that the \$60 reward remained the same “should the convict be killed in endeavoring to escape or in resisting arrest.”<sup>20</sup> The participatory ritual of hunting fugitives brought Leavenworth into the everyday life of those living in its shadows. Denied access to the institution but written into its script as part of the prison’s security, the citizen was part of a cultural politics of federalized power.

Today, in the nation’s prison town, highway signs along the region’s main road point the way not just to Leavenworth but to a matrix of penal institutions that dot the landscape. In a town with four federal prisons, two military prisons, a state prison, and a county jail, one in four residents is institutionalized. The Kansas State Penitentiary stands unmissable along the main highway. It is a large gothic castle, built during the Civil War of deep red brick, and stands in a residential neighborhood with its own museum on the front lawn.<sup>21</sup> Further down the road, a quick turn to the right reveals the Leavenworth Detention Center, a federal prison operated by Core Civic (formerly known as Corrections Corporation of America) on behalf of the US Marshals Service. The building itself is barely visible because it is wrapped so deeply in barbed wire. The city also has a minimum-security federal prison camp (FPC) and a county jail on Third Street. At the end of the road on the edge of town is the Fort Leavenworth Military Base, the home of the US Disciplinary Barracks, the only maximum-security prison operated by the Department of Defense inside the United States, and the Midwest Joint Regional Correctional Facility, built in 2010. The military reservation shares a perimeter with Leavenworth Federal Penitentiary, which served as the nation’s maximum-security institution from 1896 until 2005, when the facility was downgraded to “medium security” as a federal “correctional institution.” In back of the town, on a stretch of road that seems to crown a community shaped like a cross, the prison stands as a monument, in Peltier’s words, with “every detail arranged for the sheer, nauseating terror of it.”

In a town where the thoroughfares of daily life became roads to the prison, the social life of the community became so intertwined with the institution that even today the history of the town is narrated through the history of the prison. Leavenworth, Kansas, self-identifies as the nation's original "Prison Town, U.S.A.,"<sup>22</sup> and the president of the local guard labor union boasts that "nobody's been doing it longer or doing it better."<sup>23</sup> Billboards along various local highways invite travelers to "do time" in the city or to drink Hard Time Vodka. Brochures for heritage tourism beckon travelers with "How 'bout Doin' Some Time in Leavenworth?" At the local antique mall, T-shirts represent Leavenworth as the nation's expert on punishment, as the "University of Hard Time," and while executions are no longer carried out at the prison, other shirts with symbols of the electric chair offer "Warm Regards" from Leavenworth. The local airport once sold bright orange T-shirts printed with "Property of Leavenworth Penitentiary" and children's shirts that read "Future Guard." It is an identity always on display in the exhibitions of two prison museums and in a town tourist circuit called "The Great Escape."<sup>24</sup> A third museum, proposed but never built, was a \$3 million Regional Prison Museum, to be erected on state prison grounds with federal funding. The museum was to feature a mock prison "complete with fake watchtowers and 12- to 14-foot-tall stone walls" and a gate that "clang[s] behind them." It was described as a "tribute to a major cultural and economic force in northeast Kansas, and its construction would produce major economic dividends for the Leavenworth and Lansing area." Its purpose was to "preserve the culture and memorialize the people that have given their lives" for punishment in Leavenworth.<sup>25</sup>

When Leavenworth's architecture embedded itself in the very shape of the town, it aligned the region with federal control and symbolized the expanded power of the federal government in matters of crime and punishment. The prison's place on the Kansas prairie was significant architecturally because it amplified that power. The view from a distance produced the effect of minimizing the viewer—the dome interrupts the sky, refocusing the audience's eye on the prison's massive reach across the landscape. This reach of the institution across the horizon normalizes the sense of terror that is produced in the building's first encounter, one that recedes into the familiar upon a second look. This shift in perception makes the institution seem smaller, less threatening, more familiar, even benign. This work examines the double function of Leavenworth's architecture—to produce terror and then to normalize that terror—as the key to understanding the dispersed and fragmented sources of the prison's power in the American political imagination.

#### RETHINKING THE POLITICAL GEOGRAPHY OF THE RACIAL CARCERAL STATE

Because prisons are embedded in popular culture and in the everyday visual environment of the regions where they are placed, the nation is continually learning

about and learning to forget about them through the production of “experiential knowledge.” This is why Angela Y. Davis’s *Are Prisons Obsolete?* asks a set of questions about the curious circumstances of the prison’s simultaneous absence and presence in US culture.<sup>26</sup> The penal spectator is subject to what Thomas Dumm has called penal “techniques of pedagogy.”<sup>27</sup> Penal spectatorship references simultaneously the normalizing influence of prison architecture and a method of creating political distance between the prison and the citizen. This distance shields prison spectators from what Michelle Brown describes as “the most fundamental feature of punishment—its infliction of pain.”<sup>28</sup> Because the prison is part of a “series of scripts and roles” through which the spectator learns to naturalize the prison’s place in American political life, the citizen is asked simultaneously to recognize the prison’s authority in the arc of justice and to accept the prison as a settled part of democratic life.<sup>29</sup> Leavenworth, as the foundation of the federal prison system and a building with a national audience, is a site where ideas about state violence and the nationalization of justice were introduced and challenged. It represents an opportunity to read for what came before it, with the hope of understanding how the prison became part of a taken-for-granted political landscape that warrants no attention, even when the building’s architecture makes it impossible not to look.

*The Prison of Democracy* begins with the assumption that the prison has always been one of the central institutions of American democracy. It draws from the work of critical prison studies in questioning the place of the prison in theories of the state and recharts the course of the prison’s historiography, which has been built around disparate fields that focus exclusively on prisons of different scales, times, and regions. Because most accounts of punishment isolate federal and state prisons from their shared histories, scholars have often assumed that national power over punishment remained weak until the formation of the Bureau of Prisons in 1930. To expand the study of state punitive power, this project grounds the placement of the first federal prison in terms of its political geography: the prison’s strategic placement in a specific site of legal instability in order to federalize power over the region. The book begins in the state prisons where federal power over punishment first emerged and traces that power’s origins in the military institution at Fort Leavenworth and in the federal projects of Indian Territory and Bleeding Kansas as ideas about mass incarceration.

The book therefore works against the presumption in much of the literature that mass incarceration is a moment in time rather than a legal status that has always been embedded in the law. Mass incarceration is a political problem not only because it disappears mass numbers of people from society but because the prison is an idea about unfreedom that masquerades as an idea about democracy. This book suggests that to locate the roots of the carceral state in the late twentieth century is to misunderstand the power of the state as a force that regulates, condemns, and assigns status to the body.

With the exponential growth of prisons in the United States, scholars have worked to challenge the emergence of a carceral state and the buildup of a

prison-industrial complex that has resulted in the mass incarceration of nearly three million people.<sup>30</sup> Some have pointed to the War on Drugs in the 1980s and 1990s as the primary cause of a prison-building boom,<sup>31</sup> while others have designated the period of the 1970s and the emergence of a carceral Keynesianism as the root of a recent crisis in punishment.<sup>32</sup> Still others have argued that the problem dates back to the 1950s and 1960s, when the state waged a retributive war against the successes of the civil rights movement and built a “civil rights carceral state” in which the prison became the solution to a problem of individualized racial violence.<sup>33</sup> More recent work has developed a language for thinking about incarceration in the broader context of policing and surveillance, not just in matters of crime, but in the racialized systems of welfare, immigration, and education.<sup>34</sup> American political development and law-and-society scholars have examined how this shadow carceral state operates through administrative detention and other modes of punishment beyond criminal law.<sup>35</sup> A related field of study examines the political consequences of mass incarceration by focusing on felon disenfranchisement and other civic costs of “governing through crime.”<sup>36</sup> Others have historicized mass incarceration in terms of public culture, so that penal culture itself plays a hidden but state-sponsored role in the proliferation of prisons.<sup>37</sup>

This book suggests that each of these critical moments in the history of the twentieth-century prison accelerated the development of state and federal power over matters of punishment. As nodes in the history of an old institution, these new iterations of carceral capacity were developed in fits and starts, guided by a theory of the state with a prison at its center.<sup>38</sup> This assertion repatterns the relationship between mass incarceration as a recent moment in time and the carceral state, which is sometimes understood as having “sprouted in the shadows of mass imprisonment.”<sup>39</sup> This way of reconceptualizing mass incarceration as a legal status perhaps first emerged in the work of Georg Rusche and Otto Kirchheimer, who analyzed the prison as a function of economic conditions and as a site that siphons citizens from labor markets en masse.<sup>40</sup> David Garland has also analyzed the way in which mass imprisonment might be endemic to the state, not just in terms of dramatic increases in the number of people in prison, but also in terms of the way new forms of law target whole communities for punishment.<sup>41</sup> Because mass incarceration is not a period of disproportionate punishment but a theory that constitutes the American state, the history of the US prison system needs to be reperiodized to reflect the entrenched nature of the carceral state. The book takes the long route to a theory of carceral democracy to explore the “historical and social conditions” of the prison’s foundation as a state-building project.<sup>42</sup>

As a study of institutional capacity and change in a state that has always been carceral, this work is part of a larger challenge to the study of state power. It is most concerned with how institutions take on lives of their own as self-reinforcing structures that create new forms of power. To assume that the state has only recently become deeply carceral or that imprisonment has only recently come to define the

state's relationship to the masses is to oversimplify the form of the American state. Scholars of state building and American political development have traditionally described the United States as a weak state form. As Megan Ming Francis has suggested, the "statelessness presumption" of much of the early literature on the American state has been grounded in ideas about state powerlessness.<sup>43</sup> As William J. Novak has suggested, "An enduring and exceptional tendency to view the American state throughout its history as distinctively 'weak' continues to frustrate a reckoning with American power in the twenty-first century."<sup>44</sup> The US state, particularly with regard to matters of punishment, is said to have lacked the institutional capacity to build and direct punitive policy. Even in studies that "bring the state back in," carceral capacity is largely understood in terms of institutional resources.<sup>45</sup>

The analysis of mass incarceration, when restricted to a recent moment in time, relies on the idea that the acceleration of punishment in the postwar era marked a radical departure from the norm. After half a century of "stable" prison populations (the rate of punishment hovered around 110 per 100,000 for most of the twentieth century), a punishment system unique to its time is said to have emerged, breaking with established traditions and fundamentally changing the American political system.<sup>46</sup> This shift has been registered in the way that social science represents the prison in statistical terms, through percentages, rates, and regressions that make mass incarceration visible.<sup>47</sup> Just as social scientific knowledge has produced the terms for describing the increases in the state's carceral capacity, it has also produced the very "crime problems" that have justified a continuing process of reform and retrenchment in "data" that has historically been racialized in its production, organization, and arrangement.<sup>48</sup> Instead of understanding the deeply harmful system of racialized mass incarceration as a departure from a norm, the most recent instantiation of the project of the racial carceral state has to be grounded in an analysis of the racialization of the US prison system over time. The assumption that federal power was absent in the creation of carceral democracy is possible only through a story that begins too late and that obscures what it means to take the prison for granted as a form of justice.

Although the prison population may have been "stable" in the years before the dramatic expansion of the prison population, the "normal" use of cages and walls in a democratic society still created a mass of people who were ensnared in the state's carceral matrix. Almost every state in the union built a prison in the nineteenth century, and the one hundred thousand people they collectively held each year between 1880 and 1930 are not marginal to the history of the carceral state. Nor are the federal prisoners housed in those state institutions for nearly one hundred years before the creation of Leavenworth. This is the key moment of institutional development when the prison was consolidated as a "democratic" institution in politics and culture. The federal and state prison systems are rarely studied as interrelated architectures or parts of a whole, and because the federal

system constitutes a smaller proportion of the overall system, most studies use state prisons to stand in synecdochically as representations of “American punishment.” New York and Pennsylvania are often situated as the origins of American punishment, leaving institutions in other regions on the margins. By focusing on the federal prison system in relation to state-level institutions, this study works against the idea that federal prisons were merely symbolic institutions. In the prison’s relationship to the long arc of American state building, federal authorities directed the course of punishment for the nation through politics and culture, finally creating a flagship institution of the carceral state in 1896.<sup>49</sup> What came before that system was significant because federal power was already imprinted with the forms of capacity that made mass incarceration possible. When examined through this lens, Leavenworth becomes a prism for understanding key moments in the acceleration of federal power over crime and punishment in the context of race, slavery, and settler colonial state building. These legal arrangements were always ideas about punishment.

In addition to reconceptualizing the history of the state, *The Prison of Democracy* draws from the fields of institutional ethnography and political geography to turn the gaze from the prisoner to the institution.<sup>50</sup> The purpose of this book is not to represent what prisoners or prisons are like but to contribute to different ways of understanding the work that prisons do in society. As part of this project, the book spatializes the penitentiary form, building on research in the field of carceral geography, which attends to the “geographical distribution of sites of incarceration across space” and the “affectual and emotional geographies of prison buildings.”<sup>51</sup> Such research—Ruth Gilmore’s *Golden Gulag* analyzing the prison as a “chain of islands” across California, Mona Lynch’s *Sunbelt Justice* discovering a cluster of prisons that stretched from Virginia to Arizona, Robert Perkinson’s *Texas Tough* mapping a “prison belt” that overlays the cotton plantations of an earlier time, and Mishuana Goeman’s “From Place to Territories and Back Again” challenging scholars to understand why prisons like New York’s Auburn are built on sites of colonial conquest—reconceptualizes not only geography but law by showing how the legal regimes of earlier times continue into the present, underlying newer understandings and modes of control.<sup>52</sup> I draw on this work by centering my analysis on what I call “legal time”—the palimpsest of competing legal arrangements in operation during any particular era. And I locate Leavenworth at a series of political borders where North meets South and East meets West, and where the prison was a symbol of law and order set down in the nation’s heartland.

In working to denaturalize through a study of legal culture the connections between prisons and democracy, this book offers a theory of the carceral state that is grounded in the idea of political inversion. The legal subjectivity that the prison produces is the negation of democracy’s subject, while the political status of the prisoner exists in “a dialectical relationship with freedom, as its necessary negation.”<sup>53</sup> The negation of citizenship’s subject and the presence of fractured

subjectivities in a democracy was not exceptional or excessive; it was rather the fundamental basis of liberal governmentality.<sup>54</sup> Because it was always a carceral state, the prison marked the tyranny of liberalism's inversion: it was the "epistemological project of the Enlightenment" and the betrayal of its subject.<sup>55</sup> It incorporated a form of antidemocratic punishment into democracy, and it did so in the name of the people's punishment. As political philosopher and activist Angela Y. Davis has asked, "What if the prison is so . . . tied to democracy, that we cannot undo it much less unthink it without also rethinking the fundamental basis of democracy?"<sup>56</sup> This book asks how the prison, as an institution of state violence, became the quintessentially "democratic" institution on which the whole house of democracy was built.

### LOCATING LEAVENWORTH

Each chapter in this book addresses a different moment in the history of mass incarceration and in the prison's emergence as an idea about justice. Taken together, these moments demonstrate that there was nothing natural about the prison's association with democracy; it was an idea that had to be fashioned over time in culture and politics. Because the history of Leavenworth is almost always told in terms of sensationalized escapes and violent prisoners, this book tries to widen the frame as a study of the state.<sup>57</sup> In telling a story about the carceral state that reconceptualizes mass incarceration, the book reads the prison's official record against the grain in order to study the system as an artifact of power rather than merely to register the state's narrative. This is a methodology that subjectivizes the state, working to find power in gothic architecture, federal Indian law, state and territorial laws, slave records, congressional reports, local newspapers, and moments when things could have been otherwise.<sup>58</sup> The idea of Leavenworth is scattered, like federal prisoners before its time, across an array of institutions. This work therefore relies on an archive culled together from the state's paper trail. This idea of Leavenworth is contained in original blueprints, fabric samples, prison siren cards, and photographs. It is also in letters, memoirs, oral histories, and acts of resistance.

The first chapter examines how a federal system of punishment first emerged in state institutions designed like gothic castles. Focusing on an intergovernmental project that put federal prisoners in state institutions in the years before the building of federal institutions, the chapter historicizes the kind of shift that Leavenworth represented in prison architecture when it abandoned the gothic and asserted its connection to democracy through architecture. The chapter argues that despite Leavenworth's visual frame, the nineteenth-century gothic prison was already wedded to democracy through narratives of freedom, equality, and economy in literature, popular culture, and political thought. The prison was a symbol of the state's relationship, not just to the body of the citizen, but to a form of legal personhood enfolded in a dialectical organization of freedom. Because the

prison was always an idea about mass incarceration, the chapter grounds the emergence of a federal prison system in already existing ideas about the prison house door as a symbol of civil death. It traces how castles and fortresses came to “look like” prisons in the American imagination and outlines a theory of the carceral state that normalized state violence through the meaning of the carceral gothic.

The intergovernmental structure of power that existed before Leavenworth was eventually replaced by a militarized regime of federal punishment. When Congress authorized the building of a federal prison in 1891, it provided no supporting appropriation, and the Department of Justice borrowed the US military prison at Fort Leavenworth, Kansas, for the prison’s first decade. The Secretary of War told a House committee that the Department of Justice could operate the military prison, which consisted of “two cell-houses, with kitchens, shops, laundry, electric plant, boiler houses, chapel and school room, etc., surrounded by a stone wall, twenty feet high.”<sup>59</sup> The three-story institution was built in 1840 as a quartermaster’s depot and was converted into a prison by placing “on each floor a row of steel cages about eight feet high.”<sup>60</sup> In 1896, Congress “set apart from the contiguous military reservation” a plot of land for “United States Penitentiary purposes” and began one of the largest prison construction projects in US history.<sup>61</sup> While the new Leavenworth was being built, the prisoners remained at the old Fort Leavenworth military prison until 1903, with several hundred marched “in columns of four . . . across the field and through the woods to labor in the quarries and on the new prison site.”<sup>62</sup> From 1903 until 1906, “the prison” was a joint operation; some prisoners were housed in the new federal prison, and others remained confined on the military reservation. When the final transfer occurred and a new federal records system was developed, its 418 prisoners were living, not in “the prison” as it existed even a short time later, but in the prison’s laundry room, which had finally been enclosed by the prisoners themselves. When the federal institution was finally built, the majority of its prisoners were from a place called the Indian Territory.

The second chapter focuses on the political significance of the Fort Leavenworth military prison in the history of the settler colonial state and the legacies of Native punishment that were carried forward into Leavenworth. It begins with the trial of John Grindstone, a Shawnee man from the Quapaw Agency of Indian Territory, who was prosecuted in federal court for killing a Peoria man named Joe Sky on Quapaw land. When Grindstone became Leavenworth’s first prisoner, it was because of a legal architecture that federalized “Indian crime” and “Indian punishment” in the 1880s and led Native people to Leavenworth as a mass. Because of its relationship to Fort Leavenworth, when Congress fully federalized all “Indian crime” with the Major Crimes Act of 1885, Leavenworth was already imagined as a place for punishing Indians. Locating the idea of Leavenworth in the Indian Territory as a bound space of control, the chapter examines how punishability became a legal relation, creating forms of subjectivity rooted in the concepts of group guilt,

substitution punishments, and “enemy nations.” Because the nation’s first prison was designed to punish Native people, the chapter historicizes what it meant to choose Fort Leavenworth as the site for the nation’s first prison.

As part of the history of the carceral state, Indian Territory and the federal prison that followed are forms of settler colonial justice that require shifts in the conceptualization of American statelessness. Because the settler colonial state is also a carceral state, it relies simultaneously on a “logic of elimination” and on modes of punishment that discipline targeted populations and administrate and imagine colonial spaces “like prisons.”<sup>63</sup> The settler colonial state relies on a politics of forced recognition to claim criminal jurisdiction over sovereign nations; to assume that the American state has only recently been carceral is to overlook the legacies of carceral capacity that began in the Indian Territory.

Chapter 3 focuses on another legal arrangement that brought federal power to Kansas. In the aftermath of Indian Territory, the legal doctrines of squatter and popular sovereignty led to Bleeding Kansas, a period of civil war over slavery at the Kansas-Missouri border. The chapter looks for the idea of Leavenworth in the legacy of a legal arrangement defined by competing claims to the right to govern the territory by proslavery Missourians and antislavery Kansans. The people of abolition Kansas rejected slavery and refused to abide by federal or territorial law, leading to the development of a local justice tradition in which law was practiced by the people rather than by the state. Federal law was seen as an invading force that protected the interests of slavery and punished abolition Kansas in makeshift prisons, in Missouri jails, and in Fort Leavenworth’s military guardhouse. As an assertion of federal power over local practice, Leavenworth disrupted the interrelated and customary practices of squatter and popular sovereignty, which imagined the work of punishment as the work of “the people.” In these legal borderlands, Leavenworth disrupted local ideas about democracy in a moment when abolition justice might have ended the congenial institutions of slavery and prisons. The prisonization of Kansas drew on those older traditions but rerouted collective power into state power, separating the memory of the prison from the memory of Bleeding Kansas. This chapter puts the prison back into the story of Bleeding Kansas, returning to a landscape without law to explain the cultural upheavals required to bring the nation’s first federal prison to Kansas. In this context, Leavenworth was a monument to the carceral state.

Chapter 4 turns to the most gothic of borders between slavery and freedom in order to explain the racialization of the penitentiary form. Locating Leavenworth at the end of a line, the chapter examines how the federal prison crowned a regional constellation of penal institutions that traced the North-South border, stretching from Maryland to Virginia to Kentucky and Missouri. The chapter uses the framework of the border prison to understand how Leavenworth carried forward the carceral capacities of slavery into a postemancipation legal time. As border states became “northern” and “southern” institutions after slavery’s end, the presence of

slaves in prisons in the border states was overshadowed, along with the carceral matrix of “slave jails” that existed throughout the South. This was a system overlaid by “federal slave law,” which created a carceral apparatus to regulate the course of fugitive hunts and slave punishments. Within this carceral state, slavery was imagined as a form of mass incarceration.<sup>64</sup> As part of the history of federal punishment, it was connected to the prison as an institution not only in terms of the bodies targeted and the unfree labor extorted from them but in terms of the status assigned to those bodies.<sup>65</sup> These were also connections forged in the landscape.<sup>66</sup>

This chapter traces how an already existing network of punitive institutions for slaves made it possible to imagine the prison as a “Black institution.” On this basis, some southern states refused the penitentiary in the legal time of slavery but became leaders and innovators in a new generation of postwar prison building. The chapter begins with a map of these two institutional frameworks—the embrace of the prison as part of slavery in the border states and its rejection in key southern states—and reorients Leavenworth at the border between slavery and freedom. The chapter argues that the racialization of the penitentiary form is part of the legacy of the nationalization of the border prison as an idea about managing Black freedom.

Building on the analysis of the prison as a racial script in the previous chapters, chapter 5 offers a cultural history of mass incarceration and mass resistance. The chapter begins by examining how federal authorities developed a structure of segregation beginning in 1914 and used the social spaces of prison leisure to draw lines around racialized groups and maximize federal control. The chapter details the mass incarceration of political prisoners in 1917, including prisoners who came to Leavenworth as political activists in the Industrial Workers of the World, the Black Twenty-Fourth Infantry, and the Partido Liberal Mexicano. These activists built movements that worked across the prison’s walls to force the contradictions of group guilt, criminalized speech, and federal violence into the public eye and into the courts. The chapter examines this work in relation to that of a later generation of activists at Leavenworth in the early 1970s who used federal law to try to dismantle the carceral state. As a history of social movements at Leavenworth, the chapter focuses on the analysis of mass incarceration that comes from political prisoners and on ways of working across difference that undermine the power of the carceral state.

The book’s postscript begins in the 1970s, when the carceral state is said to have emerged in the wake of mass incarceration. It was instead another moment in the history of the prison’s consolidation in American politics and in its legal enclosure from public regulation. In a time that was supposed to mark the beginning of mass incarceration, Leavenworth was already at the end of its institutional life but was reborn in the rebuilding of the federal prison system as a place for immigrants and a place where violence necessitated a regime of securitization so severe that the courts turned a blind eye. In ending with another moment of institutional

buildup, the analysis returns to the question of the prison's relationship to democracy and imagines what it would mean to redesign a theory of the state that would not be bound to the project of the prison. It urges political scientists and prison abolitionists to reimagine a theory of justice that refuses to take the prison for granted as a "democratic" institution. In the space between the prison's rejection and its revivification, the book ends by imagining new terrains of democracy and belonging in the prison's aftermath.

Each chapter traces a moment in the history of mass incarceration in order to denaturalize the prison and acknowledge its status as a contested institution. Taken together, *The Prison of Democracy* tries to locate moments when justice might have meant something else. Each chapter historicizes the prison's status and staying power as a democratic institution and puts the prison at the center of American political history, a place where it has always resided, even as the prison's normalization as a taken-for-granted aspect of political life has depoliticized its status as an institution. In locating Leavenworth at the intersections of political geography and legal time, the book works to subjectivize prisons, not to give them a rational life, but to show how the prison is an idea about civil death that haunts the political landscape. In the service of seeing prisons differently, as cages with cultural and political consequences for the meaning of democracy, this book historicizes punishment in order to imagine a more radical future.