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The Emergence, Reception, and Decline of the Pennsylvania System and its Relevance to Italian Penal History

SOMMARIO: 1. Introduction – 2. Emergence: The Three Models of Solitary Confinement – 3. Reception: The Social Construction of Penal Deviance – 4. Decline: The Multiple Deaths of the Pennsylvania System – 5. Conclusion: The Relevance of the Pennsylvania System to Italian Penal History.

1. *Introduction*

The Pennsylvania System of long-term solitary confinement, showcased at Philadelphia's Eastern State Penitentiary (sometimes called «Cherry Hill») between 1829 and the 1870s, was one of the early models on offer as states around the world considered how to reform their jails and prisons throughout the nineteenth century. Although considered a viable contender in many European countries, the Pennsylvania System was «more popular in Italy than in many European nations», according to prison historian Mary Gibson¹. There, both before and after Unification, the Pennsylvania System was not only seriously considered and debated by multiple generations of reformers and administrators across Italy's different states, it was specifically advocated for by different reformers, including Carlo Peri, Carlo Cattaneo, Camillo Cavour, and endorsed by a commission appointed by Prime Minister Bettino Ricasoli; it was even adopted for several decades in Piedmont and Tuscany². Although in practice, the Pennsylvania System did not have a major impact on Italian prison design and practice, its role in these debates, which ultimately shaped Italian penality, makes the Pennsylvania System an important development for understanding Italian prison history.

In this chapter, I describe the emergence, reception, and decline of the Pennsylvania System in the United States and across the nineteenth-century Atlantic world³. The Pennsylvania System emerged iteratively in response

¹ M. Gibson, *Italian Prisons in the Age of Positivism, 1861-1914*, London 2019, p. 47.

² Ivi, pp. 36-40, 56-57.

³ For this chapter, I draw on research I report in my book and other works. See especially A.T. Rubin. *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins*

to multiple experiments and failures with incarceration and solitary confinement; throughout this period. Although the Pennsylvania System was (and still is) often criticized for its reliance on solitary confinement, we must remember that solitary was a popular approach for organizing prisons throughout this period; it was the *type* of solitary confinement the Pennsylvania System featured that critics targeted. Indeed, when the plan was finally carried into action at Eastern, some skeptics would not be placated, but other early critics were initially swayed by the safeguards the designers had installed to avoid the bad outcomes many feared solitary would produce. Several years into the prison's operations, however, insights into the actual practice at Eastern led to renewed, and even more intense, criticism and scrutiny that would last for decades. The focus on Eastern's extreme regime helped reduce the focus on the dangers of its main competitor, which suffered from many of the same challenges critics warned about at Eastern, but with less notoriety.

While the Pennsylvania System's popularity in the United States continued to wane over time, it lived another life entirely behind the scenes at Eastern State Penitentiary. The reality of Eastern's day-to-day routines was often quite different from the idealized Pennsylvania System its administrators and supporters claimed characterized prison life, just as the idealized routines at other prisons likewise were not followed in practice. Prison administrators often manipulated the routines to ensure better outcomes on the very issues – cost and health – that critics scrutinized most.

Over time, these deviations from the formal regime became greater; the reason for these deviations, however, shifted from protecting the prison's reputation to confronting astronomical overcrowding that threatened the very heart of the Pennsylvania System. As Eastern's administrators continued to adjust, the prison came more and more into conformity with the standard routines followed at other American prisons.

Despite the changes in actual practice at Eastern over time, it is important to recognize how much the perception of the Pennsylvania System mattered more than the reality. That perception was collectively and contentiously shaped by supporters and critics, prison administrators and penal reformers, prisoners and journalists⁴. Their efforts had a lasting

of America's Modern Penal System, 1829–1913, Cambridge 2021. The current chapter summarizes and states more forcefully some of the key points that I have made in my research, but that I made more subtly as background points because they were secondary to the research question that drove my book.

⁴ See also A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, in «Law & Society Review», 49/2 (2015), pp. 365-399; P. Goodman - J. Page - M. Phelps, *Breaking the*

impact on the style of prisons adopted throughout the United States and beyond. And their efforts continue, to this day, to shape the discourse around incarceration and solitary confinement⁵. Moreover, despite critics and proponents' claims about the Pennsylvania System's exceptionalism – either superiority or deviance – it is important to recognize just how much its implementation had in common with other approaches' realities, a point I revisit in the conclusion of this chapter. As such, we can see how even this exceptional case reveals basic, perennial realities of prison administration.

2. *Emergence: The Three Models of Solitary Confinement*

The Pennsylvania System emerged at a time when the United States and other Western powers were grappling with the question of how to punish – effectively, humanely, and legitimately. Over the course of the eighteenth century, some American colonists and some of their European counterparts were becoming uncomfortable with the heavy reliance on capital and corporal punishments. They saw these punishments as ineffective at deterring other criminals; barbaric and inconsistent with Enlightenment principles or the changing, more liberal religious views circulating at the time; or wasteful of laborers or members of society who perhaps could be redeemed and transformed into useful citizens⁶.

The American Revolution provided the new states with the opportunity and some additional motivation or justification to change their constitutions and penal codes, in many cases severely limiting the number of crimes for which capital punishment could be used and even further limiting the

Pendulum: The Long Struggle Over Criminal Justice, New York 2017.

⁵ I make this argument in the Conclusion of A.T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*. See also A.T. Rubin - K. Reiter, *Continuity in the Face of Penal Innovation: Revisiting the History of American Solitary Confinement*, in «Law & Social Inquiry», 43/4 (2018), pp. 1604-1632.

⁶ See especially M. Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Penalty: An American History*, Cambridge 2002; L.P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865*, New York 1989; D. Brion Davis, *The movement to abolish capital punishment in America, 1787- 1861*, in «The American Historical Review», 63/1 (1957), pp. 23-46. See also A.T. Rubin. *The prehistory of innovation: A longer view of penal change*, in «Punishment & Society», 20/2 (2018), pp. 192-216.

use of corporal punishment, replacing it with hard labor or confinement in a local jail⁷.

However, just as capital and corporal punishment had come under fire, so too had the local jails, which were often dirty, poorly maintained, poorly supervised, disease-infested, and overcrowded. Humanitarian reformers objected to the pain and suffering, in some cases having experienced jail conditions themselves during the Revolution. However, they also were driven by more practical concerns. As jails contained a mix of people – those awaiting trial, those awaiting punishment, those being held over until they could testify in court, paupers and vagrants, prostitutes, debtors and their families, and others – reformers worried about the moral health of the facilities as well, particularly the influence of hardened criminals on their non-criminal fellow inmates. Jails were believed to be criminogenic, spreading not just disease but criminality. Reformers thus took aim at these facilities as well, complicating the growing preference for using incarceration as a form of punishment⁸.

After various failed experiments with hard labor, states increasing turned to the new institution of the prison⁹. This first-generation of prison, what I call «proto-prisons»¹⁰, was essentially a reformed jail; the first such prisons appeared in Massachusetts (1785) as a military fort on an island, a coal mine in Connecticut (1790), and a reformed jail in Pennsylvania (1794). The latter was Philadelphia's Walnut Street Prison (first reformed as a jail in 1790 and then made a state prison in 1794), which followed a model laid out by British penal reformer John Howard in his treatise, *The State of the Prisons in England and Wales*¹¹. Walnut Street was the most

⁷ A.T. Rubin, *Penal change as penal layering: A case study of proto-prison adoption and capital punishment reduction, 1785–1822*, in «Punishment & Society», 18/4 (2016), pp. 420-441. For the historiographic debate over the role of the American Revolution, see A.T. Rubin, *Early US Prison History Beyond Rothman: Revisiting The Discovery of the Asylum*, in «Annual Review of Law and Social Science» 15/1 (2019), pp. 137-154.

⁸ See M. Meranze, *Laboratoires of Virtue*, cit.; A.T. Rubin, *The prehistory of innovation*, cit.; H. Elmer Barnes, *The Historical Origin of the Prison System in America*, in «Journal of the American Institute of Criminal Law and Criminology», 12/1 (1921), pp. 35-60; T. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States*, Madison 1987; A.J. Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America*, New Haven 1992.

⁹ M. Meranze, *Laboratoires of Virtue*, cit.; A.T. Rubin, *The prehistory of innovation*, cit.

¹⁰ A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The prehistory of innovation*, cit.

¹¹ J. Howard, *The State of the Prisons in England and Wales, with Preliminary Observations, and an Account of Some Foreign Prisons*, Warrington 1777.

influential of the first three state prisons and became the model for the new prisons built across the country and beyond.

Despite initial claims of success, these new proto-prisons soon proved a disappointment, with Philadelphia reformers clamoring for a new prison and other improvements in the 1800s and 1810s. Indeed, around the country, the older proto-prisons began imploding with fires set by the inmates, escapes, riots, and even a crime wave, likely caused by the depression following the War of 1812 but blamed on the proto-prisons which were widely decried as «schools of vice»¹². Importantly, in Walnut Street's original plan, the prison was expected to impose round-the-clock solitary confinement on the most serious offenders; in practice, solitary was only used as a short-term punishment for refractory prisoners, a point reformers noted as they called for the return to solitary confinement¹³. It was in this context that the Pennsylvania System emerged.

Groups of reformers, particularly in Philadelphia, but also scattered around in other cities (soon, especially Boston and New York), debated suggestions for what to do instead. While some reformers called for a return to capital and corporal punishment, many advocated instead for what they saw as a return to the original principles that motivated the Walnut Street Prison¹⁴. Foremost among them was solitary confinement, which reformers argued would provide adequate controls (prisoners cannot plan escapes and riots if they cannot communicate with one another), reformation (solitude encouraged quiet reflection and the pangs of conscience to do their work), and ultimately prevented prisoners from contaminating one another. The question that emerged was what form this solitary confinement should take¹⁵.

The first model proposed was *solitary confinement around the clock*: no contact, no distractions. It was what most commentators meant when they called for solitary confinement. This approach was authorized and

¹² A.T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.; R.M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776-1941*, New York 2008; M. Meranze, *Laboratoires of Virtue*, cit.

¹³ A.T. Rubin, *Penal change as penal layering: A case study of proto-prison adoption and capital punishment reduction, 1785-1822*, cit.; M. Meranze, *Laboratoires of Virtue*, cit.

¹⁴ A.T. Rubin, *Penal change as penal layering: A case study of proto-prison adoption and capital punishment reduction, 1785-1822*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.; Ead., *A Neo-Institutional Account of Prison Diffusion*, cit.

¹⁵ A.T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit., Chapters 1-2.

implemented at New York's Auburn State Prison in 1821 and then copied by Maine State Prison in 1823. It was also strongly favored in Philadelphia and was authorized and implemented at Pennsylvania's Western State Penitentiary in 1826. However, this approach had disastrous results. The program at Auburn was stopped in 1823 due to prisoner decompensation (mental and physical health problems, including self-injury and suicide); it was also shut down for similar reasons in Maine. Western was able to avoid the worst of the consequences because prison administrators ultimately did not fully implement this system: the cells of the new prison had been constructed to be too small and poorly ventilated to allow solitary confinement around the clock, so administrators let prisoners work in the yards and help construct the prison, which enabled some to escape¹⁶.

The second model proposed was *solitary confinement at night with silent collective labor during the day*. This approach was innovated at Auburn State Prison in 1821. While Auburn had employed total solitary confinement in that year, they had only used that approach on the ostensibly worst offenders; the rest of the prisoners were subjected to this hybrid approach that restricted solitary to the night alone. When total solitary confinement ended in 1823, those who survived joined the rest of the prisoner population in this approach, which ultimately became known as the Auburn System, the Congregate System, or the Silent System. This approach was copied by most other states in the following years and decades and continued to influence new prison design in the United States well into the twentieth century¹⁷.

Despite its ultimate popularity, reformers heavily debated the merits and limitations of the Auburn System. Its primary advantage over total solitary confinement was that it allowed prisoners to engage in hard labor – another favorite feature of the early punishments, though to instill discipline and recoup the expense of maintaining prisoners under lengthy sentences. The Auburn System borrowed from the nascent rise of factories, which were also viewed as using a particularly efficient form of labor. However, reformers expressed concern that physical separation was not enough and prisoners would still «pollute» one another. They also did not

¹⁶ Ivi, Chapters 1-2. On Auburn specifically, see W.D. Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848*, Ithaca 1965; R. McLennan, *The Crisis of Imprisonment*, cit.

¹⁷ W. Lewis, *From Newgate to Dannemora*, cit.; R. McLennan, *The Crisis of Imprisonment*, cit.; A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.

approve of the use of the whip, which overseers used to discipline prisoners for talking, not working, or not working quickly enough. Some reformers argued that prisoners' proximity to one another without the ability to talk was tortuous. Likewise, they also fretted that a preference for profit would take precedence over efforts to ensure prisoners' rehabilitation, particularly when a third approach seemed more likely to produce rehabilitation and less likely to produce profit. Finally, reformers warned that prisoners would still find ways to communicate and, if nothing else, they could recognize each other upon release, making it harder to have a fresh start after prison¹⁸.

The third and final approach suggested was *solitary confinement around the clock, but in larger, well-ventilated cells and with individual labor, education, and visits from approved visitors (members of a local penal reform society) and staff*. This approach was promoted by Philadelphia's penal reform society and was popular among some other penal reformers around the country and across the Atlantic, especially those who were not convinced by the Auburn System. It was ultimately authorized at Pennsylvania's Eastern and Western State Penitentiaries in 1829 (it was implemented at Eastern in 1829 and Western around 1835), and then copied by Rhode Island (1838) and New Jersey (1844). This approach became known as the Pennsylvania System or the Separate System. Some other countries also adopted the approach, but overall it remained a minority model in large part because of extensive criticism¹⁹.

While both the Auburn System and the Pennsylvania System were hotly debated, the Pennsylvania System took the brunt of the scrutiny. Critics argued that even this modified version of solitary confinement would still cause physical and mental health problems. They also argued that solitary confinement was cruel and inhumane. Others argued more practically that the Pennsylvania System would be too expensive to construct (with the larger cells), with minimal profit from prisoner labor (prisoners could only perform workshop-style labor like crafts alone within their cells by comparison to the factory-style labor of the Auburn System). Finally, reformers warned that prisoners would find a way to communicate and «pollute» each other or prison administrators would need to deviate from the system to make it workable. As I have argued elsewhere, the similarity

¹⁸ Ead., *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.

¹⁹ Ead., *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.

between the Pennsylvania System and total solitary confinement was likely too great for many reformers and they continued to look to earlier failures – the insanity and self-harm at Auburn or the workarounds at Western – and believed a repeat of these was inevitable. Indeed, Eastern’s administrators quickly stopped using the term «solitary confinement» because of its connotations with the earlier experiments, insisting instead on the label «separate confinement»²⁰.

3. Reception: The Social Construction of Penal Deviance

What is important to understand is that the Pennsylvania System was not immediately reviled by all. Despite the Auburn System’s ultimate popularity, both systems were seriously considered and debated. When states began authorizing their first modern prisons, they sent delegates and commissions to visit the existing prisons, especially the models at Auburn and Eastern. Dozens of pamphlets, letters, and articles were written about the systems in nationally circulated publications like the *North American Review* or in penal reform societies’ annual reports. Although pro-Auburn System reformers were initially critical of the Pennsylvania System, when disaster did not strike in its first several years, they relented. Indeed, by the early 1830s, they viewed the Pennsylvania System as a *variation* of the Auburn System rather than a truly distinct system, counting Eastern as one of the many prisons that had copied the Auburn model. Moreover, the Pennsylvania System at Eastern was *celebrated* by commentators in Pennsylvania and beyond. American and European reformers described these prisons and their systems as signs of enlightenment, progress, and humanity and called for more powers to follow their example²¹.

But the generally favorable reception of the Pennsylvania System changed in the mid-1830s. In 1834-35, word spread of controversy at Eastern: the legislature was called to investigate claims of administrator misconduct, including embezzlement, inappropriate (sexual) behavior (between male

²⁰ Ead., *The Deviant Prison: Philadelphia’s Eastern State Penitentiary and the Origins of America’s Modern Penal System, 1829-1913*, cit.; Ead., *A Neo-Institutional Account of Prison Diffusion*, cit. As changing a punishment’s name is a long-stand strategy, see also A.T. Rubin - K. Reiter, *Continuity in the Face of Penal Innovation*, cit.

²¹ A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia’s Eastern State Penitentiary and the Origins of America’s Modern Penal System, 1829-1913*, cit.

administrators and a female staff member), authorizing prisoners to work outside their cells, and torture-based punishments resulting in the death and insanity of two prisoners. Although the legislature generally cleared the administrators of wrongdoing, while still chiding them for authorizing prisoners to leave their cells (which administrators defended as consistent with the law), the testimony uncovered by the investigation became the evidence critics needed to prove their concerns. From 1835 onward, Auburn supporters scrutinized Eastern (and to a lesser extent other prisons on the Pennsylvania System)²².

It is at this point that Eastern truly became what I call the «deviant prison». I mean this in two senses. First, Eastern used an atypical prison system: by this point, a strong majority of states had adopted the Auburn System and although New Jersey and Rhode Island would soon adopt the system, they would also come to abandon it (see Fig. 3). Eastern's rarity thus set it apart, liable to become a praised innovator or a hated deviant. It became the latter as we see in the second sense²³.

Second, the Pennsylvania System was seen to be an inferior, dangerous, and immoral approach to organizing prisons. It is here where we see the social construction behind how reformers evaluated prison systems. From the late 1830s through the 1850s, there were no more discussions of the Pennsylvania System as a minor variation of the Auburn System; instead, it was seen to be an entirely different approach. As reformers and other commentators scrutinized Eastern's annual reports, pointing out the number of fatalities and diseases, reviewing the costs and profits, and picking apart the administrators' defenses of their prison system, there was little recognition that Auburn System prisons had similar problems²⁴.

Instead, Eastern was described as a uniquely terrible prison because of its reliance on the Pennsylvania System. For example, one commentator for the *North American Review* wrote in 1848, «[W]e cannot believe that even Pennsylvania will any longer allow the prison at Philadelphia, with its annual train of horrors, to cast an opprobrium on the justice and

²² Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829–1913*, cit., esp. Chapter 4.

²³ Ead., *A Neo-Institutional Account of Prison Diffusion*; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829–1913*, cit.

²⁴ Ead., *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829–1913*, cit.

humanity of the State»²⁵. Famously, Charles Dickens excoriated Eastern and especially its administrators in his published travel diary, although he praised Auburn – the famous advocate of the downtrodden was apparently unbothered by its use of the whip or the discomfort of prisoners' inability to speak while in each other's company²⁶. Even today, the Pennsylvania System is still remembered (by many) as the worse system, compared to the Auburn System, because it used solitary confinement and led to bad outcomes, even though Auburn also used solitary and also saw prisoners dying, going insane, and getting sick, all while their profits to the state were intermittent at best²⁷.

4. *Decline: The Multiple Deaths of the Pennsylvania System*

Amazingly, it was not the extensive criticism of the Pennsylvania System that killed it. But then, before we can say what brought about the end of the Pennsylvania System, we must be clear that it suffered multiple deaths.

If the end of the Pennsylvania System is defined as whenever administrators stopped implementing the Pennsylvania System, then we can date its first death to the prison's opening in 1829. As administrators testified at the investigation of 1834-1835, almost as soon as Eastern received its first prisoner, prisoners were taken from their cells and employed around the prison – in the blacksmith shop, in the kitchen, in the laundry, to clean up, to help with carrying supplies, and so on. While administrators defended these actions as consistent with the rules – as long as prisoners did not spy another prisoner, the rule of separation was respected – it is clear from other archival evidence, including the diary of a prisoner reformer who visited the prison regularly, as well as the reports of the prison visiting committee of the local penal reform society, letters

²⁵ F.C. Gray, *Prison Discipline in America*, in «The North American Review», 66/138 (1848), pp. 145-190, p. 190.

²⁶ C. Dickens, *American Notes*, ed. Patricia Ingham, London 2000 [1842]; A.T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.

²⁷ See R. McLennan, *The Crisis of Imprisonment*, cit.; D.J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic*, New York 2002 [1971]; A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, cit.; Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit.

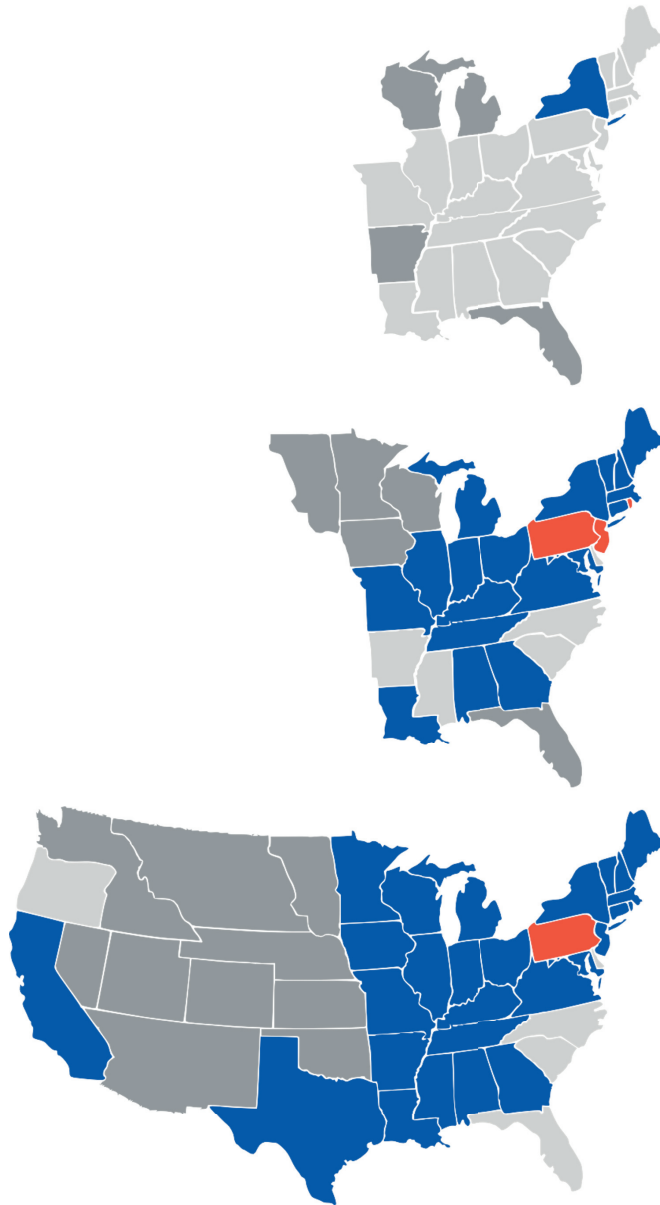


Figure 1. Modern Prison Adoption by Prison System, 1821-1860. Reproduced from A.T. Rubin, *A Neo-Institutional Account of Prison Diffusion*, in «Law & Society Review», 49/2 (2015), pp. 365-399.

clandestinely exchanged between prisoners, internal labor reports from the prison, and other documents left behind that prisoners continued to work around the prison, engaging with delivery men, and occasionally even interacting with one another. Likewise, prisoners were occasionally housed two-to-a-cell when one prisoner was showing signs of mental illness – the company of a sane prisoner was thought to slow their decline. Through these and other small ways, administrators consciously broke or bent the rules of the Pennsylvania System throughout its first several decades, all while they defended the Pennsylvania System against criticism and efforts to modify it²⁸.

Some commentators, however, assume that the end came for the Pennsylvania System when overcrowding hit in 1866. The end of the Civil War hit the economy hard. Combined with the influx of soldiers suffering from what we now call post-traumatic stress disorder and generally struggling to reacclimatize to normal life or even find a job in a contracted economy, a crime wave inevitably followed and prison populations around the country skyrocketed. By 1866, Eastern contained far more prisoners than cells (let alone usable cells) and administrators began routinely double-celling prisoners to compensate. Eastern would never again have enough cells to employ solitary confinement for all of their inmates²⁹.

However, I would argue that routine double celling in from 1866 onward did not mark the end of the Pennsylvania System. In the early years of overcrowding, Eastern's administrators continued to defend the Pennsylvania System, especially in its pure form (they did not generally discuss their workarounds publicly and were infuriated when others – former prisoners or disgruntled guards – revealed these practices). They repeatedly begged the legislature for funds to construct new cell blocks that would enable them to return to their use of «separate confinement.» Indeed, the only violation of the Pennsylvania System that they publicly acknowledged in this time was the one forced upon them by overcrowding. They still tried to maintain the Pennsylvania System the best they could in these years³⁰.

²⁸ See especially Ead., *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit., Chapters 7-8; see also A.T. Rubin, *Resistance or Friction: Understanding the Significance of Secondary Adjustments*, in «Theoretical Criminology» 19/1 (2015), pp. 23-42; A.T. Rubin, *Resistance as Agency? Incorporating the Structural Determinants of Prisoner Behaviour*, in «British Journal of Criminology», 57/3 (2017), pp. 644-663.

²⁹ A.T. Rubin, *The Deviant Prison: Philadelphia's Eastern State Penitentiary and the Origins of America's Modern Penal System, 1829-1913*, cit., Chapter 10.

³⁰ *Ibidem*.

Instead, I have argued that the end of the Pennsylvania System came in the 1870s. We cannot say exactly when the end came because it was a gradual transition over several years; the process actually began in the 1850s. We see this transition most clearly in the terminology Eastern's administrators used when describing what they were doing. Increasingly, they stopped using the phrases «separate confinement» or «separate system» and began referring to their «Individual Treatment System». In this period, administrators began describing their routines differently, emphasizing different practices and benefits of the system in ways that were more consistent with contemporary beliefs about punishment. Although these rhetorical shifts do not appear to reflect an actual change in the practices of the Pennsylvania System, other changes in the 1860s and 1870s did: in those years, we see other changes around the prison that generally broke down the sources of separation between prisoners and the rest of society. For example, prisoners were now allowed to read newspapers and receive letters from their families; under extraordinary circumstances, prisoners received visitors³¹.

I have argued that the reason the Pennsylvania System finally came to an end in the 1870s was not the threat of overcrowding, although that certainly did not help. Rather, it was that Eastern's administrators no longer *needed* the Pennsylvania System.

Much to my surprise when researching Eastern, I learned that it was not the local penal reformers or the legislature who were responsible for keeping the Pennsylvania System going, but its administrators. On the contrary, the local penal reformers and legislature repeatedly jeopardized and attacked the Pennsylvania System, seeking to ameliorate its most severe features or simply neglecting its needs. It was Eastern's administrators who had defended against these attacks as well as criticism from the Auburn camp – all the while privately justifying their own workarounds (violations of the Pennsylvania System) as ways of protecting the Pennsylvania System³².

While some of these men truly believed in the Pennsylvania System, that was not a compelling explanation for their continued defense, particularly when the truest believers were the most likely to jeopardize the system at Eastern. Instead, I identified a more selfish reason for their defense. In the process of defending the prison and the Pennsylvania System, these men had the opportunity to describe themselves as enlightened and benevolent administrators of the world's most humane, reformatory, and progressive

³¹ *Ibidem*.

³² *Ibidem*.

prison. Each criticism only gave them more license to describe themselves in glowing terms³³.

Eventually, however, their defenses shifted from the prison and the Pennsylvania System to their own status as professional penologists. By the late 1850s and 1860s, the Auburn–Pennsylvania debate had subsided and with it criticism of Eastern. With the debate virtually over, the administrators lost their legitimate opportunities to describe themselves as benevolent gentlemen running a superior prison. Instead, they increasingly focused their attention on one of their earlier claims to excellence: their expertise in the field of penology. When other men like Wines, Dwight, and Brockway emerged as the nation’s leading penologists – and particularly when they shunned Eastern’s annual reports – Eastern’s administrators grew jealous. Likewise, when the local penal reformers sought to intervene in state penal policy without consulting them first, they were similarly infuriated. Eastern’s administrators increasingly focused their energies on convincing readers of their professional bonafides and less on the glories of the Pennsylvania System.

In this context, they no longer needed the Pennsylvania System, which could not help them anymore. They gave up on the Pennsylvania System and moved on to more contemporary ideas about crime and punishment, including the idea of inherited criminality, which also did not support the need for the Pennsylvania System. They stopped referring to the Pennsylvania System as such or the benefits of solitary or separate confinement, turning instead to their system of individual treatment, claiming to be the true innovators of seemingly new ideas about punishment circulating in international prison congresses. Overtime, Eastern came to look more and more like other prisons, with more prisoners working together in workshops and some living in a new multi-tiered cellblock similar to the Auburn Style architecture. Even whipping, a practice Eastern’s administrators had long excoriated, came to Eastern³⁴.

The final end for the Pennsylvania System came in 1913. By that time, the Pennsylvania System had been dead for around four decades. In the 1900s, an entirely new generation of men took over Eastern’s administration – men who had not worked at Eastern when it followed the Pennsylvania System, men with no allegiance to the Pennsylvania System or the men who had defended it. This new generation pointed to the disconnect between the law that still required separation and the long-

³³ Ivi, Chapter 6.

³⁴ Ivi, Chapters 9-10.

standing practice of double celling and congregating prisoners. This new generation was uncomfortable with violating the law they were expected to uphold. Interestingly, they also expressed a practical concern as they criticized the practice of double-celling prisoners, insisting that prisoners should be either held in solitary or held in a three-person cell (to avoid intimate relations that may occur if only two are in a cell). Although it took the legislature several more years to respond, they formally deauthorized the Pennsylvania System by allowing the congregation of prisoners³⁵.

5. Conclusion: The Relevance of the Pennsylvania System to Italian Penal History

In exploring the emergence, reception, and decline of the Pennsylvania System, I have sought to demonstrate that Eastern's «deviance» was socially constructed rather than an intrinsic feature of its prison regime. In understanding that the Pennsylvania System emerged at a time when solitary confinement was popular, we see that it was not out of step with reigning ideas at the time. We also see how opinions changed about the Pennsylvania System, not because the ideas central to the Pennsylvania System changed and not because of objective differences in outcomes between Eastern and other prisons as critics claimed, but because perceptions changed in response to competing public relations campaigns that emphasized different information. Finally, when we see that even the decline of the Pennsylvania System complicates the question of whether the Pennsylvania System was ever truly implemented, we also see that how its advocates and critics discussed the Pennsylvania System mattered more than its on-the-ground reality.

How does this history inform the history of Italian carceral facilities, half a world away and, in many cases, decades later? Most directly, we can identify the influence either of the Pennsylvania System on European developments or of European developments on the Pennsylvania System. But we can also consider at a more abstract level what the history of the Pennsylvania System says about prison history more generally, including developments in Italy by identifying unexpected similarities and differences between the U.S. developments discussed here and the histories of Italy's diverse penal institutions discussed in the rest of this volume.

As we have seen, the debate over the appropriate model of prison

³⁵ Ivi, Chapter 10.

discipline, which eventually narrowed to the debate between the Auburn and Pennsylvania Systems, was an international debate. Heads of state and representatives from multiple countries toured the two model prisons and others in the United States (as well as Pentonville in England, which in turn was influenced by American developments), while an international community of penal reformers, politicians, and interested intellectuals weighed in on the important questions about how (and whether) humans should be incarcerated. Most famously, British author Charles Dickens (mentioned above) and political theorist Alexis de Tocqueville and his colleague Alexander de Beaumont visited Eastern and other American prisons to see and judge for themselves, and then weigh in on the debate. But Eastern's warden's log and log of visitors reveal other important visitors, including Mexican President General Ignacio Comonfort; Edward, Prince of Wales (accompanied by a duke, a lord, and an earl); Napoleon III; the Prince de Joinville (son of former King of the French Louis Philippe); and Brazilian Emperor Dom Pedro, among others³⁶. As noted in the Introduction and as multiple contributions in this volume attest, Italian reformers considered the Auburn and Pennsylvania models when deciding how to design their newly reformed prisons both before and after Unification. The Pennsylvania System received the endorsement of the International Prison Congress held in Frankfurt-am-Main Germany in 1846 and at least one English committee at the 1872 Congress held in London. As Laurence Soula documents in this volume, European representatives eagerly visited Eastern State Penitentiary in 1910, paying homage to the original model prisons, only to find – to their surprise – that the Pennsylvania System was no more. Ultimately, although some countries copied the Auburn or Pennsylvania models, many countries ultimately transformed American ideas to fit their own social context³⁷ and adopted them for their own distinctive reasons, some of which had less to do with crime control than other issues of power and legitimacy³⁸.

Although American reformers used ideas developed by Europeans –

³⁶ *Ibidem*. On prison visiting, see also J. Miron, *Prisons, Asylums, and the Public: Institutional Visiting in the Nineteenth Century*, Toronto 2011.

³⁷ M. Gibson, *Global Perspectives on the Birth of the Prison*, in « The American Historical Review », 116/4 (2011), pp. 1040-1063. doi: 10.1086/ahr.116.4.1040. eprint: /oup/backfile/content_public/journal/ahr/116/4/10.1086/ahr.116.4.1040/3/116-4-1040.pdf. url: <http://dx.doi.org/10.1086/ahr.116.4.1040>.

³⁸ M. Meranze, *Histories of the Modern Prison: Renewal, Regression, and Expansion*, in P.E. Knepper-A. Johansen (eds.), *The Oxford Handbook of the History of Crime and Criminal Justice*, New York 2016, pp. 672-694.

Italian Cesare Beccaria and Brit John Howard, especially – often crediting their influence or citing their works in justification of American plans, Americans saw their «experiments» first at Walnut Street and then at the second-generation prisons like Eastern as American innovations. They were the home-grown punishments that were described as more appropriate to a democracy, and not the old punishments forced on them by the British king and Parliament³⁹. From our vantage point today, however, these claims seem somewhat contradictory. What becomes even more surprising is how American prisons like Auburn and Eastern were indeed influential in Europe, including the very countries who spawned the ideas that made American prisons possible. The leading historian of Eastern's architecture explained: «In one of those strange twists of history and cultural diffusion, the radial plan originally developed in British and European prisons was not widely used for large prisons in Europe until after it had been transplanted to the United States by Haviland [Eastern's architect]. Although the architect had derived his inspiration for Cherry Hill and Trenton [New Jersey State Prison] from jails and mental hospitals in Ireland and England, it was his refinement of those plans in the United States rather than their own earlier buildings that provided the British and other countries their models for subsequent prisons»⁴⁰. One lesson the endogenous and complicated process of transplanting ideas about punishment reveals for historians is we must not simply assume that one idea influenced another because of their similarity and timing; instead, we must trace the path of influence through direct references in the archival sources⁴¹.

But beyond the question of the Pennsylvania System or American prisons' direct and indirect influence on European and Italian developments and vice versa, this history also shows more generally interesting points of similarity. My brief history has revealed the importance of certain concerns including the cost of running a prison and whether prisoner labor could turn a profit, the difficulties of maintaining the mental and physical health of human beings in long-term confinement, ethical and moral considerations about appropriate forms of punishment and the extreme conditions we can subject humans to, moral and practical questions about

³⁹ See A.T. Rubin, *Early US Prison History Beyond Rothman: Revisiting The Discovery of the Asylum*, cit.

⁴⁰ N. Johnston, *The World's Most Influential Prison: Success or Failure?*, in «The Prison Journal», 84/4 (2004), pp. 20-40, 32.

⁴¹ See also R. Evans, *The Fabrication of Virtue: English Prison Architecture, 1750-1840*, Cambridge 1982.

how to ensure punishment is sufficiently punitive, questions over how to rehabilitate people whose behavior we condemn as criminal, difficulties over interpreting and applying the relevant laws that govern punishment, the seemingly omnipresent threat of overcrowding, and the challenges of trying to ensure penal reforms indeed bring about change⁴². As I have written elsewhere, these concerns are recurrent throughout American penal history; I think of them as fairly essential and unavoidable for any attempt to use long-term incarceration as punishment, at least where the goal is to maintain the prisoners rather than having little concern about whether they die⁴³.

It should not be surprising, then, that multiple contributions in this volume show these same concerns coming up in disparate Italian contexts – across different regions of Italy, across different historical periods, and across different types of carceral facilities, from jails to prisons to reformatories to penal colonies. Beyond these generic similarities, we find more specific similarities that perhaps result from similar social contexts despite the differences in place and time. For example, America's «republican machines» – one reformers' name for prisons – were intended to convert criminals into useful, industrious, and productive citizens⁴⁴, but as Mary Gibson describes (in this volume), this phenomenon was also a goal of the reformatory at Tivoli after Unification. It is thus striking that despite important cultural, social, demographic, economic, and political differences, we find these interesting similarities. In these ways, even the Pennsylvania System's history of deviance and exceptionalism can be useful to scholars of penal facilities in other times and places.

⁴² Although I did not discuss it here, we could add to this list the omnipresence of misbehavior, sometimes termed resistance, on the part of prisoners, prison staff, and prison administrators as well. For a discussion of prisoner and some staff misbehavior at Eastern, see A. T. Rubin, *Resistance or Friction: Understanding the Significance of Secondary Adjustments*, cit.; Ead., *The Consequences of Prisoners Micro-resistance*, in «Law & Social Inquiry», 42/1 (2017), pp. 138-162; Ead., *Resistance as Agency? Incorporating the Structural Determinants of Prisoner Behaviour*, cit. I also discuss multiple examples of administrative rule violations in my book.

⁴³ A.T. Rubin, *That Time We Tried to Build the Perfect Prison: Learning from Episodes Across U.S. Prison History*, in D. Moran-Y. Jewkes-K.-L. Blount-Hill-V. St. John (eds.), *The Palgrave Handbook of Prison Design*. London, 2023; Ead., *The Birth of the Penal Organization: Why Prisons Were Born to Fail*, in H. Aviram-R. Greenspan-J. Simon (eds.), *The Legal Process and the Promise of Justice*, New York 2019, pp. 23-47.

⁴⁴ M. Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835*, cit.