

# American Justice

*Two distinct takes on the folly of our prison policies*

BY SASHA ABRAMSKY

OVER THE PAST CENTURY AND A HALF, prison reformers have generally looked to the South with a mixture of rage, resignation, and despair. Southern prisons were long seen as a national embarrassment: a naked and entirely retrograde abuse of power, all in the name of states' rights. But that changed during the four decades following the election of Richard Nixon, as an increasingly conservative (and often southern) national leadership rewrote the playbook around criminal justice, as it did in so many other areas of our collective life.

With overt racism no longer acceptable, large numbers of voters transferred their allegiance to politicians who made none-too-veiled references to "law and order," "moral decay," and "urban collapse," thereby harnessing white anxieties without ever explicitly talking about race. The respectable fears of Nixon's Silent Majority profoundly altered the national conversation about crime and punishment, drug addiction, policing, and prison expenditures. In so doing, they reshaped the lives of millions of Americans.

Texas, as Robert Perkinson argues in his sprawling, ambitious *Texas Tough*, led the way. "All of Texas's principal institutions—its political and legal systems, its economy and cultural mores—rested on a bedrock fracture: exalted liberty secured through systematic debasement," he writes. "As in other southern polities that later coalesced into the Confederacy, Texas developed criminal justice traditions uniquely suited to the political economy of human bondage."

Perkinson explores the ways in which Texan "justice" evolved its own patterns of behavior. There was the use of courts and prisons to "protect" a postwar white society from freed black slaves and their descendants; the rigid implementation of society's racial caste system behind bars; and a reliance on prisoners' hard labor. The state's jails and prisons encouraged a set of brutal and humiliating punishment rituals: guards were allowed to whip inmates with a leather strap well into the modern era, and rape was widely tolerated as a mechanism of institutional control.

**Texas Tough:  
The Rise of America's  
Prison Empire**  
By Robert Perkinson  
Metropolitan Books  
496 pages, \$35

**Orange Is the New Black:  
My Year in a Women's Prison**  
By Piper Kerman  
Spiegel & Grau  
320 pages, \$25

*TEXAS TOUGH* (THE TITLE OF WHICH was borrowed from an October 2000 report by the Justice Policy Institute) details a post-1968 sea change in the country's attitude toward crime and punishment. As America became more conservative during that period, national politicians and criminal-justice experts stopped looking to the South as a target for reform. Instead, the region began to be regarded as a no-nonsense paradigm that could serve as a model for the rest of the country.

"After following a southern strategy to the White House," recounts Perkinson, "Republicans began making American criminal justice a lot more southern." Racism and racial stereotyping were core parts of this transformation. But as with so much else that is unpleasant in modern politics, it came with dollops of plausible deniability. The war on drugs, for example, had a racially disproportionate impact. Yet proponents could always claim that the law was color blind, that people were being sentenced to do hard time for their crimes, not their social status.

For Perkinson, this trend reached its zenith during the tenure of George W. Bush. As Texas governor, Bush presided over more executions and built more prisons than any of his peers in other states. As president, he brought many of the worst traits associated with "Texas justice" to the Federal Bureau of Prisons—and, by extension, to the overseas prison camps institutionalized as a core component of the War on Terror. "Remarkably," Perkinson writes, "Mr. Bush twice presided over the largest and fastest-growing prison system in the nation, first as governor, then as president."

And what has been the result of this expansion of Texas-style justice? There are more than two million Americans living behind bars on any given day, many of them for drug offenses that would have been better dealt with via treatment or community service than incarceration. We are stuck with burgeoning state budget deficits as criminal-justice expenditures run amok, and a growing mental-health crisis inside prisons. Even the very landscape has been physically altered by the construction of hundreds of prisons in recent decades, most of them in poor, remote regions of the country.

Perkinson's argument is hardly revelatory. Several other writers, including Marie Gottschalk, Christian Parenti, Jonathan Simon, and (in the interest of full disclosure) myself, have written books exploring the interplay of conservative political movements, many of them originating in the South, with criminal-justice trends. This interplay is crucial for understanding how and why America entered an era of mass incarceration in the early 1970s. Paradoxically, during the very years in which political and cultural freedoms were dramatically expanded, we as a society chose to incarcerate more and more offenders, for longer and longer stretches of time, in worse and worse conditions. Perhaps it's the yin and the yang of modernity: greater freedom and opportunity for the majority, coupled with increasingly coercive responses and deprivations of liberty for the impoverished, recalcitrant minority.

That said, this framework, so useful for understanding nearly four decades of public policy, has recently become somewhat dated. In the post-Bush era, faced with staggering deficits and a restive populace, many states are starting to roll back their most extreme tough-on-crime policies and sentences. Incarceration rates are flattening, and in some states actually falling, and the federal government is, in fits and starts, recasting the war on drugs as a public-health issue. Even Texas, the poster child for all that is tough in American criminal justice, is taking some baby steps toward improving its prison conditions and limiting the numbers entering the system in the first place.

Still, Perkinson tells a generally compelling (if overlong and occasionally unfocused) story, which blends history, cultural commentary, folklore, and ethnography. Just as important, he tells it in a way that takes readers on an eminently horrifying journey into America's own heart of darkness. We read about inmates suffocated to death in punishment cells known as "holes," and of others fatally beaten on a whim by guards or by other, favored prisoners. Post-Civil War fortunes, the author notes, were regularly amassed on the backs of prison labor. And the businessmen who made these fortunes frequently became the

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supreme power brokers when it came to shaping the very criminal-justice system that had so lavishly rewarded them.

Some of the horrors documented in *Texas Tough* have at least nominal economic rationales. Others seem entirely senseless, visions straight out of Dante's nine circles of hell. At one point the author examines testimony from the *Ruiz* trial, a famous, lengthy court case that eventually resulted in the entire Texas prison system being declared unconstitutional. Of one particular prison, he writes: "Neglect at the infirmary also led to depredations by inmates. A young man named Euris Francis, for example, almost died when he lost both arms in a threshing machine, which he had been ordered to use without proper safety equipment. At the hospital, he underwent emergency surgery and had his amputations bandaged. He was then left alone on the ward, where another patient took advantage of his helplessness and raped him. 'The man without the arms was crying,' testified a witness."

You can't make up stuff like this.

AS A GENRE, PRISON WRITING (AS WELL as prison music, photography, and film) has a long pedigree in America. From the earliest days of the republic, citizens, political leaders, and overseas commentators have been fascinated by stories of crime and punishment. Changing attitudes toward religion, toward ideas of redemption, even toward sexual mores, can be charted by exploring shifting criminal justice trends, or by listening to the songs written and sung by prisoners over the centuries.

Piper Kerman's beautifully written *Orange Is the New Black* is destined to become a classic in this genre. In its introspective tone, it is more similar to South African anti-apartheid activist Albie Sachs's *Jail Diary* than it is to, say,

Mumia Abu-Jamal's denunciatory communiqués from Pennsylvania's death row. From time to time she does lambast The Man, mocking the absurdities of current incarceration practices and the politics behind them. Yet the bulk of Kerman's narrative is a journey of self-discovery, describing how one can find one's true strengths during moments of adversity. It is akin to the great blues songs, written by Lead Belly and other prisoner-troubadours, which Perkinson quotes so admirably in his work on Texas.

As a young woman fresh out of Smith College, Kerman got marginally involved with an international drug-smuggling ring. For a few months, she couriered bags of dirty money around the world. Then, disillusioned with the lifestyle, and increasingly aware of the insane risks she was taking, she cut off her connections with the underworld. Ten years later, her old crimes caught up with her. She was indicted, accepted a plea deal (very capably negotiated by her private attorney), and was sentenced to fifteen months in a women's federal prison.

Kerman is a rarity among the hundreds of thousands of men and women living out their youth and middle age behind bars for playing supporting roles in the epic drama that is the modern-day drug trade. She was white, educated, affluent, with a strong support structure out in the free world. Her felony conviction was unlikely to block the way to further employment opportunities after her release. But inside Danbury, the low-security prison in Connecticut to which she was sent, she became a number like every other prisoner: 11187-424.

Part of what makes the book so readable is the fact that Kerman isn't consumed with self-pity. Nor does she stress how different she was from the other inmates. In fact, she notes gleefully that there were certain improbable similari-

ties between the privileged, all-female environment of a liberal arts college and that of a women's prison.

"There was less bulimia and more fights than I had known as an undergrad," she recalls, "but the same feminine ethos was present—empathetic camaraderie and bawdy humor on good days, and histrionic dramas coupled with meddling, malicious gossip on bad days."

Where Perkinson has the outside observer's eye for macro detail (sometimes in overwhelming quantities), Kerman takes readers through her own bizarre, depressing, sometimes hilarious, and deeply touching interactions within the federal prison system. It's an interesting companion work to *The Man Who Outgrew His Prison Cell*, penned by former bank robber Joe Loya, and to Ted Conover's *Newjack*, the chronicles of an undercover journalist working as a correctional officer in Sing Sing.

The juxtaposition between *Texas Tough* and *Orange Is the New Black* is fascinating, and makes them well worth reading together. Perkinson writes mainly about male prisoners, and the closer he gets to the contemporary era, the more he focuses on the abysmal conditions in high-security facilities. Kerman focuses on female prisoners—a population often ignored in recent prison literature, with notable exceptions being Silja Talvi's *Women Behind Bars* and Jennifer Gonnerman's *Life on the Outside*. And she writes about low-security inmates, who occupy a whole different (if still debilitating) universe.

In contrast to Perkinson's litany of horrors, Kerman details a world where boredom, or the inability to laugh at the unintentionally absurd, is a more pervasive threat to one's integrity than being shanked on the way to chow hall or raped in the showers. *Orange Is the New Black* documents the author's attempts to preserve her individuality in the face of a gray, impersonal bureaucracy—one based around prisoner counts, strip searches, rules governing the minutiae of life, and continual reminders that prisoners, by definition, have no power, no real autonomy.

"Time was a beast, a big, indolent immovable beast that wasn't interested in my efforts at hastening it in any direction," she writes of the strange daily

rhythms of life behind bars. Later in the book, she observes, "No one who worked in 'corrections' appeared to give any thought to the purpose of our being there, any more than a warehouse clerk would consider the meaning of a can of tomatoes, or try to help those tomatoes understand what the hell they were doing on the shelf."

Perkinson describes a world of gangs and rigid racial loyalties, where weakness invites predators to "turn out" inmates in a series of unfathomably violent rapes. Kerman, by contrast, explores the formation of prison "families," complex relationships in which some women become "mothers," others become "daughters" or "sisters." Her book is punctuated with touching rituals: new prisoners being provided with soap, shower shoes, and other necessities by a "welcome committee" of old-timers, or mothers interacting with their children during vis-

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iting hours. Holidays like Mother's Day, Halloween, and Thanksgiving take on huge import, opportunities to decorate the dull, institutional walls and to fantasize about lives unfettered by prison regulations. And Kerman dwells on the small joys of her incarceration, whether it's an illicitly cooked dinner or jogging in the prison yard, the cacophony of her surroundings drowned out by her favorite radio show playing through her commissary-issued headphones.

THE STORY OF AMERICA'S MODERN-day experiment with mass incarceration—a process that has, over the past forty years, turned the country into the world's busiest jailer—is overwhelmingly a saga of futility. The more people we lock up, the angrier we get when criminals continue to commit crimes. And our response seems to exemplify

the old definition of madness: repeating the same thing over and over again while hoping for different results. We ramp up our criminal-justice expenditures and build more prisons. The war on drugs in particular has wasted hundreds of billions of dollars over the past decades, pursuing pointless and stunningly punitive solutions to intractable social problems.

Despite all evidence to the contrary, we have put our faith in the penal system's ability to eradicate addiction, mental illness, poverty, and under-education. That it has failed to do so ought to surprise nobody. Prisons, as both Perkinson and Kerman relate, are unpleasant places, institutions where conditions range from miserable to downright deadly.

No doubt there are some people so violent, so predatory, so dangerous to the broader society that they need to be incarcerated. But the premise that society is best served by locking up an ever-increasing swath of the population strikes me as an absurdity. Neither the mores of the Texas Department of Corrections nor the routines of Danbury truly rehabilitate people or prepare them for a law-abiding, functional second act in the outside world.

Want to know how to vote the next time a politician runs on a gimmicky "tough-on-crime" platform? Read *Texas Tough* or *Orange Is the New Black*—or both. And then, if you really want to be tough on crime, vote for better funding for drug-treatment centers, for more money for schools and after-school programs, for job-training opportunities for poor kids on the cusp of adulthood. Alternatively, you could vote to lock up more people. But then you must hope against hope that this time around, your hard-earned tax dollars won't simply churn out more damaged ex-cons with no economic prospects and a whole lot of bitterness to bring back into their communities. And as Perkinson and Kerman both suggest, that's more likely a delusion than a realistic hope. **CJR**

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