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Sara M. Benson
a
a San Jose State University, USA
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A Political Science of Punishment: Francis Lieber and the Discipline of American Prisons

Sara M. Benson
San Jose State University, USA

Abstract This article examines the history of political science in relation to the history of the prison. It considers how theories of the state in political science have assumed that proper states should punish with prisons, and traces these ideas to the work of Francis Lieber, the first academic political scientist in the USA. Because his ideas about prison reform were central to his conceptualization of the discipline as a science of punishment, his theory of the state is an understudied part of the history of mass incarceration. Lieber argued that the state had a moral duty to punish its citizens with the prison, and an obligation to manage the risks of democracy through the prison’s principles of scientific certainty, less eligibility, and disciplinary solitude. By examining the life and work of Francis Lieber, this article offers new ways of thinking about political science’s past, and its status as part of the history of the American prison.

In 1986, the South Carolina Department of Corrections opened the Francis Lieber Correctional Institute (LCI) as a high-security institution designed to house violent offenders. LCI’s primary task within the larger state system was to confine inmates with “behavioral problems,” and to manage the state’s Death Row. According to the prison’s website, “[i]nmates...are closely supervised and their activities and movement[s] within the institution are highly restricted” by solitary cells, double fencing, and “extensive electronic surveillance.” The design of LCI reflected the securitization of the penitentiary form that took place across the US in the 1980s, as well as the political philosophy of the actual Francis Lieber, who developed political science as a science of punishment in the nineteenth century. Because he put the prison at the center of his theory of the state, his ideas about the American prison contributed to the future of mass incarceration, and fundamentally shaped the formation of political science as a discipline.

Lieber’s political imagination was defined in many ways by a science of the prison’s punishments. His emigration to the USA in 1827 resulted from his suspect status as a German political prisoner. His first book, Stranger in America (1835), recounted his four months in a Prussian prison, and described his emigration to the US as a form of escape. Having fought for his liberal beliefs in the war for Greek independence, a fight that left him severely injured and

1 South Carolina Department of Corrections website, available online at: http://www.doc.sc.gov/InstitutionPages/Institutions.htm.
2 Ibid.
rescued from amongst the dead,³ Lieber recalled in *Stranger in America* that he “feared nothing so much as to be taken prisoner when wounded.”⁴ He soon became known in American intellectual circles for his *Encyclopaedia Americana* (1829–1831), where he first imagined a home for political science in the American academy. His theory of liberal governance, as it developed in the USA, included a “science of police” as a central part of his statecraft. This science of police first appeared in his *Encyclopaedia Americana*, alongside natural law, political theory, political economy, state history and practice, statistics, public and constitutional law, and the law of nations as subfields of an emerging discipline.⁵

After twenty years of practicing political science under the rubric of History and Economics at South Carolina College, he became widely regarded as the “father of political science” through his formal appointment in 1856 as Columbia University’s Professor of History and Political Science.⁶ Although Columbia had intended for Lieber to continue the more conventional configuration of history and economics, Lieber requested the re-designation to reflect his real contribution to American intellectual traditions.⁷ In the nineteenth-century transition “from discourse to discipline,”⁸ Lieber created the conjoined study of “History and Political Science” at Columbia, which he believed represented “the greatest branches in the greatest city of the greatest Union.”⁹

In bringing the academic field of political science into being, Lieber linked his ideas about a science of the state to the science of punishment. The search for the political origins of mass incarceration must therefore examine the history of political science as a field, a field that has traditionally presumed that a proper state should have a proper prison. When Lieber’s ideas reappeared as the namesake of a South Carolina prison in 1986, they were part of a moment


when drug war politics accelerated prison construction into the 1990s, as conservative law and order politics joined with racial liberalism to build a prison nation. In 1986, prison reform was shaped by ideas about “new” custodial architectures and carceral Keynesianisms that addressed the economic turmoil of Cold War decline by removing particular segments of workers from civic status. The 1986 Anti-Drug Abuse Act presented the prison as the only “solution” to social problems actually endemic to monopoly capitalism, as it disappeared people from communities of color and working-class communities through a bipartisan effort to institute mandatory minimum sentences and revised federal drug schedules, and to reinforce the political conditions of saturated policing and surveillance. Alongside President Ronald Reagan’s 1986 campaign promise to restore “Morning in America,” Lieber the prison drew on an earlier moment of racial incapacitation, one in which the actual Francis Lieber practiced slavery in South Carolina and worked to institute a system of racial governance that would sustain the state in moments of crisis. Lieber Correctional Institute therefore drew on the philosophy of Francis Lieber to return the prison system in South Carolina to an older moment of the prison’s “scientific” certainty, and to the practices of solitary confinement and capital punishment.

While the literature on Francis Lieber’s life and work often celebrates his role as the founder of political science, it largely ignores his work on prisons as institutions of governance. Despite prison reform’s status as “the cause he held most dear,” scholars have separated Lieber’s interest in penology from his science of the state. The primary consequence of the prison’s treatment as a separate intellectual project is that the very punitive mechanism Lieber believed was indispensable to the maintenance of state power in democracies, particularly those “burdened” by the forces of equality, immigration, and crime, remains unexamined. Between 1983 and 2001, the prison was largely absent from at least four conferences held in honor of Lieber: the 1983 Institute for Southern Studies Conference at the University of South Carolina, the 1995 Cardozo Law School Symposium on Legal and Political Hermeneutics, the 1998 gathering in Scottsdale, Arizona entitled “Francis Lieber and the Pursuit of Liberty,” and the 2001 symposium on “Francis Lieber and the Culture of the Mind.” Lieber’s political biographers have also marginalized his “social” studies of prisons in Pennsylvania, New York, and South Carolina, focusing instead on his

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13 The 1995 symposium was honored in the April 1995 issue of Cardozo Law Review. Introduced by Michael Hertz, the edition reprinted Lieber’s Legal and Political Hermeneutics. The proceedings of the 2001 gathering, which was part of the 200th Anniversary of South Carolina College and University, were published as Francis Lieber and the Culture of the Mind.
contributions to political theory, linguistics, and military studies. The prison’s excision from the secondary literature on the nation’s first political scientist not only ignores his contributions to prison reform, but also erases his investment in the future of the prison from the founding of political science. Because no studies have connected his work on prisons to his science of statecraft, this article examines the role of the discipline’s past in the future of mass incarceration.

Although Lieber explicitly defined the discipline as a perfection of the state’s ability to punish, the discipline’s founding relation to prisons remains outside its own historical narrative. The prison’s transfer, as a curricular object, from political science to criminology and penology meant that by 1986, political science no longer recognized itself as part of the penitentiary’s past. Even after critical and post-structuralist challenges to the way political theorists conceptualized power, prisons largely remained outside the boundaries of the discipline. Michel Foucault’s *Discipline and Punish* (1975) traced the history of the prison to the origins of psychology, penology, and criminology, but did not mention political science’s role in the punitive shift from the body to the soul. *Discipline and Punish* argued that the prisons and the social sciences were born “from a single process of ‘epistemologico-juridical’ formation” that made each central to the constitution and rationalization of the other. Although Foucault did not name political science as part of the prison’s appearance as a timeless and universal institution, he described the very disciplinary modes of punishment that Lieber helped to establish in the USA. By the time Lieber Correctional Institute became a prison in 1986, American political science self-identified as a descendant of ancient political philosophy. In the context of the prison’s disciplinary separation from the very field that studied state power, political science largely failed to notice the “social” institution that was redefining political life in the post-war era.

Political science rediscovered the prison only after mass incarceration transformed the political landscape of the twenty-first century. As scholars brought the state “back in” to political science, the prison’s return to its founding field occurred through two different ideological avenues—through James Q. Wilson’s neconservative theory of “broken windows,” which argued in the 1980s and 1990s that even seemingly benign property crimes bred criminal underworlds, and

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15 Thomas Dumm’s, *Democracy and Punishment* (Madison: University of Wisconsin Press, 1987) is an important exception.
17 Ibid., 23.
through a critical scholarship that emerged after 2001, when scholars such as Marie Gottschalk, Naomi Murakawa, and Vesla Weaver traced punishment’s expansion in legislative policy. These important studies of prison-building as state-building made prisons a legitimate subject of political inquiry, while the ideological struggles that ensued between political scientists for law and order and political scientists against the prison created new ways of thinking about carceral states and the social and political institutions that they require. These debates, however, have not yet attended to the historical role of political science in shaping the prison as an institution, and political science has therefore not yet accounted for its own legacy as part of the very puzzle of mass incarceration. Francis Lieber’s theory of the state puts prisons at the center of democratic governance, where it became such a routine aspect of state design that it faded into the taken-for-granted background of American political life. Francis Lieber, as the nation’s first political scientist, produced a theory of the American state that defined its duty as the power to punish. As political scientists struggle to define the political significance of mass incarceration in the twenty-first century, that particular theory of the state will have to be denaturalized and historicized as part of the problem that critical political scientists set out to solve.

Francis Lieber and the Power of Punishment

Francis Lieber first outlined the right of the liberal democratic state to punish its citizens in a series of pamphlets and open letters published in the 1830s. His work concluded that the state’s “penal right” was a duty imposed by the very constitution of civil society: “political society cannot exist without punishment.” His belief in the prison’s relationship to civil society extended its power into the social fabric of American democracy. Lieber maintained that the formation of civil society inevitably increased opportunities for crime amongst citizens tempted by the passions of their freedom. Dismissing the arguments of his contemporaries that the prison failed to abolish crime, he argued that the prison could serve...

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21 For Angela Y. Davis’s discussion of the prison as an institution that is taken for granted, see “Introduction: Prison Reform or Prison Abolition?” in Are Prisons Obsolete?.


24 Ibid., 35. Here, Lieber refers to Samuel Taylor Coleridge’s Letters and Conversations (New York: Harper & Brothers, 1836), pp. 25, 37. He also mentions the statements of Thomas Walker, London’s “police magistrate.”
democracy only by organizing and disciplining citizens through the swiftness and certainty of punishment. Assuming the inevitability of crime and punishment, Lieber consolidated a “scientific” study of statecraft that would shape the theory and practice of American democracy.

Because Francis Lieber imagined the prison as part of the governance of democratic societies, his political science helped to generate the idea of the prison as a quintessentially “democratic” institution. He designed a theory of carceral democracy that sought to manage the political risks of democratic states. The prison appeared as a symbol of equality because it removed the liberty of the offender, and therefore took something possessed equally by its citizens. In 1838, Lieber wrote, “all civilized nations are agreed that privation of personal liberty is the best punishment for the greater number of offenses.”25 As an “equalizing” institution, Lieber’s prison was to appear democratic through the deprivation of the body as an equally accessible property form, but it would actually work to consolidate the power of the state over its citizens. As Michel Foucault argued, the state’s confinement of the body drew its power from the very discourse of democracy:

How could prison not be the penalty par excellence in a society in which liberty is a good that belongs to all in the same way and to which each individual is attached... by a ‘universal and constant’ feeling? Its loss has therefore the same value for all; unlike the fine, it is an ‘egalitarian’ punishment. The prison is the clearest, simplest, most equitable of penalties. Moreover, it makes it possible to quantify the penalty exactly according to the variable of time. There is a wages-form of imprisonment that constitutes, in industrial societies, its economic ‘self-evidence’—and enables it to appear as a reparation.26

In its appearance as an “egalitarian” punishment, the prison’s equal deprivation of liberty was reproduced by the prison’s “self-evident character”—its appearance as “ha[ying] no alternative, as if carried along by the very movement of history.”27

Linking the success of the penitentiary project to the success of democracy itself, Lieber described the American prison in his English translation of Gustave de Beaumont and Alexis de Tocqueville’s On the Penitentiary (1833) as “a new victory of mind over matter—the great and constant task of man... the progress of society.”28 The prison of democracy was of vital interest to the world because the penitentiary form would teach the techniques of “perfect submission” in a free society where “the government is considered by the people as entirely their own.”29 Using the prison to manage the problem of liberal equality, Lieber’s philosophy of state punishment claimed to offer a universal model, as the “the joint principles of silence, labour, and immediate punishment” would “produce proportionately the same effect everywhere.”30 Lieber’s political science offered the state a universal institution that could discipline democracy through the equal

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25 Ibid., 53.
27 Ibid., 232–33.
29 Ibid., v.
30 Ibid., x–xi.
deprivation of liberty, and the rationalized science of punishment that would eventually become inseparable from the modern state form.

The prison of democracy relied for its power on the idea of the *polis* as police. Lieber’s ideas about justice as the center of the relationship between the people and the state appeared in Alexis de Tocqueville’s famous *Democracy in America* (1835). Because of his knowledge of American state practice, Lieber served as the tour guide for Tocqueville and his research partner Gustave de Beaumont during their 1831 travels in Boston. Lieber introduced the French travelers to the culture of American justice, and to what Tocqueville described as “a new political science for a new world.” Lieber argued to Beaumont and Tocqueville that in America the people saw themselves as part of the law’s work, and that the law could only condemn criminals to the punishments of prison and death in the name of the people. Lieber argued that “[n]o man looks upon a district attorney as upon a tool of government, because he prosecutes in the name of the United States.” Lieber described to them “spontaneous” rituals of pursuit and death, as well as “riots quelled by citizens themselves,” because “what the law requires is here held honourable.” When Lieber introduced the travelers to a local sheriff who boasted of his hanging fees, Beaumont and Tocqueville asked Lieber whether “no shame attache[d] to such functions.” He responded:

Not the slightest. The sheriff in executing the criminal is only obeying the law, like the magistrate who condemns him to death, and there attaches to his profession neither hatred nor scorn. It’s this respect for the agents of the law, deriving from the extreme respect that one has for the law itself (because one makes it) which is the cause that the people feels no animosity against the officers of police, the collectors of taxes, the customs men. All these places are honoured.

Lieber argued that these traditions, which aligned the people with the law, resulted from the natural moral relationship between the people and the state. Because the state’s morality generated its right to punish, punishment was “natural, indispensable, and inalienable to every society.” Conceptualizing punishment as a “right between society and the offender,” Lieber wrote that punishment was, “however paradoxical it may appear at first glance, the right both of the society and the offender.” The idea of the state’s moral right to inflict punishment and the criminal’s right to be corrected challenged theories of the social contract. Although Lieber agreed that duties and rights were mutually constitutive and that “no right [was] without its duties, no duty without its rights,” he argued that the social contract did not secure a state’s right to punish. He asked “by what right” the state could impose a form of binding agreement “in

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32 Lieber, *Stranger in America*, p. 34.
33 Francis Lieber, *Stranger in America*, pp. 34–35. For Tocqueville’s use of Lieber’s word “spontaneous” in his discussion of citizenship and the law, see *Democracy in America*, p. 106.
35 Ibid., 379. Lieber described the scene in his *Letters to a Gentleman in Germany* (Philadelphia, PA: Carey, Lea, and Blanchard, 1834), p. 34.
which I never had a part, [and] from which I can never withdraw myself, and according to which I am nevertheless exposed to many very severe sufferings.”

Because life and liberty were inalienable and not subject to contract as a form of conditional freedom, the punishments of the state were to be governed by a moral and utilitarian promise not to violate the honor of the citizenry.

Rooted in utility and the moral right to punish, Lieber’s theory of the state was structured by the principles of a penology that sought to “produce the greatest effect with the fewest means.” Lieber echoed Jeremy Bentham’s argument in An Introduction to the Principles of Morals and Legislation (1780) that the happiness of a society could be guided by a system of “punishing and rewarding.” He also drew from the ideas of John Stuart Mill in arranging the relationship between citizens and prisoners according to the principle of less eligibility. As a method of prison organization, less eligibility designed prison life as “less eligible” or less desirable than life in the free world. Lieber’s utilitarian penal state was rooted in the idea of the prison as a system of deprivation calculated to produce certain “choices” (to remain free from crime, and to support oneself in society rather than remain the roles of what Mill referred to as “legal charity”). Using the prison’s deprivations to incentivize returns to the free world, Lieber suggested that prisons should be governed by the deprivation of food. It would “depend entirely upon the convict to remove [the deprivation]” and “if he will abstain [from removing it] until he dies, I should say, let him die—as obedience is the first means of discipline.”

The principles of utility and less eligibility prescribed a prison that was intentionally harsh and unforgiving in its design: it was “severe” because “it ought to be so; it ought to be feared.” Although his ideal state was grounded in the calculations of prison design, Lieber criticized contemporary theories of deterrence for encouraging the public exhibition of pain, for creating disloyal and brutalized citizens, and for introducing “suffering without object—cruelty.” According to Lieber, these were “bad punishment[s], not to be tolerated in a

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42 Mill wrote regarding the 1834 Poor Law in Britain that, “if… the condition of those who are supported by legal charity can be kept considerably less desirable than the condition of those who find support for themselves, none but beneficial consequences can arise.” See John Stuart Mill, Collected Works, Volume III: Principles of Political Economy (Toronto: University of Toronto Press, 1965), p. 961.
civilized community, which has the means of building prisons.” 46 The prison that he imagined would deter the citizenry from crime “in the knowledge that offenses are . . . gravely and impressively punished.” 47 His ideal prison would intentionally produce a suffering that would degrade and deprive without dishonor.

Although the pain that Lieber’s prison was calculated to inflict inside the walls was supposed to end when the prisoner returned to society, the dishonored violence that Lieber hoped to remove through the calculations of prison science became a permanent feature of the American prison. His theory of the state was designed to discontinue a legal process of “infamation” that was already in place in American law. 48 Infamy attached a degraded social status to the body of the prisoner, an attachment that outlasted the duration of punishment, so that former prisoners carried the taint of infamy beyond the prison’s gates. In Lieber’s own time, prisoners could be either infamia juris or infamia facto—inamous because of one’s punishment or infamous because of one’s crime. 49 Infamia juris described the status attached to the body by degrading punishment or treatment, while infamia facto referred to the status of someone who committed a morally infamous crime that led to social isolation. 50 Lieber criticized the legal framework of infamy because it produced disloyal citizens. “Loyalty to the state,” he wrote, “is necessarily demolished” when it appears as a “disgusting action” that presents the public with the pain of the prisoner. 51 Lieber’s theory of the prison-state would keep citizens and prisoners separate through a different mechanism of infamy—it would keep the pain of dishonor inside prison walls even as it experimented with new techniques of solitude and deprivation.

Anchored in these new techniques of power, Lieber’s science of the state sought to correct what he perceived as the failure of law to punish routinely and severely. Lieber argued that the institution of clemency distorted the absolute punishment of law, and that democracy retained, as a remnant of the King’s mercy, a mechanism for avoiding punishment that created uncertainty in the state’s ability to punish. Lieber’s reforms would close clemency’s avenue of escape and abandon any possibility of state mercy. In building an unforgiving state, Lieber’s political science of punishment reasserted the finality of conviction in order to manage democracy’s “problem” of equality.

As perhaps the most widely discussed political question of the day, competing ideas about managing liberty came together around the prison and its ability to govern democracies. Like many of his contemporaries, including Beaumont and Tocqueville, Lieber’s statecraft was driven by the cityscapes of an “excessive” liberty, one that threatened to overtake the state’s ability to punish contagious criminals. In the context of nineteenth-century ideas about urbanization, industrialization, and the “moral contagion” of the American city, 52 Lieber’s penal state promised to manage urban spaces that contained an “assemblage, in one word, of all vices and immoralities.” 53 Withdrawing criminal bodies from

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46 Ibid., 50.
47 Lieber, “Letter to His Excellency Patrick Noble,” p. 44.
50 Ibid., 4.
51 Lieber, “Letter to His Excellency Patrick Noble,” p. 44.
52 Ibid., 48.
53 Ibid.
society, the prison of democracy appeared, as Lieber argued, when “for the first
time in history, the problem of making a high degree of general and individual
liberty compatible with populous cities is one of the highest problems of our
race.”54 The prison would solve the problem of liberal equality by extracting the
common property of the body, a form of retribution that Foucault traced to the
other social scientific disciplines of the nineteenth century. Lieber’s political
science of punishment claimed a right to punish on the basis of its morals, but
Lieber failed to see that the moral state he imagined could never produce a moral
prison. History and Political Science produced a theory of the state that took the
prison for granted, one that emerged through Lieber’s studies of the penitentiary
form in Pennsylvania, New York, and South Carolina.

Lieber’s Penitentiary Studies: Philadelphia, New York, and South Carolina

Lieber’s interventions in liberal and utilitarian penology imagined a prison that
would punish crime with swiftness and certainty, and a state that would show no
mercy. In addition to his studies of the way in which the prison’s relationship to
society could be used as an ordering principle and a method for managing
democracy, Lieber also examined modes of the prison’s internal arrangement.
Conducting studies of the state prisons in Pennsylvania, New York, and South
Carolina over the course of twenty years, his theory of the state emerged through
and as part of his prison studies. In Pennsylvania, Lieber advised his colleagues in
the Philadelphia Society for Alleviating the Miseries of Public Prisons that solitary
confinement should structure the famous Eastern State Penitentiary in
Philadelphia. His two-year study of the institution balanced the pleasure and
pain of utility by suggesting that solitude was a less abusive form of prison
organization than joint labor at the threat of the whip. His studies of the prison’s
relationship to race began in Philadelphia and continued in New York, where he
discovered that the prison could be used to effectively control Black
citizenship. He carried those ideas about race and punishment to South Carolina,
a state with a long-standing anti-prison tradition, where he worked unsuccess-
fully to build the first prison in the state’s history.

As laboratories for his science of state punishment, the prisons of
Pennsylvania, New York, and South Carolina came to represent Lieber’s
philosophy. He witnessed during his own life the institutionalization of his ideas
in the North, and the building of fourteen new state-level prisons in the 1840s and
twenty more by 1860, a moment that might be called the first wave of mass
incarceration in America.55 As a key figure in the prison reform movements of the
nineteenth century, he was known in the US and Europe as a “distinguished
scholar and philanthropist, and for [his] great knowledge of penal law and the
penitentiary system.”56 In his capacity as an advisor on state prison design, Lieber
argued against New York and for Philadelphia in his role as the English translator

54 See Lieber, “History and Political Science, Necessary Studies in Free Countries,” in
The Miscellaneous Writings of Francis Lieber, Volume I, p. 352.
55 Martin B. Miller, “At Hard Labor: Rediscovering the 19th Century Prison,” in Tony
Platt and Paul Takagi (eds), Punishment and Penal Discipline (San Francisco, CA: Crime and
of Tocqueville and Beaumont’s famous work, *On the Penitentiary in the United States* (1833). The distinction between New York and Philadelphia as opposing systems relied on the principle of labor, and whether that labor should be extracted during solitary confinement or in silent factories. Staging an argument with Beaumont and Tocqueville because of their doubts about solitary confinement as a form of restoration, Lieber appended his own essay to the back of their book. Lieber also added to the bottom of each page his own lengthy set of argumentative footnotes, where he reasserted the power of the American prison as the ideal form of governance. Using the text to defend Eastern State against *On the Penitentiary*'s perceived attacks on solitary confinement, Lieber wrote that he “need not dwell on the impropriety of calling a system barbaric.”

Lieber’s advice to the state of Pennsylvania as it built its prison system was to institute a system of total solitary confinement. Prisoners would be enclosed in cells described by Lieber as “spacious, cleanly and airy . . . with a yard attached to it,” a design that made prisoners feel grateful for any interruption to the routine isolation. Lieber believed that this system conformed to his own “motto of penal justice,” *Lex clemens, judex certus poena sapiens*, or mild laws, sure judges, wise punishments. It would “correct a criminal radically” by containing moral contagion: “more is required than an excitement of feeling; his habits must be broken: his mind must be trained.” Eastern State was a “philosophical system of prison discipline” that directed its force at the mind rather than the body, and left no visible marks. Lieber’s two-year study of Pennsylvania’s Eastern State Prison in Philadelphia led him to the belief that crime was caused by feelings of isolation from society. He nevertheless arrived at the conclusion that a criminal’s moral separation from society, which caused his crime, should be punished by the double isolation of solitary confinement.

During his interviews with Philadelphia prisoners, Lieber was confronted with the failure of the system that he imagined in at least two ways—the prisoners sometimes went insane and sometimes developed undetected forms of communication through the walls. During one of the interviews, Lieber heard “an indistinct knock against the wall, which came from the next cell . . . once in a while his neighbor knocked and he answered. And for what purpose, I inquired; is it a sign? No sir, he replied; of what should we give signs? It is only that he says, here am I, and I answer, I am here.” Within this system of total isolation, Lieber discovered in another interview with an unnamed prisoner that the “shuttle of his neighbor” was “music to his ears.” Even as he called for reforms of his own reforms, a cycle that presumed the permanence of the prison, Lieber continued to defend a system that turned self-awareness into madness. He attributed high rates of suicide to other routine aspects of prison design: “Because two convicts have

63 Ibid., 87.
committed suicide, is it the system which produced it … is suicide a rare occurrence in any prison system?” 64

Despite its obvious brutalities, Lieber argued that the solitary punishments of the Philadelphia model were better than the risks of contact and contagion that structured New York’s competing Auburn system. Auburn required “hundreds of men to walk, work, and live together without daring to open their mouths, and of locking them up at night or Sundays in narrow gloomy cells, tortured by the desire to talk to the neighbor with whom … conversation might be had, but must not be had … The demand is absolutely preposterous.” 65 Because of Auburn’s communal organization, it relied on the threat of physical violence to enforce its code of silence. Lieber insisted that Auburn’s infamous whip “degrades, irritates, [and] exasperates, not to speak of the frequent abuse which must take place and does take place, for prison keepers are but men.” 66 While Lieber rejected Auburn’s organization as a prison-city of contagious moral ruin, most of the states in Lieber’s era modeled their prisons on Auburn because it was designed as a profitable factory. Arguing that state revenue was less important than the total reform of state prisoners, Lieber argued against what he perceived as the brute violence of New York’s prison system. He understood the Pennsylvania system as part of a different register of state violence, one that was necessary for the total reconstitution of the self in prison.

Using the prisons of Pennsylvania and New York as laboratories for his theory of the state, Lieber initially adhered to racial theories of biological criminality. During his study of New York’s Sing Sing prison, Lieber situated the prison as an ideal scientific environment for comparing “the mental as well as physical difference between the white and black races.” 67 The prison was a place where prisoners of different racial groups were subject to “the same laws,” and required “to perform the same duties, and live upon the same diet … a peculiarly favourable opportunity of ascertaining certain facts.” 68 In this equal environment, 200 of the 800 prisoners were “individuals of color” 69 who “behave[d] themselves better” than the whites: “they are more orderly, follow the laws more willingly, and work more steadily.” 70 “[M]ore coloured people,” he wrote, “ask for admission to the Sunday-school of the prison, and for instruction in reading, than white people.” 71 Lieber concluded that although there was “no difference” between white and Black criminality, the prison’s mode of governance was more effective amongst Black prisoners. Emphasizing early childhood experiences over racialized differences as the primary predictor of crime, Lieber’s study at Sing Sing shaped his contribution to South Carolina’s state prison system, a state with a majority Black population. 72

64 Ibid., 72.
65 Ibid., 70.
66 Ibid., 88.
67 The Stranger in America, p. 291.
68 Ibid.
69 Ibid.
70 Ibid., 292–93.
71 Ibid., 292.
Lieber carried this idea of the prison as a form of racialized discipline into the South, when he secured employment at South Carolina College in 1835, and spent the next twenty years trying to build a state prison. Lieber saw the state as a “glorious field” for his political science of punishment because of its stubborn refusal to construct a penitentiary. For Lieber, the state’s anti-prison tradition was rooted in a legal culture of informal authority, one that had emerged in the context of domestic slavery. Because South Carolina relegated punishment to the unscientific discretion of the judge, it lacked the kind of formal legal code that Lieber argued would lead criminals equally and certainly to the penitentiary. Working with state governors and grand juries, Lieber’s push for a penitentiary remained unsuccessful until the post-Civil War era, a “delayed adoption” he called the “striking feature of South Carolina.” He later lamented his inability to interest even “one solitary minister in the cause of prison discipline or penal law reform.” Only after his departure for Columbia University did the state adopt his proposals and emerge in the wake of emancipation at the forefront of post-bellum prison reform.

Before South Carolina built its prison, “the people” remained committed to the punishment of crime according to dual systems of honor and dishonor—a system in which white people were given the privileges of clergy and pardon, while Black people, regardless of legal status, were confined to a local jail. The infamous Charleston Jailhouse doubled as an auction house and “slave depository,” where South Carolina’s masters brought troublesome slaves to be punished by the state for a fee, and where 296 Black executions took place between 1800 and 1855. White crime was mediated at the discretion of the judge and through the extra-legal institution of the duel. Another system, guided by the logic of racial biology, codified property crimes as specifically Black offenses. These separate systems of punishment meant that white citizens insisted on the right not to be punished by the state. White citizens organized against the penitentiary form because it would violate the idea of “Black theft,” and send white citizens to a place already established as a site of Black punishment. Because the public did not believe in the possibility of Black redemption, they thought it absurd to build costly prisons that resembled castles and fortresses to contain what was already codified in the law as “Black crime.” Because whites imagined crime in South Carolina as a Black institution, the prison was imagined as a place that would force white citizens to give the power of punishment to the state. Because the prison that Lieber imagined would be used to make equals of South Carolina citizens through deprivations of liberty and the equal abuses of prisoners, he failed to convince a

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74 Lieber to Dorothea Dix, 12 Nov 1851, Francis Lieber Papers, Huntington Library.
75 Ibid.
77 See Hindus, Prison and Plantation, p. 156. The Charleston Workhouse was “immortalized” by the testimony of Angelina and Sarah Grimke, which appeared in Theodore Weld’s American Slavery as It Is (New York: American Anti-Slavery Society, 1839).
state with a majority Black population to change their legal and racial traditions. When the state was finally forced, through war and reorganization, to treat prisoners “equally” regardless of race, it was to Lieber’s ideas about prison equality that it turned in order to manage the legal condition of Black freedom.

As Lieber worked to develop support for a state penitentiary in South Carolina, he chose to participate in the institution of slavery. He justified his own domestic imprisonment of Betsy and Elsa, and then Tom, Isaac, and Henry, as having a “civilizing” impact, even as he continued to describe the institution privately as a “heavy burden and grievous evil.” His choice to claim ownership of five people he knew were not objects deeply offended friends such as Charles Sumner, who taunted Lieber by sending him newspaper clippings of “some shocking article[s] about ill-treated negroes, marked with thick lines.” When he left for Columbia University in 1856, Lieber appears to have sold rather than emancipated those he enslaved. Despite his own participation in the political culture of slavery, he offered his expertise on liberal equality to the US military, and in his role as the nation’s first political scientist, designed Abraham Lincoln’s emancipation policy.

When Lieber left South Carolina in 1856 to inaugurate political science at Columbia University, he became the legal architect of emancipation and the treatment of prisoners of war. Burdened by the legal contradictions of slavery, his policies, which were formally adopted by the Lincoln Administration, established the status of a slave who crossed enemy lines, and the status of the prisoner of war. Published in 1862 as “Guerilla Parties considered with Reference to the Laws and Usages of War,” and later as “Military General Orders No. 100,” the directives declared that, “the slave escaping during war from one belligerent to another, for protection, becomes thereby free.” As thousands of emancipated

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79 Lieber to Wade Hampton, 5 September 1858, in Life and Letters, p. 300; See also Keil, “Francis Lieber’s Attitudes on Race, Slavery, and Abolition,” p. 22.
81 Matthew J. Mancini, “Francis Lieber, Slavery, and the ‘Genesis’ of the Laws of War,” Journal of Southern History 77:2 (2011), pp. 326–339. Mancini argues that scholars have focused on the Huntington archives at the expense of others, resulting in the marginalization of the Lieber Code’s relationship to slavery. The focus on the 1863 correspondence of Lieber and Major General Henry Halleck, the Army’s fourth-most senior officer, has overshadowed the competing account found in the Library of Congress Archives, including his correspondence with historian Benson John Lossing in 1866.
82 Lieber to Edward Bates, 8 June 1862, cited in Brainerd Dyer, “Francis Lieber and the American Civil War,” Huntington Library Quarterly 2:4 (1939), p. 452. See also Lieber to Charles Sumner, 19 Dec 1861, in Life and Letters, p. 322. For the full text of the military document, see Francis Lieber, “Guerilla Parties considered with Reference to the Laws and Usages of War” (New York: D. Van Nostrand, 1862). “General Orders 100” has also been published online by Yale University’s Avalon Project available online at: http://avalon.law.
slaves reached “the line,” they were sometimes returned to slavery by Union military authorities in defiance of the order, and often described as legal “contraband” in the press. In regulating the wartime economy of law, Lieber also established rules for warfare that extended domestic legal protections to civilians and soldiers acting on behalf of states. The Order treated “belligerents” who engaged in acts of civil warfare as bandits or domestic criminals, “simply armed robbers” that society must punish for “assassination, robbery, and devastation.”

Punishing civil war as a form of domestic crime, Lieber linked his rules of war to his political science of punishment.

While his earlier studies had focused on state-level systems, his studies of punishment in the post-Civil War era focused on the illegality of Confederate military prisons, the treatment of Union soldiers, and the punishment of treason. Although the brutality of capture and confinement served to justify acts of retribution on both sides, his work to criminalize extra-legal warfare was a response to treatment in the prison camps he found “beyond description loathsome.” Lieber argued that there should be no “dainty treatment of the prisoners in our hands,” but he was also critical of the US “retaliation resolutions,” which, if passed, would have placed captured Southern combatants in prisons that were guarded by US soldiers released from Confederate prison camps. His studies of Southern wartime punishment eventually led to his appointment as head of the Bureau of Rebel Archives, where he gathered two hundred and seventy thousand Confederate documents, many with “a great deal of Richmond street dirt in the boxes,” as evidence of criminal misconduct. In organizing the

Footnote 82 continued


84 Francis Lieber, “Guerilla Parties considered with Reference to the Laws and Usages of War,” pp. 6, 19.


86 Lieber to Charles Sumner, 22 January 1865, in Life and Letters, p. 355.

remains of war, a “library—of the most infernal treason,” Lieber played an important role in the post-war reconceptualization of state power that shaped the moment of national reunion.88 His theory of the state continued to rely on the prison for the management of manumission and illegal warfare.

After emancipation, the dismantling of the old practices and punishments of slavery left South Carolina without an institutional mode of punishment. During the brief moment of Black Reconstruction in the state, Black voters elected Black legislators who abolished the infamous Charleston Jail.89 Reconstruction was soon brought to its end, and the white state power structure restored the old methods of Black punishment with a new set of prisons. When President Andrew Johnson appointed Benjamin Perry, Lieber’s long-time partner in prison reform, as head of the provisional South Carolina government, the state formally ended its oppositional relationship to the American prison.90 Between 1867 and 1876, South Carolina built an elaborate structure that, despite its relationship to slavery, has been remembered as a symbol of progress and national reunification, one designed as a castle for those withdrawn from the legal boundaries of citizenship.91 The prison’s internal structure drew on Lieber’s ideas about the scientific certainty of punishment, but it also produced a brutality that resulted in 279 deaths between 1867 and 1883. Black prisoners comprised eighty-eight percent of those deaths.92 When convict leasing was introduced gradually beginning in 1873, the state temporarily abandoned the penitentiary project that Lieber had imagined.93 That project would reemerge at the center of state governance in a different moment of mass incarceration.

When Lieber Correctional Institute restored the philosophy of Francis Lieber in 1986, it signaled South Carolina’s return to the ideas of the nation’s first political scientist and his arguments about the scientific finality of punishment. In building LCI, South Carolina joined the nation in consolidating a seemingly unchangeable structure of legal certainty, and built a prison organized by solitary confinement and deprivation. Lieber’s prison drew on the principles of solitary confinement he developed in his penitentiary studies, but securitized the model, sending

88 Lieber to General Halleck, 19 May 1866, in Life and Letters, p. 363.
89 See W.E.B. Du Bois’s chapter on South Carolina in Black Reconstruction in America (1998 [1935]).
90 Perry was the first to introduce legislation to create a state prison in South Carolina. He convinced Lieber to write his open letter to Patrick Noble, who was then Governor of South Carolina. For Perry’s recollection of Lieber’s work in the state, see “Francis Lieber,” Reminiscences of Public Men with Speeches and Addresses by Ex-governor Benjamin Franklin Perry (Greenville, SC: Shannon & Co., 1889), p. 145.
91 Angela Y. Davis, “The Prison: A Sign of Democracy?” (Public Lecture, Center for Cultural Studies, University of California, Santa Cruz, November 28, 2007).
93 For the literature on convict leasing and prison construction in South Carolina, see Ayers, Vengeance and Justice (1984); Hindus, Prison and Plantation (1980); Alex Lichtenstein, Twice the Work of Free Labor: The Political Economy of Convict Leasing in the New South (New York: Verso, 1996); and Matthew J. Mancini, One Dies, Get Another (Columbia, SC: University of South Carolina Press, 1996).
prisoners to Special Management Units (SMUs) as punishment for crimes within the prison. Shifting the purpose of solitude from deterrent isolation to institutional security, the prison reproduced the very madness it sought to punish. At Lieber, twenty percent of all current prisoners are mentally ill, and the mentally ill represent forty-two percent of those housed in the Special Management Units. Of those living in the SMUs, forty-three percent have been subject to the use of force for both restraint and punishment. The violence of living death is also accompanied by the state’s death row, where prisoners await the single form of bodily punishment that Lieber’s ideal philosophy would allow.

As part of the prisonization of the American landscape, Lieber Correctional Institute was built to replace the original South Carolina state prison that Francis Lieber worked to build, which was finally demolished in 1994. Both prisons punished the mind while confining the body, and relied on Lieber’s ideas about scientific certainty, equal deprivation, less eligibility, racial discipline, and enforced solitude. Both prisons exposed the ill-conceived future of his project, a project that would condemn to civil death large segments of the population, and ultimately rely on the very forms of abuse that Francis Lieber actually opposed. His commitment to building a liberal prison that could humanely institute a system of mental pain and deprivation meant that he failed to see the prison as a failed project. He could not see, as Foucault would later observe, that “‘reform’ is virtually contemporary with the prison itself: it constitutes, as it were, its programme.”

In building a future for the prison as an institution, theories of the state in political science have secured the prison’s place in American governance. Having produced theories of the state that are also theories of the prison, political science has consolidated the power of the idea that a just state must punish with cages and deprivations. Political science helped the state to build a prison democracy and then relegated its power to structure American society to the margins of the discipline, so that twentieth-century studies of the state have rarely mentioned prisons at all. Because political science has forgotten its founding object, LCI represents an important opportunity to remember the historical legacies of this penological tradition, one that continues to shape “democratic” punishments in the twenty-first century.

Conclusion: The Future of Political Science

Francis Lieber’s theory of the prison-state continued to shape the field of political science long after the end of his career. He remains the nation’s first political

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96 Although the state’s death row is housed at Lieber Correctional Institute, executions are carried out at the nearby Broad River Correctional Institution in Columbia[0], where Lieber lived for twenty years.

97 Foucault, Discipline and Punish, p. 234.
scientist, even after his prestige was undermined by his work with the Rebel Archives, a position that was eventually condemned by the public and by Congress as a wasteful attention to a “pile of rubbish.”98 Columbia University’s President Frederick Barnard dissolved political science in 1865, removing Lieber to the law school where he taught in the fields of constitutional history and public law until his death in 1872.99 The discipline of political science was restored in 1876 under the direction of John W. Burgess, who was mentored by Francis Lieber and retained his teacher’s emphasis on history and political science as inseparable fields for the study of past and present governance: “[p]olitical science must be studied historically and history must be studied politically in order to correct comprehension of either.”100 Through Burgess, Lieber’s theory of the penal state remained part of political science’s disciplinary framework, as Burgess believed in a state sovereignty that exercised “the infliction of physical punishments for disobedience” and that “constrain[ed] the mind of the citizen-subject.”101

W.E.B. Du Bois described the influence of Lieber and Burgess in his *Black Reconstruction* (1935), ending his famous work with a cautionary tale about the theory of the state that had emerged from the beginnings of political science.102 Du Bois was critical of Lieber and Burgess as Southern intellectuals who helped to produce sixteen studies of Reconstruction between 1895 and 1935 that recast slavery as marginal to a fratricidal and regrettable war.103 In the same spirit, political scientists today might attend to the origins of the discipline in order to understand its relationship to the history of mass incarceration. As political science’s founding object, the prison has fundamentally shaped the discipline’s past; theories and practices of the state have been developed under the guise of a democracy that often does un-democratic work. In taking the prison for granted as a timeless and universal system of governance, political science as a discipline has helped to consolidate the power of the prison in American politics and culture, a power that political science might now work to undermine. As congenital institutions, prisons and political science were brought into being by the nation’s first political scientist, who saw prisons as central to the management of democracy. Given the discipline’s past, political scientists might begin to imagine political life beyond the prison, creating new theories of the state that do not rely on cages and walls.

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Notes on contributor
Sara M. Benson is a Lecturer in Political Science and Justice Studies at San Jose State University. She received her Ph.D. in Politics and Feminist Studies at the University of California-Santa Cruz. Her work focuses on the relationship between prisons and democracy, and she teaches courses in feminist critical race studies, law and punishment, and political theory.