

BOOK REVIEW

Sara Benson, *The Prison of Democracy: Race, Leavenworth, and the Culture of Law* (University of California Press, 2019)

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AT A TIME WHEN NATIONAL DISCOURSE SURROUNDING MASS INCARCERATION is becoming increasingly critical, Sara Benson's *The Prison of Democracy* examines how American sovereignty is deeply intertwined with punishment and the prison institution. The book's focal point is United States Penitentiary, Leavenworth, the nation's first and oldest federal prison. Within the first few pages, Benson guides the reader through a bizarre yet fascinating discussion about Leavenworth's architecture, purposefully designed to replicate the White House, as displayed on the cover of the book: "In imitating the capitol, Leavenworth created an icon . . . one of the ultimate monuments of American democracy, yet contained freedom's inverse on its inside" (2). It is this idea of "freedom's inverse" that becomes crucial to the text. And while *The Prison of Democracy* may initially appear as a case study of Leavenworth, the level of historical analysis reveals it to be much more than that. Rather than focusing solely on the singularity of this penitentiary, Leavenworth is taken up as an object of study for understanding the rise, expansion, and consolidation of federal governmental power, inaugurated by the right to punish.

Across each of its four chapters, *The Prison of Democracy* locates Leavenworth within key historical moments of an emergent federal carceral capacity—the formalization of legal deprivation and civil death as democracy's mode of punishment *par excellence*; the securitization of American sovereignty through the elimination and dispossession of Native tribes within the settler colonial state; the establishment of a federal politics of punishment against the regional and local practices of free and slave states leading up to the civil war; and the emergence of Reconstruction's racial-

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ized penitentiary system which took command over Black freedom in the wake of formal emancipation. Benson reconstructs Leavenworth's history by tracing a range of archival evidence, or what is referred to as "the state's paper trail": original blueprints of the prison, fabric samples, prison siren cards, photographs, letters, memoirs, oral histories, and documented records of resistance (10). This archive traces how a once disorganized federal jurisdiction that was scattered across multiple state borders and local regions, could ultimately congeal under a single, centralized, and coherent federal carceral capacity, beginning with Leavenworth prison.

According to Benson, carceral capacity in the United States did not originate from Leavenworth, even if it was eventually materially and symbolically consolidated under it: "To assume that the American state has only recently been carceral is to overlook the legacies of carceral capacity that began in the Indian Territory" (12). This corrective is explicated throughout the first chapter. Before taking shape as a federal prison, Leavenworth operated as a military fort that held captured Natives, designated as "foreign enemies." Through the creation of federal laws that regulated the free movement of Natives, entire tribes were considered guilty of violating these directives and could be punished as "domestic criminals." Not only did Fort Leavenworth represent a material site of military power, but the logics of conquest and American sovereignty contained within it, constituted the "legal architecture" of what would become the nation's first federal prison (52). Thus, Benson demonstrates that it was through the criminalization of tribal sovereignty and the regulation of forced reservation spaces which operated like open-air prisons, that the need for a coherent federalized system of punishment began to take shape as Leavenworth prison. Such a centralized system of punishment would help to secure a vision of democracy under which colonialism and slavery could be leveraged for the purpose of nation-building.

While each subsequent chapter aspires to "denaturalize" the federal authority to punish by tracing its various contested conditions, Benson constantly emphasizes the fundamental claim that "the prison is an idea about unfreedom that masquerades as an idea about democracy" (6). According to Benson, within the institutional matrix of the prison, it is the legal status of "civil death," which conditions the unfreedom of the prisoner, and in turn, secures democratic citizenship for those living in "free" civil society. Civil death is theorized as a form of legal personhood wherein, upon incarceration, the democratic subject surrenders certain rights of citizenship, as they become "a slave of the state" (96). In other words, civil death authorizes punishment, but it can only do so as part of the democratic social contract, under which

an individual consents to the possibility of punishment, in exchange for the rights of citizenship. In this way, the prisoner is the “negation” of the democratic citizen-subject, and the prison institution is the foundation upon which “the whole house of democracy was built” (9–10). Thus, Benson positions civil death as essential to the legal architecture of incarceration, as we know it. And this relationship between national sovereignty and democratic citizenship is precisely what gets repeated through every attempt to reform the prison: “The buildings can be taken apart, but they will be given new life if they remain bound to the idea of civil death...” (121).

After reading *The Prison of Democracy*, it is difficult to deny the interlocking structures of democracy and punishment that emerge as civil death and imprisonment. But what is implied by a theoretical maneuver that positions the prisoner as “a slave of the state?” Indeed, the language of slavery adheres to the concept of civil death through the well-debated idea that when the Thirteenth Amendment formally abolished slavery, it preserved the status of the slave and re-assigned it as the status of the prisoner. And as Benson notes, *Ruffin v. Commonwealth* clarifies this language, to a degree. But what remains obscured within this legal language is a latent tension between the unfreedom of racial slavery, and the unfreedom of civil death’s un-raced prisoner. After all, given that Woody Ruffin was a white prisoner, how is it that slavery could be preserved in his incarceration? In other words, under civil death, which aspects, elements, and circumstances of racial slavery carry over into incarceration, and which *do not*? Can state-sanctioned violence be analogized with the gratuitous violence of racial slavery? To what extent does the structure of racial slavery translate to the general condition of incarceration? And what, if any, differentiates the relation between a black prisoner to the state, and a non-black prisoner?

The analysis provided in *The Prison of Democracy* could only be strengthened and nuanced by engaging these questions head on. Certainly, Benson recognizes these tensions, and explores several ways in which punishment became racialized in the wake of formal emancipation, particularly in chapter 4. But, following Jared Sexton, a missed encounter with an analysis of racial slavery does not simply mean a refusal to engage the issue. Rather, a missed encounter “can and usually does involve repeated allusions, invocations, references, and so on [to slavery], but all in the service of dramatizing and/or illuminating some other ethical dilemma” (Sexton 2019, 100). Here, it appears that the “other ethical dilemma” is the problem of punishment itself, to which the afterlife of slavery is considered ancillary, rather than the reverse.

This is not to foreclose the possibilities and contributions offered by this book. Perhaps the particularities of this debate are external to the aspirations of *The Prison of Democracy*, which is ultimately about envisioning an abolitionist democracy that is yet to come, by examining the many ways that Leavenworth has structured the American political imaginary. On this point, the book is unrivaled. Not only does Benson's writing cross disciplinary categories, and bring together prominent scholars of modern punishment with various Black Studies literatures that engage the prison—a list would include, on the one hand, Katherine Beckett, David Garland, Mona Lynch, Marie Gottschalk, Alessandro De Giorgi, Jonathan Simon, Naomi Murakawa, and on the other, Angela Davis, W.E.B. Du Bois, Colin Dayan, Sarah Haley, and Saidiya Hartman—but the book also contains a precious archive comprised of periodicals, case law, and local statutes that expand across multiple states and Native nations. As such, Benson's project achieves the historical accuracy of *Blood in the Water*, the regional precision found in *Sunbelt Justice*, and the abolitionist ethos of *Are Prisons Obsolete?* *The Prison of Democracy* is an instant classic in contemporary prison studies.

REFERENCE

Jared Sexton

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"Affirmation in the Dark: Racial Slavery and Philosophical Pessimism."
The Comparatist 43: 90–111.