

We Are Not Slaves: Rethinking the Rise of Carceral States through the Lens of the Prisoners' Rights Movement

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In November 1966 Fred Arispe Cruz sat naked in a darkened cell in the solitary confinement wing of the O. B. Ellis Unit in the Texas state prison system. Cruz was a frequent visitor to solitary, but this particular stay seemed to him truly unjust, as the cause was the guards' discovery of a copy of the U.S. Constitution in his cell. Cruz had been a prisoner in Texas since 1961, when he arrived at the Harlem Prison Farm on thirty-five-year- and fifteen-year convictions for aggravated robbery. Within his first year as a prisoner within the Texas Department of Corrections, Cruz continued legal work on his appeal and became one of the earliest inmate pioneers to learn law and act as a jailhouse lawyer. Texas prisoners who acted as their own attorneys wrote appeals and writs of habeas corpus for court-ordered intervention, seeking relief from what they argued were unjust and illegal detentions.¹

Among his fellow prisoners, Cruz was known as one of those "writ writers," but among prison administrators he was simply called an "agitator." He became an avid student of the law, mastering legal precedents, rules, and procedures, and his reputation among other inmates, particularly among Chicano prisoners and black Muslim prisoners, became such that they sought him out for help on their appeals processes. As Cruz's fame grew between 1962 and 1966, so did the animosity of his captors, who increasingly viewed him as a threat to the prison system's otherwise-comprehensive control and power. Prison administrators barred Cruz, and any other writ writer, from keeping legal material in his cell, on the grounds that it was illegal for any inmate to work on the cases of fellow prisoners. When Ellis Prison administrators found the Constitution in Cruz's cell, they argued that the framing document for American government constituted "legal material," and they subsequently cast Cruz once again into the darkness of solitary confinement. This action sparked a prison-made civil rights

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¹ "Minutes of the Texas Board of Corrections," meeting no. 3733, Nov. 27, 1966, November 1966 folder, box 1998/3813, Minutes and Meetings Files, Texas Department of Criminal Justice Records (Texas State Library and Archives Commission, Austin.).

movement that would challenge the emerging carceral state's adherence to the legal and social principle that prisoners had no rights and were consigned merely as "slaves of the state."²

Cruz may have been relegated to the deep solitary dungeons of the Texas state prison system, but he was certainly not alone. In the late 1960s and early 1970s prison administrators became increasingly alarmed over a series of nationwide prison revolts inspired by the prisoners' rights movement but seen by many in the press and cast by "law-and-order" politicians as examples of lawlessness and violent criminality. There were five prison riots in 1967; fifteen in 1968; twenty-seven in 1970; thirty-seven in 1971; and forty-eight in 1972—the most prison riots in any year in U.S. history. The cases gaining the most national notoriety, however, were instances of state violence in California's Soledad Prison and New York's Attica Prison. While writing *Soledad Brother*, the prisoner George Jackson became the "American Frantz Fanon," and his death at the hands of California prison authorities in the summer of 1971 elevated Jackson as a *cause célèbre* by New Left activists outside prisons and a continuing source of political mobilization among African American prisoners who looked to him as a martyr for the cause of black liberation. Occurring only a month after Jackson's murder, the September 1971 Attica Prison riot, in particular, alarmed the nation's prison managers as nearly 1,300 of the prison's approximately 2,200 prisoners revolted and seized control of the prison, taking thirty-nine corrections officers hostage for over four days. The Attica revolt ended in a bloody police assault ordered by Gov. Nelson Rockefeller that resulted in thirty-nine deaths, including twenty-nine prisoners and ten corrections officers and civilians.³

This is where the traditional narrative of a concerted and politically aware prisoners' rights movement tends to end, however. At the story's apex are the death of George Jackson in August 1971 and the September 1971 assault by New York state police forces at Attica; historians have generally cast those gripping moments as the last gasp of the prisoners' rights movement before it was undone by mass incarceration and the era of "law-and-order" politics. Sociological studies of prisoner uprisings, for instance, tended to cast the rising tide of racial unrest and demands for civil rights as threats to the tranquility of an otherwise ordered and authoritarian prison community. Historians of the mid-twentieth century, meanwhile, hardly considered the prisoners' rights movement. When historians have considered that movement during the 1960s, they summarily dismiss it as a "naïve casting of prisoners as society's potential leaders" and as "one of the fatal mistakes leading to the demise of radical politics" in the world outside prison.⁴

Rather than serve as the denouement of the prisoners' rights movement and herald the beginning of post-1960s declension narratives, the tragedies at Attica and Soledad Prisons instead inspired two decades of struggle by prisoners across the nation who demanded

² On "slaves of the state" and its establishment as a legal status of prisoners, see *Ruffin v. Commonwealth*, 62 Va. 790 (1871).

³ On the prison riots of the late 1960s and early 1970s, see Charles E. Silberman, *Criminal Violence, Criminal Justice* (New York, 1978); Tom Wicker, *A Time to Die* (New York, 1975); and Bert Useem and Peter Kimball, *States of Siege: U.S. Prison Riots, 1971–1986* (New York, 1989). On prison radicalism in California and New York, see George Jackson, *Soledad Brother: The Prison Letters of George Jackson* (Chicago, 1970). On prison radicalism in New York and California, see Dan Berger, "Prison Radicalism and the Long Shadow of George Jackson, 1960–2012," in *Sunbelt Prisons and Carceral States: Incarceration, Immigration Detention/Deportation, and Resistance*, ed. Robert Chase and Norwood Andrews (Chapel Hill, forthcoming). Heather Ann Thompson, *Blood in the Water: The Attica Uprising of 1971 and Its Legacy* (New York, forthcoming).

⁴ On prison uprisings' upset of the sociological model of authoritative order, see James B. Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago, 1977); Mark Colvin, *The Penitentiary in Crisis: From Accommodation to Riot in New Mexico* (Albany, 1992); David B. Kalinich, *The Inmate Economy* (East Lansing, 1980); and John Irwin, *Prisons in Turmoil* (Boston, 1980). For a critical account of the California prisoners' rights movement by a historian, see Eric Cummins, *The Rise and Fall of California's Radical Prison Movement* (Stanford, 1994), ix.

that institutions of criminal justice also act as spaces of social justice. This untold story of a 1970s–1980s struggle over prisoners’ rights erupted in the courtroom and in the prison courtyard through peaceful work strikes, civil rights protests, and efforts to turn prison hostage situations into calls for media visibility to highlight the abusive conditions of mass incarceration. During the late 1970s and early 1980s prisons experienced unprecedented levels of overcrowding due to drug laws and the punitive turn in sentencing. Overcrowding worsened prison conditions, exacerbated racial tensions, and accelerated state-orchestrated sexual and physical violence. To ameliorate these worsening conditions, the prisoners’ rights movement developed a two-pronged strategy, using mass protest tactics alongside civil rights cases and class-action lawsuits to demand public visibility. The movement asked the courts to reconsider how the state punished those who committed crimes and reminded the public of prisoners’ humanity and their constitutional rights. In all these cases, prisoners pushed to be seen and heard in a crucial national debate over the growing power of America’s rising carceral state. Prisoners of the 1970s and 1980s understood the dangers of mass incarceration before many on the outside did.⁵

This essay takes up Heather Ann Thompson’s charge that historians must critically inquire into how mass incarceration contributed to the declension narratives of the mid-to-late twentieth century. It does so by offering a brief survey of the southern prisoners’ rights movement in the 1970s and 1980s, analyzed as a legal and civil rights struggle and as a social movement drawing on the language and ideology of the black power and brown power movements. While most studies of prison radicalism have typically looked to either California or New York as the pioneering intellectual spark for prison rebellion, this essay shifts the terrain from the West Coast and urban Northeast to the more rural American South and Southwest. Previous analyses have offered intellectual histories of the cultural production of prison radicalism or offered top-down legal and institutional histories that focused on attorneys, prison administrators, and judges. Scholars have drawn on this work and turned to social histories to place the prisoners and their grassroots social movement at the center of the struggle for prisoners’ rights. This essay builds on that narrative by returning the focus to the prisoners and by chronicling the prisoners’ rights movement through the lens of prisoner-initiated civil rights complaints and social protest. By demonstrating the agency and voice of the prisoners through oral histories, prison letters, and legal testimonies, this essay shows how prisoners anticipated the overcrowding of mass incarceration and tried to curb its growth while also furthering the cause of civil rights by overturning the legal tradition of prisoners as slaves of the state.⁶

A series of prisoner resistance movements after the Attica uprising evolved into three primary branches: a prison abolitionist movement of free intellectuals and protonationalist

⁵ On drug laws and their contribution to the racial disparity of mass incarceration, see Julilly Kohler-Hausmann, “The Attila the Hun Law: New York’s Rockefeller Drug Laws and the Making of a Punitive State,” *Journal of Social History*, 44 (Sept. 2010), 71–95; Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America* (New York, 1995); Jerome G. Miller, *Search and Destroy: African-American Males in the Criminal Justice System* (New York, 1996); and Marc Mauer, *Race to Incarcerate* (New York, 1999). Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley, 2007); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, 2012).

⁶ Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History*, 97 (Dec. 2010), 703–34. For legal and institutional histories of prisoner litigation, see “Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts,” *Yale Law Journal*, 72 (Jan. 1963), 506–58; Steve J. Martin and Sheldon Ekland-Olson, *Texas Prisons: The Walls Came Tumbling Down* (Austin, 1987); Chad R. Trulson and James W. Marquart, *First Available Cell: Desegregation of the Texas Prison System* (Austin, 2009); John A. Filter, *Prisoners’ Rights: The Supreme Court and Evolving Standards of Decency* (Westport, 2001); John J. Dilulio Jr., ed., *Courts, Corrections, and the Constitution: The Impact of Judicial Intervention on Prisons and Jails* (New York, 1990); and Malcolm M. Feeley and Edward L. Rubin, *Judicial Policy Making*

African American prisoners that drew on international revolutionary liberation movements against colonial regimes; a prison union movement that attempted to deliver the tactics of labor mobilization behind bars; and a legal, civil rights, and social struggle over prison overcrowding and the denial of prisoners' rights. Although each of these branches of the national prisoners' rights movement managed to share sources of support, inspiration, members, ideologies, strategies, and tactics, they remained state-by-state campaigns that were shaped by geographical differences, regional histories, individual prison practices, and state laws.⁷

In the American South, thirty years of prisoners' rights lawsuits and civil rights litigation from 1965 to 1995 yielded some great victories. Throughout the region the prisoners' rights movement successfully demanded an end to racial segregation and the southern practice of having fellow inmates act as guards while it also relied on the federal courts to order states to alleviate prison overcrowding, improve inmate health care, and grant prisoners access to attorneys and legal representation.

Integral to the southern prisoners' rights campaigns was a language of resistance that claimed that southern prisons, in particular, were explicit examples of twentieth-century slavery. Southern prison systems eschewed rehabilitative programs and any warehousing practices that left prisoners idle. Hard agricultural labor structured southern prison life and its attendant control regime. Southern prisons were therefore particularly susceptible to legal and social movement claims that aimed to match the experience of southern (and unpaid) prisoners toiling on former plantations and picking cotton with the historical memory of slave labor. Moreover, in southwestern prisons, particularly in Texas, Mexican American prisoners, inspired by the Chicano movement, saw that the conditions of southern incarceration left both black and brown inmates literal and legal slaves. This essay, therefore, considers how geographical differences among carceral states shaped the discourses and outcomes of prisoner resistance. Excavating the prisoners' rights movement, considering its successes and the resistance it faced from the state, bridges historical discourses about American law, constitutionalism, policy history, and state building with histories of social justice struggles, civil rights, and black power and brown power critiques.⁸

and the Modern State: How the Courts Reformed America's Prisons (New York, 1998). On the cultural production of prison radicalism, see Joy James, ed., *Imprisoned Intellectuals: America's Political Prisoners Write on Life, Liberation, and Rebellion* (Lanham, 2003); and Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis, 2006). For works that place prisoners at the center of the struggle for prisoners' rights, see Angela Y. Davis and Other Political Prisoners, *If They Come in the Morning: Voices of Resistance* (New Rochelle, 1971); Jamie Bissonette, *When the Prisoners Ran Walpole: A True Story in the Movement for Prison Abolition* (Cambridge, Mass., 2008); Christopher E. Smith, "Black Muslims and the Development of Prisoners' Rights," *Journal of Black Studies*, 24 (Dec. 1993), 131–46; and Ronald Berkman, *Opening the Gates: The Rise of the Prisoners' Movement* (Lexington, Mass., 1979).

⁷ On revolutionary nationalist liberation politics as a metaphorical language of prisoner resistance in the California prisoners' rights movement, see Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill, 2014). On prison unions in the South, see Donald F. Tibbs, *From Black Power to Prison Power: The Making of Jones v. North Carolina Prisoners' Labor Union* (New York, 2011). On the legal and social struggle surrounding prison overcrowding and the denial of prisoners' rights, see Robert Perkinson, *Texas Tough: The Rise of America's Prison Empire* (New York, 2010), 252–85; Mumia Abu Jamal, *Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.* (San Francisco, 2009); and Robert T. Chase, *Civil Rights on the Cell Block: Prisoners' Rights Movements and the Construction of Carceral States* (Chapel Hill, forthcoming).

⁸ Angela Y. Davis, "From the Prison of Slavery to the Slavery of Prison: Frederick Douglass and the Convict Lease System," in *The Angela Y. Davis Reader*, ed. Joy James (Malden, 1998), 74–95; Loïc Wacquant, "From Slavery to Mass Incarceration: Rethinking the 'Race Question' in the U.S.," *New Left Review*, 13 (Jan.–Feb. 2002), 41–60. On the centrality of southern prison labor to the prisoners' rights movement, see Robert T. Chase, "Slaves of the State' Revolt: Southern Prison Labor and a Prison-Made Civil Rights Movement, 1945–1980," in *Life and Labor in the New, New South*, ed. Robert H. Zieger (Gainesville, 2012), 177–213. On the culture and everyday life of prison labor hierarchies during the Great Depression, see Ethan Blue, *Doing Time in the Depression: Everyday Life in Texas and California* (New York, 2012). On unions and prison guards, particularly outside the South, see Heather Ann Thompson, "Rethinking Working-class Struggle through the Lens of the Carceral State: Toward a Labor History of Inmates and Guards," *Labor: Studies in the Working-Class History of the Americas*, 8 (Fall 2011), 15–45.

From “Slaves of the State” to Imprisoned Citizens: Rethinking Civil Rights, Legal History, and Citizenship

At the heart of this untold narrative lies a debate over who deserved civic rights. This debate represented a major shift in American constitutional law. Prior to World War II the law considered inmates as slaves of the state, and courts at state and federal levels maintained a “hands-off” doctrine of nonintervention regarding the conditions of state captivity. The legal tradition that denied prisoners the ability to seek court-ordered intervention and relief has its origins in emancipation and the struggle over Reconstruction. While the Thirteenth Amendment abolished the private ownership of human beings, it expanded states’ control over the lives and work of convicted criminals. This expansion was confirmed by the 1871 Virginia decision *Ruffin v. Commonwealth*, which ruled that convicted criminals are “for the time being a slave of the State. . . . He is *civiliter mortuus*; and his estate, if he has any, is administered like that of a dead man.” Beginning in the 1960s, prisoner activists turned to section 1982 of the 1871 Civil Rights Act, which allowed citizens to sue states in federal court for violations of their constitutional rights. In their demands for constitutional protection, prisoners relied on the First Amendment’s protection of free expression, the Fifth and Fourteenth Amendments’ due process clauses, and the Eighth Amendment’s prohibition against cruel and unusual punishment. The 1963 Illinois case over religious freedom for prisoners, *Cooper v. Pate*, found that prisoners could challenge the practices of prison officials in federal court. The 1964 Supreme Court decision on the case ignited a nationwide civil rights movement for inmates, doing for prisoners’ rights what *Brown v. Board of Education* had done for education and civil rights ten years earlier. In the aftermath of *Cooper v. Pate*, the number of prisoners’ rights suits dramatically increased from 218 in 1966 to almost 18,477 in 1984. Between 1970 and 1996 the number of prisoner civil rights lawsuits leaped an astonishing 400 percent.⁹

Thanks to federal cases such as *Cooper v. Pate*, as well as escalating prisoner activism, southern state prison systems came under intense scrutiny after 1965. From 1965 to 1995, federal courts found that eight of the eleven states of the U.S. South had unconstitutional prison systems and ordered those state systems into federal receivership. Only four of the thirty-nine states outside the South (Alaska, Delaware, New Mexico, and Rhode Island) have been subject to a similar intervention from the federal courts. Individual prisons in nonsouthern states did come under court order, usually due to overcrowding, but federal courts declared few state prison systems outside the South unconstitutional.¹⁰

⁹ *Ruffin v. Commonwealth*, 21 Grat. 790 (Va. 1871). For a legal history of the loss of citizenship rights by those convicted of a felony, see Pippa Holloway, *Living in Infamy: Felon Disenfranchisement and the History of American Citizenship* (Oxford, 2013). *Cooper v. Pate*, 324 F.2d 165 (1963); *Cooper v. Pate*, 378 U.S. 546 (1964). On the history of *Cooper v. Pate*, see Toussaint Losier, “. . . For Strictly Religious Reason[s]”: *Cooper v. Pate* and the Origins of the Prisoners’ Rights Movement,” *Souls: A Critical Journal of Black Politics, Culture, and Society*, 15 (nos. 1–2, 2013), 19–38. *Brown v. Board of Education*, 347 U.S. 483 (1954). On the increase in the number of prisoner rights lawsuits between 1966 and 1984, see *Annual Report of the Director of the Administrative Office of United States Courts* for each year. Jim Thomas, *Prisoner Litigation: The Paradox of the Jailhouse Lawyer* (New York, 1988), 61. On the ways histories of struggle for national citizenship must also consider region, locally specific histories, and labor, see Evelyn Nakano Glenn, *Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor* (Boston, 2002).

¹⁰ The prison systems in Alabama, Arkansas, Mississippi, South Carolina, Tennessee, and Texas were all declared unconstitutional. Georgia and Louisiana, meanwhile, had their principal maximum-security facilities under similar federal court orders, and Florida had its entire system under court order. Virginia remains the only southern state that did not have its prison system either declared unconstitutional or have its principal prison under federal court order. Feeley and Rubin, *Judicial Policy Making and the Modern State*, 40–41. Nonsouthern states with limited prison-litigation cases include Maine, Massachusetts, Montana, Nebraska, Vermont, and Wyoming. In New York, the

Behind many of these landmark cases was a network of outside legal organizations, such as the National Association for the Advancement of Colored People's Legal Defense Fund (NAACP LDF) and the American Civil Liberties Union, insisting that the struggle for prisoners' rights could not be separated from the civil rights movement. When forty-five freedom riders, including James Farmer, Stokely Carmichael (Kwame Ture), and John Lewis, spent thirty-nine days incarcerated at Mississippi's Parchman Prison Farm, the link between civil rights and prisoners' rights was forged. Following the well-publicized incarceration of freedom riders at Parchman Prison, the NAACP LDF and the Lawyers' Committee for Civil Rights under the Law formed what became known as the Farish Street Lawyers Group. From the confluence of civil rights and prisoners' rights came *Gates v. Collier*, a 1972 civil rights lawsuit for the prisoner Nazareth Gates filed by the attorney Roy Haber, who argued that Parchman Prison Farm was the "last vestige of state-sponsored slavery." The federal court that heard the argument eventually dismantled the southern trustee system of Mississippi. Evaluating these cases as the bridge between the civil rights movement of the 1960s and the prisoners' rights movement of the 1970s demonstrates that the civil rights struggle continued well beyond 1968; the cases also raise questions about post-civil rights era declension narratives.¹¹

Perhaps the most sweeping prisoners' rights case coming out of the South during the 1970s and 1980s was the Texas prisoner class-action civil rights lawsuit *Ruiz v. Estelle*. First filed in 1972, *Ruiz v. Estelle* was the culmination of an almost decade-long struggle between keeper and kept. It was a massive omnibus lawsuit demanding that Texas outlaw the practice of having inmates act as guards, and ordering the state to alleviate prison overcrowding, improve inmate health care, and grant inmates access to attorneys and legal representation. Central to the case, however, was the southern practice of dividing prison labor between those inmates who worked in the field and a group of select inmates who served the prison administration as convict guards, known as trustees or building tenders. The building tender (inmate trustee) system was a hierarchical labor regime that constituted a system of violence and domination relying on the economic incentives and deterrents of an internal prison economy, acts of sexual violence, and the power of racial hierarchy and brute physical force to maintain control, order, and discipline. It constructed a vicious sex trade in which building tenders were given the prison administration's tacit approval to use their power to rape other inmates and engage in the buying and selling of inmate bodies as a sexual commodity that signified cultural standing and societal power.¹²

Building tenders drew their ranks from a racially segregated prison society, in which members of any of the three major racial classifications—blacks, whites, Mexicans—could become a building tender. White inmates, however, ruled the hierarchical building tender

legal efforts of Malcolm X. Sostre, a New York prisoner and black Muslim, centered on cruel and unusual punishment while in solitary confinement, his right to practice Islam, and his right to receive the political publications to which he subscribed. Despite winning some valuable victories against New York's effort to restrict religious freedom, his cases did not result in the kind of class-action civil rights lawsuit that sent many southern prison systems into federal receivership. *Sostre v. Rockefeller*, 312 F. Supp. 863 (1970); *Sostre v. McGinnis*, 442 F.2d 178 (1971); *Sostre v. Otis*, 330 F.Supp. 941 (1971). Warren L. Schaich and Diane S. Hope, "The Prison Letters of Martin Sostre: Documents of Resistance," *Journal of Black Studies*, 7 (March 1977), 281–300.

¹¹ *Gates v. Collier*, 349 F.Supp. 881 (1972). On the "last vestige" of state-sponsored slavery, see Janine Robben, "Profiles of the Law: Lessons from Parchman Farm," *Oregon Bar Bulletin*, Jan. 2007, <https://www.osbar.org/publications/bulletin/07jan/profiles.html>. David M. Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York, 1996).

¹² *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980).

system in serving as lead building tenders: inmates with comprehensive power that derived from close working relationships with a top prison administrator. The prisoners' rights movement hoped to highlight, however, that the occurrence of state-orchestrated prison rape was accelerating because inmate trustee-guards were waging a social war of escalation with prisoners of color who rebelled against a white trustee-ruled prison. In a letter to Texas senator Chet Brooks the prisoner Michael Jewell explained how the accelerating power of inmate trustees created an atmosphere of sexual violence. "Every time I leave my cell," he warned, "I do so with the feeling that I'm entering a jungle, and the beasts could spring from behind any bush. The building tenders here have created a situation wherein one cannot feel safe, where tension is so thick you can drive nails into it, where there is no peace, nor freedom from fear. We simply cannot live under such conditions." When viewing such experiences through the lens of prisoners' rights and civil rights, historians should reevaluate prison rape as more than an expression of an individual's coercive power. By drawing on the voice of prisoners through legal testimonies and oral histories, historians can bring to light prisoners' claims that prison rape was a hidden but calculated political tool of the state used to silence the prisoners' rights movement and ensure comprehensive control.¹³

Ruiz v. Estelle, which addressed state use of abusive convict guards, was at that time the largest and longest civil rights case in the history of American jurisprudence. The trial convened in October 1978 and adjourned in late December 1980, when Judge William Wayne Justice ruled in favor of the prisoners and declared the Texas prison system unconstitutional. At the heart of the case was a major shift in constitutional law and legal history. *Ruiz v. Estelle* also represented a social movement struggle over the internal and often-hidden world of prison society and its attendant powers of sexual rapaciousness, racial hierarchy, physical abuse, and prison labor.

"Slaves of the State" Revolt: The Slavery and Convict Lease Discourse as Prisoner Mobilization

"Arise, arise, Strike! For your lives and liberties. . . . Let every SLAVE on the . . . SLAVE CAMP do this and the days of the Slave Holder are numbered. . . . You cannot be more oppressed than you are. You cannot suffer greater cruelties than you have already. Let OUR motto be: Resistance! Resistance! Resistance!" Such words of resistance came not from antebellum abolitionists or a group of rebelling enslaved peoples but instead from a political pamphlet by the prisoner and Black Panther John Eduardo Swift, who was embroiled in the struggle over the U.S. prison regime during the mid-1970s. Swift was one of many prisoners who mobilized a grassroots movement to actively assist the legal campaigns against abusive Texas state prisons through self-defense, work strikes, and a system-wide letter-writing campaign to judges, state legislators, the governor, the media, and civil rights attorneys to bring visibility to the cause. Swift wrote the tract to call Texas prisoners to the movement, but he was not alone in his efforts. Other groups, including the Prisoners Solidarity Committee of Texas, Prisoners United, the First Inmate Reform Strike (FIRST), the JailHouse Lawyers Association, and Allied Prisoners Platform for Legal Equity, joined the movement.¹⁴

¹³ Michael Jewell to Chet Brooks, Michael Jewell folder, box 1999/136-21, Records of Chet Brooks (Texas State Library and Archives Commission).

¹⁴ For John Eduardo Swift's mobilizing pamphlet, see Inmate Correspondence and Writings 1973-1974 folder, box 2004/016-55, General Counsel's Office Ruiz Litigation Case Files, Texas Department of Criminal Justice Records.



In this 1978 photo David Resendez Ruiz leaves federal court during the proceedings for *Ruiz v. Estelle*, 503 F.Supp. 1265 (S.D. Tex. 1980). *Courtesy Alan Pogue.*

Outside the South, the discourse that prisons constituted slavery was a metaphorical organizing principle that condemned the entire prison system as a form of American apartheid challenged only by rallying African Americans to the prison abolitionist cause. In nonsouthern states—particularly California, Illinois, and New York—black prisoners formed organizations and printed underground newspapers, hoping that the slavery discourse might galvanize African Americans across the nation toward collective action. In Illinois, for instance, the New Afrikan Prisoner Organization was established in the aftermath of prison uprisings at Stateville Correctional Center and the state penitentiary in Joliet, while in California the San Quentin Six—those men charged with the deaths of three guards and two prisoner trustees on the day of George Jackson’s death—also employed the prisons-as-slavery discourse.¹⁵

Across the American South, however, the charge that prisons constituted twentieth-century slavery had the added physical reality that southern prison farms forced unpaid prisoners to toil on former plantations in racially segregated groups to pick cotton under the supervision of white prison “bosses” and convict guards, and the prisoners faced routine corporal punishment and state-orchestrated sexual assault. While the black power movement outside the South lit fire to the charge that African Americans went from the “prison of slavery to the slavery of prison,” in Angela Davis’s words, prisoners in the South underwent a distinct geographical imprisonment that made their

¹⁵ Berger, *Captive Nation*, 177–222; Losier, “. . . For Strictly Religious Reason[s].”

legal condition as slaves of the state a visceral indictment against southern prison practices. Southern prisoners' rights campaigns, therefore, sought a strategy that drew upon metaphorical discourses and applied them to the physical geography of southern prison farms to frame contemporary incarceration as the living legacy of slavery bound by regional and historical practices that applied equally as well to the enslaved and the incarcerated.¹⁶

Throughout Texas, a series of political prisoner organizations formed and adopted a similar language to construct a counternarrative to the southern prison modernization success story; these organizations spoke of a "backwards" prison system tied to slave practices, racial brutality, and plantation labor. References to prison as a "slavocracy" littered prisoner letters, which explicitly called attention to unpaid prisoner work as slave labor. In one tract, "Ally or Die," a proclamation was issued to fellow "members of a totally enslaved class" within which "we are total slaves inside and disenfranchised wage-slaves outside." In another pamphlet, FIRST issued a call to all prisoners, "Blacks, Browns, Yellows, Reds, Whites," and "gays and straights," to "rally the support of families, friends, sympathizers, legal and political groups" to initiate a system-wide prison work strike against "the slave plantation." The Prison Solidarity Committee also sent out a handbill, "Texas Prisoners Resist Texas Slave System," charging that the conditions of imprisonment in Texas "are the prison conditions of a century ago, of the pre-Civil War era. . . . It is scarcely what a reasonable person would expect to find in 1978 with a reputation for modern methods and proud structures." The handbill mocked the southern prison claims of modernity, stating that "the distance from the prison farms of East Texas to the NASA Space Center is greater than the distance from the Earth to the Moon."¹⁷

As these passages suggest, the universality of prison abuse in the American South allowed prisoners of non-African American dissent, particularly Chicano prisoners, to share in the discourse that southern prisons created modern slavery. From 1973 to 1980 the number of Mexican Americans in Texas prisons more than doubled, from 2,442 to 5,168. In view of this shared criminalization of people of color, many Chicano prisoners drew on the Chicano movement—or, as George Mariscal termed it, "El Movimiento"—and understood that the conditions of southern prisons created a common experience with African Americans. Following his 1972 release from prison, Fred Cruz announced in the Chicano newspaper *Papal Chicano* the formation of the Texas Jail and Prison Coalition. Led by Cruz, the coalition aimed to unite those outside of prison and those still in prison for a statewide lobbying effort at prison reform. He hoped to link the black and brown coalition behind bars to the wider Chicano movement out on the streets. In his appeal to Chicano readers, Cruz promised to help launch a statewide effort "to bring about a humane prison system based on justice, tempered with mercy and compassion, that will give men hope for the future." Salvador Gonzalez, Cruz's childhood friend, fellow prisoner-activist, and leader of the Prison Solidarity Committee, spoke directly to Chicano prisoners' common cause with the history of racial oppression against African Americans. "What is really happening in this prison," Gonzalez charged, "society refuses to believe because they really believe in a humane world. . . . No one wants to be enslaved.

¹⁶ James, ed., *Angela Y. Davis Reader*, 74–95. On labor's centrality to Southern prison regimes, see Chase, "Slaves of the State' Revolt."

¹⁷ "FIRST Edition 1981, March, Critique of the Estelle Program," 1981 folder, box 1998/038-60, Assistant Director for Special Services Files, Texas Department of Criminal Justice Records.



This photo shows Texas prisoners picking cotton in 1968. Such widespread agricultural stoop labor by inmates was virtually eradicated in the South by 1995. *Courtesy Bruce Jackson.*

To be powerless, to be subject to the arbitrary exercise of power, to not be recognized as a human being, is to be a slave . . . an object, a number, a thing, or worse a no-thing.”¹⁸

For Alvaro Hernandez Jr., an organizer of the 1978 system-wide prison strike, the fact that black and brown prisoners collaborated and remained nonviolent in their cause showed that victory for the prisoners’ rights movement was finally within reach: “Remember one of the objectives was to show the public our humanity. To show the public that hey, we’re not animals. . . . Should we tear this place down? Should we try to take it over? . . . We’ll just sit—we’ll riot peacefully.” This black-brown coalition of prisoners defined themselves collectively as “slaves” and saw their incarceration on southern prison farms as a moment of literal and legal enslavement. By adopting a lens that views prisons as a legalized form of twentieth-century state enslavement, historians can reevaluate how black-brown coalitions formed around the shared predicament of criminalization and mass incarceration.¹⁹

In other parts of the South, prisoner mobilization campaigns expanded the slave resistance discourse to include modern struggles over the history and collective memory of the convict lease. During the mid-1970s Tennessee prisoners filed a series of lawsuits against the Tennessee Department of Corrections based on claims of overcrowding, filthy and

¹⁸ 1980 Annual Statistical Report, Ruiz Discovery–Crowding folder; box 2004/016-31, General Counsel’s Office Ruiz Litigation Case Files, *ibid.* George Mariscal, *Brown-Eyed Children of the Sun: Lessons from the Chicano Movement, 1965–1975* (Albuquerque, 2005). On Chicano prison mobilization, see Juanita Díaz-Cotto, *Gender, Ethnicity, and the State: Latina and Latino Prison Politics* (New York, 1996); R. Theodore Davidson, *Chicano Prisoners: The Key to San Quentin* (New York, 1974); Joan W. Moore, *Homeboys: Gangs, Drugs, and Prison in the Barrios of Los Angeles* (Philadelphia, 1978); Alan Eladio Gómez, “Nuestras Vidas Corren Casi Paralelas: Chicanos, *Independientistas*, and the Prison Rebellions in Leavenworth, 1969–1972,” in *Behind Bars: Latinolas and Prison in the United States*, ed. Suzanne Oboler (New York, 2009), 67–96; and Robert T. Chase, “Self Taught, Cell Taught: Urban Chicanos in Rural Prisons,” *Journal of Urban History*, forthcoming. “Pagina de Fred Cruz: Remember the Prisoners,” clipping, *Papal Chicano*, June 1–7, 1972, Issues of *Papal Chicano* and Assorted Newspapers folder, box 94/042/1, Frances Jale-Cruz Papers (Dolph Briscoe Center for American History, Austin, Tex.). Salvador Gonzales to Senator Chet Brooks, July 29, 1973, box 1981/217-93, Records of Senator Ron Clower (Texas State Library and Archives Commission).

¹⁹ Alvaro Hernandez Jr. interview by Robert T. Chase, March 23, 2007, digital recording and transcript, Civil Rights in Texas Prisons Project (Institute for Oral History, Baylor University, Waco, Tex.).

unsanitary living conditions, and physical abuse and rampant violence. Such deplorable conditions, the prisoners claimed, violated the Eighth Amendment's protections against "cruel and unusual punishment." Two years after the *Ruiz v. Estelle* decision the Tennessee trial court ruled against the Tennessee Department of Corrections in the prisoner civil rights suit *Grubbs v. Bradley*. Despite their victory, however, Tennessee prisoners experienced a period of intransigence as Gov. Lamar Alexander's "Plan for the 80s" offered a "law-and-order" approach that passed tougher sentencing laws, sending more and more prisoners into a vastly overcrowded system. When the state legislature in 1985 decided to change its prisoners' uniform from blue denim to a striped material that harkened back to the era of convict lease, the inmates revolted, gathered their retroconvict uniforms, burned them, and engaged in a system-wide prison uprising that resulted in a hostage situation similar to the one that Attica Prison inmates had created in 1971. The legislature and Governor Alexander insisted on these prison uniforms as a "law-and-order" fusion of the new "get-tough-on-crime" approach and the old public imagery of convict lease, even though the Tennessee Department of Corrections opposed the striped uniforms "because it is associated with the old Georgia chain gang."²⁰

During the 1985 Tennessee state prison hostage crisis, however, prisoners avoided the bloodbath that Attica prisoners had experienced. The Tennessee prisoners offered to return their hostages peacefully in exchange for the opportunity to have a live television news conference so that prisoners could make the public aware that the state was ignoring federal court orders. As the prisoner Mike Garrard repeatedly reminded the press, "Do you remember when this court situation began? 1975. . . . Yet it's the same rhetoric, and the prison system hasn't improved despite winning the 1982 lawsuit." "It wouldn't blow up all over the state unless something was drastically wrong," the inmate Mike Phillips agreed. One sign in particular connected the southern prisoners' rights movement to northern resistance, while also reminding the prisoners and their keepers to learn from the tragedies of the past. The hand-painted sign, done in sharp yet dripping red letters on a large cloth spread over the front of the prison, offered a simple but poignant admonition: "Remember Attica!"²¹

Even when some prisons erupted in seemingly nihilistic riots, the causes of prisoner violence centered on two countervailing forces bound up in the struggle over prisoners' rights. Perhaps the most disquieting example is the February 1980 uprising at the New Mexico State Penitentiary in Santa Fe. During that tumultuous riot, prisoners took twelve officers hostage and engaged in a sadistic frenzy of rape, murder, and torture of fellow inmates that resulted in the death of thirty-three prisoners. While the riot is a disturbing example of prison violence, historians must contextualize it as a response to the legal struggle over prisoners' rights, on the one hand, and the worsening of prison conditions, on the other.

Following a 1976 collective prison work strike, officials at the New Mexico State Penitentiary initiated a divisive and dangerous surveillance program known as "snitching," which rewarded inmate informants with better housing, improved classification, furlough and parole, and sometimes cash and drugs. When a prisoner refused to be an informer, however, prison officials threatened punishment by giving them a "snitch jacket," which endangered their lives in falsely marking them as an informant to the general prison population.

²⁰ "House Votes to Put Prisoners in Stripes," *Tennessean*, May 1, 1984, p. 1; "Earlier Prison Problems Left Unresolved," *ibid.*, July 7, 1985, p. H1; "State Prisons' Rate for Death by Violence Highest in Country," *Nashville Banner*, Nov. 2, 1985. *Grubbs v. Bradley*, 552 F.Supp. 1052 (M.D. Tenn. 1982). "Inmate Killed after Tennessee Prison Riots End," *Los Angeles Times*, July 3, 1985, p. A8.

²¹ "Inmate Killed after Tennessee Prison Riots End."



The Tennessee prisoners shown here are holding a press conference to publicly air their grievances in exchange for peacefully ending the July 1985 state prison uprising. *Courtesy Nashville Public Library.*

Snitches, meanwhile, routinely made false allegations to gain state rewards. Desperate to alleviate “snitching” and prison overcrowding, the inmate Kevin Duran, a civil rights movement veteran and an anti-Vietnam War protestor, filed a civil rights lawsuit against the prison system. In 1977 his legal efforts were combined with those of the American Civil Liberties Union’s National Prison Project. The result was a federal consent decree, *Duran v. Apodaca*, meant to alleviate poor prison conditions. State prison officials resisted the decision, however, and the “snitch” system and prison overcrowding continued unabated. Even the nation’s most disquieting prison riot must therefore be placed within the historical context of the struggle over prisoners’ rights and the encroachment of mass incarceration and a more punitive prison. When viewing the Santa Fe riot in hindsight, Duran aptly surmised, “We all knew something was bound to happen. The state was moving too slow.”²²

The Prisoner Litigation Reform Act and Silencing Prisoners’ Rights

The thirty-year era of federal court intervention on behalf of the prisoners’ rights movement came to an abrupt end in 1995. In the wake of the “conservative revolution” of 1994, Senate majority leader Bob Dole and Arizona senator John Kyl introduced the Prison Litigation Reform Act (PLRA) to “discourage frivolous and abusive prison lawsuits,” restrict the power of “liberal Federal judges,” and return control of the prisons to “responsible parties”—that is, state governments. Once passed in 1996, the PLRA restricted the power and scope of federal intervention by significantly lowering plaintiff attorney fees and by limiting the court’s involvement to only two years. By stipulating

²² *Duran v. Apodaca*, CIV-77-721-C (D.N.M. 1980); Colvin, *Penitentiary in Crisis*, 117–19, 125–26, 138, 170; “Duran Warned State Pen Was a Time Bomb,” *Albuquerque Journal*, Nov. 9, 1997.

that relief in a civil action should “extend no further than necessary,” the act severely curtailed the power and scope of federal intervention. The PLRA required prisoners to exhaust “such administrative remedies as are available,” which meant that they had to file a formal grievance within the prison and lose all their appeals before they could petition the federal court. It also restricted *in forma pauperis*, which had previously allowed inmates to file a civil rights complaint without paying the associated (sometimes costly) fees. Thus, the legislation carefully aimed at limiting a prisoner’s ability to file a civil rights complaint as comprehensive as *Ruiz v. Estelle*. Since the passage of the PLRA, the number of prisoners’ rights lawsuits nationwide has fallen 43 percent while the nation’s prison population has increased 23 percent. If Texas writ writers had labored under such a restrictive law, prisoners such as Fred Cruz, who filed many unsuccessful writs before being heard, would have been silenced. Indeed, when speaking on behalf of the Prison Litigation Reform Act, Speaker of the House Tom DeLay promised that “Texas should be in control of its prison system, not a federal judge.”²³

Despite this congressional reversal, between 1965 and 1995 the prisoners’ rights movement successfully advanced the claim that prisoners were not slaves. In the South this movement eradicated the southern prison farm, racial segregation, the trustee guard system, and agricultural stoop labor. Gone were the southern prison’s public images of slavery, the chain gang and convict lease, plantation field labor, and inmate charges of brutal sexual and physical abuse at the hands of the southern trustee system. In short, nearly all the aspects that made the prisons of the South uniquely southern were dismantled after 1985. Since the *Ruiz v. Estelle* decision Texas has held more prisoners in private prisons than any other state: 18,720 in 2006. This suggests that the turn to privatized prisons in the American South may have been one way for state legislatures to circumvent the power and oversight of federal courts. Indeed, the prisoners’ legal and labor protest strategy had implications beyond the South, particularly in the sun belt but also in the North, as prisoners’ rights suits expanded in the mid-1980s beyond southern labor conditions and looked to the ways prisoners across the nation were entitled to constitutional protection. By focusing on prison overcrowding, internal systems of abusive control and surveillance, religious freedoms, health care, and better access to the law, the prisoners’ rights movement attempted to curb the punitive effects of mass incarceration. Reactionary and conservative politicians at the national level responded to the successes of the prisoners’ rights movement by passing the Prison Litigation Reform Act, which made lawsuits such as *Ruiz v. Estelle* nearly impossible to duplicate. Nevertheless, histories of prisoner resistance and the concurrent construction of carceral states must attempt the difficult task of disentangling geographies that create temporal variety and strategies of resistance bound to the physical reality of region.²⁴

²³ Margo Schlanger, “Inmate Litigation,” *Harvard Law Review*, 116 (April 2003), 1555–706, esp. 1559–60n13, 1649. Prison Litigation Reform Act, 110 Stat. 1321 (1995). Matthew T. Clarke, “Barring the Federal Courthouse to Prisoners,” in *Prison Nation: The Warehousing of America’s Poor*, ed. Tara Herivel and Paul Wright (New York, 2003), 301–14. For Tom DeLay’s statement, see Michelle Mittelstadt, “Rider Would Limit Court in Prison Cases,” *Austin American Statesman*, Nov. 21, 1997. On prison litigation after the Prison Litigation Reform Act, see Schlanger, “Inmate Litigation”; Brian J. Ostrom, Roger A. Hanson, and Fred L. Cheesman, “Congress, Courts, and Corrections: An Empirical Perspective on the Prison Litigation Reform Act,” *Notre Dame Law Review*, 78 (no. 5, 2003), 1525–60, esp. 1531; and Derek Borhardt, “The Iron Curtain Redrawn between Prisoners and the Constitution,” *Columbia Human Rights Law Review*, 43 (Winter 2012), 469–520.

²⁴ Alicia Frezia-King to Robert T. Chase, Dec. 5, 2008 (in Robert T. Chase’s possession). On the brutality of northern prison systems and the need for civil rights cases to address that brutality, see Heather Ann Thompson, “Blinded by a ‘Barbaric’ South: Prison Horrors, Inmate Abuse, and the Ironic History of Penal Reform in the Postwar United States” in *The Myth of Southern Exceptionalism*, ed. Matthew D. Lassiter and Joseph Crespiño (Oxford, 2009), 74–98.



Displayed during the 1985 Tennessee state prison uprising, this hand-painted sign connected the southern prisoners' rights movement to northern resistance and served as a poignant historical admonition. *Courtesy Nashville Public Library.*

By looking for political debate over mass incarceration through a top-down national lens political and social scientists have concluded that the rise of the carceral state faced very little political opposition. When the historical lens shifts from national political debate over prisons to consider instead regional, state, and local resistance by prisoners—specifically their legal activism and prison protests between 1965 and 1995—historians will need to rethink the claim that the carceral state went unchallenged. These histories of multiple prisoners' rights movements reveal that there was a great legal, political, and social struggle that sought to check and challenge the construction of carceral states. This branch of the prisoners' rights movement was ultimately stifled by political calculations made by reactionary conservatives who used the power of the national legislature to return the control of prisons to state legislatures and thereby weaken federal judicial intervention for prisoners' rights in individual states. Nonetheless, a full accounting of the rise of the carceral state must look at how prisoners sought to counter the rising tide of mass incarceration. Continuing this research and excavating multiple histories of prisoner resistance might well offer a path to confront the ways a variety of carceral states have taken such deep root across American politics and society.²⁵

²⁵ For an overview of political and social science literature that claims that the rise of the carceral state faced very little political opposition, see Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge, Eng., 2006).