

# ‘A DARK CLOUD WILL GO OVER’

Pain, Death, and Silence in Texas Prisons in the 1930s

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Risk managers and health officials in the Texas Department of Criminal Justice today record a category of injury under the curious title ‘Caught In-Between’. There are a great many others, whose meanings are more evident: Slips, Trips and Falls; Chemical poisoning; Struck By/Against; Over-Exertion; Aggressive Behavior. ‘Caught In-Between’ is defined as ‘a pinch point type injury that involves mashing or squeezing’, including ‘caught in a door, between pulley, door shut on foot, etc’. Prisons, of course, are full of these pinch points. Spaces are opened only to be sealed, passages are created with the express purpose of shutting them again, locking off prisoners from the rest of the world. Automated doors open and close, gates slam shut. Hydraulic pistons are unforgiving. Unsurprising, then, that a hand, a foot, or a life might be crushed — caught in-between.<sup>1</sup>

In previous years, injuries specified as caught in-between would have been known simply as accidents — a catch-all category that hid as much as it told of how a person was injured or killed. The new differentiation of ways of listing injuries parallels the ongoing modernisation of Texas prisons, and their techniques of risk management. Despite such markers of progress, injuries, illness and deaths per-

sist; because, in a very real sense, all Texas prisoners suffer from the injury of being caught in-between. Their expulsion from the ranks of citizens has led to their social expendability. No longer are they among those whose lives are protected by the state, but they are not dead, either. For them, caught in-between becomes a state of being.<sup>2</sup>

The history of legal punishment tells a troubling story of the centralisation of physical pain and death across a spectrum of medical and disciplinary practices. In the twentieth-century United States, penal death drew upon two distinct historical currents. One was the legal execution for crimes against morality, property, the person and the sovereign, which originated in early modern Europe and took root across colonial America. The second was the social death of racial, chattel slavery in the American South.<sup>3</sup> After the Civil War, the legal status of the prisoner joined both currents into a new form of living death: *Ruffin v Commonwealth* (1871) ruled that the prisoner is ‘a slave of the state. He is *civiliter mortuus*’, civilly dead.<sup>4</sup> When the state retracted — or never extended — its guarantees of the protection of life and property, biological death was always a short step away. Postcolonial critic Achille Mbembe described this existence

as living in a death-world. His description of necropolitics, the inverse of the Foucauldian notion of biopolitical sustenance of citizens' lives, is applicable to incarceration: 'kept alive but in a *state of injury*, in a phantom-like world of horrors and intense cruelty and profanity'.<sup>5</sup>

Texas is a good place to explore pain and death in American punishment, and the 1930s, seen by many as the birth of the modern American state, are a good time to do so. Despite widespread poverty during the Great Depression, the 1930s held real promise. American liberalism made great strides under Franklin Roosevelt's New Deal, which expanded the regulatory-welfare state to protect American citizens' lives from economic crisis. These benefits were not evenly distributed, however. White male industrial workers gained the most, while white women and people of colour, who worked in domestic or agricultural labour, garnered far fewer protections; nevertheless, important gains were made.<sup>6</sup> Equally promising, lynch violence was finally disappearing across the South, and the Southern convict lease system went into a legislated 50-year remission. These were material benefits of the New Deal order.

Yet even granting that liberalism's unequal benefits were structured by race and gender, the New Deal had a still darker underside. Non-citizens, including hundreds of thousands of Mexican nationals, were expelled from the nation in what one scholar called a 'twilight zone between voluntary and forced migration'.<sup>7</sup> Prison populations also dramatically expanded, a condition made more dire by a proliferation of capital executions. Within growing carceral institutions, and particularly in

the South, prisoners died by means that ranged across a medical, legal and illegal spectrum: from state sanctions like capital execution to diseases like tuberculosis; from 'accidental' drowning to gunshot wounds; from inmate stabbings to sunstroke. Some were listed as 'natural' deaths by prison officials, others as violent illegal killings, others still as executions fully approved by the state.

But the line between these kinds of death was not always clear, and decisions as to where it was drawn were subjective. In fact — and this insight extends beyond the prison — there is no such thing as dying of 'natural causes.' Death is a condition of life, but belief in death from 'natural causes' is based on an understanding of nature as a pre-cultural, non-political, state of being. All lives, and their ends, are invariably shaped by cultural practices, the power relations of which are always historical, and always political.<sup>8</sup> When three black men died on a single day from 'the heat' on Clemens State Farm in 1930, the Texas Prison Board determined that these deaths could not have been prevented: 'The evidence show[s] that the utmost care was taken to prevent these unfortunate circumstances, and that the death of these three men is not the fault of the employees of Clemens State Farm.'<sup>9</sup> In extant records, the deaths were caused by 'heat exhaustion' rather than human actions, and unfortunate circumstances, as uncontrollable as the weather.

These black men's death from 'heat exhaustion' at everyday labour under the state's care reveals the prison's function in institutionalizing a zone of indistinction between life and death for those marked as criminal.<sup>10</sup> It also reveals a shift from

nineteenth-century to twentieth-century modes of state formation. In the nineteenth century, racist lynch violence bolstered the relatively weak state. Twentieth-century criminal justice differed in crucial ways, but nevertheless continued to guarantee a new racial and economic order. While the modern state might protect and extend subjects' lives in innovative ways, it would also permit degrees of death for unruly and racially degraded criminals, as crucial Others to the category of the citizen.

Too often scholars have treated lynch violence, incarceration and capital punishment separately. The most common periodisation of lynch violence, which begins in the 1880s and ends in 1930, is a symptom of this tendency, and meshes with the progressive story of the arrival of the modern liberal state.<sup>11</sup> Charles J. Ogletree, Jr. and Austin Sarat's recent *From the Lynch Mob to the Killing State* does well to stress the connection between nineteenth-century lynch violence and twenty-first-century legal execution, yet analyses capital punishment as if it exists in isolation from other carceral forms. Artificially decoupling lynching, ordinary punishment, and the death penalty has allowed many scholars to neglect a broader critique of prisons. Ogletree and Sarat write, 'Today, capital punishment is the new "peculiar institution" in American society', implying that capital punishment, rather than the mass carceral system of which it is a part, is the genealogical descendant of slavery.<sup>12</sup> I disagree. It is but one element within the necropolitical regime of American incarceration and its central role in modern and late-modern state formation. In order to fulfil their broader political and conceptual aims, death-penalty scholars must reckon

with the many forms of social, civil, and biological death behind bars, and with what activist-scholar Dylan Rodríguez has identified as a 'logic of death' in imprisonment. Such reconsideration must acknowledge prison abolition, rather than just death penalty abolition movements.<sup>13</sup>

Yet, it is hard to know a great deal about death. It is a difficult subject under any circumstances, 'for dying is the experience of slipping beyond the social world of affects and signification'.<sup>14</sup> Death in prison is doubly inaccessible because so much is deliberately hidden. Even for those inside, death, and its threat, enforces a veil of silence. A black Texas prisoner once explained that just talking about how someone died might be dangerous.

You actually can't tell how nothing happened. You got to go on the side with them if you want to live a long time ...

You may be cuttin' wood and they say, 'He was cuttin' wood and a tree fell on him.' All the rest of the guys say, 'How'd he get killed?' Say, 'He was cuttin' and got trapped by a tree.'

You can never tell. Things I actually seen here and things that actually happened — you got to lie, you got to lie. You tell just how it happened, a dark cloud will go over you, and nobody never know what became of you. You runned away. 'Did he get away?' 'Yeah, he got away.'

He got away in a shallow pit grave somewhere, in them woods somewhere. Ain't nobody can come

back here and tell a report but *them*. So that's the way that goes.<sup>15</sup>

You never can tell. Because this man understood that in prison, he controlled neither violence nor truth, nor even his own life. And to speak against the 'truth' violence imposed was to risk death itself, and have that 'dark cloud ... go over you'. Violence, in its many forms, made its own truth in the Texas prison, and death imposed a lasting silence.

If the late-nineteenth-century lynch mob proclaimed the 'truth' of white (male) supremacy in public spectacles that tortured and flayed bodies, mainly black men's, the 'truth' of death in the modern Texas penal regime was a crushed silence, a tubercular wheeze, an occasional gunshot, or the whine of an electrical generator pumping current through a legally-restrained body. Neither these sounds nor these sights were the terrorist spectacles of lynch violence, but they nonetheless signalled a new mode of racial and class hegemony and a new state formation.

## JURIDICAL INDISTINCTION

Texas has a long history of legal and extralegal execution, and it draws on numerous sources. The mid nineteenth century was a period of colonial warfare and expansion, and violence against Native Americans and Mexicans at the hands of Texas Rangers frequently took the shape of an extralegal posse or a lynch mob. When a member of a white settler community violated local customs, they, too, could be dispatched at the end of a rope and with an impromptu trial, if with a trial at all. Yet the best-known form of lynch violence was the racial terrorism of the late nine-

teenth and early twentieth centuries. White men, anxious about their patriarchal authority in the postbellum world (and this was exacerbated by economic crises), attempted to crush the possibilities of black political participation and reproduce the slave-like conditions and clearly-defined racial/gender hierarchies of earlier generations.<sup>16</sup> When accused of raping white women, African American men were lynched in massive and horrifically violent events, spectacles that blurred the line between legal and illegal execution. Public officials commonly participated in illegal lynch mobs and racial violence in the late nineteenth and early twentieth centuries. Similarly, black men 'saved' from mobs were frequently railroaded through a 'legal' trial and then put to death.<sup>17</sup>

Lynch violence in the late nineteenth and early twentieth centuries coexisted with capital punishment across the South. Until 1923, county sheriffs meted out capital punishment in Texas. As with lynch mobs, sheriffs hanged the condemned in a public spectacle in the county of conviction. Texas was slow to eliminate this public ritual, and to bring it behind the 'civilised' walls of the prison system.<sup>18</sup>

As the culture and economy of industrial capitalism and the aesthetics of modernity took hold across the South in the early twentieth century, advocates of local and bloody lynch justice — particularly for alleged sexual attacks by black men on white women — lost sway to the boosters of northern investment and the critics, black and white, of Southern backwardness, lawlessness, and insularity.<sup>19</sup> After such notable black activists as W. E. B. Du Bois and Ida B. Wells railed against what they identified as the barbaric lawlessness

of white lynch rule, new Southern elites with ties to Northern capital relented and moved against the previous generation's lynch violence. By the mid-1920s, Texas belatedly followed many other states by both centralising its legal executions and curtailing extralegal lynching, thus incorporating some element of white 'lawlessness' into the modernising state. This move had two key components: by denigrating working-class whites as the 'rabble' responsible for white lynch violence, new elites displaced responsibilities for lynching (in which political elites participated), while also playing on emergent conceptions of 'white trash' as a racially-polluted, criminal type.<sup>20</sup>

As the state mechanism for execution modernised to limit the threat of white mob disorder while guaranteeing white rule, so too did the Texas Prison System adopt an industrial apparatus for killing. After 1923, condemned criminals would be executed at Huntsville, and electrocuted rather than hanged.<sup>21</sup> There would be neither the festival of violence that accompanied a mass spectacle lynching, nor were vigilante killings acceptable. Instead, death came to prisoners through the anti-septic administration of justice, via the penitentiary and capital sentencing. Texans developed a sensibility that would modernise the practice of execution by centralising it in the state, and this, in the end, effectively absorbed white mob disorder while transforming the mechanisms of white male supremacy and class hegemony.

Indeed, the new prison regime was so effective at these tasks that in the Depression, unprecedented numbers of people were either imprisoned or put to death. In

Texas, the prison population swelled from 5,000 prisoners in 1930 (itself cause for much concern in prison Annual Reports) to crisis levels of 7,177 in April 1939, making the Texas Prison System one of the largest in the country.<sup>22</sup> In the same decade, capital sentencing rose nationwide, peaking in 1935 when 199 people were put to death. Then as now, Texas was a national leader in lethal punishment. The 20 men who died in Huntsville's electric chair in 1935 made up 10 per cent of all executions for that year, and Texas accounted for seven per cent of the nation's total executions between 1930 and 1942 (148 of 2,065 total executions).<sup>23</sup> Yet the electric chair was just one of many ways to die in this new regime, which, like lynch violence before it, meshed elements of legality and illegality, and neglect and cruelty.

Jesse Jones's experience presents a case in the indistinction between legal and extralegal killing across the early twentieth century. In 1906, Waco authorities arrested Jones, an African American man, for the murder of his employer, a Jewish storekeeper named Mat Block. The Sheriff explained how he obtained Jones's confession: 'When I was talking with the defendant we gave him some whisky; also told him we would protect him from the mob.' Keeping Jones awake all night, the Sheriff told Jones 'there was a crowd gathering downtown [that] contained too many men for that time of night'. Thus promised protection from a torturous death at the hands of the mob, Jones confessed, and was convicted, despite the two witnesses who claimed to be with him at the time of the murder. He was hanged in downtown Waco before a large and approving crowd.<sup>24</sup>

This sort of (white) community approval, and the overlap between vigilante and formal justice continued well into the 1930s, particularly when black men were the accused. Bob White, also African American, was arrested in Conroe, just north of Houston, for the rape of a white woman on 10 August 1937. White denied involvement in the crime. He claimed he'd been farming at the time of the attack, and argued that the casts of the attacker's footprints — used as evidence in the trial — did not match his own feet. Nevertheless, the victim identified him as the attacker. Material from his case file describes his treatment in the county jail:

That night and the three nights following the subject was taken to the woods near Livingston and beaten senseless. On the fourth night, he was suspended from the limbs of trees by chains tied around his wrists until he fainted. This treatment was administered for the purposes of obtaining a confession.<sup>25</sup>

The 'treatment' was successful, and White signed his 'X' on the confession. Later, however, White appealed his conviction, went through a second trial and appeal, and was in the process of jury selection for a third trial in June 1941 when W. S. Cochran, the victim's husband, shot him dead. Cochran, a large landholder in the area, was charged with murder, but soon released on \$500 bail. One week later, he was acquitted. The *Conroe Courier* reported 'general satisfaction' over Bob White's death.<sup>26</sup>

Confessions weren't just coerced over rape and murder charges, for which men would have been lynched a few years

earlier. Forced confessions, produced under tortures directly replicating lynch violence, could be used in a range of offences. The conditions an East Texas county jail inmate described in a letter to Governor Ferguson again showed the lack of distinction between extralegal lynching and legal criminal justice:

I am writting to you to let you know how the prisoners in the Nac'doches County jail is treated. They put you in jail on supsician and they try to make you confess, hang you up by the neck and whip you with a club and their pistols, take them out of jail at night, carry them to the woods, whip them unmercyful, one whips them the others hold their gun on them.

The writer continued that 'City and County Officers, Curl Butler High Sheriff[,] Jack Eaves Debuty[,] Pat Patterson debuty [and] City Marshall' all participated. Surely he knew he was in a weak position to make a request to the Governor, but nonetheless demonstrated optimism in the possibilities of the law when he requested that the Governor

investigate the way they are treated the poor colored people in jail and in Nac'doches ... please look into this letter and try to rid this town of such cruel treatments ...

From a prisoner in jail that are getting these treatments.<sup>27</sup>

Nevertheless, the 1930s did see the successful curtailing of lynch violence, and the glimmerings of modern trials and due process in Texas. Lynch violence de-

creased, but incarceration, accompanied by the rapid expansion of legal execution, quickly took its place.

## MEDICAL DEATH, VIOLENT DEATH

In the late nineteenth and early twentieth centuries, the most sophisticated medical facilities available in the Texas Prison System were at the Huntsville 'Walls' Unit, though investigations lamented that these were antiquated and inadequate.<sup>28</sup> In this era, doctors employed by the prison were to make weekly tours of the numerous farms where prisoners, leased to private and state farmers and railroad builders, lived, worked and died in conditions that were both putrid and violent. As the convict lease system fell into public disrepute and free-world wages dropped low enough to make the lease undesirable, the state assumed control of those farms, but medical care on these scattered sites remained inferior to that available at the Walls.<sup>29</sup> It should come as little surprise that white inmates, particularly young and compliant whites, benefited from the greater medical care available at the Walls, and that black, Mexican, and disobedient white inmates suffered disproportionately from medical neglect on the prison farms where they harvested cotton, corn and sugarcane, from sunrise to sunset, all year long.

Over the course of the 1930s, the prison's medical system became increasingly sophisticated. A new hospital at Huntsville was completed in 1935, to the high praise of prison administrators who built it.<sup>30</sup> In 1941 the hospital at the State Farm Industries Unit was 'equipped as a modern institution', to serve inmates at prison

farms scattered south of Houston. Tubercular prisoners were brought to Wynne Farm, which, in 1941 was updated to give 'first-class attention' to these infirm prisoners, and also modernised so 'that no contact is had between these patients and the non-tubercular inmates'.<sup>31</sup> The construction of new buildings and increasing medical segregation guided physicians toward a progressive narrative that touted the always-improving medical care available in the prison. This narrative wasn't entirely without merit: indeed, many inmates likely received medical attention that would have been unavailable to them prior to incarceration. That many services may in fact have been unavailable to the population at large bespeaks the social maldistribution of health, in which medical resources benefited wealthy whites disproportionately while neglecting poor blacks, Mexicans and whites, rather than the beneficence of the prison system.<sup>32</sup>

As the prison system assumed moral care and fiscal responsibility for inmates, the state, like slave owners of a previous era, sought to ensure a healthy and able-bodied population. As a result, inmates who fell ill at the farms now were more likely to be sent to the hospital at the Walls, rather than to suffer while still working on a prison farm. The goal, however, rarely stated outright but clear enough from many Annual Reports' financial statements, was that the ill might become well enough to return to work chopping cotton or canning prison-grown vegetables, and thus offset the costs of their incarceration.

By the middle of the decade, then, as the ill were congregated for treatment there, most deaths at 'The Walls' were due

to illnesses rather than fights or gunshots. After the new hospital at Huntsville was completed and as inmates from much of the scattered prison system were sent there, death at Huntsville, or at the nearby Wynne Tubercular unit, came slowly. It crept up in coughs and wheezes, from meningitis, and malignant lumps explained too late and chest infections treated ineffectively or too slowly.

As a result of the more efficient transfer of ill inmates to Huntsville across the decade, most of the dying done on other farms and in other units came from heat stroke and overwork — from accidents and ‘accidents’, from sudden heart attacks, from stabbings or beatings by inmates, or being shot by guards. Death became somewhat less frequent on the farms. But it could come suddenly, literally as a lightning strike, a falling tree, or as an old grievance and a knife in the side. It could come mysteriously, as ‘accidental asphyxia’, the cause of which is lost in the records. Prisoners on farms could expect some delay before being recognised as sufficiently ill to deserve transfer to Huntsville, and in that time could suffer greatly from medical neglect: G. B. Butler’s 11 August 1939 transfer from Clemens Farm, ill with jaundice, to the New Unit Hospital, came too late. He died there three days later.<sup>33</sup> That same year, even the expanded Huntsville hospital was running at near full capacity, a ‘condition’ diagnosed by prison officials as ‘caused by more transfers from the farms to Huntsville Hospital for treatment’.<sup>34</sup> Yet officials still found reason for self-congratulation. In 1940, Dr. Butler proudly reported to the Prison Board that ‘the Medical Departments of the recently visited prisons in Arkansas, Mississippi, and Louisiana are, as a whole, obsolete and

inadequate compared to the Medical Department of our Texas Prison System’.<sup>35</sup> A dubious, if flattering, choice of comparisons.

Prison medical records consistently differentiated between kinds of death.<sup>36</sup> Prison health officials were curious about the distinction between death from coronary thrombosis, cardiac failure, and aortic insufficiency, the better to administer the lives of the imprisoned — so that they could return, in the ideal world, as productive rather than enervated citizens. But the more salient distinction for prison authorities was between violent and non-violent death, between death at the hands of another, and death from ‘natural causes’. Yet the difference between the two is a political difference, and this is a key point. Though prison officials saw sunstroke as a disease, an alternative argument is that sunstroke, or the more medicalised ‘thermic fever’ was a violent death, differing only from legal execution in that those who died from it were not, in fact, sentenced to die. They were worked to death in the Texas sun, driven by the lash and the guards’ hopes to have a bumper crop of cotton or sugarcane, and to help finance the running of the prison itself.

While sunstroke, thermic fever and its variants were common ways to die — as was pneumonia — tuberculosis proved to be the second-most-likely cause of death for Texas prisoners between 1930 and 1941. Indeed, tuberculosis was second only to legal execution itself. While nearly one-fifth (18 per cent) of inmates who died in Texas prisons in these years were put to death in the electric chair, 15 per cent of the dead succumbed to tuberculosis in one form or another. Yet death from



tuberculosis proved to be no more of a 'natural' cause of death than capital punishment or thermic fever. Just as Texas juries and District Attorneys pushed for capital sentencing based on the sex and race of the accused and the victim, tubercular morbidity and mortality were deeply implicated in the Southern political economy. Diet and living conditions were key indicators of death or survival for people infected with tuberculosis.<sup>37</sup> The specific demography of those who died in prison of tuberculosis is unavailable, but the conditions of overwork, crowded and dilapidated housing characteristic of black life in the Jim Crow South meant that African Americans were dramatically overrepresented among those who suffered from tuberculosis, and these conditions were exacerbated behind bars. According to Samuel Roberts, approximately one-quarter of Americans who died from tuberculosis in 1929 were black. Poor whites across the South also suffered from tuberculosis, but the largest Texas cities showed a dramatic racial disparity in the pain and death of illness. In Houston and Dallas, pulmonary tuberculosis mortality rates for non-whites in 1935 were roughly twice the white rates (with 67.5 whites and 127.5 non-whites per 100,000 dying in Houston, and 35.2 whites and 84.9 non-whites per 100,000 in Dallas).<sup>38</sup>

At the Wynne Tubercular farm, the Huntsville Walls unit and elsewhere, inmates played key roles in caring for the sick and the dying. Inmate nurses were sometimes even rewarded for their service, with time deducted from their sentences and awards of meritorious conduct, particularly in their treatment of inmates suffering from communicable diseases, such as spinal meningitis or during flu out-

breaks.<sup>39</sup> The concern inmate nurses showed was remarkable, because it was perhaps more common for inmates to fight than to offer comfort.

Indeed, Texas prisons sustained a world of nearly-universal antagonism that made mutual support hard to achieve, and harder still to maintain. In fact, prison authorities institutionalised intra-prisoner violence in a practice known as the 'building tender' system. Building tenders were permitted to carry clubs and dirks, and had what might be called 'officially unofficial' sanction to maintain a brutal order based on sexual violence and fear.<sup>40</sup> Due in no small part to this system and the dominating hierarchies it supported, overtly violent pain and death were all too common. Violence was rained down by guards on prisoners, by prisoners on each other, and by prisoners onto their own bodies. Between 1930 and 1941, 11 per cent of Texas prisoners killed died of gunshot wounds, and five per cent were killed by other inmates — stabbed, clubbed, or by some other means. For people whose lives were deemed valueless by society — indeed, they held the legal status of the dead — life was cheap. In the prison context, violence became linked with masculinities, and violent hyper-masculinity became one form of currency, along with cash and tobacco, operating across subaltern prison economies and hierarchies. When folklorist Bruce Jackson interviewed long-time black prisoners in Texas, they described times when there 'was a lot of killing', and not just by guards. Much violence came 'over petty debts, petty thefts, money, hustling money to gamble'.<sup>41</sup>

Indeed, the alienation of incarceration led to a great deal of the bloodshed that, a generation later, Frantz Fanon would identify as fratricidal. Building on Fanon, literary critic Adam Gussow makes the case that black and white southerners transferred violence done against themselves (structural, symbolic, as well as material) against their peers, and that this was a troubling act of personal empowerment when violence against those in positions of structural power seemed impossible.<sup>42</sup>

If killing, for some, became a twisted form of empowerment, suicide, for others, became an escape.<sup>43</sup> In such a death-world, being shot by a guard could have been a kind of release. It is impossible to know the motivations of the dead, but common sense in prison folklore holds that if a prisoner is tired of living, an escape attempt will guarantee their death. Johnny Cash's song 'The Wall' describes a prison inmate who tried to escape, knowing that no one had survived an escape attempt before: 'The newspapers called it a jail-break plan, But I know it was suicide, I know it was suicide.' In *Passed On*, her literary history of black dying, Karla F. C. Holloway reflects on her son's death while attempting to escape from prison, and she places his life in the long history of African American life — and death — in escapes from historical or contemporary forms of unfreedom.<sup>44</sup>

There is more than a grain of historical truth to the idea that death, and even self-mutilation, could become an escape from the tortures of prison life. Prison doctors like W. B. Veazy expressed surprise about 'the apparent disregard the average inmate has for his health', but Veazy misunder-

stood the social devaluing of prisoners' bodies, a process to which prisoners were hardly immune.<sup>45</sup> How else are the many injuries that prisoners did to themselves intelligible, as they cut Achilles tendons, and severed fingers and hands? Prison doctors treated 20 self-inflicted arm fractures in 1940 alone.<sup>46</sup> Prisoners injured themselves to avoid work in the fields, to be sure, but also to control their own bodies, even through pain and destruction, in situations of radical disempowerment, in situations that warped the idea of agency developed by social historians of the past 30 years.<sup>47</sup> The line between state-sanctioned punishment, and self-destruction blurred in the modern penal regime.

Though Cecil Davis didn't slash his wrist or tie a noose from a bed sheet, it appears that he did commit suicide.<sup>48</sup> The 33-year-old Davis was serving a two-year sentence on the Retrieve Farm, dedicated to white men over 25-years-old of 'intermediate' security risk and rehabilitative potential.

Slightly more than a week after his arrival, Davis tried his first escape. On 24 July, he worked with Hoe Squad #9 near the Retrieve Club House. At around 9:30 in the morning, he looked directly at Captain Brown, in position on horseback behind the squad, and told him, 'Captain, I am going, you can kill me if you want to.' Davis dashed into the cane patch, and the nearest guards tried to shoot him but missed. Captain Brown, on horseback, overtook Davis after about 300 yards. He talked to Davis for 20 minutes, and convinced him to return. On the way back, Davis reportedly told Brown 'You might as well kill me, I'm not going back ... I'm

not going to do this time.' Reflecting on the day to investigators, Brown tried to explain just how difficult the trip back to the building was: 'You don't realize how hard it was getting him back to the building and him talking that way to me.'

On his return, a visiting physician examined Davis. Dr. Blair concluded: 'There isn't anything wrong with him. It seems to me like he just wanted to run off.' Because the doctor found no mental or physical problems, he prescribed a universal cure: Davis 'needed to be put back to work'. Davis was allowed to watch the picture show, and promised Captain Brown that he wouldn't try to escape again. That night, Brown warned him, 'You had better not run anymore because somebody might kill you. I gave you your life today.' On the Retrieve Farm, Davis's life was not his own. For Captain Brown, riding hard after an escaping prisoner and convincing him to return was difficult work. It would have been easier to kill him.

Davis ran the following day. Brown shot him dead.

In her report on the investigation, Prison Board member Charlotte Teagle determined that the killing of Cecil Davis was very much justified. In fact she commended Captain Brown 'for his patience and good judgment in getting the prisoner back to the building under such trying conditions' the day before he killed him. She concluded that Davis was 'in a very depressed state of mind' or was perhaps 'mentally unbalanced', but that, in either case, 'he placed himself in [a] position to be killed'.

While the evidence of the report clearly indicated that Davis would rather die than

spend two years at Retrieve, inmates' testimony begged questions. The majority of inmates gave pointedly nondescriptive answers to Mrs. Teagle's questions. After receiving numerous answers of 'No' or 'No M'am', she asked: 'You men don't do much talking. Why?' Eddie Canonico responded, 'I came to do my time and give no trouble', though trouble to whom is ambiguous. C. B. Bland's answer was more than simply unresponsive: 'I had rather not make any statement, but at the same time I am not casting any reflections on Captain Miller [the Retrieve Farm Manager] personally, but for my own safety, since I am trying to secure my release, and for other reasons, I had rather not testify.' The reasons for not testifying are unclear — perhaps he didn't want to imply guard misconduct for fear of reprisal, or perhaps he didn't want to challenge prisoners who may actually have intended to harm Davis, as Davis reportedly told Miller. Yet these were lost to the historical record when the dark cloud came over, and died with Davis on that hot July evening.

## LEGAL EXECUTION

Just a month after Cecil Davis's death, Florence Murphy, a black man convicted of rape, was executed. Unlike Davis, Murphy's death was planned well in advance, and carried out in Huntsville's electric chair, under the supervision of numerous state officials. Though few witnesses saw Cecil Davis die, his death was duly recorded in the *1940 Annual Report*.<sup>49</sup> Florence Murphy's was not.

Curiously, despite the long list of ailments and treatments that prison doctors offered, only once in the years between 1929 and 1941 did Texas prison doctors

record 'legal execution' as a cause of death. Even then, in 1931, only one of the 10 executions was recorded. This was not due to ignorance. Prison doctors participated in legal executions, placing a stethoscope on the steaming chest of the man strapped into the electric chair, and announcing the time of death.<sup>50</sup> While legal electrocution was the most common cause of death in Texas prisons in the 1930s, no Annual Reports mentioned this ultimate state sanction. Along with the invisibility of executions behind prison walls came a stark historical silence over those condemned to death. Yet even in this administrative silence we can find continuities between the local 'justice' of lynch mobs, assumed by a more powerful state.

On an administrative level, condemned prisoners existed in a bureaucratic netherworld between the local, county-level retributive justice of the lynch mob and the state-level mechanisms of punishment and execution. Though they lived and died at Huntsville and under the state-level prison system, in most regards, the condemned existed at the local county level. It was only in 1924 that the state of Texas began performing executions; prior to then offenders were executed by sheriffs in the counties where people were sentenced. It may have been due to the tradition that the condemned only arrived in Huntsville one month prior to their execution date, that they were in a liminal space between the injured and the dead — encapsulated precisely in the name 'the death house'. Their names were not recorded in the convict ledgers and indices; these were the record books of those living in prison, not those dying there. Nor was capital punishment discussed in meetings of the Prison Board. At this bureaucratic level,

the condemned were considered to be under the jurisdiction of the county and district courts rather than the state. Indeed, Texas counties paid \$25 to the state for the use of its cells and execution facilities.<sup>51</sup>

Together, these facts represent a link between the traditions of lynch violence and modern state execution. W. Fitzhugh Brundage argues that the history of lynching needs to be analysed at the local level, in order to assess the complex local power struggles and structures that went into this horrific form of racial violence.<sup>52</sup> State killing left the hands of local sheriffs and disordered mobs, becoming centralised in state institutions, but capital cases were tried and sentences handed down at the local level, by local district attorneys and judges who, like local elites a generation earlier, were players in political struggles and power dynamics in which race, class, the fear of crime and the 'public' sanction of revenge played key roles. This local exercise of justice bridged the transition from the lynch era to state execution.

Yet the most concrete connection between lynch violence and capital punishment came at the discretion of local judges and juries, and for cases in which they pressed for execution rather than a lengthy sentence. Rape, and particularly the alleged rape of a white woman by a black man, consistently drew the local municipalities' harshest legal wrath. The probability of a black man being executed for rape was vastly higher than the probability of a white man on the same charge. Indeed, black men were between five- and 10-times more likely to be executed for rape than white men, and this reached the

high point toward the end of the Depression, when black men were almost 20-times more likely to be put to death for rape than whites. Furthermore, men executed for rape were far more likely to be convicted and sentenced in east Texas, the region where slavery's roots were deepest, and where most lynching took place.<sup>53</sup>

## LIFE IN THE DEATH HOUSE

By all accounts, life in the death house was grim. Its nine cells looked onto 'the long last mile', a hallway that ended at a grey, solid steel door. The electric chair, known to all as 'Old Sparky', was behind that steel door, in a small, low-ceilinged room.<sup>54</sup> A guard was always on duty on this, the 'death watch' shift.

Though surely there was much antipathy among the condemned, some sense of final camaraderie was in evidence among the black, white, Mexican, and Native American men who spent their final days there. African Americans, though, were the largest number of those sentenced to die. Of the 191 men executed from 1929 to 1942, 107 were black (56 per cent), 63 were white (33 per cent), 20 were Mexican (11 per cent), and one was Native American.<sup>55</sup> J. F. Hogan, a white man convicted of murder in Hidalgo county, spent 57 days in the death house prior to the commutation of his sentence in 1934. In Hogan's two months in the death house, two men were put to death: as he said, 'a couple of Negroes; I don't remember their names.' Yet while Hogan was on death row, 'about four o'clock one evening when one of the Negroes was going down that night, we sort of held court on the Row, and the Negro willed all his personal belongings to the other boys he was to leave

behind'.<sup>56</sup> As the condemned ordered their last meals, they frequently placed orders for five bowls of ice cream, six pieces of pie, and so on. This wasn't simple gluttony or a final sensory inundation. Many ate last meals with gusto, others didn't touch the food. Rather, these extra pieces of pie went to the other prisoners in the death house. It was part of the community made among the nearly-dead, among men who knew, almost to the minute, when they would die.<sup>57</sup>

Fear and apprehension and the memories of home and of crimes must have been thick in the death house. As elsewhere in the prison system, music proved to be a powerful way for inmates to imagine other times and places than the walls that surrounded them. Country singer Merle Haggard's mournful 'Sing Me Back Home' poignantly intermingles music, memory and penal space. It tells the story of a prisoner on his way to his execution who asks a fellow inmate to 'Sing me back home, Before I die.' Haggard served time in prison, but he could hardly have known that the events his song described literally took place in the Texas death house, decades before he wrote it.

Paul Mitchell, a white prisoner who played harmonica, spent time on the Texas Death Row prior to having his sentence commuted. In Mitchell's words:

I played a mouth organ quite a bit then, and one of the men took a fancy to 'Chicken Reel'. He asked me to play it for him when his time came — said he wanted to go down with that tune ringing in his ears. I thought it would be easy, but ... well, at midnight he came by and shook hands with me. I

had the harmonica in my hand. He tried to say goodbye-but he just kind of choked up. Then he pointed to the mouth organ, and I began playing ... and he began walking toward that little gray door. Mister, that was the hardest piece I ever played in my life! And it kept getting harder! Then, when it was over, I threw my harmonica into the corner and both sides flew off of it. Now I never play 'Chick-en Reel' anymore.<sup>58</sup>

While condemned prisoners found solace in song and in each other, they also found solace in religion, and had frequent visits from prison chaplains. Most prisoners who died were not religious men (in 1929, one of the rare years when this statistic was kept in the Annual Report, 28 of the 52 who died listed no religion<sup>59</sup>), but it is easy to imagine that as their last days approached, some inmates had a change of heart, and used their final hours in spiritual pursuits. Religious officials saw the death house and the hospitals as fertile ground for their harvest of souls. Certainly questions of the afterlife pressed more urgently for those on death row than elsewhere in the prison system, and chaplains tried to fill this need. Indeed, the Catholic Reverend Hugh Finnegan felt his most important service was among the condemned. There, he said, his work's benefits were 'most evidently manifested'. He was thankful to provide real consolation in the Death House.<sup>60</sup>

## ON PECKERWOOD HILL

After a prisoner died, his family received word from prison officials. It may have been the terse telegram of an unexpected

death, when the speed of decay and expense of embalming demanded a quick, if unsympathetic, notification. Rosie Wilson received a telegram about her son, Johnnie. To say that the message is succinct is to put it mildly:

Rosie Wilson, Colored,  
Beckville, Texas.

Johnnie Wilson died last night  
eastham state farm weldon Texas  
advise by Western union immedi-  
ately whether you want remains  
your expense.

H E Moore, Chief Bureau of record  
and

Identification Texas Prison Sys-  
tem.<sup>61</sup>

Letters were more predictable in the case of an execution, when the death was planned well in advance. Prisoners' families received form letters from the warden, informing them that they needed to arrange for the removal of their family member's body after execution. If they could afford the expense, a mortician would pick up the body and return it to the family. A 1941 letter explained: 'If you intend to claim the body, please have the undertaker advise this office by letter immediately. If you do not wish to claim the body, burial will take place in the Prison Cemetery here in Huntsville with full Christian rites.' And to set the family at ease — as much as possible, under the circumstances of state execution: '[P]lease rest assured that everything possible is being done to make your brother's last hours as happy as is possible under such conditions, and the Prison Chaplain is in constant attendance.'<sup>62</sup>

Yet many prisoners' families could not afford to claim their remains, and were less fortunate than Johnnie Wilson, whose mother sent for his body. One of Elmer Pruitt's parents responded to the warden's letter: 'Many thanks to you for the information. It is my desire to claim the body of my hopeless son, but I am unable, financially, to bear the expense.' Pruitt, a black man convicted of murder in Henderson County, was executed 30 May 1937 and presumably buried at the state cemetery in Huntsville, known to inmates as Peckerwood Hill.<sup>63</sup>

Indigent prisoners, and this was not an inconsiderable number, might hope for a burial suit to be provided from the prison, as well as a coffin. The suit was almost certainly sewn by women prisoners at the Goree Farm, who made all of the work clothes worn in the prison, and the discharge suits worn by prisoners who were fortunate enough to walk rather than be carried out, and luckier still than those who never left. The coffins, too, were likely made in the prison carpentry shop. If inmate carpenters could build 'Old Sparky', it stands to reason that they could build a few dozen rough coffins each year.<sup>64</sup>

Prisoners whose families couldn't or wouldn't claim their bodies were seen to, then, by prison officials, and the prison chaplains oversaw their burial. This, too, was a vital part of their role in the prison. The matter-of-fact tone in Annual Reports belied a deeper sentiment in this Chaplain's ministrations:

In cases where the electrocuted men were not claimed by their relatives, I have conducted their funeral services; I have conducted

funeral services for the men who died in the hospital and were buried in the prison cemetery. The funerals of the men from the Wynne Farm have been held at the cemetery of that farm, as that unit has no chapel nor any suitable place for services.<sup>65</sup>

C. E. Garret, who tended to the spiritual wellbeing of white Protestants in the 'upper sector' of the prison system, oversaw some 29 burials in 1940 alone.<sup>66</sup>

These meagre services were hardly the grisly mass spectacles of death at the hands of the lynch mob. Indeed, almost no one would be there to witness the death, however it happened, or the burial, wherever it took place. If they did witness it, as was the case with Cecil Davis, they spoke about it only reluctantly. But it was also different from the post-Reconstruction lynch mob because during the depression, poor whites, now understood as 'white trash', joined African Americans and Mexicans at Peckerwood Hill: imprisoned, in the main, for property crimes, but also rape, murder, and assault; dead from medical neglect and from overwork, from hatred and electrocution. This new regime was far different from the lynch mob, but if this was progress, it was the kind described by Ralph Ellison's *Invisible Man*: 'It moved not like an arrow but like a boomerang, and if you were poor, black, or both, it was best to have a steel helmet handy, because it could come back and knock you down.'<sup>67</sup>

\* \* \*

In his history of lynch violence in the American South, historian W. Fitzhugh Brundage has cautioned against seeing clear continuity between lynch violence

and forms of modern criminal justice. While acknowledging the racism of more recent prison systems, Brundage writes that 'no legal lynching could convey the full, frightful symbolism of white supremacy that lynching by seething mobs had once conveyed'.<sup>68</sup> This is undoubtedly true. But white supremacy remained, transformed, arguably more thorough in its institutional banality than in earlier, more visible versions. In a perverse sense, the lack of frightful symbolism bespoke the complexity of the new system.<sup>69</sup> And when linked to the racial code of 'criminality' rather than biological race, it existed in more subtle ways that grew harder to identify, and even more so in the wake of the Civil Rights movement and the end of the legal basis of segregation and disenfranchisement.<sup>70</sup> Modernity would offer Texas criminal justice officers — now black and white, Native American and Mexican — a more sophisticated form of white supremacy, which Americans in the post-Civil Rights era have yet to challenge successfully in the ways that Du Bois and Wells did in their era.<sup>71</sup> Like the white supremacy of previous generations and of the lynch mob, this manifestation was deeply implicated in the social formations of the New Deal order and, now, late modernity. The panics of the 1890s saw gruesome waves of lynch violence coupled with the convict lease system; the crises of the 1930s saw the massive expansion of prison systems and legal execution. Since the 1980s, both prison populations and legal executions have seen a steep and vengeful rise in the at times slow, at times rapid, infliction of death, in the newest manifestation of white supremacy.<sup>72</sup> The dark cloud it casts has shifted, roiled and

turned across the past century, but still casts its shadow unequally across the land.

## NOTE

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## ENDNOTES

<sup>1</sup> Texas Department of Criminal Justice, Administrative Review & Risk Management Division, 'Risk Management Statistics', <http://www.tdcj.state.tx.us/adminrvw/adminrvw-risk-mgt-definitions.htm>. Accessed 13 March 2007.

<sup>2</sup> On zones of indistinction between life and death for certain categories of humans — in this case, Texas prisoners — see Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans Daniel Heller-Roazen (Stanford: Stanford University Press, 1998); also Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis: University of Minnesota Press, 2006).

<sup>3</sup> Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), esp. p.54. Also, Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982).

<sup>4</sup> *Ruffin v Commonwealth* (1871), quoted in James W. Marquart, Sheldon Eklund-Olson, and Jonathan R. Sorensen, *The Rope, the Chair, and the Needle: Capital Punishment in Texas, 1923–1990* (Austin: University of Texas Press, 1994), p.16.

<sup>5</sup> Achille Mbembe, 'Necropolitics', trans Libby Meintjes, *Public Culture*, Vol. 15 No. 1, (2003), p.21. Italics in original.

<sup>6</sup> Steve Frasier and Gary Gerstle, eds, *The Rise and Fall of the New Deal Order, 1930–1980* (Princeton:



Princeton University Press, 1989), Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare* (Cambridge, MA: Harvard University Press 1998); Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917–1942* (Ithaca: Cornell University Press, 1995).

<sup>7</sup> Leo Grebler, *Mexican Immigration to the United States: The Record and its Implications*. Mexican American Study Project Advance Report 2 (Los Angeles: Division of Research, Graduate School of Business Administration, University of California, Los Angeles, 1966), p.25. Quoted in David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants, and the Politics of Ethnicity* (Berkeley: University of California Press, 1995), p.73.

<sup>8</sup> My thoughts are indebted to geographer Ruth Wilson Gilmore's definition of 'racism' as 'the state-sanctioned and/or extra-legal production and exploitation of group differentiated vulnerabilities to premature death'. See her 'Race and Globalization,' in R. J. Johnson, Peter J. Taylor, Michael J. Watts, eds, *Geographies of Global Change: Remapping the World*, 2nd ed (Malden, MA: Blackwell, 2002), esp. p.261.

<sup>9</sup> 8 September 1930 Meeting of the Texas Prison Board. Texas State Library and Archives Commission (hereafter TSLAC), Documents of the Texas Prison Board, Minutes and Meeting Files, June 1927–December 1941, Box 1998/038-8, Folder: Minutes, August–November 1930; also, *Annual Report of the Texas Prison Board, 1930*, 'Mortality Statistics', 7-D.

<sup>10</sup> Agamben, *Homo Sacer*.

<sup>11</sup> See W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880–1930* (Urbana: University of Illinois Press, 1993), among others.

<sup>12</sup> Charles Ogletree, Jr. and Austin Sarat, 'Introduction', *From the Lynch Mob to the Killing State: Race and the Death Penalty in America* (New York: New York University Press, 2006), p.14. David Garland's *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001) offers a more comprehensive model of penalty embedded in broad social formations, and Loïc Wacquant's 'Deadly symbiosis: When the prison and the ghetto meet and mesh', *Punishment & Society*, Vol. 3 No. 1, (2001), pp.95–133, also argues for a more comprehensive analysis of contemporary carceral systems.

<sup>13</sup> A thought experiment is instructive: if the death penalty were abolished tomorrow, to what extent would life change for the more than two million disproportionately poor and non-white inmates of American carceral systems? Might prison systems actually (and perversely) be reinforced through the reform and elimination of this practice? Hugo Bedau recently came close to this critique by suggesting

that limitations on the death penalty have, in fact, strengthened the elements that remain. This is not to argue for the retention of the death penalty but, rather, to expand the abolitionist critiques to the level of the prison itself. See the opening panel of the Harvard Law School's conference 'From Lynch Mobs to the Killing State: Race and the Death Penalty in America'. The panel is available as a webcast at <http://www.charleshamiltonhouston.org/EventDetail.aspx?Id=100004>. For an important critique within death-penalty literature, see Timothy V. Kaufman-Osborn, 'A critique of contemporary death penalty abolitionism', *Punishment and Society*, Vol. 8 No. 3, (2006), pp.365–83. On prison abolition, see Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Angela Y. Davis and Eduardo Mendieta, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (New York: Seven Stories Press, 2005); Joy James, ed., *The New Abolitionists: (Neo)Slave Narratives and Contemporary Prison Writings* (Albany: State University of New York Press, 2005), 'Introduction'; and Rodríguez, *Forced Passages*.

<sup>14</sup> Claudio Lomnitz, *Death and the Idea of Mexico* (New York: Zone Books, 2005), p.16.

<sup>15</sup> Quoted in Bruce Jackson, ed., *Wake Up Dead Man: Afro-American Worksongs from Texas Prisons* (Cambridge, MA: Harvard University Press, 1972), p.3.

<sup>16</sup> William D. Carrigan, *The Making of a Lynching Culture: Violence and Vigilantism in Central Texas, 1836–1916* (Urbana: University of Illinois Press, 2004); Arnolde de León, *They Called them Greasers: Anglo Attitudes Toward Mexicans in Texas, 1821–1900* (Austin: University of Texas Press, 1983), pp.90–2.

<sup>17</sup> Marquart, et al, *Rope*, p.2; David Garland, 'Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America', *Law and Society Review*, Vol. 39 No. 4 (December 2005).

<sup>18</sup> See Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865* (New York: Oxford University Press, 1989); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans Alan Sheridan (New York: Vintage, 1979); Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (New York: Cambridge University Press, 1992); Banner, *The Death Penalty*.

<sup>19</sup> Brundage, *Lynching in the New South*; Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940* (New York: Vintage Books, 1998).

<sup>20</sup> On the racialisation of 'poor whites' into 'white trash' in this period, see Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley: University of California Press, 1998).

<sup>21</sup> Just after midnight on 8 February 1924, the first day the electric chair was used, five black men were put to death. Marquart, et al, *Rope*, pp.13–6.

<sup>22</sup> These numbers seem quaint by today's standards, but were alarming in the 1930s. See the individual *Annual Report of the Texas Prison Board*, from 1929 to 1942 (hereafter *Annual Report*); also Ethan Van Blue, 'Hard Time in the New Deal: Racial Formations and the Cultures of Punishment in Texas and California in the 1930s', PhD, University of Texas at Austin, 2004.

<sup>23</sup> See Marquart et al, *Rope*, Appendix B; also, Bureau of Justice Statistics, 'Number of persons executed in the United States, 1930–2005', available online at <http://www.ojp.usdoj.gov/bjs/glance/tables/ex-etab.htm>. Accessed 17 April 2006.

<sup>24</sup> Quoted in Carrigan, *The Making of a Lynching Culture*, pp.172–3.

<sup>25</sup> From the file of Bob White, #220, quoted in Marquart, et al, *Rope*, p.62.

<sup>26</sup> 'Negro Bob White Killed in Courtroom Tuesday', *Conroe Courier*, 12 June 1941, in Marquart, et al, *Rope*, p.62.

<sup>27</sup> 6 July 1933 letter, Governor Ferguson Box 301–491, Folder 15, TSLAC.

<sup>28</sup> See *Report of the Penitentiary Investigating Committee, 1910*; and *Report of the Penitentiary Investigating Committee, 1913*, archived at the Center For American History (hereafter CAH), University of Texas.

<sup>29</sup> Paul Lucko, 'Prison Farms, Walls, and Society: Punishment and Politics in Texas', 1848–1910, PhD, University of Texas at Austin, 1999; Robert Reps Perkinson, 'The Birth of the Texas Prison Empire, 1865–1915', PhD, Yale University, 2001; Matthew J. Mancini, *One Dies, Get Another: Convict Leasing in the American South, 1866–1928* (Columbia: University of South Carolina Press, 1996).

<sup>30</sup> *Annual Report, 1935*, p.108.

<sup>31</sup> *Annual Report, 1941*, pp.7–8.

<sup>32</sup> On Southern public health and illness, see Edward H. Beardsley, *A History of Neglect: Health Care for Blacks and Mill Workers in the Twentieth-Century South* (Knoxville: University of Tennessee Press, 1987).

<sup>33</sup> 4 September 1939 Minutes of the Texas Prison Board, Box 1998/038–8, Documents of the Texas Prison Board, Minutes and Meeting Files, June 1927–December 1941, Folder July–Nov 1939, TSLAC.

<sup>34</sup> *Annual Report, 1939*, p.118.

<sup>35</sup> 1 July 1940 Minutes of the Texas Prison Board, Box 1998/038–8, Documents of the Texas Prison

Board, Minutes and Meeting Files, June 1927–December 1941, Folder Jan–Sept 1940, TSLAC.

<sup>36</sup> Yet even this knowledge was thick with new forms of power. Interpreting Michel Foucault, Sharon Patricia Holland argues that medical dissection and the development of pathology signalled a more thoroughly invasive state and knowledge of the dead, in order to better regulate life. See Holland, *Raising the Dead: Readings of Death and (Black) Subjectivity* (Durham: Duke University Press, 2000), p.30.

<sup>37</sup> Samuel Roberts, *Infectious Fear: Politics and the Health Effects of Segregation in the Urban South*, (Chapel Hill: University of North Carolina Press, forthcoming), 'Introduction'.

<sup>38</sup> *Ibid.*, p.49.

<sup>39</sup> See, for example, the 5 May 1941 Prison Board meeting, which ruled that six prisoners would be given 90 days credit on their sentence for treating a prisoner with spinal meningitis. Documents of the Texas Prison Board, Minutes and Meeting Files, June 1927–December 1941, Box 1998/038–8, Folder Nov 1940–May 1941, TSLAC.

<sup>40</sup> I develop this analysis in 'Hard Time in the New Deal'. See also Albert Race Sample's memoirs, *Racehoss: Big Emma's Boy* (New York: Ballantine Books, 1984).

<sup>41</sup> Quoted in Jackson, ed., *Wake Up Dead Man*, p.9. Conversely, effeminate masculinities also operated as form of social capital in subaltern prison economies, and allowed 'queens' to avoid direct violence by claiming an 'effeminate' male sexuality. See Carolyn Strange, 'Pain and Death: Transnational Perspectives', *Radical History Review*, Issue 96, (Fall 2006), pp.137–50; also, Blue, 'Hard Time in the New Deal', Ch. 4.

<sup>42</sup> Frantz Fanon, *The Wretched of the Earth*, trans Constance Farrington (New York: Grove Press, 1963); Adam Gussow, *Seems Like Murder Here: Southern Violence and the Blues Tradition* (Chicago: University of Chicago Press, 2002). In 1937, psychologist John Dollard argued that violence among black southerners was a transferral of anger caused by the southern racial-caste system. In 1939, Hortense Powdermaker argued that the same violence came from the lack of police protection, which required blacks to resort to interpersonal means, including violence, to settle grievances. See David M. Oshinsky, 'Worse than Slavery': *Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press, 1996), pp.130–2.

<sup>43</sup> Alvin Poussaint and Amy Alexander identify suicide and homicide as expressions of 'retroflexed anger' at structural or psychological circumstances, directed against oneself or against someone nearby. See their 'Suicide in Black and White: Theories and Statistics', in Lewis R. Gordon and Jane Anna Gor-

don, eds, *The Blackwell Companion to African-American Studies* (Malden, MA: Blackwell Publishers, 2006), pp.265–78.

<sup>44</sup> Karla F. C. Holloway, *Passed On: African American Mourning Stories — A Memorial* (Durham: Duke University Press, 2002). Recent research has linked confrontation with criminal justice to suicide. In 'Suicide in Black and White', Poussiant and Alexander cite a 1970 New Orleans study showing that nearly 50 per cent of black men who committed suicide had a history of conflict with local authorities, notably the police, while only 10 per cent of whites who committed suicide had similar confrontations. Further, in 1989, Lindsay Hayes found that suicide was the leading cause of death in American jails, while an earlier study found that the suicide rate in detention facilities was roughly nine-times higher than it was in the general population. This led Poussiant and Alexander to conclude that 'the possibility of suicide or suicidal behavior increases after individuals come into contact with the criminal justice system'. See 'Suicide in Black and White: Theories and Statistics', esp. p.275. On suicide in prison, see Alison Leibling, 'Prisoner Suicide and Prison Coping', in Michael Tonry and Joan Petersilia (eds), *Prisons* (Chicago: University of Chicago Press, 1999), pp.283–359.

<sup>45</sup> *Annual Report, 1936*, p.161. See also Abigail Groves, 'Blood on the Walls: Self-Mutilation in Prison', *Australian and New Zealand Journal of Criminology*, Vol. 37 No. 1, (2004), pp.49–64.

<sup>46</sup> For data on fractured arms, see *Annual Report, 1940*, p.188.

<sup>47</sup> Consider Walter Johnson, 'On Agency', *Journal of Social History*, Vol. 37 No. 1, (2003), pp.113–24.

<sup>48</sup> The following paragraphs' description of Davis' escape/suicide is drawn from the 'Investigation by Mrs. C. A. Teagle on July 29 1940, at Retrieve State Farm of the Death of Inmate Cecil Davis, No. 94887', and Teagle's 2 August 1940 Report to the Prison Board, O'Daniel Records, Box 2001/138–110, Folder Texas Prison Board Joint Meeting with Texas A&M Board of Directors, TSLAC.

<sup>49</sup> *Annual Report, 1940*, 'Deaths by cause for the Year 1940', p.148.

<sup>50</sup> Don Reid, *Eyewitness: I Saw 189 Men Die in the Electric Chair* (Houston: Cordovan Press, 1973), pp.22–5; cited in Marquart, et al., pp.30–1.

<sup>51</sup> Don Reid, with John Gurwell, *Have A Seat, Please* (Huntsville: Texas Review Press, 2001), p.6. Originally published as *Eyewitness*.

<sup>52</sup> Brundage, *Lynching in the New South*, Introduction.

<sup>53</sup> Marquart, et al, pp.54, 55.

<sup>54</sup> The description comes from Nelson Olmstead, *Thirty Minutes Behind the Walls*, Program 13, 15 June 1938, CAH.

<sup>55</sup> Data drawn from Marquart, et al., Appendix B.

<sup>56</sup> *Thirty Minutes Behind the Walls*, Program 108, 10 April 1940. The two men executed while Hogan was on death row were Jack Jackson from Liberty and June Woolfork from Bexar County, both tried for murder. See Marquart, et al, Appendix B, pp.201–33.

<sup>57</sup> Reid, *Have A Seat, Please*, pp.6, 9.

<sup>58</sup> *Thirty Minutes Behind the Walls*, Program 8, 11 May 1938, CAH.

<sup>59</sup> *Annual Report, 1929*, E-19. Note that these were non-execution deaths, as the religion of the condemned were not recorded in Annual Reports or in the Statistical Record Ledgers housed at the TSLAC. While most prisoners who died were irreligious, the majority who claimed religion were most likely Baptist, Catholic or Methodist, in that order. See Statistical record ledgers, Vols. 1998/038–240 and 1998/038–241.

<sup>60</sup> *Annual Report, 1932*, p.89. On religious guidance as 'pastoral power' and thus pacification on death row, see Cary Federman and Dave Holms, 'Breaking Bodies into Pieces: Time, Torture, and Bio-Power', *Critical Criminology*, Vol. 13 (2005), pp.327–45.

<sup>61</sup> Communication between H. E. Moore and Rosie Wilson, as well as a letter from W. P. Barber to Governor Allred are in Allred Box 1985/024–96, Folder Texas Prison System, General Correspondence and Proclamations, June 1937, TSLAC.

<sup>62</sup> Marquart, et al, p.29.

<sup>63</sup> *Ibid.*, p.30.

<sup>64</sup> In 1939 the *Annual Report* listed 'Special Death Expenses' among the costs in the General Administrative section. Burial Outfits came to \$220.81, coffins cost \$379 that year, and \$195 was allocated for 'inquets', though the actual investigations over killing were unnamed. *Annual Report, 1939*, p.49.

<sup>65</sup> *Annual Report, 1930*, 2-G.

<sup>66</sup> *Annual Report, 1940*, pp.175–7.

<sup>67</sup> Ralph Ellison, *Invisible Man* (New York: Vintage International Edition 1995 [1947]), p.6. Thanks to Davarian Baldwin for underlining the importance of this passage.

<sup>68</sup> Brundage, *Lynching in the New South*, pp.256–7.

<sup>69</sup> Timothy V. Kaufman-Osborn, 'Capital Punishment as Legal Lynching?', in Ogletree and Sarat, eds, *From Lynch Mobs to the Killing State*, pp.21–54.

<sup>70</sup> Michael Omi and Howard Wnant, *Racial Formations in the United States, From the 1960s to the 1990s*, 2nd ed. (New York: Routledge, 1994).

<sup>71</sup> Davis and Mendieta, *Abolition Democracy*, p.66.

<sup>72</sup> On late modern vengeance, see Garland, *The Culture of Control*. On new manifestations of white supremacy, see Steve Martinot and Jared Sexton, 'The Avant-Garde of White Supremacy', *Social Identities*, Vol. 9 No. 2, (2003), pp.169–81.