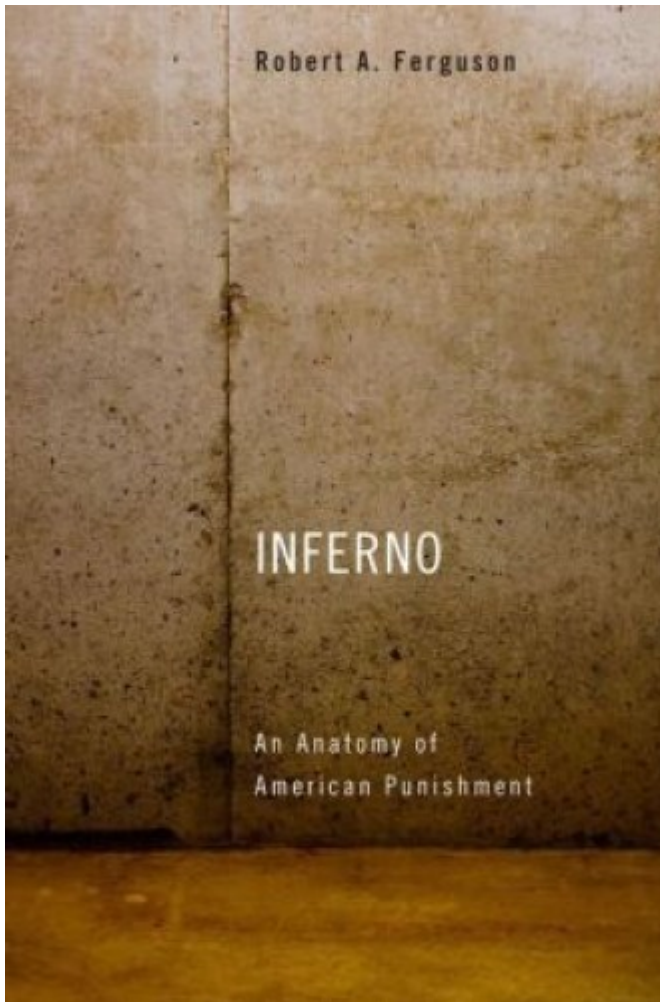


American gulag

by [Timothy Mark Renick](#) in the [May 28, 2014](#) issue

In Review



Inferno: An Anatomy of American Punishment

By Robert A. Ferguson
Harvard University

The numbers are disturbing. More than 2.2 million inmates currently fill prisons in the United States. One out of every 143 Americans is incarcerated—seven times the rate in Europe—and one in five of these prisoners is serving a sentence of 25 years

or more.

Not only is the size of the American prison population growing, it is increasingly skewed racially. African-American males make up 6 percent of the U.S. population but 40 percent of prisoners, and black men on average receive longer prison sentences than do their white counterparts. According to one estimate, “the odds of an African-American man going to prison today are higher than the odds that he will go to college, get married, or go into the military.” Evidence of racial profiling in the justice system persists. In New York, for example, police made 684,330 stops in 2011; 80 percent involved people of color.

Meanwhile, one in nine government employees in the United States now works in corrections. A growing number of states now spend more money annually on prisons than they do on education, yet prison overcrowding is chronic, and rehabilitation programs for inmates are being downsized or eliminated.

This sobering picture of the American penal system provides the context for *Inferno*, the latest work by Robert Ferguson, a professor of law, literature, and criticism at Columbia University. According to Ferguson, we have poured immense resources into a justice system that has woefully failed to deliver justice. “Even educated Americans do not know what they are doing when they want to punish, but they nonetheless hold passionate views about it,” he writes. In fact, the majority of Americans and their legislators have pushed for harsher punishments and less leniency, then turned a blind eye to the evidence that these approaches are failing.

Even worse, Americans have also turned a blind eye to the increasing levels of inhumanity in their penal system. Using a combination of legal theory, philosophy, and literary examples, Ferguson argues that we have become willfully and culpably indifferent to the conflation of pain and punishment that characterizes modern American prisons. “Let them rot in jail” is not just an expression. It has become the reality. According to Ferguson, “by keeping those in prison securely hidden from public view, . . . society confirms that it does not want to think about whatever suffering takes place behind jailhouse walls even if it knows that humiliation, discomfort, crime, and physical abuse are prevalent there.”

Take, for example, the rise in supermaximum prisons in the United States. As recently as 1984, the nation had one supermax federal penitentiary, located in Marion, Illinois. Today there are 57. In supermax prisons, Ferguson tells us, the

“dynamics of domination, control, subordination, and submission are fundamentally different from those in regular maximum security prisons.”

More than 20,000 supermax prisoners are currently being held in solitary confinement for periods of at least a year and often for much longer. Here, with the use of video monitoring, sensory deprivation has been turned into an “art form.” Prisoners have zero contact with other prisoners and even with prison staff. Cells are windowless, roughly ten by 12 feet in size, have a steel toilet and sink, and feature a trap door through which food is passed without human contact. Exercise is one hour a day and showers are once a week; both occur with the prisoners in shackles and in isolation. Aggressive behavior in solitary confinement has been known to result in prisoners being given as many as eight additional years in solitary—sentences rendered by neither judge nor jury but by penal officers.

Ironically, the practice of solitary confinement became common in the United States after it was advocated by the Quakers in the 1820s as a tool for rehabilitation—a progressive alternative to mutilations, amputations, and the death penalty. “The hope was that long periods of introspection would help criminals repent.”

However, many studies have shown the devastating and permanent effects of solitary confinement on the psyche of the prisoner. As early as 1890, Supreme Court justice Samuel Miller wrote:

A considerable number of the prisoners fell, after even short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still committed suicide; while those who survived the ordeal better are not generally reformed and in most cases did not recover sufficient mental activity to be any subsequent service to the community.

Despite Justice Miller’s plea, the Supreme Court ruled solitary confinement to be compatible with Eighth Amendment protections against “cruel and unusual punishment” and hence constitutional. As a result, Ferguson laments, we are left with a disturbing paradox: “You are placed in solitary confinement because you have been found to be mentally disturbed or physically aggressive, and solitary disturbs you more and makes you more aggressive.”

According to Ferguson, American courts have been no more sympathetic when it comes to prisoner humiliation, overcrowding, and subhuman conditions. Federal

courts dismissed damage claims made by the incarcerated, for example, when prison guards ordered “prisoners to strip naked and performed body cavity searches while members of the opposite sex were present, . . . made harassing comments to an inmate because of his perceived sexual orientation, and ordered one prisoner to ‘tap dance’ while naked.”

In *Hudson v. Palmer*, a 1984 case in which a prison guard willfully destroyed a prisoner’s personal effects “for no reason other than harassment” during a cell search, the Supreme Court granted the material facts but found in favor of the prison guard, ruling that “society is not prepared to recognize any subjective expectation of privacy that a prisoner might have.” Chief Justice Warren Burger wrote for the majority, “So dangerous is prison life that correctional officers deserve a free hand in monitoring it.”

Not only are prison guards largely given a free hand by the courts, so too are prison authorities. One inmate who was serving time for credit card fraud was placed with a population of prisoners doing time for violent crimes, was repeatedly beaten and raped, and became HIV positive. In the resulting 1994 case, *Farmer v. Brennan*, the Supreme Court remanded the case back to the trial court with instructions. These included: “An official’s failure to alleviate significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.” Justice David Souter explained: “The Eighth Amendment does not outlaw cruel and unusual conditions; it outlaws cruel and unusual ‘punishments.’”

How have we arrived at this sorry state of affairs? For Ferguson, the Calvinist roots of the European-American psyche are a piece of the puzzle. “Unquenchable fire for the wicked is our sole comfort,” John Calvin wrote. A trained lawyer as well as Christian Reformer, Calvin held that the human race struggles under a deserved curse. Even believers are “sheep destined for the fire,” and all punishments meted out to humans are righteous by definition. Rehabilitation is neither mandated nor possible.

For Ferguson, though, the ultimate blame for the injustice and inhumanity of the modern American prison system is not Calvin’s but our own. As citizens, we have failed to monitor what goes on behind prison walls and willfully averted our eyes in order to preserve our comfortable ways and to maintain a public veneer of justice. Unlike Calvin, Ferguson sees no righteousness in the inferno that we have created.