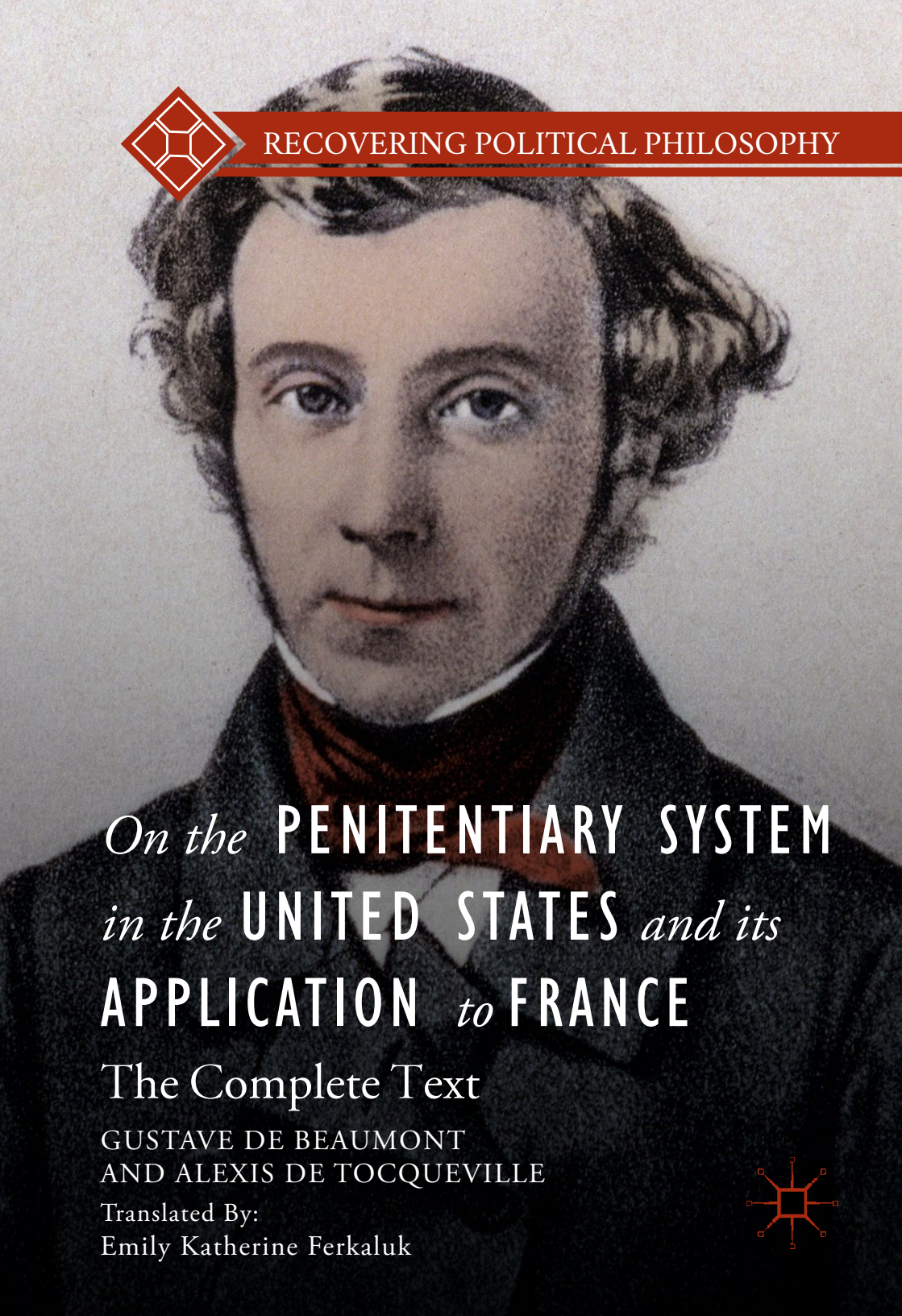

RECOVERING POLITICAL PHILOSOPHY

On the PENITENTIARY SYSTEM *in the* UNITED STATES *and its* APPLICATION *to* FRANCE

The Complete Text

GUSTAVE DE BEAUMONT
AND ALEXIS DE TOCQUEVILLE

Translated By:
Emily Katherine Ferkaluk

Recovering Political Philosophy

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Postmodernism's challenge to the possibility of a rational foundation for and guidance of our political lives has provoked a searching re-examination of the works of past political philosophers. The re-examination seeks to recover the ancient or classical grounding for civic reason and to clarify the strengths and weaknesses of modern philosophic rationalism. This series responds to this ferment by making available outstanding new scholarship in the history of political philosophy, scholarship that is inspired by the rediscovery of the diverse rhetorical strategies employed by political philosophers. The series features interpretive studies attentive to historical context and language, and to the ways in which censorship and didactic concern impelled prudent thinkers, in widely diverse cultural conditions, to employ manifold strategies of writing, strategies that allowed them to aim at different audiences with various degrees of openness to unconventional thinking. Recovering Political Philosophy emphasizes the close reading of ancient, medieval, early modern and late modern works that illuminate the human condition by attempting to answer its deepest, enduring questions, and that have (in the modern periods) laid the foundations for contemporary political, social, and economic life. The editors encourage manuscripts from both established and emerging scholars who focus on the careful study of texts, either through analysis of a single work or through thematic study of a problem or question in a number of works.

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Gustave de Beaumont
Alexis de Tocqueville

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The Complete Text

Translated by Emily Katherine Ferkaluk

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Translated from *Du Système pénitentiaire aux États-Unis et de son application en France, suivi d'un appendice sur les colonies pénales et de notes statistiques* by Gustave de Beaumont and Alexis de Tocqueville (H. Fournier, Paris, 1833).

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To David.

Series Editors' Preface

Palgrave's *Recovering Political Philosophy* series was founded with an eye to postmodernism's challenge to the possibility of a rational foundation for and guidance of our political lives. This invigorating challenge has provoked a searching re-examination of classic texts, not only of political philosophers, but of poets, artists, theologians, scientists, and other thinkers who may not be regarded conventionally as political theorists. The series publishes studies that endeavor to take up this re-examination and thereby help to recover the classical grounding for civic reason, as well as studies that clarify the strengths and the weaknesses of modern philosophic rationalism. The interpretative studies in the series are particularly attentive to historical context and language, and to the ways in which both censorial persecution and didactic concerns have impelled prudent thinkers, in widely diverse cultural conditions, to employ manifold strategies of writing—strategies that allowed them to aim at different audiences with various degrees of openness to unconventional thinking. The series offers close readings of ancient, medieval, early modern and late modern works that illuminate the human condition by attempting to answer its deepest, enduring questions, and that have (in the modern periods) laid the foundations for contemporary political, social, and economic life.

No translation of Gustave de Beaumont's and Alexis de Tocqueville's *On the Penitentiary System in the United States and its Application to France* has been easily available in English for some time, and the unreliability and incompleteness of the only English version, that of America's first political scientist, Francis Leiber (originally published in 1833), makes pressing the need for an accurate, complete translation. Emily Katherine

Ferkaluk's translation meets this need wonderfully. It takes full advantage of the first published edition of Tocqueville's *Du Système Pénitentiaire aux États-Unis, et de son application en France; suivis d'un appendice sur les Colonies Pénales et de notes statistiques* (H. Fournier Jeune, 1833) to produce a complete, scrupulously literal, yet readable English translation. Ferkaluk has devoted herself to this task because, in the first place, she sees (and gives us solid reason to see) that Tocqueville's interest in penology was no mere pretext for visiting America, as he sometimes pretended, but was quite sincere: It emerged from his professional and familial political experiences, and continued manifesting itself in the public debates over penal reform in which he continued to engage throughout the 1840s. In the second place, Ferkaluk realizes that Tocqueville's observations concerning prison reform are of abiding interest, both to students of Tocqueville and to those with an interest in humanely and civically approaching the questions of crime and emprisonment, as moral and civic phenomena that compel citizens to address the minds and hearts of criminals. In this neglected work we see Tocqueville engaging in the kind of reflection and policy-making at which he excelled as a statesman, and which he recommended (and exemplified) for citizens of the emerging modern democracies.

Timothy W. Burns
Thomas L. Pangle

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father for their encouragement and inspiration; to Hanna, whose intellectual friendship and massive support I cherish; and to David, whose love, faith, and reassurance grounded me during writing and editing. I take full responsibility for any remaining errors in the introduction or translation of this work. *Soli Deo Gloria*

Contents

Translator's Introduction

The translation within this book is the product of an effort to discover the purpose, meaning, and relevance of Alexis de Tocqueville's first and little-studied work, *On the Penitentiary System in the United States and its Application to France*. As is well known, Tocqueville and Gustave de Beaumont toured United States penitentiaries from April 1831 to February 1832 as representatives of the French government. During their travels, the French commissioners gathered official documents and conducted research on the finances, administration, and regulations of at least fourteen American prisons and penitentiaries.[1] *On the Penitentiary System* is the product of their official investigation on behalf of the French government, designed to elucidate whether one of two primary American penitentiary systems (Philadelphia or Auburn) could be implemented to successfully reform French prisons. The work was published in France and America in 1833; in August of that same year, the work was awarded the Monthyon prize by the *Académie des Sciences Morales et Politiques*. While much scholarly attention has been given to the more famous written works resulting from the American journey (Tocqueville's *Democracy in America* and Beaumont's *Marie, or Slavery in the United States*), little scholarship has been undertaken to grasp the relative contribution *On the Penitentiary System* makes to understanding Tocqueville's political thought as a whole.[2] There has, perhaps, been a dearth of scholarship on Tocqueville's first published work in part because we have not yet had a complete English translation of the work. This book remedies that problem by making an English translation of the work available in its entirety.

Many scholars also suggest that Tocqueville's study of penitentiaries was not a genuine policy endeavor, and thus remains an unimportant area of research. George Wilson Pierson argues that Tocqueville's journey to America was conducted in large part for political purposes: to advance his own stagnating political career in the French government and to avoid political unrest surrounding the rise of the July Monarchy in the summer of 1830 (1938, pp. 27–28, 31). Eduardo Nolla also argues that the trip to America was initially a means to preserve Tocqueville's political career, rather than an end in itself (de Tocqueville 2010). Hugh Brogan agrees that "For Tocqueville, whether at this date or years later, prison reform was never to be more than a secondary concern, a means to an end" (2006, p. 143–5). Michelle Perrot similarly states that the idea to study penitentiaries was, in some part, only a pretext for Tocqueville's greater desire to study democracy (1984, p. 7). Thorsten Sellin says that Tocqueville's and Beaumont's interest in prisons "was peripheral" (1964, p. xv). These notions are partially affirmed by Tocqueville's private words to his friend Charles Stoffels, when he wrote from America that his study of penitentiaries was "a very honorable pretext that makes us seem particularly to merit the interest of the government, whatever it may be, and that assures us its good will upon our return."[3] Tocqueville thus acknowledges that the trip was planned in part to aide both Tocqueville's and Beaumont's political careers.

Despite general consensus in scholarship that Tocqueville's interest in American penitentiaries was merely pragmatic, there are several reasons to believe that Tocqueville's interest in penology, broadly speaking, was sincere.[4] Not only did Tocqueville's father experience the vicious conditions of the French prison system under the Reign of Terror (1793), but Tocqueville himself observed numerous prisons in France during his work as a *juge auditeur* and later *juge suppléant* (Pierson 1938, p. 18, 31). In particular, Tocqueville visited the house of detention at Poissy in September 1830, from which he wrote a report on the poor conditions of French prisons. The study in penitentiary systems was, at least in part, a project stemming from Tocqueville's professional and familial political experiences.

Moreover, Tocqueville and Beaumont continued to work in French penal reform after the initial publication of *On the Penitentiary System*. The pair published two subsequent editions of the report in response to French political debates in 1840 and 1843–44 over penal reform. In 1840, a committee of the Chamber of Deputies in the Constituent Assembly was

appointed to report on a prison reform bill submitted by de Rémusat, Minister of the Interior (Sellin 1964, p. xxxvi). Tocqueville was the *rapporteur*, and Beaumont a member, of the committee. The Government eventually withdrew the bill for revision.[5] A revised project appeared in 1843, introduced by the new Minister of the Interior, Count Duchâtel. Tocqueville was again the *rapporteur*; a debate took place over seventeen days in 1844 regarding the project. During debates on the bill, Tocqueville argued forcefully in support of the Pennsylvania system over the Auburn system. Although the Chamber adopted a modified version of the bill, its enactment was interrupted first by the February Revolution in 1848, and again with the conclusion of the Second Republic by Louis Napoléon Bonaparte's *coup d'état* in December, 1851 (Sellin 1964, p. xxxviii). According to Sellin, Tocqueville's and Beaumont's "hopes for a basic reform of the prison system were not to be fulfilled during their lifetimes. The construction of cellular prisons was ordered stopped in 1853 and in some prisons the cellblocks already built were ordered razed. The following year, the transportation of convicts to penal colonies was introduced" (1964, p. xxxix). Despite their ultimate failure to establish penitentiaries in France, Tocqueville's and Beaumont's work in penal reform for over two decades lends weight to the understanding that their interest in penitentiaries was not simply a pretext for their journey to America. Consequently, *On the Penitentiary System* plays a greater role in understanding Tocqueville as a political thinker and statesman that has yet to be seen.

Why Study Penitentiaries?

The historical context of nineteenth century France explains the immediate purpose behind Tocqueville's and Beaumont's study of American penitentiary systems. When Tocqueville and Beaumont left for America, there was no doubt that France needed to reform its criminal justice system. At the time, imprisonment was just beginning a transition from being used to hold suspects or witnesses prior to trial or the execution of sentences, rather than as a punishment for convicted crimes. Prisons in the seventeenth and eighteenth centuries contained criminal men awaiting their actual punishment, women or children sentenced to hard labor, wayward children abandoned by their parents, vagrants, and the insane. Tocqueville and Beaumont emphasize in both their *Mémoire* (the formal request for permission from the French government to travel to America as official representatives) and *On the Penitentiary System* the problem of the amount

of growing recidivism among criminals in France, a fact directly linked to the condition of French prisons. By overcrowding prisons and mixing the guilty with the innocent, the French criminal justice system was acting as a laboratory or school for crime. Additionally, reducing recidivism required an emphasis on rehabilitation that French prisons lacked. Tocqueville and Beaumont thus responded to a political and social need in France to reform the criminal justice system.[6]

This need was recognized within the intellectual and political climate of French and American humanitarianism that characterizes the historical context for Tocqueville's and Beaumont's study of prison reform.[7] Seymour Drescher notes that French humanitarianism grew out of the enlightenment, "led by highly educated aristocratic and bourgeois intellectuals" who "gradually formulated a broad program designed to systematize and secularize a national program of public welfare in matters of education, health, old age, criminality, and especially indigence and charity" (1968, pp. 93–95).[8] These intellectuals are referred to as "publicists" within the text of *On the Penitentiary System*. According to *Le Trésor de la Langue Française informatisé*, "*publiciste*" has two meanings: first, a publicist is a person who writes on public law or is an expert on public law.[9] Second, a publicist is more generally a journalist. Thus, a publicist is a blend of academic intellectual and popular journalist; or in the case of penal reform, a mix of philosopher and philanthropist. As a practical example, Francis Lieber, the German intellectual who first translated *On the Penitentiary System* into English in America, called himself a "publicist" (Freidel 1947, p. 173). Tocqueville and Beaumont directly react to the political ideas and philanthropical work of these publicists in *On the Penitentiary System*, arguing that such persons have let their penal imaginations run away from their control.

More particularly, in writing *On the Penitentiary System*, Tocqueville and Beaumont responded to growing public interest in penal reform during their time. In 1790, Honoré Gabriel Riqueti, compte de Mirabeau crafted a report calling for the establishment of *maisons d'amélioration* in each department, with separate cells for each prisoner and a system of forced labor. Mirabeau's penal report to the Constituent Assembly was followed in 1791 by a report from Louis-Michel le Peletier, marquis de Saint-Fargeau, representing the Committees on the Constitution and on Criminal Legislation. Le Peletier presented a penal code that included the abolishment of the death penalty in most cases, along with the establishment of *maisons de peine* (prisons for those receiving

punishment), the *cachot* (a dungeon, often used to lock up prisoners who violated prison rules), the *gêne* (which was to combine solitary confinement with labor), and the *prison* (prisons for the arrested). The proposed penal code was adopted in part, authorizing the institution of four forms of imprisonment (chains in *maisons de force, réclusion*, the *gêne,* and *détention*). However, le Peletier's reform was never enacted due to the Reign of Terror beginning in September 1793.

Alternatively, in their *Memoir* Tocqueville and Beaumont identify de Montalivet's prison reform work in 1810 as the beginning of French political concerns over establishing penitentiaries during their era (Beaumont and Tocqueville 1984). Perrot describes the multiple studies of penitentiaries preceding Tocqueville's and Beaumont's, conducted in England by John Howard and Jeremy Bentham and filtering into France via the scholarship of Duke Decazes, Villermé, Marquet-Vasselot, Ginouvier, Taillandier, and Charles Lucas (1984, p. 8–9). Additionally, within the text of *On the Penitentiary System*, Tocqueville and Beaumont often refer to the work of Rochefoucauld-Liancourt, who first travelled from France to study American penitentiaries and published his findings in *Des prisons de Philadelphie par un Européen* (1796). By 1819, the Royal Prison Society was established as a government advisory board; members also acted as inspectors of the Paris prisons (Drescher 1968, p. 126). In sum, Tocqueville and Beaumont were neither the first nor the last to conduct a study of the American penitentiary system.[10]

Although the report's overall tone is one of pragmatic policy making, Tocqueville's and Beaumont's *Mémoire* reveals a more fundamental motive behind their study of American penitentiaries. Beaumont and Tocqueville defend the need to study penitentiaries in response to a great "evil" that threatens French society with "ruin and destruction," namely the issue of increasing crime in proportion to the civilizational progress of society (Tocqueville 1984, p. 49). The problem is a contradiction in terms, since increasing civilization ought to hypothetically decrease crime. Instead, civilizational progress seems to have created a new set of social problems: the authors identify vagabondage, laziness, and theft as the highest increasing offenses in France.[11] There is thus an apparent paradox between criminality and civilization. In its study of the penitentiary's claim to be able to reform human nature, *On the Penitentiary System* broadly answers two questions that arise from the paradox: why the parallel relationship between increasing civilization and increasing crime exists, and what to do to resolve the social problems stemming from the relationship. In

answering these questions, Tocqueville and Beaumont intend to test the extravagant promise of progress and publicists to rid society of problems such as poverty or crime, and instead offer a moderate civic solution to the problem of recidivism.

Practically, *On the Penitentiary System* acts as an educative tool for the French public. The work counteracts the influence of publicists over the French public and gives tools to the public to empower itself to take on the responsibility of penal reform. *On the Penitentiary System* teaches citizens how to think in terms of a new, moderate political science: theory must be tempered by experience, especially experience that teaches us the universal nature of human beings. Theory must also be tempered by self-knowledge, the type which shows us our political limits in terms of unique national resources and character. Throughout the text, Tocqueville and Beaumont evaluate different penal institutions in terms of the American experience and French socio-political circumstance; by looking to individual national experiences, they intend to give the French public necessary self-knowledge of their own capacity and potential limits to resolving the problem of increasing crime.

Politically, this rhetorical purpose for *On the Penitentiary System* assumes that the public is capable of rightly caring for issues such as crime or poverty through civic institutions, rather than through a centralized government. At first, Tocqueville's and Beaumont's report seems directed solely at those with influence over the public—publicists or legislators whose ideas establish the goals of political and social institutions and who therefore need a healthy understanding of human nature and a good amount of experience to ensure they do not abuse their own penal imaginations. However, this is not the audience to which Tocqueville and Beaumont give their report. Rather, *On the Penitentiary System* ultimately seeks to empower the general public to take control of directing their own penal imagination, rather than be subject to the imaginative whims of publicists and philosophers. At the basis of the arguments in *On the Penitentiary System* stands Tocqueville's and Beaumont's assumption that the public imagination is at least partially responsible for political policies that are either beneficial or harmful to both the individual and the nation. *On the Penitentiary System* is written for a democratic citizenry and is intended to inspire noble political action in local communities.

Why Translate *On the Penitentiary System*?

Notably, although there were two revisions of the first French edition of *On the Penitentiary System* published during the authors' lifetimes, there has been only one semi-complete English translation. Upon returning to France, Tocqueville and Beaumont asked their newly-made acquaintance in America, Francis Lieber, to translate their report and publish it in America. The three were introduced in Boston towards the conclusion of Tocqueville's and Beaumont's journey, and would meet again in Paris in 1844 (Pierson 1938, pp. 377, 439; Perry 1882, p. 91).[12] Lieber's singular translation of *On the Penitentiary System* may be called a revision in its own right, since he undertook a major editorial role when translating the text on behalf of his friends. In particular, Lieber added his own "Preface and Introduction of the Translator" and a lengthy appendix on the Pennsylvania penitentiary system. Additionally, Lieber explicitly replaced some of the original appendices with his own rather than translating them; in other appendices, Lieber wrote more than double the original excerpt or cut out significant portions. Lieber also added lengthy footnotes throughout the main text directly engaging and often contradicting Tocqueville and Beaumont in both opinion and fact. The result of Lieber's efforts is a text that stands on its own and in contrast to the original report drafted and published by the two Frenchmen.

Significantly, Tocqueville wrote to Beaumont in November 1833 that he was "not completely satisfied" with Lieber's translation.[13] Tocqueville complained of the weighty notes "in which, in his [Lieber's] capacity as a foreigner, he feels himself obliged to contradict the smallest truths that we utter about America" (Pierson 1938, p. 708). Tocqueville deduces from Lieber's revision of *On the Penitentiary System* both an extreme fear of centralization and "an incorrigible conceit" that is peculiarly American. Taking Tocqueville's criticisms of the translation to heart, we have brought the first complete, literal translation to English readers.

It is our hope that the new translation of *On the Penitentiary System* clears the pathway for further studies of Tocqueville's political work in French penal reform and penal thought. Additionally, more work can be done to systematically compare the ideas in *On the Penitentiary System* with those of Tocqueville's major works, *Democracy in America* and *The Old Regime and The Revolution*. This future work is part of an ongoing project to understand Tocqueville's political thought as a philosophy that asks questions of and appeals to universal truths, as well as undergirds the

prudent decision making of the legislator. Tocqueville was not simply a politician, nor was he thoroughly a philosopher. Tocqueville's political thought instead demonstrates a blend of understanding policy alternatives to particular problems in light of potentially absolute answers to universal questions. Moreover, while Tocqueville's larger works present his deeper insights into political philosophy, such as an understanding of the ideas that explain modern human activity, the ideas are sometimes obtusely presented in his major work's length and organization. *On the Penitentiary System* presents scholars of Tocqueville the unique opportunity to read a concise work that demonstrates Tocqueville's philosophical method applied to a particular political problem facing his nation during a specific time. Future comparisons of the case study on penitentiaries to the themes of Tocqueville's larger works will therefore help us to see his philosophical ideas more clearly.

Not only does *On the Penitentiary System* have the potential to give us a deeper understanding of Tocqueville as both politician and philosopher, but Tocqueville's lessons in *On the Penitentiary System* are also fruitful for recognizing the theoretical questions that undergird our current movement for penal reform. *On the Penitentiary System* was written at the cusp of a fundamental change in how the study of penology (a discipline not yet systematized) approached crime. While there was a shift from emphasizing public torture or other corporal punishments as primary penal methods, there was also a new concern to reform the inward state of the human being in order to allow the prisoner to re-enter society and be empowered to lead an honest life. The means to achieve such a goal were to lock the prisoner away from society; corporal punishment was largely replaced with incarceration.

In our modern era, we are questioning not only the efficacy of incarceration as the primary penal method for enforcing criminal justice, but also its status as a "moral" institution.[14] The initial goals established at the beginning of the penitentiary movement in America have gone unrealized. Rather than reducing recidivism and the number of criminals in general, penitentiaries have instead resulted, in our time, in the problem of mass incarceration. Sara Benson concisely expresses the scholarly consensus on the reason for the rise of prisons since the 1970's: "drug war politics accelerated prison construction into the 1990s, as conservative law and order politics joined with racial liberalism to build a prison nation" (2015, p. 384). Whether one agrees or disagrees with those reasons for the increase in prison sentencing, it is generally (and bipartisanly) acknowledged

that mass incarceration does little to deter or reduce crime rates, while also being expensive for the state (Reddy 2015; *Prison and Crime* 2014). Additionally, our modern incarceration system instills within prisoners anti-democratic social behavior; many former convicts cannot vote, act on juries, or participate in other crucial citizen political activities (Weaver and Lerman 2010; Reddy 2015, p. 8). In contemporary American society, mass incarceration thus represents a deeply problematic form of punishment in need of reform (Redburn et. al 2014).

Tocqueville's policy recommendations in *On the Penitentiary System* are especially important for guiding both the method and content of contemporary prison reform. We learn from Tocqueville how to moderate our expectations of what government should (and can) accomplish in relation to the individual, how to avoid foreign political complications rooted in poor domestic policy, and how to strengthen civic associations so as to avoid the growth of government. The work also enables us to see more clearly the strengths and weaknesses of relying on incarceration as the primary means of punishment. Today, we are asking questions about whether new forms of public policy, such as probationary or restorative justice programs, faith-based recidivism programs, community corrections alternatives, or electronic monitoring, would be better suited than incarceration to achieving re-integration of the prisoner into society and reducing recidivism.[15] Discerning which programs can be both sustainable and successful in terms of morally reforming the individual necessitates returning to the questions Tocqueville and Beaumont asked when evaluating the status of penitentiaries in the nineteenth century.

Most importantly, the qualitative study of *On the Penitentiary System* shows us the theoretic groundwork that needs to occur before evaluating modern penal policies. We need to see that punishment is not only a formative social institution, but is also in a crucial way dependent on the formative influence of society. Tocqueville and Beaumont argue that the penitentiary has a restorative effect on offenders when individual community members are intimately involved in the penitentiary's discipline. *On the Penitentiary System* thereby provides the groundwork for how to conserve the notion that crime is both a moral and social problem. This dual problem that prisons face, in seeking to transform the minds and hearts of offenders, can be solved in part by recognizing our civic responsibilities to care for such persons within a democracy.

Note on the Translation

As mentioned above, Tocqueville and Beaumont published three French editions of *Système Pénitentiaire* during their lifetime. The first French edition was published by H. Fournier Jeune in Paris, 1833. The second edition was published by Charles Gosselin in 1836 as Tocqueville's and Beaumont's response to French criticism of their report; most notably, the edition includes an expanded introduction (Pierson 1938, p. 710).[16] The title of the second edition was revised to include: *Seconde édition, entire mentre fondue et augmentée d'une introduction*. A third edition of *Système Pénitentiaire* was published in 1845 under the revised title *Système pénitentiaire aux États-Unis et de son application en France; suivi d'un Appendice sur les colonies pénales et de notes statistiques (3e édition augmentée du Rapport de M. de Tocqueville sur le projet de réforme des prisons et du texte de la loi adoptée par la Chambre des Députés)*. The third edition includes a summary of reform enacted in France from 1837–1845, written by Tocqueville, as well as his report to the Chamber in 1845.

The most recent publication of the French text can be found in J.P. Mayer's definitive edition of Tocqueville's *Oeuvres Complètes, Écrits sur le système pénitentiaire en France et a l'étranger, Tome IV*. Volume 4 is printed in two parts. This definitive edition combines different components of the second and third editions of *Du Système Pénitentiaire* into a singular, annotated French text. The edition also includes the original *Mémoire* submitted to the French Government by Beaumont and Tocqueville, published documents from Tocqueville's participation in the French parliamentary debates surrounding prison reform from 1843–44, previously unpublished notes on prisons and penal colonies of France and Switzerland, as well as letters written by Tocqueville regarding penitentiary reform.

Three versions of the first edition of *On the Pénitentiaire System* have been published in the English language. W.B.S. Taylor partially translated and published the work in England in 1833. Also in 1833, Francis Lieber translated the first edition and published the work in Philadelphia, PA. Lieber's interleaved manuscript, including handwritten notes and revisions to his original publication of the translation, can be found at the Johns Hopkins University Sheridan Special Collections Library. However, Lieber never published a second edition including those revisions. Thorsten Sellin published a revised edition of Lieber's translation in 1964, omitting Lieber's footnotes and many of the appendices.[17]

The following translation was made from the first published edition of *Du Système Pénitentiaire aux États-Unis, et de son application en France; suivi d'un appendice sur les Colonies Pénales et de notes statistiques*, written by Gustave de Beaumont and Alexis de Tocqueville and published by H. Fournier Jeune in Paris, 1833. The first published edition was chosen for translation for three reasons. First, the complete fair copy of the original manuscript no longer exists. Portions of the original manuscript, along with drafts of notes, appendices, and statistics, can be found at the Yale University Beinecke Rare Book & Manuscript Library. The translator has utilized original source material as much as possible, while still recognizing the need to provide a complete English text. Copies of the first published edition of *On the Penitentiary System* can be found at the Huntington Library Rare Books Collection and at the Bibliothèque nationale de France.

Second, the first French edition is the text Francis Lieber would most likely have received for translation and simultaneous publication in America with the French publication. Lieber begins his "Translator's Preface and Introduction" by saying, "MM. de Beaumont and de Tocqueville had the kindness to send me, a few months ago, their work on the Penitentiary System in the United States, before it had issued from the press in Paris, requesting me, at the same time, to translate it, if possible, for the American public" (Beaumont and Tocqueville 1833, p. v). Notably, Lieber also ends the preface by remarking that "the translator received information from Paris on the day when this introduction went to press, that a second edition of the original was preparing," thereby indicating that the first edition was the text he translated. This translation will thus potentially be useful to any scholar wishing to contrast French and American penal reform in the nineteenth century, because it allows for a comparison of Lieber's changes to the original French text he used.

Third, the first edition reflects the authors' original reflections on both penitentiaries and on American society and politics. The later editions of the text reflect Tocqueville's and Beaumont's reactions to French political developments in penal reform, as well as their matured consideration of the problems connected to establishing penitentiaries. On the other hand, the first edition presents the reader with a prefatory lens through which to better understand Tocqueville's most recognized work, *Democracy in America*.

Without compromising on the readability of the English translation, we have attempted to render the words as literally to the original French text as possible. Hence, significant words have been given a consistent translation throughout the text and an explanation for translation choice occurs

in endnotes at the place the word first appears. Words that are particularly important to the penal discussion in *On the Penitentiary System* are as follows: *corruption*; *dompter*; *morale*; *pécule*; *régime* (as compared to *discipline*, *système*, *administration*); the potential distinction between *condamnés*, *prisionnier*, *détenus*; *surveillance*; the differences between *châtiment*, *peine*, *délit*. We also note an explanation and definition, where appropriate, of peculiar French penal terms such as *départemens*, *conseils généraux*, and *les condamnés correctionnellement*. Paragraph breaks are retained from the original; grammar and spelling have been updated to adhere to the rules of modern English. Beaumont's and Tocqueville's original footnotes are numbered in the translation and hold the same position that they originally occupied in the French text; editorial notes, including commentary on the French text and some of Lieber's significant variations, are preceded by a [*]. Additionally, Tocqueville's and Beaumont's alphabetical notes retain their original places within the text and refer to the appendix "Alphabetical Notes" at the end of the document. Finally, it is worth noting that what follows this introduction is the first complete English translation of the first French edition written by Tocqueville and Beaumont, omitting only four pages of drawings of various penitentiaries originally appended to the French publication and the original Table of Contents.

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Notes

1. Those institutions are as follows: The Sing-Sing prison in Ossining, NY; the Auburn Penitentiary in NY; Eastern State Penitentiary on Cherry Hill Street, Philadelphia, PA; Walnut Street prison, Philadelphia, PA; prison in Pittsburgh, PA; prison in Wethersfield, CT; prison in Boston, MA; prison in Baltimore, MD; prisons in Kentucky, Tennessee, Ohio, Louisiana, Maine, and Vermont.
2. Several scholars have commented briefly on the importance of *On the Penitentiary System* as a potentially prefatory work to *Democracy in America*. See: Brogan 2006, p. 234; Dunn 1985, p. 401; Drolet 2003, p. 129. There are only two mentions of penitentiary systems in *Democracy*. The first occurs in I.1.2 as an example of how to distinguish "what is of Puritan origin or of English origin" in the American democracy (Tocqueville 2000, p. 44). The second mention occurs in the chapter I.2.7, "How the Omnipotence of the Majority in America Increases the Legislative and

Administrative Instability that is Natural to Democracies" (Tocqueville 2000, p. 238).

3. Letter of 11 October 1831 to Charles Stoffels. Yale Tocqueville Manuscripts. General Collection, Beinecke Rare Book and Manuscript Library, Yale University. A.VII.
4. I am not the first to make such an assertion; Avramenko and Gingerich give a detailed argument that "though prison reform served as a pretext for Tocqueville's journey to America, his interest in penology was genuine" (2014, p. 62).
5. For Tocqueville's speech, see Tocqueville 1968, pp. 70–90. Pierson provides a more detailed description of the political opposition which led to Tocqueville's and Beaumont's struggle to pass actual prison reform (pp. 711–713).
6. Tocqueville's work in penal reform is intimately related to his political interest in the governance of the French Algerian colonies. The intersection of both political efforts suggests a common philosophical or principled ground from which Tocqueville acted as a statesman.
7. For a general review of the American intellectual and political climate of the time, see Barnes 1921, pp. 35–60.
8. See also Sellin's history of French prison reform prior to Tocqueville's and Beaumont's journey, p. xix–xxxix. Sellin carefully situates the work of Rochefoucauld, Lucas, and Livingston in the French reform movement.
9. Sellin argues that the groundwork for "reform of the law of crime and punishment" in France was laid by Montesquieu in his *Persian Letters,* Rousseau's *Social Contract,* Voltaire and the Encyclopedists, and the Marquis of Beccaria's work *On Crimes and Punishment* (1964, p. xx). In 1788 a translation of John Howard's *State of Prisons,* written to establish penitentiaries in England, appeared in France. In 1819 Decazes established the Royal Society of Prisons in France, whose members included La Fayette, La Rochefoucauld-Liancourt, de Broglie, and Guizot (1964, p. xxxii). Finally, in 1827 Charles Lucas petitioned the Chambers to introduce the penitentiary System in France (Sellin 1964, p. xxxv).
10. After Tocqueville's and Beaumont's trip, two more observations of the American penitentiary system were conducted on behalf of England (William Crawford) and Russia (Julius) in 1835. In 1836, the French sent Frédéric-Auguste Demetz and Guillaume-Abel Blouet to study the Cherry-Hill penitentiary again.
11. These crimes result in part from industry fluctuations that cannot keep up with job demands. Hence, part of the problem of crime is the need to find new markets to give "unoccupied arms […] the chance to work" (Tocqueville 1984, p. 51). Tocqueville and Beaumont will examine in detail the proper relationship between the economy of the penitentiary and commercial markets within the local community.

12. Lieber and Tocqueville maintained a sporadic correspondence following the translation; for translations of some of their letters, see: Perry 1882, pp. 140, 191–3; Tocqueville 2009, pp. 60–62, 65, 67–82, 84, 87, 99, 132, 145, 154, 161, 183, 231, 260.
13. Tocqueville to Beaumont, 1 Nov. 1833, Paris. Yale Tocqueville Manuscripts. General Collection, Beinecke Rare Book and Manuscript Library, Yale University. C.1.a.2.
14. Based on the following reports, incarceration is both expensive for the nation and does not significantly contribute to lowering crime rates: Roeder et. al 2015; "FBI Releases Crime Statistics" 2015; Harcourt 2011. Bernard Harcourt connects the birth of the penitentiary system in the eighteenth century with modern mass incarceration on the basis of the "illusion" that the free market can run successfully on a natural order.
15. Enn gives evidence that it was the general public, rather than lawmakers, who emphasized the need for greater expansion of incarceration in response to crime (2014, pp. 857–872). Enn's argument agrees with Tocqueville's and Beaumont's emphasis on social mores as the responsible agents for punitive measures.
16. The criticism came primarily from the Inspector General of the Maisons de Détention, Mr. de La Ville de Mirmont, in his publication *Observations sur les maisons centrales de détention, à l'occaision de l'ouvrage de MM. de Beaumont et de Tocqueville*, 1833. Mirmont argued that the Pennsylvania system "was impossibly expensive and impractical," while the Auburn system was "no better than the dormitories of the *maisons centrales*."
17. Lieber's first edition was re-published in 1868 without any revisions. Two additional reprints of Lieber's translation were published by Augustus Kelley (1970) and Archon Books Paperbacks (1979). An abridged edition of Lieber's translation was also published by Patterson Smith (1981).

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List of Documentary Evidence[1]

The authors have, on their return from America, placed in the hands of the Minister of Commerce and Public Works six volumes in-folio, containing documents fully described below:

First Volume

Massachusetts

1. Report for the year 1820 on the Charlestown prison near Boston.
2. Report for the year 1821.
3. Report for the year 1822.
4. Report for the year 1823.
5. Report for the year 1824.
6. Report for the year 1825.
7. Report for the year 1826.
8. Report for the year 1827.
9. Report for the year 1828.
10. Report from the inspectors of the new penitentiary for the year 1829.
11. Report for 1830.
12. Laws of the State of Massachusetts, concerning the penitentiary and rules of the prison.[2]
13. Some statistical documents on the prison, and a handwritten note from the superintendent who gave them to us.
14. Regulations of the former prison (1823).