

The Resistable Rise and Predictable Fall of the U.S. Supermax :: Monthly Review

Stephen F. Eisenman

[Stephen F. Eisenman](#) is professor of art history at Northwestern University and the editor and principle author of *Nineteenth Century Art* (New York: Thames & Hudson). Throughout 2008–09, Eisenman worked with a group of Chicago artists, activists, and lawyers to end torture at Tamms supermax prison.

In a recent article entitled “[The Penal State in an Age of Crisis](#)” (*Monthly Review*, June 2009), Hannah Holleman, Robert W. McChesney, John Bellamy Foster, and R. Jamil Jonna sought to account for the surprising stability of civilian government spending (non-defense government consumption and investment) as a percentage of GDP during a period, roughly 1970 to the present, when the power of capital over labor increased, inequality grew, and cuts in government programs for the poor and working class continued more or less without abatement.¹ One solution to the paradox, the authors persuasively argued, was the growth in spending for “the penal state,” a political regime marked by the mass incarceration of the poor and the vulnerable who posed risks to the stability of the prevailing economic and social order.

Indeed, the incarcerated population of the United States has grown markedly in the last three decades, from approximately 221 per 100,000 of population in 1980, to 762 per 100,000 in 2008. The United States now has by far the highest incarceration rate in the world (over six times higher than Britain’s or China’s and twelve times higher than Japan’s), an incarcerated population of 2.3 million, and a total correctional population (in prison or jail, or on probation) of 7.3 million.² In other words, civilian government spending has remained constant during a period of capitalist-class consolidation, in part because an increasing proportion of that expenditure has gone to maintaining a penal state that disciplines the poor. One might add that the line of division between civilian and military spending during this period has become increasingly blurred, and that the same national security rationales for increasing the latter were marshaled for the former. Maintaining or augmenting what is euphemistically called a “strong defense” has, over the past four decades, become a core *civilian* priority.

Yet maintaining high levels of spending for the penal state has not been easy during the current recession. Contrary to the widespread view, the stimulative economic force of prisons is, at best, limited.³ Though they provide some jobs to rural communities, prisons are often staffed with corrections workers recruited from outside the region in which prisons are located. Prisons therefore have only a marginal impact upon local unemployment rates. In addition, large contract food and uniform suppliers, such as Aramark Corporation, whose supplies are shipped from remote locations, provide most services at prisons, and thus do nothing to help local businesses. And, of course, the billions of dollars spent to keep people in prison, unlike comparable investments in education or training, do not increase the productivity of labor. (If anything, time in prison without rehabilitation or education functions to de-skill workers.)

It is therefore unsurprising that competing demands for civilian programs devoted to welfare, health and safety, education, and transportation have led to efforts in many states, including California, New York, Illinois, Florida, and even Republican Kansas, to cut funding for corrections, and release large numbers of prisoners, especially those convicted of minor drug offenses, or who have only a short time left on their sentences.⁴ This development—surprising in the context of the penal state—has not gone unnoticed by groups seeking corrections reform. Without explicitly citing Rahm Emanuel’s now-famous dictum to “never let a serious crisis go to waste,” segments of the U.S. Left are now pressing to dismantle some of the most egregious—and expensive—examples of penal overreach, including harsh sentences for drug possession, three-strikes laws that greatly increase the imposition of life terms, and the “supermax” system of long-term, solitary confinement. The latter, in particular, condemned by human rights groups around the world as tantamount to torture, is now the object of national and local “stop-max” movements.⁵

The modern supermax regime is an aberration in American corrections. Based upon a penitentiary model that was dismissed as unsound more than 150 years ago, it was resurrected in the late 1970s and '80s during the greatest period of growth of the penal state, and at a time of government anxiety about the rise of radical political movements, both in and out of prison. However, the enormous expense of supermax-style solitary confinement and its evident failure to decrease prison violence or recidivism, combined with lawsuits alleging abuse and a rising tide of public anger at U.S. complicity in torture, predicts its eventual demise.

A Brief History of Solitary Confinement

Solitary confinement was rarely used as punishment in the United States or Europe until the opening of Eastern State Penitentiary in Philadelphia in 1829.⁶ At this new prison, men were kept in eight-by-twelve-foot cells for twenty-three hours a day, with one hour of solitary exercise in an adjoining, eight-by-twenty-foot yard. Meals were served through a slot in the cell door, and there was no possibility of physical or even visual contact with other prisoners. When a man was moved out of his cell, he was hooded, further enforcing isolation. The idea was that solitude would prevent the “mutual contamination” of prisoners, quiet the “bad passions” of criminals, stigmatize and shame men into obedience to the law, and generally foster a penitent attitude.⁷

Rather than enacting harsh punishment upon the body, the new penitentiary order was supposed to encourage men to discipline themselves. Rather than physical coercion, moral suasion would be the instrument to transform men’s souls and change their behavior. Prisoners would acquire docile bodies and embrace new “disciplinary careers,” in the words of the philosopher Michel Foucault—that is, accept that their lives were governed by the rules and obligations established by religion, government, and the prevailing social and economic system.⁸

A similar, albeit slightly less severe, regime of confinement was developed at almost the same time at Auburn Prison in New York State. There, public exasperation with crime, concomitant with the economic crisis following the Panic of 1819, led to the demand that the prisoner spend his time “in complete solitary confinement, free from all employment, all amusement, all pleasant objects of external contemplation. Let his diet be moderate, and suitable to a man placed in a narrow compass for the purpose of reflecting on his past life and the injuries which he has done to society.”⁹ All prisons, it was believed, would soon embrace the introspective, penitentiary models developed at Auburn and Philadelphia.

But the efficacy and morality of solitary confinement were quickly challenged. Within a few years of its opening, Eastern State was condemned by prison reformers for increasing recidivism rates and causing inmates to go insane; the former effect, documented with carefully collected data, was precisely the opposite of what the champions of solitary confinement had hoped, and the latter became the subject of international notoriety.¹⁰ During a visit to Eastern State in 1841, Charles Dickens met a prisoner about to be released, who had been in solitary confinement for eleven years. He wrote that the man could not answer a simple question, but instead constantly “picked the flesh upon his fingers.” Dickens added:

I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body, and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh; because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it as a secret punishment which slumbering humanity is not roused up to stay.¹¹

Dickens’s observations at Eastern State were the basis for his account of the imprisonment and release of Dr. Alexandre Manette in *A Tale of Two Cities* (1859), who is “recalled to life” after eighteen years in the Bastille Prison in Paris.

Similar criticisms were leveled against Auburn prison. In the course of his visit to the United States in 1831, the French historian Alexis de Tocqueville, later author of *Democracy in America*, wrote that at Auburn, “isolation without labor has been tried, and those prisoners who have not become insane or did not die of despair, have returned to society only to commit new crimes.”¹² The warden of Auburn came to a similar

conclusion:

There is no doubt that uninterrupted solitude tends to...harden the heart, and induce men to cultivate a spirit of revenge, or drive them to despair... A degree of mental anguish and distress may be necessary to humble and reform the offender; but carry it too far, and he will become either a savage in his temper and feelings, or he will sink in despair.¹³

(These conclusions anticipate the judgment of modern sociologists, psychiatrists, and physicians who have observed that men subjected to long-term solitary confinement suffer from hallucinations, loss of affect, and depression, and often engage in acts of self-mutilation or suicide.¹⁴)

In other prisons too, including Millbank in London, built in 1816 according to the panopticon model devised by Jeremy Bentham, isolation was abandoned within a few years of its implementation. After “a distressing rise in the number of insane people,” a system of “modified intercourse” was introduced, allowing inmates to meet and converse during exercise periods.¹⁵ Thus, in the three cases cited here, the key components of the penitentiary model—silence, segregation, and inactivity—were modified or abandoned when observation and research showed them to be destructive and counterproductive. Contemporary corrections officials rarely demonstrate such receptivity to observable facts and effects.

By the end of the nineteenth century, prisoner isolation and sensory deprivation were widely understood to be forms of torture. The viewpoint was summarized in an 1890 Supreme Court opinion by Justice Samuel Freeman Miller that solitary confinement had the effect of rendering many prisoners insensible, suicidal, or violent, and thus incapable of reform or reintroduction to the community.¹⁶ Indeed, for the next eight decades, solitary confinement was used only rarely in the United States, mostly for short-term control of extremely violent offenders. One well-known exception was the placement of Robert Stroud, the “Bird Man of Alcatraz,” after his killing of a guard, into extended segregation, first at the federal penitentiary at Leavenworth, Kansas, then on Alcatraz Island. Stroud spent six years in isolation in D-Block at Alcatraz before being transferred in 1959 to the Medical Center for Federal Prisoners in Springfield, Missouri, where he died in 1963.

After the closure of Alcatraz in 1963, the Bureau of Prisons (BOP) dispersed its inmates to federal facilities across the country, rather than concentrating them in any one place. This approach appeared to be at least as successful in maintaining security as the former method, but in the wake of a general rise in public fear about the maintenance of “law and order” during the Nixon administration, and a concomitant desire by the U.S. Justice Department and BOP to re-educate and isolate incarcerated political dissidents, the practice of placing men in extended solitary confinement was revived at the maximum-security, federal penitentiary at Marion, Illinois.¹⁷

A “Long Term Control Unit” at Marion was established in 1973 as an administrative means to manage prisoners whom the BOP believed disruptive of institutional authority, or who held radical political views.¹⁸ Terms of solitary confinement in the control unit were thus unlimited, in contravention of both established practice and standards published by the American Correctional Association (1959):

Segregation for punishment should be for the shortest period...and in any event not over thirty days...In other cases, a few days in punitive segregation followed by thirty to ninety days in administrative segregation...is sufficient. Excessively long periods for punishment defeat their own purpose by embittering and demoralizing the inmate.¹⁹

No longer a mere expedient for inmates who were violent or had broken prison rules, solitary confinement at Marion became a veritable behavioral modification system, replete with operant conditioning therapy intended to break down preexisting patterns of thought and action.²⁰ Indefinite terms of “administrative detention” soon became the *sine qua non* of control units and supermax prisons.

Beginning in 1980, inmates at Marion instituted a series of work and hunger strikes in order to achieve greater religious freedom, end beatings by guards, improve medical services, and ameliorate some of the worst conditions for prisoners in segregation. But the killing of two guards in 1983 by members of the

Aryan Brotherhood led to a brutal crackdown against all prisoners, and the implementation of a total “lockdown,” or permanent confinement of all Marion prisoners to their cells.

The Marion lockdown, in turn, spawned a new generation of control unit, or “supermax” prisons, among the first of which was Pelican Bay in 1989, whose harsh regime, according to federal district court judge Thelton Henderson in 1995, “may well hover on the edge of what is humanly tolerable for those with normal resilience, particularly when endured for extended periods of time.”²¹ Judge Henderson’s ruling, in a large class action alleging multiple forms of “cruel and unusual punishment,” placed the prison under the oversight of a special master and forbade the imprisoning of mentally ill prisoners in the Security Housing Unit (SHU) at Pelican Bay, but did not end the use of long-term isolation for other men.

By the mid-1980s, the impetus to establish control units extended to women’s prisons, too. A small, experimental Maximum Security Unit was established at Davis Hall in the Federal Correctional Institution for women at Alderson, West Virginia, and a more sophisticated “High Security Unit”—employing padded doors and intercoms to ensure sensory deprivation—was started at the Federal Correctional Institute at Lexington, Kentucky in 1986. At the latter, basement isolation cells housed just five women, three of whom were convicted of crimes arising from their radical political activities and beliefs.²² The women were subjected twenty-four hours per day to artificial light, frequent searches, shackling and handcuffing, extremely limited recreational activities, and severe restrictions on visitation and phone calls.

According to the testimony of Susan Rosenberg (later affirmed in a judgment by U.S. district court judge Barrington D. Parker, Sr.), Rosenberg and her cellmates were asked to renounce their political convictions, and informed that the length of their terms of isolation depended upon their renunciations. After condemnation by Amnesty International and adverse court findings, the High Security Unit was shut down in 1988, but a new control unit for women was established immediately after, at the Federal Correctional Institution at Marianna, Florida. Though the prisoners there were not in twenty-four-hour per day lockdown, they were kept under close and constant surveillance, subjected to frequent searches, and denied most educational or rehabilitative programming. Today there are no supermax prisons specifically designated for women, though there are control units within larger women’s prisons—such as the SHU at Valley State Prison in Madera County, California—in which women are subjected to the same isolating conditions as men.

Experimentation with control units continues: since 2007, a new offshoot has been devised, the “communication management unit,” intended to restrict visitation and all other means of communication severely between prisoners and the outside world. There are currently two CMUs: one at Marion and the other at the Federal Correctional Complex at Terre Haute, Indiana. The majority of prisoners at these facilities are Muslims convicted of “providing material support” to terrorists, racketeering, tax evasion, violating trade embargos, and other nonviolent acts. A few environmental and animal rights activists are also imprisoned in the CMUs, including Daniel McGowan at Marion, who pled guilty in 2006 to arson and conspiracy (with “terrorism enhancement”) for his part in a pair of actions by the Earth Liberation Front against two Oregon lumber companies.²³

Tamms Supermax

The prison with which I am most familiar, Tamms C-Max in southern Illinois, is typical of the roughly two dozen supermax prisons built in the 1980s and 1990s. Touted as a solution to rising recidivism and violence within prison (men are transferred to Tamms for crimes or infractions within other Illinois Department of Corrections facilities), it was planned to house the “department’s most violent and problematic inmates.”²⁴ In fact, however, more than half of the current population of 247 were not convicted of any crimes after entering the Illinois prison system. At Tamms, men are locked in their concrete cells for twenty-three hours per day, seven days a week, with an hour each day available for solitary exercise in another cell fitted with a mesh roof open to the sky. Meals are served through a slot in the cell door, and prisoners are allowed one shower per week. There are no communal activities, religious services, jobs, counseling, or rehabilitation, and no phone calls are allowed. Personal possessions—even family photographs—are strictly rationed. By consistent observation of rules, prisoners may earn the right to have a radio or television, but not both.

For all its uncanny similarity to the early nineteenth-century Eastern State Penitentiary in Philadelphia, Tamms is even more isolating: prisoners rarely see guards or each other because much of the opening and closing of doors and gates is done remotely, and the cells in each unit all face the same direction. Visits are strictly non-contact: prisoners are shackled to the floor and see family or friends through a plexiglass wall. Many men at Tamms have been subjected to this regime for years. Indeed, a quarter of the inmates at Tamms have been there since the prison opened in 1998, and many others for seven, eight, and nine years. Thus, whereas the correctional ideal at Eastern State was to foster introspection in the hope that self-knowledge would lead to conformity with law, the ideal at Tamms and every other control unit or supermax since Marion is behaviorist, the assumption being that prisoners' actions can be modified by means of a strict system of sanctions and a modest menu of rewards, independent of any underlying psychology. Unfortunately, the long terms of placement at Tamms have not permitted much testing of the behaviorist hypothesis.

The psychological impact of this regime of segregation is profound, and the prison houses a mental health unit with a full-time staff of eight. Nevertheless, self-mutilation, depression, suicide, and other psychotic symptoms are common at Tamms. One former prisoner, now in his late fifties, and released from Tamms after almost nine years, told me of the daily mental gymnastics that were required for him to maintain his sanity, and said that some younger men were not up to it. Another prisoner in his twenties became so desperate for physical contact that he often refused to return his food tray through the slot in his door so that the "tag team"—a squad of masked and helmeted officers—would come to his cell to tackle and extract him. I was also told that one man plotted with a fellow prisoner he met in the hospital to seriously cut themselves on a given date in the future, so that they might have a chance to meet again.

Tamms has recently been the subject of two lawsuits alleging, among other things, that men are sent there in retaliation for filing prison grievances. It has also become the focus of protests by reform activists, and the target of legislation. A bill in the Illinois House would establish clear criteria for who may be sent to Tamms; prohibit the placement there of mentally ill prisoners; and limit length of stay to one year, except under special circumstances. Amnesty International and Human Rights Watch have published statements in support of this reform legislation, and Illinois newspapers and other media have begun to question the value of long-term solitary confinement.

Human rights organizations have long determined that extended solitary confinement and sensory deprivation are "cruel, inhuman and degrading." In 2000, the UN Human Rights Committee issued the following statement:

The Committee is of the view that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant [on Civil and Political Rights].²⁵

In 2006, the Committee Against Torture specifically addressed incarceration in U.S. supermax prisons, stating:

The Committee remains concerned about the extremely harsh regime imposed on detainees in 'supermaximum prisons'. The Committee is concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment (art. 16). The State party should review the regime imposed on detainees in 'supermaximum prisons', in particular the practice of prolonged isolation.²⁶

In addition, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) rejected prolonged solitary confinement and sensory deprivation.²⁷ The European Convention on Human Rights—to which the U.S. is also signatory—in a landmark case from 1978, condemned "sensory deprivation" as "inhuman or degrading treatment"; so has the European Court of Human Rights, the European Committee for the Prevention of Torture, and the Inter-American Court for

In spite of international condemnation and exorbitant cost—sometimes three to four times that of other facilities—supermax prisons continue to be used by corrections departments because they are judged to deter prison violence and lower recidivism rates.²⁹ But evidence that these prisons reduce violence or recidivism is conspicuously lacking.

Supermax Prisons, Violence, and Recidivism

Corrections officers, American Federation of State, County and Municipal Employees representatives, and state legislators from the district in which Tamms is located all argue that the supermax functions as a “safety valve,” necessary to deter assaults against guards. But evidence for this effect in Illinois or elsewhere is notably absent. Though one scholarly article argues for an association between the opening of the supermax and a reduction in aggregate violence against guards, the effect was both small and of extremely short duration.³⁰ Nor did this limited correlation extend to a reduction in violence against prisoners, even though such assaults, too, may lead to a transfer to Tamms. The lead author of the article has recently written to clarify her findings: “We simply do not know enough about the supermax or about the effect of Tamms specifically, to make an educated guess about the long-term effectiveness of these facilities.”³¹ In another article, she and her coauthors noted that “the implementation of a supermax had no effect on levels of inmate-on-staff assaults in Minnesota, [and] temporarily *increased* staff injuries in Arizona.”³²

A broader review of the history of violence in Illinois prisons reveals that assaults against guards began to decline *two years before* the opening of Tamms supermax. Following the release in 1993 of a report by the Illinois Task Force on Crime and Corrections, led by Anthony Valukas, and in the wake of the scandal surrounding the broadcast in 1996 of tapes showing mass murderer Richard Speck engaged in sex behind bars, significant changes were made to insure control of Illinois’s maximum security prisons. These changes included the zoning of large prisons into a number of smaller sub-units to better control inmates, the use of armed staff to escort prisoners during movements, the expansion of segregation units and cells in existing minimum- and maximum-security prisons, and the implementation of a “gang-free” prison program.³³ These and other changes had an immediate impact on the number of prison assaults. Indeed, by the time Tamms opened in 1998, the number of assaults on staff had dropped to a fifteen-year low, despite an escalating prison population.

Moreover, the manifest uncertainty that violent or other serious offenders will be sent to the supermax seriously undermines its potential deterrent effect. As criminologists since Cesare Beccaria in the mid-eighteenth century have noted: it is not the severity of punishment that counts as a deterrent, but the prisoner’s perception of its certainty.³⁴ Given the small number of supermax beds, compared to the large number of offenses committed behind bars, it is unlikely—with the enormous expense of such confinement—that prisoners will perceive punishment at the supermax as the certain consequence of a given offense.³⁵

There is one other factor to be briefly considered in addressing the possible impact of supermax prisons on the safety of corrections officers. There is accumulated evidence that working in a supermax is stressful and dangerous. In her book, *Total Confinement*, the anthropologist Lorna Rhodes documents the enormous stress experienced by both prisoners and guards at Washington State Prison.

Many of the prisoners at Washington State, according to Rhodes, are mentally ill; some were sent to the supermax because their mental illnesses led them to violate prison rules, while others became ill, confined in the supermax. But most surprising to Rhodes were the high levels of anxiety and depression experienced by both corrections officers and prisoners. The most powerful and disturbing example of this concerns excrement. It is well known that prisoners in supermax facilities sometimes pelt guards with urine or feces; pent up anger and frustration is enormous, and a prisoner’s own waste is at times the only weapon. Rhodes documents through interviews the ways in which this practice leads to what one officer called a “hardening” or indifference among guards to other human beings.³⁶ Some officers explicitly fear, as

Rhodes puts it, that they “are veering away from humanity toward dirt.” The regular cleaning of cells covered with excrement, the violent, “forced extraction” of inmates from cells, and the searching of prisoners’ body cavities are all routine aspects of the life of a corrections officer at a supermax facility. These jobs take a psychological and physical toll as great or greater than the physical assaults some guards suffer at non-supermax prisons.

Supermax prisons have no more impact on recidivism rates than they do on prison violence.³⁷ In a study from Washington State, the authors examined the probability, timing, and seriousness of offenses of men released from state supermax prisons—“Intensive Management Units” or IMUs—compared with that of men who had not served time in IMUs. Carefully matching prisoner records according to a comprehensive pattern of indicators, the results were clear: the recidivism rate for men who had served in IMUs was higher than that for men in the control group who had not served time in IMUs. For felonies, the increase was statistically insignificant (47 percent compared to 40 percent), but for more serious felonies (violence against persons), the increase was pronounced: 36 percent to 24 percent.

The authors are careful to state that causality cannot be inferred from their research, but certain conclusions were, nevertheless, possible:

We found, with qualifications, that IMU assignment predicts *higher* recidivism.... But we do not know whether the predictive effect is due to the IMU experience or to some psychological process that leads prison staff to see the offender as threatening and which, after release, leads to further criminal aggression.³⁸

Nor is there evidence that overall recidivism rates are decreased after the opening of supermax prisons. In Illinois, for example, the average adult recidivism rate, according to data provided by the Illinois Department of Corrections, in the two years prior to the opening of Tamms supermax, was 42.5 percent. In the two years following the opening, it averaged 46.2 percent. In the following two years (Fiscal Year exits 2000-2001), during which time the population at Tamms reached its peak, and when knowledge of the prison (and thus potential deterrent effect) was likely to have been most widely disseminated within and without the prison system, the average rate of adult recidivism was 54.5 percent. Described another way, adult recidivism rates in Illinois increased by more than 28 percent from 1996 (40.2 percent) to 2001 (56.4 percent).

As with the question of recidivism among men who had served at least twelve months in supermax prisons in the state of Washington, it is not possible to draw conclusions about causality from the raw, Illinois data. But it is nevertheless clear that there is no evidence that supermax confinement reduces overall recidivism rates in Illinois; if anything, just the opposite.

Conclusion—Ideology and Resistance

The brief review above of the history of long-term, solitary confinement in the United States reveals that it is by far the exception rather than the rule in corrections. For less than forty years, from 1820 to the time of the Civil War, isolation in prison was seen as a way to rehabilitate—by means of stigmatization and sustained self-reflection—the most hardened criminals. But public revulsion at the psychological and physical toll of solitary confinement, and recognition of its ineffectiveness at reducing prison violence or recidivism largely ended the practice until the advent of the modern control unit or supermax, conceived according to behaviorist principles. Today, research again indicates that these expensive new facilities have neither reduced aggregate violence in prisons nor lowered recidivism rates. What then, is the reason for their continued use?

A full answer to this question would require a sustained examination of the politics and economics of the U.S. correctional system, and is beyond the scope of this article. But one clue to the persistence of the supermax regime may be found in the common language used to describe prisoners at Guantánamo Bay in Cuba and U.S. supermax prisons: “the worst of the worst.”³⁹ That peculiarly stigmatizing phrase—displaying all the inertness and opacity of ideology—reveals again the interpenetration of international and domestic security interests that define the penal state. Certain men (and a few women) are so far beyond

redemption that they must be warehoused in concrete cubicles beyond the eyes and ears of any other humans for the sake of the very preservation of the state. In that closed and claustrophobic space, prisoners are rendered both dependent and abject, and thus, by the self-justifying logic of torture, all the more incapable of human intercourse, and all the more deserving of chastisement and continuous, close confinement. In addition, the absolute difference between those who are imprisoned and those who are free—and between those who are guilty and those who are innocent—may be most starkly asserted at a prison in which men are treated worse than zoo animals, fed through a slot in the door, and manacled and chained to the floor during rare visiting hours. The supermax prison therefore creates its own rationale; it is not a solution to incorrigibility, but a justification of the penal state.

But even an ideology as powerful as the one that underlies the supermax may fall to the hammer blows of economic recession, litigation, and popular protest. The decline in corrections budgets, combined with lawsuits in multiple states alleging abuse and lack of due process in placement and sentencing, have stopped cold the growth of the supermax regime, and in a number of states rolled it back.⁴⁰ In addition, the national “stop-max” movement, as well as state-level efforts at reform (like the broad-based one in Illinois with which I am involved), have generated negative public perceptions of solitary confinement, countering, to some extent, the thrall of penal state ideology. Together, these forces may yet end the sordid practice of long-term solitary confinement in the United States.⁴¹

Notes

1. ↪ Hannah Holleman, Robert W. McChesney, John Bellamy Foster, and R. Jamil Jonna, “The Penal State in an Age of Crisis,” *Monthly Review* 61, no. 2 (June 2009): 1-17.
2. ↪ U.S. Department of Justice, Bureau of Justice Statistics and International Center for Prison Studies, King’s College London. The incarceration rate includes all inmates held in custody in state or federal prisons and local jails, and is defined as the total number of inmates in custody per 100,000 U.S. residents. These figures do *not* include juvenile detention centers, territorial prisons, jails in Indian country, U.S. Immigration and Customs Enforcement facilities, military prisons, persons on probation or parole. See Holleman, et al., “The Penal State.”
3. ↪ The case of Colorado, with the third highest per capita prison spending by state, is instructive. Christopher Setti, “Prisons and Their Effect on Local Economies,” *Journal of the Colorado Center for Tax Policy* 47, no. 3 (December 2001): 1-9. On profits and prisons see David Ladipo, “The Rise of America’s Prison Industrial Complex,” *New Left Review* 7 (January-February 2001): 109-23.
4. ↪ Twenty-three of thirty-three states surveyed by the Vera Institute of Justice have cut spending for prisons in 2009. According to stateline.org, at least seven states have closed prisons, <http://www.vera.org>. The California Department of Corrections, the largest in the nation with 170,000 inmates, expects its 2010 budget to be cut by 1.5 billion. A recent court ruling mandates the release of nearly a third of prisoners because of chronic overcrowding and inadequate health and medical care. *Coleman/Plata v. Schwarzenegger*, No. 3:01-cv-01351-TEH (N.D. Cal.).
5. ↪ Stopmax is the name of a national campaign to end solitary confinement organized by the American Friends Service Committee. The most active local organization to oppose supermax confinement is Tamms Year Ten, organized on the tenth anniversary of the opening of a supermax in Tamms, Illinois. It is led by an artist and activist, Laurie Jo Reynolds, and includes among its members ex-prisoners, prisoners’ families, artists, writers, students, academics, and lawyers. It is supported by more than seventy faith-based and human rights organizations. (See www.year10.org). My knowledge of Tamms supermax is based upon my work with Tamms Year Ten.
6. ↪ Michael Ignatieff, *A Just Measure of Pain, 1750-1850* (New York: Pantheon, 1978); Adam Jay Hirsch, *The Rise of the Penitentiary* (New Haven: Yale University Press, 1992).
7. ↪ *Observations and Reflection on the Penitentiary System, from Franklin Bache to Roberts Vaux*, (Philadelphia: Jeper Harding, 1829), 3-4.
8. ↪ Michel Foucault, *Discipline and Punish* (New York: Random House, 1977), 300.

9. ↪ Francis C. Gray, *Prison Discipline in America* (Boston: Charles C. Little and James Brown, 1847), 37.
10. ↪ William Roscoe, *A Brief Statement of the Causes which Have Led to the Abandonment of the Celebrated System of Penitentiary Discipline* (Liverpool: Harris and Company, 1827).
11. ↪ Charles Dickens, *American Notes for General Circulation* (London: Chapman and Hall: 1842): 116-18.
12. ↪ Gustave Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and its Applicability to France* (Edwardsville: Southern Illinois University, 1964) (originally published 1833), 56.
13. ↪ Gray, *Prison Discipline in America*, 41.
14. ↪ Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement," *Crime & Delinquency* 49, no. 1 (2003): 124-56; C. Haney and M. Lynch, "Regulating Prisons of the Future," *New York University Review of Law and Social Change* 23 (1997); and Bruce A. Arrigo and Jennifer Leslie Bullock, "The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units," *International Journal of Offender Therapy and Comparative Criminology* 52 (2008): 622-40.
15. ↪ Gray, *Prison Discipline in America*, 159.
16. ↪ *Medley*, 134 U.S. 160 (1890).
17. ↪ The FBI's counterintelligence program (COINTELPRO, 1956-1971) was designed, according to the 1976 report of the *Senate Select Committee to Study Governmental Operations* (chaired by Senator Frank Church) to prevent "the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence." (*Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans*, Book Three, April 23, 1976, 1.)
18. ↪ Among those held at Marion were Leonard Peltier, leader of the American Indian Movement, Sekou Odinga of the Black Liberation Army, Alan Berkman, convicted of a series of bombings of government and military targets, and Oscar Lopez Rivera of the Puerto Rican nationalist group, FALN. See: *Let Freedom Ring*, Matt Meyer, ed. (Oakland: PM Press, 2008), 89-98.
19. ↪ *Manual of Correctional Standards* (New York: American Correctional Association, 1959), 246, 253.
20. ↪ Alan Eladio Gomez, "Resisting Living Death at Marion Penitentiary, 1972," *Radical History Review* 96 (Fall 2006): 64.
21. ↪ *Madrid v. Gomez*, 889 F. Supp. 1146, 1280 (N.D. Cal. 1995).
22. ↪ The political prisoners were Silvia Baraldini, Susan Rosenberg, and Alejandrina Torres. Jan Susler, "The Women's High Security Unit in Lexington, KY," *Yale Journal of Law and Liberation* 31 (1989): 31-42.
23. ↪ Daniel McGowan, "Tales from Inside the U.S. Gitmo," Blog entries, www.huffingtonpost.com.
24. ↪ Illinois Department of Corrections, <http://www.idoc.state.il>. See the series of reports in the *Belleville News Democrat*, August 2009.
25. ↪ UN Human Rights Committee, *Concluding Observations: Denmark*, 2000.
26. ↪ UN Committee Against Torture, *Conclusions and Recommendations: USA*, July 2006.
27. ↪ General Assembly resolution 43/173 of 9 December 1988, Principle 7.
28. ↪ *Ireland v. the United Kingdom* (Case No. 5310/71); *Rohde v. Denmark*, no. 69332/01 ECHR 2005; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2nd General Report, CPT/Inf(92)3, 20. Council of Europe, Second General Report of the Committee for the Prevention of Torture, CPT/Inf (92) 3 [EN], para. 56; Loayza Tamayo Case, Provisional Measures in the Matter of Peru, Order of the Court of September 13, 1996 Inter-Am. Ct. H.R. <http://www.prisonersabroad.org.uk>.
29. ↪ In Illinois, Tamms Supermax costs \$67,994 per prisoner per year, while the maximum security prison at Menard Correctional Center costs \$20,736 (Illinois Department of Corrections, *Taxpayer Action*

Board). The total budget for corrections in Illinois in 2009 is \$1.44 billion.

30. ↪ Jody Sundt et al., "The Sociopolitical Context of Prison Violence and Its Control," *The Prison Journal* 88, no. 1 (2008): 94-122.
31. ↪ E-mail correspondence, April 1, 2008. Also Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, "The Effect Of Supermaximum Security Prisons On Aggregate Levels of Institutional Violence," *Criminology* 41, no. 4 (2003): 1341-76.
32. ↪ Briggs et al., "The Effect of Supermaximum Security Prisons," 1341.
33. ↪ Illinois Department of Corrections, *Response of The Illinois Department of Corrections to the Final Report of the Expert Panel on Performance Review*, July 7, 1997.
34. ↪ Cesare Beccaria, *An Essay on Crimes and Punishments* (London: J. Almon, 1747), 98; Raymond Paternoster, "The Deterrent Effect of Perceived Certainty and Severity of Punishment," *Justice Quarterly* 4, no. 15 (1998): 173-217; cited in Jesenia Pizarro and Vanja M. K. Stenius, "Supermax Prisons," *The Prison Journal*, 84 (2004): 258.
35. ↪ In response to a FOIA request by Chicago attorney Jean Maclean Snyder of the prison reform group Tamms Year Ten, the IDOC stated that in 2008 there were 400 inmate assaults on staff, eighty-six of which caused serious injury, and 1,653, assaults on inmates, ninety-one of which caused serious injury. Only nineteen men were sent to Tamms that year.
36. ↪ Lorna Amarasingham Rhodes, *Total Confinement* (Berkeley: University of California Press, 2004), 47.
37. ↪ C. Riveland, *Supermax Prisons* (Washington, DC: National Institute of Corrections, 1999); Jamie Fellner and Joanne Mariner, *Cold Storage* (New York: Human Rights Watch, 1997).
38. ↪ David Lovell and Clark Johnson, "Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State," Department of Psychosocial & Community Health, University of Washington, ii. On the increased recidivism of prisoners released directly from the supermax to the community, see "Recidivism of Supermax Prisoners in Washington State," *Crime and Delinquency* 53 (2007): 654.
39. ↪ The locus classicus is a speech by Donald Rumsfeld. See "Threats and Responses—the Detainees," *New York Times*, October 23, 2002. Also see Ken Ballen and Peter Bergen, "The Worst of the Worst?" *Foreign Policy*, October 2008; and "Inside Tamms Supermax," *The Chicago Tribune*, February 13, 2009.
40. ↪ Supermax units have been closed or significantly reduced in size in Michigan, Indiana, Wisconsin, Ohio, and Minnesota, among other states. In Mississippi, a lawsuit filed by the ACLU National Prison Project, the Mississippi ACLU, and the law firm of Holland and Knight led to a more restrictive classification system, the exclusion of mentally ill inmates, a reduction in the time spent in isolation, and a sharp reduction in the number of prisoners in solitary confinement at Parchman's Unit 32 from nearly 1,000 to about 150. Terry Kupers et al., "Beyond Supermax Administrative Segregation," *Criminal Justice and Behavior*, July 29, 2009.
41. ↪ On September 17, 2009, IDOC director Michael Randle announced a Ten-Point Plan for reform at Tamms, including new transfer review hearings, specified lengths of stay, increased out-of-cell time, phone calls, religious services, and a step-down program to accelerate transfer back to regular prisons. Reform advocates with Tamms Year Ten welcomed the plan, but are concerned it will still permit lengthy terms of isolation and do little to help prisoners with mental illnesses.