

The Effects of Modern-Day Slavery: Mass Incarceration

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Introduction

After the Civil War ended in 1865, the South was left without a government or economic structure. While the Confederate States were adopted back into the United States, the South was still left with the responsibility to rebuild. With the ratification of the 13th, 14th, and 15th Amendments, African Americans were freed, granted citizenship, and African American men were able to vote. Many African Americans fled the South with hopes of escaping violent mobs and finding solitude in northern cities. This meant that the South was in high demand for labor to run and profit from their plantations. The South quickly found loopholes to solve the demand issue, and control African Americans in a whole new legal way. The South implemented convict leasing which led to oppressive segregation under Jim Crow which led to mass incarceration that stripped African Americans of their rights. These efforts have been further instigated by prominent political figures within the past sixty years such as Presidents Nixon, Reagan, and Clinton. These oppressive efforts that occur even today are a direct result of slavery and the continued prejudice and racism that allowed loopholes to be created and problematic policies to be implemented. Mass incarceration is a modern caste system classifying people of color as second-class citizens limiting their human rights.

Convict Leasing

After the end of the Civil War, the 13th Amendment was passed in 1865 which abolished slavery. However, there was an important clause embedded into the language of the amendment. It stated that “Neither slavery nor involuntary servitude,

except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction”.¹ What is most important about the language of this Amendment is the clause that states slavery is illegal “except as a punishment for crime”.² The language of this meant that slavery was not wholly illegal and there was a loophole. Immediately, people in the South recognized this and found a way to use this loophole to keep Black people working on their plantations under inhumane conditions with zero compensation for their work. Within the next few months after the Amendment was ratified, the Republican majority outlawed race-based forms of convict leasing which did not acquire much change. The House then “passed a bill outlawing race-neutral convict leasing, which the Senate postponed when the focus of Republican strategy shifted to Black voting rights”³ and convict leasing was pushed to the side.

The convict leasing system emerged as a response to the new Amendments. Similar to the “Black Codes, vagrancy laws, and sharecropping arrangements, the convict lease system was a mechanism of race control used to prevent ex-slaves from obtaining the status and rights enjoyed by wage workers”.⁴ The convict leasing system allowed previous plantation owners to find cheap or inexpensive labor to boost the southern economy back up. Unfair sentencing for menial crimes fed prisoners into this

1 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 1:23:54.

2 Ibid., 1:23:54.

3 Pope, James G. "Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account." *New York University Law Review* 94 (December 2019), 1465.

4 Adamson, Christopher R. "Punishment after Slavery: Southern State Penal Systems, 1865-1890." *Social Problems* 30, no. 5 (June 1983), 555.

system in which companies paid fees to the state or local governments for labor at lumber camps, textiles, brickyards, farms, railroads, and elsewhere. Black people were arrested for any crime white people could stick on them for things like loitering. This system had great “fiscal appeal, since state governments were paid hundreds of thousands of dollars by the companies leasing convicts”.⁵ From the start, this system was incredibly corrupt. During this time, most African Americans had yet to flee the South so in states like Louisiana, Mississippi, and South Carolina, they comprised fifty percent of the population.⁶ The system was meant to diminish Black men and keep them at the same status they had when they were a slave. Black people without a job or could not hire themselves out were “prosecuted as vagrants and sentenced to hard labor on local plantations”.⁷ By arresting Black people for simple crimes such as vagrancy, they were able to control the public and forced “Black laborers to choose between compulsory labor and employment at a sub-living wage.”⁸ They did not seek out white men without jobs and throw them into this system and that is where the discrimination in this system lies. When Southern governments shaped the law to exploit Black people, “The Thirteenth Amendment had transformed Black slaves into free trespassers on the real property of their former owners.”⁹ This further supports the claim that the Punishment Clause kept Black people stuck in a new form of slavery. Within this system, according to Adamson (1983), “Black convicts throughout the South were starved, chained to each other at night in over-crowded dirty stockades, overworked and forced to continue working while sick, and whipped occasionally to death”.¹⁰ This system practically legalized slavery with a new name as its cover-up. Black people accounted for over ninety-five percent of most prison populations, with the highest percentages in the South.¹¹

5 Adamson, Christopher R. "Punishment after Slavery: Southern State Penal Systems, 1865-1890." *Social Problems* 30, no. 5 (June 1983), 556.

6 Ibid., 558.

7 Ibid., 559.

8 Pope, James G. "Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account." *New York University Law Review* 94 (December 2019), 1512.

9 Ibid., 1512.

10 Adamson, Christopher R. "Punishment after Slavery: Southern State Penal Systems, 1865-1890." *Social Problems* 30, no. 5 (June 1983), 561.

11 Ibid., 565.

In the nineteenth century, the systems in the prisons and convict leasing, were created with the intent to continue the economic and racial relationships that were formed during slavery.¹² After emancipation,

“white ‘Redeemers’ – white planters, small farmers, and political leaders – set out to rebuild the pre-emancipation racial order by enacting laws that restricted Black access to political representation and by creating Black Codes that, among other things, increased the penalties for crimes such as vagrancy, loitering, and public drunkenness.”¹³

The Jim Crow laws that came after convict leasing was eradicated in the 1920s, mimicked Black Codes, and were segregationist and oppressive laws that outright made African Americans second-class citizens, socially and economically, in the South. Not only did the prison systems get worse and the population of Black men in prison rise, but white southerners could shut out Black people even more openly and, in more ways, than before. In the first fifty years of the twentieth century, thousands of Klansmen were running for office and stoking the violence committed against African Americans. Black people began to seek refuge in northern cities like Detroit, Chicago, Harlem, and Pittsburgh with the hope they would find solitude.¹⁴

Also in the twentieth century, a statute that would have prohibited peonage (a form of involuntary servitude), was struck down meaning peonage was upheld in the 1905 case of *Clyatt v. United States* and the 1914 case of *United States v. Reynolds*.¹⁵ As more interpretations and understanding of the Thirteenth Amendment developed, lawyers continued to draw “on changing academic, political, and popular meanings of peonage and involuntary servitude”¹⁶ throughout the rest of the twentieth century. Because of these actions, “white supremacist regimes incarcerated

12 Browne, Jaron. "Rooted in Slavery: Prison Labor Exploitation." *Race, Poverty, & the Environment* 14, no. 1 (Spring 2007), 43.

13 Gilmore, Kim. "Slavery and Prison – Understanding the Connections." *Social Justice* 27, no. 3 (Fall 2000), 198.

14 *13th*. Directed by Ava DuVernay. 2016. Netflix, Film., 7:49.

15 Goluboff, Risa L. "The Thirteenth Amendment in Historical Perspective." *Journal of Constitutional Law* 11, no. 5 (July 2009), 1453.

16 Goluboff, Risa L. "The Thirteenth Amendment in Historical Perspective." *Journal of Constitutional Law* 11, no. 5 (July 2009), 1465.

African-American laborers en masse and leased them to private employers without facing a serious Thirteenth Amendment challenge.”¹⁷ It is widely agreed that the lack of challenge to laws and actions like this is “evidence that the Amendment authorizes such practices.”¹⁸ Inaction like this allowed convict leasing and later more racial targeting to incarcerate a disproportionate number of African Americans. Southern states were even found to be guilty of exploiting the Punishment Clause to ensnare Black laborers.¹⁹

Government Policies

African Americans’ hope that they would find solitude and refuge in the North did not exactly hold up. The North still experienced race riots and discrimination, even though they did not have the same Jim Crow laws. The Civil Rights Act was even a fight in the North, too. Black people were still being prosecuted in many urban areas for the same menial crimes southern Black people were being prosecuted for. African Americans were labeled as vagrants and criminals when they were getting arrested. Being arrested meant they would face job discrimination, wage discrimination, societal discrimination, and in other forms, too. For the first time with the Civil Rights Act, Black people changed the narrative of what it meant to be arrested and criminality. Being arrested became a noble cause in the fight for their civil rights. They voluntarily sought to turn the system on its head, and got arrested for peacefully protesting.²⁰ After the Civil Rights Movement and the passage of the Civil Rights Act and Voting Rights Act of 1964 and 1965, respectfully, the focus within the American government shifted to being tough on crime.

With so many African Americans now with the ability to vote without restrictions and the Jim Crow Era officially closed, the U.S. government needed a new way to control people of color. This time in American history is marked by more human rights protests and anti-war protests. Many people in the US. felt that the country was out of control and needed

order. President Nixon, who was struggling with low approval ratings, was the first President to make crime and order a priority. Nixon created the ‘War on Drugs’ to show he was taking back control of a country that had just seen a decade of violent protests and many formative changes. When they shifted focus to crime, they made the media address addiction as a criminal issue instead of a health issue. They made drugs a new enemy.²¹ How does making drugs an enemy take care of protestors and control people of color? Drugs were mostly prominent in urban areas and impoverished neighborhoods that housed many people of color because generational poverty put them in those positions. Protestors, especially anti-war protestors, were known for experimenting with drugs. Furthermore, “by treating civil rights protest as a strain of social disorder, veiled connections were drawn between the crime problem, on one hand, and black social protest, on the other.”²² So, that is how Nixon’s administration took them down. What many white southerners failed to realize was this was just a narrative spun by a President seeking re-election. White people used drugs at the same rate as Black people but were not as prosecuted for it or did not receive such harsh sentencing. John Ehrlichman from Nixon’s administration later came out long afterward and admitted that it was all a lie. Ehrlichman said that:

“The Nixon campaign in 1968 and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black but by getting the public to associate the hippies with marijuana and the blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”²³

This quote is monumental to the exposure of the true

17 Pope, James G. "Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account." *New York University Law Review* 94 (December 2019), 1465.

18 Ibid., 1465.

19 Ibid., 1511.

20 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 11:13.

21 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 15:30.

22 Western, Bruce, and Christopher Wildeman. "The Black Family and Mass Incarceration." *The Annals of the American Academy of Political and Social Science* 621 (January 2009), 223.

23 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 18:12.

motives behind the ‘War on Drugs.’ They knew that they were creating a false public understanding and that they had created a divide between communities that was manufactured by their own government. The only thing the government had correct was the fact that “elevated crime rates and the realigned race relations of the post-civil rights period provided a receptive context for the law and order themes of the Republican Party.”²⁴ However, Nixon’s ‘War on Dugs’ set up the rest of the twentieth century to be riddled with policies “put into place [such as] rigid sentencing guidelines that required (1) longer sentences; (2) mandatory minimums; (3) reclassifying some drug offenses from misdemeanors to felonies; and (4) the passage of the ‘Three Strikes You’re Out’ laws.”²⁵

President Reagan was the next president to stoke the ‘tough on crime’ agenda. With his wife, Nancy Reagan’s, ‘Just Say No to Drugs’ campaign implementing an educational tactic, he won moderates over into that sphere of anti-criminals thinking and made drugs a top issue when it was not on the general public’s agenda. A new drug in the 1980s called crack cocaine emerged and overtook inner-city communities. With the new spike in crime and drugs, mandatory sentences were established but powder cocaine (a drug used more in rich, suburban communities) was hardly met with the same kind of scrutiny.²⁶ Reagan’s plans allocated millions of dollars to house the exceedingly increasing number of prisoners. Later, a tape came out of Lee Atwood, a member of the Reagan campaign, admitting that because they could not use racial slurs anymore, they would have to change their rhetoric to phrases like ‘state’s rights’ and focus on economic tactics like ‘cutting taxes’ where they knew Black people were hurt worse by those things than white people. To still achieve that racial division among southern whites, the Reagan campaign knew that they had to change their rhetoric.²⁷ Labeling people of color as “crack heads”, ‘crack babies’, ‘super-predators’, and

welfare queens”²⁸ and then using the media to over-represent Black people being arrested or involved in crime every day on the news created too strong of a narrative. In 1980, there were 513,900 people in U.S. prisons.²⁹ In 1985, that number rose to 759,100.³⁰ In 1990, just five years later, after Reagan’s administration, that number skyrocketed to 1,179,200.³¹

President Clinton was the next president to play a significant role in mass incarceration. It is even debated that he played the largest role in the corruption of our prison system. By the time Clinton ran for President, it was “virtually impossible for a Democrat to run and be soft on crime”.³² With the implementation of Clinton’s ‘Three Strikes You’re Out’ policy, he drove the fight to allocate more funds to the police, to put more police on the street, create more mandatory minimums, and add even more people to the prison system with the 1994 thirty million dollar criminal spending bill. Because of this focus and influx of money, officers, and prisoners, the police force became militarized, and incentives were created that encouraged police abuse.³³ In an effort to avoid being “cast by conservatives as ‘soft on crime’...”, even Clinton, who was a progressive, and “publicly aligned himself with the Black community and Black leaders, escalated the racially discriminatory drug war”³⁴. Even though, in the past several years, both Bill and Hillary Clinton have publicly admitted they regret the policies they put in place, the damage has been done. One huge consequence of the effects these three presidents had is the fact that throughout the past few decades, these systems have been resistant to change because people from all races were “willing to tolerate the disposal of millions of individuals once they had been labeled criminals in the media and political discourse”.³⁵ Because of the incessant labels, discrimination, and acceptance by both Republicans and Democrats, the issue of mass incarceration, discriminatory sentencing, unpaid forced labor in prisons, and the war on drugs

24 Western, Bruce, and Christopher Wildeman. "The Black Family and Mass Incarceration." *The Annals of the American Academy of Political and Social Science* 621 (January 2009), 223.

25 Smith, Earl, and Angela J. Hattery. "Incarceration: A Tool for Racial Segregation and Labor Exploitation." *Race, Gender, & Class* 12, no. 1/2 (2008), 82.

26 *13th*. Directed by Ava DuVernay. 2016. Netflix, Film., 22:19.

27 *13th*. Directed by Ava DuVernay. 2016. Netflix, Film., 26:30.

28 Alexander, Michelle. *The New Jim Crow*. The New Press, 2010, xv.

29 *13th*. Directed by Ava DuVernay. 2016. Netflix, Film., 18:49.

30 *Ibid.*, 26:55.

31 *Ibid.*, 34:35.

32 *13th*. Directed by Ava DuVernay. 2016. Netflix, Film., 35:33.

33 *Ibid.*, 39:08.

34 Alexander, Michelle. *The New Jim Crow*. The New Press, 2010, xlii

35 *Ibid.*, xlii.

and crime had hardly been fought against, let alone talked about, until the twenty-first century.

Effects of Mass Incarceration

The effects of mass incarceration have only worsened and have grown to be detrimental in the twenty-first century. Currently, the United States houses twenty-five percent of the world's incarceration rate and yet the U.S. only accounts for five percent of the world's population.³⁶ Black men make up six and a half percent of the U.S. population but account for 40.2 percent of the prison population.³⁷ It is projected that one in every seventeen white men will be imprisoned at some point in their lifetime but one in every three Black men are likely to be imprisoned at some point in their lifetime.³⁸ Some urban areas experience an even higher percentage. In our nation's capital, Washington D.C., "it is estimated that three out of every four young Black men can expect to serve time in prison".³⁹ Because of new and harsher policies that put more police on the streets in urban areas and made the criminal justice system give out harsher punishments, "the incarceration rate for young low-education Black men rose by 22 points in the two decades after 1980".⁴⁰ These statistics and the people suffering within them are a perfect representation of the racial complications of our criminal justice system. Furthermore, "if white men were incarcerated at the same rate as blacks, there would be more than 6 million people in prison and in jail".⁴¹ Archaic systems made to control people of color such as the convict leasing system are thought of to have disappeared. Even back in 1982, "many states still had clauses in their constitutions that deemed slavery and indentured servitude legal punishments or had no proviso about the legality or illegality of prison enslavement".⁴² Even today, during the 2022 midterm elections, states voted on the ballot about whether or not to include language

abolishing slavery, making forced labor illegal, and paying prisoners minimum wage in their constitutions. However, the systems are still very much thriving under a different name. Private corporations can run for-profit prisons and lease factories similar to convict leasing.⁴³

More recently, the exploitation of prisoners and their forced labor is being more commonly referred to as 'modern-day slavery' to call attention to the reconstruction of slavery after the 13th Amendment. However, it is different in its own way this time in history. As Dylan Rodriguez states in an interview with Angela Davis (2000), "when we look more closely at the emergence of the prison-industrial complex, the language of enslavement fails to the extent that it relies on the category of forced labor as its basic premise".⁴⁴ The difference between before the 13th Amendment was ratified to now is that, now, Black men and women have been granted equal rights and voting rights. While they do face the major problem of forced labor in prisons, there are other huge consequences that follow with being arrested now. More than "70 million Americans—over 20 percent of the entire U.S. population, overwhelmingly poor and disproportionately people of color—now have criminal records that authorize legal discrimination for life".⁴⁵ People who have been imprisoned now face legal discrimination in employment, education, housing, and thus in the economy. Because more Black people have been charged with felonies than white people, they also face voter discrimination in many states due to "voter disenfranchisement laws effectively suppressing the Black vote as well".⁴⁶ All because for more than three decades, politicians and the news has constantly told the public that these 'criminals' deserve to suffer in prison and have successfully made the public forget or made them ignorant to the fact that "whites are just as likely to commit many crimes, especially drug crimes".⁴⁷ The loophole that the 13th Amendment provides is dangerous. Even "the fiercest critics of mass

36 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 1:05.

37 13th. Directed by Ava DuVernay. 2016. Netflix, Film., 1:23:34.

38 Ibid., 1:23:18.

39 Alexander, Michelle. *The New Jim Crow*. The New Press, 2010, 8.

40 Western, Bruce, and Christopher Wildeman. "The Black Family and Mass Incarceration." *The Annals of the American Academy of Political and Social Science* 621 (January 2009), 225.

41 Ibid., 228.

42 Gilmore, Kim. "Slavery and Prison - Understanding the Connections." *Social Justice* 27, no. 3 (Fall 2000), 200.

43 Browne, Jaron. "Rooted in Slavery: Prison Labor Exploitation." *Race, Poverty, & the Environment* 14, no. 1 (Spring 2007), 44.

44 Davis, Angela Y. "The Challenge of Prison Abolition: A Conversation." By Dylan Rodriguez. *Social Justice* 27, no. 3 (Fall 2000), 213.

45 Alexander, Michelle. *The New Jim Crow*. The New Press, 2010, xxix.

46 Ibid., 239.

47 Alexander, Michelle. *The New Jim Crow*. The New Press, 2010, 226.

incarceration generally accept that the Punishment Clause permits practices they condemn as brutal and exploitative.”⁴⁸ Today, Black people face discrimination in more legal ways for the same crimes white people commit than ever before. If more action had been taken or more protections were put into place, we “might have prevented or shortened one of the most barbaric and shameful episodes in United States history.”⁴⁹

Conclusion

Even though the Civil War ended in 1865, emancipating slaves, and the 13th Amendment abolishing slavery was ratified, slavery still very much existed under a different guise. Because the South had to rebuild their economy and restore their governments, they adopted a convict leasing system which fed Black prisoners to private companies and farms to work forced labor in inhumane conditions. This system eventually led to the Jim Crow laws of the south which then led to ‘tough on crime’ policies put into place by Presidents Nixon, Reagan, and Clinton after the Civil Rights Movement in 1965. These oppressive efforts, such as unfair sentencing, which occur even today have a direct, undeniable relationship to slavery. These modern policies have overcrowded prisons, targeted minorities, disenfranchised American citizens, and stripped many Black people of their rights. Mass incarceration is a modern caste system classifying people of color as second-class citizens limiting their human rights and increasing the discrimination they face.

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48 Pope, James G. "Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account." *New York University Law Review* 94 (December 2019), 1467.

49 Ibid., 1553-1554.