

The Continuation of Slavery Through the Prison System in the United States

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Patrick M. Leonard Jr.
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On my honor as a University Student, I have neither given nor received
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Signature _____ Date _____
Patrick Leonard



Approved _____ Date _____
Hannah Rogers, Department of Engineering and Society

Abstract

The prison industrial complex and mass incarceration are both products of the privatization of prisons and drug laws enacted in the late 1900s. 'Tough on Crime' policies have been used to help win elections ranging from the country to state, and federal. These policies were used to instill a sense of safety in America. Hidden in these campaign speeches were the effects of these policies on the black population in the United States. Drug laws and nationwide climate shifts about drugs have left people of color to be over-policed as these laws targeted these communities disproportionately. These effects can be analyzed through the lens of the Actor-Network Theory by identifying the actors responsible for the mass incarceration of people of color. The use of this theory will validate the connection between the current prison system and slavery. This thesis explores the business models of private prisons and how they mistreat and profit off of people of color. More than 150 years have passed since the 'end' of slavery in the United States. This thesis explores a unique perspective of how many things have not changed in America. Through the research of this topic, I believe prevention is the most important function of the criminal justice system and is also the same function severely lacking.

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Introduction

The United States has experienced an unprecedented rise in incarceration since the 1970s. Social divisions and the politicization of crime at the national level led to increases in crime. This led to the shift away from the indeterminate sentencing model and the adoption of a sentencing model focused on severe constraints on judges and parole officers. I will focus on the effect of government-run prisons not being able to keep up with the growing number of prisoners. They began to look towards the private sector to fulfill their needs. The privatization of prisons was widely accepted in the United States due to ‘tough on crime’ policies enacted in the 1980s. These changes in sentencing, the privatization of prisons, and the inhumane prison conditions have disproportionately affected people of color. A domino effect has started from the politicization of crime to a change in sentencing structure, to the need to house the rise in inmates through private prisons. My research will show that the stakeholders in private prisons have created a system that can profit off of people of color disproportionately relating the current practices in the prison system to those practices of slavery. By looking back at historical evidence of practices during slavery, one can make clear the intersection of slavery and the prison system in the United States.

Subsystems of the Prison system: Actors in ANT

The current prison system in the United States shows ties dating back to slavery. To understand how the prison works means to understand the prison network and human and nonhuman entities that influence each other constantly. Looking at the prison system as a sociotechnical system, one can distinguish the specific actors that make up this network. Policymakers create the laws; police officers then enforce these laws, then sentences are at the

discretion of judges and juries. From there incarcerated people are taken to either state, federal, or private prisons. There are many actors involved in the overarching prison system that contribute to the high rates of incarcerated people of color. This paper will further focus on how policymakers, private prison owners, inmates, and companies that contract prisoners interact in the overarching system. These actors directly influence the industrial prison complex. Other actors in the system include police and correction officers but will not be focused on as this paper is looking at the prison system from outside of the prisons themselves. The properties of this system have unavoidable emergent properties that are not predictable. Currently, the United States has the highest incarceration rate in the world and Black and brown people are incarcerated at disproportionate rates due to “hard on crime” laws and the privatization of the prison system after World War II (Gilmore, 2000).

Drug Laws & Tough on Crime Policies

The growth of the number of prisoners in private facilities has increased from 1,345 in 1985 to 106,940 by 1997 (Schneider, 2012). The population grew, in part, because of harsh sentencing and drug laws and the racial profiling of Black people. In 2001, Black males had a 32.2% chance of going to prison, while white males had only a 5.9% chance (Fulcher, 2012). Almost two million people are currently locked up and more than 70% of the imprisoned population are people of color (Davis, n.d.). The Anti-Drug Act created mandatory minimum federal sentencing laws that led to an increase in drug arrests and convictions. President Bush created a billion-dollar plan that focused on “stiffer sentences for everyone involved in drugs, from the occasional users to international drug traffickers” and shifted the focus from “stopping narcotics at the border to fighting drug trafficking on the street.” (Fulcher, 2012) These changes

in drug sentencing laws both boosted the number of prisoners and increased the period they served in prison. In a journal published by Morenoff and Harding (2014), it stated that incarceration appeared to exacerbate existing racial and socioeconomic inequalities by making those who are already disadvantaged even more so educationally, economically, and socially. These sources indicate that policies used to reduce crime in America didn't work and in turn targeted specific groups of people. These laws began to put even low-level criminals behind bars for decades. White people were using a lot of drugs in the 70s and committed many crimes, yet the people being arrested and imprisoned were mostly from poor Black and Hispanic neighborhoods.

Specific artifacts of the justice and prison system directly link them to slavery. A national push towards 'tough on crime' sentencing policies became a more targeted war on drugs. The laws called for harsh sentences for drug crimes and limits on plea bargaining. From 1980 to 1995 the number of drug arrests nearly tripled while the proportion of drug offenders in state prisons rose from 6.4% to 22.7% (Mauer, 1999). Coinciding with the policy changes was a shift in sentencing philosophy towards a more determinate and more punitive direction. States across the nation began to shift towards these models as seen in California with the "Three Strikes and You're Out" law which required sentences of up to life imprisonment for a third felony. Mandatory sentencing laws gained popularity aided by the financial incentives contained in the 1994 federal crime bill for states that adopted these policies. Ultimately this led to the continued rise in the prison population. Sentencing disparities between crack cocaine and powdered cocaine along with racial profiling are among some of the reasons Black people became disproportionately represented in the U.S. prison population (Fulcher, 2012). One can see that due to this newly popular style of law, the nation's prison population exploded. This meant

building hundreds of new state, federal, and private prisons. These laws had many unknown consequences by targeting poor communities of color and by demanding the need for private prisons. By 1998 violent crime was down 19% and overall crime had declined by 17% following a six-year trend. During this same period, the number of inmates in the nation's prisons increased by 51% (Mauer 1999). There is a vicious cycle occurring in the justice system. Inside courtrooms, children as young as 13 are sentenced to life imprisonment for nonhomicide offenses (Stevenson, 2019). This is the start of the overcrowding of prisons and the exploitation of people of color.

The actual period to be spent in prison was generally determined by a parole board based on the inmate's conduct in prison and the participation in prison programs. Concerns of discretion based on race, gender, and other factors led to a restructuring in sentencing where judges and parole boards would have less discretion. Judges relied upon a sentencing grid consisting of the current offense and the offender's prior record.

The shift in climate around drugs

While the determinate sentencing shift focused on the notion that similar offenders and offenses will be treated alike there are still sentencing disparities. Reducing the discretion of the judge's sentencing has not eliminated the disparity but has rather enhanced the power of the prosecutor's office because the criminal charge itself is now the critical factor in determining a sentence (Mauer, 1999). Judges make sentencing decisions in open court which is subject to public scrutiny. Prosecutorial decisions and plea bargaining are conducted behind closed doors.

There are glaring class distinctions contributing to sentencing disparities. Wealthy defendants have greater access to high-quality attorneys and sentencing consultants, so these

similar offenders and offenses are not treated alike. A significant portion of the racial disparities seen in the criminal justice system results from drug policies, sentencing policies, and decisions by criminal justice stakeholders that target minorities. This is seen regarding marijuana. In the first several decades of the 1900s, it was seen as a drug that was only used by Black and Mexican people in the United States. At this time waves of Mexican immigrants, many of who casually smoked marijuana began to enter the United States. Extreme prejudice against Mexicans was attached to their drug of choice. This process is what inspired most early marijuana laws. The paradigm has reinforced the general belief that drug prohibitions are a product of racism or a toll wielded to oppress labor in the United States (Campos, 2018). It led to policies such as the Boggs Act of the 1950s which penalized first-time possession of marijuana or heroin with a sentence of two to five years in prison. By the start of the 1960s marijuana was becoming widely used by the white middle class. Young white college students were being arrested for marijuana offenses and the public's attitude changed quickly. States began to revise their laws through new statutes. This same case has been seen with many drugs throughout the 1900s but Black people are always harshly affected. Political leaders have promoted “Tough on crime” policies promising their effectiveness as tools for fighting crime. These policies have proved to be both costly and unjust and have led to the creation and growth of private prisons.

Laws that led to the creation of Private Prisons & the History of private prisons

For the first 200 years of its history as an independent republic, the United States' prisons, both state and federal, were operated by government offices. This all changed in 1994 when President Clinton signed the Crime Bill. The Violent Crime Control and Law Enforcement Act authorized \$8 billion in state grants for the construction of prisons and boot camps. President Clinton's budget for 1996 claimed to cut costs through the privatization of prisons (Eisen, 2017).

The anti-drug policies of Reagan and Bush, coupled with the “Tough-on-crime” policies of Clinton, swelled the prison population. The accompanying rise in prison populations placed immense pressure on governmental resources. Between 1978 and 1998, the prison population increased fourfold, from 294,000 inmates to more than 1.3 million (Culp, 2005). Local, state, and federal prisons could not keep up. Private companies stepped in to fill the gap and the public saw it as a good way to cut public spending. By the turn of the century, there were a total of 158 private prisons operating in 30 states. Fast forward to 2020: The United States now has the highest incarceration rate in the world. This prison boom disproportionately affected black men. By the end of 2002, 12% percent of black men in their twenties were in prison or jail (Harrison and Karberg, 2003). A prison system that used to lease its inmates as plantation labor in the 19th century has come full circle and is once again a nexus for profit. Whether it be prison labor programs or the 24/7 surveillance of inmates, American prison systems owe their cruelty to slavery.

At the end of the 1990s, governing jurisdictions passed a body of regulatory legislation that molded private prisons into clones of the public prisons that privatization advocates had sought to supplant (Culp, 2005). Due to increasing operating costs and overcrowding of public prisons, there was pressure to find alternative forms of sentencing and custody. The idea of prison privatization reemerged from this increasing prison population and federal court-imposed limits on prison use.

Using government resources for private prisons provides an incentive to increase the prison population. These private prison companies are not bound by government rules such as political pressures, environmental concerns, and bidding and construction contracting. Financing of new public prisons often required voter approval of construction bonds, a lengthy process with

an uncertain outcome. They also claimed to have the ability to get funds from private investors quickly while the government has to get appropriations from state legislators or attain bonds. The reliance on private companies to manage inmates transformed into a “successful” profit-generating enterprise. An opportunity to “purchase” prisoners for profit will continue to provide private prison companies with incentives to keep people of color in prison (Fulcher, 2012). Utilizing private services has led to the government giving up the responsibility to manage inmate populations and allowed for punishment to shift from public objectives to one of profiteering. The key players in the prison industrial complex are the federal, state, and local correctional agencies that are the financiers. The private companies are the profiteers and the prisoners are the commodities. The survival of private prisons is dependent on the resources of the government. Many of these prison contracts are based on the number of inmates in their facilities per day. These companies have solicited support from legislators and political candidates to propose and pass legislation that will keep incarceration rates high to continue to secure million-dollar prison management contracts.

In the late 1970s, many states viewed prisons as potential profit-making entities for state and local businesses. The idea and practice of profiting off of inmates in federal and state prisons continue to this day. States such as Kentucky, Louisiana, and Tennessee could not afford to support their growing prison population and were in desperate financial straits and began to turn to businesses to run the facilities. Under a federal court order to reduce overcrowding, Louisiana either had to lock up fewer people or build more prisons (Chang, 2012). States tried to build their way out of the problem by creating 256 new state correctional facilities throughout the United States from 1979 to 1995. Annual costs of operating this expanding network of prisons rose from \$5 billion to nearly \$40 billion (Culp, 2005). Building more prisons to keep up with the demand

was increasingly more difficult. The state began to encourage sheriffs to pay for the construction in return for future profits. The incentives were so appealing that new private prisons sprouted up all over Louisiana to house its nearly 40,000 inmates. This was not just happening in Louisiana but across the entire United States. Private prisons make money by the number of beds that are filled. To keep the beds filled, these companies have to outsource their prisoners (Schneider, 2012). The more empty beds, the more money that prison stands to lose. LCS Corrections Services runs three prisons and is a major donor to the political campaigns of urban sheriffs who supply rural prisons with inmates (Chang, 2012).

Use of Prison labor

The private sector involvement in U.S. prisons has a history as long as the prison system itself. Private companies would pay the state for the use of the inmates and profit was made by selling the inmate-made products on the market. Post-Civil War the privatization of prisons increased primarily in the South as these bankrupt states faced high unemployment and a growing crime problem. Many 19th-century public prisons were allowed to operate at a profit and at no cost to taxpayers. Business owners complained that state-owned enterprises constituted unfair competition. Reforms in the early 1900s abolished the contracting out of labor and almost every state had passed legislation banning the importation of prison-made goods from other states.

Contracting out of particular non-custody services such as food service, maintenance, and medical care continued without the legal impediment surrounding private custody arrangements (Culp, 2005). Through enormous corporate lobbying, the United States passed the Prison Industry Enhancement Certification Program which permitted companies to use prison labor.

Consequently, Black men and women are exploited for profit. Although the 13th Amendment prohibits slavery and involuntary servitude, there was an exception - a loophole for “punishment for crime whereof the party shall have been duly convicted”, which made prison labor possible (Das and Love, 2017). Prison labor is a billion-dollar industry, and some of the most widely known brands are the corporate beneficiaries of this new slavery. Remnants of slavery can be seen through the subsystems that ultimately make up the prison system.

Counter Argument For private prisons

Some critics oppose the characteristic of the US prison system as a slave labor camp. There are arguments that prison labor is infrequently used, and that corporations are not the sole culprits behind the prison industrial complex. This objection is true in the sense that corporations are not the sole stakeholders in prison labor. There are many different types of prison labor systems. Some inmates are managed by the government and others are managed by private firms. These private firms sell the products made by inmates to collect profit. Prisoners are either employed by the prison to do housekeeping work, such as cleaning and laundry, or they can work outside of the prison for the government or private companies. As of 2018, over 3,100 private companies have been shown to profit from mass incarceration (Hammad, 2019). The critic’s reports ignore the fact that the prison system operates with a great interest in producing a profitable labor force while neglecting the rehabilitation of its prisoners.

There is also a false sense of morality in the idea that prisoners benefit from prison labor by building work skills to be applied after they are released. Critics believe prison labor would promote employment opportunities for inmates in order for them to acquire marketable skills to

provide them with successful rehabilitation. This idea overshadows the exploitative nature of prison labor without opportunities to apply those work skills. There is a narrative that all inmates have never worked or even had exposure to work and as a result, they are disrupting the peace and safety of Americans. However, it is not that prisoners do not know how to work, it is the fact that their labor is being exploited without any benefit. When you look at every actor in the prison labor system, everyone from the government to private companies to the prisons is benefitting. The only party not benefiting from this system are the prisoners. The prisoners are denied workplace rights and only make between 12 to 40 cents per hour. Following their release, these individuals are not qualified to work certain jobs proposed by these critics due to their criminal record.

These views can easily be challenged and it is important to understand that these systems in place are meant to profit off of Black and Brown people. Through analysis of the different factors contributing to the larger sociotechnical prison system, the STS paper will conclude that the artifacts found in prisons and jails today perpetuate slavery in the United States.

Conclusion

Racism is deeply rooted in America's foundation and has disseminated into many aspects of our society, most prominently, the criminal justice system. It is important to view the prison system through the lens of the Actor-Network-Theory. To understand the entire system, one must understand who the actors are and how they interact. In my analysis of the prison system, I choose to focus on policymakers, private prison owners, companies that use prison labor, and the inmates themselves. Black people have been victimized well after slavery was 'abolished'. Historically, legislatures created racialized laws targeting a particular class of people. through

these laws, slavery never truly ended. More Black people are incarcerated today than were enslaved over 150 years ago. The government has continuously reformed forced labor systems from slavery to convict leasing, gangs, and the modern prison system, to serve its financial interests at the expense of Black lives. The law should serve and protect all citizen's rights and lives. Black people should be in the room and their experiences should be taken into account when political decisions are made. This lack of consideration for Black voices contributes to perpetuating poverty.

Due to slavery, Black people inherit the burden of having to fight the systems and institutions designed to oppress black people. Political climate shifts, drug laws, and tough-on-crime policies were the start of the prison industrial complex. These laws and policies targeted poor communities of color and put them behind bars for low-level crimes. Drugs were being used by every race in the United States yet Black and Hispanic people were arrested and imprisoned at higher rates than their white counterparts. The climate shifts in the way drugs were used by certain groups perpetuated the racial profiling that ran rampant in America. Glaring class distinctions were contributing to glaring sentencing disparities. These laws led to the mass incarceration of people of color and the overcrowding of prisons which led to the need for private prisons. Those who have been negatively affected by mass incarceration are stripped from civic engagement after their release. Drug laws are being reconsidered and marijuana is becoming legal in many states. I believe that anyone that has been imprisoned due to old laws should be released and granted their civic rights. By stripping people of their legal and human rights during incarceration, the government can control Black communities from the outside while stopping their efforts to represent themselves.

To move towards a world where prisons don't profit off their inmates, a world where people of color are not targeted by laws and the police, a world where Black people are not constantly pushed into poverty, I believe the entire criminal justice system needs to be torn down and reimagined. This drastic change will most likely not happen in my lifetime but until it happens other things can change to help move towards that reality. Prisoners need to be allowed to explore legitimate careers, and this cannot be fulfilled when they are building skills for jobs they won't be able to qualify for following their release. Instead of prisons seeking to punish inmates, prisons should be run to rehabilitate and provide inmates with the proper services to prevent reincarceration such as mental health evaluations or schooling. Lastly, America needs to understand that drugs are a social problem and not a criminal one. Prevention should be the focus of the criminal justice system not making laws targeting communities and waiting for them to break them.

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