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WRIT105_BP

M1 Essay

8 October 2018

Prison Profiteers: The Exploitation of the 13th Amendment and Race to Construct an Empire

The prison industrial complex (PIC) is the most profitable business you've never heard of. Since its establishment, America has had a monumental problem when it comes to power and control. Many of the laws set in place benefitted a specific group of people: white, Christian men. People of color were brought into America to be kept down, enslaved, and treated as less than humans. We have made strides since then, but the law still purposely disadvantages those who are not white men, and it affects the definition of justice in our country. Worse still, the slow progress towards equality under the law for marginalized groups has given rise to a business model that thrives and makes money from racism and skewed justice, the prison industrial complex, and it is completely legal.

The PIC is what's known as one of the fastest-growing industries in the United States, using incarceration rates and the toughness of the modern justice system to make money. America's government and its citizens have, since the end of the US Civil War, used the Constitution as a tool to shape the justice system as they see fit, with little to no regard for ethics or societal consequences. The constant misuse of America's laws has continued to be a disadvantage for mental health, our economy, the actual balance of power on Capitol Hill, and people of color, and it is directly responsible for the prison industry we know today. While minorities are not the only people in prisons, they make up a large majority of the overall prison

population and have wildly increased its numbers. As of 2014, the prison population was a staggering 2.3 million, starting at 357,292 in 1970, and seeing increases by the hundred-thousand every decade (*13TH*). This outrageous increase in the number of inmates allows industries nationwide to make money off of racism, cheap labor, and general greed. Using tactics that have been in play since the ratification of the 13th Amendment, the prison industrial complex has used the disenfranchisement of people of color and laws posed on the Senate floor by lobbyists to create a source of income that is legally indomitable. Race relations have had a direct effect on the regulations and societal norms that gave birth to the prison industrial complex.

To begin analyzing how the Prison Industrial Complex became so powerful and profitable, one must first understand the ideals that allowed it to form and continue to be accepted by the law. Section 1 of the 13th Amendment to the Constitution is as follows, “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” (Constitute Project Amendment XIII). The Amendment outlaws slavery in America on the surface, but there is a much darker side to the revolutionary law. Ava DuVernay, critically acclaimed director of 2014’s movie *Selma*, inspired by the true events of Rev. Dr. Martin Luther King Jr.’s fight for civil rights, explores the dangerous loophole in the amendment that outlawed slavery in her Netflix documentary, *13TH*. The documentary states that the 13th Amendment to the U.S. Constitution prohibits any American from being enslaved, but only outside of prisons, as it was still allowed as punishment for a crime. As a result, when slaves gained freedom on December 6th, 1865, the day the 13th amendment was ratified, black people were arrested in large quantities and thrown in jail in the nation’s first prison boom (*13TH*, 1:53-2:30; 3:32-3:41).

This began the theme of mass incarceration of people of color in the U.S. by white people, to deliberately keep them at a lower social standing.

Another reason white people saw a necessity in keeping black people controlled by them was the film *Birth of a Nation* (1915)'s depictions of the entire race as animalistic beings that targeted white values, sparking the creation of the mythology of black criminology and re-birthing the Ku Klux Klan. The image of the so-called "negro menace" had been presented, and it created a very real sentiment of fear in white people. Jaron Browne, the National Organizer for Global Well-Being Programs in Oakland, CA, in his article titled "Rooted in Slavery: Prison Labor Exploitation," states, "While the model prison in the United States was built in Auburn, New York in 1817, it wasn't until the end of the Civil War, with the official abolition of slavery, that the prison system took hold" (Browne par. 5). Browne is telling readers that America's prison system was only established to keep freedmen and women disenfranchised. Given that America's prisons are mostly a response to the freeing of southern slaves, it is not acceptable that facets of slavery are still present in today, especially the use of inmates as cheap labor. Through the exploitation of the loophole, the inmates, and the general complacency with the racism of those who controlled the justice system, the private prison network, now deemed the "prison industrial complex," was born. The most notable private prison company is the Corrections Corporation of America, or the CCA, now known as CoreCivic, and their staff of more than 16,000 (CCA Social Responsibility) is responsible for overseeing the logistics of what can be called modern slavery.

Not only were the intentions of the CCA legal, state governments allowed them to make more money through business deals. The CCA was presented with quotas; if they could keep their prisons at or above 90% filled capacity at all times in a given state, they would continue to

make money off of the prisoners they kept (*13TH*, 57:50-58:12). A tall order such as this one would be harder to fulfill if not for the prejudice against people of color. These people inflated the prison population and were subjected to a life that would now be spent living with the disadvantages associated with being convicted of a crime regardless of innocence, and the prison industrial complex was only made more successful for it. Unfortunately, the prison industrial complex and its backers have more societal power than what has already been mentioned thanks to the American Legislative Executive Council, or ALEC. ALEC is a political lobbying group that can vote on the same level as regular politicians, which is dangerous considering the people that they represent. The organization was actually backed by quite a few big name companies, including Wal-Mart, known for being one of the biggest retailers of firearms and ammunition (*13TH*, 56:13-56:32). Businesses associated themselves with ALEC so they could get laws passed that would lessen regulations or lower taxes against them. To add to the despicable nature of this business tactic, companies could also benefit from whatever consequences came from ALEC-presented laws.

Like the prison industrial complex, ALEC didn't just appear in recent years. They have been growing and gaining more influence for over 40 years. They even remade their image in 2007 in an attempt to rid themselves of ill opinion from the public. However, ALEC has still been very controversial even after this change, influencing some of the biggest changes to the nation's laws and regulations that have endangered society the most. One of these laws is the "Stand Your Ground" in Florida, allowing the killing of another person if the killer felt threatened. Stand Your Ground is responsible for the acquittal of George Zimmerman in the case concerning the shooting death of Trayvon Martin. Zimmerman, a member of the neighborhood watch was suspicious of Martin, an unarmed black teenager, and took it upon himself to end the

young man's life on mere speculation. It was ruled that he acted in self-defense and was set free. DuVernay's documentary highlights the big name business that benefitted from Stand Your Ground and the Trayvon Martin case: Wal-Mart. Following this, Wal-Mart and many other companies, but not all of them, pulled out of ALEC, but the Wal-Mart family still funds them (*13TH*, 51:20-57:22). Stand Your Ground and other ALEC laws are examples of their wide-reaching influence in Washington and usefulness to businesses, but it does not stop there.

ALEC's laws also help the plight of the CCA and the prison industrial complex since they help put more defendants in jail at a quicker rate for a longer amount of time. The Federal Crime Bill, presented by Former President Bill Clinton, was, in reality, a bill presented by ALEC, beneficial for the CCA and detrimental to America's due process of law. As with other "tough on crime" presidents, Bill Clinton used far too much force in trying to crack down on crime, creating lasting, dangerous consequences.

To provide some background on what these presidents did that turned the justice system into a weapon for the CCA to conquer the market, this "tough on crime" mindset began with President Richard Nixon in the 1970s. He proposed a "War on Drugs" to combat the rising number of drug-related incidents in America, but this war was of a metaphorical nature, intending to vilify black people and recreational drug users. It took the words and actions of President Ronald Reagan to turn Nixon's metaphorical war into a literal one, even though the problem of drugs wasn't as big of a problem as Reagan made it look like it was. With the emergence of crack cocaine, a form of cocaine that could be smoked and sold in very small doses inexpensively, Congress quickly passed mandatory sentencing laws for offenses related to the new drug. Because this drug affected inner cities the most, these mandatory sentencing laws were disproportionate to others. White people were associated with cocaine, the more

sophisticated narcotic, and black people were associated with crack, the less refined narcotic. The prison sentence for someone found with an ounce of crack was equal to the sentence someone would get if they were found with 100 ounces of cocaine, meaning black people would face more punishment for their crimes and they would be kept in prison longer (*13TH*, 22:05-23:03). Reagan's initiative spawned another wave of mass incarceration, increasing funding for jails and focusing the police on economically challenged communities of color.

When it came time for President Bill Clinton to adopt the "tough on crime" mindset, he put forth the notorious Federal Crime Bill of 1994 (*13TH*, 36:28-39:39), a list of new rules for the criminal justice system that even Clinton himself regrets signing. In the \$30 billion bill, there was a plan for Mandatory Minimum sentences (*13TH*, 37:18-38:00). This policy voided judges and courtrooms as they could no longer decide a sentence based on the circumstances presented. Whatever your crime, there was now a specific amount of time American judges were forced to make defendants serve. The bill also contained the Truth in Sentencing policy, making it so that convicts would have to serve at least 85% of their sentences no matter how good their behavior (*13TH*, 38:00-38:49). Finally, there was the 3 Strikes law, doling out automatic life sentences to felons if they committed 3 violent crimes. This led to the Los Angeles Sheriff's office being forced to release 4,200 misdemeanor inmates every month when the law was initially passed. This was necessary to avoid overpopulation due to a massive influx of third-strike prisoners (*13TH*, 36:32-37:18). The new rules did solve some problems, but Bill Clinton already knew his bill had major consequences, expressing regret in a speech to the National Association for the Advancement of Colored People in 2015 shown in DuVernay's documentary. He states, "But I want to say a few words about it. Because I signed a bill that made the problem worse. And I want to admit it" (*13TH*, 40:50-41:02). Clinton is saying that he wants to take responsibility for

enacting change that he knew was dangerous. The war on drugs was going to disproportionately affect people of color, and he knew this, but at the same time, he just wanted to get the bill passed.

President Clinton actually apologized for the bill many times before that speech, but originally didn't understand at its core why it was so harmful. *The Hill*, an American political newspaper and website, noted when Clinton stated, "We have too many people in prison. And we wound up spending — putting so many people in prison that there wasn't enough money left to educate them, train them for new jobs and increase the chances when they came out that they could live productive lives" (McCabe par. 4). President Clinton is saying that he blamed the money that wasn't being allocated to training for schools and the workforce so inmates could go back into society fully prepared. However, while this is definitely one of the problems associated with the bill, this was not the biggest one. Dara Lind, a journalist for *Vox*, stated, "The 1994 crime bill Clinton signed was a big reason for the second trend: longer prison terms. The law used funding for new prisons as a way to pressure states to get rid of parole and adopt "truth-in-sentencing" laws that required prisoners to serve out their sentences" (Lind par. 8). The quote is saying that the keywords here are "longer prison sentences". As stated before, this meant more prisoners would be sent to jail quicker, turning into the prison industrial complex's bread and butter, and that they would stay that way for longer periods of time. Their lives would be forever changed for the worse because of the ideals of greed and racism, mirroring what the Federal Crime Bill did to America's criminal justice system.

As it stands, the 13th Amendment is a blessing and a curse for America, especially for its economy. It freed America's slaves, but it also sparked the first coming of mass incarcerations that legally re-enslaved black people through an immediately exploited loophole. When the 13th

Amendment was ratified, the economy was devastated, as the producers of many marketed items no longer had cheap labor. However, during Civil War-era slavery and during modern slavery, the economy has been better off because of cheap labor, as companies don't have to spend as much money on workers and there are more of them that will work for longer hours. In fact, modern slavery is even encouraged in some places, even in the form of chain gangs.

As recently as the 1990s, some Americans were fine with the idea of modern chain gangs. Journalist Rick Bragg of *The New York Times*, in a 1995 article on the resurgence of chain gangs in Alabama, briefly interviews a former prison warden, 53-year old Ron Jones. In the article, the warden states, “‘People say it's not humane,’ ... ‘But I don't get much flak in Alabama’” (Bragg par. 5). Bragg argues that “‘the chain gangs are part of a new kind of prison reform, one that frightens some human-rights advocates’” (par. 6). Jones explains the advantages of Alabama's legal complacency when it comes to outdated, blatantly racist and demeaning practices. Bragg's article highlights the kind of attitude that allows slavery and mistreatment of inmates to continue in America's prisons. Chain gangs were used during the nation's first prison boom following the end of the Civil War, increasing the speed of progress with back-breaking task while keeping inmates cognizant of the fact that they were trapped. The complacency expressed by Mr. Jones is one of the reasons why the prison industrial complex is still a legal business model. However, it proves that the economy is nothing without some form of slavery or disenfranchisement to the point where it is required.

It was through interpretations of the Constitution that America's justice was made only to serve those in power. These interpretations negatively affected the poor and people of color while positively affecting the rich and white. There are examples throughout history and today that show constitutional rights being violated just to put black people in jail, like when the right

to citizens that protects them from being forced to admit guilt or even answer an on-the-street interrogation is cast aside because the person “could” be guilty since they don’t want to answer question. For American immigrants, the violation of constitutional rights is actually legal, under the law SB1070. This law allowed the stopping of anyone who looked like an immigrant, and it benefitted the CCA. (*13TH*, 1:00:31-1:01:18) A law that took away constitutional rights made them over \$11 million and gave them another source of profit. The detention facilities that were filled up as a result of SB1070 were now another source of income for the prison company. John W. Whitehead, a contributor to the *Huffington Post* and a constitutional attorney, in his article, “Jailing Americans for Profit: The Rise of the Prison Industrial Complex,” states that “part of the investment pitch for CCA...include the profits to be made in building ‘kinder, gentler’ minimum-security facilities designed for detaining illegal immigrants, especially low-risk detainees like women and children” (Whitehead par. 8). Whitehead is saying that the CCA now had a stake in the private detaining of illegal immigrants and that they were trying to change their image to appear more accommodating to the needs of everyone in society, similar to ALEC’s rebranding. The CCA wants to be felt everywhere, and they will not stop advancing on the prison system until they control every corner of it. The organization is given free reign of American justice, only checked by themselves.

Continuously, the Constitution is used as a weapon to advance the hidden agendas of racist and greedy Americans, and there is no greater example of this than the prison industrial complex. When the financial interests of slave owners and businesses were threatened at the end of slavery, mass incarceration was utilized to keep them afloat. Decades later, the situation is no different. The private prison company CCA sits at the top of the industry, allying with state governments and ALEC to remain funded and legally in control. ALEC assists any kind of

business that wants an advantage in Washington to make their lives easier, and the country's definition of what is right and wrong gets more and more distorted. ALEC bills forever changed federal law, essentially a model for state and local laws, which means they also change the standard on every level of government. Private prisons remained populated through the large-scale arrests of people of color, too many of whom were innocent, couldn't afford bail, mentally ill, or had their constitutional rights violated by police or the law itself. While not directly stated as part of their origins, history shows us that race relations in America have allowed the prison industrial complex to form, succeed, and thrive on the imaginary fears of the societally advantaged.

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