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# Incentives to Incarcerate: Corporation Involvement in Prison Labor and the Privatization of the Prison System

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University of San Francisco

**Incentives to Incarcerate:  
Corporation Involvement in Prison Labor and the Privatization of the Prison  
System**

A Field Project Presented to  
The Faculty of the School of Education  
International and Multicultural Education Department

In Partial Fulfillment  
Of the Requirements for the Degree  
Masters of Arts in International and Multicultural Education

by  
Alythea Morrell  
December 2015

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Corporation Involvement in Prison Labor and the Privatization of  
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MASTER OF ARTS

in

INTERNATIONAL AND MULTICULTURAL EDUCATION

Alythea Morrell  
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UNIVERSITY SAN FRANCISCO

Under the guidance and approval of the committee, and approval by all the members, this field project has been accepted in partial fulfillment of the requirements for the degree.

Approved:

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Date

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## CHAPTER I INTRODUCTION

### **Statement of the Problem**

*Today's prison system...is a system predesigned and constructed to warehouse the people of undeveloped and lower economical communities. Under the existing social order men and women are sent to prison for labor (free labor) and further economical gain (money) by the state. Where else can you get a full day's work for two to sixteen cents an hour, and these hours become an indeterminate period of years. This is slave labor in 20th-century America. Repeat! Men and women are sent to prison for free labor, not for what contributions they might make to their communities, under the guise of rehabilitation. Ninety-eight per cent of (all) people held in U.S. concentration camps are people of oppression, we are the people who come from the underclass of the system, we are the people castigated and barred from the productive arenas of social employment, decent housing, correct education, correct medical care, etc., etc., a war of survival... Bear with me, I don't intend to sound bitter, but only to relate the truth; we must come to know the truth, we are the people left to the crumbs of the system... we are the people who lay prey to the criminal elements of the system.*

*-John Clutchette*

The mass incarceration of human beings in the United States (US) is unprecedented. The US has the highest incarceration rate in the entire world (Stevenson, 2014). According to Peleaz (2014), "no other society in human history has imprisoned so many of its own citizens" (p. 1). The US accounts for approximately 5% of the world's population. However, it accounts for 25% of the world's prisoners (Alexander, 2012; Khalek, 2011). In 1980, there were approximately 400,000 prisoners in the US. Today, there are over 2,400,000 prisoners, a 500% increase over the past 30 years (Flounders, 2013). In addition, there are nearly 6,000,000 people on probation or parole (Stevenson, 2014). One out of every fifteen people born in the US will go to prison and one out of every three African American males will be incarcerated at some point in their lives (Stevenson, 2014). Currently, one in every thirty-two adults in the US is either in prison, in jail, on probation or on parole. What is even more disturbing than the sheer number of incarcerated individuals is the fact that incarceration disproportionately affects people of color, in particular, young African American men (Browne, 2007). African American men in their 20s and early 30s

without a high school diploma are more likely to end up behind bars than in the workforce.

Today, there are more African American men in jail, prison, on parole or on probation than were enslaved in 1850 (Alexander, 2012).

While the aforementioned statistics are disturbing, the situation is even more complicated by the connection of corporations to the U.S. criminal justice system and the for-profit privatization of the prison system. Corporations such as IBM, Boeing, Motorola, Microsoft, AT&T, Texas Instrument, Dell, Compaq, Honeywell, Hewlett-Packard, Intel, TWA, Nordstrom's, Revlon, Macy's, Target, and others have a financial stake in US mass incarceration (Khalek, 2011). The massive amount of people incarcerated in the US has become an open labor market for corporations, and according to Sarah Flounders (2013), "IBM, Texas Instruments and Dell get circuit boards made by Texas prisoners. Tennessee inmates sew jeans for Kmart and JCPenney. Tens of thousands of youth flipping hamburgers for minimum wages at McDonald's wear uniforms sewn by prison workers, who are forced to work for much less" (p.1).

According to the Committee on Community Partnerships and Grassroots Power and the Executive Council, "For-profit prison companies benefit from rising rates of incarceration that stem in large part from changes in laws and procedures that require increased penalties for nonviolent and minor crimes, such as the possession of small amounts of drugs, and lengthy or lifetime incarceration as a result of 'three strikes' sentencing laws" (as cited in American Federation of Labor and Congress of Industrial Organizations, 2013, para. 2). Corporations utilizing prison labor are not held to the same standards and requirements that corporations operating outside prisons are. This is a violation of the rights of prisoners. We, as a society, have put in place standards, laws and regulations for a reason, namely to protect workers. So why is it

that simply because one is incarcerated he or she is no longer afforded or deemed worthy of being treated with respect and corporations are allowed to profit from this subversion of the law?

Prisoners, who are disproportionately comprised of African American and Hispanic men and women, cannot unionize and cannot strike. They are not provided benefits that workers outside of prison are required to receive, such as health care, unemployment insurance, workers' compensation insurance, overtime pay or vacation days. In addition, prisoners are paid as little as \$0.13 per hour (Pelaez, 2014; Thompson, 2012). Prisoners may choose to work while in prison, and therefore, some may view this as prisoners' exercising their free will. However, often prisoners who choose not to work are moved to disciplinary housing and lose good behavior credit, which would ultimately reduce their sentences (Flounder, 2013). Prisoners who choose not to work can face prolonged isolation and sensory deprivation, which is why, despite the fact that they are only making pennies per hour, many prisoners choose work since the alternative is to be caged in cement for 23 hours per day. According to an article published by *ABC News* and written by Alon Harish and Alexis Shaw (2012), an inmate at the Chittenden Regional Correctional Facility in South Burlington, Vermont was forced to work but refused to do so. In response to his refusal Harish and Shaw states, "prison officials threatened to put McGarry [the inmate] 'in the hole,' where inmates are shackled and locked up for 23 hours per day in solitary confinement" (p. 1). In order to avoid inhumane treatment, McGarry chose to work since the alternative was deemed far worse.

In addition to corporate profit from prison labor, corporations also profit from the privatization of the prison system. Private prison companies admit that their business model is dependent on the incarceration of massive numbers of human beings (American Civil Liberties Union, 2014). In fact, Corrections Corporation of America, leading for-profit prison company in

the US, filed its 2010 annual report with the Securities and Exchange Commission stating that “the demand for our facilities and services could be adversely affected by . . . leniency in conviction or parole standards and sentencing practices . . .” (p. 19). Private corporations are financially invested in the prison industry is extremely disturbing.

Corporations have one main goal - to make a profit. Caylor Rolling, the prison program director at Partnership for Safety and Justice in Portland, Oregon, explains that corporations “cut corners because the bottom line is making money” (Associated Press, 2007, para. 8). The capitalist mentality which is essential for corporations to stay in business is inherently incompatible with human rights. The fact of the matter is that today corporations “make commodities out of human beings and prisoners,” and “because of their low social status, they are particularly vulnerable to abuse” (Human Rights Advocates, 2010, p. 1).

When an individual is incarcerated, one of the purposes of that incarceration, in theory, is to rehabilitate that individual so that they can return to society a better and improved person. The California Department of Corrections (2014) states, “Our mission... is to help offenders leave prison with better job or career skills, education, life skills, and confidence, so they can succeed in their futures despite past obstacles” (para. 1). This means that prisons should be a place where prisoners have access to drug treatment, counseling, therapy and education. However, when the focus is not on the rehabilitation of prisoners, and instead is on profit, it is of little surprise that the human rights of prisoners would be violated. Human Rights Advocates (2010) notes:

The basic motivation...is to increase their bottom line. Indeed, in most states in the United States corporations are legally obligated to place the accumulation of shareholder wealth above all other considerations. In order to do so, companies must seek a steady and predictable, if not growing, flow of income while continuously finding ways to cut expenses. In the prison context, inmates become the commodities through which such profit maximization is achieved and the cost reductions come at the expense of prisoner safety, likely to result in the quick dismissal of basic principles of human dignity. (p.5)



The fact that corporations are allowed to house their factories inside of prisons and have access to an endless supply of workers who cannot unionize, have no say in what they are doing and be paid slave wages, motivates corporations to lobby for harsher punishments and longer sentencing because it is to their benefit.

The same goes for private prisons such as Corrections Corporation of America and GEO Group. When beds are filled, these companies profit. If the existing public and private prisons are at capacity they build new facilities, which again, leads to profit. Because corporations involved in mass incarceration benefit financially, the American Federation of Labor and Congress of Industrial Organizations (2013) explains that corporations have “lobbied for laws as well as stricter incarceration policies” because “their business model depends on growing the correctional system for the sake of profit without regard to justice” (p. 1). Allowing corporations to use prisoners as a means of profit is unjust and it is counterintuitive to think that any meaningful rehabilitation can take place under such a scenario. When the bottom line is profit “the facts show that [it]... leads to inhumane conditions for...those who are incarcerated” (American Federation of Labor and Congress of Industrial Organizations, 2013, para. 3).

The United Nations’ International Covenant on Civil and Political Rights (ICCPR), Article 10(3), establishes that “the penitentiary system shall not comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” The ICCPR makes clear that the principle purpose of imprisonment should be rehabilitation. Is forcing prisoners to work for pennies without access to laws and standards rehabilitating or rather degrading and inhumane?

The United Nations’ Standard Minimum Rules for the Treatment of Prisoners, Article 29 demands that the state have exclusive regulation and power regarding the “types and duration of

punishment which may be inflicted” and “the authority competent to impose such punishment.” Should we be allowing private corporations to house, punish and profit? Article 29 specifically explains that only the state should have the authority to punish.

Article 58 of the United Nations’ Standard Minimum Rules for the Treatment of Prisoners further asserts that in order to protect society from crime, “the only justification for imprisonment is to rehabilitate offenders so that they might reenter society as productive, law-abiding citizens.” Human Rights Advocates (2010) explains that “rehabilitation and recidivist prevention programs are designed for the purpose of reducing criminal activity and consequently, prison populations. A business model where shareholder wealth is directly proportional to the number of people brought and kept behind bars is inherently incompatible with these principles” (p. 5). By allowing corporations to profit from mass incarceration, they have incentive to lobby for legislation that maintains current levels of mass incarceration. Therefore, there is a need to bring more awareness to the public discourse about mass incarceration, especially the role corporations play in perpetuating mass incarceration in the US.

### **Purpose of the Project**

The purpose of the project is to bring awareness to how private corporations gain financially from incarceration and, therefore, have a strong incentive to maintain imprisonment rates. The medium for bringing this awareness about is a website. The objective is to spotlight how incarceration rates have increased over 500% over the past 30 years (Flounders, 2013), that incarceration disproportionately impacts people of color, and how corporations gain financially from imprisoning society’s poorest and most vulnerable people.

I would like my audience to understand that when corporations are allowed to profit from the mass incarceration of human beings profit becomes the primary objective. As previously

stated, prisons, in theory, are to be a places of rehabilitation. However, when profit is the main goal and that profit is dependent upon *not* rehabilitating prisoners and keeping recidivism rates high, it is obvious that rehabilitation will not be achieved. When the structure of the U.S. prison system creates a sanctuary for corporate profit and that profit stems from a vigorous stream of prisoners, it is of little surprise that within the prison system there is, often, little focus on education, job training, drug treatment, rehabilitation or programs that would steer individuals on a path *away* from future incarceration.

By shedding light on this often hidden aspect of the prison system, I hope to illustrate how corporations that focus on profit at the expense of human rights have incentives to lobby for stricter punishments for victimless or property crimes and harsher sentencing requirements. Profiting off of prisoners is extremely unhealthy for our society, and I believe that many people are unaware of just how much money is being made and what this means in terms of motivation to maintain current levels of incarceration. I find it imperative to understand the moneymaking practices interwoven into the fabric of the prison industry. By recognizing that the mass incarceration of human beings in the US is big business for private corporations, the real incentive for locking up millions of human beings becomes apparent.

The US does not have the highest prison population in the world because we have the highest crime rates in the world or more deviant members of society than other countries. The only reason for the gargantuan influx of prisoners is sad and simple; profit. By bringing this truth out from shadows, I hope to encourage people to speak out against the mass jailing of our citizens. I hope to enable people to better understand that our fellow citizens are being incarcerated at rates that are unheard of at any point in history and in any country in the world, all for the benefit of corporate profit and not for the betterment of society. Human beings are

being incarcerated and exploited for corporation profit, and we as U.S. citizens can no longer turn a blind eye and act as if it is not happening or that it is acceptable. A website was chosen as the vehicle for this project because I believe that the World Wide Web is one of, if not *the*, best ways to get information out to the masses. Because a website is accessible to anyone from a student to a teacher to a curious citizen, I feel that it is the best means to get my message out to a broader audience.

### **Theoretical Framework**

In our society, we hold our citizens to certain standards, and when individuals violate those standards there is a mutual agreement that those individuals must be punished. That punishment is often in the form of incarceration, depending upon the offense. The idea behind this is fairly straightforward; prison is a place to go reflect, rehabilitate and correct past behaviors in order to emerge as a contributing member of society. If a person is deviant and breaks societal standards, there should be a place where they can go and get help to become a more productive and contributing member of society; a place that offers education, rehab, counseling, etc. The United Nations' International Covenant on Civil and Political Rights highlights that the essential aim, with regard to the treatment of prisoners, is to provide social rehabilitation and reformation. This is a beneficial idea for society and is also in everyone's best interest. Many would agree that to reduce the number of people going to prison would be a positive thing. It goes without saying that society, in theory, does not want people committing crime and going to jail and believes that to reduce the numbers of those incarcerated by providing meaningful programs, would be beneficial for our country.

So the logical next question is, why are we not providing these necessary services to our prisoners in order to rehabilitate them and assist them in becoming positive contributing

members of society and, in turn, reduce the number of people in the prison system? If, generally speaking, most everyone in the US agrees to this, then why does the US, while holding less than 5% of the world's population, account for 25% of the world's prisoners (Khalek, 2011)? I also believe that, generally speaking, many in the US would agree that discrimination and racism are unhealthy and should not be tolerated. So then why does the US disproportionately incarcerate people of color, particularly young African American men who represent nearly one third of all sentenced prisoners (Browne, 2007)? Why is it that African Americans make up 13% of the US population yet account for 40% of all US prisoners (Khalek, 2011)?

Critical race theory (CRT), a theory that was evolved from critical legal studies, provides a critical analysis of racism and race in society. CRT acknowledges that racism is woven into the foundation of society in the US and therefore is pervasive in dominant culture. This lens is used to carefully examine power structures in US society and is used to identify how these power structures have been built upon a legacy of white supremacy and privilege. These power structures are used to continue the marginalization of people of color. In addition, CRT casts doubt on the notion of the American Dream and meritocracy. Furthermore, legal discourse provides that US laws are created to be colorblind and neutral. However, CRT rejects these ideas by critically analyzing meritocracy and liberalism as a mechanism for perpetuating privilege and power. CRT "recognizes that liberalism and meritocracy are often stories heard from those with wealth, power, and privilege" (UCLA School of Public Affairs, 2010, para. 2). These "stories paint a false picture of meritocracy; everyone who works hard can attain wealth, power, and privilege while ignoring the systemic inequalities that institutional racism provides" (UCLA School of Public Affairs, 2010, para. 2).

Another concept is that of the prison industrial complex, which is used to analyze the complicated arrangement of the US prison system, corporations, and the prison population in the US. I believe, and will illustrate through my research, there are profits to be made and those profits are contingent upon incarcerating people. In addition, the reason we see our prisons overwhelmingly filled with people of color is because, historically, they have been positioned as some of the most vulnerable populations, which makes them easier to target, criminalize, and incarcerate than their white counterparts. People of color have a long history of being targeted, arrested, and incarcerated in this country and the US has pattern and practice of racism and discrimination, which has left many marginalized and often lacking the resources that whites have access to, leaving them in a precarious position and often the target of abuse and exploitation. Erik Olin Wright (1997) explains that mass incarceration can be viewed as a way to do away with societies' undesirables and because "direct genocide is no longer a viable strategy...the alternative, then, is to build prisons and cordon off the zones of cities in which the underclass live" (p. 153). Earl Smith and Angela Harris (2006) noted that today's prison system allows the privileged members of society to segregate or cordon-off unwanted members of society. The prison system removes these unwanted people, not only by imprisoning them, but also by permanently disenfranchising them from participating in politics, not allowing them to access social services, and relegates them to permanent second-class citizens. As mentioned earlier, the driving force behind mass incarceration is the financial incentive. The unwanted members of society are extremely exploitable and corporations have taken note. In other words, "Prison labor allows corporations to significantly cut their labor costs and thus increase their profits, much like plantations did during the 200 plus years of slavery in the United States" (Smith & Earl, 2006, para. 13).

This relationship between the prison system and corporations describe the distinctive nature of the prison industrial complex. Smith and Earl (2006) write, “The more prisons that are built for profit, rather than rehabilitation, the more people who must be incarcerated. Prisons only make money when the cells are occupied. Similarly, the more prisons provide labor for corporations the more prisons will be built. Thus, the Prison Industrial Complex and its attendant industries contribute to the increased rates of incarceration in the US and the continued exploitation of labor, primarily African American labor” (para. 14).

The term prison industrial complex is used to describe the financial incentive and explains the rapid expansion of prisons, political influence of private corporations and the business that is generated off of prison labor, construction of prisons, workforce involved in maintaining prisons, etc. This term is derived from the military industrial complex, referred to by President Dwight D. Eisenhower in his farewell address in 1961, and describes the policy and monetary relationship between the industry of war and the politicians that support it along with lobbyist who push for military spending. The term prison industrial complex is also used to explain the complex network of people, politicians, lobbyists, and businessmen all motivated by money to incarcerate. These actors are not interested in the rehabilitation of prisoners, but rather how much money can be made from their incarceration.

By understanding the implications of the prison industrial complex and that there are billions of dollars secured on the labor of prisoners (disproportionately people of color), one can begin to understand why proponents of human rights would be outraged. Article 4 of the United Nations’ Universal Declaration of Human Rights states, “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” It is my opinion that the prison industrial complex and the mass incarceration of humans in the US is a new form of

slavery. Men and women being exploited, forced into prison and made to work for the profit of corporations is inhumane and cruel and a violation of the human rights.

### **Significance of the Project**

This project is significant to all US citizens. Being arrested and incarcerated is a possibility for anyone in this country and if there is an incentive to lock people up and force them to work, I believe that it is imperative that citizens be aware of this fact. To know that there is a monetary incentive to incarcerate, not rehabilitate, is disconcerting. I am hopeful if people become aware this largely unknown aspect of the US prison system they may become outraged and then motivated to speak out against it. Allowing mass incarceration to continue is harmful for all. It is harmful to those incarcerated because they are not only being exploited but also being denied the opportunity to access meaningful programs that would assist in their rehabilitation and reduce recidivism rates. In addition, it is harmful for those who are not incarcerated because prisoners who are released often have not had proper counseling, drug rehab, or access to the necessary rehabilitative programs.



## CHAPTER II REVIEW OF THE LITERATURE

In order to comprehend the current state of the US prison system and how corporations are profiting from incarceration and prison labor today, it is imperative to understand the historical roots of the problem. This can be accomplished by examining the history of incarceration in the US. Therefore, this review of literature is divided into five sections. Section one focuses on rise in the incarceration of former slaves after the Civil War. The second section highlights use of African American male convicts as labor. The third section focuses on the modern-day incarceration of the US prison system. The fourth section delineates how structural deficiencies of the US prison system violate international law. The review concludes with a summary.

### **Rise in the Incarceration of Former Slaves after the Civil War**

According to Browne (2007), prior to the Civil War and the abolition of slavery, there was no true prison system. Instead, punishment mainly consisted of torture, which was referred to as capital or corporal punishment. However, the end of the Civil War in 1865 began a new chapter in the US. The Civil War, in theory, marked the end of slavery when the Thirteenth Amendment to the US Constitution was passed. The Thirteenth Amendment states 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” (US Constitution, Amendment 13, Section 1). Slavery was, therefore, abolished *except* for those imprisoned. Despite the fact that, in theory, slavery had ended, “the various mechanisms for race control, including statutes and court decisions, as well as the underlying rationale for the law of slavery, continued to influence the law” (Gorman, 1997, p. 447). The end

of slavery also meant a complete loss of free labor. This meant a complete loss of capital for plantation owners and businesses that thrived from slave labor (Blackmon, 2008).

Immediately following the end of the Civil War Reconstruction took place in the US; however, some scholars argue that Reconstruction began during the Civil War. During this time the federal government passed the Reconstruction Act of 1867. This Act forced Confederate states to accept the Thirteenth and Fourteenth Amendments to the Constitution. As a result, numerous laws were passed that afforded former slaves substantial educational, civil, economic, and political rights (Wormser, 2002). In the early years of Reconstruction, judicial procedures improved, courts were reorganized, and African Americans held political positions.

Reconstruction resulted in significant and positive strides toward civil and political equality; however, Reconstruction did not focus on forced labor because it was thought that if African Americans participated in the political process, they could protect themselves. The reality was that most Whites reacted to African Americans' new freedom with actions meant to impose a new kind of bondage. As African Americans progressed, resentment by Whites over African American achievement and empowerment progressed even more rapidly (Gorman, 1997).

In response to African American upward mobility, terrorist organizations developed; most notably, the Ku Klux Klan which murdered, tortured, and terrorized thousands of African Americans for exercising their constitutional rights. These terrorist organizations worked diligently to regain White control and relegate African Americans back to their former position as second-class citizens (Wormser, 2002). In an attempt to regain control over African Americans, White Democratic legislators found ways to constrain newly freed African Americans in the form of what is known as Black Codes. Black Codes were a way of criminalizing African Americans for nearly anything from speech to behavior or how they spent

their earnings to supporting their families. Black Codes were laws, rules, and statutes put in place by Southern states as a way to reclaim power over newly freed African Americans and to maintain a steady supply of free labor which was lost when slavery was outlawed. By allocating nearly any behavior or speech as a criminal offense, this allowed for African Americans to be arrested, imprisoned, and prosecuted for the most minor of offenses. The criminal justice system was used to wrongly convict and force harsh sentences on former slaves. Subsequently, convicts were forced to work for free (Stewart, 1998).

Despite the fact that the Civil War marked the end of slavery, social mechanisms to control African Americans still remained. Many African Americans were still dependent on Whites and were, therefore, forced to take jobs as tenant farmers or sharecroppers. This resulted in largely exploitative relationships between African Americans and Whites (Gorman, 1997). Since 1865, the US has had an extensive history of using prisoners as laborers. Various court decisions have upheld the practice of using prisoners as a source of free labor (LaBaron, 2008). These court rulings are grounded in the Thirteenth Amendment. Browne (2007) argues that because the Thirteenth Amendment allowed for prisoners to be forced to work, the Thirteenth Amendment opened the door for mass criminalization, particularly in the South as backlash to Reconstruction and also allowed for the de facto re-enslavement of African Americans in the form of convict leasing.

### **Use of African American Males as Convict Labor**

Convict leasing began in 1865 and became increasingly important in the South because business owners needed cheap laborers to work the fields and mines. Convict leasing also served as a way for a state to reduce cost of housing, feeding and guarding prisoners because businessmen and private companies would pay the state money in order to *lease* prisoners

(Woodman, 1998). These businessmen and private companies were responsible for clothing, housing, and feeding the prisoners. Scholars assert that convict leasing was in many ways worse than slavery. This is because the businessmen leasing the prisoners had no financial investment in prisoners, whereas when a businessman owned a slave, he was invested in that slave. In this sense, if a prisoner was to die while working, it was of little concern to the businessman because he could simply replace the prisoner with another (Mancini, 1996). Mancini (1996) further asserted that the convict leasing system was “one of the harshest and most exploitative labor systems known in American history” (p. 1). Further, the sole aim of convict leasing was profit. The lessee was able to profit from the exploitation of prison labor as well as the state government that leased the convicts to the businessmen and private companies (Sellin, 1976).

During this time, convict leasing became extremely popular, particularly in the Southern states. Black Codes were enacted as a means of criminalizing and imprisoning African Americans. As a result, the implementation of convict leasing forced African Americans to return back to the life of forced labor without compensation that they had just been freed from.

Although it is easy to view convict leasing as a part of the prison system, Mancini (1978) stated:

Convict leasing, in fact, is best understood not as part of the history of prisons but as part of the elaborate social system of racial subordination which had previously been assured by the practice of slavery. That is, the lease system was a component of that larger web of law and custom which effectively insured the South's racial hierarchy. Seen in this light, the brutality of convict leasing fits clearly into a more comprehensive pattern of intimidation and violence, and it can be seen as an intrinsic part of that system rather than an aberration. (p. 339)

Convict leasing allowed for not only the reduction of prison costs to the states, but it also proved to be extremely lucrative for business owners.

Mancini (1978) noted, “convict leasing was one the greatest single source of personal wealth to some of the South’s leading businessmen and politicians” (p. 339). Therefore, the

social and economic justifications for the convict lease system were equally reinforced. These practices lasted for nearly half a century. Consequently, prisons became continual sources of revenue for the state (Mancini, 1978).

As convict leasing became more popular and lucrative, the demographics of the convict labor force became younger and almost entirely African American. Furthermore, sentences for prisoners became horrendously long. This practice provided businesses with not only a consistent labor force but also a labor force largely comprised of young, strong, African American men who were destined to work for years on end (Mancini, 1978).

Convict leasing was so important to the Southern economy that sheriffs regularly arrested able-bodied African Americans and falsely charged them with crimes, forcing them into labor. These false charges were frequent because African American males could never successfully challenge the word of a White person (Gorman, 1997). It is critical to understand the reason for the exorbitant number of arrests and the reason for the extension of sentences. The reason is because there were enormous profits to be made. As previously noted, nearly anything an African American did or said could potentially land them in prison. Breaching a contract, failing to pay a debt, switching jobs, or idleness were just some of the many offenses that were grounds for incarceration (Gorman, 1997).

Out of the decrease and eventual termination of convict leasing grew the emergence of chain gangs. It is often believed that the end of convict leasing was due to an outpouring of dissatisfaction and outrage by US citizens over the treatment of convict laborers. However, the truth is that many African American citizens had expressed these sentiments for years, and it was only when convict leasing failed to produce the revenue it once had that convict leasing began to

diminish. Out of the commencement of one malevolent grew another just as, if not more, malevolent than convict leasing – the chain gang (Gorman, 1997).

The Good Roads Movement began in an attempt to improve roads and expand the prosperity and mobility of White US citizens. The South's textile, manufacturing and agricultural industries were growing, and it was believed that in order to sustain this growth, the building of new roads was essential. In building the roads, the South continued its legacy of forcing African Americans to work for free. Rather than paying these citizens a living wage, prisoners were forced without being compensated. The difference was that rather than leasing the convicts to businesses the convicts worked for the state. However, the same dehumanizing, inhumane, and terroristic methods used for convict leasing and slavery were not abandoned (Gorman, 1997; Lichtenstein, 1993).

The chain gangs were primarily comprised of male African American convicts. These men were forced to build roads in the Deep South and were subjected to extreme brutality and inhumane treatment. The chain gang was used as way to torture, terrorize, and exploit African Americans, all while also generating profits (Gorman, 1997; Thompson, 2011). Again, despite the fact that human beings were being tortured and forced into barbaric treatment in order to extract labor, this was of little concern to the majority of White US citizens. The one thing that did concern them was the easy access to labor.

In 1910 workingmen of the US declared that “penal labor exerts a depressing influence upon their wages and their standard of living” (Thompson, 2011, p. 17). As this sentiment intensified so did efforts to regulate prison labor. While some states were sympathetic to labor union's cries for regulations, other states were not as understanding. This, however, did not deter their efforts. Workers and labor organizations vowed to start a “crusade against the system of

convict labor” (Thompson, 2011, p. 17). Workers in both the South and North began striking against companies that used prison labor in hopes that their striking would bring attention to the issue of using prisoners as laborers (Thompson, 2011).

The extremely high level of unemployment caused by the Great Depression in the 1920s and 1930s proved to be the final blow to the private sector’s involvement in the prisons (Misrahi, 1996). In 1924, the US Secretary of Commerce, Herbert Hoover, held a conference regarding unfair competition between prison-made products and free industry and labor. Consequently, an advisory committee was established to study the issue. In 1928, the committee issued a report to Congress, which resulted in federal legislation regulating the manufacturing, sale, and distribution of prison-made products (Sloan, 2010).

In 1929, the Hawes-Cooper Act was passed which required that goods made in prisons and transported from one state to another were subject to the laws of the importing state. This law essentially allowed for a state to prohibit the sale of prison made goods regardless of which state they came from. In 1935, the Ashurst Sumners Act was passed which made it a federal offense to knowingly transport goods made by convict labor. It states, in part, that

Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution, shall be fined under this title or imprisoned not more than two years, or both. (Sloan, 2010, para. 5)

In 1936 the Walsh-Healey Act was passed. The Walsh-Healey Act set forth regulations relating to prison-made goods and the Ashurst Sumners Act prohibited the distribution of the prison-made goods in commerce or interstate transportation. The Hawes-Cooper Act allowed for violators of the Ashurst Sumners Act and the Walsh-Healey Act to be criminally prosecuted (Sloan, 2010; Misrahi, 1996; Thompson, 2011). Therefore, for decades following the

implementation of these acts, the manufacturing of prison made goods for private and public distribution and sale was illegal. These acts were passed as an effort to protect the employment of non-prisoners, also referred to as free labor, who could not compete with prison labor. The acts ceased interstate trading of goods made by prisoners and froze the private market for prison labor.

As the US economy experienced significant momentum in the socially and culturally chaotic 1960s, the once strong focus on the labor movement, which led to the passage of the above-referenced Acts, lost its drive. However, companies, corporations and businessmen had never lost their desire for cheap labor. These companies, corporations, and businessmen began to mobilize, once again, in order to regain access to the cheapest source of labor: prisoners (Thompson, 2012).

### **Modern-day Incarnation in the US Prison System**

As economic and political forces began to coalesce, President Richard Nixon launched his War on Drugs campaign in 1971. On June 17, 1971 President Nixon announced that drug abuse was public enemy number one and created the Special Action Office for Drug Abuse Prevention (SAODAP). In January 1972, the Nixon Administration created the Office of Drug Abuse Law Enforcement (ODALE) composed of a task force of federal and local police in order to fight the drug trade at the local level. Two years later, in August 1974, the Drug Enforcement Administration (DEA) was created. Nixon referred to the DEA as a super agency tasked with handling all aspects of the drug problem (KQED, 2015).

The War on Drugs campaign resulted in longer sentences. These harsher and longer sentences began to swell the US prison populations and led to overcrowding (Engel, 2014). By the 1980s, the US prison population reached a new level. More prisoners meant more money had



to be spent housing prisoners and more prisons needed to be built to accommodate the increasing number of prisoners. The overcrowding of prisons throughout the country and the rising costs associated with prisons quickly became a substantial political issue. Private corporations seized the moment and offered a solution: privately administered prisons. These private corporations offered to run prisons like a business. They claimed that a business model approach, would bring better efficiency, lower costs, and would decrease the amount of money the government was spending on incarceration. These corporations also theorized that they would be held more accountable because they would be faced with fines for missteps, unlike the traditional government run prisons. The truth however, is that privately run prisons are not held to the same constitutional constraints as government run prisons (Thomson Reuters, 2014).

In addition to seizing an opportunity for privately run prisons, businessmen and corporations began to put pressure on legislators to reevaluate the laws that prevented accessing prison labor. This pressure led to the implementation of the Prison Industries Enhancement Certification Program (PIECP or PIE as it is commonly referred to). The PIE Program reincorporated the private sector into prisons. By way of PIE, private companies became exempt from restrictions on the sale and transportation of interstate commerce goods made by prisoners. (Misrahi, 1996; Taylor, 2011).

The rationale to reintegrate prison labor back into the criminal justice systems is diverse. On one hand there are advocates who believe that prison labor promotes rehabilitation. They argue that prison labor enables prisoners to develop discipline as well as a strong work ethic while providing prisoners with valuable skills that can be put to use outside prison walls once they are released. On the other hand, there are proponents of prison labor who believe that it is a

form of punishment prisoners must endure. In addition to punishment, it provides a way for prisons to recoup money as a way of offsetting the cost of incarceration.

### **Corporate Use of Prison Labor**

What both sides fail to acknowledge is the reason for expanding prisons and prison labor, which is profit for private corporations. Corporations who use prison labor avoid unions, avoid paying minimum wages, and also avoid having to provide an assortment of benefits, which prison laborers are not entitled to under the law. This legal ability to circumvent the law only leads to increased profits (Taylor, 2011).

It is important to understand how PIE was implemented and the behind the scenes schemes that enabled its passage. Thompson (2012) explained that PIE was a

major corporate victory, like others during this period, [and] depended on the fact that in 1973 the nation's most conservative businesses and tough-on-crime politicians had come together. They found a common voice in the American Legislative Exchange Council (ALEC), a powerful new political lobby committed to beating back unions, locking people up, and accessing cheap labor in ways that businesses had not been able to do for nearly a century. (p. 41)

As previously noted, prison labor had been barred for years. However, PIE maintained a facade that it would allow prisoners to work, contribute to the cost of incarceration, and would give them the opportunity to learn new skills that would aid them once released. In reality, PIE was a profit-making scheme for corporations (Walshe, 2012).

It is imperative to acknowledge and grasp how intertwined big business is with government in order to fully understand just how horrific the rapidly growing prison system is. For the private prison industry there is just one customer - the government. Because the private prison industry has a mere one customer it is forced to spend a considerable amount of time lobbying and influencing policymakers and government agencies. Their goal is not only to secure contracts and incarcerate prisoners, but to also increase the number of prisoners, therefore

creating a demand for private prisons (Clarke, 2012). The American Legislative Exchange Council (ALEC) is an example of how incestuous big business, government, and the prison system are.

ALEC, which was created in 1973, refers to itself as a “nonpartisan membership association for state lawmakers who shared a common belief in limited government, free markets, federalism, and individual liberty” (American Legislative Exchange Council, 2014, para. 1). ALEC, as explained by Valerie Strauss, is “an organization that writes model legislation on a variety of topics that its membership of conservative legislators use in state after state to make new laws that promote privatization in every part of American life. ALEC gets laws passed without the public knowing about the organization’s role or how the legislation was drafted” (as cited in Strauss, 2012, para. 2). ALEC is a perfect example of how big business works behind closed doors to lobby for and get bills and laws passed that promote incarceration, longer sentencing, and secure access to prison labor, among others.

ALEC has been, and still is, a central player in the rapidly growing prison system. ALEC assisted in the creation of the US’s toughest sentencing laws such as three-strike laws, mandatory sentencing for non-violent drug offenses and the Truth in Sentencing Act, requiring that anyone convicted of a crime serve no less than 85% of the sentence imposed and 100% of the sentence imposed for violent crimes (Elk & Sloan, 2011). ALEC assisted in the drafting of these laws and ALEC members, such as Walmart, Hewlett-Packard McDonald’s, Correction Corporation of American, and GEP Group, who are in favor of exploiting prisoners, spent millions and millions of dollars lobbying congress to pass these laws (Thompson, 2012).

According to Thompson (2012), “in the first decade of the twenty-first century corporations spent over \$22 million lobbying congress...They also expended millions on

political campaigns” (p. 4). She goes on to explain that all the money expended paid off because corporations managed to pass a law that created a loophole in PIE, which made it legal for corporations not to pay prisoners the minimum wage. The US minimum wage is \$7.25. Yet, some state prisoners make a meager \$0.13 per hour (Thompson, 2012). The South Carolina Department of Corrections website specially states, “inmate wages can be negotiated with private sector companies since it does not fall under Federal Minimum Wage requirements. Inmates earn from \$.35 to \$1.80 per hour” (para. 2). What is perplexing is the US alleges to maintain a free market labor system in which people are not forced to work and they are paid for the work performed. In fact, the US federal law requires all employers to pay employees a minimum wage of \$7.25 (29 U.S.C. § 206).

These corporations are willing to spend massive amounts of money to ensure that harsh sentencing laws are passed and lax prison oversight laws are enacted because the sole purpose of corporations, such as Correction Corporation of America and GEO Group, is to create profit. They have no concern for the human beings that are imprisoned for years on end for petty crimes. They do not care about safety, rehabilitation, or reducing recidivism rates. They only care about their bottom line (Friedman, 2012).

The more prisoners a private prison houses, the more money the private prison makes. This, without question, leads to an obvious conflict of interest. If a private prison is a business and the purpose of a business is to make money, and the way a private prison makes money is to house more prisoners, it will obviously do all that it can to house more prisoners. But when the purpose of prison, as stated above, is to rehabilitate prisoners so that they can once again become a functioning member of society and not go back to jail, one can quickly see how these two ideas are inherently incompatible. The incentive is not to rehabilitate prisoners. If private prisons

focused reducing recidivism rates and rehabilitating prisoners, it would be a poor business model and would lead to a decrease in profits (Thomson Reuters, 2014). A criminal justice system operating in this manner is not only corrupt and dysfunctional, it is incompatible with international law.

### **US Prison System and Violations of International Law**

The International Covenant on Civil and Political Rights (“ICCPR”), Article 10(1) states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 10(3), in part, provides that, “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” These Articles make it clear that the goal and motive for imprisonment must be rehabilitation. A criminal justice system driven by profit that stems from mass incarceration without concern for reformation or rehabilitation is a direct violation of prisoners’ human rights.

The numerous financial incentives for corporations involved in prison labor are simply incompatible with maintaining human rights standards. Corporations are obligated by their investors to put profit above all other considerations. In order to accomplish this, inmates become a commodities, “These [inmate] laborers have been legally stripped of their political, economic and social rights and ultimately relegated to second-class citizens. They are banned from unionizing, violently silenced from speaking out, and forced to work for little to no wages. This marginalization renders them practically invisible, as they are kept hidden from society with no available recourse to improve their circumstances or change their plight” (Khalek, 2011, p. 1).

By allowing private prisons to not only operate, but to flourish, we are essentially allowing corporations’ drive for profit to be put above human lives and dignity. Allowing this to

continue is completely unjust, particularly when those lives are disproportionately black and brown lives. The fact that the vast majority of all people incarcerated in the United States are minorities violates certain articles of the International Convention on the Elimination of All Forms of Racial Discrimination, an international treaty to which the US is a signatory.

Article 2(1)(c) of the International Convention on the Elimination of All Forms of Racial Discrimination states, “Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.” The passage of Arizona’s anti-immigration law, SB 1070, “requires police to determine the immigration status of someone arrested or detained when there is *reasonable suspicion* they are not in the U.S. legally” (ACLU, 2015, para. 1). SB 1070 was passed in 2010 and in the following months five more copycat bills were passed in Utah, Alabama, Indiana, Georgia and South Carolina. These bills promote racial profiling and discrimination against anyone who is perceived to be a foreigner based solely upon how they look or sound. If an individual cannot provide the proper documentation, they find themselves incarcerated in immigration detention centers. Again, it is easy to see how laws such as SB 1070 not only target and certain demographics but also contribute to mass incarceration.

According to Article 4(c) of the International Convention on the Elimination of All Forms of Racial Discrimination signatories, “Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.” Clearly, the above-mentioned SB 1070 promotes racial discrimination. In addition to SB 1070, recently, national attention has been focused on the murders of unarmed African American men by White police officers and has triggered national outcry. This has led to protests across the country demanding

that police officers be held accountable for their actions. Despite the attention that has recently been given to these murders, rarely are police charged with a crime let alone convicted (Kindy & Kelly, 2015). Police officers racially target young African American men, gun them down, and rarely face any consequences or punishment for their actions.

Article 5(a) of the International Convention on the Elimination of All Forms of Racial Discrimination states that citizens shall have “The right to equal treatment before the tribunals and all other organs administering justice.” In contrast, in 2013, a White 16-year old teenager from Texas killed four people while driving drunk, yet, was sentenced to only 10 years of probation after the defense argued that the teenager was a product of *affluenza*. The defense described *affluenza* as “a condition in which growing up wealthy prevents children from understanding the links between their behavior and the consequences because they are rarely held accountable for their actions” (Ahmed, 2013, p. 1). The fact that this teenager literally got away with murder is one thing, but the fact that a 14-year old African American teenager went before the same judge and was charged with killing a man with one punch received a 10-year sentence illustrates that our criminal justice system is not administering equal treatment and instead favors those with white skin and a large bank account (Sterbenz, 2013).

The incentive to incarcerate is largely driven by money and greed. It is easy to target, punish, and convict those who are marginalized, poor, undereducated, or lack access to quality legal representation. Today’s prisoners are disproportionately Black and Brown people who are confronted with prison conditions that are dangerous, abusive, and inhumane. The mistreatment of prisoners and the forceful nature of prison labor violates human rights by depriving prisoners of their liberty to be treated with respect and humanity. No entity should be allowed to profit off of the mass incarceration of human beings.

## Summary

My research has made highlighted that the US has a long and brutal history of racial discrimination and marginalization, which dates back to the 17<sup>th</sup> century. After the abolition of slavery, Whites, fearful of the perceived threat of African American progress, began implementing laws that had the potential to criminalize nearly anything an African American did. Because an African American could never challenge the word of a White person, they often found themselves incarcerated and, once again, subjected to the whims of a racist criminal justice system. From Black Codes to convict leasing, to chain gangs, to the wars on poverty, crime and drugs, one can see that profiting off of the incarceration of Black and Brown people is nothing new to the US. For a country that prides itself on being a land of freedom and opportunity for anyone, regardless of race, yet allows these types of practices to thrive, puts theses romantic and idealistic principles of the US in question.



## CHAPTER III THE PROJECT AND ITS DEVELOPMENT

### **Description of the Project**

The project itself is a website designed to share my research and findings with the masses. The website uses the information and research described herein but is laid out in a visual manner. The homepage delineates many of the sobering statistics associated with the prison industry. The next page on the website states the problem the website aims to address. I hope that by first drawing in the viewer and then more carefully explaining what the issue is I will create a reason for the viewer to care and become interested in the topic. The next page of the website explains who the problem most directly affects. Again, by illustrating that the problem of mass incarceration disproportionately affects Black and Brown men, I hope to engender a sense of disappointment and disbelief with the current operations of the prison system. This in turn will create a feeling of urgency to speak out against mass incarceration.

Again, my goal is to illuminate this overlooked aspect of the criminal justice system and explain that because we allow corporations to profit off incarcerating people up it will continue to happen at the staggering rates we see today. The next page of the website takes a step back to explain how we arrived at this juncture and to make clear that this did not happen overnight. This historical timeline page explains that the US has a long and troubled history of marginalization, forced labor, and White supremacy. I hope to give the viewer the tools to understand that, if we look closely, we can see that history is repeating itself. The road may have a new name and there may be freshly planted trees along the path, but the truth is we have been down this road before.

The website also provides viewers with a place to make comments, get in touch with the author, and read the actual text of the field project. The website also provides the viewer with

flyers that can be printed out and distributed should the viewer feel motivated to spread the word about incentives to incarcerate.

### **Development of the Project**

I was doing research for a class and stumbled upon an article written by Angela Davis entitled *Masked Racism: Reflections on the Prison Industrial Complex*. In this article she states that private corporations such as Victoria's Secret and Boing have set up their businesses within prison walls and were using prisoners to make their products. It was one of those moments where your jaw drops in disbelief.

I have always had an interest in how race, wealth and politics interact and play out in law and the criminal justice system, so after reading Davis' article I was intrigued and wanted to know more. I think that what also lured me to investigate further is because I find myself to be an engaged and curious citizen, yet I had no idea that this was taking place. Even after years of research on the topic of incarceration incentives, information regarding corporation's use of prison labor is not easy to find.

The fact that this information is hidden and hard to come by only made me more interested in the topic. As I read article after article and book after book it became clear that these practices were pervasive and that the criminal justice system was not simply housing criminals, but instead it was a multi-billion dollar industry. Realizing this fact made me hungry to learn more and share my findings with others.

### **The Project**

The website can be found at the following URL: [www.prison-profit.org](http://www.prison-profit.org).

## CHAPTER IV CONCLUSIONS AND RECOMMENDATIONS

### **Conclusions**

Mass incarceration in the US is rampant. Incarceration rates dwarf all other countries in the world. Not only does the US mercilessly incarcerate its own citizens it also disproportionately incarcerates Black and Brown men. This fact on its own is disturbing. However, when it is coupled with the fact that big corporations profit from the overly aggressive and ineffective criminal justice system, it makes it that much more horrendous. Hence, the purpose of the project was to design a website to bring awareness to how private corporations gain financially from incarceration and, therefore, have significant incentive to maintain imprisonment rates.

I believe that it is cruel and wrong to criminalize, disenfranchise, and incarcerate millions and millions of human beings, especially for profit. I am certain that this greed will create everlasting and devastating consequences for the US. Incarcerating millions of men, who are oftentimes fathers, creates everlasting strains on families. Mass incarceration is also unhealthy for not only those that it directly affects but also society as a whole.

My goal is that the project will allow people to better understand how and why we criminalize our citizens at the rate we do. I hope my project will illustrate how incarcerating and profiting off of the backs of our Black and Brown citizens is not a new concept and the US has done this before. I hope my project will also highlight that there is no justification for allowing a big business to profit off of mass incarceration and that if we stopped providing means to profit then big business would likely lose interest.

The project, although just one website amongst millions, begins to accomplish the difficult task of addressing the problem we face in this country of incentivizing incarceration for big business. With any problem, the first obstacle is to let others know that there is a problem. It is vital to give history, context, and insight on the problem in order for others to see its importance. I believe that my website does just that.

For many, there is an understanding that mass incarceration disproportionately affects people of color and that mass incarceration has devastating effects on communities. What people do not always know is that billions and billions of dollars are being made off of this pain and suffering. People do not know that organizations such as the American Legislative Exchange Council craft bills and lobbies for strict sentencing and leniency for corporations that in turn allow big business to profit. When people are made aware of these realities, they become more empowered, engaged, and vocal about the injustices they or their fellow citizens experience.

### **Recommendations**

This project requires ongoing work. At this stage, it is a vehicle to disseminate information and allows the website visitors to better understand the epidemic that is taking place. As the project progresses and gains more momentum, the website will remain a pillar for knowledge sharing and exchanging of ideas. Today, the website gives an overview of the problem, who it affects, who profits from the problem, and gives a historical perspective of how the US got to this juncture. There is also a page where website visitors can download informational flyers. My hope is that if after reading through the website a viewer feels compelled to share this knowledge, they have an easy way to do so by printing out the flyers. The website also has a space to share ideas and a way to contact the author. I hope that the

website teaches something new, motivates visitors to speak out against the profits being made off of mass incarceration, gives them a place to share ideas, concerns, and plans for the future.

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