

**SHACKLED TO ECONOMIC APPEAL:  
HOW PRISON LABOR FACILITATES MODERN SLAVERY  
WHILE PERPETUATING POVERTY IN BLACK  
COMMUNITIES**

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INTRODUCTION

**S**YSTEMIC and institutionalized racism is woven into the foundation of America. It has been 150 years since the Thirteenth Amendment emancipated enslaved persons. In those 150 years, racist policy-makers and enforcers sought to preserve and reinvent the legacy of slavery, which was legitimized through a caveat in the Thirteenth Amendment, the Labor Clause. While the Amendment declared any slavery or involuntary servitude unconstitutional, the Labor Clause opened the door to the creation of new institutions of forced labor. The horrors of slavery do not solely exist in the past: the mistakes left unresolved by the Thirteenth Amendment still linger today, as evidenced by our modern prison industry, that profits from the exploitative forced labor of an entire class of people.

The Thirteenth Amendment of the United States Constitution was ratified in 1865 to abolish slavery and involuntary servitude in the aftermath of the American Civil War. It states, “Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”<sup>1</sup> This Amendment served to abolish one system of slavery but opened the door for the creation of another system of forced labor. Since enslaved persons were considered property up until their liberation, Southern states sought to preserve white supremacy by reintegrating freedmen into forced labor through criminalization and incarceration. The Labor Clause, “except as punishment for crime whereof the party shall have been duly convicted . . .” promises freedom to everyone except those convicted of crimes. This clause legitimized a new system of slavery by offering up incarcerated individuals as a renewed, involuntary workforce, depriving incarcerated individuals of constitutional protection from forced labor as punishment for their crimes.

Any discussion about the American prison system would be incomplete and unjust without first examining the immediate aftermath and long-term effects of slavery. To demonstrate that modern prison labor perpetuates poverty in black communities, this paper will describe the evolution of the forced labor industry, from slavery and convict leasing to prison labor and the prison-industrial complex within our current system. Slavery has never truly been dismantled—with one profitable, exploitative labor force taking the place of another, leaving no opportunity for black Americans as a whole to progress from government-created

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<sup>1</sup> U.S. CONST. amend. XIII, § 1.

poverty in their communities. Though an overwhelming number of factors contribute to the continuous physical, social, political, and economic subjugation of black people, this paper will specifically examine the ways in which the American prison system exploits prisoners' cheap labor to manufacture products for a profit while also manufacturing criminals within the black community to maintain that source.

## I. THE BLACK CODES

After slavery was abolished in 1865, white Southerners' labor force was dramatically affected due to the shortage of workers. Dismantling slavery also posed a terrifying social threat to whites who spent centuries carefully crafting a racial hierarchy based on white supremacy. The solution for white Southerners seeking to salvage what they could of an exploited labor force and exploitative social order involved turning recently freed slaves into criminals through racialized laws. As Ta-Nehisi Coates writes, "[t]he end of enslavement posed an existential crisis for white supremacy, because an open labor market meant blacks competing with whites for jobs and resources . . . . Postbellum Alabama solved this problem by manufacturing criminals. Blacks who could not find work were labeled vagrants and sent to jail, where they were leased as labor to the very people who had once enslaved them."<sup>2</sup> Rather than allow freedmen the chance to secure employment, find housing, and adjust to their freedom, whites immediately turned to creating a new system of social control by criminalizing activities involved with simply *living*.

Southern state legislatures spent the years following slavery's dissolution enacting laws that criminalized and punished former slaves with the intention of generating a new, involuntary labor force.<sup>3</sup> These laws collectively were called the Black Codes, and they prohibited black people from engaging in common, everyday activities that were free and legal for whites to engage in.<sup>4</sup> In limiting autonomy for freed slaves through restrictions on their economic mobility, the Black Codes punished black people for activities including vagrancy, lack of employment, and violating labor contracts.<sup>5</sup> Additionally, Black Codes restricted black peoples' rights to civic engagement, such as serving on juries and voting.<sup>6</sup>

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<sup>2</sup> Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, THE ATLANTIC (Oct. 2015), <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

<sup>3</sup> Mary Rose Whitehouse, *Modern Prison Labor: A Reemergence of Convict Leasing Under the Guide of Rehabilitation and Private Enterprises*, 18 LOY. J. PUB. INT. L. 89, 94 (2017).

<sup>4</sup> *Id.*

<sup>5</sup> ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/black-code> (last updated May 5, 2015).

<sup>6</sup> Woody R. Clermont, *Unshackling the Punishment Clause: A Call for the End of Convict Slavery*, [REDACTED] 10-11 (2011).

The Thirteenth Amendment's Labor Clause, declaring that slavery and involuntary servitude were unconstitutional, "except as a punishment for crime, whereof the party shall have been duly convicted,"<sup>7</sup> allowed states the discretion to create laws that only black people could be duly convicted of violating.<sup>8</sup> The South Carolina Black Code, which only applied to persons of color, included a contract form for black "servants" who worked for white "masters" and outlined the rights and duties of each party to the contract.<sup>9</sup> Servants were required to live on their master's property and work from sunrise to sunset everyday excluding Sundays; servants were not allowed to leave the property or host visitors without their masters' permission; masters were allowed to discipline minor servants by moderately whipping them; and masters were even allowed to whip older servants with a judge's permission.<sup>10</sup> Servants who broke the contract could be arrested and returned back to their masters with a judge's order.<sup>11</sup> Meanwhile, the Mississippi Black Codes defined vagrants as "anyone who was guilty of theft . . . was drunk, was wanton in conduct or speech, had neglected job or family, handled money carelessly, and . . . all other idle and disorderly persons."<sup>12</sup> Since these laws were based on the Slave Codes, they racialized criminality and penalty.<sup>13</sup> These postbellum laws, in effect, transformed the racial composition of the prison population.<sup>14</sup> Black people who had just been freed from a life of slavery were reintegrated into a life of involuntary servitude through penal servitude facilitated by the Thirteenth Amendment.<sup>15</sup>

## II. CONVICT LEASING

A new involuntary labor force achieved through convict leasing filled the void left by slavery. Using Black Codes to criminalize and incarcerate former slaves ensured that whites still had access to cheap labor and the ability to profit off black bodies. Enforcing laws targeting former enslaved persons resulted in an influx of prisoners, and Southern states subsequently argued that they did not have the means to house them.<sup>16</sup> At first, states paid private contractors to house, feed, and oversee prisoners.<sup>17</sup>

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<sup>7</sup> U.S. CONST. amend. XIII, § 1.

<sup>8</sup> ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 28 (Greg Ruggiero ed., Seven Stories Press 2003).

<sup>9</sup> *Southern Black Codes*, CONSTITUTIONAL RIGHTS FOUND., <http://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> DAVIS, *supra* note 8, at 29.

<sup>13</sup> *Id.* at 31.

<sup>14</sup> *Id.* at 33.

<sup>15</sup> *Id.* at 29.

<sup>16</sup> Whitehouse, *supra* note 3, at 95.

<sup>17</sup> Robert Longley, *What Was Convict Leasing?*, THOUGHTCO. (Nov. 1, 2018), <https://www.thoughtco.com/convict-leasing-4160457>.

Eventually, state prisons in the North and the South arranged agreements with private contractors who would pay a fee to lease convicts for labor in exchange for housing and feeding them.<sup>18</sup> States leased prisoners to operators of plantations, railroads, and coal mines.<sup>19</sup> The private parties agreed to house and feed prisoners and paid a small fee to state prisons, and in exchange, prisons provided prisoners for labor.<sup>20</sup> Prisoners did not receive payment or compensation for their labor, and they were under the complete and total control of the private parties.<sup>21</sup> While some states executed convict leasing systems as early as 1844, it became a widespread practice after slaves were emancipated.<sup>22</sup> These agreements generated high profits for both the state and the commercial interests that leased the prisoners.

This new kind of slave-to-master relationship was not just constitutional, it was *made possible* by the Thirteenth Amendment—despite the fact that its initial purpose was to liberate. Through the convict leasing system, white Southerners successfully found a way to continue exploiting and profiting from free black labor, thus establishing an effective replacement for slavery. Unlike slave-owners, who had financial and property incentives to keep their slaves alive and well, private parties who leased convicts had no so-called property interest and therefore no such incentives.<sup>23</sup> Since convicts were leased in large numbers for very cheap, they were easier to replace when they died.<sup>24</sup> Unsurprisingly, what was an enormously profitable endeavor for the private interests and the states came at a massive human cost. Without the financial incentive to keep convicts alive, they were treated even worse than slaves – subjected to torture and barbaric treatment.<sup>25</sup> Oftentimes, prisoners were overworked and whipped to death.<sup>26</sup> Within the first two years that Alabama leased convicts for labor, 20% of the leased prisoners died.<sup>27</sup> The number only grew: 35% died the following year, while 45% died the fourth year.<sup>28</sup> In 1873, 25% of all black convicts died while serving their sentences under the supervision of their lessees.<sup>29</sup> Still, advocates of convict leasing argued that prison laborers were better off than they had been as slaves, since “rigid discipline . . . regular working hours, and

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<sup>18</sup> *Slavery by Another Name: Convict Leasing*, (PBS 2012), <http://www.pbs.org/tpt/slavery-by-another-name/themes/convict-leasing/>.

<sup>19</sup> Longley, *supra* note 17.

<sup>20</sup> Whitehouse, *supra* note 3, at 95.

<sup>21</sup> *Id.*

<sup>22</sup> Longley, *supra* note 17.

<sup>23</sup> Heather Ann Thompson, *African Americans' Forced Labor*, SOLIDARITY (July-Aug., 2010), <https://solidarity-us.org/atc/147/p2941/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Whitehouse, *supra* note 3, at 96.

<sup>27</sup> Thompson, *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> Longley, *supra* note 17.

[acquiring] new skills” allowed them to “lose their ‘old habits’ and finish their prison term better equipped to assimilate into society as freemen.”<sup>30</sup> Arguments like these, in which whites took it upon themselves to teach and correct what were perceived as uncivilized, deviant behaviors by black people, were prominent justifications for both slavery and convict leasing. This paper will later highlight how such arguments are still used to justify prison industry labor today.

Unreasonable as they were, the Black Codes were codified excuses for white supremacists to criminalize and incarcerate the black population, allowing the practice of selling black labor to commercial interests to dominate the Southern economy for decades. After the Black Codes were repealed, however, white Southerners still had an interest in incarcerating and exploiting black people. Local sheriffs and courts were also invested in providing cheap, black labor by whatever means necessary. Most sheriffs and town marshals in southern Alabama during this period profited from this human trade; some entered into formal contracts with mining companies while others captured and sold black men along railroads or back roads.<sup>31</sup> Slavery was over, but the fate of freedmen did not change. They were still treated like property, brutalized with physical abuse and coercion, and bought and sold like commodities.

The end of convict leasing resulted from a combination of various factors, including public opinion, politics, and economic interests.<sup>32</sup> Through newspapers and reports, the horrors of this practice were finally exposed and consequently generated public opposition, even though politicians still defended and protected the practice.<sup>33</sup> It took organized labor unions arguing that the practice threatened the free market and companies choosing not to utilize prison labor to finally abolish the convict leasing system.<sup>34</sup> Alabama was the last state to eliminate convict leasing in 1928.<sup>35</sup>

### III. CHAIN GANGS

Continuing the trend of replacing one failed forced labor institution with another, chain gangs were born. In practice, chain gangs were not much different than convict leasing, since both systems involved prisons leasing convicts for profit. The difference between the two institutions was

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<sup>30</sup> *Id.*

<sup>31</sup> Thompson, *supra* note 23, (citing DOUGLAS BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR TWO*, 127 (2008)).

<sup>32</sup> Longley, *supra* note 17.

<sup>33</sup> *Id.*

<sup>34</sup> Patrice A. Fulcher, *Emancipate the FLSA: Transform the Harsh Economic Reality of Working Inmates*, 27 J. C.R. & ECON. DEV. 679, 688 (2015).

<sup>35</sup> Longley, *supra* note 17.

to *whom* prisons leased inmates.<sup>36</sup> Under the convict leasing system, prisoners were leased to private commercial interests; and under the chain gang system, prisoners were leased to the state to work on public projects.<sup>37</sup> Chain gangs involved shackling five prisoners at a time by their ankles while they ate, slept, and labored outdoors.<sup>38</sup> For the next thirty years, black prisoners were violently coerced, either at gunpoint or through the use of whips, into a slave-like labor system.<sup>39</sup>

Prisoners serving their sentences under the convict leasing and chain gang systems were subjected to brutal and inhumane conditions: they slept on the bare ground, often without clothes; they were punished for “slow hoeing (ten lashes),” “sorry planting (five lashes),” and “being light with cotton (five lashes);” those who attempted to escape were whipped or sometimes had a metal spur fastened to their feet; they commonly died from exhaustion, pneumonia, sunstroke, gunshot wounds, and shackle poisoning—a result of chains and leg irons’ constantly rubbing against their bare skin.<sup>40</sup> Chain gangs were eradicated in the 1950s after the practice garnered worldwide attention for its violence and brutality.<sup>41</sup>

#### IV. MASS INCARCERATION

Before discussing current forms of prison labor as an extension of slavery, it is important to first provide background on the prison boom and the mass incarceration of black people. After chain gangs were outlawed in the 1950s, slavery-like practices of exploiting black labor were put on hold while Jim Crow laws held in place the racial hierarchy until the subsequent prison boom took over in the 1980s.

The prison population began growing during the Nixon administration after he declared the “War on Drugs,” a covertly racist movement that pushed for increasingly punitive policies in response to the drug epidemic.<sup>42</sup> The War on Drugs rejected rehabilitative efforts and emphasized tough-on-crime policies. Nixon believed that higher conviction rates would lower crime rates, particularly of drug users and sellers, so he encouraged harsh law enforcement approaches to drug

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<sup>36</sup> Whitehouse, *supra* note 3, at 96.

<sup>37</sup> *Id.* at 96-97.

<sup>38</sup> Fulcher, *supra* note 34.

<sup>39</sup> Jaron Browne, *Rooted in Slavery: Prison Labor Exploitation*, 28 RACE, POVERTY & THE ENV'T, 43-44 (2007).

<sup>40</sup> Davis, *supra* note 8, at 32-33 (citing DAVID OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE, 45 (1996)).

<sup>41</sup> Browne, *supra* note 39, at 44.

<sup>42</sup> James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/blog/history-mass-incarceration>.

investigations.<sup>43</sup> He tripled the federal law enforcement budget, established the Drug Enforcement Agency (DEA), and created the Controlled Substance Act (CSA).<sup>44</sup> Whereas drugs like marijuana and heroin previously had individual laws outlining the sentencing associated with their use and distribution, the CSA combined all drug policies into one piece of legislation to be enforced by the DEA.<sup>45</sup> The CSA resulted in the DEA and the Department of Health and Human Services (DHHS) creating scheduling guidelines and drug schedules, or classifications, based on addictiveness or medicinal value.<sup>46</sup> Marijuana and heroin, both thought to be highly addictive and medicinally useless, were classified together as Schedule One drugs.<sup>47</sup>

These policies served as a catalyst for incarcerating mass numbers of non-violent drug offenders, and the prison population further expanded under the Reagan administration as the President pushed Nixon's War on Drugs. Reagan's main tactic was to cultivate a moral panic surrounding drug use and distribution by pushing forth the notion that the issue was a national epidemic.<sup>48</sup> When he first entered office in 1980, the total prison population was 329,000—eight years later, it had almost doubled to 627,000.<sup>49</sup> Taking advantage of this moral panic, Reagan reintroduced mandatory minimum sentencing laws, which harshly punished first-time offenders and stripped judges of their discretion in determining sentences on a case-by-case basis.

One of most famously racialized penalties stemming from this period was the disparate punishment imposed for crack and powdered cocaine. The penalty for possession of five grams of crack cocaine was a five-year mandatory minimum sentence, while one had to possess five hundred grams of powdered cocaine to earn the same penalty.<sup>50</sup> This difference in sentencing is significant in revealing the underlying, racist intention driving the policies of this era: though black and white people used cocaine at around the same rate, powdered cocaine was more expensive and used more among whites, while crack cocaine, the cheaper form of the same drug, was more frequently used in black communities.<sup>51</sup> While the Black Codes were overtly targeted at black people, the laws passed in this era were just as racialized, and their effects were just as harmful in stunting their social and economic mobility.

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<sup>43</sup> Timothy Munoz, *The Rise of Mass Incarceration and the Private Prison Industry: 1970s-Present*, 165 UNDERGRADUATE THESES, 6 (2018) <http://commons.cu-portland.edu/theses/>.

<sup>44</sup> *Id.* at 7.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8-9.

<sup>49</sup> Cullen, *supra* note 42.

<sup>50</sup> Munoz, *supra* note 43, at 10.

<sup>51</sup> *Id.*



Another significant increase in incarceration rates occurred during the Clinton Administration. In 1999, Clinton stated “[a]s we begin a new century and a new millennium, we have a remarkable opportunity to harness all the resources of our criminal justice system—our courts, prisons, prosecutors, probation officers, and police—to break the drug habits of our prisoners, and to break the cycle of drugs and crime for all time.”<sup>52</sup> Clinton sustained earlier presidents’ tough-on-crime rhetoric and signed the Violent Crime Control and Law Enforcement Act of 1994, known as the Crime Bill.<sup>53</sup> Among its policies, the Crime Bill imposed the death penalty for existing and new federal crimes, encouraged states to implement “three strikes and you’re out” provisions, and awarded states \$12.5 billion to build new prisons if they passed truth-in-sentencing (TIS) laws requiring prisoners to serve at least 85% of their sentences.<sup>54</sup> Between 1995 and 1999, to receive federal funding, nine states adopted the TIS laws and another twenty-one states altered their existing laws to comply with the Crime Bill’s standards.<sup>55</sup> By 1999, forty-two states had TIS laws that contributed to a subsequent increase in incarceration rates—all driven by the Crime Bill’s financial incentives for states to adopt its tough-on-crime policies.<sup>56</sup>

The rise in rates of incarceration may appear to reflect a rise in criminal activity, or maybe even a more effective criminal justice system that has become increasingly capable of apprehending, charging, and convicting criminals. Statistics, however, support the alarming fact that while incarceration rates have risen, crime rates have simultaneously fallen. From 1963 to 1993, murders doubled, robberies quadrupled, and aggravated assaults quintupled while levels of incarceration declined from the 1960s through the early 1970s and violent crime rates went up.<sup>57</sup> During the mid-1970s and through the late 1980s, imprisonment and violent crime both increased.<sup>58</sup> Finally, from the early 1990s through today, “violent-crime rates fell while imprisonment rates increased.”<sup>59</sup> In promoting tough-on-crime policies, emphasizing punishment over rehabilitation, and using moral panic to rally Americans behind the War on Drugs, modern presidents laid the psychological groundwork for the

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<sup>52</sup> U.S. DEP’T OF JUSTICE, THE CLINTON ADMINISTRATION’S LAW ENFORCEMENT STRATEGY: BREAKING THE CYCLE OF DRUGS AND CRIME (1999), [https://www.justice.gov/archive/dag/pubdoc/Drug\\_Final.pdf](https://www.justice.gov/archive/dag/pubdoc/Drug_Final.pdf).

<sup>53</sup> Inimai M. Chettiar & Lauren-Brooke “L.B.” Eisen, *The Complex History of the Controversial 1994 Crime Bill*, BRENNAN CTR. FOR JUST. (Apr. 14, 2016), <https://www.brennancenter.org/blog/complex-history-controversial-1994-crime-bill>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Coates, *supra* note 2.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

prison boom. This groundwork, the practice of expanding prisons, and the increased rates of incarceration have all survived to the present day.

The United States now has the highest rate of incarceration in the world with almost 2.3 million people locked away.<sup>60</sup> At a cost of \$80 billion a year, the United States incarcerates 25% of the world's prisoners, even though it holds just 5% of the global population.<sup>61</sup> The criminal justice system, including its harsh and racist means of law enforcement, is not one that is in the pursuit of justice. Rather, it pursues profit by manufacturing criminals using black bodies. It is evident when examining mass incarceration's disproportionate impacts on various racial groups that black communities suffer the most. While comprising just 12% of the U.S. population, black people make up 40% of the prison population.<sup>62</sup> About 12% of black men between ages twenty-five and twenty-nine are incarcerated, while less than 2% of white men in that age group are incarcerated.<sup>63</sup> Nearly one in three black men will experience incarceration over the course of their lifetimes.<sup>64</sup>

The laws that originated in the War on Drugs are reminiscent of the Black Codes and parallel the immediate post-slavery era, when innocent black people were captured and incarcerated so as to hinder their economic mobility and force them into the convict leasing and chain gang systems. Breaking the law is serious; however, the law's creation, enforcement, and impacts are all racialized. Incarcerating and manufacturing criminals out of an entire class of people sheds light on efforts to maintain historic social control and preserve a racial hierarchy.

Even worse, it is estimated that over 90% of state and federal criminal convictions are a result of plea bargains.<sup>65</sup> During plea negotiations, the criminal defendant is often compelled to waive his constitutional right to a jury trial and right against self-incrimination by pleading guilty to a lesser offense, all in exchange for the government's promise to advocate for a lesser sentence.<sup>66</sup> These deals are made under the threat of what has come to be known as the trial penalty, the risk of spending significantly more time in prison pre- and post-conviction that comes with choosing to

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<sup>60</sup> Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, PRISON POL'Y INITIATIVE (Mar. 19, 2019), <https://www.prisonpolicy.org/reports/pie2018.html>.

<sup>61</sup> Coates, *supra* note 2.

<sup>62</sup> DEVAH PAGER, MARKED RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 1-6 (U. of Chicago Press 2007).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> LINDSEY DEVERS, BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, RESEARCH SUMMARY: PLEA AND CHARGE BARGAINING (2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

<sup>66</sup> NAT'L ASS'N OF CRIMINAL DEF. LAWYERS, THE TRIAL PENALTY: THE SIXTH AMENDMENT RIGHT TO TRIAL ON THE VERGE OF EXTINCTION AND HOW TO SAVE IT, 6 (2018).

take a case to trial.<sup>67</sup> Our criminal justice system of trials has been replaced with a system of plea deals—one that criminalizes impoverished black people and produces an increasingly fast-growing prison population. Additionally, when people who accept plea deals are subsequently rearrested, their penalties tend to be harsher based on their prior convictions.<sup>68</sup> For example, Frank Ellington, discussed further later in this paper, pled guilty to theft and armed robbery charges on three separate occasions.<sup>69</sup> After the third charge, he was threatened with a life sentence without parole, so he plead guilty to a lesser charge and the opportunity to be released on parole.<sup>70</sup> Ellington nearly served his life in prison for robbery, an outrageously disproportionate sentence that would have been based solely on his prior convictions. Plea deals support the profitable manufacturing of black convicts by entangling people in the system and making it almost impossible for them to leave and successfully transition back into society.

For centuries, generations of black families have suffered severe economic stagnation due to this phenomenon. Mass incarceration is an extension of all the institutions before it that have deprived black communities of opportunities to overcome the oppressive circumstances imposed upon them. Coates describes that people who are incarcerated today:

Do not merely hail from poor communities—they hail from communities that have been imperiled across both the deep and immediate past, and continue to be imperiled today. Peril is generational for black people in America—and incarceration is our current mechanism for ensuring that the peril continues. Incarceration pushes you out of the job market. Incarceration disqualifies you from feeding your family with food stamps. Incarceration allows for housing discrimination based on a criminal-background check. Incarceration increases your risk of homelessness. Incarceration increases your chances of being incarcerated again.<sup>71</sup>

It cannot be overstated how mass incarceration disrupts black families and destroys their opportunities to build wealth and advance from poverty. The National Research Council cites the Bureau of Justice Statistics in a report stating that “more than half of fathers in state prison report being the

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Will Tucker, *The Kill Line*, THE SOUTHERN POVERTY LAW CTR. (July 26, 2018), <https://www.splcenter.org/news/2018/07/26/kill-line>.

<sup>70</sup> *Id.*

<sup>71</sup> Coates, *supra* note 2.

primary breadwinner in their family.”<sup>72</sup> Children of male inmates are raised without fathers, perhaps by mothers whose primary focus is to ensure that their families survive poverty due to losses of a source of income; not something secondary such as accumulating assets. This is just one impediment to upward economic mobility. For generations, these circumstances have consistently prevailed.

It is important to highlight that there is an entire system—made up of seemingly separate and severable issues, or flaws, in the criminal justice system—*designed* to perpetuate poverty in black communities. At the center of this web of issues specifically designed to subjugate black communities is the psychological and rhetorical groundwork that has been established since the beginning of slavery and through today.<sup>73</sup> When people today hear that prisoners must labor to pay their debts to society and learn how to become law-abiding citizens, the words are accepted because they comply with an already-established bias against black people. Instead of applying human rights to all Americans, people selectively disregard those who are deemed to be without moral standards or care for the common good and deny them those basic rights.

## V. MODERN PRISON LABOR

As the massive prison population grew, the government implemented new forms of prison labor at the expense of black peoples’ freedom and livelihoods. Operating under the false sense of morality purporting that prisoners benefit from prison labor by building work skills to be applied in their post-release endeavors masks the exploitative nature of prison labor without community-based opportunities to apply those work skills. There are various different types of prison labor systems. Some prisoners work within prisons that are managed by the government, others within prisons managed by private firms who then sell the products that inmates produce to collect profits. Prisoners can be employed in the prison doing housekeeping work, such as cooking, cleaning, and laundry, or they can labor outside the prison for government entities or private companies.<sup>74</sup>

The Federal Labor Standards Act (FLSA), passed in 1938, provides federal protections for employees’ well-being. The statute includes a minimum wage provision, which applies to “any individual employed by an employer”—an employer being one who acts “directly or indirectly in the interest of an employer in relation to an employee.”<sup>75</sup> It would make sense to assume that anyone who works for an employer is considered an “employee” under the statute—regardless of his or her incarceration

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<sup>72</sup> NATIONAL RESEARCH COUNCIL, THE NATIONAL ACADEMIC PRESS, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 267 (2014), <https://www.nap.edu/read/18613/chapter/11>.

<sup>73</sup> See Coates, *supra* note 2.

<sup>74</sup> Whitehouse, *supra* note 3, at 98.

<sup>75</sup> 29 U.S.C. §§ 203(d), 206(a)(1) (2012).

status. Yet courts hold a different view and have declared that prisoners laboring for prisons are not subject to the FLSA: the court in *Danneskjold v. Hausrath* held that “the relationship is not one of employment; prisoners are taken out of the national economy; prison work is often designed to train and rehabilitate; prisoners’ living standards are determined by what the prison provides; and most such labor does not compete with private employers.”<sup>76</sup> Later this paper will illustrate that the opposite of each of these elements actually *is* met, which should entitle prisoners to employee status and protections under the FLSA. The tests for how this Supreme Court holding applies to prisoners has gone through many changes, but today the courts consistently consider these main factors: (1) the right to hire and fire inmates, (2) supervising and controlling their work, and (3) the maintenance of employment records.<sup>77</sup>

The prison boom and mass incarceration cannot be divorced from profit. In 1979, Congress passed the Justice System Improvement Act, which established the Prison Industry Enhancement Certification Program (PIE).<sup>78</sup> Corrections agencies that are certified under PIE are exempted from previously-established restrictions against selling prison-made goods in interstate commerce.<sup>79</sup> The program was created to promote employment opportunities for inmates so they could “acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release.”<sup>80</sup> PIE allows private industries “to establish joint ventures with state and local correctional agencies to produce goods using inmate labor.”<sup>81</sup> It also allows for companies to build their factories directly in prisons. Once a state’s department of corrections is certified through PIE, it can sell inmate-made goods or enter into prison labor contracts with private companies to make and sell products on the open market.<sup>82</sup> On the other hand, state correctional departments that are not PIE-certified are prohibited from interstate sales of prison-made products, but they also do not have to comply with PIE’s obligation to pay prisoners minimum wage.<sup>83</sup>

Private prisons, meanwhile, do not have to comply with any of these standards. Some government-run and privately-run prisons even choose not to pay prisoners anything. While PIE requires that inmates be paid wages no less than someone in the local area doing the same job who is not incarcerated, it authorizes corrections departments to deduct fees from

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<sup>76</sup> *Danneskjold v. Hausrath*, 82 F.3d 37, 42 (2d Cir. 1996).

<sup>77</sup> Fulcher, *supra* note 34, at 700.

<sup>78</sup> BUREAU OF JUSTICE ASSISTANCE, U.S. DEP’T OF JUSTICE, PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM 1 (2004), <https://www.ncjrs.gov/pdffiles1/bja/203483.pdf>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Fulcher, *supra* note 34, at 692.

<sup>83</sup> Fulcher, *supra* note 34, at 694.

inmate earnings, including victim restitution, room and board, child support, and offsetting the costs of incarceration.<sup>84</sup> Note that these fees are *not in lieu* of the money received from taxpayers, so the idea that prisoners should labor to pay their way for their own incarceration is inconsistent with the reality that prisons receive tax dollars to fund their incarceration. Considering the costs of court fees, attorney fees, room and board, and other fees, working for small wages means that inmates have to work longer hours just to make a dent in paying off their expenses. This program pushes forth the narrative that prison labor works to the *benefit* of the vulnerable prisoners, when in reality, their only “choice” is to provide labor or face brutal penalties imposed by correctional officers. Meanwhile, private companies including IBM, Boeing, Nordstrom, Revlon, May’s, Microsoft, and Dell capitalize on prisoners’ cheap labor instead of relying on workforces in other countries, with the added benefit of proudly promoting their products as “MADE IN THE USA.”<sup>85</sup> Additionally, the federal government incentivizes private companies with tax credits for employing prisoners under the Work Opportunity Tax Credit legislation (WOTC). For example, after BP’s Gulf of Mexico oil spill, the company employed prisoners to clean up parts of the mess.<sup>86</sup> BP then received tax write-offs under WOTC, likely earning about \$2,400 per inmate they hired.<sup>87</sup>

## VI. THE PRISON-INDUSTRIAL COMPLEX

The prison-industrial complex (PIC) refers to the symbiotic relationship between private corporations, correctional and detention facilities, and the government. This symbiotic relationship thrives so long as the government provides a racialized prison population for commercial interests to profit from. As previously explained, prisons were rapidly being built at a time when crime rates were declining in the 1980s, thus, their construction was not driven by increased criminal activity. Instead, it was driven by racism and the pursuit of profit. Increasing space in prisons was needed to accommodate the growing number of individuals being imprisoned for nonviolent offenses under tough-on-crime laws. When the War on Drugs was declared, people battling debilitating drug addictions were subjected to newly created laws and harsh punishments for violating them. As the government emphasized punishment over rehabilitation by primarily turning to incarceration as a remedy for breaking the law, separating crime and punishment became increasingly difficult. In other words, it established a growing consensus that those who commit crimes *must* face their punishment in prison, despite the racialization of the laws and their harsh enforcement, despite the

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<sup>84</sup> *Id.*

<sup>85</sup> Fulcher, *supra* note 34, at 689.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 689-90.

economic and political structures that lead some people to resort to crime, and despite the circumstances surrounding individuals' decisions that lead to their convictions. The narrative that crime and punishment are inseparable has allowed the government and private prisons to benefit from criminal convictions, as well as encouraged a society that accepts these racist and profit-driven practices. Just as convict leasing and chain gangs were thought to resolve the social, political, and economic threat posed by recently freed slaves, punishment through imprisonment today is relied upon as the solution for our country's political, economic, and social problems. The PIC depends on the reinforcement of these notions, and for decades, has expanded and perpetuated mass incarceration.

In 1934, President Franklin D. Roosevelt signed an Executive Order that established the Federal Prison Industries program, known today as UNICOR.<sup>88</sup> UNICOR is a government-owned corporation that operates prison labor programs. UNICOR's stated mission "is to protect society and reduce crime by preparing inmates with job training and practical work skills for reentry success."<sup>89</sup> As of 2015, UNICOR operates 83 factories and employs 12,278 inmates, paying them between \$0.23 and \$1.15 per hour.<sup>90</sup> Inmates employed by UNICOR perform various different types of labor, including making office furniture, men's underwear, and hospital gowns, crafting prescription eyeglasses, building kitchen appliances, and raising animals for food.<sup>91</sup>

The prison-industrial complex extends beyond the relationship between the government and prisons. Prisons and corporations have symbiotic relationships as well. Private prisons rose to prominence during the prison boom, as the government lacked space to house its prisoners and private companies saw the opportunity to make a profit. The government pays private companies a fee for each inmate in exchange for those companies bearing the costs of building correctional and detention facilities, housing inmates, hiring staff, and managing all other day-to-day functions. Two of the largest U.S. private prisons are the Corrections Corporation of America (CCA), established in 1983 and now called CoreCivic, and the Wackenhut Corrections Corporation, now called the GEO Group (GEO).<sup>92</sup> These companies combined operate over 130 prisons and generate over \$4 billion in annual revenue.<sup>93</sup> One of the facilities the GEO Group runs is the Lockhart Correctional Facility in Lockhart, Texas. GEO successfully convinced various companies to build their factories and operate their businesses out of the Lockhart Facility,

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<sup>88</sup> UNICOR, FACTORIES WITH FENCES 8,

[https://www.unicor.gov/publications/corporate/CATMC1101\\_C.pdf](https://www.unicor.gov/publications/corporate/CATMC1101_C.pdf).

<sup>89</sup> UNICOR, <https://www.unicor.gov/about.aspx>.

<sup>90</sup> UNICOR, [https://www.unicor.gov/FAQ\\_General.aspx](https://www.unicor.gov/FAQ_General.aspx).

<sup>91</sup> UNICOR, <https://www.unicor.gov/index.aspx>.

<sup>92</sup> Munoz, *supra* note 43, at 25, 27.

<sup>93</sup> WORTH RISES, THE PRISON INDUSTRIAL COMPLEX: MAPPING PRIVATE SECTOR PLAYERS 1 (2019).

which is PIE certified.<sup>94</sup> One of the companies to do so was Lockhart Technologies, Inc. (LTI), which once operated out of Austin, Texas and employed 150 people.<sup>95</sup> In manufacturing and repairing circuit boards, LTI served companies including IBM and Dell, while only paying the Lockhart Facility one dollar per year in rent. After LTI pays inmates minimum wage, the Facility takes about 80% of their compensation for room and board, victim restitution, and other fees.<sup>96</sup>

Private prisons employ various tactics to guarantee continuous, long-term profits. For example, the majority of contracts between the government and private prisons include occupancy clauses. Occupancy clauses range from 80 to 100%, and their purpose is to lock the government into meeting the companies' demands to occupy their prisons with a minimum number of inmates.<sup>97</sup> Three of Arizona's private prisons, for example, have occupancy clauses demanding that 100% of their beds are filled; that means that if, *at any time*, their occupancy falls below the 100% quota, the state is obligated to compensate the prisons.<sup>98</sup> Known as the "low-crime" tax, taxpayers are forced to pay millions of dollars for unused beds any time the occupancy falls below the lockup quota.<sup>99</sup> Arizona, Louisiana, Oklahoma, and Virginia have the highest lockup quotas ranging from 95 to 100%.<sup>100</sup> The purpose of these occupancy clauses is to ensure that private prisons are guaranteed inmates, and thus, a profit, despite any fluctuations in crime rates or incarceration rates that may occur throughout the duration of their decades-long contracts.

Occupancy clauses serve to be mutually beneficial for the government and private prisons in maintaining high rates of incarceration. It is in the government's best interest not to lose money paying for unused beds in prisons, so it *may as well* incarcerate more individuals. Lockup quotas are not a problem for the U.S. government to meet since over 90% of criminal cases end in plea deals, which consequently saves the government time and money. By threatening people with outrageously high prison sentences if they risk taking their cases to trial, the government forces those caught in the system to become pawns to meet a quota imposed by private prisons. Additionally, private prison companies spend millions of

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<sup>94</sup> *Texas Correctional Industries: Providing Useful Work Skills or Slave Labor?*, PRISON LEGAL NEWS (Aug. 7, 2014), <https://www.prisonlegalnews.org/news/2014/aug/7/texas-correctional-industries-providing-useful-work-skills-or-slave-labor/>.

<sup>95</sup> Reese Erlich, *Prison Labor: Workin' for the Man*, COVERT ACTION Q. (Fall 1995), <http://people.umass.edu/kastor/private/prison-labor.html>.

<sup>96</sup> *Id.*

<sup>97</sup> *Criminal: How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits for Private Prison Corporations*, IN THE PUB. INT., 2, 3 (Sept. 2013), <http://www.njjn.org/uploads/digital-library/Criminal-Lockup-Quota,-In-the-Public-Interest,-9.13.pdf>.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*



dollars in political contributions and lobbying efforts to sway legislation in their favor.<sup>101</sup> From a business perspective, private prison companies have a stake in incarcerating people and keeping them incarcerated for as long as possible. For the shareholders of these private prison companies, prisoners are merely profitable commodities.

The idea behind utilizing private prisons was to save taxpayers money, yet now taxpayers are penalized if incarceration rates fall and violate occupancy clauses. Moreover, so long as private prisons are *said* to save taxpayers money, people are more inclined to blindly support this system thanks to the psychological groundwork based on anti-black—and more currently, tough-on-crime—narratives that have been established for centuries. From the perspective of those who have not had to intimately know incarceration over generations, they may easily believe that those who commit crimes *are menaces threatening public safety*, and that *they deserve their punishment*. Black vilification is a crucial underlying component supporting the PIC, and it is an ever-present theme in perpetuating slavery through all its historic and modern forms.

The PIC is not only facilitated through private prisons. Of the \$80 billion the U.S. spends on incarceration, half of it is used to pay private companies that serve prisons.<sup>102</sup> Whether it is goods sold in vending machines or in the commissary, the clothes inmates wear, healthcare, or phone companies overcharging inmates' families, thousands of companies flocked to the business opportunities and profits promised in operating prisons, jails, and detention facilities. As of 2018, over 3,100 private companies have been shown to profit from mass incarceration.<sup>103</sup>

## VII. ARGUMENTS SURROUNDING PRISON LABOR

Organizations like the National Institute of Justice maintain that work programs are beneficial to everyone involved in the partnership between government, private companies, and prisons.<sup>104</sup> However, there is one key party not benefitting, overlooked by this analysis: the prisoners whose labor and vulnerability is exploited. Their report essentially almost loses sight of the apparent façade that prison labor programs benefit prisoners, reaffirming that the prison system operates with a greater interest in generating a profitable labor force than to rehabilitating prisoners while and protecting the American population.

Advocates offer various arguments for prison industry labor, such as “reduc[ing] operating costs . . . reduc[ing] idleness . . . and expos[ing] offenders to the norms and practices of the ‘world of work.’”<sup>105</sup> For

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<sup>101</sup> *Id.* at 5.

<sup>102</sup> WORTH RISES, *supra* note 93, at 1.

<sup>103</sup> *Id.*

<sup>104</sup> GEORGE E. SEXTON, WORK IN AMERICAN PRISONS: JOINT VENTURES WITH THE PRIVATE SECTOR (Nat'l Inst. of Justice, 1995).

<sup>105</sup> Kathleen E. Maquire, Timothy J. Flanagan, & Terence P. Thornberry, *Prison Labor and Recidivism*, 4 J. OF QUANTITATIVE CRIMINOLOGY 1, 3 (1988).

example, Colorado Correction Industry's mission statement is "to reduce inmate idleness and the demand for general-funded programs by working as many inmates as possible in self-supporting and productive industries . . . [and] [t]o train inmates in meaningful skills, work ethics and quality standards which best enable them to secure long-term employment after release from prison."<sup>106</sup> Again, the psychological groundwork is laid to support the narrative that all prisoners have never had exposure to work and are, as a result, disrupting American peace and safety. The issue, however, is not that prisoners do not know how to work, it is that their labor is exploited without any benefit conferred to them. Prisoners are denied basic workplace rights and are even subjected to "building skills" for jobs that they cannot qualify for post-release due to their criminal record.

A. *Building Work Skills but Nowhere to Work: California's Inmate-Firefighters*

Building work skills may certainly be beneficial for prisoners who are preparing to fight recidivism, but there may not be value in building work skills for employment opportunities that are not available to people with criminal records. Since the 1940s, California has tasked its prisoners with fighting wildfires after most of the state's firefighters joined the World War II efforts.<sup>107</sup> The program still exists today, with male, female, and juvenile inmates making up a third of the state's firefighting force.<sup>108</sup> Paid just \$2 per day, or \$1 an hour if fighting an active fire, thousands of inmates volunteer to risk their lives combatting these natural disasters.<sup>109</sup>

In serving for the California Department of Forestry and Fire Protection (Cal Fire), inmates are credited with time off for good behavior—usually two days off their sentences for each day they serve on the force.<sup>110</sup> To volunteer, inmates must be of minimum custody status and they must be physically able to complete a training course.<sup>111</sup> Once they are selected to join Cal Fire, they are sent to handle the most dangerous assignments by being placed on the first front line of defense to cut firebreaks, while civilian firefighters operate water trucks and helicopters

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<sup>106</sup> COLORADO CORRECTION INDUSTRIES, BROCHURE 5, <https://www.coloradoci.com/bin-pdf/CCibrochure.pdf>.

<sup>107</sup> Annika Neklason, *California Is Running Out of Inmates to Fight Its Fires*, THE ATLANTIC (Dec. 7, 2017), <https://www.theatlantic.com/politics/archive/2017/12/how-much-longer-will-inmates-fight-californias-wildfires/547628/>.

<sup>108</sup> *Id.*

<sup>109</sup> *\$1 an Hour to Fight Largest Fire in CA History: Are Prison Firefighting Programs Slave Labor?*, DEMOCRACY NOW (Aug. 9, 2018), [https://www.democracynow.org/2018/8/9/1\\_an\\_hour\\_to\\_fight\\_largest](https://www.democracynow.org/2018/8/9/1_an_hour_to_fight_largest).

<sup>110</sup> *Id.*

<sup>111</sup> Neklason, *supra* note 107.

from much farther away.<sup>112</sup> The work of all firefighters is dangerous and can be fatal, and the importance and value of civilian firefighters on Cal Fire cannot be trivialized. Inmates convicted of assault or robbery, however, have died on the line of duty; one was killed by a falling tree and the second suffered a fatal wound from a chainsaw.<sup>113</sup> In 2016, twenty-two-year-old Shawna Lynn Jones, just two months away from getting released, died on the force.<sup>114</sup>

Civilian firefighters are aware of the dangers such a career poses, but with full and complete training and a fair salary, firefighters accept the fatal risks involved with the job. Inmates, however, are treated like commodities once they “volunteer” to protect Californians from wildfires. When it is said that prisoners *volunteer* to fight wildfires, it is not within the context of free and fair circumstances, absent of coercion. For prisoners who volunteer, it is likely that they are seeking to escape the brutalities in prison and to earn time off their lengthy sentences by signing up for the force. Many of those who volunteered to join Cal Fire for just dollars a day may not be so willing to volunteer if they were not shackled, isolated in cells, and separated from society behind bars. Furthermore, civilian firefighters earn an average salary of \$74,000 plus benefits, while inmates earn just dollars a day fighting fires at a closer and more dangerous proximity than their counterparts.<sup>115</sup> Meanwhile, prison labor saves the state \$80 to \$100 million a year.<sup>116</sup>

Aside from getting minimal pay for the most dangerous and difficult work assignments, the greatest flaw of this program is that inmates who served for Cal Fire are not afforded employment opportunities with the department after their release. To be employed by Cal Fire, California requires that firefighters be certified as Emergency Medical Technicians (EMTs). The application for EMT certification includes a good moral character provision, which automatically disqualifies anyone with a felony conviction.<sup>117</sup> Thus, inmate firefighters are disqualified from earning an EMT certificate and are consequently restricted from being employed with the very firefighting force that they were good enough to work for when they were incarcerated.

The typical argument for exploitative prison labor—namely, that it reduces recidivism by helping inmates build working skills that can be

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<sup>112</sup> Neklason, *supra* note 107.

<sup>113</sup> Karen Kucher, *22-year-old inmate firefighter hurt July 5 in Lakeside blaze dies*, THE SAN DIEGO UNION-TRIBUNE (July 11, 2007, 12:10 P.M.), <https://www.sandiegouniontribune.com/news/public-safety/sd-me-firefighter-died-20170711-story.html>.

<sup>114</sup> *Preventing Ex-Convicts from working is silly*, ECONOMIST (Oct. 26, 2017), <https://www.economist.com/united-states/2017/10/26/preventing-ex-convicts-from-working-is-silly>.

<sup>115</sup> DEMOCRACY NOW, *supra* note 109.

<sup>116</sup> *See id.*

<sup>117</sup> ECONOMIST, *supra* note 114.

implemented post-release, thus ensuring they enjoy smooth transitions back into society—crumbles when applied to California’s inmate firefighter program. Lengthy prison sentences, the incentive of time off, placements on the front line to handle the toughest assignments that not even trained civilian firefighters are tasked with, paying prisoners \$1 an hour to save the state up to \$100 million dollars, and then, *despite their experience working in the field*, disqualification from the opportunity to become civilian firefighters on the force, is exploitation in its truest form. If reducing recidivism rates was truly a goal for the state of California, then it should not disenfranchise ex-offenders from qualifying for a job that they already have work experience in.

Without community-based opportunities and fair pay, using prisoners to fight fires is not only exploitative, but it perpetuates poverty for communities and families of prisoners. California saves millions of dollars, but it does so by treating inmates like disposable commodities. With the incentive of good time served and a dollar an hour compensation—which some might argue is better than earning *nothing*—inmates whose only other option is to remain locked up in brutal prison conditions may be willing to volunteer to assist Cal Fire. The fact is that these inmates have families, and their bills and expenses do not cease once they are taken into state custody. Instead of properly compensating prisoners whose families lost a source of income, the state of California exploits prisoners’ desperation to escape insufferable conditions in prison, thereby further perpetuating poverty for these families.

### *B. Poor Workplace Conditions: The Poultry Plant*

Part of the exploitative nature of prison labor is that prisoners are subjected to dangerous working conditions. Along with insufficient training, these conditions further illustrate how little value companies afford the prisoners offering their labor. Prisons in Alabama are in business with one of the most dangerous workplace industries in the United States—the poultry plant. Within the context of work release programs, inmates from state prisons are sent to work on poultry processing plants.<sup>118</sup> Frank Ellington was one of those lucky enough to be selected for a work release program—a privilege reserved for those deemed to be low-risk offenders. After serving close to 8 years in an Alabama prison, Ellington was promised the possibility of parole if he participated in the work release program at the Koch Foods of Ashland’s poultry plant.<sup>119</sup> He worked there for five months until the machine he was cleaning caught on to his arm and pulled him in, crushed his skull, and

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<sup>118</sup> Kristi Graunke and Will Tucker, *Why Incarcerated People at Poultry Plants Deserve Better*, MARSHALL PROJECT (Aug. 13, 2018), <https://www.themarshallproject.org/2018/08/13/why-incarcerated-poultry-workers-deserve-better>.

<sup>119</sup> Tucker, *supra* note 69.

killed him instantly.<sup>120</sup> Though there was no suit filed against Koch Foods, the federal government fined the company \$38,802 after an investigation revealed that employees in the poultry plant were not properly trained.<sup>121</sup>

The Alabama Department of Corrections (ADOC) takes 40% of inmates' gross minimum wage pay, which generates around \$11 million for the agency, and it takes an additional cut to pay for inmate fees.<sup>122</sup> In 2012, inmates' collective earnings amounted to \$25 million, but they only received \$3.3 million.<sup>123</sup> Mr. Ellington hoped that in the event of his death, the remainder of his earnings could go towards supporting his mother, but his court costs needed to be paid off first. The ADOC subtracted 40% and an additional 25% from Mr. Ellington's \$323.26 weekly wage, yet he still owed \$4,800 in court debt upon his death with nothing remaining for his mother.<sup>124</sup>

As previously mentioned, Mr. Ellington entered a guilty plea to avoid surrendering to a life in prison.<sup>125</sup> He gave up his constitutional rights to save the government time and resources, and he worked to show the court that he is deserving of release on parole. In the end, his efforts did not matter because as a vulnerable worker, he was subjected to the most dangerous working conditions and no workplace rights—all for earnings he did not get to keep. Stuck in a web of unfortunate circumstances and disproportionate punishments for his original crime, Mr. Ellington's only option was to surrender to the state's mercy—a story not much different than those who lost their lives in convict leasing programs.

*C. Exposure to Work Structure & Reducing Inmate Idleness:  
Angola State Prison*

Working under the assumption that criminals lack work experience, prison labor is believed to address inmate idleness by exposing them to work life and structure. The work structure an infamous Louisiana prison has in place is rather exploitative and is hauntingly reminiscent of slavery. Angola State Prison, a maximum-security prison farm in Louisiana, sits on land that was originally an 8,000-acre slave plantation, and today, the prison extends over 18,000 acres.<sup>126</sup> The plantation was named after Angola, the country where its former slave-occupants were captured from.<sup>127</sup> Angola became a prison in 1880 and was initially managed and operated by a private company until news of brutality against inmates

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Graunke and Tucker, *supra* note 118.

<sup>124</sup> Tucker, *supra* note 69.

<sup>125</sup> *Id.*

<sup>126</sup> DELIA CABE, VOICES BEHIND BARS: NATIONAL PUBLIC RADIO AND ANGOLA STATE PRISON 4 (Knight Case Studies Initiative, Colum. Univ. Graduate Sch. of Journalism 2010).

<sup>127</sup> *Id.*

surfaced and the state retrieved it in 1901.<sup>128</sup> At that time, prisoners serving their sentences were housed in what used to be the slave quarters, and they worked on the plantation field.<sup>129</sup> Throughout history, the prison conditions, inmate assaults, and hard labor prisoners were subjected to were so brutal, that it was not until the 1990s that it met the national jail standards by the American Correctional Association.<sup>130</sup>

Angola prison successfully transitioned from plantation to prison; from slaves to inmates. The prison today does not look any different than it did since it was established as a plantation. Most of the inmates in this prison are black, and the correctional officers, called “Freemen,” are white.<sup>131</sup> People who work at the prison live for free with their families in homes located on the prison’s property.<sup>132</sup> “House boys,” as the wardens referred to them, were the well-behaved inmates who wore white uniforms and maintained the hundreds of homes on the property.<sup>133</sup> This included cooking, cleaning, and landscaping for the prison staff occupying the homes.<sup>134</sup> The other well-behaved inmates were employed in the fields.<sup>135</sup>

The prison has manufactured various types of goods, including cotton, corn, license plates, and mattresses.<sup>136</sup> Inmates are examined by the prison doctor to determine whether or not they can work. Once cleared, they continue on to work on the fields under the hot Louisiana sun for as little as two cents an hour while the armed Freemen surveil the prison farm on horseback. Inmates are not *forced* to work. They are, however, threatened with loss of good time credit, loss of visitation privileges, and solitary confinement if they refuse to work.<sup>137</sup> Angola prisoners also have an opportunity to earn money at the Angola Prison Rodeo. For \$20 a ticket, thousands of attendees come to watch the prisoners battle horses and violent bulls.<sup>138</sup> While some of the inmates, suffer wounds and broken

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 5.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Whitney Benms, *Prison Labor in America: How is it Legal?*, THE ATLANTIC (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/>.

<sup>138</sup> Aviva Shen, *Angola Prison Rodeo Offers Risks and Rewards for Louisiana’s Hard-Knock Lifers*, THE GUARDIAN (Oct. 29, 2016, 12:37 P.M.), <https://www.theguardian.com/us-news/2016/oct/29/angola-prison-rodeo-louisiana>.

bones, those who withstand the animals are awarded cash prizes. Inmates who volunteer receive no training beforehand.<sup>139</sup>

#### *D. Inmate Views on Prison Labor*

The moral and ethical debate surrounding prison industry labor tends to exclude the voices of those who have direct experience in the programs. Unsurprisingly, a large population of inmates characterize prison labor as enslavement. With the little power and rights afforded to them, prisoners across the country declared a nationwide strike in August and September of 2018 in response to a riot at a maximum-security prison in South Carolina. The press release detailing the strike noted that “[s]even comrades lost their lives during a senseless uprising that could have been avoided had the prison not been overcrowded from the greed wrought by mass incarceration, and a lack of respect for human life embedded in our nation’s penal ideology.”<sup>140</sup> The prisoners rioting demanded “humane living conditions, access to rehabilitation, sentencing reform, and the end of modern day slavery.”<sup>141</sup> Prisoners liken prison labor to slave labor because inmates who do refuse to work are penalized with time in solitary confinement.<sup>142</sup> In an opinion piece for *The Guardian*, current inmate Kevin Rashid Johnson addressed the strike and described his harrowing observations serving time in various prisons across the country:

Though I’ve always refused to engage in this modern slavery myself, I’ve witnessed plenty of examples of it. The most extreme were in Texas and Florida, where prisoners are forced to work in the fields for free, entirely unremunerated. They are cajoled into chain gangs and taken out to the fields where they are made to grow all the food that inmates eat: squash, greens, peas, okra. They are given primitive hand-held tools like wooden sticks and hoes and forced to till the soil, plant and harvest cotton. They are watched over all day by guards on horseback carrying shotguns. Elite posses of prisoners are used to keep other prisoners in line, through open coercion and violence. Prisoners who do not agree to such abject slavery are put in solitary confinement. I know from personal experience.<sup>143</sup>

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<sup>139</sup> *Id.*

<sup>140</sup> Amani Sawari, *National Prison Strike*, SAWARI MI BLOG, <http://sawarimi.org/national-prison-strike>.

<sup>141</sup> *Id.*

<sup>142</sup> Kevin Rashid Johnson, *Prison Labor is Modern Slavery. I’ve Been Sent to Solitary for Speaking Out*, *THE GUARDIAN* (Aug. 23, 2018, 6:00 A.M.), <https://www.theguardian.com/commentisfree/2018/aug/23/prisoner-speak-out-american-slave-labor-strike>.

<sup>143</sup> *Id.*

On the other hand, some prisoners favor the program, as it provides them with a temporary escape from the confines of their cells. For example, inmate Chandra Bozelko “couldn’t wait to head to work in the kitchen of the maximum-security women’s prison,” since it made her feel “the closest to free she can be.”<sup>144</sup> Although some prisoners enjoy their work, prisoners volunteer for these programs not because they love working for little to no money, but because they want any opportunity to leave their cells and enjoy something different from their usual routine. This is significant because prisoners’ willingness to volunteer for an exploitative labor program is made in a limited and coercive capacity. Thus, some prisoners’ favorability of prison work should not be considered out of context or used to defend further exploitation of *all* prisoners’ labor.

Regardless, prisoners’ personal experiences with prison labor should be incorporated into the discussion and reform of prison industry labor. If prison labor is to remain part of the penal system, prisoners should be allowed to volunteer their labor for the program, and those choices should be made absent of the coercive threat of punishment in solitary confinement. The purpose and benefit of prison work programs should shift from saving the government money and profiting private interests to benefiting the prisoners themselves by building useful work skills and providing community-based opportunities. Such efforts would assist in disrupting the cycle of mass incarceration and poverty as a result of hinderances to people acquiring wealth. Seeing as though some prisoners do enjoy prison work, there likely will not be a shortage of volunteers. Moreover, prisoners should be afforded basic human rights, such as safe workplace environments, appropriate compensation for their labor, and the ability to keep their earnings. Finally, prisoners should build work skills for jobs they can actually qualify for after their release, and if the government is to keep prison labor as part of its penal system, then it should work towards actually minimizing recidivism by compelling private interests to provide community-based opportunities after prisoners are released.

#### CONCLUSION

Black people in the United States are confronted with the inherited burden of having to withstand the systems and institutions that were designed to indefinitely oppress black people, hinder black progression, and preserve a white supremacist social hierarchy. Far too many black Americans must beat the system to overcome poverty, defy racism, survive the violence in their government-segregated neighborhoods, and

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<sup>144</sup> Chandra Bozelko, *Think Prison Labor is a Form of Slavery? Think Again*, L.A. TIMES (Oct. 20, 2017, 4:00 A.M.), <https://www.latimes.com/opinion/op-ed/la-oe-bozelko-prison-labor-20171020-story.html>.



avoid incarceration, as their forced labor is exploited by the very Amendment that liberated them all those years ago. It means carrying the weight of private and government interests in commodifying black bodies so that the rest of America enjoys the fruits of their labor—all while poverty is preserved, yet criminalized, in their own communities. This has been a reality for generations.

Racism is so deeply entrenched in our country's foundation that it has disseminated into all aspects of our society, including, most prominently, our criminal justice system. Historically, legislatures created tailored, racialized laws with the intention that a particular class of people would inevitably violate them, codifying white supremacy and victimizing black people well after commonly recognized slavery was abolished. As a result, slavery never truly ended, with more black people incarcerated today than were enslaved 150 years ago. From slavery to convict leasing, chain gangs, and the modern prison industry, our government has continuously reshaped forced labor systems to serve the state's financial interests at the cost of black lives and freedom.

Advocates of prison industry labor argue that prison labor helps inmates build work skills, reduce their idleness, and lower their chances of recidivation. Yet the argument that prison labor is for the laborers' own benefit fails as soon as the inmates are set free: there are few to no post-release employment opportunities available to them by the same companies that exploit them while they are incarcerated. Prisoners must be given the opportunities to embrace legitimate careers, and they cannot do that when they are building skills for jobs they can never qualify for.

It is clear that economic appeal prevails over inmate rehabilitation, especially since prison labor provides substantial profit for so many different actors. Prisoners should have the rights to work in safe workplace conditions and keep their earnings. The law should serve to protect all individual lives and rights, yet some of the laws in place explicitly exclude prisoners from basic workplace protections. Black peoples' experiences and livelihoods were given little to no weight in the political decision-making around each prior oppressive institution, and today, those who are negatively affected by the prison-industrial complex are disenfranchised from civic engagement after their release. By stripping prisoners of their legal and human rights during their incarceration, then continuing their subjugation through felony disenfranchisement, the government successfully controls the inside of black communities from the outside while suppressing their efforts to represent themselves. This lack of consideration for black voices in creating the policies that disproportionately affect black communities contributes to perpetuating poverty and has allowed the government to continue its subjugation of black communities. While the government and private interests refuse to pay prisoners, their families are stuck with the economic burden of losing a source of income and the inability to build capital. Felony disenfranchisement and economic mistreatment has allowed the government to continue its subjugation of black communities.

In theory, prison labor can provide prisoners with something rewarding and worthwhile. To reduce prison labor's tendency to perpetuate poverty and its negative effects on prisoners, their families, and their communities at home, however, prisoners should at minimum be afforded workplace rights, such as forming unions to negotiate and protect their rights, safe working conditions, minimum wage pay, and the ability to keep their earnings. Most importantly, prisoners should be given the choice to volunteer their labor and should not be penalized for declining to participate in prison industry programs.

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