

People as Property: Criminalizing Color, Dissent and Impoverishment through the Prison-Industrial Complex

by Karen Coulter

There has been a shocking exponential increase in the number of people incarcerated in the U.S., with highly disproportionate imprisonment of people of color, especially African Americans. It's important to realize the scale of this crisis, its deeply embedded historical and structural foundations, and its implications for the creation of a free democratic society. As of 2003, the U.S. had two million people incarcerated out of a world total imprisoned population of nine million. The U.S. population is less than five percent of the world's total while U.S. prisons hold 20% of the world's prison population. The number of U.S. prisoners has tripled since 1980. The U.S. now incarcerates more of its residents than any other country in the world, with the possible exception of Russia. As Angela Davis observes, "Short of major wars, mass incarceration has been the most thoroughly implemented government social program of our time." What does this say about our future as free individuals?

When the U.S. prison construction boom began in the '80's, official records showed crime already declining. The crime rate peaked in 1980 and by 1999 had decreased by over 71%, lower than in any year since 1973. Several critics agree that "the incarceration boom is NOT a direct product of variations in crime rates. Rather it is a product of almost three decades of criminal justice legislation that has transformed the relationship between crime and punishment in the United States." Contrary to public perception that high rates of imprisonment are needed to curb the growth of violent crime, the percentage of those imprisoned each year for violent crimes has fallen consistently during the incarceration boom. By the 1990's, more than two-thirds of those sentenced to prison in any year were convicted of nonviolent property, drug or disruption of "public

order" offenses, many of which would not justify prison time elsewhere in the world. The U.S. incarceration rate increase cannot be attributed to societal characteristics unique to the U.S., as the pattern of decreasing crime rates coupled with increasing rates of incarceration, prison privatization, disproportionate imprisonment of racial and ethnic minorities, and increasingly degrading prison conditions are the pattern in several other countries, including Canada, Australia, and the United Kingdom. This suggests a common white government response to economic and social welfare collapse (under Capitalism) and to social resistance against the agenda of global corporatization.

Historical Foundations

As the U.S. leads the pack in the incarceration response to economic and political disparity, it is useful to look at the political history of the U.S. in which this response finds its foundation and social acceptance. It is significant that by the end of the year 2000, nine of the 13 states that exceeded the national incarceration rate were in the South. The South has "a long tradition of using the law as a tool to build and protect a racialized political and economic order", as Professor Philip Wood explains. The Civil War impoverished Southern planters. No longer able to maintain their culture by economic means, Southern planters and industrialists turned to a combination of coercion and racism. For instance, the convict lease system was used in Alabama to re-create an enslaved black working class for use in the coal and iron industries. The prison labor regime and privatized prison systems we now witness were pioneered in the South during Reconstruction to recapture black labor profits and white social dominance. There was private ownership and operation of prisons in several states in the

17th and 18th centuries. Conditions in these privately run penitentiaries were so terrible that some inmates committed suicide while others maimed themselves to avoid the labor. Beginning in 1817 with New York's Auburn prison, the primary U.S. prison model was the "lease prison," whereby corporations contracted with states to operate their entire prison system or states would operate the prisons but lease the prisoners' labor to private corporations. Nineteenth century prisons were basically forced labor camps. Operations of lease prisons literally worked prisoners to death with mortality rates as high as 40%. In the 1870's competitors of the Tennessee Coal, Iron and Railroad Company complained that convict labor gave that corporation an unfair competitive advantage. In 1891 the Tennessee Coal, Iron and Railroad Company locked out all of its union workers for refusing to sign a "yellow dog" contract that would have prohibited their union membership. The union members were then replaced by lease convicts. In the ensuing Coal Creek Rebellion, angry union miners overwhelmed the lease prisons, releasing over 400 prisoners, and loaded them on trains for the state capital. When the corporation brought in more convicts, the miners released them too and this time burned down the prison stockades. Shortly after this, Tennessee ended use of convict leased labor.

By the beginning of the 20th century most states enacted laws abolishing or restricting the use of prison labor by private industry partly due to poor conditions and systematic abuse by private operators. Administration and operation were delegated to government agencies and funded solely by the government with virtually no private sector involvement until the 1980's.

Slavery and involuntary servitude were

supposedly abolished by the 13th amendment to the Constitution. However, the amendment reads that slavery and involuntary servitude shall no longer exist in the U.S. "except as punishment for crimes whereof the party shall have been duly convicted." Conveniently, in Mississippi vagrancy was coded as a black crime and broadly defined to include theft, drunkenness, "wantonness" in conduct or speech, neglecting a job or family, carelessness in handling money, and "all other idle and disorderly persons." Would depression and anger not be a typical situation of liberated slaves without property, home, job, money or experience handling money? In Alabama, prior to the slaves being freed, 99% of prisoners were white. Shortly after emancipation and with the Black Codes in effect, the overwhelming majority of prisoners were black. Black people then became the involuntary labor force of the convict lease system. In South Carolina, a freed person had to obtain a special license from a local judge (usually white) to perform agricultural or domestic work. Thus Black Codes strictly regulated African American livelihoods in the service of private industry, which is now being enforced by the prison industrial complex. Mississippi historically imprisoned large numbers of emancipated African American men to continue exploiting their labor. After the convict lease system was terminated at the turn of the century, prisoners continued their unpaid agricultural labor for the state. Mississippi's Parchman Prison Farm continued a legacy of brutal prison rule until the 1970's. The convict lease system caused the Virginia Supreme Court to comment in an 1871 case, "Ruffin vs. Commonwealth," that prisoners were "slaves of the state."

Racial backlash and racialized criminalization during Reconstruction merged with labor market policy and social marginalization. Work and its associated incentives are compelling forms of social control. The South capitalized on providing a haven for Northern capital that provided low wage, labor intensive, nonunion employees segregated from the regulation of industrial union relations and tax structures of the Northeast and Midwest. This set the model for future U.S. corporate enterprises in Third World countries with the sweatshop structure. Sweatshops were also used in the northeastern U.S. with surplus labor from the flood of unorganized European immigrants who were racially divided and pitted against each other.

This formula of exploitation, pioneered by Mississippi in 1890 and quickly imitated throughout the South, was designed to disenfranchise those who had little to gain from this impoverishing model and agitating for interracial cooperation and radical reform. The Ashurst-Summers Act of 1935 prohibited interstate commerce of prison-made products unless prisoners were paid at least minimum wage. Yet now, prisoners don't receive the promised minimum wage. Despite other threats to the Southern capital accumulation model, such as the Fair Labor Standards Act and later the 1964 Civil Rights Act and the 1965 Voting Rights Act, the model survived and became the template for national economic restructuring after 1980 under Reagan, which moved the economy to a low wage, export orientation, shifting the balance of power between capital and labor.

Prison Labor Today

In the 1970's Chief Justice Warren Berger began pushing for conversion of prisons into "factories with fences." Congress then acquiesced with the Justice Improvement Act of 1979, which established seven "prison industry enhancement pilot projects" exempted from the Ashurst-Summers Act. By 1984 this had been allowed to grow into 20 pilot projects covering all businesses set up in the prisons. The law was amended again in 1990 to allow for up to 50 projects. So by quiet manipulation all prison products from any state could legally cross state lines and compete with the products of free labor. There are many advantages for corporations using prison labor. In Washington State, for instance, the use of prison slaves means that the corporations don't have to pay for rent, electricity, water, or other operational expenses. They are exempt from state and federal workplace safety standards, paying medical benefits, unemployment, and vacation or sick leave to prisoners who are given no right to collectively organize or bargain. In 1977 the Supreme Court conveniently decided "Jones vs. North Carolina Prisoner's Labor Union" in such a way as to remove legal protection for prison union organizing. Prisoners aren't covered by Workers Compensation or the federal Fair Labor Standards Act. If prisoner workers complain or resist, they are subject to the arbitrary discipline of prison officials, which can include being fired, laid-off, or thrown into isolation under spurious charges, potentially losing their personal property in the process. Prisoners can be exposed to deadly toxins, such as the ash stream of a trash-burning power plant run

by Shaneway Corporation in Columbus, Ohio. Prisoners separated metal from toxic ash for 5 dollars an hour with no protective clothing or equipment even though the ash contained arsenic twice OSHA limits, cadmium levels five times the limit, lead 138 times the limit, and dioxin 770 times the community's ambient air level. These exposures effectively commuted nonviolent offenders' short prison sentences to potential death sentences from cancer. Unfortunately this is not an isolated case of prisons subjecting prisoners to dangers from toxins, constituting illegally cruel and unusual punishment.

Prisoners have been forced to manufacture military equipment used in wars and by death squads in U.S. client dictatorships overseas as a condition for transfer to a less brutal prison. The Federal Prisons Industries Corporation, known as UNICOR, has supplied military equipment since 1934 to the War Department, now named the Department of Defense. Prison labor thus fueled the Korean War, the Gulf War, and genocidal regimes in Israel, Indonesia and El Salvador. The Marion Central Unit Prison is known for well documented prisoner abuse and never ending lock-down. The prison administration there came up with a process whereby prisoners worked for UNICOR as a condition of transfer, thereby forcing them to engage in military production even if it was against their belief system to do so. One of the Marion penitentiary wardens, Ralph Aaron, admitted that "the purpose of Marion is to control revolutionary attitudes in the prison system and at large. It will be much harder for us to stop U.S. wars if the workers producing the weapons are behind bars and subject to isolation or other discipline for resisting." Yet prisoners do resist. On March 4th, 1996 at Oak Park Heights Maximum Security Prison in Minnesota, about 120 prisoners refused to show up for work at Minncor, the Minnesota State prison industry. The striking workers demanded the minimum wage, an end to restrictions on visits from friends and family, an end to brutal treatment in the segregation complex and excessive medical and phone costs. They called for better air ventilation, lowered food prices, improvement of the inadequate law library, and the return of cable television. The average prisoner wage at Oak Park Heights was about 95 cents an hour, with up to 80% of that going to court ordered restitution, victims' support funds, child support, and room and board fees. Despite prison lock-down, ransacking of prisoners' cells, and segregation of alleged ringleaders, more

prisoners refused to work, and by dinner the next day more than half the prisoners in the segregation unit refused to eat in solidarity with the striking workers. However the strike was broken when the only way to escape 23 hour-a-day solitary confinement was to agree to go back to work, with no concessions won. Mass imprisonment is used to deprive people of all power over their lives and force them into the capitalist exploitation system.

As Daniel Burton-Rose points out, “Under capitalism even human beings can be, and regularly are, reduced to a bottom line dollar sign...it should be remembered that Nazis did not start by murdering millions. Their first step was imprisonment, and, more importantly, the dehumanization and objectification of certain social strata. The same process that is at work today when human beings are vilified as nothing more than ‘prisoners’, ‘criminals’, or ‘illegal aliens’ and their warm bodies are treated as a commodity worth just so much profit potential.” A great variety of corporations have been profiting from imprisoned slave labor, including data entry for Chevron corporation, “Prison Blues” jeans manufacturing, telephone reservations for TWA airlines, lingerie making for Victoria’s Secret corporation, and manufacturing of circuit boards, limousines and water beds. Microsoft, Boeing, Starbucks and other corporations pay minimum wages to the state (not to the inmates) to produce a growing range of goods and services.

Then there are the investors in the prison industry: American Express Corporation invested millions in private prison construction in Oklahoma; General Electric Corporation financed prison construction in Tennessee; Goldman Sachs, Merrill Lynch, Smith Barney, and other Wall Street investment firms made big profits by underwriting prison construction with the sale of tax-exempt bonds, a 2.3 billion dollar industry as of 1997. Some of the largest Wall Street investment corporations started buying bonds and securities from private prison corporations in the ‘90’s and reselling them for profit to individual investors, mutual funds and others, literally speculating in the growth of locking up more and more people.

Privatized Prisons

In a brochure for a conference of privatized prisons held in December 1996 at the Four Seasons Resort in Dallas, Texas, a New York investment firm called the corporate takeover of prisons the “newest trend in the area of privatizing

previously government-run programs.” The brochure jubilantly urged: “While arrests and convictions are steadily on the rise, profits are to be made—profits from crime. Get in on the ground floor of this booming industry now!” Privately owned and operated prisons first reemerged in the U.S. in the early 1980’s in response to overcrowding in INS facilities from immigration crackdowns in Texas and California. As of the year 2000, there were about 153 private prisons in the U.S., capable of holding about 119,442 prisoners. Jenni Gainsborough of the ACLU’s National Prison Project summarizes the fundamental concern with prison privatization as “a basic philosophical problem when you begin turning over the administration of prisons to people who have an interest in keeping people locked up.” To make a profit, private prisons must be kept filled—a 90 to 95% of capacity status is thought necessary to guarantee the large rates of return necessary to attract investors. Rapid growth in legislative demand for residents’ incarceration and immigrants’ detention caused the value of these enterprises to skyrocket. As late as 1995 the Corrections Corporation of America was worth \$3.5 billion and considered a secure investment with growth potential. However to achieve these returns private prison corporations systematically cut costs in prisoner care and rehabilitation and in guard training, resulting in chronic abuse, internal chaos, and bad management. To maintain market dominance all the major corporations in the private prison business have hired professional lobbyists.

Deeper Structural Reasons for These Trends:

Monique Morris notes: “As a function of being the first stock sold on the New York Stock Exchange, African people in America have been stigmatized and exploited in order to serve the capitalist interests of America’s ruling class. Profits—or savings—realized through the privatization of the criminal justice system represent a contemporary mode of structuring that interest.” Privatization of the prison system parallels the Reconstruction period’s use of prisons as a cheaper, more efficient form of slavery. Jerome Miller, a former youth “corrections” officer warns: “The race card has changed the whole playing field. Because the prison system doesn’t affect a significant percentage of young white men we’ll increasingly see prisoners treated as commodities. For now the situation is a bit more benign than it was back in the

19th century, but I’m not sure it will stay that way for long.”

The rise of the prison industrial complex can be accurately seen as part of a profound transformation restructuring U.S. economic development and its forms of social control. Philip Wood identifies corporate colonization of decision-making structures as a key element of the changes in U.S. public policy supporting the expansion and privatization of the prison industry. Christian Parenti notes that: “A better analysis of the American prison state uses as its analytic crowbar the concept of society-wide class struggle. This model understands incarceration, directly profitable or not, as part of a larger circuitry of social control in which the poor are blamed for their own plight, class privilege is protected by force, and a portion of the population who cannot find work because of the market economy’s metabolic need for unemployment, are managed by the state with violence and incarceration.” Parenti observes that after the political rebellion of the late 1960’s anti-war and civil rights movements, with a parallel capitalist crisis of falling profits and stagnant growth, the Reagan administration ushered in a wholesale economic restructuring, with unions vanquished, health and safety standards lowered, and social spending virtually stopped—similar to Bush II era restructuring. Reaganomics resulted in wages declining and profits for a wealthy minority increasing hand-in-hand with an astronomic increase in general poverty. The “rabble” was seen as in need of control, with incarceration as the tool of repression and the “war on drugs” as its justification. Thus it is no accident that the rate of incarceration took off in the 80’s. The proximate cause was not so much “bad corporations” (which are inherently amoral anyway) as it was the role of state violence stepping in to perpetuate Capitalism. The expanding prison system was not just controlling people, but also managing the social symptoms of Capitalism: poverty, racism and exploitation.

According to a 1996 report by the U.S. GAO, “...inmate population growth in recent years can be traced in large part to major legislation intended to get tough on criminals, particularly drug offenders. Examples of this ‘get tough’ policy include mandatory minimum sentences and repeat offender provisions.” As part of this intentional political agenda, Reagan actually created a “privatization czar” position in the Office of Management and Budget and appointed a President’s Commission on Privatization.

The California Correctional Peace Officers' Association did its part to fill the increasing prison space by contributing \$101,000 to get California's Proposition 184, the "Three Strikes" initiative, on the ballot and passed. Despite hype about the three strikes measure being designed to punish serious habitual offenders, an ever increasing number of three strikes convictions were for petty theft such as stealing a can of beer or a few packs of batteries. One California man was sentenced to 25 years to life in prison for stealing a pair of sneakers after two previous convictions for theft—nonviolent property crimes.

Disproportionate incarceration of people of color is also traceable to distinct political agendas. Racial profiling, a "war on drugs" that targets African American neighborhoods and the drug dependence of the poor, and three strikes legislation have created prison demographics completely out of sync with the number of people of color incarcerated compared to the much lower percentage of people of color within the general population outside prison walls. In the 1990's about 12% of the U.S. population was African American, yet on December 31st, 2000, 46.2% of prisoners under state or federal jurisdiction were black.

Southern white politicians particularly benefit from great reductions in the number of African American voters that result from felony disenfranchisement laws. In Alabama and Florida 31% of African American men are permanently disenfranchised due to felony convictions, while one in four African American men are permanently disenfranchised in Iowa, Mississippi, New Mexico, Virginia, and Wyoming. The 1965 Voting Rights Act is thus effectively being repealed, gagging an entire segment of the population and compromising democracy of the whole. As Monique Morris concludes: "The legacy of slavery that has made African Americans the incarcerated race must end somewhere, along with the economic incentives that perpetuate its existence. As long as the prison industrial complex is allowed to continue its exploitation of African American's educational, economic, health, and civic vulnerabilities, the abominable legacy of slavery remains intact." As long as white identity is experienced as a valuable possession, rights, liberty, and status are affirmed for white people and denied to black people and other people of color.

As historian Adam Jay Hirsch pointed out: "The penitentiary is a mirror image of Southern chattel slavery as both institutions enforce subordination to the will of others, subject their subjects to a daily routine specified by the owning class, force dependence on others for basic human needs such as food and shelter, isolate their subjects and coerce them to work for longer hours than free laborers and for little or no compensation." If we are persuaded that racism should not define the future and see prisons as racist institutions, then we need to recognize that, as Angela Davis claims, "...a fundamental requirement for the revitalization of democracy is the long overdue abolition of the prison system."

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