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**FROM SLAVERY TO THE WAR ON DRUGS – A HISTORY OF STATE-SPONSORED
SUBJUGATION**

**By Robert Craig
Associate Director, Abolish Private Prisons
www.abolishprivateprisons.org**

On the Advent to the 400th commemoration the first Africans setting foot on American soil as slaves, the African American Christian Clergy Coalition (AACCC) stands in solidarity with those who stand against the continuation of institutionalized slavery.

In the article below, Robert Craig, Associate Director of Abolish Private Prisons, highlights the historical transition from chattel slavery to the scourge of private prisons on African Americans. As you read this article, I encourage you to think about what we can do together to end this injustice against our community. AACCC is committed to Criminal Justice Reform, all the way from developing solutions to the problems of community policing to turning the tide on unjust imprisonment for profit.

“Let justice roll down like a river and righteousness like an ever-flowing stream.” Amos 5:24

Dr. Warren H. Stewart, Sr.
Chairperson, African American Christian Clergy Coalition

Private prisons are an integral part of mass incarceration in the United States. They support the continuation and expansion of keeping people – especially African-American men – locked up at absurdly high rates by donating large sums of money to politicians friendly to their mission. And they rely on mass incarceration to ensure their beds and bank accounts stay full.

None of this is a new phenomenon: the government of the United States has long facilitated the subjugation of African-Americans for the benefit of mostly white land owners and otherwise wealthy individuals. In fact, there is a straight line between slavery to a land-owning white and slavery to prison corporations; and at every step, government authority was a necessary piece of the exploitation puzzle.

At the same time, however, federal courts have sometimes provided a refuge – they have not always been on the right side of history, but they have played an important part in ensuring rights throughout American history. It is that tradition that Abolish Private Prisons seeks to expand when it challenges the constitutionality of incarcerating people for profit.

Chattel Slavery – Explicitly Condoned by State and Federal Laws and Constitutions

Slavery is rooted in the history of the United States, appearing soon after the first European settlers, as far North as the Puritans in New England and as far South as Florida. From the 18th century and through the first half of the 19th century, the importation of African slaves defined people – of course the slaves themselves, but also slave owners, non-slave holding whites, free blacks, and Native Americans.

The institution itself dominated people, how they were categorized, their relationships with each other, and politics; and in turn, the institution was enshrined and legitimized by American codes of government, including the United States Constitution, various state Constitutions, and federal laws. The power of the state ensured that people of African descent remained property whose existence was reduced to the material benefit of landowning whites. This state power manifested in various ways: Congress passed the Fugitive Slave Act, federal marshals were tasked (pursuant to that law) with returning escaped slaves to their owners, and the Supreme Court issued its infamous Dred Scott decision, which interpreted the Constitution to exclude people of African descent from the definition of citizenship in the United States.

Black Codes – State Laws Authorizing Forced Labor: Convict Leasing

The era of state-sanctioned chattel slavery characterized by total legal ownership of one person by another ended with the Civil War. However, shortly thereafter, a sinister movement gained momentum in some southern states to use new criminal laws to re-enslave the recently freed. These laws essentially criminalized life for this targeted group and were known as “**black codes**.” The codes varied in detail but shared two common features: a broad vagrancy law that allowed local officials to arrest people for minor infractions and aggressive enforcement against African-American men.

The success of the scheme to re-enslave had the cooperation of legislatures, mayors, police, prosecutors, and wardens. Following the *en masse* sentencing of many African-American men, prison wardens “leased” their manual labor for little or no cost by allowing a third-party to pay the assessed fine. Then, the person who paid the fine (usually a white landowner) could force the leased person (usually an African-American man convicted of a crime like “not having a job”) to labor for the benefit of the landowner. Meanwhile, white people arrested under the same vagrancy laws could generally take an oath of poverty and avoid being hired out as a laborer. So, despite being emancipated from slavery in a formal sense, African-Americans, especially those in the south, faced slavery by a different name: **convict-leasing**.

Jim Crow – State Laws Keeping a Black American Underclass

As the convict-leasing system receded during the first half of the 20th century, African-Americans faced a growing body of *de jure* segregation, known broadly as **Jim Crow**

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laws. This era was characterized by broad political disenfranchisement through poll taxes, literacy tests, tightened residency rules, onerous record-keeping requirements, and comprehension tests.

Social segregation and systemic disparate access to government benefits prevented African-Americans from accessing the wealth and status accumulated by white counterparts throughout the 20th century. Such social segregation included separate “colored” facilities, redlined housing districts, and poorly funded schools. Finally, violence against African-American populations (spanning the spectrum from property damage and vandalism to lynching) was largely ignored by the judicial system.

As in the previous centuries, the segregation and disenfranchisement of this era was accomplished using the coercive power of the state *against* African-Americans, and the same state power was withheld *from* African-Americans when it could have been used to protect their property, life, and pursuit of happiness. This unequal treatment was enshrined as constitutional in the Supreme Court case of *Plessy v. Ferguson*.

War on Drugs – State and Federal Governments Disproportionately Imprison People of Color

The middle of the 20th century marked the beginning of the end of the Jim Crow era, after the landmark *Brown v. Board of Education* ruling (1954), the passage of the Civil Rights Act of 1964, and the anti-miscegenation ruling in *Loving v. Virginia* (1965), which ended the prohibition on mixed-race marriage. But the next stage of government subjugation of African-Americans began in 1970 with the ***War on Drugs***, characterized by four decades of increasing punishment for drug-related activity.

A central feature of this “war” was a racist distinction between crack and powder cocaine, which allowed powdered cocaine users (mostly white people) to escape criminal punishment by attending rehab facilities while crack cocaine users (mostly African-Americans) faced breathtakingly harsh sentences for an otherwise equivalent dosage. And to make matters worse, state officials used this broad authority to police African-American neighborhoods in draconian ways, inappropriately employing stop-and-frisk techniques to terrify and keep down entire neighborhoods.

ENTER THE PRIVATE FOR-PROFIT PRISON INDUSTRY

The Creation and Growth of Private Prison Corporations

Recognizing the potential to profit from this explosive growth of African-American people convicted of low-level crimes, several corporations partnered with various government agencies to incarcerate people in ***privately run, for-profit prisons***, both benefiting from harsh laws and influencing their creation.

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The number of people incarcerated in private facilities grew with the prison population generally – the latest numbers show that over 100,000 people are housed in private prisons, representing almost 10% of the total prison. But perhaps more shocking than the mere number of people held in private prisons is the meteoric rise: between 2000 and 2016, the number of people in all prisons increased by 9% while the number of people in state-contracted private prisons increased by 31%.

This private prison industrial complex has grown to include twelve private prisons *in Arizona alone*.

Institutional Similarities Between Private Prisons, Convict Leasing, and Chattel Slavery

All three institutions – chattel slavery, convict-leasing, and for-profit incarceration -- operate under the principle that dominion over another person's body directly contributes to the enrichment of the owner.

Similarities abound between private incarceration and convict-leasing: both institutions rely on over-enforcement of laws that are easily violated, both disproportionately affect African Americans, and both use the labor of those subjugated to enrich owners.

Importantly, for-profit incarceration and convict-leasing draw inspiration from and rely on the systemic disadvantages created by centuries of chattel slavery. In a terrible twist, private prisons make money from the *mere presence* of people in its cells, and need not rely on labor of its inmates to turn a profit.

Far from hiding from this conclusion, the responsible corporate entities share the sentiment publicly. CoreCivic (formerly Corrections Corporation of America), for example, told its shareholders that its business model “could be adversely affected by . . . the decriminalization of certain activities that are currently proscribed by our criminal laws.”

Adding an exclamation point to the history of subjugation of black Americans, private prisons disproportionately house people of color. As Katie Quandt from Mother Jones explained:

It's well known that people of color are vastly overrepresented in US prisons. African Americans and Latinos constitute 30 percent of the US population and 60 percent of its prisoners. But a new study by University of California-Berkeley researcher Christopher Petrella addresses a fact of equal concern. Once sentenced, people of color are more likely than their white counterparts to serve time in private prisons, which have higher levels of violence and recidivism and provide less sufficient health care and educational programming than equivalent public facilities.

The Theoretical Downsides Manifesting in Reality

At least two lawsuits in federal courts are revealing how private corporations are exploiting labor to enrich their shareholders. In Colorado, civil immigration detainees are participating in a certified class action suit, which alleges, among other things, that they were forced to perform menial labor including scrubbing toilets and waxing floors while being paid less than one dollar per day. Likewise, a lawsuit in Georgia alleges that CoreCivic forces detained immigrants to work for extremely limited wages (from a dollar per day up to 50 cents per hour) by serving limited amounts of nutritionally limited food and pushing detainees to purchase supplemental food at an overpriced commissary.

High recidivism rates cost communities and taxpayers dearly but they are signs of higher profits to prison corporations. Recent studies suggest that private prison facilities offer fewer education programs and work programs, both of which are proven to help people successfully reintegrate after release. These studies starkly recall the anti-literacy laws of the 19th century, which were likewise designed to keep African-American people “down.”

CLOSING THOUGHTS

Over the course of three centuries, (as Ta-Nehisi Coates wrote) for “African Americans, *unfreedom* [has been] the historical norm.” Mass incarceration, including private incarceration, represents yet the latest iteration of slavery in the United States, through which powerful groups reap personal profit on the backs of African-American men, increasing the value of the corporation as soon as the prisoner becomes a number on the balance sheet. State sanctioned slavery, whether constituted by literal chattel slavery, convict-leasing, or coerced labor in privately owned facilities represents a moral failure of the United States, its legislators, and other officials.

As we remember the first Africans who were kidnapped and brought to the United States against their will four centuries ago, we should take stock of how slavery continues to infect the United States. And most importantly, we should consider how we can all contribute to putting an end to this latest iteration of the “peculiar institution.”

When Thurgood Marshall and the NAACP reached the pinnacle of the Civil Rights movement in the 1960s, they were facing mountains of precedent permitting the treatment of African Americans as second-class citizens. They overcame.

The private prison industry does not have such deep roots – yet, which is why we need to act now. And it is why Abolish Private Prisons is preparing a federal lawsuit to challenge the constitutionality of the private, for-profit prison industry. We can and must eradicate this latest iteration before it becomes “too big to fail.”