

The U.S. Prison System: An Unmoving Anchor of Systemic Racism in Our Country

Author's Statement

Though this paper was originally produced as a contribution paper for my 76-101 Interpretation and Argument class taught by Dr. Don Holmes, this project has always meant more to me than just a final essay for a class. Since my senior year of high school, I've been intrigued by the complexity of the U.S. prison system and through this assignment and previous research on my own, I have come to learn of the horrible injustices our prison system inflicts upon the African American community. I am appalled at how much of a problem mass incarceration is in our society, but also at how little this issue is talked about. The fact that such an enormous American problem is discussed so little by our society is unacceptable, and my hope is that this paper can help spread awareness about mass incarceration, contribute solutions, and inform people about how they can help create change within our prison system. I hope that one day we can all unite under a common purpose of creating a society with equality and equity, and I intend to continue pushing this notion forward through my writing.

-James

Abstract

One of the largest contributors to systemic racism in our country is the U.S. prison system. The mass incarceration of African Americans is an issue that has plagued our society for decades, and any efforts to change it have been stagnant despite the significant demand for change in recent years. When analyzing individual aspects of the U.S. prison system such as prison labor and cash bail outs, it can be determined that the rampant privatization of the prison system is the main reason why change to the U.S. prison system has been so stagnant. In particular, companies such as CoreCivic and the GEO Group are able to profit off of prison labor and maintain control through political lobbying and campaign funding of State Governors as well as influencing state governments through financially aiding the operation of state prisons. To loosen the grip the private prison industry has on the U.S. prison system, we can either vote out politicians funded by the industry or boycott companies that profit from prison labor. While these solutions are difficult to implement, they are worth pursuing as they could allow us to bring an end to mass incarceration of African Americans and change the prison system to make it equal and fair for everyone.

Keywords: mass incarceration, prison industrial complex, systemic racism, prison labor

Introduction

When looking back upon our nation's history, it is clear that much of our past still resides in our current policies, especially in terms of African American incarceration rates. Though Jim Crow laws have been abolished, vestiges from these laws remain implicit within our present prison industrial complex which continues to be an anchor of systemic racism within the United States. Despite our present still looking so similar to our past, people have begun to acknowledge that change needs to be made so that our institutions are beneficial and equal for everyone. Though strong public desire for change has only increased, the U.S. prison system continues to be a significant driver of systemic racism, delimiting African Americans opportunities for advancement in the post-Civil Rights era.

When looking at many of our institutions today and how they are designed to limit African Americans' advancement, they often have one or two specific factors that work directly against African Americans. For instance, the main contributor to systemic racism within the public education system is that the quality of education heavily correlates with the quality of the city the school resides in, much of which is caused by the segregation of African American students in the past (Gilyard 62). Since many African Americans live in poorer neighborhoods, the education they receive is almost always inherently worse than education received by people living in wealthier neighborhoods. However, the prison system stands out in the fact that there are several contributors to systemic racism within it, such as the justice system, privatization, and autonomy between state and federal jurisdiction, all of which intertwine to create a complex web of partners, regulations, and interests that work hand-in-hand to incarcerate as many African Americans as possible.

Despite this distinction, having several contributors to systemic racism is not what has made changes to the U.S. prison system so stagnant. Our institutions can be restructured so long as we have people in power who wish to do so. Rather than all its moving parts being responsible for the static nature of our prison system, I assert that it is instead the rampant privatization of the prison system at a state level that hinders society from changing the U.S. prison system. To explore the impact of prison privatization, I analyze how the U.S. prison system today came into fruition, and identify numerous components of the modern prison system and how they intertwine to work against African Americans. By diving into the U.S. prison system's past and present, this essay will paint a complete picture of the U.S. prison system and will use this picture to identify what has caused any efforts to change the U.S. prison system so stagnant. In the end, I offer possible solutions, including easily replicable examples, that United States' leaders could implement on local, state, and federal levels to address the stagnation in the US prison industrial complex and to offer alternatives to mass incarceration on a national scale.

History of The U.S. Prison System

When looking at our nation's inception, society was intended to disenfranchise enslaved Africans and other minorities while favoring White people. This premise has echoed throughout our nation's history and has governed how our society has operated for almost all of the U.S.'s history. While the founding fathers didn't intend for the prison system to be disadvantageous for African Americans and other minority groups, the prison system has proven to be one of society's greatest sources of systemic racism throughout history, and time and time again the system has been changed to continue incarcerating African Americans despite the societal changes occurring at any given point in time.

Prison Labor

One example of such a change involves the use of prison labor in our nation's history. After slavery was abolished, companies and plantations were desperate for a way to replace the free labor they received from enslaved people. Fortunately for them, the overthrow of societal changes made during reconstruction allowed companies and plantations to recreate the free labor they got from slavery by forcing African Americans into unfair debt contracts and by using prison labor. The use of prison labor, called convict leasing, would first be outlawed in Georgia in 1908, and would become nationally prohibited over thirty years later (Georgia 11). However, the use of prison labor and leasing of prisoners persists to this day due to a loophole in the Thirteenth Amendment, which states that the implementation of involuntary servitude is acceptable as a form of criminal punishment (Vazquez np). This loophole would allow prison labor to continue despite the official outlawing of convict leasing. For instance, even though Georgia officially outlawed their convict lease system as early as 1908, prison labor would still be implemented for public projects such as working on public roads throughout the rest of the twentieth century (Georgia 11). Furthermore, these leases would often be long and arduous, with little regard to the safety or wellbeing of the prisoners. A prime example of a typical lease can be seen in the case of Grant, Alexander, and Company in 1869 who leased 393 prisoners from Milledgeville penitentiary to construct the Brunswick and Macon Railroad in Georgia. This lease lasted three years, and in that time the prisoners constructed over 450 miles of railroad track (Georgia 2). Even today prison labor is still as prevalent as it was in the twentieth century, so much so that many state penitentiaries force prisoners to work on prison-owned fields, such as the Jim Ferguson Unit, who still has its prisoners grow and harvest cotton from its cotton fields (Reed np).



Figure 1: Prisoners from the Jim Ferguson Unit, which is a state-owned prison in Texas, bring in the harvest from the prison's cotton fields. *Source: Reed*

Cash bailouts

Present day interpretations of the U.S. Constitution have also aided in the substantial changes to the prison-industrial complex, especially including cash bailouts. Cash bailouts, which are mentioned in the Eighth Amendment, were first conceptualized during the birth of our nation as the Founding Fathers planned to implement it in order to tie defendants to the jurisdiction of the court. Though the Founding Fathers stated that bail should not be made excessive, they didn't give a clear definition of "excessive," which would be interpreted and taken advantage of throughout our nation's history.

During the "redlining" from = the early-to-mid 1900s, in which many institutions such as banks, schools, and even roadway systems avoided engaging with impoverished communities, especially African American communities, this loose interpretation of "excessive" would be applied to match the rest of our institutions during this time period (Gordon np). During this time, judges and lawmakers interpreted the idea of "excessive" to mean an unreasonable amount for White people and wouldn't scale this down to more impoverished people, especially African Americans. Because of this ruling, African Americans would face cash bailouts that they couldn't afford, but this wouldn't be considered excessive because White people would be able

to afford it. For instance, during the 1980s, the bail amount for drug possession skyrocketed, with the bail for felony possession of cocaine and marijuana going from \$1,000 to \$10,000, and the bail for felony possession or sale of crack going from \$5,000 to \$20,000. This increase in bail was a part of the War on Drugs, and while many White people could afford these bails, it was nearly impossible for African Americans to afford them (Miller np). This interpretation of “excessive” is still used today and is the reason why many African Americans are unable to afford cash bailouts and are forced to go to prison (Wagner np).

The rest of the U.S. prison system shares a similar history to prison labor and cash bailouts, such as incarcerating people who are not convicted of a crime and the privatization of prisons, both of which are discussed in the following sections. The prison system today is the result of constant changes and refinements to incarcerate as many African Americans as possible.

Analysis of the Modern U.S. Prison System

The modern U.S. prison system is a complex web of partners, regulations, and interests, which all contribute to the mass incarceration of African Americans. Much like in our past, many pieces of the U.S. prison system such as cash bailouts and prison labor continue to play the same key roles in incarcerating African Americans.

Harsher punishments for African Americans

Racial bias in court cases is one of the significant contributors to systemic racism, which often leads to African Americans receiving much harsher punishments than White people for the same crime (Larche np). One such case that highlights this idea is that of Lawrence Stephens, Darnel Nolen, and Paul Michael Melendres, who together robbed two people inside their home at gunpoint. Stephens and Nolen, who are African American, were sentenced to 1,823 years and 33 years respectively, while Melendres, who is White, was only sentenced to 10 years (Larche np).

Another facet is the incarceration of unconvicted people. While this has been a common practice of our prison system for most of its history, it has become particularly rampant today. Of the 547,000 people in U.S. jails, 445,000 of those people have not been convicted of a crime. Many of these individuals are African American, however this ratio of convicted and unconvicted people is much smaller for state and federal prisons (Wagner np).

Privatization

Another characteristic is the rampant privatization of the prison industry that has occurred in the past few decades. This issue in particular has worsened over the past few decades and has allowed companies such as CoreCivic and the GEO Group to amass millions of dollars each year. To put it in perspective, CoreCivic earned a total revenue of 1.86 billion in 2021 (Core 10-K 71), and the GEO Group earned a total revenue of 2.25 billion in 2021 (GEO 10-K 128). These companies have transcended from being partners to the prison system to becoming one of the biggest contributors to upholding it. They thrive off of mass incarceration as more prisoners means more demand for their services, and therefore invest heavily into politically influencing our prison system to drive up incarceration rates (Clarke np). Private prison companies offer services at a cheaper price than what most governments would pay to run their prisons, and use their status as a cheaper alternative to negotiate contracts with state governments to contribute to and even run some of their prisons (Reed np). While this cheaper alternative is good for state governments, it often leads to a decrease in safety and health standards, and is one of the greatest contributors to why state prisoners face much harsher living conditions than federal prisoners (Reed np).

A complex system

While these characteristics may seem rather singular, these factors each collaborate to

form a complex system that maligns more than it mediates those caught within its grasp. For example, the incentive to give high cash bailouts to African Americans today (mentioned in the previous section) actually derives mostly from the private prison industry's incentive to incarcerate as many people as possible, as they encourage state courts to give out these harsh cash bailouts. Large cash bailouts in turn contribute to the large number of unconvicted African Americans in jail, as people can actually get a bail out even if they're not convicted. However, since these bailouts are so high for African Americans, unconvicted African Americans can't afford them and are forced to stay in jail, despite not being charged with a crime.

To put this vicious cycle into perspective, the median bail amount for individuals between the ages of 23-39 across the U.S. is approximately \$10,000, and the average annual income of non-incarcerated men who couldn't post a bail bond is \$39,600 (Wagner np). In 2019, the average African American household income was \$43,862, with some states such as South Dakota and Iowa having average Black household incomes of \$32,389 and \$22,810 respectively. It's also important to mention that other groups such as American Indian and Alaskan Natives were affected similarly, as they also have average incomes too low to afford bail (Bednarikova np). Today, African Americans make up 38% of the approximately 1.9 million Americans in prison, meaning there are around 722,000 African Americans in prison (Wagner np), and this mass incarceration of African Americans stems from the intricacies of the modern U.S. prison system. Below, Figure 2 illustrates how complex the U.S. prison system continues to be.

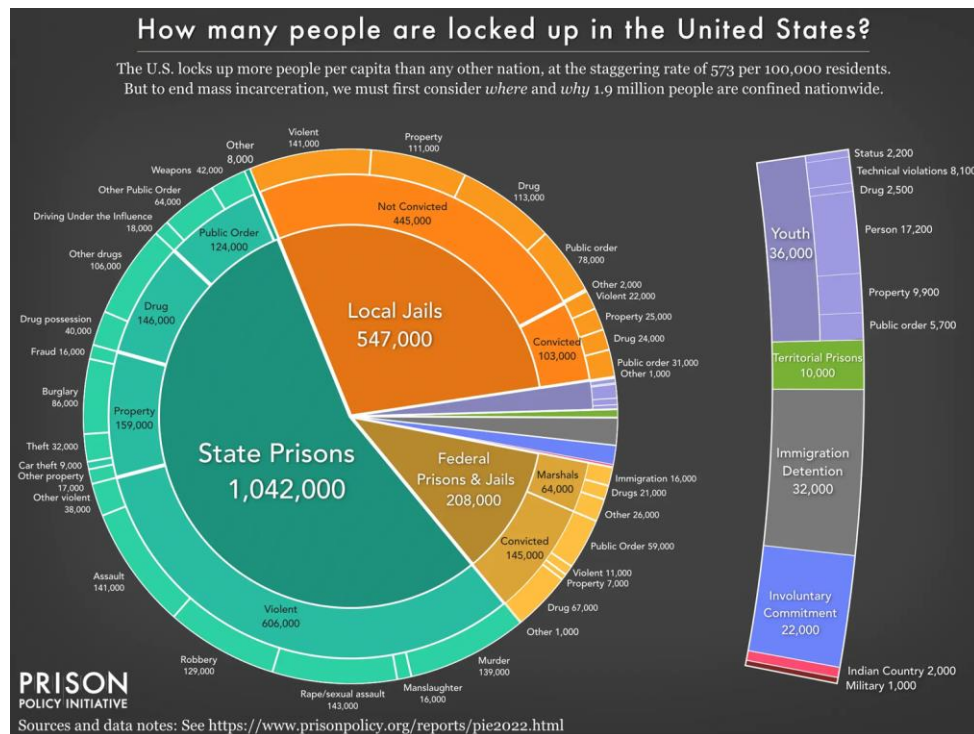


Figure 2: This pie chart displays the demographics of the U.S. prison population in 2022. In particular, this chart details how many people are in jails, state, and Federal prisons as well as what crimes these prisoners committed to end up there. *Source: Wagner*

The Anchor of the U.S. Prison System

My research shows that the main stopgap to making significant changes to the U.S. prison system is the private prison industry. Due to the nature of autonomy granted by the federal government for states to run their prisons as they see fit, private prison companies such as CoreCivic and the GEO Group have been able to establish influence on state prisons through political lobbying and direct ownership of prisons. The presence of the private prison industry has greatly contributed to the continued use of prison labor and terrible conditions that many state prisoners face, and the federal government has been slow to address these issues because of the autonomy granted to states.

Political Influence and Lobbying

The private prison industry controls the prison system through its political influence through lobbying and campaign funding. This industry uses lobbying and campaign funding to get politicians elected that will implement laws and regulations in their favor. The GEO group has given \$20+ million in campaign funding and has especially contributed greatly to political campaigns in California and Florida. This is important to note since Florida has the second highest prison population of any state in the U.S., and California has the third highest (Basti np), with Texas having the highest prison population in the U.S.

Additionally, the private prison industry has used their political influence to shift most of the prison population to state prisons, where they have much more control on how prisons are operated. Their use of political influence is displayed by the fact that by 2016, there were approximately three times more state prisoners than there were federal prisoners, and this gap has only continued to grow. This rampant control of the prison population has allowed the private prison industry to take advantage of prison labor, which often consists of harsh labor and unforgiving conditions.

Constitutionally-granted autonomy

The private prison industry has been able to take control of the prison system in large part due to the autonomy given to state governments by the federal government. This autonomy is granted through the 10th Amendment in the Constitution, as the 10th Amendment states that any rights not specified or implied in the Constitution are to be reserved by the state (Longley np). It is through the nature of the 10th Amendment that states are able to run their prisons so independently, and it is also what makes federal intervention so difficult. Unless the federal government makes direct changes to the Constitution, they don't have the jurisdiction to intervene nor do they have the capability of challenging said jurisdiction. Though government

intervention into state jurisdiction can become a heavy source of debate and controversy, it is important that the federal government be able (and willing) to intervene in state prison affairs when necessary, especially when considering that most state prisons employ terrible living conditions and unsafe environments for its prisoners.

For instance, in April 2022, the U.S. Justice Department found that the Mississippi State Penitentiary was violating the 8th and 14th Amendments of the Constitution. They were found guilty of failing to provide adequate mental health and suicide prevention treatment, subjecting people to long periods of confinement, and failing to protect prisoners from violence from other prisoners (D.O.J. MS). If the federal government had the ability to regularly inspect state prisons, unfair and harsh treatment towards prisoners like what was discovered at the Mississippi State Penitentiary could be identified and resolved much faster, and would improve the environment and treatment of prisoners overall in state prisons. Another more recent example can be seen with the Louisiana Department of Public Safety and Corrections (LDOC) who was found by the Justice Department to be confining prisoners past their custody dates, which is a violation of the 14th Amendment. Though the Justice Department formally concluded that LDOC was keeping prisoners past their custody dates in January 2023, they had been suspecting LDOC of committing these violations for the past decade, yet hasn't offered a response until now. From January to April 2022, 26.8% of prisoners released from LDOC were held past their release dates (D.O.J. LA). Of these prisoners, the median amount of days spent past release dates was 29 days, with 24% of these prisoners staying around 90 days past their release date (D.O.J. LA).

Solutions to End Mass Incarceration

Due to their iron grip on the U.S. prison system, the private prison industry is the key factor that has made any efforts to change the prison system so stagnant. While solving this

issue may seem impossible, there are a couple of solutions. Though they aren't easy to implement by any means, they are effective and will loosen the grip the private prison industry has on the prison system.

Solution 1: Decrease private prison influence among politicians

The first solution is to vote out politicians funded by private prison companies and bring in politicians who will abolish the laws that benefit the private prison companies. This solution may seem simple, but actually implementing it is quite difficult. This difficulty is due to the fact that most of these governors are from the South, where many people actually like the politicians backed by private prison companies. Though these governors are popular within their state, the ability to raise someone to challenge them could become much more feasible thanks to recent pushes to increase the power of public funding.

Over the past year, Congress has become interested in reducing the influence of large donors and limiting the priority given to corporate interests (Hendrick np). One bill that intends to accomplish increasing the public's influence was proposed by Representative John Sarbanes. Known as the *Government by the People Act*, this bill would provide matching funds for donations up to \$200 on a 6-1 ratio. If this bill were to be passed, public donations up to \$200 would be six times more impactful, and would create an incentive for a candidate to prioritize the public's interests (Hendrick np). Even though these bills haven't passed yet, there are still things candidates can do to empower public donors, such as giving out tax credits for limited donations or giving voters a small publicly funded voucher (Hendrick np). Despite the challenges, accomplishing this will leave the private prison industry powerless as their political influence and benefits from the government are removed.

Solution 2: Boycott

The second solution is to boycott private and public companies who profit from prison labor. Doing so will force companies to stop using prison labor, which will severely damage the private prison industry economically and will remove the incentive to use prison labor in the first place. However, the main issue with this solution is that many large companies such as Starbucks, Walmart, and Verizon profit from prison labor and are therefore harder to influence. While it may seem that not much can be done to change the minds of these companies, history has shown that large and organized boycotts can persuade companies as large as Verizon and Walmart to change their policies.

For example, back in 2010, Nestlé promised a *zero-deforestation* policy after being pressured by Greenpeace, an environmental boycotting organization (Consumer np). Nestlé gave in to Greenpeace's pressure after eight weeks of campaigning, campaigning that attracted around 1.5 million participants, resulted in nearly 200,000 emails sent to Nestlé, and inspired several public demonstrations outside of Nestlé's U.S. headquarters in Arlington VA (Consumer np). If enough attention is brought to this issue, it is possible that a similar boycott of these companies could be amassed. Making these companies change their policies will have a substantial impact on the private prison industry, and will also create societal change on its own, as it will force companies to stop using prison labor for profit.

Reforms are already underway

Although the prison industrial complex seems to inspire much more apathy than hope among the public, not all is lost. The potential for state reform and overall improvement of the prison system is still high, and a prime example of this notion can be seen through the prison reforms made by the state of Hawaii earlier this year. These reforms aimed to create rehabilitation programs that would ease reentry into society for previously incarcerated

individuals (HB2309 np). Through these programs, Hawaii intends to decrease the amount of previously incarcerated people returning to crime and ending up back in prison, an occurrence known as *recidivism*, as much of their prison population stems from this phenomenon (HB2309 np).

Recidivism is not unique to Hawaii, but rather is an overarching issue that nearly every state faces. Though the U.S. prison population currently sits at approximately 1.9 million people, around 600,000 people go to prison annually, and around 10 million go to jail every year (Wagner np). Much of these high rates of prison and jail entry stems from recidivism, as at least one in four people who end up in jail get arrested again in the same year (Wagner np). If every state were to implement reforms similar to the ones' Hawaii has implemented, recidivism rates would drop significantly, and mass incarceration would diminish.

Conclusion

The demand for change within our institutions comes down to bringing an end to systemic racism and creating a society that is fair and equal for everyone. This ultimate goal forces us to keep fighting for what is right, regardless of how much of an uphill battle it may be. Even though the solutions I discussed would be difficult to implement, this difficulty does not mean that they are not worth pursuing. I hope that one day my ideas will come to full fruition, and the prison system will be changed to be fair for everybody and will bring an end to the mass incarceration of African Americans.

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