IS THE PRISON COMPLEX A REVISION OF SLAVERY?

KADAH MARSHALL
College of Business
Florida Atlantic University

Abstract

Many think of slavery as the brutal practice of forcing someone to work hard without paying them a fair wage, sometimes without paying them at all. Britannica defines slavery in this manner: Slavery may be defined as a condition in which one human being was owned by another, and it was considered by law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons. This definition has been used to describe today’s prison system. Others point to the Thirteenth Amendment of the U.S. Constitution as justification for the current practice of requiring prisoners to work for pennies a day. The current prison system has been constructed as a mirror image of slavery because of their use of unfair wages, the willingness to capitalize on the plight and reality of being incarcerated, and the excessive sentencing that has become a part of our judicial criminal justice system.
Many think of slavery as the brutal practice of forcing someone to work hard without paying them a fair wage, sometimes without paying them at all. Britannica defines slavery in this manner: Slavery may be defined as a condition in which one human being was owned by another, and it was considered by law as property, or chattel, and was deprived of most of the rights ordinarily held by free persons.¹ This definition has been used to describe today’s prison system. Others point to the Thirteenth Amendment of the U.S. Constitution² as justification for the current practice of requiring prisoners to work for pennies a day. The 13th Amendment says:

- Sections 1 & 2. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.³

The current prison system has been constructed as a mirror image of slavery because of their use of unfair wages, the willingness to capitalize on the plight and reality of being incarcerated, and the excessive sentencing that has become a part of our judicial criminal justice system.

Unfair wages are an understatement of what these prisoners are being paid. There is nothing proportional about the wages that are paid to the prisoners and the profit made from their labor. According to the Federal Bureau of Prisons, “Institution work assignments include employment in areas like food service or the warehouse, or work as an inmate orderly, plumber, painter, or groundskeeper. Inmates earn 12¢ to 40¢ per hour for these work

³ Id.
assignments.” These inmates are being paid the equivalent of loose change hourly. It is a harsh realization that our criminal justice system would condone the extreme unfairness of these wages and the personal exploitation of these incarcerated people. The prison labor industry is worth billions of dollars. The prison labor industry is dependent upon the contributions of inmates who are barely compensated at all, much less fairly.

In the case of Ragnar E. Danneskjold v. State of New York Department of Correctional Services, prison inmates sued the Department of Correctional Services under the Fair Labor Standards Act for minimum wage. The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments. Covered nonexempt workers are entitled to a minimum wage of not less than $7.25 per hour effective July 24, 2009. Overtime pay at a rate not less than one and one-half times the regular rate of pay is required after 40 hours of work in a workweek. In the Danneskjold case, the prison inmates decided to sue for unpaid wages because of all the tutoring they did to help teach other inmates. They were participating as tutors for the Consortium of the Niagara Frontier which offers inmates at the Attica Correctional Facility and opportunity to earn college degrees. The judge however, ruled in favor of the prison due to

---

7 Id.
9 Danneskjold supra.
prison labor not being protected under the Fair Labor Standards Act (FSLA).\textsuperscript{10} This verdict completely disregarded the purpose behind the FLSA which was to stabilize the post-depression economy and protect the workers in the labor force using the minimum wage to create a minimum standard of living to protect the health and well-being of employees.\textsuperscript{11} The FLSA offers protection for both part-time and full-time workers in the private sector, local, state, and federal governments. Prison labor would fall under these categories. The court case however, focused on the phrase included in the Thirteenth Amendment, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.” And in focusing on this phrase, the court accepted the premise that its allowable to create involuntary servitude systems where criminal convictions are present.\textsuperscript{12} It may be that the addition of that phrase needs to be removed from the Thirteenth Amendment. Prison inmates are people, they may be stripped of certain entitlements/freedoms, yet they should not be completely diminished to little to no pay for work that helps keeps the economy thriving.

Private prisons are capitalizing off these inmates. CoreCivic and the GEO Group, which make up half of the market share of prison made $3.5 billion in 2015.\textsuperscript{13} Because this prison labor system has become so enriching for these large corporations, the concept of “lockup quotas” was also adopted by the parties in order to negotiate their contracts with federal and state authorities.\textsuperscript{14}

\textsuperscript{11} Minimum Wage, Legal Information Institute, https://www.law.cornell.edu/wex/minimum_wage, (last visited April 2, 2021.)
\textsuperscript{14} Id.
Prisons were established to rehabilitate those unable to abide by societal laws and regulations. Instead, inmates are being sold by the government to house and work in private prisons where conditions are less than favorable. Private prisons are essentially exploiting the government in order for them to be able to use these prisoners while also forcing labor from the inmates, and its labor that leaves the inmate severely underpaid and overworked. Corporate Accountability lab states, “Private prisons hold valuable government contracts featuring minimum bed guarantees and a fixed price per-prisoner provision, [along with] private companies that stock overpriced commissaries and provide telephone services, and private companies using prison labor in their supply chains.” These contracts are problematic for our justice system. If the government is under contract to keep a minimum number of inmates in a private prison, is that an incentive for them to increase the length of the sentences imposed?

Conclusion

Excessive sentencing contributes to the enslavement of prisoners by extending the amount of time the prisoner stays in the prison environment. According to the Federal Bureau of Prisons, there are 21,562 prisoners who are sentenced to 20 years or more in prison. According to the Sentencing Project, at the federal level, the prison population expanded from 20,000 in 1980 to 189,000 by 2016. Research suggests that the combined effect of the surge in drug prosecutions and the expansion of mandatory minimum sentences was a key

factor in the increase. These sentences ensure payment for private prisons and companies who depend on the prison labor. Is it possible that the need to establish quotas or to meet certain productivity goals by these private prisons becomes a factor in the sentencing?

The prison complex is more than a reversion to slavery, it is making the concept of slavery acceptable to the everyday citizen. Using inmates to acquire needed labor is a way to divert and tone down the harsh reality of exploiting people in order to benefit corporations. Immediate changes should be made starting with the miniscule wages inmates are forced to receive for their required work, then removing the government’s ability to negotiate contracts with these private corporations to use and exploit prison labor for their own profit, as well as using the concept of guaranteeing a minimum number of prisoners in any given prison at a certain time in order to ensure the corporation has sufficient labor for their projects. And finally, we need a Constitutional Amendment to the Thirteenth Amendment removing the phrase that disallows protection for convicted prisoners.