

The Demoralization of the U.S. Judicial System Through the Promotion of Private Prison Industries

by Ashley Carrie

Introduction

In the United States, the prison system has evolved into a business, which has corrupted our Justice System. “The American system of justice is being replaced by an even more flawed and insidious form of mass punishment based upon profit and expediency.”¹ Private prisons are used to alleviate the economic burden of the rising prison population on the government. Many conflicting views are held on the pros and cons of the privatization of prisons. The benefits of using Private Prison Industries are that the state government saves tax dollars, gives prisoners work to pay their costs of living and maintain prisons, and the work they do while in prison is used to rehabilitate the prisoners. A study done in 2007 examined the role of privatization on the cost of government-provided services. “Our findings suggest that if the “average” state in that group were to introduce the use of private prisons, the potential savings for one year in the Department of Corrections expenditures for public prisons could be approximately \$13 to \$15 million for that particular hypothetical state.”² Despite the cost-benefit, opponents believe that private prison has demoralized the U.S Justice System and negatively affected American society through mass incarceration.

The movement toward privatizing prisons began in the United States in the 1980s with the Correction Corporation of America, created because of the

¹ John Whitehead, *Jailing Americans for Profit: The Rise of the Prison Industrial Complex*, Huffington Post, April 10, 2012, http://www.huffingtonpost.com/john-whitehead/prison-privatization_b_1414467.html, (last visited April 11, 2017).

²James F. Blumstein, Mark A. Cohen, Suman Seth, *Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons*, December 2007. Vanderbilt Law and Economics Research Paper No. 03-16; Vanderbilt Public Law Research Paper No. 03-05, <https://ssrn.com/abstract=441007> or <http://dx.doi.org/10.2139/ssrn.441007>, (last visited April 11, 2017).

increase in prison populations.³ The increase in the prison population gave rise to the cost of operating prisons.⁴ It was viewed as a waste of tax payers' dollars and became an issue for federal and state governments. As a solution, the state governments made contracts with private companies, giving them the right to make and maintain prisons. A business agreement between the government and private prisons that guarantees the capacity of a prison will be filled to a certain percentage point compromises the integrity of the judicial system. In the Public Interest (ITPI), a Washington, D.C. based research and policy group on public services, reported in September 2013 research project⁵ that it found so-called 'bed guarantees' in around 65% of the more than 60 private prison contracts it analyzed, including contracts from Texas, Ohio, Colorado and Florida. The bed guarantees, or "lockup quotas," ranged from 70% minimum occupancy in at least one California facility to 100% occupancy at three Arizona prisons. The most common bed guarantee was 90%.⁶ In order to meet the conditions of these contracts, laws were created, not based on the well-being of society, but in order to meet the conditions of these contracts and to ensure profit for private prisons. These agreements create an incentive to put citizens behind bars at a high rate, thus leading to mass incarceration. The business contract creates an incentive for the judicial system to imprison individuals in order to uphold their agreement or to meet their quotas. The privatization of prisons allows big businesses to manage some prisons, in order to use prisoners for cheap labor.

The rising concerns about how private prison industries are negatively affecting the judicial system. Here are some of the observations, private prison industries have negatively affected society by increasing the prison population

³ *Private Prisons are Back*, Corrections Project, http://www.correctionsproject.com/corrections/pris_priv.htm, (last visited April 11, 2017).

⁴ *Id.*

⁵ Joe Watson, *Report Finds Two-Thirds of Private Prison Contracts Include "Lockup Quotas"*, Prison Legal News, July 31, 2015, <https://www.prisonlegalnews.org/news/2015/jul/31/report-finds-two-thirds-private-prison-contracts-include-lockup-quotas/>, (last visited April 11, 2017).

⁶ *Id.*

for profit. In one study sponsored by the Sentencing Project, author Cody Mason, observed, “Finally, private prison companies’ dependence on ensuring a large prison population to maintain profits provides inappropriate incentives to lobby government officials for policies that will place more people in prison. This is evidenced by the creation and coordination of model legislation through conservative lobbying groups, as well as in the political contributions and lobbying efforts of individual companies. This effort to increase reliance on incarceration comes at a time where America’s rate of imprisonment is the highest in the world and when the prison population is far beyond the point of diminishing returns in terms of public safety.”⁷

The United States has the largest prison population in the world, “U.S. Statistics reveal that the United States holds 25% of the world’s prison population, but only 5% of the world’s people.”⁸ Powerful politicians and businesses use policies and laws to guarantee a large prison population for labor. “Policies reveal how private prison companies (PPCs) use political campaign donations, political lobbyists and relationships with government officials to increase their profits by promoting policies that result in more people being incarcerated.”⁹ Because of these conflicting interests, one might wonder if the Judicial System has become more concerned about protecting the interest of private prison industries, rather than promoting justice. As author Vick Peláez surmised, “The passage of laws that require minimum sentencing, without regard for circumstances. . . and. . . a large expansion of

⁷ Cody Mason, *Too Good To Be True, Private Prisons in America*, January 2012, The Sentencing Project, <http://sentencingproject.org/wp-content/uploads/2016/01/Too-Good-to-be-True-Private-Prisons-in-America.pdf>.

⁸ Vick Peláez, *The Prison Industry in the United States: Big Business or New Form of Slavery?*, Global Research, March 10, 2008, <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>, (last visited April 11, 2017).

⁹ Matthew Clarke, *Study Shows Private Prison Companies Use Influence to Increase Incarceration*. Prison Legal News, (August 22, 2016), <https://www.prisonlegalnews.org/news/2016/aug/22/study-shows-private-prison-companies-use-influence-increase-incarceration/>, (last visited April 11, 2017).

work by prisoners creating profits [makes one wonder if] “that motivates the incarceration of more people for longer periods of time.”¹⁰ Corporate control of prisons has demoralized the judicial system. It hinders them from providing impartial and unbiased decisions.

Authority

Private Prison Industries have been described as the rebirth of slavery and Jim Crow. After the Civil War, the South wanted to preserve the slave labor and hinder Reconstruction, the period after the Civil War to promote and ensure slaves’ freedom and rights. They created laws, such as convict leasing. Black Codes became legalized slavery. “After the 1861-1865 Civil War, a system of hiring out prisoners was introduced in order to continue the tradition of slavery.”¹¹ This was made possible through enforcing rules that were only applied to African Americans called the black codes. African Americans in the South were sent to prison if they violated black codes. The black codes are described as having the primary purpose of restricting blacks’ labor and activity.¹² These policies were put in place in order to reverse the equalizing effects of the Civil War and to keep Reconstruction from being implemented in the South, which left African Americans economically dependent. “After reconstruction, a majority of whites during this time believed newly freed African Americans were too lazy to work, which urged legislators to pass the black codes. This was essentially a system of white control. These codes varied from state to state, but were rooted in slavery, and they foreshadowed Jim Crow laws to come.”¹³

¹⁰ Vick Peláez, *The Prison Industry in the United States: Big Business or New Form of Slavery?*, Global Research, March 10, 2008, <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>, (last visited April 11, 2017).

¹¹ *Id.*

¹² *Black Codes*, History.com, 2010, <http://www.history.com/topics/black-history/black-codes>, (last visited April 11, 2017).

¹³ Aristotle Jones, *The Evolution: Slavery to Mass Incarceration*, The Huffington Post, Oct. 6, 2016, http://www.huffingtonpost.com/entry/the-evolution-slavery-to-mass-incarceration_us_57f66820e4b087a29a54880f, (last visited April 11, 2017).

The Modern Prison System has similar characteristics that existed in slavery and Jim Crow. “This feat has been achieved largely by appealing to the racism and vulnerability of lower-class whites, a group of people who are understandably eager to ensure that they never find themselves trapped at the bottom of the American totem pole. This patter, dating back to slavery, has birthed yet another racial caste system in the United States: mass incarnation.”¹⁴

Refusing constitutional rights to prisoners allows for a corrupt justice system. The Fifth Amendment in the U.S. Constitution addressed the rights of prisoners and states, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”¹⁵ The takings clause of the Fifth Amendment implies labor, if interpreted as a property right, cannot be taken without due process of law. Allowing private prisons to exploit prison labor by paying them from 12 cents to 40 cents an hour¹⁶ suggests that once a citizen becomes a prisoner, they forfeit their constitutional rights. Private prison industries are using prison labor under the theory that they are government-property. In a study conducted by the ACLU, they noted, “In 2010, the two largest private prison companies alone received nearly \$3 billion dollars in revenue, and their top executives, according to one source, each received annual compensation packages worth well over \$3 million.”¹⁷

¹⁴ Michelle Alexander, *The New Jim Crow: Mass Incarceration and the Age of Colorblindness*, The New Press, 2010, <https://genderlawjustice.berkeley.edu/wp-content/uploads/2012/03/The-New-Jim-Crow.pdf>, (last visited March 30, 2017).

¹⁵ U.S. Constitution, Amendment V.

¹⁶ Prison Policy Initiative Section III: *The Prison Economy*, <https://www.prisonpolicy.org/prisonindex/prisonlabor.html>, (last visited April 11, 2017).

¹⁷ *Banking on Bondage: Private Prisons and Mass Incarceration*, The American Civil Liberties Union, Nov. 2, 2011, https://www.aclu.org/sites/default/files/field_document/bankingonbondage_20111102.pdf. (last visited April 11, 2017).

Some argue that the Constitution permits exploitation of prisoners' labor because they are stripped of their rights, "Today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans. Once you're labeled a felon, the old forms of discrimination-employment discrimination, housing discrimination, denial of the right to vote, denial of education opportunity, denial of food stamps and other public benefits, and exclusion from jury service- are suddenly legal."¹⁸

Then in the Thirteenth Amendment we have, "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 its jurisdiction."¹⁹ The Fourteenth Amendment states, "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."²⁰

Analysis

Though it seems that our country should be far removed from injustices that occurred after the Civil War, history is repeating itself through the current privatization of prisons. Drug charges and unfair rendering of jail time have become the Black Codes of this century. African Americans make up the majority of the population in prisons. "Although black people make up just 13 percent of the overall population, they account for 40 percent of U.S prisoners."²¹ According to the Bureau of Justice Statistics (BJS), black males are incarcerated at a rate "more than 6.5 times that of the white males and 2.5 that of the Hispanic males and black females are incarcerated at approximately

¹⁸ Michelle Alexander, *The New Jim Crow: Mass Incarceration and the Age of Colorblindness*, The New Press, 2010, <https://genderlawjustice.berkeley.edu/wp-content/uploads/2012/03/The-New-Jim-Crow.pdf>, (last visited March 30, 2017).

¹⁹ U.S. Constitution, Amendment XIII.

²⁰ U.S. Constitution, Amendment XIV.

²¹ Rania Khalek, *WORLD 21st-Century Slaves: How Corporations Exploit Prison Labor*, AlterNet, July 21, 2011, http://www.alternet.org/story/151732/21st-century_slaves%3A_how_corporations_exploit_prison_labor, (last visited April 11, 2017).

three times the rate of white females and twice that of the Hispanic females.”

²² And in the ACLU Report, it was noted that between 1970 and 2005, the number of citizens incarcerated grew by 700 percent.²³ And it must be noted that studies have shown that the level of violence against inmates in private institutions has escalated as well as numerous instances of unsafe living conditions being found in private prisons.²⁴

Conclusion

The fifth, thirteenth, and fourteenth amendments of the U.S. Constitution are in need of interpretation and revision. The issue with the emergence of private prison industries is that it injects potential bias into the judicial system. The current interpretation of these amendments allow the government and private prison industries to compel and control prisoners' labor. This affects the justice system because verdicts may be based upon the need to meet quotas in order to comply with government contracts with the private prison industries, insuring certain profit levels for the private prisons. The Constitution seems to contemplate incarcerating citizens to deprive them of their rights once they become prisoners. The Fourteenth Amendment protects prisoners because it makes no exceptions, all people deserve equal treatment under the law. Private prison industries creates unequal and biased sentencing of criminals to support the continuation and profit of its industries.

According to an article in the Huffington Post, “Prison privatization is neither fiscally responsible nor in keeping with principles of justice.”²⁵ The article continues by saying, “It simply encourages incarceration for the sake of profit.

²² Id.

²³ *Banking on Bondage: Private Prisons and Mass Incarceration*, The American Civil Liberties Union, Nov. 2, 2011, https://www.aclu.org/sites/default/files/field_document/bankingonbondage_20111102.pdf, quoting Public Safety Performance, Public Safety, Public Spending: Forecasting America's Prison Population 2007-2011, 11, (last visited April 11, 2017).

²⁴ Id.

²⁵ John Whitehead, *Jailing Americans for Profit: The Rise of the Prison Industrial Complex*, Huffington Post, April 10, 2012, http://www.huffingtonpost.com/john-whitehead/prison-privatization_b_1414467.html, (last visited April 11, 2017).

It is a justice system based on increasing the power and wealth of the corporate state.”²⁶ Another interpretation of these Amendments is needed; the amendments should be interpreted in a way that is consistent with other laws and rights of the United States. When these amendments were made, it was used to still force African Americans to work through convict leasing. An updated interpretation of these Constitutional Amendments should clearly state the rights and protections of prisoners. Also, non-violent offenders and those with drug charges should receive a lesser sentence. Though the prisoners are viewed as criminals, it should not take away from their worth as humans and as citizens of the United States, nor reduce them to involuntary servitude.

²⁶ *Id.*