

# 91020000

## Cameron Rowland

*13<sup>th</sup> Amendment to the U.S. Constitution*

*Passed by Congress January 31, 1865. Ratified December 6, 1865.*

*Section 1.*

*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.*

*Section 2.*

*Congress shall have power to enforce this article by appropriate legislation.*

Property is preserved through inheritance. Legal and economic adaptations have maintained and reconfigured the property interests established by the economy of slavery in the United States. The 13<sup>th</sup> constitutional amendment outlawed private chattel slavery; however, its exception clause legalized slavery and involuntary servitude when administered “as a punishment for crime whereof the party shall have been duly convicted.” Immediately following the passage of the 13<sup>th</sup> amendment the advent of laws designed to criminalize black life, known as Black Codes, aligned the status of the ex-slave and the pre-criminal:

Every southern state except Arkansas and Tennessee had passed laws by the end of 1865 outlawing vagrancy [understood as either homelessness or joblessness] and so vaguely defining it that virtually any freed slave not under the protection of a white man could be arrested for the crime.<sup>1</sup>

Using the 13<sup>th</sup> amendment, Southern state governments effectively enmeshed themselves within the antebellum cycle of accumulation. The system of convict leasing financialized prisoners by leasing their labor to private industry. Many former slaves were leased back to former slave owners, now as a fully fungible labor force.<sup>2</sup> Although no longer designated as private property, ex-slaves functioned as a kind of public property whose discounted labor benefited both the governments that leased them and the corporations that received them.<sup>3</sup>

---

1 Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II* (New York: Anchor, 2009), 53.

2 “By the late 1870s, the defining characteristics of the new involuntary servitude were clearly apparent. It would be obsessed with ensuring disparate treatment of blacks, who at all times in the ensuing fifty years would constitute the vast majority of those sold into labor. They were routinely starved and brutalized by corporations, farmers, government officials, and small-town businessmen intent on achieving the most lucrative balance between the productivity of captive labor and the cost of sustaining them. The consequences for African Americans were grim. In the first two years that Alabama leased its prisoners, nearly 20 percent of them died. In the following year the mortality rate rose to 35 percent. In the fourth, nearly 45 percent of them were killed.” Blackmon, *Slavery by Another Name*, 57.

3 As ruled in *Ruffin v. Commonwealth*, the prisoner “is in a state of penal servitude to the State. He has, as a

U.S. steel, coal and railroad industries grew as a result of extensive convict lease programs in the South.<sup>4</sup> Corporate production was limited, however, by insubstantial Southern roads. In the early 20<sup>th</sup> century, the majority of roadways in the rural south were unpaved dirt roads. Due to rain, sections frequently became impassable. In 1904 less than three percent of Georgia's 57,000 miles of roads were paved with gravel, stone, or sand clay, and none with bituminous macadam.<sup>5</sup> The U.S. Department of Agriculture Office of Public Roads, established in 1905, and local, non-governmental "good roads" associations influenced Southern Progressive politicians in prioritizing road development. Up to this point, most Southern states had employed the largely ineffective statute labor system, which conscripted all citizens of a state to work on the roads four to five days per year. As a more reliable alternative, politicians turned to convict labor: "In North Carolina and elsewhere in the South where enthusiasm for good roads reigned, convict leasing was attacked, and the state was urged to put convicts to work on the roads; the good roads movement became 'identified with the movement to take the prisoner out of the cell, the prison factory and the mine to work him in the fresh air and sunshine.'"<sup>6</sup> The Progressive rhetoric of penal reform emphasized mutual benefit—William L. Spoon, a civil engineer and good roads advocate in North Carolina, stated in 1910: "The convict is forced to do regular work...and that regular work results in the upbuilding of the convict, the upbuilding of the public roads, and the upbuilding of the state."<sup>7</sup>

Unlike convict leasing, which facilitated private corporations' use of prisoners' labor, the chain gang system restricted the labor of the incarcerated to "state-use."<sup>8</sup> Organized labor championed this restriction as convict leasing competed with "free market" labor.<sup>9</sup> Progressive politicians rationalized the alternative chain gang system via a procedural legal framework that continues to characterize liberal reforms today: "the punishment [of convicts] ought not to be at the hands of a private party who may be tempted by the exigencies of business ... to make punishment either more or less."<sup>10</sup> More contemporary liberal reforms to reduce judicial discretion include the establishment of mandatory minimum sentences. As Naomi Murakawa describes, while this kind of proceduralism reduces the variance of punishment, it also contributes to the "pursuit of administrative perfection" and effectively strengthens U.S. carceral machinery.<sup>11</sup> By 1928, every U.S. state's convict lease laws had been repealed in favor of laws that restricted prison labor to state-use. In this way:

[T]he state became the direct exploiter of that labor in an effort to build and maintain a transportation infrastructure that might contribute to the expansion of the manufacturing and commercial sectors. And just as that earlier system of forced labor was driven primarily by the dictates of political economy rather than humane penology, so too was the decision to remove the South's forced labor pool from private enterprise and give it to the "people" in the interest of a more public notion of economic development.<sup>12</sup>

---

consequence of his crime, not only forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being a slave of the State. He is *civilliter mortuus*; and his estate, if he has any, is administered like that of a dead man." *Ruffin v. Commonwealth*, 62 Va. 790, 796 (Va. 1872).

4 Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), 40.

5 Lichtenstein, *Twice the Work of Free Labor*, 177.

6 Alex Lichtenstein, "Good Roads and Chain Gangs in the Progressive South: 'The Negro Convict is a Slave'," *The Journal of Southern History* 59, no. 1 (1993): 87.

7 William L. Spoon, "Road Work and the Convict," *Southern Good Roads* 2 (November 1910): 15.

8 Kim Gilmore, "Slavery and Prisons: Understanding the Connections," *History Is A Weapon*, accessed January 6, 2016, <http://www.historyisaweapon.com/defcon1/gilmoreprisonslavery.html>.

9 Lichtenstein, *Twice the Work of Free Labor*, 158.

10 Eugene C. Branson, "Eugene Cunningham Branson Papers, Correspondence," *Journal of Labor* (July 17, 1908): 4.

11 Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (New York: Oxford, 2014), 26.

12 Lichtenstein, "Good Roads and Chain Gangs," 106.

The interwoven economy of road improvement and prison labor expanded on previous stages of industrialization. The development of transport infrastructure and logistics was a precondition for the shipping of slaves across the Atlantic, and was the primary purpose of the slave and convict leased labor used to build U.S. railroads. The transition to chain gang labor extended this genealogy, adapting it to the development of publicly owned infrastructure.

The rate of incarceration in the U.S. remained at approximately 110 people per 100,000 from 1925 to 1973.<sup>13</sup> Following the passage of the Omnibus Crime Control and Safe Streets Act of 1968 signed by President Johnson and the Drug Abuse Prevention and Control Act of 1970 signed by President Nixon, the scale of prison development and the rate of incarceration increased dramatically. By 2014 the rate of incarceration had risen to 612 people per 100,000.<sup>14</sup> Despite the rhetoric of colorblindness, the administration of racialized law has effectively maintained racial order. In 2014, an estimated 539,500 black people made up the racial majority of the 1,561,500 people in federal and state prisons in the United States, and were incarcerated at over five times the rate of whites.<sup>15</sup> Ruth Wilson Gilmore writes that the development of prisons in California beginning in the 1970s served to utilize the state's nonproductive surpluses of "finance capital, land, labor, and state capacity."<sup>16</sup> As inert overaccumulation, the stasis of these surpluses constituted an impending crisis. The "prison fix," as Gilmore terms it, financed prison construction through government issued bonds. California avoided crisis by developing "public markets for private capital" that would use its surplus to fuel the expansion of its prison system.<sup>17</sup>

Through an increasing set of capitalizations, people in prison have become part of a nexus of government economic interests. While inmates serve as captive consumers to various private suppliers, many jails and state prisons also impose pay-to-stay fees. These daily fees incurred for residing at the institution can range from \$1 to \$142.<sup>18</sup> These fees often outweigh the wages of typical work programs, forming a debt that is immediately up for collection upon release.<sup>19</sup> Outside of prison, formerly incarcerated drug felons are denied welfare benefits and food stamps. In 2013, 37 states imposed some form of restrictions on access to Temporary Assistance for Needy Families (TANF) welfare benefits for drug felons, and 34 states imposed some form of restrictions on access to Supplemental Nutrition Assistance Program (SNAP) food stamps for drug felons.<sup>20</sup>

State-use laws still prescribe U.S. federal and state prison institutions as the primary conduits of inmate labor.<sup>21</sup> In 2005, the Bureau of Justice Statistics recorded that 775,469 of the 1,321,685

---

13 Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* (Washington, DC: Department of Justice, 1925-1973).

14 Bureau of Justice Statistics, *Prisoners in 2014* (Washington, DC: Department of Justice, 2014), 1.

15 Bureau of Justice Statistics, *Prisoners in 2014*, 15.

16 Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California, 2007), 57.

17 Gilmore, *Golden Gulag*, 63.

18 Lauren-Brooke Eisen, "Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause," Brennan Center for Justice, modified July 31, 2014, <https://www.brennancenter.org/analysis/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate-excessive-fines-clause>.

19 "By 1988, forty-eight states authorized some form of correctional fees. Room and board fees grew rapidly in the second half of the 1980s, becoming even more common in the 1990s and into the 21st century. By 2004, approximately one-third of county jails and more than fifty percent of state correctional systems had instituted "pay-to-stay" fees, charging inmates for their own incarceration." Eisen, "Paying for Your Time."

20 The 1996 Personal Responsibility and Work Opportunity Reconciliation Act welfare reform "...imposed a denial of federal benefits to people convicted in state or federal courts of felony drug offenses. The ban is imposed for no other offenses but drug crimes. Its provisions that subject individuals who are otherwise eligible for receipt of SNAP or TANF benefits to a lifetime disqualification applies to all states unless they act to opt out of the ban." Marc Mauer and Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits* (Washington D.C.: The Sentencing Project, 2013), 1-2.

21 Passed in 1979, the Prison Industry Enhancement Certification Program currently allows participating states, 38 prison systems in total, to establish joint ventures in which inmates work for private corporations (Bureau of Justice

people in public prisons (not including jails) worked in prison industries, institutional support services, public works, farming or other forms of labor.<sup>22</sup> Many state codes have work requirements or options for requirement.<sup>23</sup> New York correctional code states: "The commissioner and the superintendents and officials of all penitentiaries in the state may cause inmates in the state correctional facilities and such penitentiaries who are physically capable thereof to be employed for not to exceed eight hours of each day other than Sundays and public holidays."<sup>24</sup>

The state-use of prisoner labor does not result in publicly traded profit, but rather in savings. The savings function of the neoliberal state is a reflection of governance modeled after business. In New York State, inmates provide savings on the basis that they are paid \$0.10 to \$1.14 an hour.<sup>25</sup> This reduced labor cost does not appear as an increased profit margin, but is dispersed as savings on the cost of the products and services rendered to the state and as revenue intended to offset the operating budget of the Department of Corrections and Community Supervision. The savings provided by the state-use of inmate labor describes a discrete dependence between the state's correctional and economic systems. Without profits or direct comparison to market rates, it is difficult to quantify the total savings that inmate labor provides the state.<sup>26</sup>

In the early 1990s, many states began to expand the savings function of inmate labor by offering commodities made in state prison industry facilities to private nonprofit organizations within the same state. New York added this provision to its correctional code in 1991.<sup>27</sup> Nonprofit partnerships often serve a savings function themselves, allowing the state to carry out operations through grants or contracts without having to maintain full-time or unionized staff. The savings function is a form of austerity that may be more efficacious than profit. These savings, as absences of costs and information, operate as financial and rhetorical instruments of governmental opacity.

91020000 is the customer number assigned to Artists Space upon registering with Corcraft; the market name for the New York State Department of Corrections and Community Supervision, Division of Industries. Corcraft's mission is: "to employ inmates in real work situations producing quality goods and services at competitive prices, delivered on time as required by the State of New York and its subsidiaries at no cost to the taxpayer."<sup>28</sup> By law, Corcraft can only sell to government agencies (including other states) at the state and local levels, schools and universities, courts and police departments, and certain nonprofit organizations.

---

Assistance, *Prison Industry Enhancement Certification Program* [Washington, D.C.: Department of Justice, 2012], 4). The majority of private prison contracts reviewed by In The Public Interest include occupancy guarantees of 80-100% (In the Public Interest, *Criminal: How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits for Private Prison Corporations* [Washington D.C.: In The Public Interest, 2013], 6). However, the PIECP includes only 5000 prisoners out of the total 1.5 million prisoners (Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities* [Washington, D.C.: Department of Justice, 2005], Appendix table 16). Private prisons hold 8.4% of this total prison population (Bureau of Justice Statistics, *Prisoners in 2014*, 15).

22 Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities* (Washington, DC: Department of Justice, 2005), Appendix table 16.

23 Extensive case law, most recently *Sanders v. Hayden*, 544 F.3d 812, 814 (7th Cir.2008), has ruled that inmates are not employees of the state and are not protected by the Fair Labor Standards Act.

24 New York Correctional Code § 171.

25 Michael Virtanen, "For Low Pay and a Chance, Inmates get to Work," *Bloomberg Businessweek*, last modified February 13, 2012, <http://www.businessweek.com/ap/financialnews/D9SSIB180.htm>.

26 As Corcraft is a New York State Preferred Source, government agency customers do not conduct a price comparison. This is ostensibly because Corcraft offers the lowest prices on all the products it provides.

27 New York Correctional Code § 171.

28 "Who We Are," Corcraft, accessed January 6, 2016, <http://www.corcraft.org/webapp/wcs/stores/servlet/WhoWeAreView?langId=1&storeId=10001&catalogId=10051>.