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IML 440: Thesis Studio

The New Antebellum

Introduction

The 13th Amendment states: "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." (National Archives n.d.) The stipulation of "except as punishment for crime whereof the party shall have been duly convicted" is striking for two reasons: it has allowed for unpaid labor to be an essential part of the American economy and the American judicial system has a long recorded history of wrongful convictions with a circular incarceration system that often traps people in a cycle of repeat offenses. As of 2024, The United States correctional system is currently holding around 1.9 million people and incarcerates people at the nonplussing rate of 583 per 100,000 residents [1].

There's a lack of transparency surrounding the goods and services that Americans consume which this project hopes to somewhat remedy. If you've shopped at Whole Foods, Kroger, or Target there's a chance that you may have eaten food produced by prison labor. A two-year investigation done by the Associated press found that cattle and crops produced by the Louisiana State Penitentiary are linked to a slaughterhouse in Texas that goes into the supply chains of big businesses including McDonald's, Walmart, and Cargill. Originally an 8,000-acre plantation, the Louisiana State Penitentiary in Angola is now a maximum-security prison where three-quarters of the penitentiary's population are serving life sentences. Since 1965, the

[1] Wagner and Sawyer, "Mass Incarceration."

penitentiary has produced numerous streams of income from its population: corn, cotton, and mattresses are just a few. If incarcerated individuals refuse to work, it could negatively affect their chances at parole or have them subject to harsh punishments like being sent to solitary confinement.

A report done by More Perfect Union found that the state of Alabama has contracts with hundreds of private companies including McDonald's, Wendy's, Burger King, Golden Coral, and even the Alabama Bureau of Pardons and Paroles. The state takes around 40% of wages and often denies parole to keep laborers; these methods have allowed them to generate billions (More Perfect Union 2024). In California inmates generally make less than 74 cents per hour [2] and many prisons will often take a portion of their workers' paycheck for various fees (like medical fees and room and board) [3] . People are being forced work for next to nothing to pad the profits of grocery chains, restaurant chains, and state government. This study will address the questions: How much financial burden are incarcerated individuals in the United States truly carrying? Where does the money these workers are producing go? What companies are profiting the most? And how much do these companies rely on prison labor for a positive bottom line? How does this supply chain dynamic affect the way we engage with consumer goods and transactional interactions? By examining surveys and fiscal data, this project aims to explore how mass incarceration, and subsequently mass labor theft, impact the U.S. economy, interpersonal relationships, and larger social structures like race and consumerism.

Background

[2] Nanguneri, "If Californians Vote to Ban Slavery This Fall, Will Prisoners Get a Raise?"
[3] (Eisen)

Prior to the Civil War, a relatively small amount of people were incarcerated in the American south[4]. Free Black offenders were commonly sentenced to severe physical punishment or death, and the fate of enslaved offenders were largely left in the hands of their owners. While most southern states were slow to adapt penal and humanitarian reforms gaining traction in the Northeast, the eventual transition away from corporal and capital punishment was seen as a victory. However, the period following the Civil War was filled with unchecked white supremacy and large labor shortages. The carceral system born from the post Antebellum South resulted in the social, political, and physical death of hundreds of thousands of people.

Convict leasing swept through the South after the Civil War, this development coincided with a stark change in prison populations and racial disparities. Through Black Codes states were able to regulate the lives of Black American and charge them with a mirage of petty crimes[5]. As Camille Westmont and Ava Colclasure argue: "While Southern states had a social motive for these discriminatory tactics– maintaining white racial supremacy through maintaining control over the state's Black population– states also had an economic motive to imprison even more people: more prisoners translated into larger lease profits."[6] At the end of 1865, Georgia's only penitentiary held 177 prisoners, and "for the first time a large number of Negroes was among them"[7]. In Tennessee, Black prisoners accounted for less than 5% of state prisoners in 1860, but by 1891 they accounted for 75% of the prison population[8]. By 1877, ten of the eleven Confederate states were leasing prisons to private industries[9]. Although the Amhurst-Summers Act of 1935 prohibited the interstate sale of goods produced by carceral labor, the Prison

[4] Westmont and Colclasure, "An Archaeology of Convict Leasing in the American South."
[5] Terrell, "The Convict Leasing System."
[6] Westmont and Colclasure, "An Archaeology of Convict Leasing in the American South."
[7] Muller, "Freedom and Convict Leasing in the Postbellum South."
[8] Westmont and Colclasure, "An Archaeology of Convict Leasing in the American South."
[9] Muller, "Freedom and Convict Leasing in the Postbellum South."

Industry Enhancement Certification Program (PIECP) allows certified federal, state, local, and tribal departments of corrections to evade normal restrictions on the sale of goods produced by carceral labor in interstate commerce[10].

Because of its past, United States' carceral system is an ethno-racially, economically, and gender unequal institution; historically, prison labor is tied to nineteenth and twentieth century domains of racial capitalism [11]. In "Prison Agriculture in the United States: Racial Capitalism and the Disciplinary Matrix of Exploitation and Rehabilitation" Carrie Chennault and Joshua Sbicca define racial capitalism as "political economic development and reproduction predicated on ascribing value and extracting capital through ethnoracial hierarchies and differences" (p. 175, 2023). There's a lack of transparency surrounding many of the regulatory systems, goods, and services that shape our country. In a critical analysis of punitive systems, Rusche and Kirchheimrt (Punishment and Social Structure) apply the concepts of Karl Marx and Frederik Engels to assert that "the criminal occupied in forced labor" exist beyond the domain of political economy as "ghosts outside of its realm"[12].

Since work is most often mandatory, if an incarcerated individual refuses to work, they can face disciplinary measures like loss of privileges and/or property, solitary confinement, and the loss of contact with family [13]. Considering that the United States' prison system operates through modes of social and economic control, disproportionately criminalizes of people of color and low-income individuals, and generally pays less than 2 dollars per hour, exploitation seems to be a fundamental disposition of the prison system [14]. Adam Reich argues: "Yet within the

[10] National Correctional Industries Association, "About PIECP."
[11] Chennault and Sbicca, "Prison Agriculture in the United States."
[12] Gibson-Light, "The Ghosts Inside."
[13] Jarman and Heard, "Prison Work in Law and Reality."
[14] Chennault and Sbicca, "Prison Agriculture in the United States."

contemporary prison there are signs this political economy has turned on its head. Whereas in the past, state coercion helped prisons generate profit for private markets, in the present, market ideas are used within prisons to facilitate state control." By the enforcement of compulsory work, low wages, unequal work opportunities, and overpriced commissaries, private and state prisons reinforce dominant power structures. Through neoliberalism and racial capitalism, the United States constructs a criminal industrial complex to exercise modes of control and conceal the sociopolitical problems plaguing this country.

The rise of neoliberal hegemonic thought in the mid 20th century is, in part, known to be due to a manufacturing of social and cultural crises through Ronald Raegan's and Margeret thatcher's political reigns[15]. These crises culminated into a 'crisis of crime'; neoliberalism purported the idea that this was due to the welfare state which created an ingrained culture of poverty, violence, and crime, especially within communities of color[16]. In "Neoliberalism", Julie Wilson argues that "neoliberalism constructs a criminal industrial complex to capitalize on the biopolitics of disposability"[17]. According to Wilson, " Within neoliberalism, everyone is potentially disposable, but the biopolitics of disposability draw lines between "winners" and "losers" via market competition" [18]. Under neoliberalism, the state's function is to support and protect the private sector. As a facet of the relationship between the state and the somatic lives of citizens, biopolitics enable the state to determine where bodies fall onto the binary of valuable and disposable. Those deemed unfit or unproductive can be pushed to the margins of society. Subsequently, as Angela Davis argues in her book *Are Prisons Obsolete?*, the carceral system

[15] Wilson, *Neoliberalism*.
[16] Wilson.
[17] Wilson.
[18] Wilson.

ideologically serves to relieve Americans "of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism"(2003).

Current Carceral State

How Many People Are Incarcerated in the United States in 2024?	
Total	1,935,000
State Prisons	1,071,00
Local Jails	550,000
Federal Jails and Prisons	208,000
Immigration Detention Centers	46,000
Involuntary Commitment	25,000
Youth Detention Centers	25,000
Territorial Jails: 7,000	7,000
Indian County Jails	2,000
Military Jails	1,000

Figure 1: The incarcerated population in 2024

Source: Prison Policy Initiative (2024)

State officials often purport that the main goals of carceral work programs are to lower rates of recidivism, offer individuals valuable schools, and offset the costs; this allows prisons to show that their operations are beneficial to the public. Although labor programs have been reported to increase earnings and formal employment, with a greater impact on the employment

of women [19], and many external labor programs (i.e. jobs that do not support the prison facilities) proclaim the missions of easing reentry and building valuable experience, they can also be grounds for exploitation, mistreatment, and emotional turmoil [20]. In an exploration of the prison system's cultural perception and messaging, Chennault and Sbicca state: "prisons prioritize their need to remain socially relevant over the needs of incarcerated people through methods of disciplinary power, namely by regulating prison space, time, and behaviors"[21]. Jobs that are more demanding or require special skills now have higher wages but, due to their scarcity, majority of the prison population works lower wage, low-status jobs with shorter hours like "prison housework"; favored assignments are delegated based on compliance and positive evaluations, allowing the labor to somewhat function as an enforcer of prison order [22].

Today, most prisons in the United States have work programs to employ incarcerated workers; almost 99% of public adult prisons and 90% percent of private adult prisons have these programs[23] (ACLU). Over 65 percent of people incarcerated in state and federal prisons work, yet, they are not classified as formal employees.[24] As a result, today's workers are denied many standard rights and protections, this includes **wage regulation**, the right to assemble, workplace health and safety regulations, and unemployment insurance[25]. There are four primary forms of prison labor programs: facility support services, prison industries, public work assignments, and

[19] Cox, "The Effect of Private Sector Work Opportunities in Prison on Labor Market Outcomes of the Formerly Incarcerated."
[20] Weill, "Prisoners on the Fireline."
[21] Chennault and Sbicca, "Prison Agriculture in the United States."
[22] Jarman and Heard, "Prison Work in Law and Reality."
[23] ACLU, "Captive Labor."
[24] ACLU.
[25] Gibson-Light, "The Ghosts Inside."

work for private industries[26]. Within these categories, incarcerated individuals can work in a variety of positions and industries, but they will often face similar levels of subjugation.

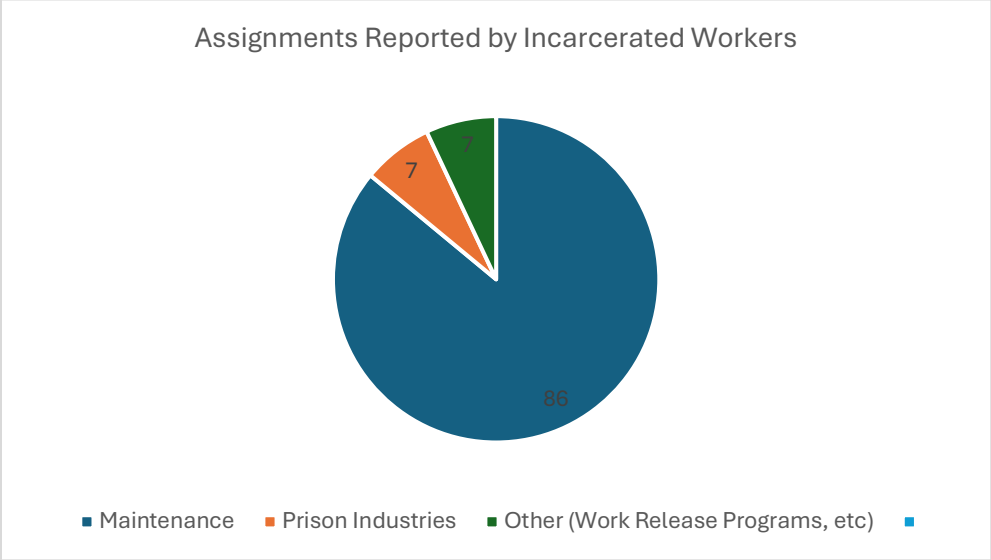

Figure 2: Assignments reported by incarcerated workers

Source: ACLU Analysis of Bureau of Justice Statistics Report (2022)

A large portion of incarcerated workers perform facility support/maintenance work. Over 80% of the incarcerated workers surveyed by the Bureau of Justice Statistics worked in jobs to maintain the prisons they were incarcerated in; around 30 percent perform janitorial tasks, close to 20 percent complete food preparation and kitchen tasks, 14.1 percent perform essential tasks like medical services, 8.5 percent provide grounds maintenance, 6.6 percent work in repairs, and 4.5 percent work in laundry[27]. The average monthly maintenance salary ranges from $22.44 - $100.80 so many incarcerated individuals struggle to afford necessities, which can force them to suffer in dehumanizing conditions[28]. If someone wishes to call home, they must pay a private

[26] Maruschak, "Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables."
[27] Maruschak.
[28] Fallk, "Protecting People and Benefiting Business."

phone company by the minute, these costs can put incarcerated individuals between a rock and a hard place. Unfair pay, non-optional fees, and harmful labor practices place individuals in both a financially and physically weaker position, making it easier for the carceral system to continue its oppressive cycle.

Janitorial Duties	29.9%
Food Prep or Kitchen Duties	19.6 %
Essential Services (Library, Barber, Etc.)	14.1%
Grounds or Road Maintenance	8.5%
Maintenance Repair or Construction - 6.6%	6.6%
Laundry	4.5%
Farming, Agriculture, or Forestry	2.2%
Other Assignments (Public Work Assignments, Work Release, Etc.)	7.3%

Figure 3: Assignments reported by incarcerated workers (detailed breakdown)

Source: ACLU Analysis of Bureau of Justice Statistics Report (2022)

Around 6.5 percent of prison jobs are through state prison industry programs[29]. These programs offer jobs in state owned corporation to produce goods and services for sale to other government agencies. The National Association of Prison industries boast that in 2021,

[29] ACLU, “Captive Labor.”

incarcerated workers employed in prison industries programs produced over two billion dollars worth of goods and services[30]. Forty-nine states operate state-owned prison industries corporations that manufacture and supply goods solely for consumption by public sector customers; there are seven states whose labor programs are almost completely unpaid. When performing work for the private sector through the PIECP, incarcerated workers can either manufacture goods and perform services inhouse or be contracted directly to private businesses prisons[31]; this has allowed government purchasers to resell products made through the program without fully informing buyers of their source[32].

1	California	$249,961,931
2	Washington	$113,260,594
3	North Carolina	$92,500,000
4	Pennsylvania	$80,688,000
5	Texas	$76,745,600
6	Florida	$69,524,370
7	Colorado	$68,871,011
8	New York	$63,557,000
9	Maryland	$52,457,137
10	Arizona	$47,974,027

Figure 4: State-owned Prison Industries with the highest net profits of 2021

Source: American Civil Liberties Union (2022)[33]

[30] ACLU.
[31] ACLU.
[32] Fallk, “Protecting People and Benefiting Business.”
[33] ACLU, “Captive Labor.”

Although there is a common misconception that prisoners are a financial burden to taxpayers, by requiring people who are incarcerated to “earn their keep”, carceral institutions purport the idea that they are relieving society while workers fund the operating costs of their own oppression. The disproportionate criminalization of BIPOC and lower income communities are a political tool of the neoliberal agenda to distract from pressing issues, transfer wealth to the private sector, and generate profit for the state. Today, there is an abhorrent lack of accessibility to carceral data. With almost 2 million people incarcerated right now, there needs to be a clearer understanding of their full experiences to enact prison reform and keep governmental agencies accountable.

References

ACLU. “Captive Labor: Exploitation of Incarcerated Workers | ACLU.” *American Civil Liberties Union* (blog), June 15, 2022. https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers.

Chennault, Carrie, and Joshua Sbicca. “Prison Agriculture in the United States: Racial Capitalism and the Disciplinary Matrix of Exploitation and Rehabilitation.” *Agriculture and Human Values* 40, no. 1 (March 2023): 175–91. https://doi.org/10.1007/s10460-022-10346-x.

Cox, Robynn. “The Effect of Private Sector Work Opportunities in Prison on Labor Market Outcomes of the Formerly Incarcerated.” *Journal of Labor Research* 37, no. 4 (December 2016): 412–40. https://doi.org/10.1007/s12122-016-9229-0.

Eisen, Lauren-Brooke. “America’s Dystopian Incarceration System of Pay to Stay Behind Bars | Brennan Center for Justice.” Accessed October 14, 2024. https://www.brennancenter.org/our-work/analysis-opinion/americas-dystopian-incarceration-system-pay-stay-behind-bars.

Fallk, Rebecca S. “Protecting People and Benefiting Business: Why Prison Labor Should Be Subject to the Provisions of the Service Contract Act.” *Public Contract Law Journal* 50, no. 2 (Winter 2021): 275–95. https://www.proquest.com/docview/2791682834/abstract/20C6CF2E4D444EABPQ/1.

Gibson-Light, Michael. “The Ghosts Inside: The Historic Struggle to Reclassify Prison Labor, 1967–1979.” *The Prison Journal* 103, no. 4 (September 2023): 489–512. https://doi.org/10.1177/00328855231188430.

Jarman, Ben, and Catherine Heard. “Prison Work in Law and Reality: Comparative Perspectives from Brazil, the UK, and the US.” *European Labour Law Journal* 15, no. 3 (September 2024): 541–62. https://doi.org/10.1177/20319525241263179.

Maruschak, Laura M. “Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables,” November 2021.

Muller, Christopher. “Freedom and Convict Leasing in the Postbellum South.” *American Journal of Sociology* 124, no. 2 (2018): 367–405. https://www.jstor.org/stable/26546196.

Nanguneri, Shaanth. “If Californians Vote to Ban Slavery This Fall, Will Prisoners Get a Raise?” *CalMatters*, July 17, 2024, sec. Justice. http://calmatters.org/justice/2024/07/minimum-wage-prisons/.

National Correctional Industries Association. “About PIECP.” nationalcia.org. Accessed December 15, 2024. https://www.nationalcia.org/about-piecp.

Terrell, Ellen. “The Convict Leasing System: Slavery in Its Worst Aspects | Inside Adams.” Webpage. The Library of Congress, June 17, 2021. https://blogs.loc.gov/inside_adams/2021/06/convict-leasing-system.

Wagner, Peter, and Wendy Sawyer. “Mass Incarceration: The Whole Pie 2024.” Accessed September 9, 2024. https://www.prisonpolicy.org/reports/pie2024.html.

Weill, Joanna M. “Prisoners on the Fireline: The Application of Ethical Principles and Guidelines to Prison Fire Camps.” *Ethics & Behavior* 30, no. 2 (February 17, 2020): 112–25. https://doi.org/10.1080/10508422.2019.1579649.

Westmont, V. Camille, and Cayla B. Colclasure. “An Archaeology of Convict Leasing in the American South.” *Journal of African Diaspora Archaeology and Heritage* 13, no. 2 (May 3, 2024): 134–69. https://doi.org/10.1080/21619441.2023.2205688.

Wilson, Julie A. *Neoliberalism*. Key Ideas in Media and Cultural Studies. New York, NY: Routledge, 2017. https://doi.org/10.4324/9781315623085.