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Katherine Matthews 15 April 2012

The Long Shadow of Injustice:

A historical re-periodization of the narrative of mass incarceration

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Abstract

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Mass Incarceration is the pattern of penal confinement targeting specific racial groups resulting in a form of racialized social control that creates an undercaste—"a lower caste of individuals who are permanently barred by law and custom from mainstream society." This project attempts to redefine mass incarceration as current definitions such as the aforementioned provided by Dr. Michelle Alexander neglect eras pre dating the war on drugs and tough on crime era of 1970s and contexts besides the United States. This project posits that the United States utilized mass incarceration as a tool of social control of people of color prior to the 1970s. This research examines incarceration data of men in Mississippi, Alabama, and Georgia between 1865-1968. This project has demonstrated a pattern of penal social control in the form of mass incarceration prior to the war on drugs and in effect, re-periodized the narrative of mass incarceration. Rather than construct mass incarceration as mutually exclusive from previous institutional overt forms of social control, this project examined the nuanced nature of mass incarceration ensuing concurrently during the reconstruction and Jim Crow eras. This project places this research in conversation with two prominent scholars on the issue of mass incarceration, Marc Mauer and Michelle Alexander in efforts to broaden the scope of mass incarceration and in effect produce a more comprehensive definition of the term.

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Introduction

In 2008, the United States housed a quarter of the world's inmates. Of this figure 60% were minorities. Demographically, white men face a 1 in 106 chance of incarceration, Hispanics a 1 in 36 chance and blacks stand a 1 in 15 chance.[1] These are the jarring figures that capture the attention of scholars who investigate mass incarceration. I gain these statistics from prominent scholar and director of the sentencing project, Marc Mauer. In his book *Race to Incarcerate*, Mauer examined the last three decades of the expanding United States prison industrial complex and its intersections with race and class. In the same vein, litigator and scholar Michelle Alexander examined mass incarceration in the post Civil Rights era in her recent publication, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness.* Although the United States leads the world in incarcerating her citizens evidenced by the unprecedented inmate population, I challenge the contention of mass incarceration being a new phenomenon. I suggest present day mass incarceration is an amplified version of an ongoing occurrence.

Marc Mauer "… tries to assess how U.S. society has come to rely on the use of imprisonment to an extent that was entirely unforeseen and even unimaginable just thirty years ago."[2] In the same vein, litigator and scholar Michelle Alexander

[1] Marc Mauer, *Race to incarcerate* (New York: The New Press, 1999), 136.

[2] Ibid., x

examines recent trends of mass incarceration. She argues "that mass incarceration is, metaphorically, the New Jim Crow…"[3]

According to Mauer, mass incarceration refers to the unprecedented explosion in the United States prison population of the past forty years. However, Alexander defines mass incarceration sociologically as

> A system that locks people not only behind actual bars in actual prisons, but also behind virtual bars and virtual walls- walls that are invisible to the naked eye but function nearly as effectively as Jim Crow law once did at locking people of color into a permanent second-class citizenship. The term mass incarceration refers not only to the criminal justice system, but also to the larger web of laws, rules, policies, and customs that control those labeled criminals both in and out of prison.[4]

She does not define mass incarceration in terms of sheer numbers, but rather cites the creation, designation, and maintenance of a racial caste and undercaste. According to Alexander, a racial caste "denotes a stigmatized racial group locked into an inferior position by law and custom."[5] Demonstrated by the current overrepresentation of African Americans and Hispanics in the criminal justice system, Mauer and Alexander discuss the intentional targeting of minority communities through every step of the criminal justice system. Police surveillance, searches, arrests, prosecution decisions, convictions, and sentencing all act in a racialized manner disproportionately disadvantaging communities of color.

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[3] Michelle Alexander, *The New Jim Crow Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 11.

[4] Ibid., 13

[5] Ibid.,

Alexander acknowledges slavery, Jim Crow, and mass incarceration as racial caste systems, but argues the periods occur consecutively and independent of one another rather than mass incarceration operating as a nuanced phenomenon ensuing throughout. Similarly, Mauer writes that elements of mass incarceration have always been present, but the recent changes in public policy have greatly elevated its significance. He describes the current state of mass incarceration as a second wave of incarceration utilization as crime control.[6] I suggest mass incarceration has always occurred, but due to recent changes in policies after the collapse of Jim Crow, has gained more latitude to bolster the magnitude of people affected and its social consequences.

Alexander defines undercaste as "a lower caste of individuals who are permanently barred by law and custom from mainstream society."[7] Likewise, Mauer writes "prisoners represented an oppressed class whose crimes resulted from their second-class status in society."[8] Both scholars agree that the sociological consequences of those labeled convicts underpin the devastating effects of mass incarceration. Alexander comments that even after one has paid his or her legal debt to society, offenders face legal discrimination. Convicts lose voting rights, have trouble finding gainful employment with adequate pay, and struggle to support and provide for families. Furthermore, incarceration decreases the number of marriageable black men in the African American community, a primary motor

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[6] Mauer, *Race to Incarcerate,* 9.

[7] Alexander, *The New Jim Crow,* 13.

[8] Mauer, *Race to Incarcerate,* 43.

aiding in the disintegration of the black nuclear family. As a result of hardship faced post-release, many offenders return to criminal behavior to survive and run the risk of recidivism creating a perpetual cycle locking them into the undercaste. [9]

Alexander, Mauer, and other scholars studying mass incarceration cite its inception as the early 1970s, concurrent with then President Richard Nixon's declaration of the War on Drugs. Although scholars acknowledge previous racialized forms of imprisonment including the infamous nineteenth century chain gangs, vagrancy laws, and the convict leasing system, these occurrences do not qualify as mass incarceration due to the negligible magnitude relative to current statistics.

Both Mauer and Alexander agree that mass incarceration emerged in response to the newly acquired social gains on behalf of minority populations in the United States due to the Civil Rights Movement. Furthermore, they discuss how the crime rate is disproportionate to the expanding industrial complex. Media frenzies falsely depicting minorities overwhelmingly committing crime created public support for punitive forms of punishment. By exploiting public stereotypes, fear, and anxiety, the media successfully convinced an oblivious public that urban crime was on the rise and needed to be addressed with tougher legislation such as mandatory minimum sentencing policies, three strikes laws, and truth in sentencing policies. The War on Drugs targeted minorities by increasing urban police surveillances and arrests and creating legislation to disproportionately capture black and brown people demonstrated by the 1:100 crack cocaine ratio. Rather than prosecuting the "Big Fish" as advertised in the tough on crime crusade, the majority

[9] Alexander, *The New Jim Crow,*

of offenders behind bars are convicted of petty drug charges. Minorities comprise the majority of imprisoned drug offenders despite the fact that people of all colors use and sell illegal drugs at similar rates.[10]

Before 1970 laws existed that applied to all Americans, but many were specifically created, augmented, and disparately enforced to unjustly imprison nonwhite populations creating a disproportionate representation of minorities. Furthermore, convicts before 1970 became permanent members of the undercaste and faced similar if not identical hardships challenging offenders today. Additionally, various public outlets aided in creating an image of menacing nonwhites that provided support for punitive policies. Films such as Birth Of a Nation (1915) propagated images of violent and ignorant African Americans who were better served by enslavement rather than emancipation.

Mass incarceration functioned as a reaction to historical turning points in the same fashion that the Civil Rights Movement provided an impetus for the current phenomenon. After Emancipation in 1865 and the following reconstruction period, southern states immediately enacted Black Codes specifically tailored to restrict newly gained civil rights of African Americans. Vagrancy laws, peonage work contracts, and chain gangs emerged creating an upsurge in overwhelmingly black prisoners.

Although Mauer and Alexander lead academia in the study of mass incarceration, other scholars have undertaken similar research interests from

[10] Alexander, *The New Jim Crow,* 7.

various vectors of interrogation. Tara Herivel and Paul Wright[11] examine the financial profits that various corporations and organizations gain from the prison industrial complex. They offer an alternative to the social control narrative of mass incarceration by demonstrating how tax dollars designated to ensure public good find their way to private enterprises who have a monetary stake in the persistence and expansion of correctional facilities.

Ernest Drucker[12] offers a unique perspective of mass incarceration by metaphorically comparing it to medical epidemics. He argues that mass incarceration undermines the families and communities it targets and in effect damages social structures intended to prevent crime. He explains how the current epidemic of mass incarceration has spread due to the contagious nature of punitive social control.

Nell Berstein[13] studied mass incarceration as a human rights violation by examining the suffering of children of the incarcerated. She calls attention to policies forcing forfeiture of parental rights and the stigmas that negatively impact parents with criminal records.

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[11] Tara Herival and Paul Wright, *Prison Profiteers: Who Makes Money from Mass Incarceration*, Reprint ed. (New York: The New Press, 2009).

[12] Ernest Drucker, *A Plague of Prisons: the Epidemiology of Mass Incarceration in America* (New York: The New Press, 2011).

[13] Nell Bernstein, *All Alone in the World: Children of the Incarcerated* (New York, NY: The New Press, 2005).

Blind Goddess[14] is a compilation of writings edited by Alexander Papachristou from practitioners, professors, and advocates analyzing the current state of mass incarceration. Legal scholars and experts discuss the impact of race in every segment of the criminal justice system including police surveillance, jury selection, and reentry to society.

Many scholars have studied the racialized nature of the criminal justice system prior to 1970. Donald Nieman[15] uses Washington County, Texas from 1868-1884 as a case study to demonstrate the impact of black political power in the administration of criminal justice. He discusses how whites used criminal law to uphold white supremacy and restrict black civil rights. In another case study of *State v. Russell*, Rudolph Alexander Jr. and Jacquelyn Gyamerah[16] explore the question of differential punishment in the criminal justice system between white Americans and African Americans by using a 1991 lawsuit from Minnesota Supreme Court. Alexander contends that African Americans have consistently been denied equal protection of the law granted by the Fourteenth Amendment. Alexander demonstrates an extended pattern of differential punishment of African Americans and whites beginning in slavery and extending post Civil War with the implementation of Black Codes, vagrancy laws, and chain gangs. He argues that the

[14] Alexander Papachristou and Patricia J. Williams, *Blind Goddess: a Reader On Race and Justice* (New York: The New Press, 2011).

[15] Donald Nieman, "Black Political Power and Criminal Justice: Washington County, Texas 1868-1888," *The Journal of Southern History* (August 1989): 391-420.

[16] Rudolph Alexander, Jacquelyn Gyamerah. "Differential Punishing of African Americans and Whites Who Posses Drugs: A Just Policy or a Continuation of the Past?," *Journal of Black Studies* (September 1997): 97-111.

state created laws targeting African Americans to increase the numbers of blacks in prison in order to control them more effectively. Not only were new racially bias laws implemented, but also penalties were drastically more punitive.

Other scholars study early racialization of the criminal justice system by evaluating the labor systems that followed the Civil War. Christopher Adamson[17] evaluates the political and economic functions of Southern United Sates penal systems post 1865. He particularly discusses the convict lease system and its resemblance to slavery. He argues that crime control stemmed from the idea that blacks were a "problem population" to be controlled both before and after emancipation. Although his study focuses primarily upon exploited cheap labor reminiscent of slavery, Adamson demonstrates how the state utilized prison as a means of social control for the masses of ex-slaves in particular. He does not use the term mass incarceration because at the time of publication, the term did not exist.

In the same vein, David Oshinsky[18] uses Mississippi's Parchman prison farm to analyze the convict-leasing system of the South that emerged post 1865. The civil war destroyed penitentiaries and prison while drastically increasing the free black population. As a result, the convict leasing system appeared in Mississippi to restrict blacks' newly acquired rights and to ensure agricultural profits experienced under the institution of slavery. Additionally, Oshinsky explores the use of lynching,

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[17] Christopher Adamson, "Punishment After Slavery: Southern State Penal Systems," *Social Problems* (June 1983): 555-569.

[18] David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York City: Free Press, 1996).

sharecropping, and legalized racial residential segregation to retain the order of white supremacy.

Douglas Blackmon[19] explores the post Civil War institution of convict leasing. He coins the system "neoslavery," analyzing the legal and commercial influences that perpetuated a system of cheap exploited black labor. Similar to current petty drug offenses, thousands of African Americans were charged with arbitrary fines designed to specifically intimidate blacks. Blackmon explains how legal loopholes and federal policies allowed whites to escape the fate of black "criminals." Blackmon cites the newly created reconstruction laws and African Americans' desire to participate in the political system as an impetus for the convict lease system.

In his book, *The Condemnation of Blackness: Race, Crime and the Making of Modern Urban America*[20], Khalil Muhammad delineates the historical legacy of racialized conception of crime. Focusing upon how black criminality has been constructed since the emancipation proclamation, Muhammad describes the United States shift from the "slavery problem" to the newly created "Negro problem." Relying upon "the racial data revolution" society's voices of authority characterized black crime as pathologically driven whereas white crime was rooted in external structural factors. Muhammad focuses his study in northern urban areas, highlighting Philadelphia, Pennsylvania.

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[19] Douglas Blackmon, *Slavery By Another Name: the Re-enslavement of Black People in America From the Civil War to World War II* (New York: Doubleday, 2008).

[20] Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass.: Harvard University Press, 2010).

Similar to Muhammad's historical survey of racialized crime, *Race, Crime, and Justice: a Reader*[21] edited by Shaun Gabbidon and Helen Taylor Greene is a collection of essays detailing a century of racial minorities interaction with the criminal justice system. Binding classical work from W.E.B. DuBois and Gunnar Myrdal with contemporary scholars including Angela Davis, and John Hagen, this reader examines issues of policing, racial profiling, capital punishment, and courts.

I find the current description of mass incarceration to be inadequate as it neglects the full scope of the phenomenon. I argue for a succinct and comprehensive definition of mass incarceration that encompasses both racial statistical proportions and extralegal disadvantages. Marc Mauer relied on prison statistics to demonstrate the astronomical rate at which the United States incarcerates her citizens and in particular, poor minority populations. Michelle Alexander focused upon sociological implications of those stigmatized as offenders in addition to her analysis of prison statistics. I argue that legislation and practice prior to 1970 and increased incarceration rates in a racially disproportionate manner. Furthermore, I contend that the criminal justice system created and perpetuated a permanent undercaste predating the War On Drugs resulting in a nearly identical fashion of limiting the life chances of those labeled convicts. Although present incarceration figures surpass any other period in time, the same purpose and pattern of targeting and confining nonwhite populations occurred at a lesser magnitude. Before 1970, Southern America upheld the institution of slavery, Black Codes, and Jim Crow that legally

[21] Shaun L. Gabbidon and Helen Taylor Greene, eds., *Race, Crime, and Justice: a Reader* (New York: Routledge, 2005).

created an undercaste barring minorities, particularly African Americans, from mainstream society. Since the inception of the United States, every era held minorities in a virtual prison, creating a state of mass incarceration. Convicts of color have always experienced the consequence of limited life chances discussed by both Mauer and Alexander.

Michelle Alexander highlights disenfranchisement as a primary feature of mass incarceration. This process overwhelmingly relegates blacks into an undercaste barring them from participating in mainstream society. It is important to note that the systematic and institutionalized disenfranchisement of African Americans far began before the 1971 War on Drugs.

In 1868, the Fourteenth Amendment to the United States constitution granted citizenship to "all persons born or naturalized in the United States." Additionally, the amendment disallowed states from denying anyone "life, liberty, or property, without due process of law," or to "deny to any person within its jurisdiction the equal protection of the laws."[22] The subsequent Fifteenth Amendment declared "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[23]

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[22] "14th Amendment to the U.S. Constitution: Primary Documents of American History (virtual Programs," Library of Congress, http://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html (accessed March 27, 2012).

[23] "15th Amendment to the Constitution: Primary Documents of American History (virtual Programs," Library of Congress, http://www.loc.gov/rr/program/bib/ourdocs/15thamendment.html (accessed March 27, 2012).

Although the United States constitution granted citizenship and protected African Americans' right to suffrage, southern states enacted laws and practiced customs that circumvented federal mandates. Between 1871 and 1889 almost every southern state passed statutes that restricted suffrage for African Americans.[24] Similar to current day drug laws, newly enacted statues were written race neutral, but overwhelmingly affected African Americans and provided loopholes for whites who may have unintentionally fell victim to legal restrictions.

In 1890, the Mississippi State Legislature created the second Mississippi plan that effectively disenfranchised African Americans. Previously, overt violence and intimidation of black voters proved successful in discouraging black political participation. However, Mississippi and fellow southern states legally enforced poll taxes, literacy tests, grandfather clauses, understanding clauses, residency restrictions, all white primaries, and criminal disenfranchisement.[25]

In 1898, the Mississippi Supreme Court decision of *Williams v. the State of Mississippi* clearly describes how state law was tailored to target African Americans in the disenfranchisement effort.

> By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites; a patient, docile people, but careless, landless, migratory within narrow limits, without forethought, and its criminal members given to furtive offenses, rather than the robust crimes of

[24] Ronald L.F. Davis PhD, "Creating Jim Crow: In-Depth Essay," Creating Jim Crow: In-Depth Essay, agaul.weebly.com/uploads/3/7/8/0/3780214/jimcrow_lesson.pdf.

[25] Ibid.

> the whites. Restrained by the federal constitution from discriminating against the negro race, the convention discriminates against its characteristics, and the offenses to which its criminal members are prone.[26]

The courts decision divides "black" and "white" crime and criminalizes identified black behavior accordingly to avoid violation of the Fifteenth Amendment. Those convicted of "theft, arson, rape, receiving money or goods under false pretenses, bigamy, embezzlement"[27] were barred from voting whereas offenders of violent crimes were not.

By 1901, every state that had a significant African American population succeeded in the disenfranchisement of black voters.[28] Blacks were not allowed to serve in meaningful political positions nor work as law enforcement officers. Blacks were segregated into separate public, educational, and social institutions that proved inferior to that of their white counterparts.

In 1867, nearly 70% of backs that were eligible to vote were registered, but in 1892, less than 6% of eligible blacks were registered.[29] Similarly, in 1872, 342

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[26] "U.S. Supreme Court: Williams V. State of Mississippi, 170 U.S. 213 (1898)," FindLaw: Cases and Codes, http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=170&invol=213 (accessed March 27, 2012).

[27] Ibid.

[28] Blackmon. *Slavery by Another Name,* 157.

[29] Andrew Shapiro, "Challenging Criminal Disenfranchisement under the Voting Rights Act: A New Strategy," *The Yale Law Journal* 103, no. 537 (November 2, 1993): 537-66, http://www.jstor.org/stable/797104 (accessed March 27, 2012).

blacks were elected to state legislatures and Congress in eleven of the former Confederate states, but in 1900, that figure dwindled down to five.[30]

It was not until 6 August 1965 with the passage of the Voting Rights Act that universal suffrage was granted and protected. Section two prohibited denial to suffrage on the basis of literacy tests. Section five stated that special provisions had to be approved by the Attorney General or United States District Court for the District of Columbia to ensure that the changes did not have discriminatory effects such as the grandfather clauses.[31]

I posit that the United States utilized mass incarceration as a tool of social control of people of color prior to the 1970s. My research examines incarceration data of men and women in Mississippi, Alabama, and Georgia between 1865-1968. I will demonstrate a pattern of penal social control in the form of mass incarceration prior to the war on drugs and in effect, re-periodize the narrative of mass incarceration. Rather than construct mass incarceration as mutually exclusive from previous institutional overt forms of social control, I examine the nuanced nature of mass incarceration ensuing concurrently during post-reconstruction and the Jim Crow era. In 1865, the thirteenth amendment outlawed slavery in the United States and acted as an impetus for morphing the practice of systematic social control and continued subjugation of blacks parallel with Alexander's contention that the end of the Jim Crow era necessitated a new form of systematic oppression of blacks.

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[30] Ibid.

[31] "History of Federal Voting Rights Laws," The United States Department of Justice, http://www.justice.gov/crt/about/vot/intro/intro_b.php (accessed March 27, 2012).

Therefore I end my study in 1968, the end of the civil rights movement as Alexander starts her examination of mass incarceration with the subsequent tough on crime era.

Chapter One: 1865- 1903

In the antebellum South, slave masters punished enslaved blacks according to adherence of slave codes whereas the criminal justice system regulated white offenders. However after emancipation, the South intended to maintain the fashion in which black and white offenders were punished and controlled.[1] In order to do so, the legal and penal systems needed adjustments.

The civil war came to an end in 1865 and as a result, so did the American institution of slavery. By 1877, the reconstruction that promised to integrate blacks into American society fully and safely, ended. However, in 1865 Mississippi and other former confederate states enacted Black Codes to maintain the old social order in light of African Americans' newly acquired rights to citizenship and male suffrage.

Mississippi, Alabama, and Georgia created Black Codes to restrict the civil rights of freedmen, free Negroes, and mulattoes specifically. Freedmen referred to newly freed slaves after the Civil War.[2] Free Negroes was a term used primarily in the antebellum South referring to blacks who were not enslaved. Mulattoes were decedents of mixed race heritage. The Georgia Black Code specifically defined the population of color it is referring to in title III, act number 250, Section one as

[1]Adamson, "Punishment After Slavery: Southern State Penal Systems," 555.

[2]The American Civil War, "Freedmen, The Freed Slaves of the Civil War," http://www.civilwarhome.com/freedmen.htm, (accessed January 25, 2012).

"negroes, mulattoes, mestizoes, and their descendants, having one-eighth Negro, or African blood, in their veins."[3]

The Black Codes included amendments to existing penal codes in order to ensure lawful imprisonment of blacks because existing laws were intended for whites only. Whites enjoyed the privilege to govern themselves freely even if society morally condemned activities like consumption of alcohol. However, after emancipation, State legislature restricted blacks from experiencing freedoms that their white counterparts took for granted. Mississippi wrote in act four sections one through five of the State's penal code new crimes punishable by imprisonment. Freedmen, free negroes, and mulattoes were prohibited from possessing fire arms, ammunitions, knives, and other various weapons despite the second amendment right to bear arms. Additionally, freedmen could not consume alcoholic beverages. Any white man found giving freedmen liquor or weapons was also subject to prosecution. Failure to pay fines within five days of conviction resulted in imprisonment or hire for labor.[4]

In 2002, The United States Department of Justice[5] issued an official statement defending the 1:100 sentencing disparity between crack and cocaine. Filled with innuendos, the report suggested poor minority populations abuse crack and pose as a more serious danger to society relative to cocaine users. Similarly, the newly

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[3] George Washington University, "The American Black Codes 1865-1866," http://home.gwu.edu(accessed January 22, 2012).

[4] Ibid

[5] "Federal Cocaine Offenses," US Department of Justice, http://www.justice.gov/olp/pdf/crack_powder2002.pdf, (accessed February 12, 2012).

constructed penal law describes black Mississippians as a danger to society. The punitive impulse of the Mississippi legislature to criminalize blacks for possession of weapons when whites could legally carry them captured the State's perception of African Americans' potential for violence.

Section two of Mississippi penal codes invades the domestic sphere of Mississippians making punishable the most personal actions such as language and religious pastoring.

> Be it further enacted, that any freedman, free Negro, or mulatto committing riots, routs, affrays, trespasses, malicious mischief, cruel treatment to animals, seditious speeches, insulting gestures, language, or acts, or assaults on any person, disturbance of the peace, exercising the function of a minister of the Gospel without a license from some regularly organized church, vending spirituous or intoxicating liquors, or committing any other misdemeanor the punishment of which is not specifically provided for by law shall, upon conviction thereof in the county court, be fined not less than $10 and not more than $100, and may be imprisoned, at the discretion of the court, not exceeding thirty days.[6]

In the age of colorblindness, the drug laws that disproportionately imprison minorities also apply to whites. However due to the discretion of actors within the criminal justice system, surveillance, arrests, convictions, and sentencing vary among the races which create unequal outcomes negatively impacting minorities relative to whites. Conversely, the black codes apply strictly to people of color resulting in a racialized system of social control, a key-defining feature of mass incarceration.

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[6] The Black Past: Remembered and Reclaimed, "(1866) Mississippi Black Codes | The Black Past: Remembered and Reclaimed," http://www.blackpast.org/?q=primary/1866-mississippi-black-codes, (accessed January 25, 2012).

Similar to Mississippi, Alabama enacted penal codes in act 112 section one delineating the construction of prisons, staffing, and regulations. Again, the commissioner's court of the respective counties had discretion to perform outlined duties allowing for disproportionate enforcement and application of the law. The state of Alabama mandated that:

> …in no case shall the punishment inflicted exceed hard labor, either in or out of said house; the use of chain-gangs, putting in stocks, if necessary, to prevent escapes; such reasonable correction as a parent may inflict upon a stubborn, refractory child; and solitary confinement for not longer than one week, on bread and water; and may cause to be hired out such as a vagrants, to work in chain-gangs or otherwise, for the length of time for which they are sentenced; and the proceeds of such hiring must be paid into the county treasury, for the benefit of the helpless in said poorhouse, or house of correction.[7]

Alabama's newly amended penal code reflected the continuation of cheap labor and maintenance of the racial social order as the impetus for its creation. The convict-lease system emerged after the collapse of institutionalized slavery. Prisoners faced the possibility of being chained and performing hard labor reminiscent of legal slavery. Before emancipation, the State did not subject whites to harsh physical punishment because they were regarded as men however, the function of the penal system changed to accommodate the anticipated subjugated black population.

After emancipation in 1865, four million African Americans gained freedom throughout the South. Immediately, the prison population began to increase and

[7] The American Black Codes, www. gwu.edu

became overwhelmingly black. [8] Before emancipation 99% of jails were white, but after, the vast majority of prisoners were black.[9] For example, by 1866, the Natchez city jail in Mississippi had 67 black prisoners and 11 white prisoners. In Grenada, MS, there were 17 black and 1 white prisoner. In Columbus, MS there were 53 blacks and not a single white inmate.[10] The fast rising number of black prisoners in the 1880s and the near absence of incarcerated whites should demonstrate the impact of an increasingly repressive legal system, a trend mirrored in the War on Drugs.[11]

Of the newly created Black codes, vagrancy laws proved most damaging for the newly expanded African American community. Created to feed the convict-lease system, vagrancy laws operated as justification for removing undesirable blacks and virtually re-enslaving them. Mississippi, Alabama, and Georgia widely defined vagrancy and made convicts pay a fine and/or serve jail time. After emancipation, tens of thousands of formerly enslaved blacks lacking their promised 40 acres and a mule entered the free world. Most lacked permanent dwellings due to years of forced labor and status as property. Furthermore, many slaves left plantations as they were sites of oppression and struggled to find gainful employment. As a result, blacks ran a disproportionately higher probability of being considered vagrants

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[8] Robert Ward and William Rogers, *Convicts, Coal, and the Banner Mine Tragedy* (University of Alabama Press, 1987), 32.

[9] Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865-1900,* (Charlottesville: University of Virginia Press, 2000), 6.

[10] Oshinsky, *Worse Than Slavery,* 34.

[11] Ward and Rogers, *Convicts Coal, and the Banner Mine Tragedy*, 33.

according to the definitions. Similar to drug laws from the tough on crime era, vagrancy laws acted in a comparable way, disproportionately impacting people of color. Those found in violation of vagrancy laws were fined and sent to prison at the discretion of the court. Courts' discretion proves problematic as judges who are products of the racial social system in which they live, have the ability to disparately enforce punishment for vagrancy offenders potentially targeting a specific group, in this case blacks.

In Mississippi, Article II Sections 1-7 defined and describes violations punishable by law, including vagrancy. Mississippi Black Codes define vagrants as:

> All rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependents, and all other idle and disorderly persons, including all who neglect all lawful business, habitually misspend their time by frequenting houses of ill-fame, gaming-houses, or tippling shops, shall be deemed and considered vagrants, under the provisions of this act, and upon conviction thereof shall be fined not exceeding one hundred dollars, with all accruing costs, and be imprisoned, at the discretion of the court, not exceeding ten days.[12]

Section two of article three made it legally punishable to assemble in groups during the day and night. Also, those found without lawful employment or business were subject to incarceration. The law forbade whites from assembling with freedmen, negroes, or mulattoes on terms of equality including living in adultery or fornication. The penalty for such offenses was imprisonment, no more than six days

[12] Ibid

for white men and ten for black men. Furthermore, section seven finds those who fail to pay taxes to be vagrants as well.[13]

The definition of vagrancy expanded to include domestic offenses. The intrusion of the state into the private affairs of the individual citizens demonstrated an excessive compulsion to control the lives of blacks, continuing the social control of slavery. Most notable in article three section two was the established incongruity of prison term maximums of blacks relative to whites. Here, we find cause to assert that disproportionate sentencing for vagrancy laws aided in a racialized system of social control found in Michelle Alexander's definition of mass incarceration.

Alabama defines vagrancy in act 112 section two as:

> In addition to those already declared to be vagrants by law, or that may be hereafter be so declared by law; a stubborn or refractory servant; a laborer or servant who loiters away his time, or refuses to comply with any contract for a term of service without just cause; any such person may be sent to the house of correction in the county in which such offense is committed; and for want of such house of correction the common jail of the county may be used for that purpose.[14]

Similar to Mississippi's vagrancy definitions, those without gainful employment in Alabama are eligible for imprisonment. However, blacks with employment could still be considered vagrants if they are found to be stubborn. In essence, anyone who did not continue in the manner of slavery to work under a white master amenably would be punished.

Section three of Alabama's vagrancy laws demonstrated the states' commitment to maintaining the racial social order of slavery. Similar to the fugitive

[13] The Black Past: Remembered and Reclaimed, www.blackpast.org

[14] The American Black Codes, www. gwu.edu

slave act, citizens were required to notify the sheriff or constable of their respective county of possible vagrants. If found guilty of vagrancy, the offender would then be ordered to pay fifty dollars. If the fine was not rendered, then the vagrants were sentenced to jail for no more than six months. While imprisoned, the vagrant could be hired out for labor as outlined in section one of the penal code (gwu.edu).

Georgia continues the pattern of imprisoning vagrant blacks without employment as defined in title II number 240 act nine section one of the penal code as:

> All persons wandering or strolling about in idleness, who are able to work, and who have no property to support them; all persons leading and idle, immoral or profligate life, who have no property to support them, and are able to work, and do not work; all persons able to work, having no property to support them, and who have not some visible and known means of a fair, honest and reputable livelihood; all persons having a fixed abode who have no visible property to support them, and who live by stealing or by trading in, bartering for, or buying stolen property; and all professional gamblers, living in idleness, shall be deemed and considered vagrants, and shall be indicted as such ; and it shall be lawful for any person to arrest said vagrants.[15]

Not only did the state of Georgia criminalize blacks for lack of employment and residence, but also those deemed to live immorally and wastefully qualified as vagrants. In essence, the state legally removed blacks that did not adhere to the mores of hegemonic white society and punished them with imprisonment. The Black Codes did not punish criminality, but rather deviant cultural. Hegemonic white supremacy intended to maintain the racial social order of the antebellum South by criminalizing activities specific to the black condition in America.

[15] Ibid

Although Southern states abolished Black Codes in 1866, discrimination persisted in the criminal justice system for African Americans. New legal restrictions created a disproportionate number of African American prisoners. [16] Several of the primary elements needed to legally control black labor remained in place despite the abolishment of Black Codes. Southern courts dominated by white juries, attorneys, and judges continued to racially enforce laws regarding vagrancy and breach of labor contracts absent of race references.[17] The present day United States drug laws operate in a similar fashion where they appear race neutral, but disproportionately affect racial minorities.

To ensure the profitable use of prisoners and manage the explosion of black offenders, Southern states created a new class of prisoners, county convicts. Motivated by racism and cheap labor, states modified their penal codes to administer those convicted of misdemeanors and sentenced to up to two years of hard labor while felons went to state penitentiaries. Similar to drug law sentencing, the time did not fit the crime. For example, in Greene County, Alabama in 1874, three "little negro boys" received twelve months in county jail for taking oranges and a bottle of wine from a local store. In the same county, Ann Austin, a freedwoman was convicted of grand larceny and sentenced to two years in the state penitentiary for "killing a shoat" (young pig). She appealed, but her sentence was

[16] Curtain, *Black Prisoners*, 3.

[17] Mark Colvin, *Penitentiaries, Reformatories, Chain Gangs: Social Theory and the History of Punishment in Nineteenth- Century America,* (New York: Macmillan, 1997), 219-220.

not reduced because that was "the least term of imprisonment allowed by law." [18] Reminiscent of mandatory minimum sentencing, the state of Alabama required Austin to serve an inordinate amount of time for a trivial offense without recourse.

In 1866, Georgia introduced the first chain gangs. The state legislature transferred control of criminals from state penitentiaries to counties because many facilities were destroyed during the Civil War. The State granted counties the authority to use convicts to build roads or lease them to private businessmen and planters. For the first time, a system emerged in which counties could profit from criminal punishment rather than incur an expense for the maintenance of penitentiaries and inmates. The promise of financial revenue garnered from social outcasts attracted other Southern states, and many followed Georgia's example by establishing county chain gangs including Mississippi and Tennessee.[19]

The most common convictions of chain gang members included vagrancy, evading work contracts, and theft. The counties intentionally created harsh conditions in the chain gang to make convict lease work on plantations appear more amicable. On the chain gang, a deputy or hired agent had authority to whip challenging convicts and if one tried to escape, the deputy could shoot him. Workdays were long, and hot. Convicts were not sufficiently fed and at night remained chained sleeping without shelter.[20] When white planters crowded county courthouses to pose as "white sponsors" willing to pay off criminal fines, many

[18] Curtain, *Black Prisoners,* 42-43.

[19] Colvin, *Penitentiaries, Reformatories, Chain Gangs*, 220.

[20] Ibid, 220.

blacks opted to enlist within the convict lease system rather than suffer the travesties associated with the chain gangs.[21]

In 1868, a southern businessman, Edmund Richardson, approached federal authorities in Mississippi desiring cheap labor to develop land he owned in the Delta.[22] The state authorities agreed to a contract in which the businessmen could work the state's felons in his agricultural camps. This served as a viable alternative to imprisonment due to the potential costs it would take to repair penitentiaries damaged in the Civil War. Interestingly, already in 1868 just three years after emancipation, all of the felons leased to the Delta were black and former slaves. The State paid Richardson $18,000 annually for the workers transportation and maintenance, but he kept all profits from convict work and in a matter of a few years, gained substantial wealth.[23] According to the *Penitentiary Report of 1871,* Richardson sent 146 black men and 6 black women to the Delta while 61 whites and 25 black men remained at the penitentiary.[24][25] Richardson and his convict labor agreement with the state of Mississippi began the legacy of the convict lease system. In the late 1860s, Georgia, Arkansas, Louisiana, Tennessee, and Texas instituted similar practices of paying private contractors to work and maintain prisoners.

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[21] Ibid, 220.

[22] Oshinsky, *Worse Than Slavery,* 35.

[23] Ibid.

[24] Ibid, 36.

[25] Black convicts who remained at the penitentiary were either old and disable, incapable of work. However, whites remained because as Richardson would put it, work in the Delta was "nigger work" requiring manual labor of building levees, clearing swampland, and plowing fields.

However, the convict labor system soon evolved to where private contractors solicited and handsomely paid counties for convict workers.[26]

Governor Robert Patton (1865-1867) persuaded Alabama legislation to reinstate the convict lease system and stipulated that offenders work outside the prison walls especially because "hard working respectable citizens" did so. Patterson thought confinement to be a luxury unworthy for inmates. However, it was clear that return of the convict leasing system was undoubtedly tied to the industrial expansion in North Central mineral counties. Before 1865, the state leased prison buildings for profit but with the implementation of the convict lease system, officials began to outsource labor to make profits. Local mining companies leased the majority of prisoners while remaining convicts served hard time working in the street, often in chains. In 1877, Mississippi passed The Leasing Act that declared all prisoners may "work outside the penitentiary in building railroads, levees or in any private labor or employment."[27] As a result, Mississippi leased more than one thousand of its convicts.[28]

Throughout the late nineteenth century, Alabama had the most profitable prisons in the nation credited to reinstatement of the convict lease system. In 1877, Warden John G. Bass gave the state treasury $14,000 and the next year $16,000.[29] County jails became profitable endeavors rather than costly expenses for Alabama.

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[26] Colvin, *Penitentiaries, Reformatories, Chain Gangs*, 222-223.

[27] Oshinsky, *Worse Than Slavery,* 41.

[28] Ibid.

[29] Ward and Rogers, *Convicts, Coal, and the Banner Mine Tragedy,* 30.

Additionally, county sheriffs collected fees for every prisoner they arrested. [30] In 1904, Mississippi purchased and created Parchman prison farm, located in the Mississippi Delta covering several thousand acres. In less than one year, Parchman profited $185,000 garnered by convict work of picking cotton and cutting timber.[31] Many scholars studying the current age of mass incarceration tend to use the phrase, "the prison industrial complex" to describe the profits and monetary investment in the present criminal justice system. Private corporations have erected countless prisons that created hundreds of jobs in economically depressed areas. In order to keep jobs and turn profits, criminals are needed to perpetuate the system.

Alabama used their prisoners extensively for manual labor. In the nineteenth century, Alabama had the most deadly prisons in the nation.[32] In 1870, the convict lease system killed 41% of prisoners. [33] Overall state death tolls were 14% and in the County 24%.[34] Despite the excessive number of deaths directly associated with incarceration, Alabama did not abolish the convict lease system because victims were virtually all black. White supremacist ideals supported the Southern United States that considered African Americans as subhumans who did not deserve protection from the high death risks associated with penal convict leasing practices.

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[30] Curtin, *Black Prisoners*, 8.

[31] Oshinsky, *Worse Than Slavery,* 109.

[32] Curtain, *Black Prisoners*, 2.

[33] Ward and Rogers, *Convicts, Coal, and the Banner Mine Tragedy,* 30.

[34] Ibid, 41.

After the adoption of post emancipation legislation and augmented criminal penalties and statutes, the number of convicts drastically increased. Before the Civil War, almost all inmates were white. However, for the rest of the nineteenth century, ninety percent of prisoners were black and victims of the chain gangs or convict leasing system.[35] An annual report published by the penitentiary system in Alabama showed that between 1874-1877, the prison population tripled to 700. At the end of 1877, 552 of the 779 incarcerated for were grand larceny or burglary.[36] In 1874, Mississippi imprisoned 272 inmates, however in 1877, that figured increased to 1,072. Likewise, Georgia in 1872 housed 42 inmates, but by 1877 that figure increased to 1,441. The majority of new black convicts were guilty of vagrancy and larceny offenses.[37] In 1876, Mississippi legislature targeted African Americans in its passage of the Pig Law, the theft of a farm animal or any property worth at least ten dollars that redefined grand larceny offenses, punishable by up to five years in state prison. According to one official, "The Pig Law did nothing to stop crime, but quite a lot to spur convict leasing."[38] It is clear that the increase in prison inmates directly correlated with the increase in free African Americans. The end of the Civil War and Reconstruction that granted civil rights to blacks served as an impetus for an increase in the use of incarceration as a form of social control similar to the Civil Rights Movement that scholars credit for the current state of mass incarceration.

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[35] Colvin, *Penitentiaries, Reformatories, Chain Gangs,* 220.

[36] Ibid, 43.

[37] Ibid, 233.

[38] Oshinksy, *Worse Than Slavery,* 40.

Although not every prisoner was black, African Americans dominated prison mines in Alabama. In 1890, Tennessee Coal, Iron and Railroad Company (TCI) leased 1,051 Alabama state prisoners, 894 of whom were black. Of Alabama county prisoners, whites comprised less than four percent. Throughout the 1880s, the Alabama Black Belt counties of Bullock, Dallas, Greene, Hale, Lowndes, Marengo, Perry, and Sumter did not imprison or lease a single white county prisoner.[39] Alabama did not require the county penal system to maintain records until 1883 so precise numbers of convicts are unknown. However, primary publications provide some insight to the demographic of the prison population. In 1874, a Dallas County newspaper reported, "51 prisoners in Dallas jail, all negroes." An article from The Montgomery Advertiser titled *Who Commits Crime in the South* reported that in Montgomery County, 2,538 people had been arrested. Of these, 775 were white and 1,763 were black. The majority of crimes were for disorderly conduct and drunkenness. Of total arrests, 309 of the offenders were freed people, those released from slavery, charged with larceny. The next year in January of 1875, an Alabama newspaper, the *Eutaw Whig and Observer* reported, "there is now twenty seven prisoners in the jail at this place, all negroes." [40]

The current state of mass incarceration follows a pattern identical to that of the nineteenth century; after 1865, an undeniable spike in the use of incarceration occurred. Not only did the prison population drastically increase in a short span specifically related to gains in civil rights on behalf of African Americans, but

[39] Curtin, *Black Prisoners,* 2.

[40] Ibid, 42.

additionally blacks disproportionately represented inmates in heavily populated black areas. Between 1870 and 1910, the prison population increased at a greater rate than the general population in the South.[41] Additionally, the Southern prison population became "younger and blacker, and the length of their sentences soared."[42] Furthermore, the crimes that account for the majority of arrests were recently enacted laws to target the minority population in a similar fashion as drug laws in the 1970s. Although the figures presented from the nineteenth century do not startle the public nearly as much as current incarceration records, an undeniable resemblance exists between the two eras.

Southern states persecuted African Americans far more often and more severely than their white counterparts. Oshinsky writes, "An investigation of Georgia's state conviction population in 1882 showed "coloreds" serving "twice as long as whites for burglary and five times as long for larceny," the two most common crimes."[43] Furthermore, in Mississippi between 1880 and 1930, ten men, all black were legally executed for rape and two dozen more received life sentences.[44] However, white men sexually assaulting black women existed before emancipation, yet not one was punished in Mississippi. Similar to the disparate enforcement of drug laws in the War or Drugs, misdemeanors were trivial and virtually a black only offense. Freedman's Bureau agent in Salem, Alabama, Sam

[41] Oshinsky, *Worse Than Slavery, 63.*

[42] Ibid.

[43]Ibid.

[44] Ibid, 104.

Gardener, complained to the mayor of the "manifest of injustice done the Freedmen in administering justice."[45] Gardner noted the racially unequal legal treatment, "In an affray begun and urged on by a white man with a negro, the negro is certain to be fined heavily and the white man let go free."[46] Another agent in Montgomery wrote his superior that, "I am annoyed every morning with colored people coming into my office and complaining that they are arrested while going to and from church." [47] Additionally, in the event of blacks bringing cases against one another, it was common practice to fine both parties.[48]

Alabama and Mississippi penal code, the county required offenders to pay court costs, fees incurred by sheriffs, jurors, and a trial totaling fifty dollars.[49] Poor share croppers could not afford the fees and worked off costs by serving extra prison time at a rate of thirty cents per day.[50] Due to the minimal economic opportunities that faced newly freed African Americans more than any other population at the time, black convicts overwhelmingly lacked resources to afford criminal fees and ended up serving longer sentences relative to whites. Similarly, African American convicts in the current state of mass incarceration generally receive sentences longer than those of their white counterparts. Not only are blacks

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[45] Curtin, *Black Prisoners*, 6.

[46] Ibid, 6.

[47] Ibid, 6.

[48] Ibid, 46.

[49] Oshinsky, *Worse Than Slavery,* 42.

[50] Curtin, *Black Prisoners,* 6-7.

going to prison at a higher rate, but they are also staying much longer, locking them out of economic sectors, educational institutions, and family life, salient features of the undercaste Michelle Alexander advocates for.

Society at large perceived thievery as a black crime. An attempt to free them selves of white economic dependency, blacks created and operated deadfalls, roadside markets that catered to the needs of black farmers and sharecroppers including products such as cloths, molasses, sugar, cottonseed, and cheap jewelry. Alabama law enforcement targeted black deadfall operators by arresting them for facilitating thievery. [51] In 1874, Alabama state legislature attempted to abolish deadfalls by outlawing the purchase of farm produce after dark from anyone, but the producer. Furthermore, it was illegal to sell cotton in quantities less than a bale. American historian Walter Flemming wrote in 1905 that deadfalls encouraged stealing. He explained that people would take crops and materials during the night and sell them to the deadfalls. Loose cotton (less than a bale) implied the goods were stolen.[52] However, the controversy about deadfalls spawned from black and white farmer economic competition, not thievery. Both races traded at night, but blacks received the label of thieves.

Alabama intentionally augmented its legal prohibition of larceny and deadfalls to affect blacks disproportionately relative to whites. Up-country white farmers would arrive to markets late in the night for convenience. Additionally, poor white farmers attempting to sell less than a bale feared the impact of the deadfall

[51] Ibid, 8.

[52] Ibid, 49.

law. As a result, Alabama legislature made the deadfall laws only applicable in the Black Belt counties. Penalties for violation included fines of ten to twenty five dollars and those unable to pay were sentenced to hard labor. Between 1878 and 1879, Alabama legislature banned the nighttime transportation of seed cotton in addition to the sale. In nine Black Belt counties, selling cotton in the seed at any time, day or night was treated as a felony. Those who entered a house or garden, took a farm animal, or possessed any amount of cotton or corn could receive sentences from two to twenty years in prison. [53] Similar to drug laws of the current model of mass incarceration, dead fall laws were written as race neutral, but continued to disproportionately affect blacks.

Interestingly, white landowners who refused to pay blacks for their manual labor, were not considered thieves and thus were not prosecuted as such. Furthermore, the Freedmen Bureau specifically forbade its agents to arrest or pressure landlords late in payment to furnish wages.[54] The racially selective practice of arresting and charging offenders of theft in the nineteenth century mirrors that of present day disparate enforcement of drug laws. Additionally, theft was understood to be a black problem with far more severe penalties for blacks comparable to the crack cocaine 1:100 ratio disproportionately affecting black drug users relative to white users.

The increase of black prisoners buttressed the belief that African Americans were natural criminals and prone to deviance. Many Southern whites took black

[53] Ibid, 54-56.

[54] Curtin, *Black Prisoners,* 46-47.

theft as a biological flaw.[55] Prior to emancipation, white on white crime was of great concern; however afterwards, the focused shifted to blacks stealing animals, household items, and crops. A Charleston attorney stated that "Whenever larceny, burglary, arson and similar crimes are committed in the South, no one is suspected [anymore] save negroes."[56] Similar to the media craze about black drug dealers and users of the late twentieth century, Southern newspapers across the Black Belt highlighted increased convictions for petty theft perpetuating the idea that blacks required social control.[57] "Virtually every issue of every Southern newspaper contained an account of black wrongdoing; if no episode from nearby could be found, episodes were imported from as far away as necessary; black crimes perpetrated in the North were especially attractive."[58] Undoubtedly, the late 1880s and early 1890s witnessed an increase of crime in the South, however newspapers presented an exaggerated image of the "bad nigger" intended to perpetuate white hysteria.[59]

Perceptions of black crime intensified by the media after the Civil War fueled the creation of "get tough" policies, similar to those of the 1970s. Scholar Mark Colvin writes in regards to post-Civil War media practices, "Southern white elites, especially through their newspapers seized upon whites' perception of growing

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[55] Oshinsky, *Worse Than Slavery, 32*.

[56] Ibid, 33-4.

[57] Curtin, *Black Prisoners,* 42.

[58] Colvin, *Penitentiaries, Reformatories, Chain Gangs,* 241.

[59] Ibid, 241.

black crime. In part, this perception gave impetus to the greatest surge in the use of chain gangs and convict leasing."[60] Yellow journalism exploited public fears of crime and danger to garner support for punitive policies in both the post reconstruction era and during the formation of the War on Drugs.

United States attorney John Minnis commonly wrote letters from Alabama to Washington DC during the mid 1870s about how local law was used to suppress black freedom. A Republican from North Carolina, Minnis was given the task of prosecuting the Ku Klux Klan. He won fourteen convictions, but by 1874 was unable to go forward. In defense of black farm laborers, sharecroppers, political activists, and ordinary citizens he discussed how being a member of the Republican Party or brining a complaint against the Klan could lead to arrest, criminal charges, and imprisonment. Criminal charges were used to intimidate assertive blacks. Furthermore, Alabama police commonly arrested black voters in the Black Belt and charged them with vagrancy.[61] In August of 1874, he wrote about fifteen black citizens in Birmingham, "They were taken before the mayor the next morning and without one particle of proof of any violation or intended violation of law, were each fined twenty dollars and sentenced to work it out on the streets."[62] By requiring offenders to pay fines for petty crimes, the criminal justice system of Alabama maintained a continuous flow of black inmates for cheap labor. The fee system made convicts unable to furnish payment serve on average an additional eight months on

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[60] Colvin, *Penitentiaries, Reformatories, Chain Gangs,* 243.

[61] Curtin, *Black Prisoners*, 56.

[62] Ibid, 58.

their sentences.[63] Similarly, mandatory minimum sentencing that perpetuated current mass incarceration ensured a constant flow of inmates to support the prison industrial complex. The removal of judicial discretion in sentencing secured offenders for an excessive sentence often unwarranted by the crimes committed.

[63] Ibid, 46.

Chapter Two: 1903-1941

After the turn of the century, prison populations continued to rise and African Americans comprised the majority of inmates in the South. In 1917, according to the Mississippi state penitentiary report, blacks comprised about 90% of the prison population.[1] Likewise, in 1940, sharecropping inmates on Parchman prison farm comprised the vast majority of tenants and field workers in Mississippi.[2] Identical to the current definitions of mass incarceration, African Americans were overrepresented behind bars. In 1929, Mississippi held 1,729 prisoners and by 1935, that figure increased to 2,639. Historian David Oshinsky describes the pattern as "a number so large that it would not be matched again until the mid 1970s." [3] The grand increase in the Mississippi prison population from 1929-1935 mirrors that of the currently defined era of mass incarceration with a drastic spike observed post 1971. Although not nearly as extreme in magnitude as the current prison statistics, the rapid increase in prison population observed in six years demonstrates a history of mass incarceration occurring before the declaration of the War on Drugs. While it is important to note that during the 1930s at the height of the Great Depression poor whites began to significantly populate Parchman comprising 30% of convicts, the prison farm remained primarily a black institution.[4]

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[1] David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York City: Free Press, 1996), 137.

[2] Ibid.

[3] Ibid., 164.

[4] Ibid.

In 1915, Parchman opened its women's camp housing 26 inmates, all of whom were black. Ten years later in 1925, the women prison population increased to 48, again all black inmates.[5] The black female population at Parchman ranged from 25-65 inmates annually while the white woman population never grew past five.[6] Once again, the Parchman female prison population demonstrated a key feature of mass incarceration: the overrepresentation of blacks relative to whites.

White women barely served time incarcerated despite the egregious nature of their crimes. In 1929, a Mississippi white woman, Mrs. Marion Drew confessed in a "love poem" to killing her husband. However, Mrs. Drew never went to trial and the judge in accord with the district attorney agreed to accept her guilty plea and release her without bond. The judge ordered she behave herself in the future to avoid criminal punishment.[7] A few years later, a judge in Jones County, Mississippi sentenced a white woman to house arrest following her conviction for murder stating that he "did not think state prison was a proper place for her."[8] Similarly, in Greenwood, Mississippi, another white woman Sara Ruth Dean went on trial in 1934 for the murder of her married lover, J. Preston Kennedy. She was found guilty, but allowed to remain at home during her appeals. After the failed attempt to overturn her conviction, Governor Mike Conner issued a full pardon on her behalf on 9 July 1935 due to overwhelming mercy requests. Governor Connor cited that his decision

[5] Ibid., 169.

[6] Ibid., 174.

[7] Ibid., 175-6.

[8] Ibid.

rested on politics and chivalry and that he "just could not send a woman like Ruth Dean to Parchman no matter what she had done."[9] In each of these instances, white women received far more leniency than their black counterparts. Of the initial 26 black female inmates to enter Parchamn in 1915, 17 had been convicted of homicide. Similarly, 36 of the 48 black female inmates in 1925 were guilty of murder.[10] The disparate application of law in regards to black and white women mirrors that of the current definition of mass incarceration. Due to discretionary practices of judges in the criminal justice system in the early twentieth century, black women disproportionality overrepresented the female prison population at Parchman when guilty of identical crimes. Since the War on Drugs, black women also have been overrepresented behind bars despite nearly identical drug use between the races creating an undeniable parallel with previous eras.

Monetary debt in the South often led to imprisonment, beating, or even death. Most Southern rural laborers could move freely, but black sharecroppers and immigrants in particular could not escape from the cycle of debt and poverty.[11] The conditions of rural farm labor created a legacy of peonage,

> the system in which a debtor must work out what he owes in compulsory service to his creditor. In the South, this was the condition of the sharecropper, who went deeper and deeper into debt to the planter on whose farm he worked. Since the planter furnished the goods the cropper needed and kept the account books himself, it was

[9] Ibid.

[10] Ibid., 169.

[11] Daniel Pete, *The Shadow of Slavery: Peonage in the South, 1901-1969,* (University of Illinois Press, 19972), ix.

> virtually impossible for the black cropper to free himself from debt and thus escape the system.[12]

As of 1915, at least six former confederate states had statutes enforcing peonage including Florida, Mississippi, Georgia, and Alabama.[13] After the turn of the twentieth century, a host of factors created a climate suitable for debt peonage in the South. First, the dominating plantation economy that underscored southern life required free labor to continue profitably. Secondly, the States' treasuries were empty after fighting and losing the costly Civil War. Thirdly, the newly emerged system of sharecropping and convict lease made peonage a natural successor. And finally, Southern slave standards and racial hatred intensified by the Civil War made the South a breeding ground for peonage. Therefore, it is no surprise that the majority of peons in the South were African Americans.[14]

Peonage laws made it illegal to breach a contract of employment. Many farmers remained as peons due to the costly alternative of going to jail and entering the convict lease system, one worse than sharecropping. [15] Additionally, corrupt sheriffs and judges often conspired with financial private industrial interests to place men in a state of peonage without the

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[12] H-Net: Humanities and Social Sciences Online, "Peonage in the South: The Life Story of a Negro Peon," http://www.h-net.org/~hst203/documents/peonage.html (accessed February 9, 2012).

[13] N. Gordon Carper, "Slavery Revisited: Peonage in the South," *Phylon* 37, no. 1 (February 1976): 85, www.jstor.org.

[14] Ibid., 87.

[15] H-Net: Humanities and Social Sciences Online, "Peonage in the South: The Life Story of a Negro Peon,"

legally guarantee right to due process or official judicial proceedings. Most of these peons were black.[16]

Assistant Attorney General Charles W. Russell of the United States observed the relationship between peonage and the convict lease system. He writes,

> In other words, after the law has finished with him he is held in involuntary servitude by the man who has leased him. The State gets no pay for the months he is thus detained, and the lessee gets his labor without have to pay anything.[17]

Debt peonage is a characteristic of mass incarceration because the peons were victims of the racist criminal justice system. Not all peons had broken laws that warranted arrest. Many were victims of white landowners attempting to secure cheap labor to support the Southern plantation economy. Oftentimes white farmers would advance money to black tenants at astronomical interest rates. Rather than evict farmers who could not repay their debt, white farmers would serve warrants for fraud. When in court, black tenants would many times accept their white landlords as their "sureties," a party paying the accused's bail. Defendants would then "confess judgment," a practice where the accused accepts responsibility for his or her crime before being tried. Rather than enter the criminal justice system and serve time behind bars, work in the mines, or on the infamous chain gangs, black tenants would sign a contract to work off their debt with their white landlord

[16] N. Gordon Carper, "Slavery Revisited: Peonage in the South," 85.

[17] Ibid., 89.

without compensation. [18] While peonage in this case may not have been a direct result of incarceration, the threat of criminal punishment as an alternative for peonage created a permanent undercaste that was routinely locked out of mainstream society, characteristic of Michelle Alexander's definition of mass incarceration. Peons could not sufficiently provide for their families because they lacked adequate pay. Additionally, peons lacked autonomy due to their work contracts that were legally enforced by threat of incarceration.

At the turn of the twentieth century, the federal government began to respond to rumors of debt peonage in the South. On 27 May 1903, newspapers across Alabama printed a press released issued by the Department of Justice in Washington D.C. that read,

> Washington May 26- At the request of the Department of Justice, the United States Secret Service has undertaken the work of investigating the charge of peonage, or holding another in servitude to work out a debt, which has been made against persons living in the vicinity of Montgomery, Ala. The punishment provided by the statue for this crime is a fine of not less than $1,000 nor more than $5,000 or imprisonment of not less than one year nor more than five... Information in the hands of [Secret Service] chief Wilkie tends to show that a regular system has been practiced for a long time between certain magistrates and persons who want Negro laborers. It is said the plan is to bring a poor Negro before a magistrate on a flimsy charge. He is convicted and, having no money to pay a fine, the white man offers to advance him the money, provided the Negro will make a labor contract with him for a length of time sufficient to reimburse him for the money and trouble he has taken to keep the Negro out of jail. He is thereupon taken away and begins what is frequently a long cruel servitude, being frequently whipped for failure to perform the work to the satisfaction of his employer. An agent of

[18] Douglas Blackmon, *Slavery By Another Name: the Re-enslavement of Black People in America From the Civil War to World War II* (New York: Doubleday, 2008),66-67.

> the secret service who is now on the ground will make a thorough investigation of the whole alleged system and turn over to the United States Attorney of that district all information he may secure with a view to the prosecution of said offenders.[19]

In May, federal agent, E.P. McAdams was sent to investigate the legitimacy and prevalence of peonage.[20] The release from the Department of Justice demonstrated how debt peonage functioned as mass incarceration. "Poor Negroes" faced "flimsy charges" specifically tailored to ensure mass arrests to continue black subjugation and cheap exploited labor. The entire system was supported and enforced by threat of incarceration.

In less than two weeks, federal marshals discovered cases of peonage throughout Shelby, Coosa, and Tallapoosa counties in Alabama. By the end of April, a grand jury in Birmingham issued nine indictments in Shelby County. The indictments described the complexity and magnitude of peonage where the offense was not an isolated matter, but rather "layers upon layers blanketing the state," in at least a half dozen other locations.[21] A sheriff in Lowndes County ran a peonage operation where 25,000 black sharecroppers and farmers lived. In total, the indictments estimated that thousands of slaves and dozens of local landowners were involved in debt peonage throughout Alabama.[22] Montgomery federal prosecutor Warren S. Reese wrote Attorney General Philander Knox baffled by the state of debt peonage. He said, "I never comprehended until now the extent of the

[19] Ibid., 156-7.

[20] Ibid., 156.

[21] Ibid.,176.

[22] Ibid.

present method of slavery."[23] By November, prosecutor Reese's office reported to attorney general Knox that special agents were pursuing more than forty cases in the heavily black populated plantation counties of southern Alabama including, Coffee, Geneva, Covington, and Barbour.[24]

Debt peonage did not exist only in Alabama. In July of 1908, the Georgia state legislature commissioned an investigation into the state's convict leasing system. Investigators discovered 14 camps that held men sold by the state. At an additional sixteen locations, men charged in the county and city courts were held in slavery. 430 men were at Durham Coal Mines, 350 men were at Egypt in a plantation building of Georgia, and 200 men were held at the Chattahoochee Brick Company. A total of at least 3,464 men and 130 women lived under some form of explicitly forced labor in Georgia.[25] In the Mississippi Cotton Belt, an investigator estimated that at least a third of the planters were holding their workers to "a condition of peonage" in 1907.[26]

In the beginning of the twentieth century debt peonage characterized the condition of the majority of black farmers in the South. The magnitude of peonage in the South is comparable to that of current mass incarceration. Although peons were technically not inmates, they were bound to the land they worked due to legally enforced labor contracts. Furthermore, the majority of peons were black

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[23] Ibid., 177.

[24] Ibid., 253.

[25] Ibid., 338-339.

[26] Oshinsky, *Worse Than Slavery,* 120.

demonstrating a grand overrepresentation of African Americans victimized by the systems similar to present mass incarceration.

The summer of 1903 brought about a number of trials in regards to debt peonage. However, in the 1899 case of planter William Eberhart, Geogia courts protected peonage and ruled that slavery was not a crime because no federal statue explicitly made it a crime to enslave someone. The presiding judge indicated that the federal government lacked jurisdiction in state matters.[27]

Nonetheless, in June of 1903, John. W. Pace stood trial in Birmingham, Alabama accused of peonage. After listening to witness testimonies, Judge Thomas Goode Jones wrote a letter to Attorney General Philander C. Knox in Washington D.C. describing the method of creating peons in Alabama.

> The plan is to accuse the Negro of some petty offense, and then require him, in order to escape conviction, to enter into an agreement to pay his accuser so much money, and sign a contact, under the terms of which his bondsmen can hire him out until he pays a certain sum. The Negro is made to believe his is a convict, and treated as such. It is said that thirty Negroes were in the stockade at one time.[28]

The white men who were accused of participating in the Pace peonage ring who testified all had the same defense, "all of the black men and women held to force labor were properly convicted of crimes; they freely agreed to be leased as laborers; and they were never physically abused."[29]

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[27] Blackmon. *Slavery by Another Name,* 172.

[28] Ibid., 171.

[29] Ibid., 191.

Pace plead guilty to eleven counts of peonage, but contended that the federal statute against the crime was not applicable. He received a sentence of five years for each count, but due to his deteriorating health, his sentences were to be served concurrently.[30] While awaiting trial for conspiracy charges in the seizure and enslavement of blacks, Pace was allowed to remain free after posting a $5,000 bond. Yet, in 1904, the presiding judge suspended his sentence and Pace remained free. Furthermore, he had not actively perused his appeals in regards to the constitutionality of the peonage statute that he pleaded guilty to.[31]

During the Pace trial on 10 June 1903,the grand jury asked Judge Jones how to interpret whether or not peonage violated the thirteenth and fourteenth amendment. Five days later, Jones responded,

> any man who induces a laborer to sign a contract agreeing to be held under guard and unable to leave until a debt is paid was guilty of peonage. A citizen or law enforcement officer who tricked a laborer into believing he could avoid criminal prosecution or a sentence to hard labor only by signing such a contract was guilty of peonage. Anyone who falsely accused a person of a crime in order to compel him or her to sign such a contract or conspired to obtain the labor of a worker through such false charges, was guilty of violating the pre-emancipation slave kidnapping act, which forbade "carrying away any other person, with the intent that such other person be sold into involuntary servitude."[32]

Judge Jones also wrote that Alabama's labor contract law was unconstitutional and ordered the release of anyone held against his will. Tens of thousands of black

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[30] Ibid., 218-220.

[31] Ibid., 263.

[32] Ibid., 204-205.

workers in Alabama were bound to labor contracts perpetuating the system of debt peonage.[33]

Rather than release black laborers held under the unconstitutional contract labor law, white landowners relied on the loophole that only those sureties that gained workers via confessed judgment be guilty of violating the peonage statute. To evade prosecution, white landowners convicted blacks of petty crimes in open court that exponentially increased the number of black convicts.[34]

Subsequent to Judge Jones' outlaw of labor contract laws, the Alabama legislature passed a new "false pretense" statue. "Once held under a labor contract, black men who attempted to leave their employers face criminal prosecution for doing so. If they had entered into the contract to avoid an earlier prosecution, the departure would exponentially increase the time they could be held as slaves."[35] In efforts to maintain the racial order and an exploitative plantation economy, Alabama laws changed to accommodate the restrictions posed by Judge Jones' ruling. Similar to current drug laws creating mass incarceration, the false pretense statute[36] appeared race neutral, but targeted and affected a primarily black population.

The peonage cases of 1903 did not end after the conviction of John Pace. Case number 4218 charged five white men with conspiring to sell Pike Swanson into labor at the Crosby farm. Both George and Burancas Crosby plead guilty to forty-five

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[33] Ibid.

[34] Ibid, 285.

[35] Ibid.

[36] False pretense legally means f*alse representations of material past or present facts, known by the wrongdoer to be false, and made with the intent to defraud a victim into passing title in property to the wrongdoer.*

counts of peonage and conspiracy to hold blacks in slavery in hopes of receiving clemency. Although clemency was denied, the judge accepted the argument that the statute of limitation for the charges had passed and dismissed the case.[37]

Similarly, in the Georgia case of Shy, Clawson, and Tuner charged with peonage, the defendants received slaps on the wrists. United States District Court Judge Emory Speer fined each party $1,000, but then suspended their sentences. Interestingly, lawyers represented the Turners argued that his clients "indeed had engaged in a form of slavery, but that involuntary servitude wasn't peonage and therefore wasn't illegal."[38] Citing the 1866 Civil Rights Act, the attorneys explained that the law declared all people born in the United States to be full fledged American citizens, but it never explicitly criminalized holding of slaves. The jury was impossibly deadlocked resulting in the mistrial and acquittal of the Turners. To avoid another trial, the Turners plead guilty stating that they were unaware of the unlawfulness of their acts and received a $1,000 fine.[39]

In the case of Sheriff Thomas McClellan, accused of the capturing and selling African Americans in Georgia, Judge Speer fined the defendant $500 in exchange for a guilty plea.[40] In November 1903 Edward McRee and his two brothers stood trial for thirteen counts of peonage. Again, the defendants claimed that they were unaware of their crime because "this custom had been [in] existence ever since the

[37] Ibid., 223.

[38] Ibid., 226.

[39] Ibid.

[40] Ibid., 252-3.

war."[41] The accused plead guilty in exchange for a fine of $1,000.[42] The only person to serve jail time in the McRee case was a black man, George P. Hart, for selling a teenage girl to Frank McRee.[43] One cannot ignore the blatant racialized administration of law where the only person incarcerated was a black man for his end of the deal in which his white partner walked free.

The peonage cases of 1903 demonstrate disparate enforcement of the law in every instance. Similar to the current state of mass incarceration, black offenders experience more arrests, convictions, and longer sentences than their white counterparts. Black peons were guilty of petty crimes, yet endured long harsh sentences of prison and physical labor. However, white landowners who orchestrated and maintained the illegal system of peonage rarely entered the criminal justice system. Those charged and found guilty of peonage rarely served time incarcerated. Even when found guilty of the most egregious crimes, white men were never in real jeopardy of meaningful penalties.[44] In 1909, an internal review of Alabama cases in regards to peonage showed that of the 43 indictments issued, all ended in presidential pardons, acquittals, dismissals, or suspended sentences. Only four convictions resulted in short jail sentences. In total, $300 in fines had been collected.[45]

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[41] Ibid. 252.

[42] Ibid.

[43] Ibid., 253.

[44] Ibid., 262.

[45] Ibid., 355.

In 1911, *Bailey v. Alabama* Justice Hughes announced in the Court's opinion that "the Alabama law constituted a violation of the Thirteenth Amendment protection against involuntary servitude."[46] Alonzo Bailey, a black man, was tired and convicted of fraud for failure to repay an advance provided by his white landlord, a widespread practice binding thousands of black farmers to peonage. The decision set a precedent that challenged the constitutionality of peonage laws. In the 1914 case of *Reynolds v. United States,* judges ruled laws binding workers to extended periods of servitude unconstitutional protected by the Thirteenth Amendment.[47] This legal ruling protected poor farmers who would avoid imprisonment by confessing judgment and entering into extended work contracts with sureties. The legal basis for peonage was abolished and by 1925, all southern states eliminated the convict-lease system.[48]

Although southern states abolished the convict lease system on the books, it continued in practice to a greater magnitude than ever before. By way of local customs and informal arrangements, black prisoners and laborers continued to toil under a system of forced labor.[49] In 1930, 4.8 million African Americans lived in the southern Black Belt region where the majority of blacks were engaged in some form of peonage. [50]

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[46] Rebecca S. Shoemaker, *The White Court Justices, Rulings, and Legacy* (Santa Barbara, CA: ABC-CLIO, 2004), 185.

[47] Ibid.

[48] N. Gordon Carper, "Slavery Revisited: Peonage in the South," 98.

[49] Blackmon. *Slavery by Another Name,* 375.

[50] Ibid.

In September of 1930, white writer John Spivak found that Georgia had more forced labor slaves than ever. He found that at least 8,000 men, all black, labored in the chain gang throughout 116 counties. A total of 1.1 million African Americans lived in Georgia during 1930.[51] Spivak estimated that half lived under "the direct control and force of whites-unable to move or seek employment elsewhere under the threat that doing so would lead to the dreaded chain gang."[52] In 1932, plantation owner J.H. Storud needed cotton pickers to work his land. Macon city police arrested sixty black men and charged them with vagrancy then furnished the convicts to Storud in a timely fashion.[53]

The unlawful continuation of debt peonage was not limited to Georgia. Alabama stopped selling convicts to private industries, but thousands of blacks were leased to local landowners or worked on chain gangs.[54] In 1927, Alabama arrested 37,701 citizens on misdemeanor charges making them eligible for sale by county sheriffs. That year 1 of 19 black men over 12 entered coerced labor in Alabama. In 1928, 12,500 people were charged with possessing or selling alcohol, 2,735 were arrested for vagrancy, 2,014 were charged with gaming, 458 for unlawfully leaving the property of an employer without permission, and 154 were arrested for adultery.[55] Although federal law changed to protect citizens from peonage, the practice continued. Law enforcement continued to arrest primarily blacks for

[51] Ibid., 371.

[52] Ibid.

[53] Ibid., 375.

[54] Ibid.

[55] Ibid.

violation of the same offenses that created debt peonage before the 1911 Supreme Court decision.

The continuation of debt peonage, evidenced in the verified personal accounts and existence of chain gangs, violated federal law. Ironically, the widespread violation of law perpetrated by white landowners and local law enforcement rarely resulted in criminal arrests and convictions. A key feature of mass incarceration is disparate enforcement of law. Not only where blacks overrepresented on the chain gangs as a result of selective policing, white lawbreakers avoided criminal prosecution, and in many cases were protected by the local governments.

Despite overwhelming evidence of unlawful peonage practices, by the mid 1930s the federal government only investigated the most atrocious violations. The local courts rarely punished white landowners found guilty of peonage beyond token fines. [56] It was not until the United States entered World War II that the federal government took a more proactive role in condemning the practice of peonage. President Franklin D. Roosevelt knew that enemies of the United States would expose the inherent hypocrisy of African Americans soldiers fighting for democracy abroad while enduring second-class citizenship domestically. Therefore, on 12 December 1941, Attorney General Francis Biddle issued a directive, Circular No. 3591 to all federal prosecutors. It read,

> A survey of the Department files on alleged peonage violations discloses numerous instances of 'prosecution declined… It is the purpose of these instructions to direct the attention of the United

[56] Ibid., 376-7.

> Sates Attorneys to the possibilities of successful prosecutions stemming from alleged peonage complaints, which have heretofore been considered inadequate to invoke federal prosecution.[57]

Biddle outlines a number of federal criminal statues that one could be charged with if found guilty of continuing peonage. However, it was clear that Circular No. 3591 was more of a political move than one demonstrative of the nation's commitment to protecting the thirteenth amendment right of all Americans. All of the statues listed had been in existence prior to 1941, yet with the threat of international criticism provided by WWII, the federal government paid lip service to the issue of coerced labor.[58]

[57] Ibid., 377-8.

[58] Ibid.

1941-1968

Black soldiers returned from World War II with the desire for full integration and civil rights within the United States. After the Japanese attack upon Pearl Harbor, an American naval base in Hawaii, the United States entered World War II on 7 December 1941.[1] Over 2.5 million black men registered to fight on behalf of the United States and one million more signed up to serve as volunteers or draftees.[2] However, Jim Crow segregation dominated every training base in the armed forces by racially separating soldiers in living quarters and combat units, denying African Americans admittance to particular departments including the marines, and relegating blacks to menial positions without the prospect of promotions.[3] In response, James Thompson from Wichita Kansas wrote a letter to the editor of the black newspaper, *The Pittsburgh Courier*, questioning the legitimacy of African American soldiers fighting abroad and risking their lives for a country that refused to grant them equal rights.[4] He asked, "Should I sacrifice to live 'half American?'"[5] Thompson proposed a two-prong attack of fighting for justice abroad and domestically.

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[1] "United States Enters World War II: Brief History," World War II History Library, http://www.worldwariihistory.info/WWII/United-States.html (accessed February 27, 2012).

[2] Clarence Taylor, "Patriotism Crosses the Color Line: African Americans in World War II," The Gilder Lehrman Institute of American History, http://www.gilderlehrman.org/historynow/12_2007/historian5.php (accessed February 27, 2012).

[3] George Schuyler, "'MAKE DEMOCRACY REAL,' SAYS DOUBLE V ORIGINATOR: Typical American Negro Youth Urges All Out Effort To Gain Rights," *Pittsburgh Courier*, April 18, 1942.

[4] Ibid.

[5] Ibid.

The Pittsburgh Courier, urged its readers to fight for civil rights by launching the "Double V" campaign on 7 February 1942. The Double V campaign advocated for "Democracy: Victory at home, Victory abroad."[6] Demonstrative of mass support, over 18,000 blacks assembled at Madison Square Garden in New York City under the guidance of A. Philip Randolph to kick off the Double V Campaign and threatened to march on Washington if the United States did not integrated the armed forces. Randolph and Grand Reynolds later formed the Committee Against Jim Crow Law in Military Service in November of 1947, an instrumental organization involved in desegregation efforts.[7] On 26 July 1948, President Truman signed Executive Order 9981 that stated, "It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin."[8]

The "Double V" campaign and the subsequent victory of Executive Order 9981 provided the necessary momentum to ignite the Civil Rights Movement. Civil rights activists worked primarily to eliminate Jim Crow laws that operated to maintain the white supremacist racial hierarchy in the Southern United States. Enacted between 1867 and 1965,[9] Jim Crow laws legally enforced segregation in

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[6] Robin D. G. Kelley and Earl Lewis, eds., *To Make Our World Anew: Volume II: A History of African Americans Since 1880* (New York City: Oxford University Press, USA, 2005), 158.

[7] "February Is Black History Month," Greater Kansas City AFL-CIO, http://www.kcaflcio.org/?zone=/unionactive/view_article.cfm&HomeID=234325 (accessed February 27, 2012).

[8] "Desegregation of the Armed Forces Online Research File," Harry S. Truman Library and Museum,http://www.trumanlibrary.org/whistlestop/study_collections/desegregation/large/index.php?action=chronology (accessed February 27, 2012).

[9] Kelley and Lewis, eds., *To Make Our World Anew,* 8.

public and private spaces and prevented black men from voting. Bolstered by the 1896 Supreme Court decision of Plessy V. Ferguson[10] ruling "separate but equal" constitutional, Jim Crow laws were ratified in every state by 1910.[11]

Inherently, Jim Crow laws engendered mass incarceration; not only did the law lock blacks into a permanent undercaste and prevented them from fully engaging in mainstream society, but also attempts to challenge segregation often resulted in beatings, incarceration, or death. White retaliation and the threat of incarceration deterred many blacks from defying the unjust legally enforced social structure. Unlike the drug laws of the twentieth century, Jim Crow segregation blatantly targeted African Americans by the letter of the law. However, the War on Drugs has created a similar effect in practice as Jim Crow laws by overwhelmingly affecting African Americans and preventing them from fully participating in American society.

The Civil Rights Movement to eliminate Jim Crow laws resulted in mass incarceration. When activists began to conduct nonviolent demonstrations and marches, law enforcement overwhelmingly imprisoned African Americans. In this respect, mass incarceration took a two prong attack by legally imprisoning blacks under Jim Crow and then imprisoning those who attempted to invoke their first amendment right of freedom of speech and the right to peaceably assemble.

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[10] "Plessy V. Ferguson – Case Brief Summary," Lawnix - Law Resources and Legal Information, http://www.lawnix.com/cases/plessy-ferguson.html (accessed February 27, 2012).

[11] Kelley and Lewis, eds., *To Make Our World Anew*, 85.

After the 1954 Supreme Court decision of Brown v. The Board of Education of Topeka ruled segregated schools unconstitutional[12] and began to integrate, many states enacted additional Jim Crow laws to curb the civil right gains of African Americans. Alabama passed six segregation laws including mandated separation of races on public transportation in 1955.[13] In Montgomery, Alabama seventy five percent of those who rode the public buses were black, yet faced arrest for refusing to relinquish seats to white passengers. Segregated public transportation was an obvious attempt to legally target African Americans for arrest similar to the War On Drugs 1:100 criminalization of rock versus powder cocaine. The Montgomery Bus Boycott challenged legal white supremacy and as a result, thousands of demonstrators were arrested, the majority of whom were African Americans, a chief feature of mass incarceration.

Police arrested 15-year-old Claudette Colvin on 2 March 1955 for refusing to relinquish her seat to white passengers, although she was not seated in the restricted white section. Despite the unlawful request to leave her seat, it was practice for blacks to give preference of any seat to whites as buses filled up. Claudette was charged with violation of the segregation laws and assault and battery for resisting arrest.[14]. On 1 December 1955, seamstress Rosa Parks also sat behind the white only restricted area on a public bus and refused to relinquish her

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[12] "Brown V. Board of Education, 347 Us 483 - Supreme Court 1954," Google Scholar,http://scholar.google.com/scholar_case?case=12120372216939101759&hl=en&as_sdt=2,11&as_vis=1 (accessed February 22, 2012).

[13] " Pauli Murray, *States' Laws On Race and Color* (Athens: University of Georgia Press, 1997), 615-20."

[14] Russell Freedman, *Freedom Walkers* (New York: Holiday House, 2006), 14-20.

seat which resulted in her arrests. E.D. Nixon who headed the local National Association for the Advancement of Colored People (NAACP) chapter chose Parks' case to campaign against bus segregation because of the three she proved to be the most reputable and stable defendant.[15]

Upon receiving news of Rosa Park's arrest, Jo Ann Robinson, president of the Women's Political Council, called for a boycott of the city buses that began Monday 5 December 1955. The council quickly disseminated a flier that read:

> Another Negro woman has been arrested and thrown in jail because she refused to get up out of her seat on the bus for a white person to sit down. It is the second time since the Claudette Colvin case that a Negro woman has been arrested for the same thing. This has to be stopped. Negroes have rights, too, for if Negroes did not ride the buses, they could not operate. Three-fourths of the riders are Negroes, yet we are arrested, or have to stand over empty seats. If we do not do something to stop these arrests, they will continue. The next time it may be you, or your daughter, or mother. This woman's case will come up on Monday. We are, therefore, asking every Negro to stay off the buses Monday in protest of the arrest and trial. Don't ride the buses to work, to town, to school, or anywhere on Monday. You can afford to stay out of school for one day if you have no other way to go except by bus. You can also afford to stay out of town for one day. If you work, take a cab, or walk. But please, children and grown-ups, don't ride the bus at all on Monday. Please stay off all buses Monday.[16]

Robinson's flier demonstrated the pervasiveness of the criminal justice system and its attempt target African Americans who suffered from mass incarceration. The bus segregation laws disproportionately imprisoned African Americans creating outrage that sparked the Montgomery Bus Boycott.

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[15] Ibid, 26-28.

[16] Robinson, Jo Ann. "Jo Ann Robinson's Montgomery Bus Boycott Flyer." Chantham County. www.chathamnc.org (accessed March 19, 2012).

The Montgomery Improvement Association (MIA) spearheaded by Martin Luther King Jr. undertook the responsibility of coordinating the bus boycott. On any given workday, 17,500 African Americans rode the bus making 35,000-45,000 trips. For those who could not walk or carpool for the duration of the protest, the Transportation Committee of the MIA synchronized for the 18 black owned cab companies known as the "taxicab army" to assist by reducing their normal rate to ten cents a trip, comparable to city bus fare.[17] Immediately after the Montgomery Bus Boycott began, law enforcement used the law to undermine African Americans and their efforts to utilize alternative transportation. Montgomery police began to enforce a longtime ignored law of 45 cents minimum taxi fare law. Cab drivers found guilty of charging less than the state required minimum fare faced arrest and prosecution.[18] Again, Alabama law facilitated mass incarceration by targeting and imprisoning African American taxi drivers who assisted in challenging legal white supremacy.

On 18 December 1955, the MIA organized an elaborate carpool system to circumvent the legal dilemma posed by the taxicab army. However, police harassment increased as Montgomery officers targeted black maids waiting at pick up points in white neighborhoods and threatened to arrest the women for loitering and vagrancy unless they dispersed.[19] Black carpool drivers overwhelmingly

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[17] Robert Glennon, "The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955-1957," *Law and History Review* 9, no. 1 (Spring 1991): 59-112, http://www.jstor.org/stable/743660?seq=12 (accessed February 15, 2012), 65.

[18] Ibid, 65.

[19] Ibid, 66.

received traffic tickets and were arrested for imagined and arbitrary violations such as going to slow or fast and signaling a turn too late or too soon.[20] The State threated those with multiple traffic citations with suspension of driver's licenses in addition to impounding their cars. Furthermore, white owned insurance companies raised rates on "bad drivers" and threatened to cancel policies disproportionally affecting black drivers who began to assist in the boycott efforts. Police badgering and harassment resulted in hundreds of traffic tickets and sixty arrests.[21] These efforts proved successful as many drivers stopped offering rides to bus boycotters for fear of license revocation or impounding of their vehicles.

The reemergence of vagrancy laws that began in the reconstruction era to imprison African Americans for convict labor demonstrates mass incarceration in the 1950s. The wide latitude fixed within the definition of vagrancy allowed Montgomery police to target African Americans with the intention of either imprisoning citizens or threatening jail to intimidate bus boycotters. Furthermore, police discretion operated similar to the current state of mass incarceration where black drivers are disproportionately pulled over for traffic violations relative to their white counterparts.[22] African American drivers who assisted with the bus boycott endured far more police stops, questions, and tickets in a similar fashion as today's system of mass incarceration.

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[20] Russell Freedman, *Freedom Walkers* ,62.

[21] Glennon, "The Role of Law in the Civil Rights Movement," 66.

[22] Ben Poston, "Racial Gap Found in Traffic Stops in Milwaukee," *Milwaukee Journal Sentinel*, December 3, 2011.

On 13 February 1956 Montgomery judge Eugene W. Carter convened a Grand Jury to investigate the bus boycott. More than 200 blacks were subpoenaed and indicted for violation[23] of a 1921 Alabama that read,

> Two or more persons who, without a just cause or legal excuse for doing so, enter into any combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying or preventing any other persons, firms, corporations, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor.[24]

Blacks did not refuse to appear due to explicit threats of imprisonment and Klan retaliation. The antilabor statue created to deter coal-mining organization was not applied to prosecute the White Citizens Council (WCC), a white supremacist group, boycott of black businesses. The WCC was notorious for their resistance to school integration and organized boycotts, protests, and meetings.[25] Here, Alabama law operated disparately to target African Americans despite similar behavior on the behalf of white citizens. In the end, the city commissioners gave the black community an ultimatum to end the boycott or face legal consequences. The boycott continued and on 21 February 1956, a Grand Jury indicted 89 MIA leaders and carpool drivers for conspiracy.[26] Montgomery police not only threatened black boycotters, but also in April of 1956, Alabama mayor W.A. Gayle threatened bus drivers who refused to maintain segregated transportation with arrest and jail.[27]

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[23] Freedman, *Freedom Walkers,* 67.

[24] Glennon, "The Role of Law in the Civil Rights Movement," 70.

[25] "Citizen's Council," The Citizen's Council, http://www.citizenscouncils.com/ (accessed March 20, 2012).

[26] Kelley and Lewis, eds., *To Make Our World Anew*, 188.

[27] Glennon, "The Role of Law in the Civil Rights Movement," 49.

On 13 November 1956 federal courts ruled city bus segregation law unconstitutional in *Browder v. Gayle*.[28] Nonetheless, city attorneys appealed the ruling and maintained transportation segregation continuing the boycott until court documents arrived on 20 December 1956.[29] On the same day of *Browder v. Gayle*, Alabama state judge Eugene Carter attempted to end the boycott by issuing an injunction restricting blacks from congregating on street corners to wait for their carpool rides. Furthermore, anyone accused of operating a carpool could be arrested and held without trial for contempt of court. Judge Carter's actions demonstrated the use of the criminal justice system to target African Americans disproportionately mirroring the present day drug laws. The extreme latitude granted to law officials to indefinitely hold prisoners engendered mass incarceration because judges' discretion ensured black overrepresentation.

During the 1950s, jail for African Americans, women especially, had been terrifying due to the autonomy authorities possessed to abuse and degrade prisoners without consequence. "And the laws of the South were interpreted explicitly to ensure that the rape or coercion of a black woman by a white man would almost never be prosecuted as a crime."[30] Additionally, going to jail was shameful and not a self sacrificing act. Civil rights activist Bayard Rustin later recalled "In the black community, going to jail had been a badge of dishonor. Martin

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[28] Kelley and Lewis, eds., *To Make Our World Anew*, 190.

[29] Ibid, 92.

[30] Douglas A. Blackmon, *Slavery by Another Name: the Re-Enslavement of Black Americans from the Civil War to World War II*, 1st Anchor Books ed. (New York: Anchor, 2009), 305.

made going to jail like receiving a Ph.D."[31] Michelle Alexander provides in her definition of mass incarceration the creation and maintenance of a racial undercaste. Furthermore, she explains how mass incarceration not only refers to the criminal justice system, but the to extra-legal factors that control beyond prison confines those labeled criminals.[32] The shame associated with a prison conviction during the 1950s described by Rustin qualifies this era as one of mass incarceration because of the extra-legal consequences endured by ex-convicts similar to those of present day released offenders.

Civil rights activists targeted interstate transportation in addition to intrastate transportation. On 5 December of 1960, the United States Supreme Court ruled segregated interstate transportation illegal in the case of *Boyonton v. Virginia.*[33]. The "Freedom Riders" who tested the Supreme Court decisions faced arrests for utilizing "white only" areas on the interstate buses and facilities within stations despite new legislation.

Freedom Riders started their trip in Washington D.C. and travelled peacefully until reaching Anniston, AL on 15 May 1961 where an angry mob met the demonstrators with firebombs.[34] During the attack, local police and FBI agents

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[31] Jack M. Bloom, *Class, Race, and the Civil Rights Movement* (Bloomington: Indiana Univ Pr, 1987), 142.

[32] Alexander, *The New Jim Crow,* 13.

[33] "Boynton V. Virginia - Significance, Court Splits, but For Boynton - Petitioner, Marshall, Decision, and Justices," Law Library - American Law and Legal Information, http://law.jrank.org/pages/13146/Boynton-v-Virginia.html (accessed February 23, 2012).

[34] Kelley and Lewis, eds., *To Make Our World Anew*, 214.

stood by refusing to intervene.[35] In Anniston, police utilized discretion by not arresting whites who broke the law in assaulting the Freedom Riders. Similar to the current state of mass incarceration, police disparately enforced the law and disproportionately targeted African Americans despite whites similar, and in this case, worse criminal behavior. Similarly, when Freedom Riders arrived in Birmingham local police allowed the Ku Klux Klan to have fifteen minutes to assault protesters without interruption in the presence of federal agents. In this case, the FBI had been notified beforehand of the planned attack and still nothing was done to mitigate the circumstance.[36] Again, authorities' discretion and disparate enforcement of the law created a state of mass incarceration mirrored in the present.

On 20 May 1961, civil rights activists planned another Freedom Ride from Birmingham to Montgomery. The Kennedy administration secured protection for the demonstrators while en route, but once protestors entered the city limits of Montgomery, law enforcement left them at the mercy of an awaiting angry white mob that brutally attacked and beat them. The Klan mob grew to over 3,000 members who rioted and attacked blacks in the area. Again, law enforcement failed to make any arrests and served the Freedom Riders with injunctions for inciting the violence.[37] Mass incarceration operated not only to unjustly and disproportionately

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[35] Joseph E. Luders, *The Civil Rights Movement and the Logic of Social Change* (Cambridge: Cambridge University Press, 2010), 165.

[36] Ibid.

[37] James Haskins, *The Freedom Rides: Journey For Justice* (New York: Hyperion, 1995), 56-57.

imprison blacks, but also the disuse of law allowed white lawbreakers to escape justice and not endure imprisonment. Also, the injunction against the Freedom Riders blamed the victims rather than the perpetrators similar to the current system of mass incarceration and how drug users are punished more frequently than the big kingpins.

Following the grand injustice suffered by Freedom Riders in Alabama, President Kennedy made a deal with the governors of both Mississippi and Alabama to protect the demonstrators from mob violence in exchange for illegal arrests.[38] In this instance, the president of the United States facilitated mass incarceration of black protestors in order to protect the national image from further international criticism. When Freedom Riders arrived in Jackson, Mississippi on the morning of 24 May 1961, and attempted to use "white only" amenities, police officers arrested them for breach of peace and refusal to obey an officer. In total, more than 300 demonstrators were arrested for legally utilizing "white only" areas in interstate travel.[39]

It was not until 1 November 1961 that the Kennedy administration demanded another desegregation order on behalf of the Interstate Commerce Commission (ICC).[40] Although the letter of the federal law provided integrated interstate transportation, in the Deep South African Americans remained reluctant

[38] Kelley and Lewis, eds., *To Make Our World Anew*, 214.

[39] Ibid.

[40] Ibid.

to employ newly received rights and freedoms for fear of white terror and retaliation.

In Albany, Georgia on 22 November 1961, five students returning home for Thanksgiving attempting to utilize the white waiting room were arrested.[41] Later in December, eleven students are arrested again for integrating an Albany bus station, but were charged with disturbing the peace rather than for violation of segregation. They were held at a bond of $2200 collectively, an outrageous amount that the economically depressed black Albany community struggled to furnish.[42] Similar to extraordinary drug sentences disproportionate to the relative offense engendered by mandatory minimum sentencing in the current state of mass incarceration, the high amount of bond necessary to release innocent prisoners was intended to maintain the social order and keep blacks as permanent members of the racial undercaste. When the eleven students went to trial, nearly 300 students marched in nonviolence protest to be arrested. Marion King, the wife of an Albany Movement leader held a protest prayer at City hall to be arrested alongside 200 other adults. In response to the astronomical number of arrests, Dr. King and Ralph Abernathy led 256 people in a nonviolent march to be arrested. In total, 1,000 demonstrators were arrested in Albany for exercising constitutionally granted rights. The city did not repeal all segregation ordinances until 1964.[43]

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[41] Ibid, 27.

[42] Steven Barkan, "Legal Control of the Southern Civil Rights Movement," *American Sociological Review* 49, no. 4 (1984): 552-65, http://www.jstor.org/stable/2095468 (accessed March 21, 2012).

[43] Ibid.

During the Albany Movement, law enforcement essentially broke and defied federal law in efforts to maintain white supremacy; however officers did not face imprisonment themselves. Rather, police arrested blacks who attempted to exercise their right to desegregated transportation facilities, and right to freedom of speech. This ironic disparate enforcement of law displays a history of mass incarceration with far more extreme perversion of law than that of contemporary times. Furthermore, the proportion of African Americans arrested mirrors the pattern observed in present mass incarceration, but to a lesser magnitude. Throughout the Civil Rights Movement, nonviolent demonstrators regularly faced arrest and imprisonment for challenging the racial order of Jim Crow segregation. City police met actions of civil disobedience with hostility.

On 1 February of 1960, student orchestrated sit-ins began to spread throughout the southern United States. By the end of the month, students conducted more than 30 sit-ins in seven states with over 50,000 participants. In April, students under the leadership of Ella Baker created the Student Nonviolent Coordinating Committee (SNCC).[44]

As a result of widespread sit-ins, the Georgia State Legislature on 16 February 1960 passed a law criminalizing those who refused to leave a place a business when ordered to do so by management. Nonetheless, on 15 March, 200 students conducted sit-ins at ten locations in downtown Atlanta. The governor

[44] Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s* (Cambridge, Mass.: Harvard University Press, 1995), 10-11.

ordered police to arrest demonstrators and 77 students went to jail.[45] On 17 May, the Congress of Racial Equality (CORE) orchestrated a march to take place outside the state capital building. City police prohibited the 3,000 students that appeared to participate in civil disobedience. From 14-16 of October SNCC organized a mass sit in at ten locations and picketed four locations.[46] Martin Luther King Jr. and 300 students participated in a sit in at an Atlanta department store, Rich's, and were arrested.[47] Of the protestors who participated, a total of 74 people were arrested and 36 of those refused to pay bail.[48] Georgia used the law as a preemptive attack against African Americans to prevent them from peacefully exercising their right to peacefully assemble and freedom of speech.

In April of 1963, Martin Luther King Jr. and the SCLC joined the Alabama Christian Movement for Human Rights (ACMHR)[49] in Birmingham, Alabama for a mass campaign fighting Jim Crow segregation. Demonstrations included mass meetings, sit-ins, and a march on the county building to register voters that resulted in hundreds of arrests and six-month jail sentences. In reaction to the desegregation

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[45] Jack Walker, "Protest and Negotiation: A Case Study of Negro Leadership in Atlanta, Georgia," *Midwest Journal of Political Science* 7, no. 2 (May 1963): 99-124, http://www.jstor.org/stable/2108669 (accessed March 21, 2012).

[46] "Atlanta Students Sit-In For U.S. Civil Rights, 1960-1961," Global Nonviolent Action Database, http://nvdatabase.swarthmore.edu/content/atlanta-students-sit-us-civil-rights-1960-1961 (accessed February 23, 2012).

[47] Ibid.

[48] "Atlanta Students Sit-Ins For U.S. Civil Rights, 1960-1961," www.nvdatabase.swarthmore.edu.

[49] ACMHR emerged after Alabama white authorities banned the NAACP for organizing illegal boycotts. Days after the ban went into effect, Fred Shuttlesworth created ACMHR, one of the most integral affiliates of the SCLC.

campaign, the city government acquired a court injunction against the protest. [50] On 2 May 1963, SCLC organizer James Bevel created the Children's Crusade that utilized young children as freedom fighters. More than 1,000 African American students attempted to march in downtown Birmingham where police arrested hundreds of demonstrators. The next day, hundreds of young people assembled again, but instead of arresting the protestors, Commissioner Eugene "Bull" Connor ordered city police and fire fighters to halt the demonstrators by high pressure fire hoses, police billy clubs and police dogs.[51] The highly publicized images of extreme police brutality upon young children outraged the on looking international community leading to negotiations of desegregation known as "The Birmingham Truce Agreement" on 10 May 1963.[52]

[50] Steven Barkan, "Legal Control of the Southern Civil Rights Movement."

[51] Ibid.

[52] Ibid.

Conclusion:

Marc Mauer relies upon statistical overrepresentation of African Americans within the criminal justice system as of 1971 to demonstrate a pattern of mass incarceration. Similarly, Michelle Alexander relies upon statistical data and sociological implications such as the creation of laws and extralegal consequences including criminal disenfranchisement to make her case for mass incarceration. Alexander emphasizes the creation and perpetuation of a permanent undercaste that locks African Americans into second-class citizenship by way of the criminal justice system. In this paper, I argued that mass incarceration occurred prior to the 1971 declaration of the War on Drugs. I evaluated three time periods, 1865-1903, 1903-1941, and 1941-1968, to find instances of mass incarceration as defined by leading scholars Alexander and Mauer.

From emancipation to the turn of the twentieth century, I discovered the intentional creation of laws that disproportionately affected African Americans including Black Codes, vagrancy laws, and penal codes. By incarcerating a large number of African Americans, the southern plantation system was able to continue with the exploitation of cheap black labor engendered by the convict lease system. Similarly, from 1903-1944, the primary mode of maintaining cheap black labor was by binding African Americans to the land in the form of sharecropping and debt peonage. From World War II until the end of the Civil Rights era, I found mass incarceration most present in the form of disparate enforcement of law, especially in regards to peaceful protests and demonstrations that tested states' commitment to uphold federal desegregation laws.

It is important to note that not only African Americans fell victim to sharecropping, debt peonage, and voting restrictions. Poor white farmers often suffered similarly however, as time passed they were able to create a middle class and accumulate wealth at a far greater rate than their black counterparts. Additionally, a host of white sympathizers joined the Civil Rights Movement and endured violence alongside black protesters. Whites were not immune from the criminal justice system, but they did not experience mass incarceration in the same way as did African Americans.

While emancipation occurred in 1865, it would take a century until African Americans fully enjoyed citizenship evidenced by the 1965 Voting Rights Act. Even though the federal government repealed state attempts to restrict African American suffrage rights, criminal disenfranchisement remains intact, barring millions of American citizens from participating in the political arena today.

My research would have greatly benefitted from raw data to perform statistical analysis in order to gauge and track percentages stratified by race to demonstrate an overrepresentation of imprisoned African Americans. However, I encountered incomplete and inconsistent data sets that made it difficult to ensure parody across tabulations. As a result, my research took a qualitative form, emphasizing Alexander's sociological implications in the specific creation and maintenance of racialized laws and practices within the criminal justice system that formed an African American undercaste. Furthermore, much of the archival data and primary sources available to authors of utilized secondary sources were not digitized and would require that I travel to sites in order to engage them. Due to

limited funds and time restrictions, I did not have the liberty to engage as much with the primary sources that I would have liked, but I meticulously cited reputable secondary sources that documented statistics and figures. I also believe that a larger analysis of all the southern states or even the entire United States would make my research more compelling and generalizable.

For future studies, I would like to limit my time span to conduct and in depth study of a specific time period. I would like to further analyze the social climate of the general public and how citizens influenced the creation and perpetuation of mass incarceration. Additionally, I would like to further analyze the creation of laws and used language to asses how state legislatures crafted discriminatory laws in a race neutral context. To better understand the prevalence of this phenomenon, I want to expand the geographical boundaries of mass incarceration, a phenomenon that appears in an American context primarily due to the current astonishing prison statistics that surpass any other nation. However, I am interested in how mass incarceration occurred with comparable results in other nations in which social control of populations of color created a permanent undercaste. By examining South Africa during the apartheid era of 1948-1994, in comparison with the United States, I want to draw international parallels that will expand the definition of mass incarceration. I choose South Africa as a point of comparison with the United States because a similar phenomenon, mass incarceration of black and brown populations, transpired despite differing contexts. By placing mass incarceration in a comparative framework, I aim to enrich the ongoing dialogue by providing an additional vantage point from which to assess mass incarceration.

Scholarship can serve as a form of activism that can prove useful when paired with practical application. My research not only aims to broaden the definition of mass incarceration, but also to influence legislation and policies in efforts to begin the process of decarceration.

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