

Mass Incarceration: The Economics and Politics of Control
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The passage of the 13th amendment hit the South as hard as any Union bombardment during the Civil War, devastating the social and economic landscape the same way Sherman's "March to the Sea" devastated the physical one. In its wake, the South scrambled to find a way to rebuild and restore, not only its crippled economic system, but the broken social hierarchies that had once defined the economic and social structures of the Southern plantation system. This is where the films *Slavery by Another Name* by Samuel D. Pollard and *The 13th* by Ava DuVernay begin their histories about how the South rebuilt their economy by redesigning their system of control over the people the 13th amendment expressly intended to liberate, and how, in the modern age, coding and criminalization of race has grown from a regional to a national issue.

Both films begin much in the same way, by describing the damage to the Southern way of life after the attempts of Northern "Radical" Republicans tried to purge the traditions of slavery from the South during Reconstruction. While meeting with some successes, however incomplete they were, Pollard's film explores the immediate dismantling of those gains in the sixty years that followed Reconstruction through the use of the criminal justice system. By taking advantage of the provision of the 13th amendment that makes a legal exception for criminals, the South attempted to subject African Americans to "slavery by another name."¹

Pollard illustrated how this legal exception was exploited by newly industrializing areas of the South. Birmingham, Alabama was sitting at the conjunction of all the resources necessary to make it the Pittsburgh of the South. Birmingham, "founded in 1871 and fed by intersecting rail lines, [it] was poised to exploit Alabama's rich deposits of coal, iron ore, and limestone: the

¹ Samuel D. Pollard, dir., *Slavery by Another Name* (Arlington, VA: PBS, 2012), <https://mnsu.kanopy.com/video/slavery-another-name>.

ingredients of steel.”² Pollard described how it also sat on another key resources to be exploited: convict labor. Through the stories of Ezekiel Archey and Greene Cottenham, Pollard explained how the system was maintained through a series of “pig laws” designed to charge black men with petty crimes and punish them with backbreaking forced labor.³ In this way, Pollard describes how these crimes skewed public opinion and result in the criminalization of race. These trumped up “pig law” violations and selective enforcement led to misleading crime statistics and created an image of the violent, brutal, and sexually aggressive African American male. This, then, made it all too easy to justify the first wave mass incarceration of African Americans and provide the fuel for the construction of an industrializing South, thereby reasserting the old social and economic hierarchies that had been lost with the Reconstruction amendments of the 1860s.

DuVernay’s film starts with the late 19th century history of the criminalization of African Americans, but expands it to the modern age and across regions. She too revisits this concerted effort to create a pool of cheap labor to rebuild the southern economy but notes that this effort to criminalize blacks was brought to the mainstream in 1915 with the release of that era’s blockbuster, *Birth of a Nation*.⁴ Lauded by President Woodrow Wilson as, “history written with lighting,” it ushered in a new era of terrorism against African Americans and a rebirth of the Ku Klux Klan. The film, shown in both the North and the South, presented a sympathetic image of noble Klansmen fighting back against the “repacious, menacing, Negro male evil that had to be

² Pollard, dir., *Slavery by Another Name*, 19:54.

³ Pollard, dir., *Slavery by Another Name*, 18:26-21:23.

⁴ Ava DuVernay, *13th* (Sherman Oaks, CA: Kandoo Films, 2016), 04:37-:07:31

banished.”⁵ Now, immortalized in celluloid, this lingering image would transcend region and serve as a justification for mass incarceration into the 20th century.

DuVernay’s history departs Pollard’s as she describes an evolution of the coding of race through the last three decades of the 20th century. As the civil rights movement of the 50s and 60s put an end to the control of de jure segregation, and the old crimes used to fill prisons had become unpalatable, new fears had to be stoked. Slowly rising crime rates in the 70s were then connected to the civil rights movement itself.⁶ The negative publicity of the Black Panthers, the Black Power movement, anti-war, and feminist movements turned into the fear that there was a breakdown of law and order. Even though crime statistics indicated no surge in crime, Nixon won his landslide victory in 1972 on a “law and order” platform.⁷

The administrations in these decades, notably Nixon and Reagan, targeted a new enemy: drugs. While the crimes that had been trumped up to ensnare blacks in the past were petty, the new threat of drugs, gangs and drug seemed a very real to the entire country. In 1988 additional fuel was added to the fire of criminalization of race. Young black men were portrayed as a hyper-violent “super predators.” The Willie Horton case elevated fears even further.⁸ Throughout this 30 year period of time, then, new “pig laws” were developed in the form of disparate drug scheduling of cocaine and crack. These, combined with inconsistent prosecution and sentencing, led to a massive flow of blacks into the prison system, nearly quadrupling the number of inmates between 1970 to 1990.⁹ President Clinton would add to this expressway to the prison system with his “Three Strikes”, mandatory minimum sentencing, “Truth in Sentencing” and his 1994

⁵ DuVernay, *13th*, 04:22-07:59.

⁶ DuVernay, *13th*, 13:56.

⁷ DuVernay, *13th*, 16:26-18:25

⁸ DuVernay, *13th*, 28:40-30:51

⁹ DuVernay, *13th*, 22:36

Federal Crime bill built the infrastructure for mass incarceration for the 21st century.¹⁰ Unlike the policies of the past, these laws were race neutral in language, and as a result, more palatable to mainstream America. The “War on Drugs” was hardly race neutral in reality.

DeVernay, more than Pollard, shows the evolution of the coding of race as times and economic conditions change. While convict labor of the past helped build profit for companies, the 2000s marked yet another shift: convicts *were* profit. DeVernay describes the current era of prison privatization, where there is a vested interest in keeping prisons full and keeping inmates in prison. This sinister dynamic was aided by the American Legislative Exchange Council that writes legislation to support its corporate sponsors, one of which was the Corrections Corporation of America.¹¹ This new Prison/Industrial Complex connects two factors: corporate vendors and a steady supply of prisoners. Corporations, according to Bob Sloan, “are in our prisons and they are profiting from punishment.”¹² The combination of corporate capitalism and criminal justice has created a noxious environment and, as a result, may be the most pressing civil rights issue we face today. With its deep roots in corporate America, where there is little financial incentive to reform, it provides a daunting challenge to a new world to make good on the promise of the 13th amendment.

¹⁰ DeVernay, *13th*, 34:31-40:55

¹¹ DeVernay, *13th*, 53:58-1:03:52

¹² DeVernay, *13th*, 1:03:52