

Why We Must Divest from Mass Incarceration

By Janay Richmond

The rapid expansion of incarceration hurts more than the people directly affected by the system. The 2.3 million incarcerated individuals in the U.S. (triple the number in 1980)¹ put a strain on taxpayers while businesses profit from – and get tax breaks for – using low-cost prison labor.² It takes jobs out of the mainstream economy, makes it tough for small business owners to compete and negatively impacts entrepreneurs and other hardworking people reaching for the American Dream.

The laws in place that feed America's rising prison population unjustly target people of color, largely as a result of the so-called "War on Drugs."³ African Americans make up only 13 percent of our population, yet more than 40 percent of those incarcerated are Black.⁴ While direct indications of discrimination often are obscured from our daily lives, our nation is as flawed as it was 500 years ago. Like all those participating in the economic market, even the philanthropic sector is implicated.

In the 1500s, Portuguese and Spanish colonists brought enslaved laborers across the Atlantic, followed by other European nations competing to grow their colonial economies.⁵ In the U.S., an economy built on labor from chattel slavery lasted until the Civil War, when business interests were left to devise new ways to supplement the loss of this unpaid labor source. The 13th Amendment prohibits slavery except as punishment for a crime, a loophole that has been threaded by economic interests since its inception in 1864. Passed in 1865–66,

the Black Codes' vagrancy laws pressured freed men to sign yearly labor contracts or risk being arrested and forced into hard labor.⁶ Convict leasing to businesses started in the 1880s and the "Progressive Era" brought chain gangs.⁷

The New Deal somewhat restricted prison labor,⁸ but by the 1990s, the American Legislative Exchange Council (ALEC) lobbied Republicans and Democrats alike to pass laws that (1) enforced harsher sentences for drug addiction and possession and (2) deregulated prison labor practices.⁹ The result is a national economic trend: Microsoft, Starbucks, Victoria's Secret, Costco and Wal-Mart have all used low-cost convict labor.¹⁰

Like the economic drivers of slavery, the modern capitalist economy incentivizes the generation of a reserved low-cost labor source. The two largest private prisons in the country, the Corrections Corporation of America and The GEO Group, are publicly traded entities.¹¹ This has successfully made us our own worst enemy, because all people who trade on the market, employers who offer benefits, employees who receive 401K or 403b benefits and foundations that invest their endowments are owners of this new system that trades Black lives.

For example, as recently as 2012, The Bill & Melinda Gates Foundation had \$2.2 million invested in The GEO Group,¹² a company with about 66,000 incarcerated people under its control.¹³ Some argue that, in context, that money is just a drop in the bucket considering the foundation's large portfolio. But even if foundation in-

vestment in private prisons is minimal, large funders have diversified endowments and many hold stock in corporations that use convict labor.

When you hear the term "systemic racism" used by the Movement for Black Lives and others, this is that mysterious system. This is the wizard behind the curtain. This time around, it operates in an ingenious way that puts blood on all of our hands. As in centuries past, it plays on fear and misinformation, and it justifies itself with acrobatic feats of rhetoric. If we all own a piece of the economic pie, we are all invested in keeping this system alive. While it has become woven into the fabric of American life to the point that it seems totally inextricable, the prison industrial complex is not indestructible.

Foundation trustees are responsible for protecting their endowments, a duty most commonly understood to mean using sound, money-making investment savvy. Some argue that investment goals should be considered separately from grantmaking activities. But investing in a system that isolates Black people as cheap labor sustains the very societal problems and disparities that foundations, in their work to work toward the common good, attempt to correct. How savvy can an investment policy be if it undercuts a foundation's goals?

In addition to robust investment screening protocols, foundations should take steps to end America's dependency on the prison-industrial complex. To this end, here are some steps foundations can take:

1. Fund advocacy and community organizing groups that build power among formerly incarcerated populations, their families and allies to dismantle private prisons and unpaid labor, as well as other criminal justice reform toward more just policing and sentencing.

2. Market our new normal. We need to pursue public education to combat the narrative of fear perpetuated by those with special interests.

3. Call out companies that include prison labor in their business models. Shareholder activism and divestment are powerful tools some foundations forget are at their disposal.

4. Put pressure on lawmakers to once again restrict prison labor.

Foundations cannot say they are interested in helping disadvantaged groups forge a path to equity while investing in the system that represents the biggest obstacle in their lives. It's time to decide just how serious we are about reducing injustice in America. ■

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Notes

1. "Criminal Justice Fact Sheet," NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet>.
2. Abe Louise Young, "BP Hires Prison Labor to Clean Up Spill While Coastal Residents Struggle," *The Nation*, July 21, 2010, <http://www.thenation.com/article/bp-hires-prison-labor-clean-spill-while-coastal-residents-struggle>.
3. The War on Drugs and its disparate effects on communities of color is outside the scope of this essay, but is well-documented elsewhere. For more information, see Lawrence D. Bobo and Victor Thompson, "Unfair by Design: The War on Drugs, Race, and the Legitimacy

of the Criminal Justice System," *Social Research*, Vol. 73, No. 2, 2006, https://muse.jhu.edu/journals/social_research/summary/v073/73.2.bobo.html.

4. Criminal Justice Fact Sheet, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet>.
5. Greta Warber, "Shipwreck Shines Light on Historic Shift in Slave Trade," *National Geographic*, June 5, 2015, <http://news.nationalgeographic.com/2015/06/150605-shipwreck-slave-trade-south-africa-18th-century-brazil>.
6. "The Southern "Black Codes" of 1865–66," Constitutional Rights Foundation, <http://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html>.
7. Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (Massachusetts: Cambridge University Press, 2008).
8. Heather Ann Thompson, "The Prison Industrial Complex: A Growth Industry in a Shrinking Economy," *New Labor Forum*, August 6, 2012, <http://new-laborforum.cuny.edu/2012/08/06/the-prison-industrial-complex>.
9. Mike Elk and Bob Sloan, "The Hidden History of ALEC and Prison Labor," *The Nation*, August 1, 2011, <http://www.thenation.com/article/hidden-history-alec-and-prison-labor>.
10. Caroline Winter, "What Do Prisoners Make for Victoria's Secret?" *Mother Jones*, July/August 2008, <http://www.motherjones.com/politics/2008/07/what-do-prisoners-make-victorias-secret>.
11. Elk and Sloan, op cit.
12. Alex Park, "Is the Gates Foundation Still Investing in Private Prisons?" *Mother Jones*, December 8, 2014, <http://www.motherjones.com/politics/2014/12/gates-foundation-still-investing-private-prisons>.
13. Booth Gunter, "Investigation, Lawsuit Expose Barbaric Conditions at For-Profit Youth Prison in Mississippi," *Southern Poverty Law Center*, May 2, 2012, <https://www.splcenter.org/news/2012/05/03/investigation-lawsuit-expose-barbaric-conditions-profit-youth-prison-mississippi>.

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Traditional philanthropic entities like the Ford Foundation and others have made shifts to the way they fund, providing greater flexibility for organizations engaged in issues like justice reform. And the government continues to partner with philanthropy and non-profits through efforts like My Brother's Keeper and collaborative work to provide the funding and support through the Department of Justice and Department of Education.

I recognized at an early age the value of education and of having the opportunities and support systems to realize my dreams relatively unencumbered. Each child, family and community deserves the same. From neighborhood blocks to national board rooms, and from local courthouses to the White House, I have had the opportunity to experience the impact that both strong and structurally-biased policy can have on the communities that depend on policy most for effective change. We are all better when we are all doing better. ■

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Notes

1. Kevin Welner and Amy Farley, *Confronting Systemic Inequity in Education* (D.C.: National Committee for Responsive Philanthropy, October 2010) <http://www.ncrp.org/paib/education-philanthropy>.
2. See "Title I – Improving The Academic Achievement Of The Disadvantaged," U.S. Department of Education, <http://www2.ed.gov/policy/elsec/leg/esea02/pg1.html>.
3. Lisa Ranghelli, *Leveraging Limited Dollars: How Grantmakers Achieve Tangible Results by Funding Policy and Community Engagement* (D.C.: National Committee for Responsive Philanthropy, January 2012) http://ncrp.org/?option=com_ixxocart&Itemid=41&p=product&id=66&parent=1.