

# EXHIBIT A



# THE CHARTER OF THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE

THE UNDERSIGNED, Robert Shenton, hereby certifies:

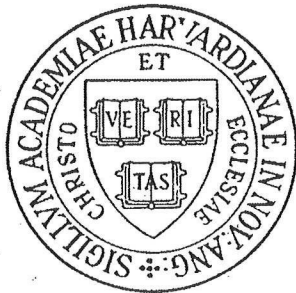
That he is Secretary to the Corporation and Secretary of the Board of Overseers of Harvard College.

That the following vote was duly adopted at meetings of the President and Fellows of Harvard College and of the Board of Overseers held in Cambridge on Wednesday, June 11, 1975, at each of which a quorum was present and acting throughout, and that it has not been modified or rescinded and is still in full force and effect on the date hereof:

VOTED: That the Secretary to the Corporation and of the Board of Overseers be and he hereby is authorized and instructed to prepare and publish, in form satisfactory for certification by the Secretary of The Commonwealth of Massachusetts, copies of those documents which contain or relate to the corporate power and authority of this Corporation.

The undersigned hereby further certifies that those documents hereinafter appearing under Part I of the certificate of the Secretary of The Commonwealth of Massachusetts are true, correct and complete copies of the originals of all provisions of law and of the Constitution of the Commonwealth now in force (except where otherwise indicated in the Introduction and in editor's marginal notes and footnotes) which contain or relate to the corporate power and authority of the President and Fellows of Harvard College.

IN WITNESS WHEREOF, I have hereunto affixed the seal of the President and Fellows of Harvard College on this 17th day of June in the year of our Lord One Thousand Nine Hundred and Seventy-Six and of Harvard College the Three Hundred and Fortieth.



*Robert Shenton*

ROBERT SHENTON  
*Secretary to the Corporation  
Secretary of the Board of  
Overseers*



THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE SECRETARY

STATE HOUSE, BOSTON 02133

TO WHOM IT MAY CONCERN

I, Paul Guzzi, Secretary of The Commonwealth of Massachusetts, hereby certify: that I have custody of the public records of the Commonwealth; that such records show that the General Court of the Colony of Massachusetts Bay on October 28, 1636, appropriated a sum of money toward a building for a school or college later named Harvard College; that on May 23, 1650 the General Court established Harvard College as a body corporate having perpetual succession, to be known under the name of President and Fellows of Harvard College; and that said Harvard College has continued to be and is today a body corporate under the laws of The Commonwealth of Massachusetts, authorized by law to confer all academic degrees.

PART I.

I further certify that the following are true copies, witnessed under the Great Seal of The Commonwealth of Massachusetts,<sup>\*</sup> of records relating to the organization, existence and the corporate powers of the President and Fellows of Harvard College as they appear of record here, namely:

1. 1636 — APPROPRIATION TOWARD THE COLLEGE

The Court agreed to give 400£ towards a schoale or Colledge, whearof 200£ to bee paid the next yeare, and 200£ when the worke is finished, and the next Court to appoint wheare and what building.

"Records of the Governour and Company  
of the Massachusetts Bay in New  
England," I:183, entry 309.<sup>2</sup>  
28 October 1636. In five volumes  
(1628-56) in the Massachusetts Archives,  
Boston, Mass. (Hereafter cited as M.B.C.R.)

<sup>\*</sup> This certificate does not cover editor's marginal notes or footnotes.

*The General Court on 2 May 1638 changed the name Newtowne to Cambridge, where many leading colonists had been educated in Old England. (M.B.C.R. I: 221, entry 382.)*

2. 1637 — COLLEGE TO BE AT NEWTOWNE

The Colledg is ordered to bee at Newetowne.

*M.B.C.R. I:204, entry 344.  
15 November 1637*

3. 1638/39 — NAMING THE COLLEGE

It is ordered that the Colledge agreed upon formerly to bee built at Cambridg shalbee called Harvard Colledge.

*M.B.C.R. I:241, entry 410.  
13 March 1638/39<sup>3</sup>*

4. 1642 — DEFINING THE COMPOSITION, DUTIES AND POWERS OF THE BOARD OF OVERSEERS

Whereas, by order of Cort in the [7th month 1636] there was appoint[ed] and named six magistrates and six elders to order the Colledge at Cambridge, of which twelve some are removed out of this jurisdiction,

It is therefore ordered that the Governour and Deputy for the time being, and all the magistrates of this jurisdiction, together with the teaching elders of the sixe next adjoyning townes, that is Cambridge, Watertowne, Charlestowne, Boston, Roxberry, and Dorchester, and the president of the Colledge for the time being, shall have from time to time full power and authority to make, and establish all such orders, statutes, and constitutions as they shall see necessary for the instituting, guiding, and furthering of the said Colledge, and the severall members thereof from time to time in piety, morality, and learning; as also that they shall have full power to dispose, order, and manage, to the use and behoofe of the said Colledge, and members thereof, all gifts, legacies, bequeathalls, revenues, lands, and donations, as either have bene, are, or shalbee conferred, bestowed, or any wayes shall fall to the said Colledge; and whereas it may come to passe, that many of the said magistrats and elders may bee absent, or otherwise implied in weighty affaires, when the said colledge neede their present helpe, councill, and authority, therefore it is ordered, that the greater number of the said magistrates, elders, & president shall have the power of the whole; provided, also that if any constitution, order, or orders shall bee made that is found hurtfull to the said Colledge, or the members thereof, or to the weale publike, that then upon the appeale of the

*[The scribe has mistaken the act of appropriation of 28 October 1636 (M.B.C.R. I:183, entry 309) for the correct one, that appointing a "committee to take order for a College," 20 November 1637 (M.B.C.R. I:213, entry 367.)]*

partie, or parties aggrieved to the said overseers, that they shall repeale the said order or orders at their next meeting, or stand accountable thereof to the next Generall Cort.

*M.B.C.R. II:24-25, entry 531.  
27 September 1642*

5. 1650 — CHARTER OF 1650<sup>4</sup>

Whereas through the good hand of God many well devoted persons have ben and daylie are moved and stired upp to give and bestow sundry gifts legacies lands and Revenewes for the advancement of all good litterature Arts and sciences in Harvard Colledge in Cambridge in the county of midelsex and to the mayntenance of the praesident and fellowes and for all Accommodations of Buildings and all other Necessary provisions that may conduce to the education of the English and Indian youth of this country in knowledge and godlynes. It is therefore Ordred and Enacted by this Courte and the Authority thereof, that for the purposes aforesayd from henceforth that the said Colledge in Cambridge in midelsex in new England shalbe a Corporation consistinge of seaven persons (to witt) a praesident, five fellowes and a Treasurer or Burser. And that Henry Dunster shalbe the first praesident<sup>5</sup> Samuel Mather Samuel Danford<sup>6</sup> masters of Art,<sup>7</sup> Jonathan Michell Comfort Starre and Samuel Eaton<sup>8</sup> Bachellors of Art shalbe the five fellowes and Thomas Danford<sup>9</sup> to be Treasurer, all of them beinge Inhabitants in the Bay and shalbe the first seven persons of which the said Corporation shall consist. And that the said seven persons or the greater Number of them, procuring the presence of the overseers of the Colledge, and by their counsell and consent shall have power and are hereby authorized at any time or times to elect a new praesident, fellowes or Treasurer so oft and from time to time as any of the said person or persons shall dy or be removed, which said praesident and fellowes for the time beinge shall for ever hereafter in name and fact be one body politicke and Corporate in law, to all intents and purposes, and shall have perpetuall succession, and shalbe called by the name of praesident and fellowes of Harvard Colledge, and shall from time to time be eligible as aforesaid. And by that name they and their successors shall and may purchase and acquire to themselves or take and receive uppon free gift and donation any lands tenements or heriditaments within this Juris-

diction of the Matathusets not exceed[ing] the vallew of five hundred pounds per anum and any goodes and sumes of money whatsoever, to the use and behoofe of the said praesidente fellowes and schollers of the said Colledge and also may sue and plead or be sued and impleaded by the name aforesaid in all Courts and places of judicature within the jurisdiction aforesaid and that the said praesident with any three of the fellowes shall have power and are hereby authorized when they shall thinke fitt to make and appoynte a common seale for the use of the said Corporation. And the praesident and fellowes or major part of them, from time to time may meete and choose such officers and servants for the Colledge and make such Allowance to them, and them also to remove and after death or removeall to choose such others, and to make from time to time such orders and by lawes for the better ordning and cariing on the worke of the Colledge as they shall thinke fitt provided they the said orders be allowed by the overseers. And also that the praesident and fellowes or the major part of them with the Treasurer, shall have power to make conclusive Barganes for lands and tenements to be purchased by the said corporat[ion] for valueable consideracions. And for the better ordninge of the government of the said Colledge and corporation be it Enacted by the Authoritie aforesaid, that the praesident and three more of the fellowes shall and may from time to time uppon due warninge or notice given by the praesident to the rest, hold a meetinge for the debatinge and concludinge of affayres concerninge the profits and Revenewes of any lands and disposinge of their goods, provided that all the said disposings be accordinge to the will of the donors. And for direction in all emergent occasions execution of all orders and by lawes and for the procuringe of a generall meetinge of all the overseers and societie in great and difficult cases, and in case of non agreement. In all which cases aforesaid, the conclusion shalbe made by the major part the said praesident havinge a castinge voyce, the overseers consentinge thereunto. And that all the aforesaid transactions shall tend to, and for the use and behoofe of the praesident fellowes schollers and officers of the said Colledge. And for all accomodations of buildings bookes and all other necessary provisions and furnitures as may be for the advancement and education of youth in all manner of good litterature arts and sciences, and further be it ordered by this court and the authoritie thereof that

all the lands tenements or heriditaments howses or Revenues within the jurisdiction to the aforesaid praesident or Colledge appertayning not exceedinge the vallew of five hundred pounds per anum shall from henceforth be freed from all civill impositions taxes and rates. all goods to the said Corporation or to any scholers thereof appertayning shalbe exempted from all manner of toll customes, excise whatsoever, and that the said president fellowes and scholeres together with the servants, and other necessary officers to the said president or Colledge appertayninge not exceedinge ten, viz three to the praesident and seaven to the Colledge belonginge shalbe exempted from all personall civill offices militarie exercises or services watching and wardings, and their estates from not exceeding one hundred pounds a man shalbe freed from all country publicke taxes and rates whatsoever and no other.

p[er] Curia[m]

Edward Rawson Secrit[arius]

*M.B.C.R. III:264-66.*

*23 May 1650*

6. 1657 — APPENDIX TO THE CHARTER OF 1650

In answer to certaine proposalls presented to this Court by the overseers of Harvard Colledge as an appendix to the colledge charter It is ordered the corporation shall have power from time to time to make such orders and by lawes for the better ordering and carrying on of the worke of the Colledge, as they shall see cawse, without dependance upon the consent of the overseers foregoing, provided alwayes that the corporation shall be responsible unto and those orders and by lawes shallbe alterable by the overseers according to theirre discretion. And when the corporation shall hold a meeting and agreeing with colledge servants, for making of orders and by lawes, for debating and concluding of affaires concerning the profitts and revenues of any lands or guifts and the disposing thereof, (provided that all the said disposalls be according to the will of the donors) for mannaging of all emergent occasions, for the procuring of a Generall meeting of the overseers and society in great and difficult cases and in cases of non agreement, and for all other colledge affaires to them pertaining; In all these cases the conclusion shallbe valid being made by the major part of the corporation; the President having a casting vote; provided alwayes that



in these things also they be responsible to the overseers, as aforesaid. And In case the corporacion shall see cause to call a meeting of the overseers, or the overseers shall thinke good to meete of themselves, it shallbe sufficient unto the validditye of colledge acts, that notice be given to the overseers in the sixe tounes menconed in the printed lawe anno 1642 when the rest of the overseers by reason of the remotenes of their habbitacons cannot conveniently be acquainted therewith.

M.B.C.R. IV:265.  
23 October 1657

7. 1671 — DISPOSITION OF GIFTS

Itt is ordered by this Court and the authority thereof, that all gifts and legacies given and bequeathed to the Colledge, schooles of learning, or any other publicke use shallbe truly and faithfully disposed of according to the true and declared intent of the donors. And all and every person or persons betrusted to receive or improve any such gifts or legacies shallbe liable from time to time to give account of their disposall and management thereof to the County Court of that sheire where they dwell and where such estate shall lye, who are hereby impowred to require the same, where neede shallbe and to appointe feoffees of trust to setle and mannage the same according to the will of the donors.

M.B.C.R. IV:678.  
31 May 1671

*The original intent and present legal effect of this charter have long been the subject of scholarly debate. See the comment on this charter in the Introduction.*

8. 1672 — CHARTER OF 1672

Whereas by the good hand of God there hath bin erected and continued a colledge in Cambridge, in the county of Midlesex, called by the name of Harvard Colledge and that by an Instrument or charter dated the 31th of May in the yeare 1650. The Praesident and Fellows thereof were established to be one body corporate by the authority of this Court; and whereas severall Gifts and Donations have bin made and are still making, by many well devoted persons inhabitants of this country, as also strangers, for the maintenance of the Governours and Government thereof, and for all the accomodations of the schollars thereof, in Books buildings lectures schollarships and all other necessary and fitting provissions that may conduce to the education of English and Indian youths

there residing in all good literature and Godlynes. Now for the perpetuation and further advancement of so good a worke and for the better Incouragement of all persons therein concerned, or to be concern'd, Itt is ordered and enacted by this Court and the authority thereof that Leonard Hoare, Doctor in Phisicke<sup>10</sup> Be the present Praesident of said Harvard Colledge mr Samuell Danforth, Fellow of the said Colledge mr Urian Oakes, pastor of the church of Cambridge mr Thomas Shephard teacher of the church of Charls Toune mr Joseph Broune and mr John Richardson masters of Art be the Fellowes, and mr John Richards the Tresurer<sup>11</sup> of the said Colledge and Corporation for the time being; And that the Praesident Fellowes, and Tresurer of the said Colledge, or the Fellowes alone when there is no Praesident established and their successors from time to time be the Imediate Governours thereof, and shall in name and fact for ever hereafter be one Body pollitick and corporate in Lawe, to all intents and purposes, and shall have perpetuall succession Having power and Authority by these presents, procuring a meeting of the overseers; and by their counsell and consent to elect successours into the place of any one or more of them which shall be (by death or remoovall) made vacant. Bee it also heereby authorized and enacted That the said corporation and their successors shall have the power of constituting and againe at their pleasure remooving all inferiour officers to the said society apperteyning and all the next and Imediate Governm[en]t of every member of the said society according to such orders and lawes as are or shallbe established by the said Corporation; the overseers of the said Colledge allowing, or not contradicting the said lawes upon notice of them given to them at their next meeting. And also the said Corporation and their successors may purchase and acquire to themselves or take and receive upon free Gift any lands, tennements, haereditaments, annuitys, services, Goods, moneys, or other emoluments whatsoever, or from whomsoever, and (observing strightly the will of the donors) dispose of the same to the use and behooffe of the said Colledge or any members thereof; And that the Praesident may warne a Generall meeting of the said Corporation for debating any of the affaires afforesaid.

In all which cases the Conclusion shall be made by the major part present the Praesident having a Casting voyce, and that the said Corporation with their distinct tresurer (if any such be chosen)



by the name of the Praesident Fellowes and tresurer of Harvard Colledge, may sue and Plead, or be sued or Impleaded in all Courts and places of Judicature within this Jurisdiction of the Massachusetts Colony to all intents and purposes in law and with effect as may any private person or Body Incorporate, only the estate to the Corporation belonging, and not that which belongs proper to any member of the said corporation, being liable to such Impleadments. Also that the said Corporation or any three of them, the Praesident being one, in all crimes by the lawes of this Country punishable by one magistrate shall have the Full power of sconsing fineing or otherwise correcting all inferiour officers or members to the said society belonging, as the lawes of the country provide in such cases, or the lawes of the Colledge not repugnant unto them. And for that end any of the said Corporation shall and heereby have power personally with such ayde of the society as they shall thinke meete taking the constable along with them, to enter into any houses licenced for publicke enterteynment where they shallbe informed, or maybe suspitious of any enormities to be plotting or acting by any members of their society and all Constables and all other inferiour Civil officers in that place are heereby Authorised and Comanded to be readily ayding and Asisting to them or any of them in the premisses. Neither shall any person or persons legally expelled the Colledge abide above ten dayes in the touneship of Cambridge unless their parents live in the said touneship.

And be it also ordered and enacted by this court and the Authority thereof that all the lands tennements hereditaments or annuities within this Jurisdiction to the said Corporation apperteyning not exceeding the value of five hundred pounds p[er] anum shallbe hereforth free from all ordinary civil impositions taxes and rates, and all Goods to the said Corporation or to any schollars thereof apperteyning shallbe exempt from all manner of toll, customes, and excise whatsoever except in cases of warr or extraordinary exigences of the Countrey.

And moreover that the said Praesident Fellowes and schollars together with their maeniall servants and other necessary officers (not exceeding the number of ten) shall be utterly exempted from all personall and civil offices, military exercises, watchings and wardings or the like publick services: And the personall estates of the said Corporation and their officers (not exceeding one hundred

pounds a man) shall be also freed from the like Country taxes forever. All and every of which premises wee doe ordeyne and enact to be fully established for Lawe, Any Law grant or usage to the Contrary in any wise notwithstanding.

In Ans[we]r to a proposall made by Dr Hoare Praesid[en]t of the Colledge for the better repaire necessary to be donne to his lodging by addition of a kitchen &c and making of fences for orchards and gardens meet for such a place and society It is by this Court Comitted to the care and prudence of the said Doctor to effect whatyet is necessary to be donn therein And the said Doctor is ordered to take of the moneys now to be brought in for the reedify[ing] the buildings of the said Colledge and take of such materials as shall be brought to the place not exceeding three hundred pounds, taking the specie as it will arise in proportion one with another by the order of the committee appointed to see the worke carried an end.

*M.B.C.R. IV:707-09.*

*8 October 1672*

9. 1707 — DECLARING CHARTER OF 1650 HAD NEVER BEEN REPEALED

4 December 1707. In Council —

The Governour and Council haveing Accepted and approved the choice made by the Fellows of Harvard Colledge in Cambridge, of mr John Leverett<sup>12</sup> to be present Praesident of the said Colledge, to fill up that Vacancy.

Propose That the House of Representatives consider of and Grant a Suitable Salary to be paid to the said Praesident annually out of the Publick Treasury for his Encouragement and Support during his continuance in the said Office, residing at Cambridge and Dischargeing the proper Duty's to a Praesident belonging: And intirely Devote himselfe to that Service.

And Inasmuch, as the first foundation and Establishm[en]t of that House, and the Government thereof, had it's Original from an Act of the General Court, made and pass'd in the year 1650 which has not been repealed or Nulled.

The Praesident and Fellows of the said Colledge are Directed, from time to time, to Regulate themselves according to the Rules of the Constitution by the said Act prescribed; And to Exercise the

Powers and Authority's thereby Granted for the Government of that House and the Support thereof.

[Subscribed to Act when issued.]

[Voted. Is.<sup>a</sup> Addington Secry.]

Sent down for concurrence

In the House of Representatives,

December 4: 1707. Read.

5: . . . Read & . . . Concurr'd

John Burrill Speaker

And Voted That the Sum for

Salary be one Hundred

and fifty Pounds.

Agreed to in Council. 6 December 1707.]

Is.<sup>a</sup> Addington Secry.

[signed] Consented to

J. Dudley

*Massachusetts Archives 58:263. Boston, Mass. Original materials bound into 328 volumes in the Archives; entries not indexed or numbered.*

*(Also found in Ellis Ames and others, eds., The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay. [Boston, 1869-1922], Chapter 94. 6 December 1707)*

## 10. 1780 — CHAPTER V OF THE CONSTITUTION OF MASSACHUSETTS

### SECTION I.

#### *The University.*

I. Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in Church and State: And whereas the encouragement of arts and sciences, and all good literature, tends to the honor of GOD, the advantage of the christian religion, and the great benefit of this and the other United States of America — It is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in

# EXHIBIT B

## Slavery, Civil Rights, and Abolitionist Perspectives Toward Prison

"Advocates of incarceration . . . hoped that the penitentiary would *rehabilitate* its inmates. Whereas philosophers perceived a ceaseless state of war between chattel slaves and their masters, criminologists hoped to negotiate a peace treaty of sorts within the prison walls. Yet herein lurked a paradox: if the penitentiary's internal regime resembled that of the plantation so closely that the two were often loosely equated, how could the prison possibly function to rehabilitate criminals?"

—Adam Jay Hirsch<sup>15</sup>

The prison is not the only institution that has posed complex challenges to the people who have lived with it and have become so inured to its presence that they could not conceive of society without it. Within the history of the United States the system of slavery immediately comes to mind. Although as early as the American Revolution antislavery advocates promoted the elimination of African bondage, it took almost a century to achieve the abolition of the "peculiar institution." White antislavery abolitionists such as John Brown and William Lloyd Garrison were represented in the

dominant media of the period as extremists and fanatics. When Frederick Douglass embarked on his career as an anti-slavery orator, white people—even those who were passionate abolitionists—refused to believe that a black slave could display such intelligence. The belief in the permanence of slavery was so widespread that even white abolitionists found it difficult to imagine black people as equals.

It took a long and violent civil war in order to legally disestablish the "peculiar institution." Even though the Thirteenth Amendment to the U.S. Constitution outlawed involuntary servitude, white supremacy continued to be embraced by vast numbers of people and became deeply inscribed in new institutions. One of these post-slavery institutions was lynching, which was widely accepted for many decades thereafter. Thanks to the work of figures such as Ida B. Wells, an antilynching campaign was gradually legitimized during the first half of the twentieth century. The NAACP, an organization that continues to conduct legal challenges against discrimination, evolved from these efforts to abolish lynching.

Segregation ruled the South until it was outlawed a century after the abolition of slavery. Many people who lived under Jim Crow could not envision a legal system defined by racial equality. When the governor of Alabama personally attempted to prevent Arthurine Lucy from enrolling in the University of Alabama, his stance represented the inability to imagine black and white people ever peaceably living and studying together. "Segregation today, segregation tomorrow, segregation forever" are the most well known words of this politician, who was forced to repudiate them some years later when segregation had proved far more vulnerable than he could have imagined.

Although government, corporations, and the dominant

media try to represent racism as an unfortunate aberration of the past that has been relegated to the graveyard of U.S. history, it continues to profoundly influence contemporary structures, attitudes, and behaviors. Nevertheless, anyone who would dare to call for the reintroduction of slavery, the organization of lynch mobs, or the reestablishment of legal segregation would be summarily dismissed. But it should be remembered that the ancestors of many of today's most ardent liberals could not have imagined life without slavery, life without lynching, or life without segregation. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerances held in Durban, South Africa, divulged the immensity of the global task of eliminating racism. There may be many disagreements regarding what counts as racism and what are the most effective strategies to eliminate it. However, especially with the downfall of the apartheid regime in South Africa, there is a global consensus that racism should not define the future of the planet.

I have referred to these historical examples of efforts to dismantle racist institutions because they have considerable relevance to our discussion of prisons and prison abolition. It is true that slavery, lynching, and segregation acquired such a stalwart ideological quality that many, if not most, could not foresee their decline and collapse. Slavery, lynching, and segregation are certainly compelling examples of social institutions that, like the prison, were once considered to be as everlasting as the sun. Yet, in the case of all three examples, we can point to movements that assumed the radical stance of announcing the obsolescence of these institutions. It may help us gain perspective on the prison if we try to imagine how strange and discomfiting the debates about the obsolescence of slavery must have been to those who took the "peculiar institution" for granted—and especially to those



who reaped direct benefits from this dreadful system of racist exploitation. And even though there was widespread resistance among black slaves, there were even some among them who assumed that they and their progeny would be always subjected to the tyranny of slavery.

I have introduced three abolition campaigns that were eventually more or less successful to make the point that social circumstances transform and popular attitudes shift, in part in response to organized social movements. But I have also evoked these historical campaigns because they all targeted some expression of racism. U.S. chattel slavery was a system of forced labor that relied on racist ideas and beliefs to justify the relegation of people of African descent to the legal status of property. Lynching was an extralegal institution that surrendered thousands of African-American lives to the violence of ruthless racist mobs. Under segregation, black people were legally declared second-class citizens, for whom voting, job, education, and housing rights were drastically curtailed, if they were available at all.

What is the relationship between these historical expressions of racism and the role of the prison system today? Exploring such connections may offer us a different perspective on the current state of the punishment industry. If we are already persuaded that racism should not be allowed to define the planet's future and if we can successfully argue that prisons are racist institutions, this may lead us to take seriously the prospect of declaring prisons obsolete.

For the moment I am concentrating on the history of antiblack racism in order to make the point that the prison reveals congealed forms of antiblack racism that operate in clandestine ways. In other words, they are rarely recognized as racist. But there are other racialized histories that have affected the development of the U.S. punishment system as



well—the histories of Latinos, Native Americans, and Asian-Americans. These racisms also congeal and combine in the prison. Because we are so accustomed to talking about race in terms of black and white, we often fail to recognize and contest expressions of racism that target people of color who are not black. Consider the mass arrests and detention of people of Middle Eastern, South Asian, or Muslim heritage in the aftermath of the September 11, 2001 attacks on the Pentagon and World Trade Center.

This leads us to two important questions: Are prisons racist institutions? Is racism so deeply entrenched in the institution of the prison that it is not possible to eliminate one without eliminating the other? These are questions that we should keep in mind as we examine the historical links between U.S. slavery and the early penitentiary system. The penitentiary as an institution that simultaneously punished and rehabilitated its inhabitants was a new system of punishment that first made its appearance in the United States around the time of the American Revolution. This new system was based on the replacement of capital and corporal punishment by incarceration.

Imprisonment itself was new neither to the United States nor to the world, but until the creation of this new institution called the penitentiary, it served as a prelude to punishment. People who were to be subjected to some form of corporal punishment were detained in prison until the execution of the punishment. With the penitentiary, incarceration became the punishment itself. As is indicated in the designation “penitentiary,” imprisonment was regarded as rehabilitative and the penitentiary prison was devised to provide convicts with the conditions for reflecting on their crimes and, through penitence, for reshaping their habits and even their souls. Although some antislavery advocates spoke out

against this new system of punishment during the revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens.

In many ways, the penitentiary was a vast improvement over the many forms of capital and corporal punishment inherited from the English. However, the contention that prisoners would refashion themselves if only given the opportunity to reflect and labor in solitude and silence disregarded the impact of authoritarian regimes of living and work. Indeed, there were significant similarities between slavery and the penitentiary prison. Historian Adam Jay Hirsch has pointed out:

One may perceive in the penitentiary many reflections of chattel slavery as it was practiced in the South. Both institutions subordinated their subjects to the will of others. Like Southern slaves, prison inmates followed a daily routine specified by their superiors. Both institutions reduced their subjects to dependence on others for the supply of basic human services such as food and shelter. Both isolated their subjects from the general population by confining them to a fixed habitat. And both frequently coerced their subjects to work, often for longer hours and for less compensation than free laborers.<sup>16</sup>

As Hirsch has observed, both institutions deployed similar forms of punishment, and prison regulations were, in fact, very similar to the Slave Codes—the laws that deprived enslaved human beings of virtually all rights. Moreover, both prisoners and slaves were considered to have pronounced proclivities to crime. People sentenced to the penitentiary in

the North, white and black alike, were popularly represented as having a strong kinship to enslaved black people.<sup>17</sup>

The ideologies governing slavery and those governing punishment were profoundly linked during the earliest period of U.S. history. While free people could be legally sentenced to punishment by hard labor, such a sentence would in no way change the conditions of existence already experienced by slaves. Thus, as Hirsch further reveals, Thomas Jefferson, who supported the sentencing of convicted people to hard labor on road and water projects, also pointed out that he would exclude slaves from this sort of punishment. Since slaves already performed hard labor, sentencing them to penal labor would not mark a difference in their condition. Jefferson suggested banishment to other countries instead.<sup>18</sup>

Particularly in the United States, race has always played a central role in constructing presumptions of criminality. After the abolition of slavery, former slave states passed new legislation revising the Slave Codes in order to regulate the behavior of free blacks in ways similar to those that had existed during slavery. The new Black Codes proscribed a range of actions—such as vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts—that were criminalized only when the person charged was black. With the passage of the Thirteenth Amendment to the Constitution, slavery and involuntary servitude were putatively abolished. However, there was a significant exception. In the wording of the amendment, slavery and involuntary servitude were abolished “except as a punishment for crime, whereof the party shall have been duly convicted.” According to the Black Codes, there were crimes defined by state law for which only black people could be “duly convicted.” Thus, former

slaves, who had recently been extricated from a condition of hard labor for life, could be legally sentenced to penal servitude.

In the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many as a reincarnation of slavery. The Mississippi Black Codes, for example, declared vagrant "anyone/who was guilty of theft, had run away [from a job, apparently], was drunk, was wanton in conduct or speech, had neglected job or family, handled money carelessly, and . . . all other idle and disorderly persons."<sup>19</sup> Thus, vagrancy was coded as a black crime, one punishable by incarceration and forced labor, sometimes on the very plantations that previously had thrived on slave labor.

Mary Ellen Curtin's study of Alabama prisoners during the decades following emancipation discloses that before the four hundred thousand black slaves in that state were set free, ninety-nine percent of prisoners in Alabama's penitentiaries were white. As a consequence of the shifts provoked by the institution of the Black Codes, within a short period of time, the overwhelming majority of Alabama's convicts were black.<sup>20</sup> She further observes:

Although the vast majority of Alabama's antebellum prisoners were white, the popular perception was that the South's true criminals were its black slaves. During the 1870s the growing number of black prisoners in the South further buttressed the belief that African Americans were inherently criminal and, in particular, prone to larceny.<sup>21</sup>

In 1883, Frederick Douglass had already written about the South's tendency to "impute crime to color."<sup>22</sup> When a particularly egregious crime was committed, he noted, not only was guilt frequently assigned to a black person regardless of the perpetrator's race, but white men sometimes sought to escape punishment by disguising themselves as black. Douglass would later recount one such incident that took place in Granger County, Tennessee, in which a man who appeared to be black was shot while committing a robbery. The wounded man, however, was discovered to be a respectable white citizen who had colored his face black.

The above example from Douglass demonstrates how whiteness, in the words of legal scholar Cheryl Harris, operates as property.<sup>23</sup> According to Harris, the fact that white identity was possessed as property meant that rights, liberties, and self-identity were affirmed for white people, while being denied to black people. The latter's only access to whiteness was through "passing." Douglass's comments indicate how this property interest in whiteness was easily reversed in schemes to deny black people their rights to due process. Interestingly, cases similar to the one Douglass discusses above emerged in the United States during the 1990s: in Boston, Charles Stuart murdered his pregnant wife and attempted to blame an anonymous black man, and in Union, South Carolina, Susan Smith killed her children and claimed they had been abducted by a black carjacker. The racialization of crime—the tendency to "impute crime to color," to use Frederick Douglass's words—did not wither away as the country became increasingly removed from slavery. Proof that crime continues to be imputed to color resides in the many evocations of "racial profiling" in our time. That it is possible to be targeted by the police for no other reason than the color of one's skin is not mere specu-

lation. Police departments in major urban areas have admitted the existence of formal procedures designed to maximize the numbers of African-Americans and Latinos arrested—even in the absence of probable cause. In the aftermath of the September 11 attacks, vast numbers of people of Middle Eastern and South Asian heritage were arrested and detained by the police agency known as Immigration and Naturalization Services (INS). The INS is the federal agency that claims the largest number of armed agents, even more than the FBI.<sup>24</sup>

During the post-slavery era, as black people were integrated into southern penal systems—and as the penal system became a system of penal servitude—the punishments associated with slavery became further incorporated into the penal system. “Whipping,” as Matthew Mancini has observed, “was the preeminent form of punishment under slavery; and the lash, along with the chain, became the very emblem of servitude for slaves and prisoners.”<sup>25</sup> As indicated above, black people were imprisoned under the laws assembled in the various Black Codes of the southern states, which, because they were rearticulations of the Slave Codes, tended to racialize penalty and link it closely with previous regimes of slavery. The expansion of the convict lease system and the county chain gang meant that the antebellum criminal justice system, which focused far more intensely on black people than on whites, defined southern criminal justice largely as a means of controlling black labor. According to Mancini:

Among the multifarious debilitating legacies of slavery was the conviction that blacks could only labor in a certain way—the way experience had shown them to have labored in the past: in gangs,



subjected to constant supervision, and under the discipline of the lash. Since these were the requisites of slavery, and since slaves were blacks, Southern whites almost universally concluded that blacks could not work unless subjected to such intense surveillance and discipline.<sup>26</sup>

Scholars who have studied the convict lease system point out that in many important respects, convict leasing was far worse than slavery, an insight that can be gleaned from titles such as *One Dies, Get Another* (by Mancini), *Worse Than Slavery* (David Oshinsky's work on Parchman Prison),<sup>27</sup> and *Twice the Work of Free Labor* (Alex Lichtenstein's examination of the political economy of convict leasing).<sup>28</sup> Slave owners may have been concerned for the survival of individual slaves, who, after all, represented significant investments. Convicts, on the other hand, were leased not as individuals, but as a group, and they could be worked literally to death without affecting the profitability of a convict crew.

According to descriptions by contemporaries, the conditions under which leased convicts and county chain gangs lived were far worse than those under which black people had lived as slaves. The records of Mississippi plantations in the Yazoo Delta during the late 1880s indicate that

the prisoners ate and slept on bare ground, without blankets or mattresses, and often without clothes. They were punished for "slow hoeing" (ten lashes), "sorry planting" (five lashes), and "being light with cotton" (five lashes). Some who attempted to escape were whipped "till the blood ran down their legs"; others had a metal spur riveted to their feet. Convicts dropped from exhaustion, pneumonia,

malaria, frostbite, consumption, sunstroke, dysentery, gunshot wounds, and "shackle poisoning" (the constant rubbing of chains and leg irons against bare flesh).<sup>29</sup>

The appalling treatment to which convicts were subjected under the lease system recapitulated and further extended the regimes of slavery. If, as Adam Jay Hirsch contends, the early incarnations of the U.S. penitentiary in the North tended to mirror the institution of slavery in many important respects, the post-Civil War evolution of the punishment system was in very literal ways the continuation of a slave system, which was no longer legal in the "free" world. The population of convicts, whose racial composition was dramatically transformed by the abolition of slavery, could be subjected to such intense exploitation and to such horrendous modes of punishment precisely because they continued to be perceived as slaves.

Historian Mary Ann Curtin has observed that many scholars who have acknowledged the deeply entrenched racism of the post-Civil War structures of punishment in the South have failed to identify the extent to which racism colored common-sense understandings of the circumstances surrounding the wholesale criminalization of black communities. Even antiracist historians, she contends, do not go far enough in examining the ways in which black people were made into criminals. They point out—and this, she says, is indeed partially true—that in the aftermath of emancipation, large numbers of black people were forced by their new social situation to steal in order to survive. It was the transformation of petty thievery into a felony that relegated substantial numbers of black people to the "involuntary servitude" legalized by the Thirteenth Amendment. What Curtin suggests is that these



charges of theft were frequently fabricated outright. They "also served as subterfuge for political revenge. After emancipation the courtroom became an ideal place to exact racial retribution."<sup>30</sup> In this sense, the work of the criminal justice system was intimately related to the extralegal work of lynching.

Alex Lichtenstein, whose study focuses on the role of the convict lease system in forging a new labor force for the South, identifies the lease system, along with the new Jim Crow laws, as the central institution in the development of a racial state.

New South capitalists in Georgia and elsewhere were able to use the state to recruit and discipline a convict labor force, and thus were able to develop their states' resources without creating a wage labor force, and without undermining planters' control of black labor. In fact, quite the opposite: the penal system could be used as a powerful sanction against rural blacks who challenged the racial order upon which agricultural labor control relied.<sup>31</sup>

Lichtenstein discloses, for example, the extent to which the building of Georgia railroads during the nineteenth century relied on black convict labor. He further reminds us that as we drive down the most famous street in Atlanta—Peachtree Street—we ride on the backs of convicts: "[T]he renowned Peachtree Street and the rest of Atlanta's well-paved roads and modern transportation infrastructure, which helped cement its place as the commercial hub of the modern South, were originally laid by convicts."<sup>32</sup>

Lichtenstein's major argument is that the convict lease was not an irrational regression; it was not primarily a throwback to precapitalist modes of production. Rather, it

was a most efficient and most rational deployment of racist strategies to swiftly achieve industrialization in the South. In this sense, he argues, "convict labor was in many ways in the vanguard of the region's first tentative, ambivalent, steps toward modernity."<sup>33</sup>

Those of us who have had the opportunity to visit nineteenth-century mansions that were originally constructed on slave plantations are rarely content with an aesthetic appraisal of these structures, no matter how beautiful they may be. Sufficient visual imagery of toiling black slaves circulate enough in our environment for us to imagine the brutality that hides just beneath the surface of these wondrous mansions. We have learned how to recognize the role of slave labor, as well as the racism it embodied. But black convict labor remains a hidden dimension of our history. It is extremely unsettling to think of modern, industrialized urban areas as having been originally produced under the racist labor conditions of penal servitude that are often described by historians as even worse than slavery.

I grew up in the city of Birmingham, Alabama. Because of its mines—coal and iron ore—and its steel mills that remained active until the deindustrialization process of the 1980s, it was widely known as "the Pittsburgh of the South." The fathers of many of my friends worked in these mines and mills. It is only recently that I have learned that the black miners and steelworkers I knew during my childhood inherited their place in Birmingham's industrial development from black convicts forced to do this work under the lease system. As Curtin observes,

Many ex-prisoners became miners because Alabama used prison labor extensively in its coalmines. By 1888 all of Alabama's able male prisoners were leased

to two major mining companies: the Tennessee Coal and Iron Company (TCI) and Sloss Iron and Steel Company. For a charge of up to \$18.50 per month per man, these corporations "leased," or rented prison laborers and worked them in coalmines.<sup>34</sup>

Learning about this little-acknowledged dimension of black and labor history has caused me to reevaluate my own childhood experiences.

One of the many ruses racism achieves is the virtual erasure of historical contributions by people of color. Here we have a penal system that was racist in many respects—discriminatory arrests and sentences, conditions of work, modes of punishment—together with the racist erasure of the significant contributions made by black convicts as a result of racist coercion. Just as it is difficult to imagine how much is owed to convicts relegated to penal servitude during the nineteenth and twentieth centuries, we find it difficult today to feel a connection with the prisoners who produce a rising number of commodities that we take for granted in our daily lives. In the state of California, public colleges and universities are provided with furniture produced by prisoners, the vast majority of whom are Latino and black.

There are aspects of our history that we need to interrogate and rethink, the recognition of which may help us to adopt more complicated, critical postures toward the present and the future. I have focused on the work of a few scholars whose work urges us to raise questions about the past, present, and future. Curtin, for example, is not simply content with offering us the possibility of reexamining the place of mining and steelwork in the lives of black people in Alabama. She also uses her research to urge us to think about the uncanny parallels between the convict lease sys-

tem in the nineteenth century and prison privatization in the twenty-first.

In the late nineteenth century, coal companies wished to keep their skilled prison laborers for as long as they could, leading to denials of "short time." Today, a slightly different economic incentive can lead to similar consequences. CCA [Corrections Corporation of America] is paid per prisoner. If the supply dries up, or too many are released too early, their profits are affected . . . Longer prison terms mean greater profits, but the larger point is that the profit motive promotes the expansion of imprisonment.<sup>35</sup>

The persistence of the prison as the main form of punishment, with its racist and sexist dimensions, has created this historical continuity between the nineteenth- and early-twentieth-century convict lease system and the privatized prison business today. While the convict lease system was legally abolished, its structures of exploitation have reemerged in the patterns of privatization, and, more generally, in the wide-ranging corporatization of punishment that has produced a prison industrial complex. If the prison continues to dominate the landscape of punishment throughout this century and into the next, what might await coming generations of impoverished African-Americans, Latinos, Native Americans, and Asian-Americans? Given the parallels between the prison and slavery, a productive exercise might consist in speculating about what the present might look like if slavery or its successor, the convict lease system, had not been abolished.

To be sure, I am not suggesting that the abolition of slav-

ery and the lease system has produced an era of equality and justice. On the contrary, racism surreptitiously defines social and economic structures in ways that are difficult to identify and thus are much more damaging. In some states, for example, more than one-third of black men have been labeled felons. In Alabama and Florida, once a felon, always a felon, which entails the loss of status as a rights-bearing citizen. One of the grave consequences of the powerful reach of the prison was the 2000 (s)election of George W. Bush as president. If only the black men and women denied the right to vote because of an actual or presumed felony record had been allowed to cast their ballots, Bush would not be in the White House today. And perhaps we would not be dealing with the awful costs of the War on Terrorism declared during the first year of his administration. If not for his election, the people of Iraq might not have suffered death, destruction, and environmental poisoning by U.S. military forces.

As appalling as the current political situation may be, imagine what our lives might have become if we were still grappling with the institution of slavery—or the convict lease system or racial segregation. But we do not have to speculate about living with the consequences of the prison. There is more than enough evidence in the lives of men and women who have been claimed by ever more repressive institutions and who are denied access to their families, their communities, to educational opportunities, to productive and creative work, to physical and mental recreation. And there is even more compelling evidence about the damage wrought by the expansion of the prison system in the schools located in poor communities of color that replicate the structures and regimes of the prison. When children attend schools that place a greater value on discipline and security than on knowledge and intellectual development,

they are attending prep schools for prison. If this is the predicament we face today, what might the future hold if the prison system acquires an even greater presence in our society? In the nineteenth century, antislavery activists insisted that as long as slavery continued, the future of democracy was bleak indeed. In the twenty-first century, antiprison activists insist that a fundamental requirement for the revitalization of democracy is the long-overdue abolition of the prison system.

# EXHIBIT C



# Incarcerated Workers Organizing Committee

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## About

We, the Incarcerated Workers Organizing Committee (IWOC), are a prisoner-led section of the [Industrial Workers of the World](#). We struggle to end prison slavery along



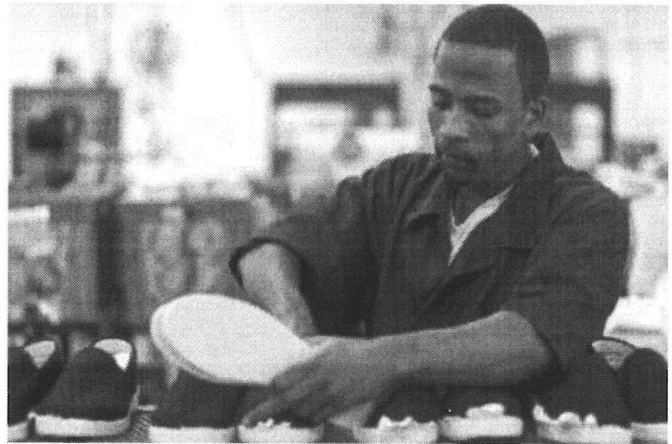
with allies and supporters on the outside. On September 9, 2016 we were part of a coalition of inside and outside groups that launched the largest prison strike in US history. Resistance to prison slavery continues with work stoppages, hunger strikes and other acts of resistance to business as usual.

But it will take a mass movement - inside and out - to abolish prison slavery. We have hundreds of members in over 15 prisons and our membership continues to grow. We invite all those who agree with our statement of purpose to [join us](#) and to start a local group in their prison, city, or trailer park. IWW membership is free to those incarcerated, and is based on income for those on the outside. We ask supporters to sponsor a prisoner's membership for just \$5 a month.

## Prison Slavery

Incarcerated people are legally slaves as per the 13th Amendment which abolished "slavery and involuntary servitude, except as punishment for a crime". We are legally slaves. If you've been to prison you'd know we are treated like slaves.

Billions are made annually off our backs. Outrageously priced or grossly inadequate privatized 'services' like health care, food, phone calls, assault our humanity - they feed us like animals, suck our families dry, and when sick leave us to die. The government spends as much as an elite college tuition per person to keep each of us incarcerated, but this money does not develop us as human beings, reduce crime or make our communities safer.



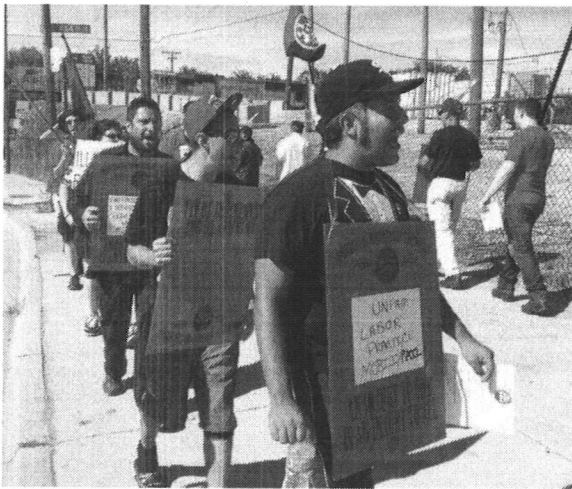
They also profit from our labor. At least half of the nation's 1.5 million of us imprisoned in the United States have jobs yet are paid pennies an hour, or even nothing at all. Many of us perform the essential work needed to run the prisons themselves - mopping cellblock floors, preparing and serving food, filing papers and other prison duties. Others of us work in "correction industries" programs performing work in areas such as clothing and textile, computer aided design, electronics, and recycling activities. Some of us even sub-contract with private corporations such as Sprint, Starbucks, Victoria's Secret, and many more.

As incarcerated workers, we are some of the most exploited workers in the country. There is no minimum wage for prison labor. The average wage is 20 cents an hour, with some states not paying a wage at all. Up to 80% of wages can be withheld by prison

officials. There are very few safety regulations and no worker's compensation for injury on the job. While in prison, we try to earn money to support our families, ourselves, and pay victim restitution yet these wages prevent us from that. We believe that as workers we are guaranteed the same protections and wages as other workers.

We are working to abolish prison slavery and this system that does not correct anyone or make our communities safer.

## Industrial Workers of the World



In addition to abolishing prison slavery, we are also fighting to end the criminalization, exploitation, and enslavement of working class people in general. We are part of the larger Industrial Workers of the World (IWW), a revolutionary union that has been fighting oppressive systems for over one hundred years. When first founded, the IWW was the only union open to all- regardless of race, gender or nationality. Fierce campaigns waged by miners, dock workers and agricultural workers led to

significant gains in wages and workplace conditions.

Our revolutionary politics and refusal to sell out led to massive and widespread crackdowns by the US government as part of the Red Scare, and beyond.

Despite this, the union persisted and to this day continues to organize for a new world. Like, IWOC, the IWW is seeing a resurgence, with membership steadily growing since 2000.

## IWOC's Statement of Purpose - July 31, 2014

1. To further the revolutionary goals of incarcerated people and the IWW through mutual organizing of a worldwide union for emancipation from the prison system.

2. To build class solidarity amongst members of the working class by connecting the struggle of people in prison, jails, and immigrant and juvenile detention centers to workers struggles locally and worldwide.
3. To strategically and tactically support prisoners locally and worldwide, incorporating an analysis of white supremacy, patriarchy, prison culture, and capitalism.
4. To actively struggle to end the criminalization, exploitation, and enslavement of working class people, which disproportionately targets people of color, immigrants, people with low income, LGBTQ people, young people, dissidents, and those with mental illness.
5. To amplify the voices of working class people in prison, especially those engaging in collective action or who put their own lives at risk to improve the conditions of all.



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# EXHIBIT D

# Mass Incarceration: The Whole Pie 2019

By Wendy Sawyer and Peter Wagner

March 19, 2019

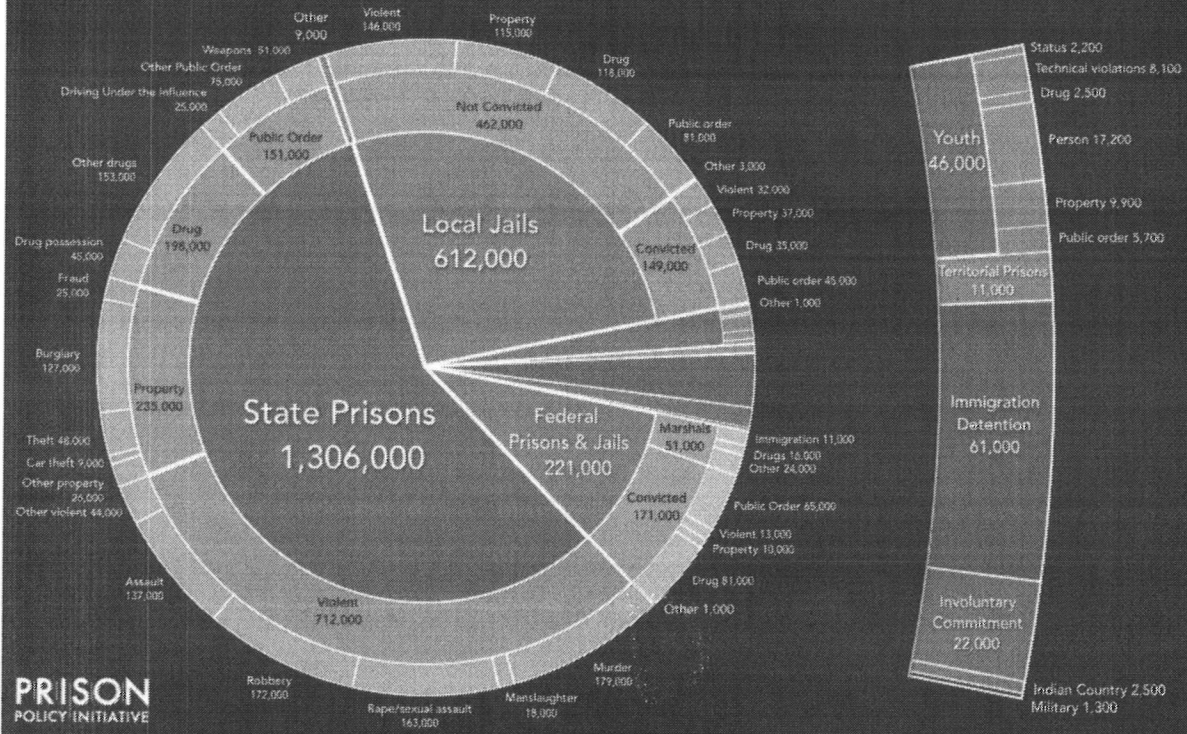
Can it really be true that most people in jail are being held before trial? And how much of mass incarceration is a result of the war on drugs? These questions are harder to answer than you might think, because our country's systems of confinement are so fragmented. The various government agencies involved in the justice system collect a lot of critical data, but it is not designed to help policymakers or the public understand what's going on. As public support for criminal justice reform continues to build, however, it's more important than ever that we get the facts straight and understand **the big picture**.

This report offers some much needed clarity by **piecing together this country's disparate systems of confinement**. The American criminal justice system holds almost 2.3 million people in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. † This report provides a detailed look at where and why people are locked up in the U.S., and dispels some modern myths to focus attention on the real drivers of mass incarceration.



# How many people are locked up in the United States?

The U.S. locks up more people per capita than any other nation, at the staggering rate of 698 per 100,000 residents. But to end mass incarceration, we must first consider *where* and *why* 2.3 million people are confined nationwide.

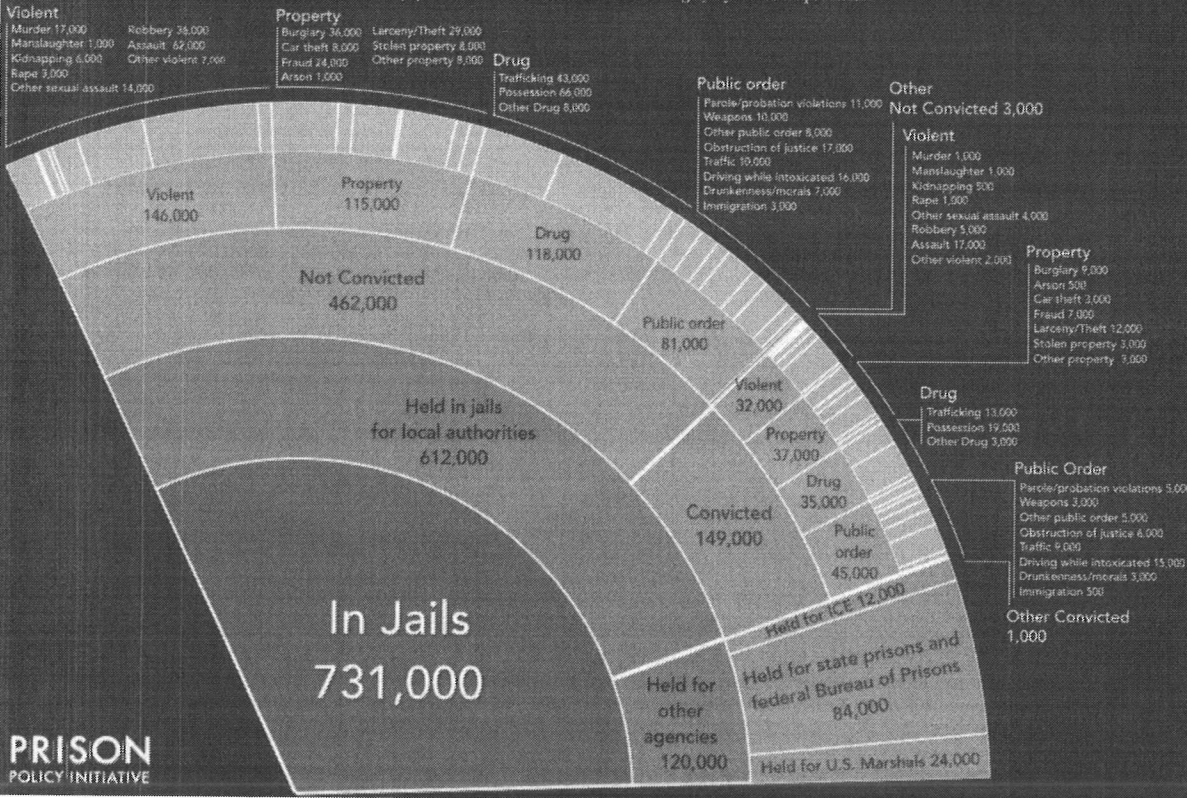


**PRISON POLICY INITIATIVE**

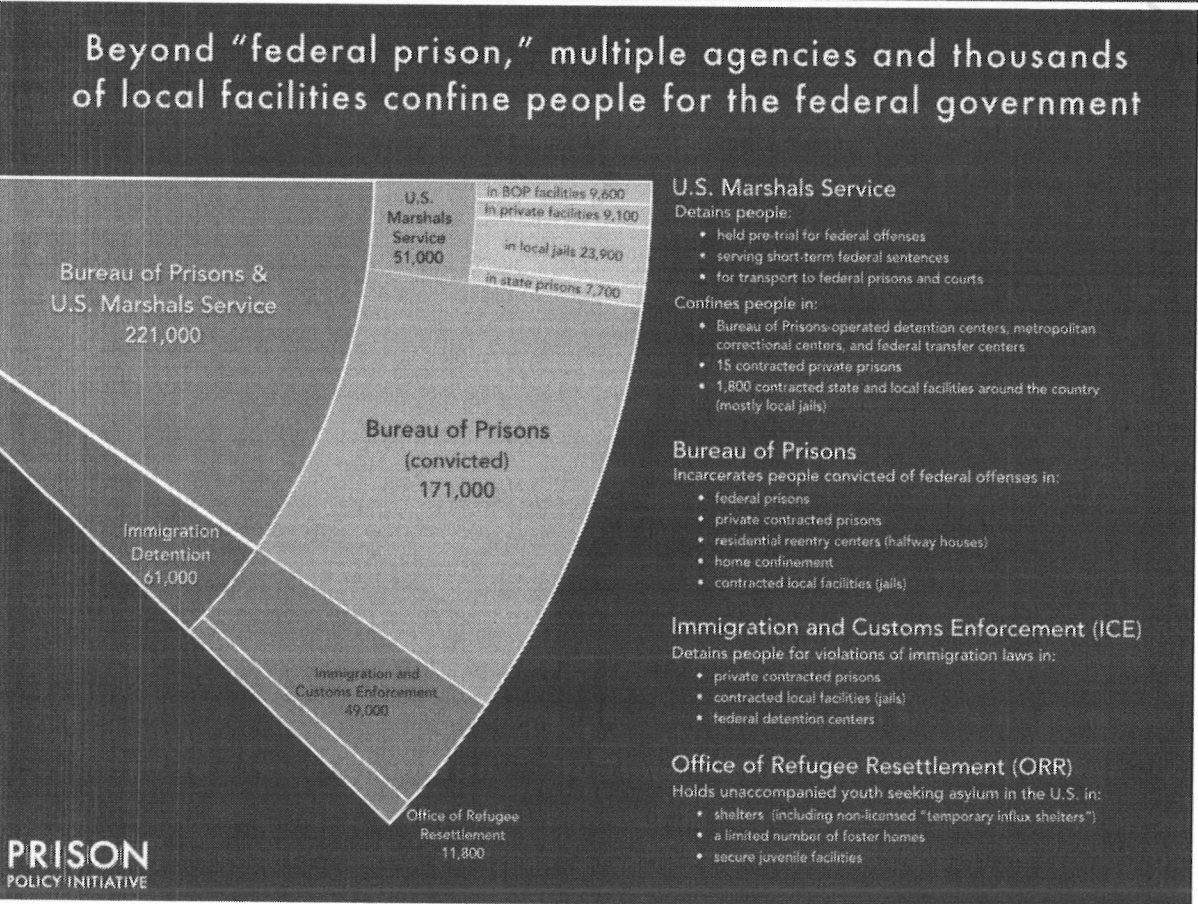
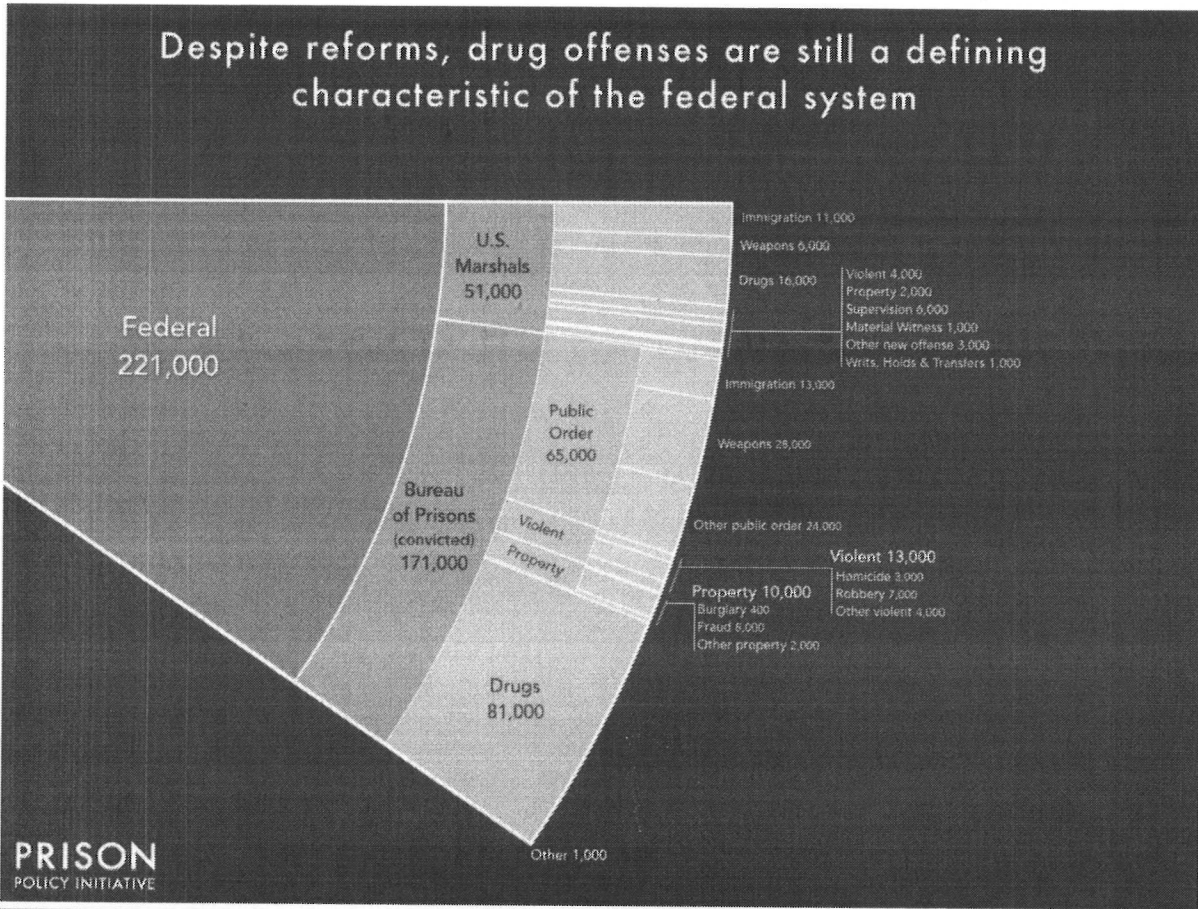
Sources and data notes: See <https://www.prisonpolicy.org/reports/pie2019.html>

## 76% of people held by jails are not convicted of any crime

If you include the 120,000 people held in local jails that rent out space to other agencies, 63% are unconvicted. Either way, jail incarceration rates are driven largely by local bail practices.



**PRISON POLICY INITIATIVE**



- #### U.S. Marshals Service
- Detains people:
- held pre-trial for federal offenses
  - serving short-term federal sentences
  - for transport to federal prisons and courts
- Confines people in:
- Bureau of Prisons-operated detention centers, metropolitan correctional centers, and federal transfer centers
  - 15 contracted private prisons
  - 1,800 contracted state and local facilities around the country (mostly local jails)
- #### Bureau of Prisons
- Incarcerates people convicted of federal offenses in:
- federal prisons
  - private contracted prisons
  - residential reentry centers (halfway houses)
  - home confinement
  - contracted local facilities (jails)
- #### Immigration and Customs Enforcement (ICE)
- Detains people for violations of immigration laws in:
- private contracted prisons
  - contracted local facilities (jails)
  - federal detention centers
- #### Office of Refugee Resettlement (ORR)
- Holds unaccompanied youth seeking asylum in the U.S. in:
- shelters (including non-licensed "temporary influx shelters")
  - a limited number of foster homes
  - secure juvenile facilities

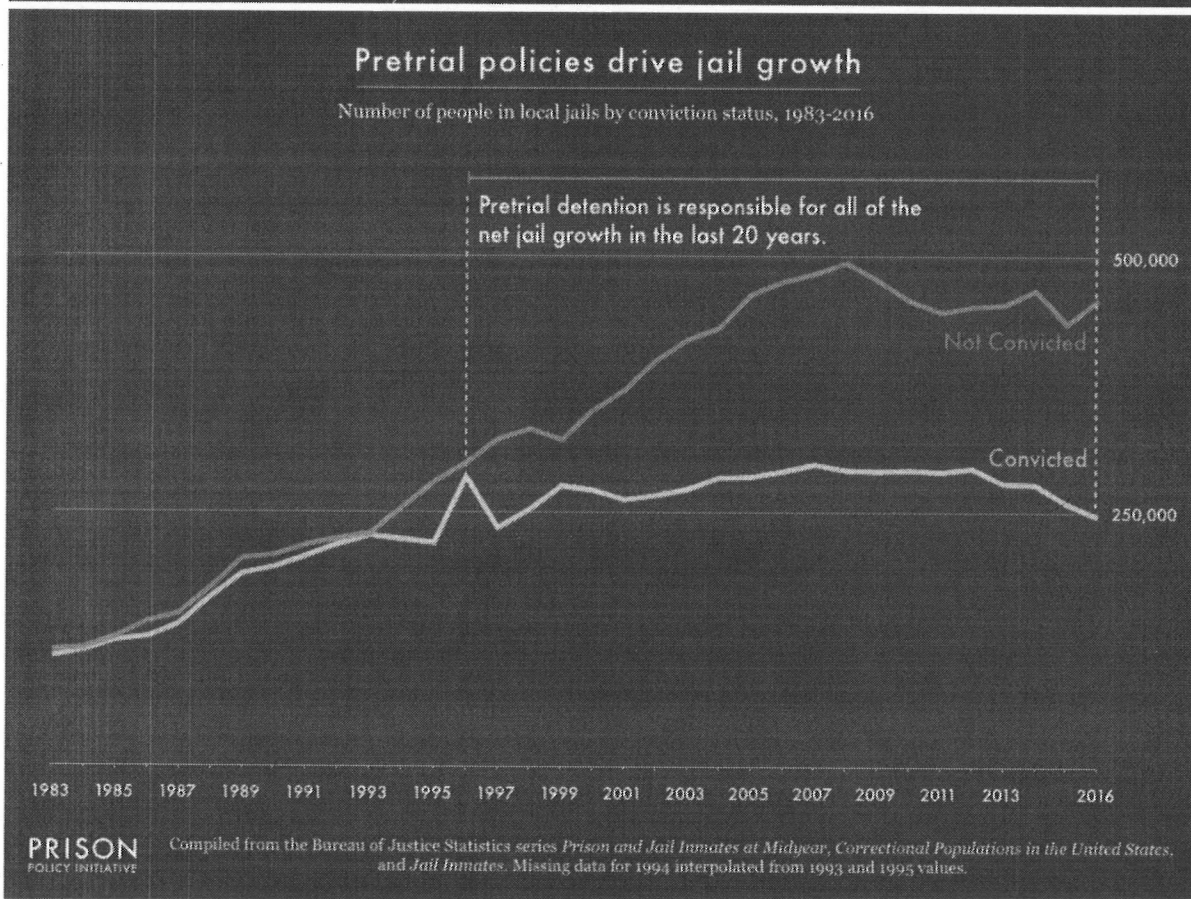
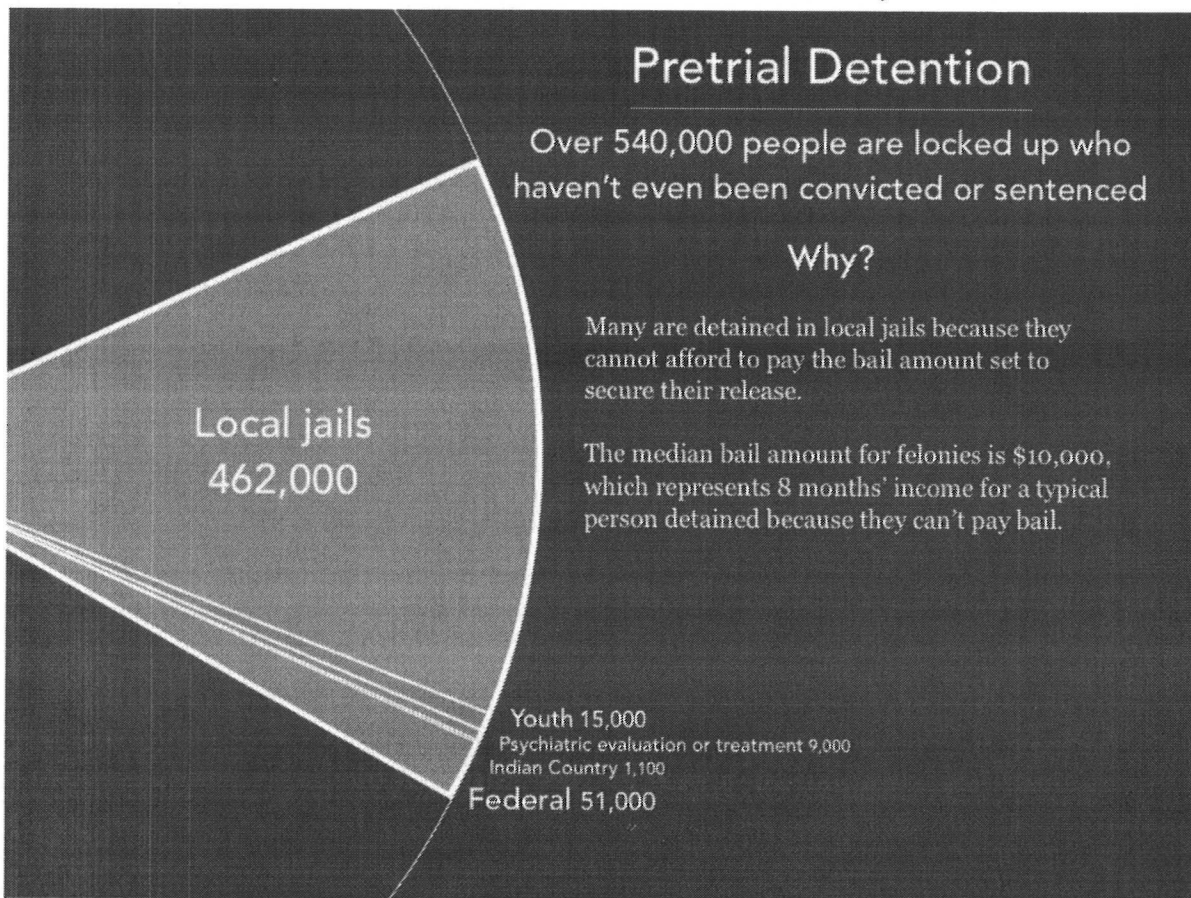
Slideshow 1. Swipe for more detailed views.

This big-picture view allows us to focus on the most important drivers of mass incarceration and identify important, but often ignored, systems of confinement. The detailed views bring

these overlooked systems to light, from immigration detention to civil commitment and youth confinement. In particular, local jails often receive short shrift in larger discussions about criminal justice, but they play a critical role as “incarceration’s front door” and have a far greater impact than the daily population suggests.

While this pie chart provides a comprehensive snapshot of our correctional system, the graphic does not capture the **enormous churn** in and out of our correctional facilities, nor the far larger universe of people whose lives are affected by the criminal justice system. Every year, over 600,000 people enter *prison* gates, but people go to *jail* 10.6 million times each year. <sup>2</sup> Jail churn is particularly high because most people in jails have not been convicted. <sup>3</sup> Some have just been arrested and will make bail within hours or days, while many others are too poor to make bail and remain behind bars until their trial. Only a small number (less than 150,000 on any given day) have been convicted, and are generally serving misdemeanors sentences under a year.

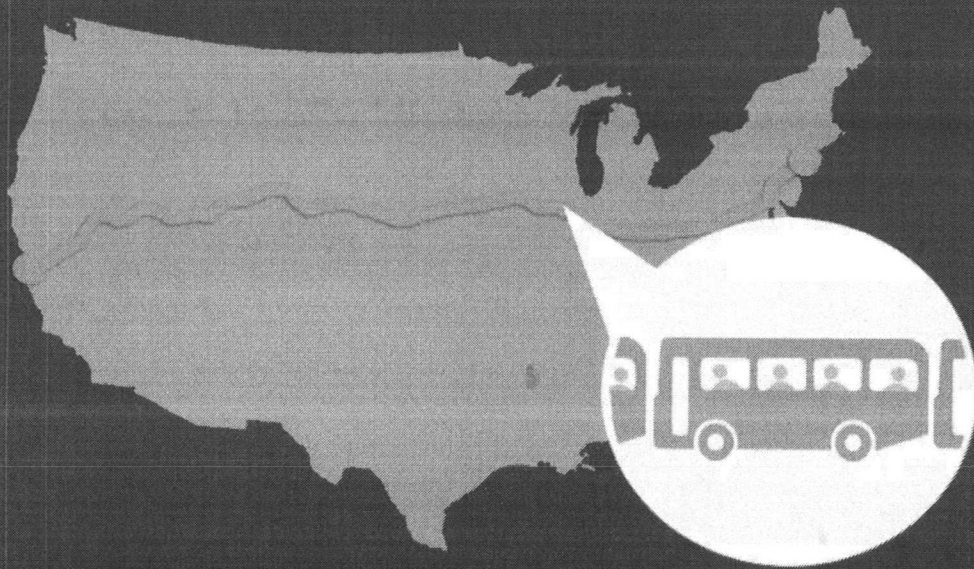




## Local Jails: The real scandal is the churn

When talking about the societal impact of jails, the average daily population of 612,000 is far less important than the staggering number — 10.6 million — admitted to jails each year.

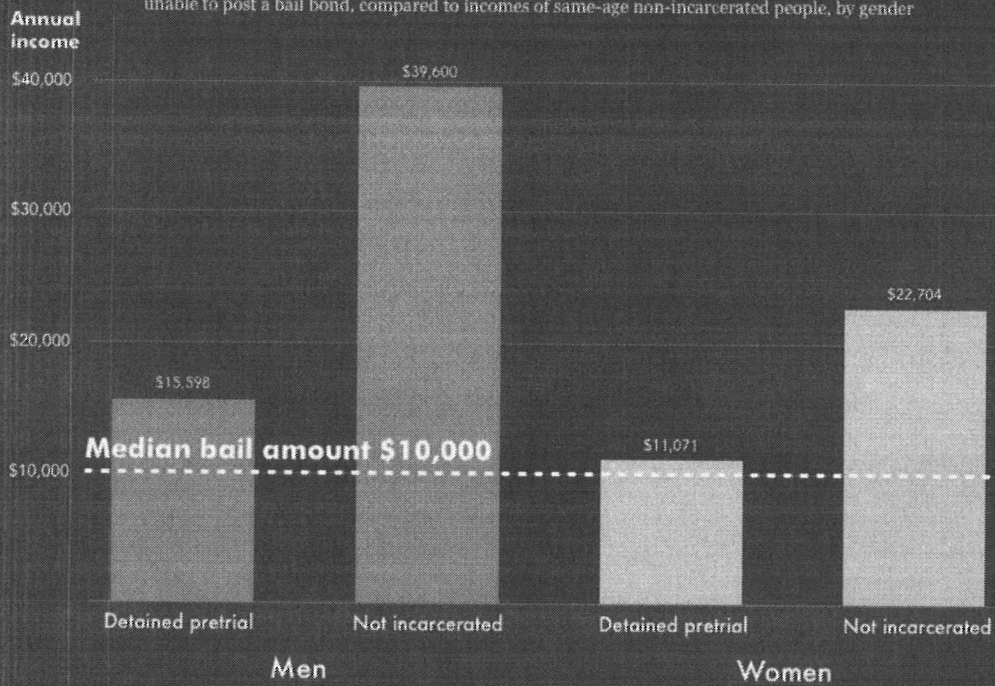
### What does 10.6 million jail admissions look like?



It's enough people to fill a line of prison buses bumper-to-bumper from New York City to San Francisco.

### Why are so many people detained in jails before trial? They're not wealthy enough to afford money bail.

Median annual pre-incarceration incomes (in 2015 dollars) for people ages 23-39 in local jails who were unable to post a bail bond, compared to incomes of same-age non-incarcerated people, by gender



For detailed data notes, see *Detaining the Poor* at [www.prisonpolicy.org/reports/incomejails.html](http://www.prisonpolicy.org/reports/incomejails.html)

PRISON  
POLICY INITIATIVE





*Slideshow 2. Swipe for more detail on pre-trial detention.*

With a sense of the big picture, the next question is: *why* are so many people locked up? How many are incarcerated for drug offenses? Are the profit motives of private companies driving incarceration? Or is it really about public safety and keeping dangerous people off the streets? There are a plethora of modern myths about incarceration. Most have a kernel of truth, but these myths distract us from focusing on the most important drivers of incarceration.

## Five myths about mass incarceration

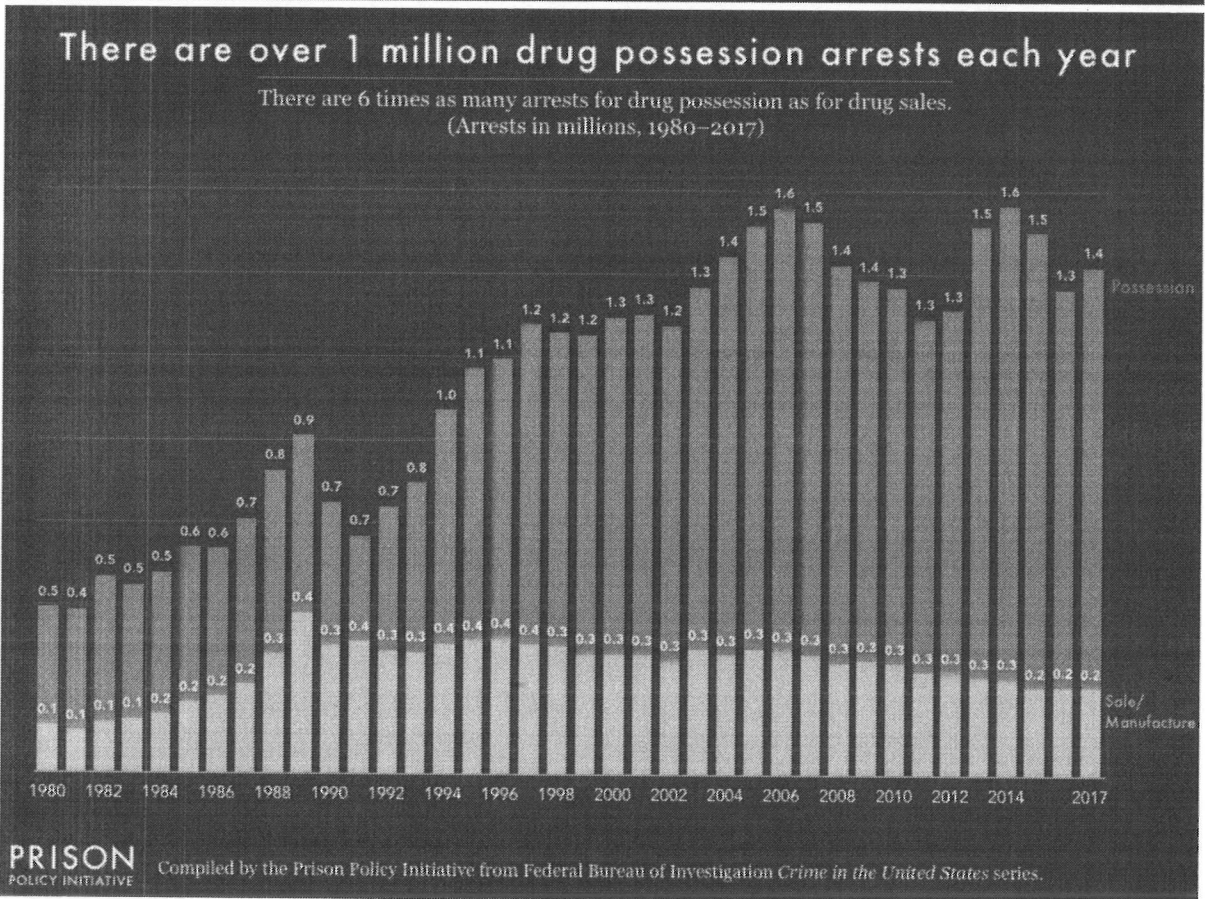
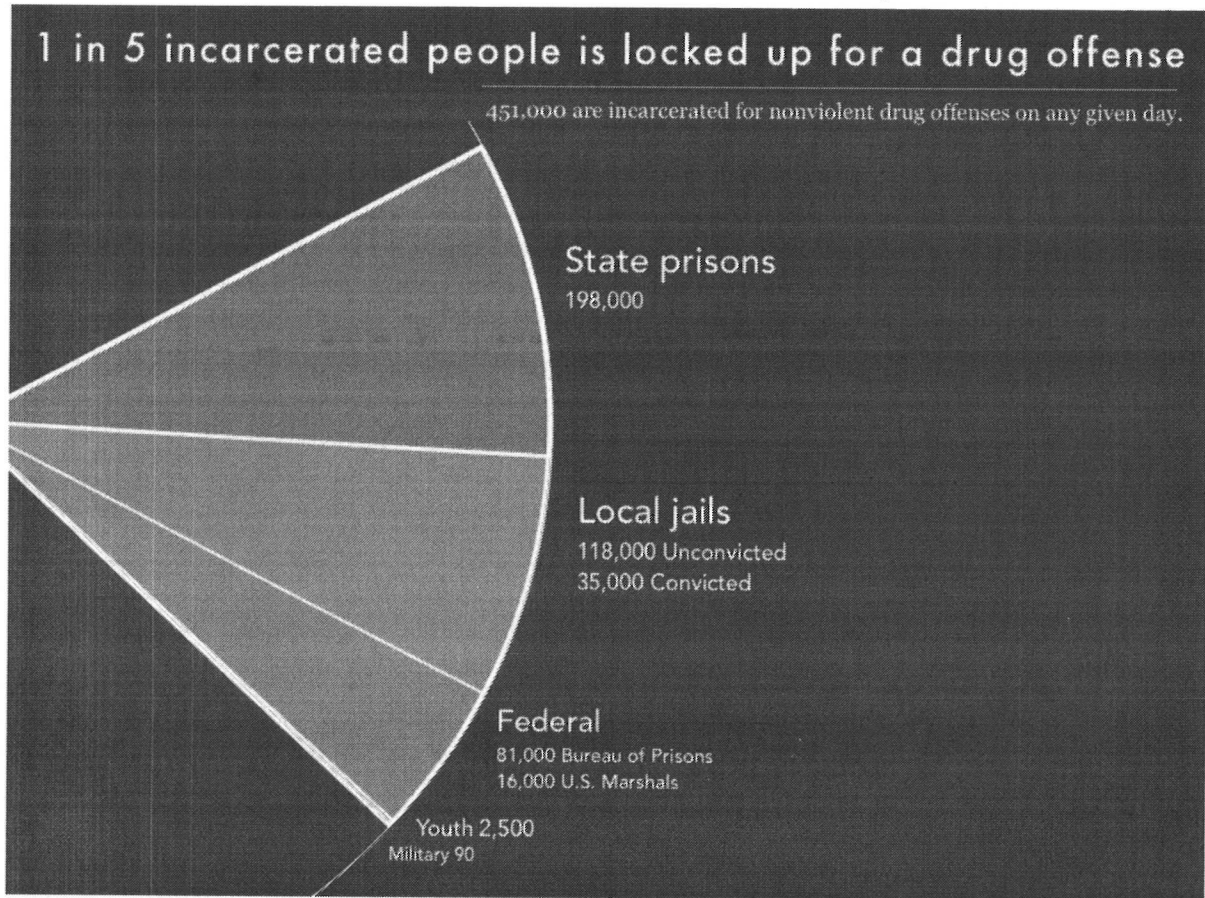
The overcriminalization of drug use, the use of private prisons, and low-paid or unpaid prison labor are among the most contentious issues in criminal justice today because they inspire moral outrage. But they do not answer the question of why most people are incarcerated, or how we can dramatically — and safely — reduce our use of confinement. Likewise, emotional responses to sexual and violent offenses often derail important conversations about the social, economic, and moral costs of incarceration and lifelong punishment. Finally, simplistic solutions to reducing incarceration, such as moving people from jails and prisons to community supervision, ignore the fact that “alternatives” to incarceration often lead to incarceration anyway. Focusing on the policy changes that can end mass incarceration, and not just put a dent in it, requires the public to put these issues into perspective.

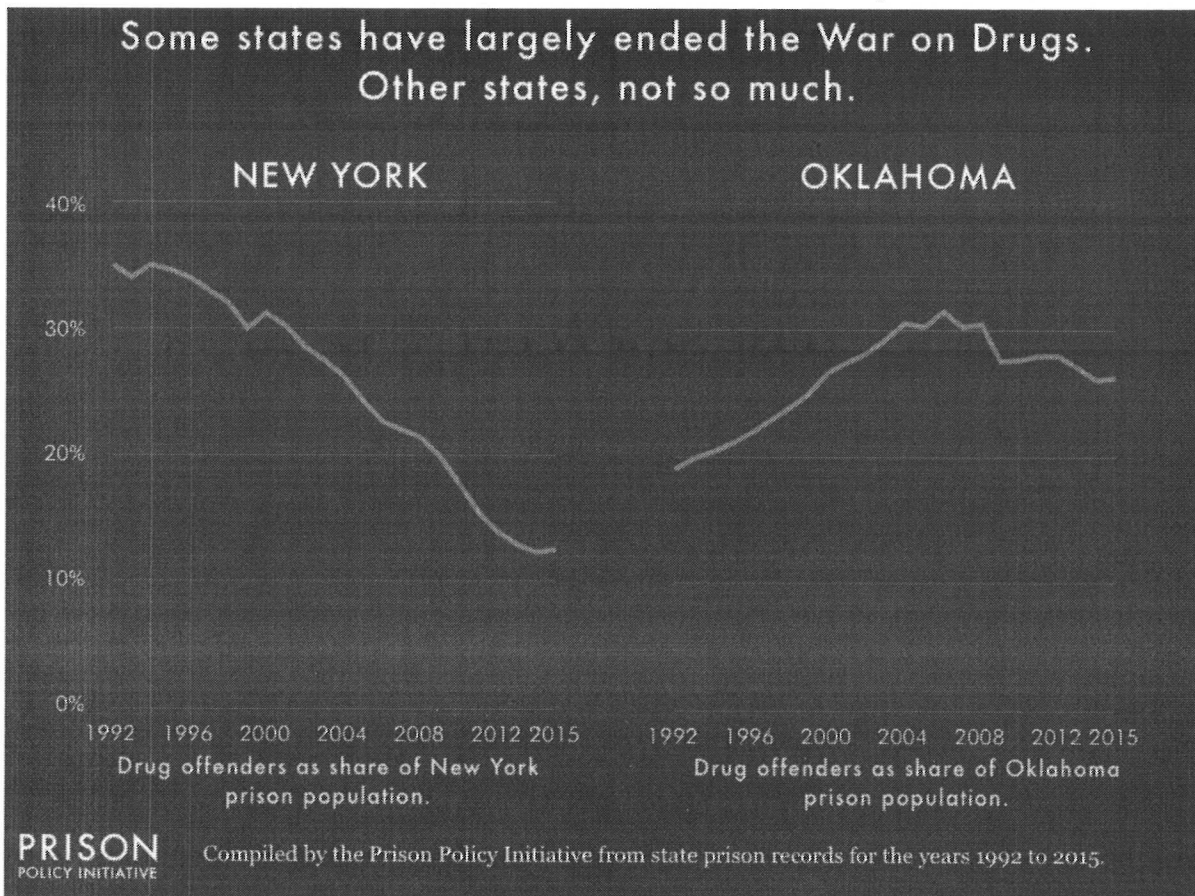
## The first myth: Releasing “nonviolent drug offenders” would end mass incarceration

It’s true that police, prosecutors, and judges continue to punish people harshly for nothing more than drug possession. Drug offenses still account for the incarceration of almost half a million people, <sup>4</sup> and nonviolent drug convictions remain a defining feature of the *federal* prison system. Police still make over 1 million drug possession arrests each year, <sup>5</sup> and many of these arrests do lead to prison sentences. Drug arrests continue to give residents of over-policed communities criminal records, hurting their employment prospects and increasing the likelihood of longer sentences for any future offenses.

But at the state and local levels, far more people are locked up for violent and property offenses than for drug offenses alone. To end mass incarceration, reforms will have to go further than the “low hanging fruit” of nonviolent drug offenses. (As it happens, some of the boldest strategies for reforming the criminal justice system — such as heavy investments in social services and community-based alternatives to incarceration — benefit not only those with substance use disorders, but people at risk of incarceration for any offense.)





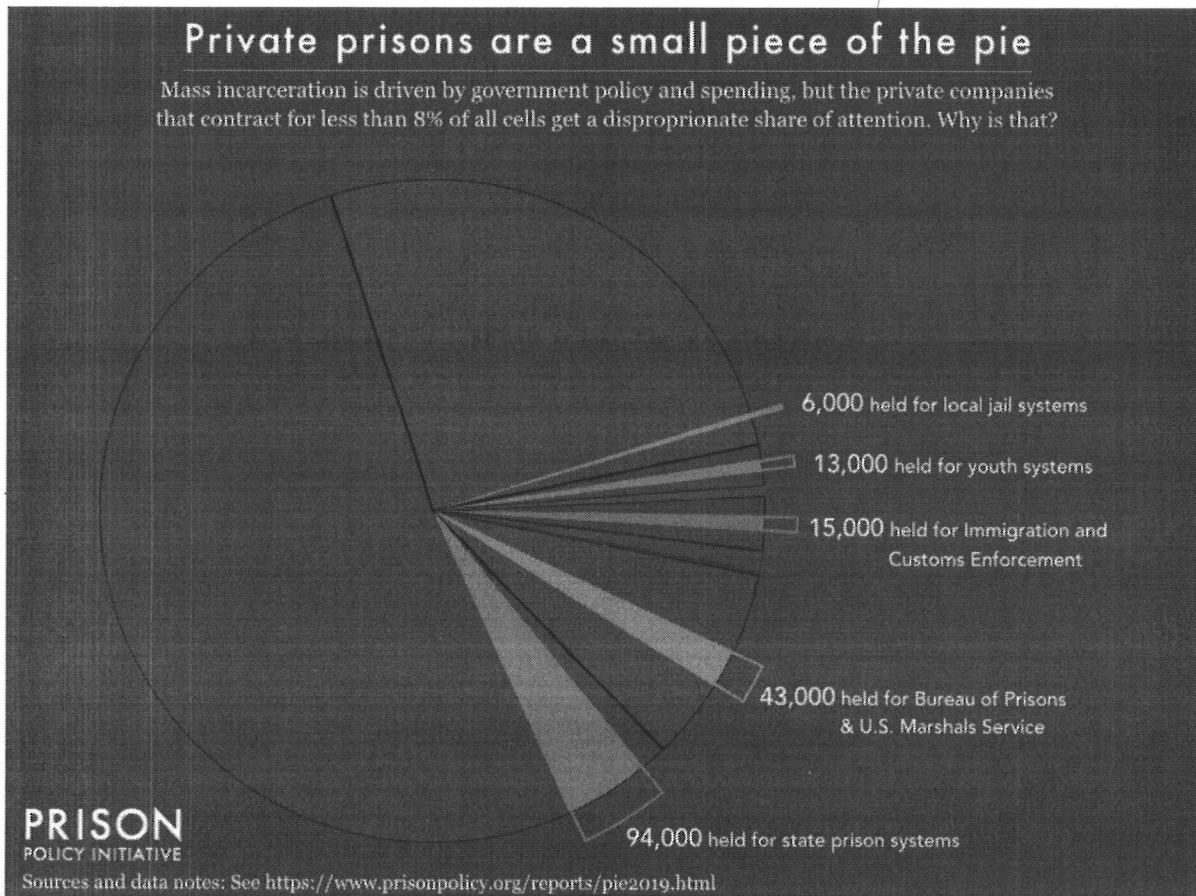


*Slideshow 3. Swipe for more detail on the War on Drugs.*

## The second myth: Private prisons are the corrupt heart of mass incarceration

In fact, less than 8% of all incarcerated people are held in private prisons; the vast majority are in publicly-owned prisons and jails. <sup>6</sup> Some states have more people in private prisons than others, of course, and the industry *has* lobbied to maintain high levels of incarceration, but private prisons are essentially a parasite on the massive publicly-owned system — not the root of it.

Nevertheless, a range of private industries and even some public agencies continue to profit from mass incarceration. Many city and county jails rent space to other agencies, including state prison systems, <sup>7</sup> the U.S. Marshals Service, and Immigration and Customs Enforcement (ICE). Private companies are frequently granted contracts to operate prison food and health services (often so bad they result in major lawsuits), and prison and jail telecom and commissary functions have spawned multi-billion dollar private industries. By privatizing services like phone calls, medical care and commissary, prisons and jails are unloading the costs of incarceration onto incarcerated people and their families, trimming their budgets at an unconscionable social cost.



*Private prisons and jails hold less than 8 percent of all incarcerated people, making them a relatively small part of a mostly publicly-run correctional system.*

### **The third myth: Prisons are “factories behind fences” that exist to provide companies with a huge slave labor force**

Simply put, private companies using prison labor are not what stands in the way of ending mass incarceration, nor are they the source of most prison jobs. Only about 5,000 people in prison — less than 1% — are employed by private companies through the federal PIECP program, which requires them to pay at least minimum wage before deductions. (A larger portion work for state-owned “correctional industries,” which pay much less, but this still only represents about 6% of people incarcerated in state prisons.) 8

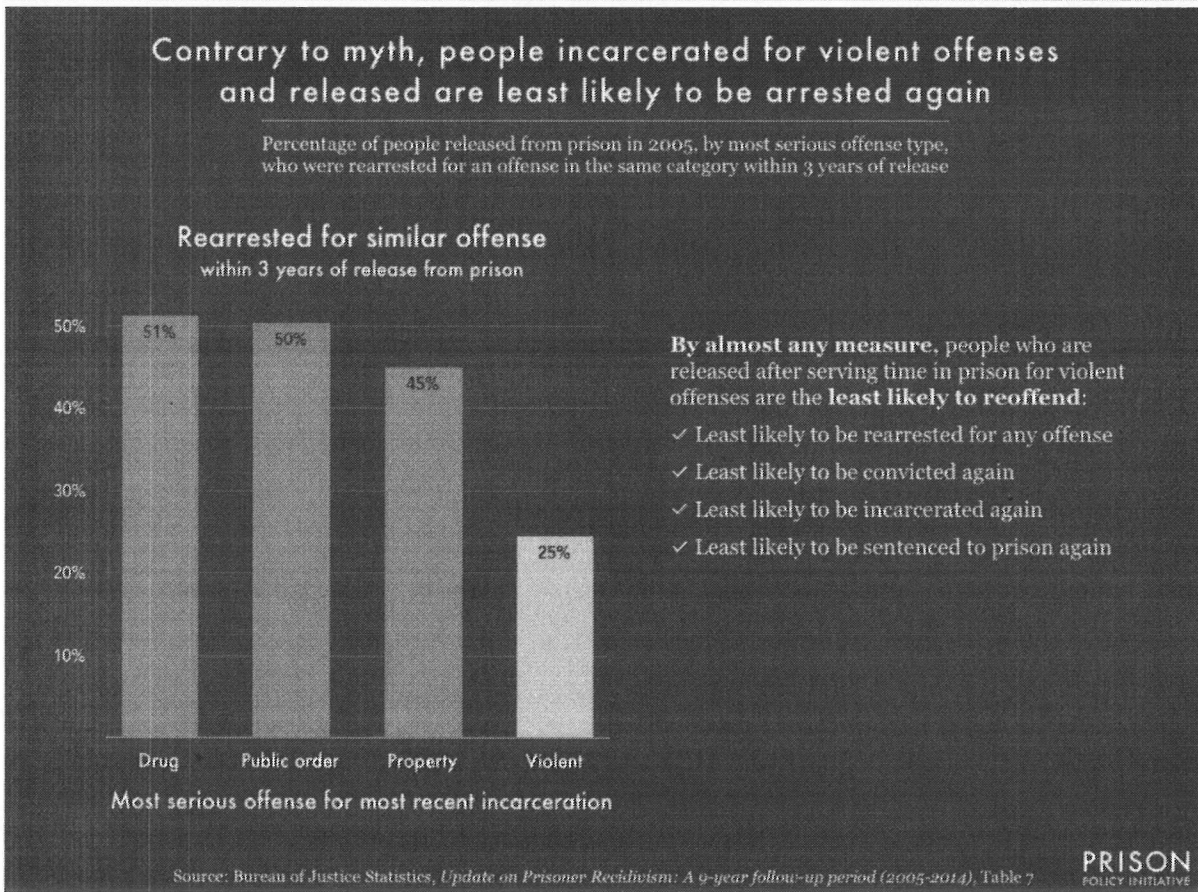
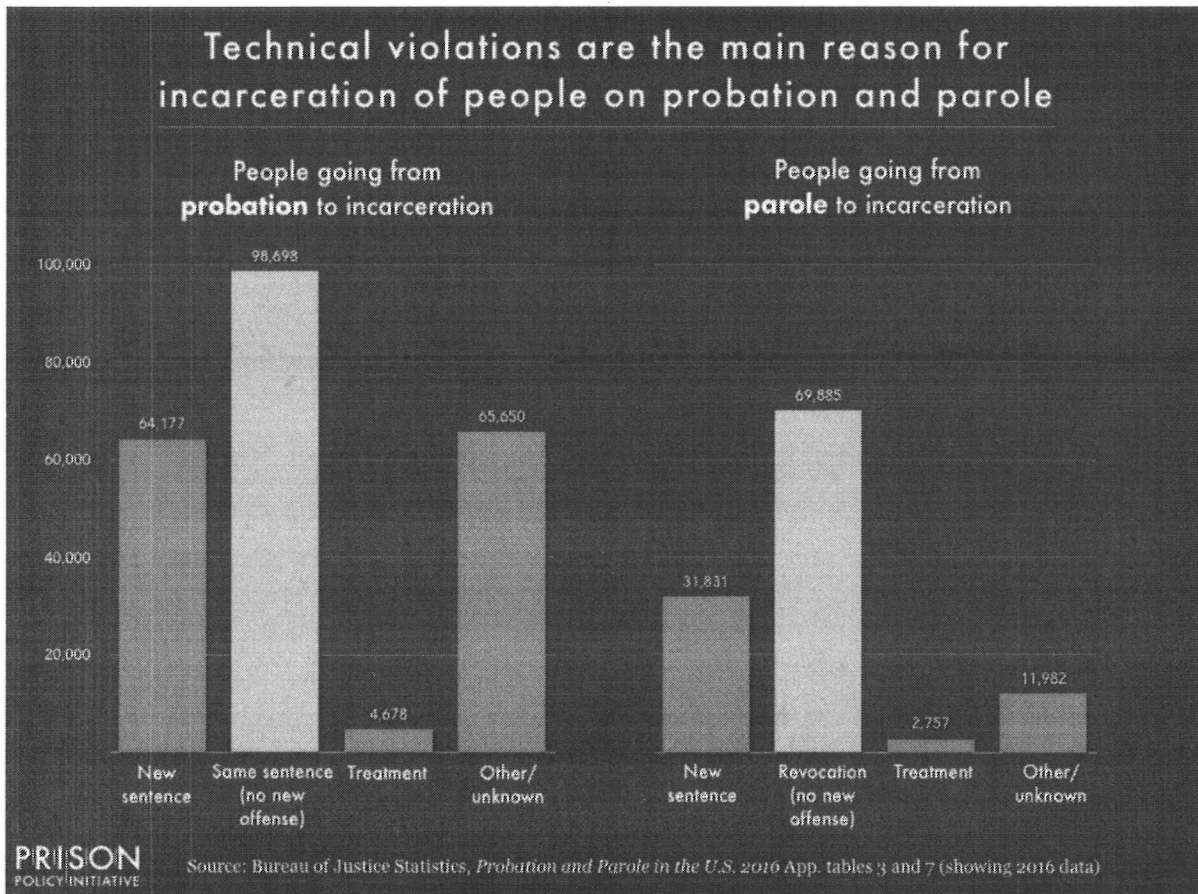
But prisons do rely on the labor of incarcerated people for food service, laundry and other operations, and they pay incarcerated workers unconscionably low wages: our 2017 study found that on average, incarcerated people earn between 86 cents and \$3.45 *per day* for the most common prison jobs. In at least five states, those jobs pay nothing at all. Moreover, work in prison is compulsory, with little regulation or oversight, and incarcerated workers have few rights and protections. Forcing people to work for low or no pay and no benefits allows prisons to shift the costs of incarceration to incarcerated people — hiding the true cost of running prisons from most Americans.

### **The fourth myth: Expanding community supervision is the best way to reduce incarceration**

Community supervision, which includes probation, parole, and pretrial supervision, is often seen as a “lenient” punishment, or as an ideal “alternative” to incarceration. But while remaining in the community is certainly preferable to being locked up, the conditions imposed on those under supervision are often so restrictive that they set people up to fail. The long supervision terms, numerous and burdensome requirements, and constant surveillance (especially with electronic monitoring) result in frequent “failures,” often for minor infractions like breaking curfew or failing to pay unaffordable supervision fees.

In 2016, at least 168,000 people were incarcerated for such “technical violations” of probation or parole — that is, not for any new crime. <sup>9</sup> Probation, in particular, leads to unnecessary incarceration; until it is reformed to support and reward success rather than detect mistakes, it is not a reliable “alternative.”





*Slideshow 4. Swipe for more detail about what the data on recidivism really shows.*

## The fifth myth: People in prison for violent or sexual crimes are too dangerous to be released

Finally, we come to the myth that people who commit violent or sexual crimes are incapable of rehabilitation and thus warrant many decades or even a lifetime of punishment. As lawmakers and the public increasingly agree that past policies have led to unnecessary incarceration, it's time to consider policy changes that go beyond the low-hanging fruit of “non-non-nons” — people convicted of non-violent, non-serious, non-sexual offenses. If we are serious about ending mass incarceration, we will have to change our responses to more serious and violent crime.

## Recidivism: A slippery statistic

As long as we are considering recidivism rates as a measure of public safety risk, we should also consider how recidivism is defined and measured. While this may sound esoteric, this is an issue that affects an important policy question: at what point — and with what measure — do we consider someone's re-entry a success or failure?

The term “recidivism” suggests a relapse in behavior, a return to criminal offending. But what is a valid sign of criminal offending: self-reported behavior, arrest, conviction, or incarceration? Defining recidivism as re-arrest casts the widest net and results in the highest rates, but arrest does not suggest conviction, nor actual guilt. More useful measures than re-arrest include conviction for a new crime, re-incarceration, or a new sentence of imprisonment; the latter may be most relevant, since it measures offenses serious enough to warrant a prison sentence. Importantly, people convicted of violent offenses have the lowest recidivism rates by each of these measures. However, the recidivism rate for violent offenses is a whopping 48 percentage points higher when re-arrest, rather than imprisonment, is used to define recidivism.

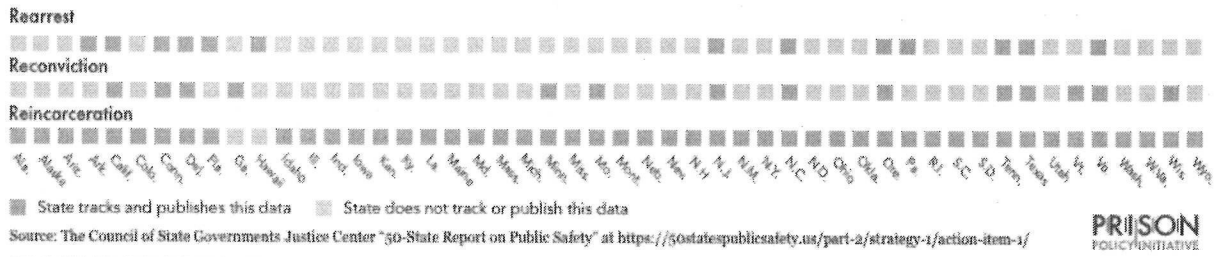
The cutoff point at which recidivism is measured also matters: If someone is arrested for the first time 5, 10, or 20 years after they leave prison, that's very different from someone arrested within months of release. The most recent government study of recidivism reported that 83% of state prisoners were arrested at some point in the 9 years following their release, but the vast majority of those were arrested within the first 3 years, and more than half within the first year. The longer the time period, the higher the reported recidivism rate — but the lower the actual threat to public safety.

A related question is whether it matters what the post-release offense is. For example, 71% of people imprisoned for a violent offense are re-arrested within 5 years of release, but only 33% are re-arrested for another *violent* offense; they are much more likely to be re-arrested for a public order offense. If someone convicted of robbery is arrested years later for a liquor law violation, it makes no sense to view this very different, much less serious, offense the same way we would another arrest for robbery.

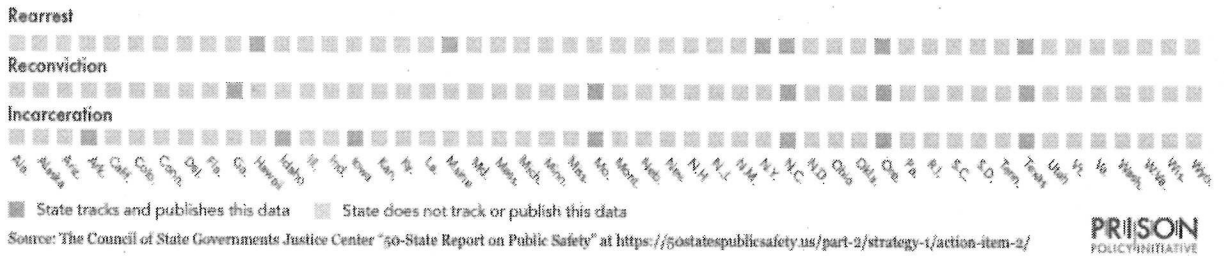
A final note about recidivism: While policymakers frequently cite reducing recidivism as a priority few states collect the data that would allow them to monitor and improve their own performance in real time. For example, the Council of State Governments asked correctional systems what kind of recidivism data they collect and publish for people leaving prison and people starting probation. What they found is that states typically track just one measure of post-release recidivism, and few states track recidivism while on probation at all:



### Most states track and publish just one measure of post-release recidivism



### Very few states track and publish any recidivism data for people on probation



If state-level advocates and political leaders want to know if their state is even trying to reduce recidivism, we suggest one easy litmus test: Do they collect and publish basic data about the number and causes of people’s interactions with the justice system while on probation, or after release from prison?

The data supports changing our responses to some of the crimes that scare people most: people convicted of sexual assault and homicide are actually among the least likely to reoffend after release. People convicted of homicide are the least likely to be re-arrested, and those convicted of rape or sexual assault have re-arrest rates roughly 30-50% lower than people convicted of larceny or motor vehicle theft. More broadly, people convicted of *any* violent offense are less likely to be re-arrested in the years after release than those convicted of property, drug, or public order offenses. Yet people convicted of violent offenses often face decades of incarceration, and those convicted of sexual offenses can be committed to indefinite confinement or stigmatized by sex offender registries long after completing their sentences.

## Offense categories might not mean what you think

To understand the main drivers of incarceration, the public needs to see how many people are incarcerated for different offense types. But the reported offense data oversimplifies how people interact with the criminal justice system in two important ways: it reports only one offense category per person, and it reflects the outcome of the legal process, obscuring important details of actual events.

First, when a person is in prison for multiple offenses, only the most serious offense is reported. <sup>10</sup> So, for example, there are people in prison for violent offenses who were also

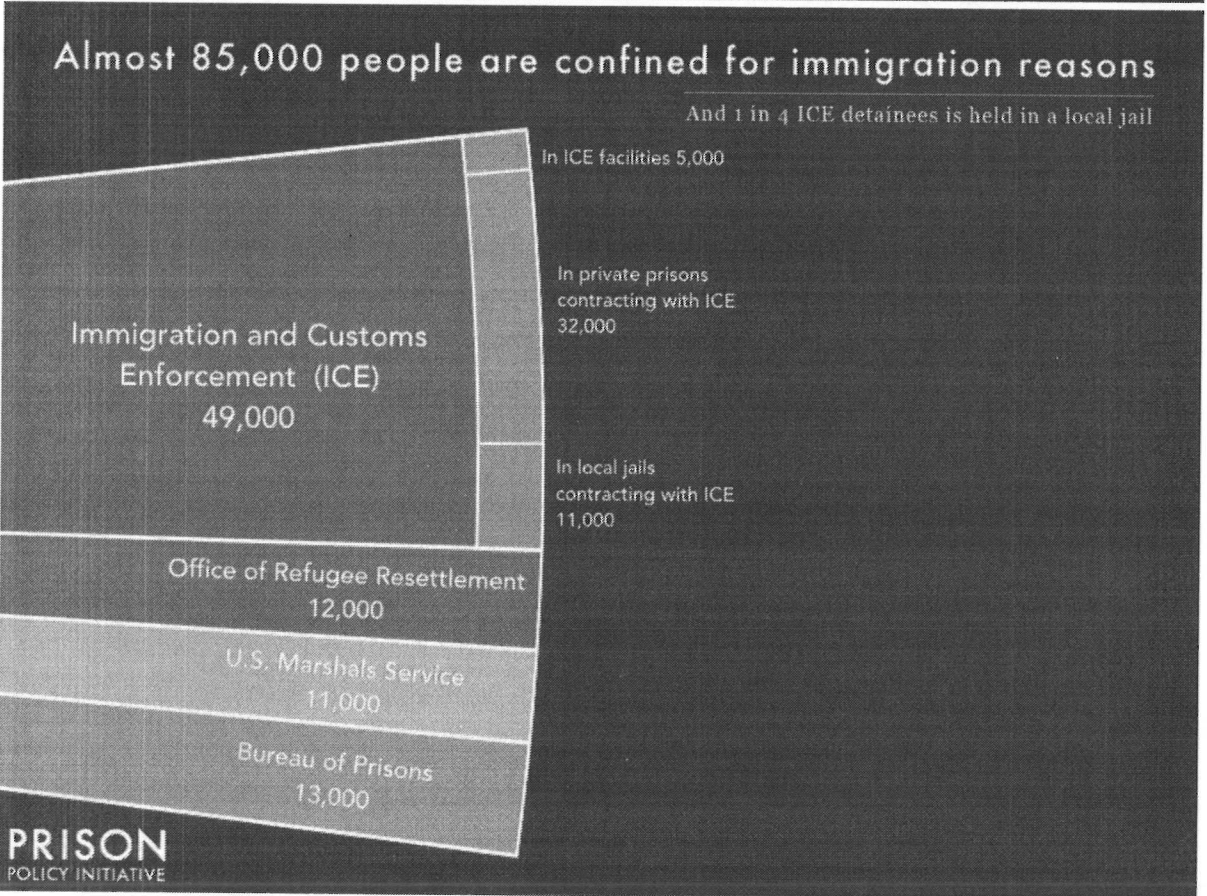
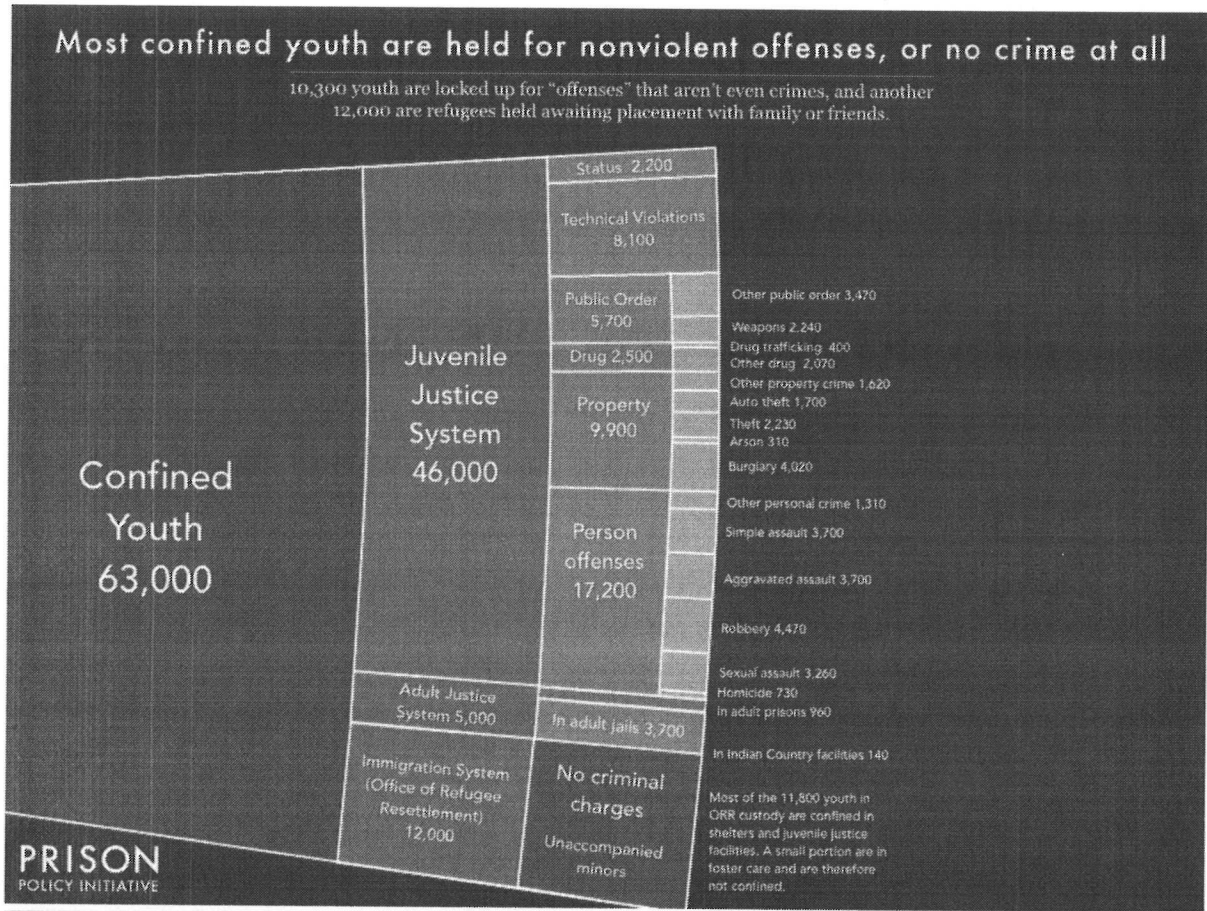
convicted of drug offenses, but they are included only in the “violent” category in the data. This makes it hard to grasp the complexity of criminal events, such as the role drugs may have played in violent or property offenses. We must also consider that almost all convictions are the result of **plea bargains**, where defendants plead guilty to a lesser offense, possibly in a different category, or one that they did not actually commit.

Secondly, many of these categories group together people convicted of a wide range of offenses. For violent offenses especially, these labels can distort perceptions of individual “violent offenders” and exaggerate the scale of dangerous violent crime. For example, “murder” is an extremely serious offense, but that category groups together the small number of serial killers with people who committed acts that are unlikely, for reasons of circumstance or advanced age, to ever happen again. It also includes offenses that the average person may not consider to be murder at all. In particular, the felony murder rule says that if someone dies during the commission of a felony, everyone involved can be as guilty of murder as the person who pulled the trigger. Acting as lookout during a break-in where someone was accidentally killed is indeed a serious offense, but many may be surprised that this can be considered murder in the U.S. <sup>11</sup>

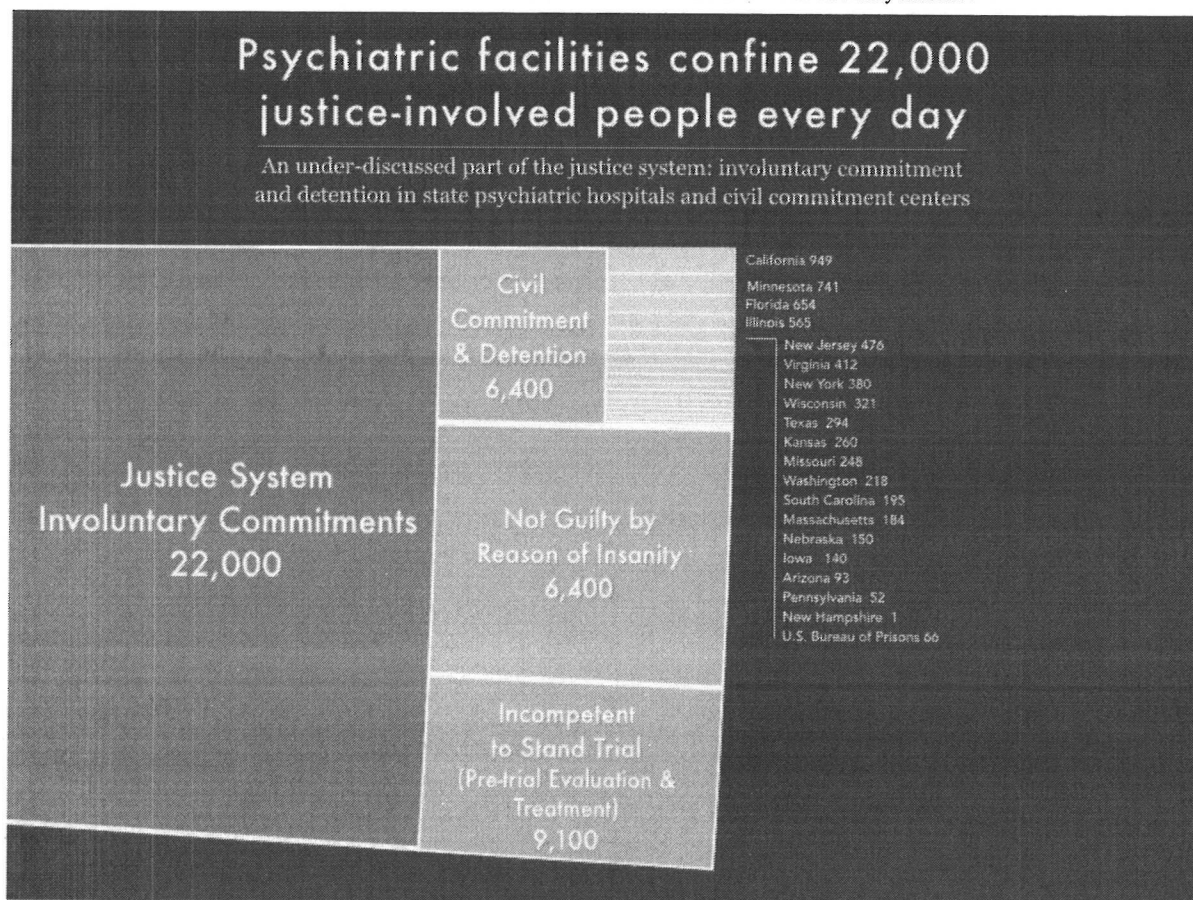
## **Lessons from the smaller “slices”: Youth, immigration, and involuntary commitment**

Looking more closely at incarceration by offense type also exposes some disturbing facts about the 63,000 youth in confinement in the United States: Too many are there for a “most serious offense” that is **not even a crime**. For example, there are over 8,100 youth behind bars for technical violations of their probation, rather than for a new offense. An additional 2,200 youth are locked up for “status” offenses, which are “behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility.” <sup>12</sup> Nearly 1 in 10 youth held for a criminal or delinquent offense is locked in an adult jail or prison, and most of the others are held in juvenile facilities that look and operate a lot like prisons and jails.

Turning to the people who are locked up criminally and civilly for **immigration-related reasons**, we find that 13,000 people are in federal prisons for criminal convictions of immigration offenses, and 10,600 more are held pretrial by U.S. Marshals. The vast majority of people incarcerated for criminal immigration offenses are accused of illegal entry or illegal re-entry — in other words, for no more serious offense than crossing the border without permission. <sup>13</sup>







*Slideshow 5. Swipe for more detail about youth confinement, immigrant confinement and psychiatric confinement.*

Another 49,000 people are civilly detained by U.S. Immigration and Customs Enforcement (ICE) not for any crime, but simply for their undocumented immigrant status. ICE detainees are physically confined in federally-run or privately-run immigration detention facilities, or in local jails under contract with ICE. An additional 11,800 **unaccompanied children** are held in the custody of the Office of Refugee Resettlement (ORR), awaiting placement with parents, family members, or friends. While these children are not held for any criminal or delinquent offense, most are held in shelters or even juvenile placement facilities under detention-like conditions. <sup>14</sup>

Adding to the universe of people who are confined because of justice system involvement, 22,000 people are **involuntarily detained or committed** to state psychiatric hospitals and civil commitment centers. Many of these people are not even convicted, and some are held indefinitely. 9,000 are being evaluated pre-trial or treated for incompetency to stand trial; 6,000 have been found not guilty by reason of insanity or guilty but mentally ill; another 6,000 are people convicted of sexual crimes who are involuntarily committed or detained after their prison sentences are complete. While these facilities aren't typically run by departments of correction, they are in reality much like prisons.

## **Beyond the "Whole Pie": Community supervision, poverty, and race and gender disparities**

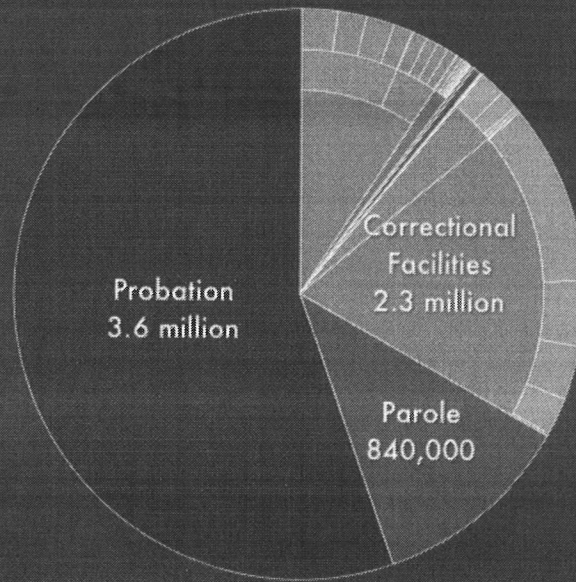
While this report provides the most inclusive view of the various systems of confinement in the U.S. justice system available, these snapshots can't capture all of the important systemic issues. Once we have wrapped our minds around the "whole pie" of mass incarceration, for example, we should zoom out and note that confinement is just one piece of the larger system of correctional control. There are another 840,000 people on parole and a staggering 3.6 million people on probation. Given the onerous conditions of probation and the steep consequences for technical violations, policymakers should be wary of "alternatives to incarceration" that can easily lead to incarceration for people who pose no threat to public safety.

Beyond identifying the parts of the criminal justice system that impact the most people, we should also focus on **who is most impacted and who is left behind** by policy change. Poverty, for example, plays a central role in mass incarceration. People in prison and jail are disproportionately poor compared to the overall U.S. population. <sup>15</sup> The criminal justice system punishes poverty, beginning with the high price of money bail: The median felony bail bond amount (\$10,000) is the equivalent of 8 months' income for the typical detained defendant. As a result, people with low incomes are more likely to face the harms of pretrial detention. Poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities. <sup>16</sup>

It's no surprise that people of color — who face much greater rates of poverty — are dramatically overrepresented in the nation's prisons and jails. These racial disparities are particularly stark for Black Americans, who make up 40% of the incarcerated population despite representing only 13% of U.S. residents. The same is true for women, whose incarceration rates have for decades risen faster than men's, and who are often behind bars because of financial obstacles such as an inability to pay bail. As policymakers continue to push for reforms that reduce incarceration, they should avoid changes that will widen disparities, as has happened with juvenile confinement and with women in state prisons.

# Incarceration is just one piece of the much larger system of correctional control

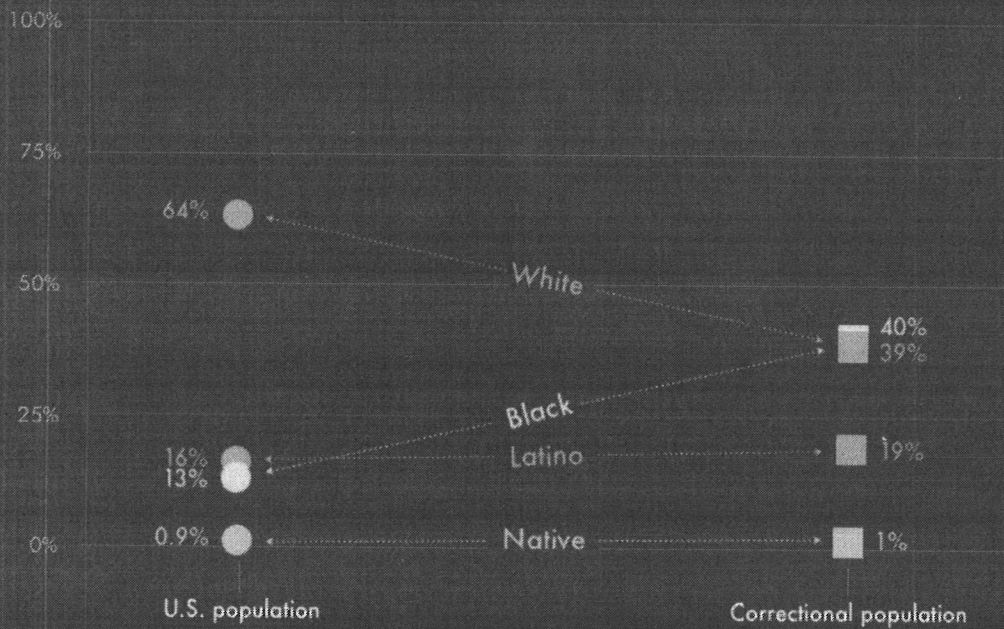
The U.S. justice system controls almost 7 million people, more than half of whom are on probation.



PRISON  
POLICY INITIATIVE

## Racial and ethnic disparities in correctional facilities

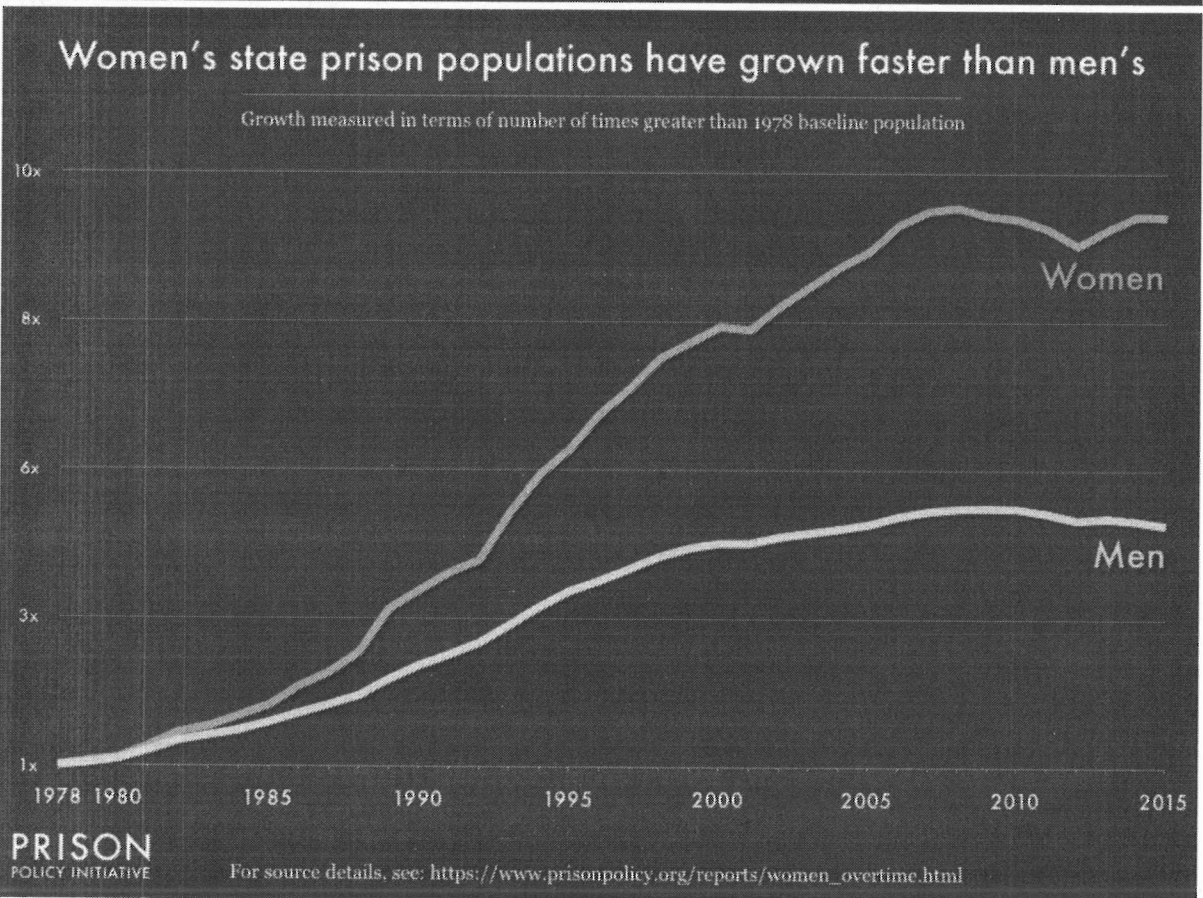
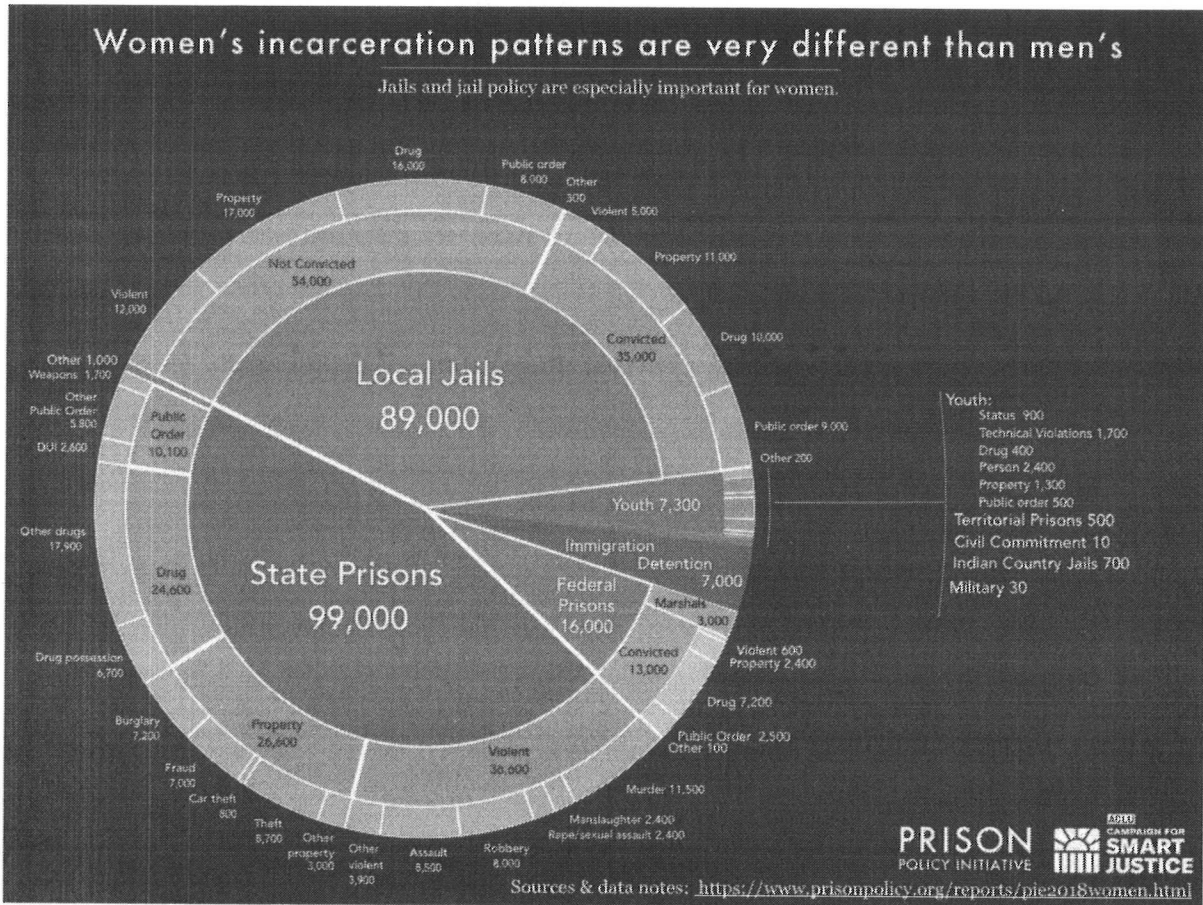
Whites are underrepresented in the incarcerated population while Blacks are overrepresented.



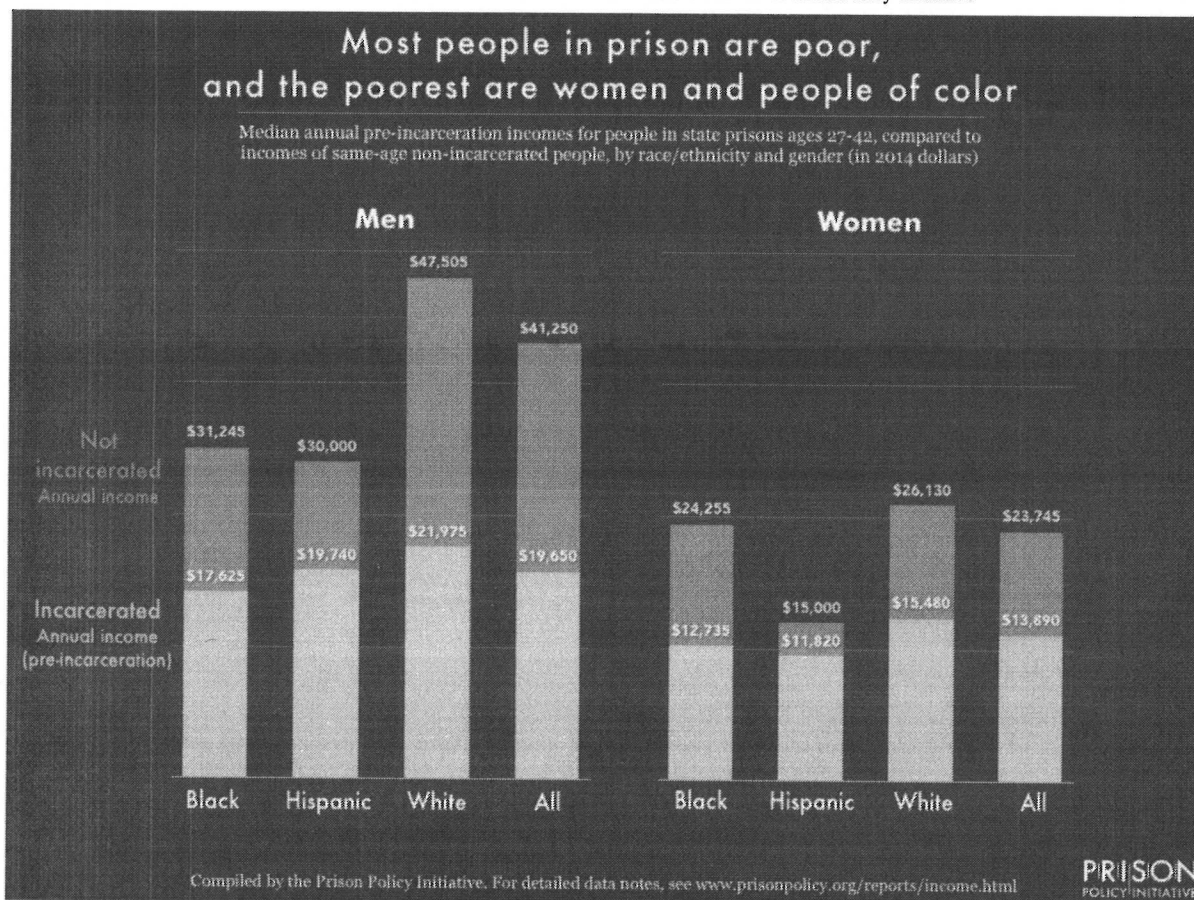
PRISON  
POLICY INITIATIVE

Compiled from 2010 Census, Summary File 1.









*Slideshow 6. Swipe for more detail about race, gender and income disparities.*

Equipped with the full picture of how many people are locked up in the United States, where, and why, our nation has a better foundation for the long overdue conversation about criminal justice reform. For example, the data makes it clear that ending the war on drugs will not alone end mass incarceration, though the federal government and some states have taken an important step by reducing the number of people incarcerated for drug offenses. Looking at the “whole pie” also opens up other conversations about where we should focus our energies:

- Are state officials and prosecutors willing to rethink not just long sentences for drug offenses, but the reflexive, simplistic policymaking that has served to increase incarceration for violent offenses as well?
- Do policymakers and the public have the stamina to confront the second largest slice of the pie: the thousands of locally administered jails? Will state, county, and city governments be brave enough to end money bail without imposing unnecessary conditions in order to bring down pretrial detention rates? Will local leaders be brave enough to redirect public spending to smarter investments like community-based drug treatment and job training?
- What is the role of the federal government in ending mass incarceration? The federal prison system is just a small slice of the total pie, but the federal government can certainly use its financial and ideological power to incentivize and illuminate better paths forward. At the same time, how can elected sheriffs, district attorneys, and judges — who all control larger shares of the correctional pie — slow the flow of people into the criminal justice system?

- Given that the companies with the greatest impact on incarcerated people are not private prison operators, but service providers that contract with public facilities, will states respond to public pressure to end contracts that squeeze money from people behind bars?
- Can we implement reforms that both reduce the number of people incarcerated in the U.S. and the well-known racial and ethnic disparities in the criminal justice system?

Now that we can see the big picture of how many people are locked up in the United States in the various types of facilities, we can see that **something needs to change**. Looking at the big picture requires us to ask if it really makes sense to lock up 2.3 million people on any given day, giving this nation the dubious distinction of having the highest incarceration rate in the world. Both policymakers and the public have the responsibility to carefully consider each individual slice in turn to ask whether legitimate social goals are served by putting each group behind bars, and whether any benefit really outweighs the social and fiscal costs.

Even narrow policy changes, like reforms to money bail, can meaningfully reduce our society's use of incarceration. At the same time, we should be wary of proposed reforms that seem promising but will have only minimal effect, because they simply transfer people from one slice of the correctional "pie" to another. Keeping the big picture in mind is critical if we hope to develop strategies that actually shrink the "whole pie."

## Data sources & methodology

People new to criminal justice issues might reasonably expect that a big picture analysis like this would be produced not by reform advocates, but by the criminal justice system itself. The unfortunate reality is that there isn't one centralized criminal justice system to do such an analysis. Instead, even thinking just about adult corrections, we have a federal system, 50 state systems, 3,000+ county systems and 25,000+ municipal systems, and so on. Each of these systems collects data for its own purposes that may or may not be compatible with data from other systems, and that might duplicate or omit people counted by other systems.

This isn't to discount the work of the Bureau of Justice Statistics, which, despite limited resources, undertakes the Herculean task of organizing and standardizing the data on correctional facilities. And it's not to say that the FBI doesn't work hard to aggregate and standardize police arrest and crime report data. But the basic reason why so many simple-sounding questions about criminal justice are in fact unanswerable is the "system" wasn't set up to answer them.

Similarly, there are systems involved in the confinement of justice-involved people that might not consider themselves part of the criminal justice system, but should be included in a holistic view of incarceration. Juvenile justice, civil detention and commitment, immigration detention, and commitment to psychiatric hospitals for criminal justice involvement are examples of this broader universe of confinement. The "whole pie" incorporates data from these systems to provide the most comprehensive view of incarceration possible.

To produce this report, we took the most recent data available for each part of these systems, and where necessary adjusted the data to ensure that each person was only counted once, only once, and in the right place.

## Not directly comparable with past pie reports

Before explaining the data sources, we want to explain two methodology changes that make this report not directly comparable with past reports. Unlike past years, in this report:

- We included all youth in residential placement for justice system involvement that were “detained” (as opposed to “committed”) in our pretrial detention detail slide. Last year, we included about 9,000 youth who were detained because they were awaiting a hearing or adjudication. This year, we also included an additional 6,000 youth whose status was “detained” because they were awaiting disposition or placement, because the court had not yet committed them to the facility where they were held.
- We included children held in the custody of the Office of Refugee Resettlement (ORR) in our immigration detention count in the main graphic, and in several detail slides. While these children are not held by ORR because of any criminal or delinquent charges, they are typically held in detention-like conditions; therefore, they fit into our holistic view of confinement in the U.S.

## Data sources

This briefing uses the most recent data available on the number of people in various types of facilities and the most significant charge or conviction. This year, several planned government reports were not published on their anticipated schedule, delayed in part by the government shutdown of December 2018 and January 2019. We sought out alternative data sources where possible, but some data simply has yet to be updated. Furthermore, because not all types of data are collected each year, we sometimes had to calculate estimates; for example, we applied the percentage distribution of offense types from the previous year to the current year’s total count data. For this reason, we chose to round most labels in the graphics to the nearest thousand, except where rounding to the nearest ten, nearest one hundred, or (in two cases in the jails detail slide) the nearest 500 was more informative in that context. This rounding process may also result in some parts not adding up precisely to the total.

Our data sources were:

- **State prisons:** Vera Institute of Justice, People in Prison 2017 Table 2 provides the total yearend 2017 population. This report does not include offense data, however, so we applied the ratio of offense types calculated from the most recent Bureau of Justice Statistics report on this population, Prisoners in 2016 Table 13 (as of December 31, 2015) to the 2017 total state prison population.
- **Jails:** Bureau of Justice Statistics, Jail Inmates in 2016 Table 1 and Table 3, reporting average daily population and convicted status for yearend 2016, and our analysis of the Survey of Inmates in Local Jails, 2002 <sup>17</sup> for offense types. See below and Who is in jail? Deep dive for why we used our own analysis rather than the otherwise

excellent Bureau of Justice Statistics analysis of the same dataset, Profile of Jail Inmates, 2002.

- **Federal:**
  - **Bureau of Prisons:** Federal Bureau of Prisons (BOP) Population Statistics, reporting data as of January 25, 2019 (total population of 180,307), and Prisoners in 2016 Table 15, reporting data as of September 30, 2016 (we applied the percentage distribution of offense types from that table to the 2019 convicted population).
  - **U.S. Marshals Service** provides a breakdown of its average daily population in fiscal year 2017 by facility type (state and local, private contracted, federal, and non-paid facilities) on its 2018 Prisoner Operations Fact Sheet. The number held in local jails came from our analysis of the Annual Survey of Jails 2016 data set, which showed that 23,850 people were held for the Marshals Service. To estimate the number held in state facilities, we subtracted the 23,850 held in jails from the combined “state and local facilities” population reported in the Fact Sheet. Offense data for the Marshals Service was estimated by applying the ratios of offense types from a 2018 FOIA record request response to the 2017 population reported in the Fact Sheet. It is worth noting that the U.S. Marshals detainees held in federal facilities and private contracted facilities were not included in several previous editions of this report, as they are not included in most of the Bureau of Justice Statistics’ jails or prisons data sets.
- **Youth:** Office of Juvenile Justice and Delinquency Prevention, Juvenile Residential Facility Census Databook (JRFCDB), reporting total population and facility data for October 26, 2016. Because the JRFC does not offer offense type or placement status details, we applied the offense type and placement status ratios from the 2015 Easy Access to the Census of Juveniles in Residential Placement (EZACJRP) to the 2016 total population count. Our data on youth incarcerated in adult prisons comes from Prisoners in 2016 Table 11 and youth in adult jails from Jail Inmates in 2016 Appendix Table 1, both reporting data for December 31, 2016. The number of youth reported in Indian Country facilities comes from the Bureau of Justice Statistics report Jails in Indian Country, 2016 Appendix Table 4, reporting data for June 30, 2016. For more information on the geography of the juvenile system, see the Youth First Initiative.
- **Immigration detention:** The 2019 count of 49,060 comes from page 2 of a Division-by-Division Summary of Conference Report of the 2018 Omnibus spending bill. <sup>18</sup> Our estimates of how many ICE detainees are held in federal, private, and local facilities come from the Report of the Subcommittee on Privatized Immigration Detention Facilities, December 1, 2016, by the Homeland Security Advisory Council. Page 6 of that report says that as of September 12, 2016, 10% were in federal owned and operated facilities, 65% in private for-profit contract facilities, and 25% in county jails and other government entities. The count of 11,800 children in Office of Refugee Resettlement (ORR) custody comes from the Office’s Frequently Asked Questions web page, dated July 9, 2019.
- **Justice-related involuntary commitment:**
  - **State psychiatric hospitals** (people committed to state psychiatric hospitals by courts after being found “not guilty by reason of insanity” (NGRI) or, in some states, “guilty but mentally ill” (GBMI) and others held for pre-trial evaluation



or for treatment as “incompetent to stand trial” (IST)): These counts are from pages 92, 99, and 104 of the August 2017 NRI report, Forensic Patients in State Psychiatric Hospitals: 1999-2016, reporting data from 37 states for 2014. The categories NGRI and GBMI are combined in this data set, and for pre-trial, we chose to combine pre-trial evaluation and those receiving services to restore competency for trial, because in most cases, these indicate people who have not yet been convicted or sentenced. This is not a complete view of all justice-related involuntary commitments, but we believe these categories and these facilities capture the largest share.

- **Civil detention and commitment:** (At least 20 states and the federal government operate facilities for the purposes of detaining people convicted of sexual crimes after their sentences are complete. These facilities and the confinement there are technically civil, but in reality are quite like prisons. People under civil commitment are held in custody continuously from the time they start serving their sentence at a correctional facility through their confinement in the civil facility.) The civil commitment counts come from an annual survey conducted by the Sex Offender Civil Commitment Programs Network shared by SOCCPN President Shan Jumper. Except for the federal Bureau of Prisons (BOP), all counts are from their 2018 survey. The BOP did not participate in that year’s survey, so we included its figures from the 2017 survey.
- **Territorial prisons** (correctional facilities in the U.S. Territories of American Samoa, Guam, and the U.S. Virgin Islands, and U.S. Commonwealths of Northern Mariana Islands and Puerto Rico): Prisoners in 2016 Table 20, reporting data for December 31, 2016.
- **Indian Country** (correctional facilities operated by tribal authorities or the U.S. Department of the Interior’s Bureau of Indian Affairs): Jails in Indian Country, 2016 Table 1, reporting data for June 30, 2016.
- **Military:** Prisoners in 2016 Tables 18 (for total population) and 19 (for offense types) reporting data as of December 31, 2016.
- **Probation and parole:** Our counts of the number of people on probation and parole are from the Bureau of Justice Statistics report Correctional Populations in the United States, 2016 Table 1, Table 5 and Appendix Table 1, reporting data for December 31, 2016, and were adjusted to ensure that people with multiple statuses were counted only once in their most restrictive category. (At the time of publication, newer data collected in 2016 was expected but not yet available.) For readers interested in knowing the total number of people on parole and probation, ignoring any double-counting with other forms of correctional control, there are 874,800 people on parole and 3,673,100 people on probation.
- **Private facilities:** Except for local jails (which we will explain in the “Adjustments to avoid double counting” section below) our identification of the number of people held in private facilities was straightforward:
  - For both state prisons and the federal Bureau of Prisons, we relied on the counts of the number of people in “privately operated facilities” and “community corrections centers” in Appendix Table 3 in Correctional Populations in the United States, 2016 .

- For the U.S. Marshals Service we used the 2018 Prisoner Operations Fact Sheet
- For youth, we used the 2016 Juvenile Residential Facility Census Databook, which provides a breakdown of the number of youth held in publicly and privately operated facilities
- For immigration detention, we relied on the work of the Tara Tidwell Cullen of the National Immigrant Justice Center

## Adjustments to avoid double counting

To avoid counting anyone twice, we performed the following adjustments:

- To avoid anyone in immigration detention being counted twice, we removed the 25% (12,265) of the Immigration and Custom Enforcement (ICE) detained population that is held under contract in local jails from the total jail population. We removed 34.1% of these ICE detainees from the jail convicted population and the balance from the unconvicted population. (We based these percentages of the population held for ICE on our analysis of the Profile of Jail Inmates, 2002, as detailed in our report, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*.)
- To avoid anyone in local jails on behalf of state or federal prison authorities from being counted twice, we removed the 83,679 people — cited in Table 17 of Prisoners in 2016 — confined in local jails on behalf of federal or state prison systems from the total jail population and from the numbers we calculated for those in local jails that are convicted. To avoid those being held by the U.S. Marshals Service from being counted twice, we removed 23,850 Marshals detainees from the jail total that we found through our own analysis of the 2016 Annual Survey of Jails dataset. We removed 75.9% of these people held in jails for the Marshals from the jail convicted population, and the balance from the jail unconvicted population. (Again, we based these percentages on our analysis of the Profile of Jail Inmates, 2002.)
- Because we removed ICE detainees and people under the jurisdiction of federal and state authorities from the jail population, we had to recalculate the offense distribution reported in Profile of Jail Inmates, 2002 who were “convicted” or “not convicted” without the people who reported that they were being held on behalf of state authorities, the Federal Bureau of Prisons, the U.S. Marshals Service, or U.S. Immigration and Naturalization Service/U.S. Immigration and Customs Enforcement (ICE).<sup>19</sup> Our definition of “convicted” was those who reported that they were “To serve a sentence in this jail,” “To await sentencing for an offense,” or “To await transfer to serve a sentence somewhere else.” Our definition of not convicted was “To stand trial for an offense,” “To await arraignment,” or “To await a hearing for revocation of probation/parole or community release.”
- For our analysis of people held in private jails for local authorities, we needed to use a measure that avoided double counting people who were held in private jails for other agencies (described in “private facilities,” above). This is a problem because of many private facilities that hold people for local jails also hold people for other agencies. (In fact, the majority of people confined in private jails are held for federal and state authorities.) We therefore used the Census of Jails 2013 (private facilities have “8” as the third digit of the FACID variable) and we removed the number of people held for the Marshals Service, Immigration and Customs Enforcement, Bureau of Indian

Affairs, other federal authorities, state prison systems, and those under tribal hold. After these adjustments, we determined that there were 6,048 people held by private facilities for local authorities.

## How to link to specific images and sections

To help readers link to specific images in this report, we created these special urls:

### **How many people are locked up in the United States?**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow1/1>

### **76% of people held by jails are not convicted of any crime**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow1/2>

### **Despite reforms, drug offenses are still a defining characteristic of the federal system**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow1/3>

### **Beyond “federal prison,” multiple agencies and thousands of local facilities confine people for the federal government**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow1/4>

### **Pretrial Detention**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow2/1>

### **Pretrial policies drive jail growth**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow2/2>

### **Local Jails: The real scandal is the churn**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow2/3>

### **Why are so many people detained in jails before trial? They're not wealthy enough to afford money bail.**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow2/4>

### **76% of people held by jails are not convicted of any crime**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow2/5>

### **1 in 5 incarcerated people is locked up for a drug offense**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow3/1>

### **There are over 1 million drug possession arrests each year**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow3/2>

### **Some states have largely ended the War on Drugs. Other states, no so much.**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow3/3>

### **Private prisons are a small slice of the pie**

<https://www.prisonpolicy.org/reports/pie2019.html#privateimage>

### **Technical violations are the main reason for incarceration of people on probation and parole**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow4/1>

### **Contrary to myth, people incarcerated for violent offenses and released are least likely to be arrested again**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow4/2>

### **Most states track and publish just one measure of post-release recidivism**



[https://www.prisonpolicy.org/reports/pie2019.html#recidivism\\_measures](https://www.prisonpolicy.org/reports/pie2019.html#recidivism_measures)

**Very few states track and publish any recidivism data for people on probation**

[https://www.prisonpolicy.org/reports/pie2019.html#recidivism\\_measures](https://www.prisonpolicy.org/reports/pie2019.html#recidivism_measures)

**Most confined youth are held for nonviolent offenses, or no crime at all.**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow5/1>

**Almost 85,000 people are confined for immigration reasons**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow5/2>

**Psychiatric facilities confine 22,000 justice-involved people every day**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow5/3>

**Incarceration is just one piece of the much larger system of correctional control**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow6/1>

**Racial and ethnic disparities in correctional facilities**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow6/2>

**Women's incarceration patterns are very different than men's**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow6/3>

**Women's state prison populations have grown faster than men's**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow6/4>

**Most people in prisons are poor, and the poorest are women and people of color**

<https://www.prisonpolicy.org/reports/pie2019.html#slideshows/slideshow6/5>

To help readers link to specific report sections or paragraphs, we created these special urls:

**Offense categories might not mean what you think**

<https://www.prisonpolicy.org/reports/pie2019.html#offensecategories>

**Lessons from the smaller "slices": Youth, immigration, and involuntary commitment**

<https://www.prisonpolicy.org/reports/pie2019.html#smallerslices>

**Five myths about mass incarceration**

<https://www.prisonpolicy.org/reports/pie2019.html#myths>

**Beyond the "Whole Pie": Community supervision, poverty, and race and gender disparities**

<https://www.prisonpolicy.org/reports/pie2019.html#community>

**Recidivism: A slippery statistic**

[https://www.prisonpolicy.org/reports/pie2019.html#recidivism\\_measures](https://www.prisonpolicy.org/reports/pie2019.html#recidivism_measures)

**Each paragraph is also numbered, so you can use urls in this format:**

<https://www.prisonpolicy.org/reports/pie2019.html#paragraph1>

<https://www.prisonpolicy.org/reports/pie2019.html#paragraph2>

<https://www.prisonpolicy.org/reports/pie2019.html#paragraph3>

etc...

[Learn how to link to specific images and sections](#)

## Acknowledgments

All Prison Policy Initiative reports are collaborative endeavors, but this report builds on the successful collaborations of the [2014](#), [2015](#), [2016](#) and [2017](#), and [2018](#) versions. For this year's report, the authors are particularly indebted to Heidi Altman of the [National Immigrant Justice Center](#) for feedback and research pointers on immigration detention, Todd Minton for helping us understand the Bureau of Justice Statistics' data on jails, [Mack Finkel](#), [Alexi Jones](#), and [Maddy Troilo](#) for research support, Wanda Bertram for her invaluable edits, and Shan Jumper for sharing updated civil detention and commitment data. This year, we are again grateful to Jordan Miner for making the report interactive, and Elydah Joyce for her help with the design. Any errors or omissions, and final responsibility for all of the many value judgements required to produce a data visualization like this, however, are the sole responsibility of the authors.

We thank the John D. and Catherine T. MacArthur Foundation [Safety and Justice Challenge](#) for their support of our research into the use and misuse of jails in this country. We also thank the [Public Welfare Foundation](#) and each of our individual donors who give us the resources and the flexibility to quickly turn our insights into new movement resources.

## About the authors

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**Peter Wagner** is an attorney and the Executive Director of the Prison Policy Initiative. He co-founded the Prison Policy Initiative in 2001 in order to spark a national discussion about the negative side effects of mass incarceration. He is a co-author of a landmark report on the dysfunction in the prison and jail phone market, [Please Deposit All of Your Money](#). Some of his most recent work includes [Following the Money of Mass Incarceration](#) and putting each state's overuse of incarceration into the international context in [States of Incarceration: The Global Context 2018](#).

He is [@PWPolicy](#) on Twitter.

## About the Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to expose the broader harm of mass criminalization and spark advocacy campaigns to create a more just society. Alongside reports like this that [help the public more fully engage in criminal justice reform](#), the organization leads the nation's fight to keep the prison system from exerting undue influence on the political process (a.k.a. [prison gerrymandering](#)) and plays a leading role in protecting the families of incarcerated people from the predatory prison and jail telephone industry and the [video visitation industry](#).

## Footnotes

1. The number of state facilities is from [Census of State and Federal Correctional Facilities, 2005](#), the number of federal facilities is from the list of prison locations on the [Bureau of Prisons website](#) (as of March 14, 2019), the number of youth facilities is from the [Juvenile Residential Facility Census Databook \(2016\)](#), the number of jails from [Census of Jails: Population Changes, 1999-2013](#), and the number of Indian Country jails from [Jails in Indian Country, 2016](#). We aren't currently aware of a good source of data on the number of the facilities of the other types. ↩
2. 10.6 million jail admissions includes multiple admissions of some individuals; it does not mean 10.6 million unique individuals cycling through jails in a year. According to a presentation, [The Importance of Successful Reentry to Jail Population Growth](#) [Powerpoint] given at The Jail Reentry Roundtable, Bureau of Justice Statistics statistician Allen Beck estimates that of the 12-12.6 million jail admissions in 2004-2005, 9 million were unique individuals. More recently, we analyzed the 2014 [National Survey of Drug Use and Health](#), which includes questions about whether respondents have been booked into jail; from this source, we estimate that approximately 6 million unique individuals were arrested and booked into jails in 2014. ↩
3. The local jail population in the main pie chart (611,506) reflects only the population under local jurisdiction; it excludes the people being held in jails for other state and federal agencies. The population under local jurisdiction is smaller than the population (731,300) physically located in jails on an average day in 2016, often called the custody population. (For this distinction, see the second image in the first slideshow above.) The "not convicted" population is driving jail growth. ↩
4. The data doesn't show how many people are convicted of drug law violations and are held in territorial prisons or Indian Country jails. ↩
5. In 2017, there were 1,632,921 drug arrests in the U.S., the vast majority of which were for drug possession or use rather than for sale or manufacturing. See [Crime in the US 2017 Table 29](#) and the [Arrests for Drug Abuse Violations table](#). ↩
6. For an explanation of how we calculated this, see "private facilities" in the [methodology](#). ↩
7. At yearend 2016, six states held at least 20% of those incarcerated under the state prison system's jurisdiction in local jail facilities: Kentucky (48%), Louisiana (58%), Mississippi (26%), Utah (26%), Tennessee (24%), and Virginia (21%). For more on how renting jail space to other agencies skews priorities and fuels jail expansion, see the second part of our report [Era of Mass Expansion](#). ↩
8. According to the most recent [National Correctional Industries Association survey](#) that is publicly available, an average of 6% of all people incarcerated in state prisons work in state-owned prison industries. However, the portion of incarcerated people working in these jobs ranges from 1% (in Connecticut) to 18% (in Minnesota). For a description of other kinds of prison work assignments, see our [2017 analysis](#). ↩
9. According to the Bureau of Justice Statistics report [Probation and Parole in the United States, 2016](#), Appendix Table 3, 98,698 adults exited probation to incarceration under their current sentence; Appendix Table 7 shows 69,855 adults were returned to incarceration from parole with a revocation. The number of people incarcerated for technical violations may be much higher, however, since nearly 78,000 people exiting probation and parole to incarceration did so for "other/unknown" reasons, and some states did not report data. ↩
10. The federal government defines the hierarchy of offenses with felonies higher than misdemeanors. And "[w]ithin these levels, ... the hierarchy from most to least serious is as follows: homicide, rape/other sexual assault, robbery, aggravated assault, burglary, larceny/motor vehicle theft, fraud, drug trafficking, drug possession, weapons offense, driving under the influence, other public-order, and other." See page 13 of [Recidivism of Prisoners Released in 1994](#). ↩
11. The felony murder rule has also been applied when the person who died was a participant in the crime. For example, in some jurisdictions, if one of the bank robbers is killed by the police during a chase, the surviving bank robbers can be convicted of felony murder of their colleague. For example see *People v. Hudson*, 222 Ill. 2d 392 (Ill. 2006) and *People v. Klebanowski*, 221 Ill. 2d 538 (Ill. 2006). According to a recent [New York Times](#) article, the U.S. is currently the only country still using the felony murder rule; other British common law countries abolished it years ago. A small but growing number of states have abolished it at the state level. ↩
12. In 2016, more than half (57%) of juvenile status offense cases were for truancy. 9% were for "ungovernability" and 8% were for running away. See page 64 of [Juvenile Court Statistics 2016](#). ↩
13. As of 2016, nearly 9 out of 10 people incarcerated for immigration offenses by the federal Bureau of Prisons were there for illegal entry and reentry. ↩
14. Most children in ORR custody are held in shelters. A small number are in secure juvenile facilities or in short-term or long-term foster care. With the exception of those in foster homes, these children are not free to come and go, and they do not participate in community life (e.g. they do not attend community schools). Their behaviors and interactions are monitored and recorded; any information gathered about them in ORR custody can be used against them later in immigration proceedings. And while the majority of these children came to the U.S. without a parent or legal guardian, those who were separated from parents at the border are, like ICE detainees, confined only because the U.S. has criminalized unauthorized immigration, even by persons lawfully seeking asylum.

The number of children in ORR custody shot up dramatically under the Trump administration's "zero tolerance" and family separation policies, as ORR was tasked with taking separated children into its custody. Additionally, the recent involvement of the Department of Homeland Security in the agency's background

- checking process has scared off many potential family sponsors, slowing down the placement process for these children. ↩
15. Our report on the pre-incarceration incomes of those imprisoned in state prisons, Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned, found that, in 2014 dollars, incarcerated people had a median annual income that is 41% less than non-incarcerated people of similar ages. Our analysis of similar jail data in Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time found that people in jail have even lower incomes, with a median annual income that is 54% less than non-incarcerated people of similar ages. ↩
  16. Even outside of prisons and jails, the elaborate system of criminal justice system finances and fees feeds a cycle of poverty and punishment for many poor Americans. ↩
  17. This is the most recent data available until the Bureau of Justice Statistics begins administering the next Survey of Inmates in Local Jails. ↩
  18. Notably, the number of people admitted to immigration detention in a year is much higher than the population detained on a particular day. The immigration detention system took in 396,448 people during the course of fiscal year 2018. ↩
  19. Responses to whether someone reported being held for an authority besides a local jail can be found in V113, or V115-V118 in the Survey of Inmates in Local Jails, 2002 Codebook. ↩

# EXHIBIT E



# The Harvard-To-Prison Pipeline Report

## STATEMENT OF SOLIDARITY HARVARD COLLEGE

As members of the Harvard College community, we  
industrial complex (PIC) as a moral, civic, and scholarly  
College is to "educate the citizens and citizen leaders."  
PIC, Harvard hypocritically bakes the development  
and brown communities' investment in the PIC of  
curriculum, in classrooms across the College, for  
deleterious impacts of mass incarceration on a  
University invests its resources in the very mechanism  
bring with Harvard has recognized and apologized for  
shackling slavery, but this apology is empty if it does not  
its contemporary counterpart: the racialized shackling of  
people that this education "will help students learn how they can  
Despite this stated goal, by preserving the system of mass  
incarceration and the Harvard management corporation are set  
against the world.

Written by Harvard College signers in solidarity  
petition to divest from the prison-industrial  
complex, February 2019.

Harvard  
HP

The Harvard  
Prison Divestment  
Campaign

October  
2019



# The Harvard-To-Prison Pipeline

## **Acknowledgments**

Thanks to all the members who worked on the report, including: Jarrett Drake, Xitlalli Alvarez, Joanna Anyanwu, Anna Nathanson, Amanda Chan, Paul Clarke, Zoe Hopkins, Amber Ashley James, Ismail Buffins, Pat Tomaino, and Joe Pinto.

A huge thank you and shout out to Caroline Filice Smith for designing this beautiful report, especially in a time crunch, and to Sarah Kantrowitz for her design input and advice. We could not have created such a wonderful research product without your time and talent.

**A Report By**  
The Harvard  
Prison Divestment  
Campaign

**October  
2019**

# 00 | EXECUTIVE SUMMARY

The Harvard Prison Divestment Campaign is a reparatory justice initiative that seeks to sever Harvard's financial ties to the prison-industrial complex (PIC). We are a group of committed students and community leaders who, following the guidance of formerly incarcerated and presently incarcerated organizers, seek the abolition of prisons and the carceral state.<sup>1</sup> In this report we take a deep dive into the definition and scope of the PIC, outline Harvard's financial entanglements with its structures based on available information, and elevate the efficacy and urgency of divestment.

## What We Know

This report demonstrates that Harvard, has at least \$3 million worth of holdings in the PIC across a variety of sectors. We also highlight the devastating effects of the businesses in each of these sectors, including but extending far

beyond private prison operators. We show how Harvard can and must be the first university to divest fully from the prison-industrial complex.

## We Demand that Harvard:

**1** Publicly disclose and release endowment holdings in all funds with stock in companies whose existence depends on the prison-industrial complex.

**2** Provide an authenticated copy of endowment holdings to the Harvard community in the interests of transparency, prior to divestment and regularly thereafter.

**3** Apportion a significant percentage of divested funds towards companies, organizations, and initiatives in Cambridge and Boston that are led by people directly impacted by the prison-industrial complex. Establish an accountability structure for the appropriate redistribution of funds, with timed mandates and oversight accorded to people and communities who have been the central victims of mass incarceration.

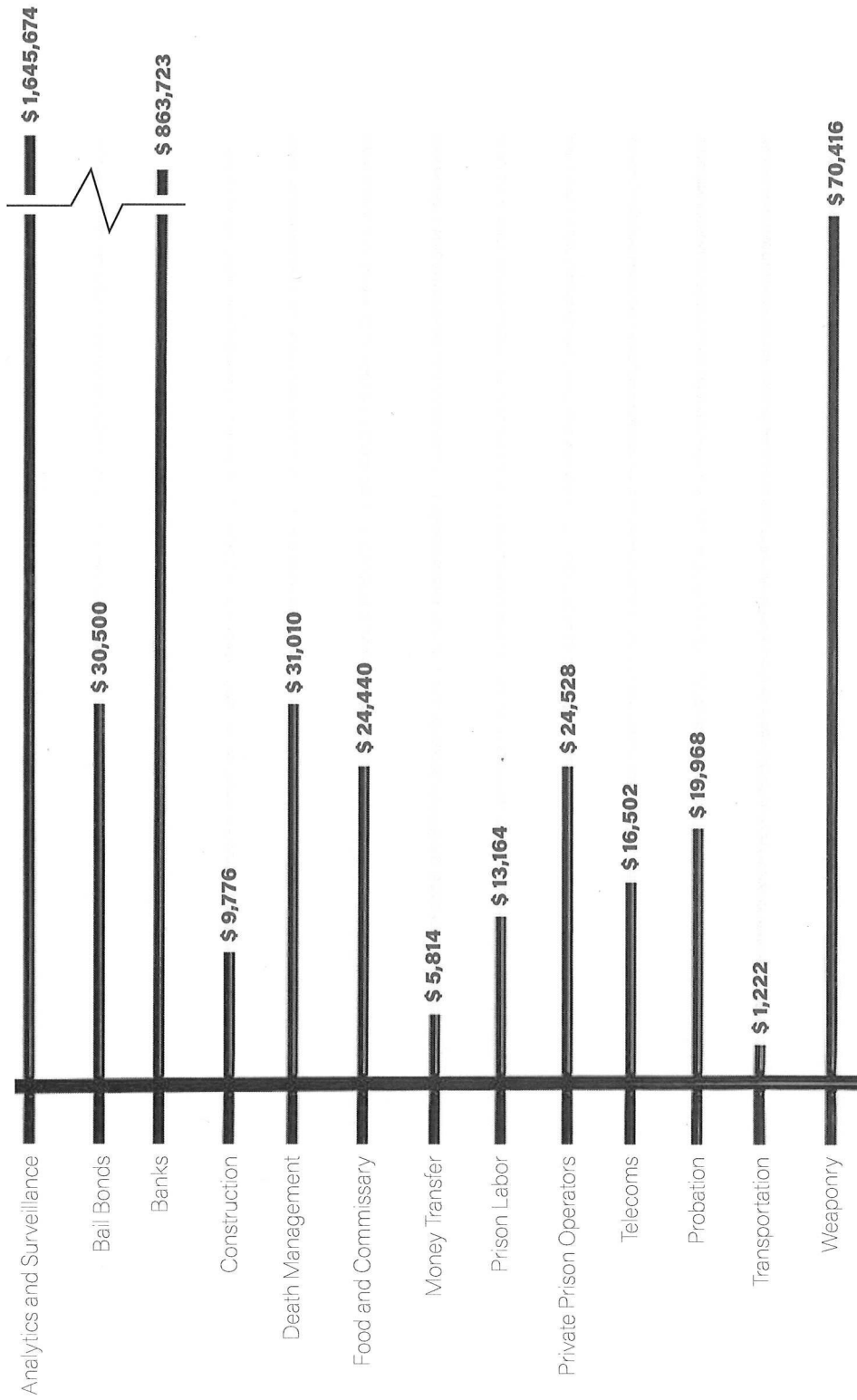
**4** Launch a cross-school, campus-wide initiative to research and teach creative ways to eliminate structural social harms that do not rely on prisons and police. Develop funded academic projects (e.g. scholarships, centers, institutes, departments, and concentrations) that employ formerly incarcerated people, organizers, and scholars. End discrimination against and create opportunities for current and formerly incarcerated persons.

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**We demand that the Harvard Management Company immediately divest Harvard's holdings from the corporate entities and businesses we enumerate in this document.**

---

<sup>1</sup> The carceral state is popularly conceived as a punitive form of governance. That is, a nation-state that relies, most often (though not exclusively) on punishment through confinement, surveillance and other systems of discipline and control of racialized, classed and gendered subjects.



**Left**

A breakdown of the \$3 million Harvard has invested in the prison-industrial complex. See Section 2.1.

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# 01 | FROM PRISONS \_\_\_\_\_ TO ABOLITION

## What is the Prison-Industrial Complex?

We follow educator and organizer Rachel Herzing's definition<sup>1</sup> of the prison-industrial complex as "the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to what are, in actuality, economic, social, and political 'problems.'" In the US, it is a system that has ensnared almost 2.3 million people<sup>2</sup> in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. It also holds an additional 4.5 million people under correctional control on probation or parole.

Despite the popular misunderstanding, the prison-industrial complex does not only include private prison operators like CoreCivic, GEO Group, and G4S. Rather, it encompasses a slew of state and non-state entities including federal, state, and local governments; weapons manufacturers; bail bondsmen; analytics and surveillance technology manufacturers; financiers; pharmaceutical corporations; telecommunications companies; and police and guard unions. Notably, the prison industrial complex also includes actors involved in the persecution of migrants, including Immigration and Customs Enforcement, Customs Border Patrol, and the National Guard.

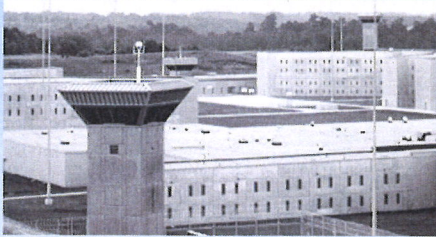
<sup>1</sup> Herzing, Rachel. "What Is the PIC?" Prison Culture. Published October 12, 2010.

<sup>2</sup> Sawyer, Wendy, and Peter Wagner. "Mass Incarceration: The Whole Pie 2019." Mass Incarceration: The Whole Pie 2019 | Prison Policy Initiative. Published March 19, 2019.



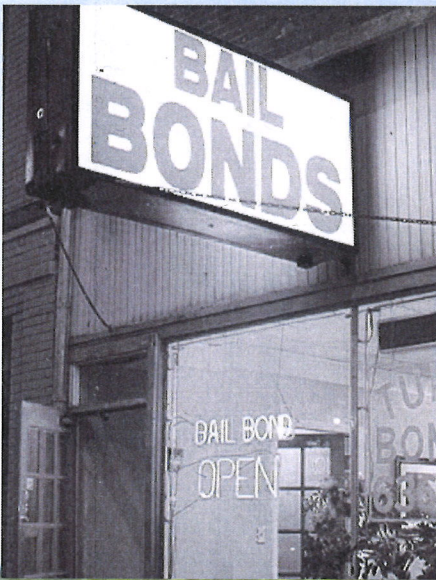
## follow the dollar

(how harvard profits from, and relies upon, the prison-industrial complex)



### Prisons

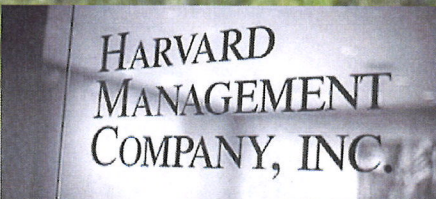
a state government makes a contract with a private prison corporation to build and operate a prison



### Contracts

this prison contract then generates many more contracts with a slew of state and non-state entities, including:

- bondsmen
- analytics companies
- surveillance tech manufacturers
- financiers
- weapons manufacturers
- pharmaceutical corporations
- telecommunications companies
- police and guard unions



### Shareholders

investors in these companies profit from rising stock values e.g. the Harvard Endowment.




### Profits

this money then gets used to finance Harvard's operations, including:

- campus buildings
- student events
- salaries
- stipends
- scholarships
- & more investments







**"the best  
prison is  
the one that  
doesn't  
exist."**

**- Jarrett M. Drake**



## Why Abolition?<sup>1</sup>

a vision for a just future

01.2/

The Harvard Prison Divestment Campaign is an abolitionist group seeking to rid the world of cages and police. Though abolishing the prison-industrial complex will not happen overnight, a world without prisons is possible. But in order to manifest this world, we must first end our culture of punishment and violence and instead, build a society rooted in transformative justice<sup>2</sup> and care.

Despite some well-intentioned calls for more “humane”<sup>3</sup> prisons and more “community”<sup>4</sup> policing, a world that uses cages and police to fix social issues<sup>5</sup> will never be just and can never fully heal the problems it creates. As activist Angela Y. Davis explained over three decades ago, “Prisons do not disappear problems, they disappear human beings. Homelessness, unemployment, drug addiction, mental illness, and illiteracy are only a few of the problems that disappear from public view when the human beings contending with them are relegated to cages.”<sup>6</sup>

Despite the fact that prisons exacerbate, rather than alleviate, social problems, our culture’s punitive mindset has rendered many people unable to even imagine a world without prisons. As racial capitalism<sup>7</sup> and mass incarceration have developed, the world has become

reliant on prisons to stimulate its broken economy, create jobs, and superficially address social problems. Powerful governments breathe out prisons and powerful actors, like the President and Fellows of Harvard, breathe in profits—all at the expense of Black, brown, and poor people.

The Harvard Prison Divestment Campaign’s call for divestment from the prison-industrial complex is motivated by an unapologetic vision for abolition. That is, we organize and agitate for a world without human caging, confinement and surveillance—for an end to all carceral institutions and punitive mentalities and measures that uphold and justify our current, devastatingly unjust, system of social control. Principally, we take aim at racial capitalism. We believe that by investing in education, mental health resources, and community



**1** Kushner, Rachel. “Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind.” *The New York Times*, April 17, 2019.

**2** Prison Culture. “Prison Culture Transformative Justice.” Prison Culture. RSS March 12, 2012.

**3** United Nations Office on Drugs and Crime. “Towards more humane prison systems.” Accessed September 29, 2019.

**4** Lombardo, Crystal. “Pros and Cons of Community Policing.” Vision Launch. Published June 6, 2016.

**5** You might ask: “But what about rapists? What about murderers?” The prison-industrial complex does not help to curb rape, assault, or any other violent crime. Those who are curious can find more resources at the African-American Intellectual Historical Society (AAIHS)’s blog Black Perspectives: <https://www.aaihs.org/prison-abolition-syllabus-2-0/>.

**6** Davis, Angela. “Masked Racism: Reflections on the Prison Industrial Complex.” *Colorlines: Race, Culture, Action* 1, no. 2 (1998): 11.

based care rather than incarceration, we will create a better, more sustainable, and more just world.

There is ample evidence, including some<sup>8</sup> advanced by scholars at Harvard<sup>9</sup>, that policing and incarceration are institutions made by and for white supremacy. In the United States, prisons confine poor Black and brown people and compound the gendered and ableist violence faced by women, Trans, queer and disabled people of color. Prisons are engines for violence against people facing gender oppression—particularly incarcerated women, genderqueer, and Trans people. Thus, it is unsurprising that prison abolition has been principally advanced by Black feminists, incarcerated women, and queers.

In our original petition, which was circulated and signed by thousands of Harvard affiliates, we trace the continuation of a violence that is indisputably anti-Black and rooted in slavery. Harvard continues to profit from the caging and forced labor of Black people through its investments in the prison-industrial complex, through which the legacies of slavery persist. After the Civil War, the 13th Amendment's abolition of slavery "except as punishment for a crime" facilitated efforts by Southern elites to preserve slavery—through the passage of the Black Codes, convict leasing programs, and Jim Crow-era laws—that would eventually evolve into the modern prison system. The fight for the abolition of slavery lives on in the fight for the abolition of prisons today.<sup>10</sup>

### **It's Not Just About Private Prisons**

In the United States, prisons appear in many iterations, from youth facilities to immigrant detention centers, to federal penitentiaries. We believe that #AllCagesAreConnected.<sup>11</sup> Therefore, our demands to divest extend well beyond cutting ties to the private prison industry. We acknowledge and applaud student divestment movements at other universities and colleges that have successfully divested from private prisons. The growth of private prison operators such as GEO group and CoreCivic is inextricably tied to the massive growth of immigrant detention, to cite one issue in the public light. Moreover, the historical traces and anti-Black lineage of convict leasing to the private prison industry and the blatant exploitation of incarcerated people today is undeniable. However, we problematize the position that private prison operators are exceptional in their profiteering and cruelty. Those who operate and expand publicly run prisons and youth facilities are equally culpable.

We are abolitionists because abolition is the only way. Abolition is a radical liberatory framework, a strategy and a vision necessary for racial justice, gender justice, climate justice and disability justice. Our world is in need of profound transformation. Abolition is the process of imagining the world necessary to make prisons obsolete and bringing that world into being. We refuse to struggle for anything less.

**7** Rodríguez, Dylan, Dorothy E. Roberts, Nancy Leong, and Richard Thompson Ford. "Racial Capitalism." *Harvard Law Review*, June 20, 2013.

**8** see: "Angela Davis: Freed by the People." The Lia and William Poorvu Gallery, Schlesinger Library, Harvard University.

**9** Perry, Imani. "From the War on Poverty to the War on Crime," by Elizabeth Hinton." *The New York Times*, May 27, 2016.

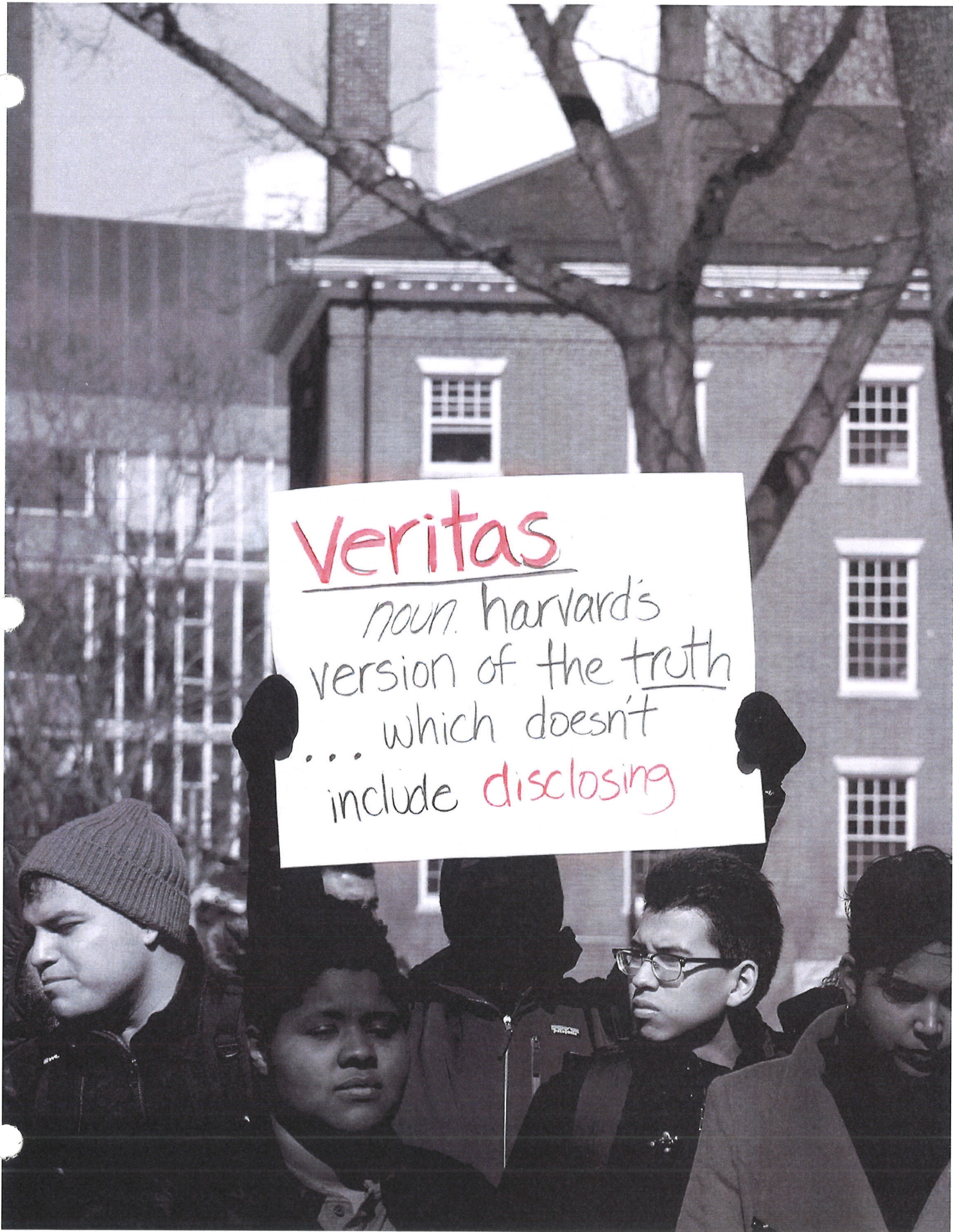
**10** Angela Davis explained the connection between the institution of slavery and the prison-industrial complex in Chapter 2 of her book, *Are Prisons Obsolete?*

**11** #AllCagesAreConnected is an abolitionist campaign run by Boston-based group Deeper Than Water. Learn more about their campaign at <https://deeperthanwater.org>.



Veritas

noun. harvard's  
version of the truth  
... which doesn't  
include disclosing





## 01.3/ **Harvard, Slavery, and Eugenics**

the continuance of a violent past

the harvard-to-prison pipeline report

Scholars and activists have traced the development and expansion of mass incarceration and mass criminalization to the historical origins and objectives of chattel slavery as a means of forced labor, social control, and subjugation. Subsequently, these same purposes were advanced through convict leasing, the Black Codes, Jim Crow, and now, the modern prison-industrial complex.<sup>1</sup>

<sup>1</sup> Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003.

Both institutions were born out of punishment and violence, both have served as weapons of social, psychological, and civic control, and both have victimized Black people.

<sup>2</sup> Beckert, Sven, et al. *Harvard and Slavery: Seeking a Forgotten History*. Cambridge: Harvard and Slavery Research Seminar, 2011.

<sup>3</sup> Since its founding in 1636, Harvard has been complicit in and benefitted from the institution of slavery; and through its investments, it continues to perpetuate and profit from the legacies of slavery reflected in and maintained by the prison-industrial complex. In order to address and disrupt the enduring entanglements between Harvard and the institution of slavery, we must understand and grapple with Harvard's violent and anti-Black history.

<sup>4</sup> Harvard University. "Harvard and Slavery." Accessed Oct 1, 2019.

<sup>5</sup> Beckert, Sven, et al. *Harvard and Slavery: Seeking a Forgotten History*. Cambridge: Harvard and Slavery Research Seminar, 2011.

<sup>6</sup> *Ibid.*

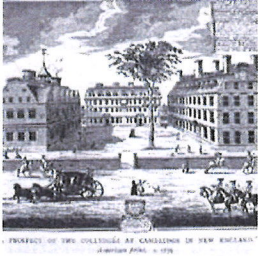
### **Harvard, Slavery, and Slave Trade:**

Like many American universities founded in the nation's early history, slavery played a vital role in Harvard's existence and rise to prominence during the 17th to early 19th centuries.<sup>2</sup> Slavery was legal in Massachusetts until shortly after the American Revolution, and it was commonplace for Harvard faculty and leadership to own enslaved people.<sup>3</sup> Among these figures were presidents Increase Mather and Benjamin Wadsworth. During this period, there were four enslaved people living and working at Wadsworth House: Bilhah, Venus, Titus, and Juba.<sup>4</sup>

These patterns of slave ownership at Harvard did not go without objection. Resistance among enslaved people and public conversations in Massachusetts, particularly among Harvard intellectuals, challenged the morality and legal implications of slavery.<sup>5</sup> However, colonial leaders, many of them trained at Harvard, simply responded by intensifying restrictions for enslaved people.<sup>6</sup>

1636./

**Harvard**  
is founded



1726./

**Benjamin Wadsworth**  
purchases Venus, the first of four slaves to live at Wadsworth House



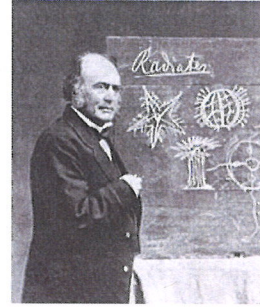
1838./

**Harvard**  
President shuts down a debate on the abolition of slavery



1860./

**Louis Agassiz,**  
Harvard's leading scientist, pens *On the Origin of Species*



1906./

**Lawrence Lowell**  
who advocated for eugenics and opposed black students living in the Yard, is named as president of Harvard.



1927./

**Buck v. Bell**  
Former Overseer and Harvard law professor, Oliver Wendell Holmes Jr. pens Supreme Court decision enshrining eugenic sterilization in law.



2017./

**President Drew Faust**  
unveils plaque dedicated to those people it enslaved outside Langdell Hall.



**President Lawrence Bacow**  
refuses to divest from the prison-industrial complex.

2019./ **Harvard and Divestment**

In 1783, enslaved people in Massachusetts were emancipated.<sup>7</sup> However, this did not end Harvard's ties to the peculiar institution. During the 19th century, people who made their profits from the slave trade and related cotton trade like Israel Thorndike, James Perkins, Peter C. Brooks, Benjamin Bussey, and Abbot Lawrence were among Harvard's biggest private donors.<sup>8</sup> In fact,

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**Since its founding in 1636, Harvard has been complicit in and benefitted from the institution of slavery; and through its investments, it continues to perpetuate and profit from the legacies of slavery reflected in and maintained by the prison-industrial complex.**

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<sup>7</sup> Mass Gov. "Massachusetts Constitution and the Abolition of Slavery." Accessed Oct 1, 2019.

<sup>8</sup> Beckert, Sven, et al. *Harvard and Slavery: Seeking a Forgotten History*. Cambridge: Harvard and Slavery Research Seminar, 2011.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Kevles, D.J. "Eugenics and Human Rights." *BMJ (Clinical Research Ed.)* 319, no. 7207 (1999): 435-38.

<sup>12</sup> Beckert, Sven, et al. *Harvard and Slavery: Seeking a Forgotten History*. Cambridge: Harvard and Slavery Research Seminar, 2011.

the combined donations from these five slave profiteers alone made up 50 percent of the individual donations to the university between 1800 and 1850.<sup>9</sup> Mirroring its contemporary ties to the prison industrial complex, Harvard's support for the institution of slavery was centrally motivated by financial incentives.

While a number of anti-slavery leaders like Charles Sumner and Theodore

Parker were Harvard graduates and faculty, Harvard leadership was broadly antagonistic to such efforts. For example, in 1838, the Harvard Divinity School's philanthropic society planned a debate on the abolition of slavery that never took place because it was prohibited by then President Josiah Quincy.<sup>10</sup> Ultimately, like its present leadership, former Harvard leadership failed to demonstrate the moral courage to stand against oppressive, anti-Black institutions.

**Science, Social Darwinism, and Slavery: the Eugenics Movement at Harvard**

In the years leading up to and after the the abolition of slavery, another iteration of dominance, control, and captivity rose to prominence at Harvard. In the late 18th century, Western intellectualism came to embrace anthropological and scientific practices widely recognized as racist today. These various pseudoscientific theories, including unilineal evolution and social Darwinism, culminated in a push for racial eugenics, which called for the improvement of humanity through the elimination of non-white genotypes.<sup>11</sup>

Harvard's leading scientist at the time, Louis Agassiz, was central to the development and proliferation of racial eugenics. Much of Agassiz's research and teachings at Harvard sought to lend "scientific" credibility to the fiction of the biological superiority of the white race.<sup>12</sup> Agassiz's *Diversity of the Origin of the Human Races*, which argues that Black people were not of the same species as white people, was frequently



used to justify slavery in the years leading up to the Civil War.<sup>13</sup> Agassiz used polygenism to explain what he viewed as the biological inferiority of Black people. Writing about what he called the “negro disposition,” Agassiz wrote that Black people had a “peculiar apathy, a peculiar indifference to the advantages afforded by a civilized society.”<sup>14</sup>

Important to Agassiz’s legacy of scientific racism are the photographs he used as “evidence” for his claims. Today, Harvard is facing a lawsuit from Tamara Lanier, a direct descendant of an enslaved person named Renty whom Agassiz photographed as part of his anthropological studies of Black people.<sup>15</sup> The photograph, now in the Peabody Museum, is central to the agenda of reparative justice that the Harvard Prison Divestment Campaign seeks to advance.<sup>16</sup> Not only are these types of photographs part of the violent

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## How can Harvard claim to interrogate its historic complicity in slavery when it is engaging in practices that carry on that legacy in the present day?

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legacy of dehumanization that Black people experienced during captivity, but they are still charged with a similar kind of violence as they remain in the hands of the Peabody Museum, which makes a profit from these images meant to prove racial inferiority.

The age of eugenics at Harvard stretches long past Agassiz’s time at the



**13**  
Pandian, Kevin. “Louis Agassiz (1807-1873)”  
Revised March 2, 2011.

**14**  
Beckert, Sven, et al.  
*Harvard and Slavery: Seeking a Forgotten History*. Cambridge: Harvard and Slavery Research Seminar, 2011.

**15**  
Burke, Minyvonne.  
“Woman sues Harvard claiming it is exploiting images of her 19th-century slave ancestors.”  
*NBC News*, March 20, 2019.

**16**  
Svrluga, Susan, and Mara Reinstein. “Harvard accused in lawsuit of retaining and profiting from images of slaves.”  
*The Washington Post*, March 20, 2019.

university and into the Jim Crow Era of the 20th century. Harvard President Charles W. Eliot was famously anti-immigration, maintaining that immigration was a threat to the purity of the white race.<sup>17</sup> Eliot's eugenicist agenda also included a call for the sterilization of people who were "feebleminded," disabled, or "criminalistic." While Eliot's overt calls for sterilization and other eugenicist practices may seem extreme now, they were not out of sync with the university's culture at the time. As early as 1894, Harvard graduates had founded a eugenics organization called the Immigration Restriction League.<sup>18</sup>

Edward M. East, a Harvard professor, became famous for his virulent anti-miscegenation views based on the idea that that "the negro is inferior to the white."<sup>19</sup> Eliot's successor, A. Lawrence Lowell was also a vociferous advocate for eugenics and prohibited black students from living on Harvard Yard during his tenure.<sup>20</sup> Another professor,

Frank W. Taussig, in his book *Principles of Economics*, wrote "the human race could be immensely improved in quality, and its capacity for happy living immensely increased, if those of poor physical and mental endowment were prevented from multiplying. Certain types of criminals and paupers breed only their kind, and society has a right and a duty to protect its members from the repeated burden of maintaining and guarding such parasites."<sup>21</sup>

### A Call to Action

In recalling the history of Harvard University, we have demonstrated that the promise of the abolition of slavery has not yet been fulfilled. Our campaign is a continuation of the abolitionist fight. By demanding Harvard divest from the prison-industrial complex, we are calling the university to account not only for its present position, but also to answer for its past failures.

**17**  
Cohen, Adam. "Harvard's Eugenics Era." *Harvard Magazine*, March-April 2016.

**18**  
Wong, Matteo. "The Harvard Alumni Who Fought to Keep Immigrants Out." *The Crimson*, Oct 18, 2018.

**19**  
Cohen, Adam. "Harvard's Eugenics Era." *Harvard Magazine*, March-April 2016.

**20**  
Ibid.

**21**  
Ibid.



Harvard has ostensibly apologized for its complicity in perpetuating slavery. Under the Presidency of Drew Faust, Harvard formed a group of faculty historians to more thoroughly uncover other ways in which Harvard may have been complicit in slavery in the past. Faust also wrote an article in the Harvard Crimson in which she claimed that "in more fully acknowledging our history, Harvard must do its part to undermine the legacies of race and slavery that continue to divide our nation."<sup>22</sup> But Harvard cannot claim to interrogate its historic complicity in slavery while upholding white supremacy in the present day. The University cannot legitimately commemorate the memories of enslaved people on this campus while its endowment supports the incarceration and degradation of Black people and communities. It cannot assert that it is confronting the past, while it is so blind to its racism right now? Harvard's apology for its legacy of slavery is vacuous unless it makes decisions that actively manifest a commitment to dismantling the systems of oppression that are remnants of slavery and white supremacy.

It needs to do more than tack a commemorative plaque onto a building. It needs to do more than talk about its ugly past. It needs to restore and repair, to confront the ugliness of its actions in this contemporary moment. It needs to hold itself accountable for its past through real action. Harvard needs to put its money where its mouth is and divest from the prison-industrial complex now.

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**Our campaign is a continuation of the abolitionist fight. By demanding Harvard divest from the prison-industrial complex, we are calling the university to account not only for its present position, but also to answer for its past failures.**

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# 02 | The Numbers

The \$3 million invested in the prison-industrial complex, from the 1% of the endowment we know about

## The \$18,000 Myth

On Thursday April 18th, Harvard President Lawrence Bacow told two organizers with the Harvard Prison Divestment Campaign that the University's endowment holds roughly \$18,000 worth of investments in companies connected to the prison-industrial complex.

Bacow's statement is significant for a number of reasons. First, it marks the first time that any Harvard president admitted that Harvard is invested in prisons at all. Second, Bacow remained steadfast in his opposition to divestment of even such a minuscule amount. This is an institution whose yearly budget is greater than the state budget of Delaware and recently forged an \$186,000 gift from Jeffrey Epstein, who used his position of power to perpetuate grave harm against children. Lastly and most

importantly, our research shows that Bacow's stated numbers are false.

The Harvard Prison Divestment Campaign's research shows that the university's investments into the prison-industrial complex total at the very least close to \$3 million. Even this number barely scratches the surface of the University's actual holdings. Below we explain our methodology<sup>1</sup> for determining which companies meet the criteria for the prison-industrial complex before outlining our research process into the endowment to make connections with the named companies.

## The Harvard Endowment

To understand how the Harvard endowment is connected to these core companies of the prison-industrial complex requires a basic understanding of what an endowment is. According to its most recent report, the Harvard Management Company (HMC)—which is the non-profit organization responsible for managing the university's endowment—stated that the endowment was valued at \$39.2 billion<sup>2</sup> as of June 30, 2018. You may hear or read on occasion that Harvard has “\$40 billion in the bank.” That's actually untrue. The 2018 HMC annual report states as much: just 3% of that \$39.2 billion, or roughly \$1.2 billion, is held in cash.

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**The first and most basic demand we have of the university is to disclose the specifications of its private portfolio.**

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**1**  
Using the definition of the prison-industrial complex provided in Section 1.1, we then identified, read, and fact-checked a range of publications listing specific companies whose business models rely heavily on human caging, control, and confinement. See the top sources we used to identify our list of target companies at the end of this report.

**2**  
Harvard's Endowment is **\$39.2 Billion**

We Know About the **\$425 Million** that is Publicly Invested

And the **\$1.2 Billion** Held in Cash

We Know Nothing About the Remaining **\$38.775 Billion**

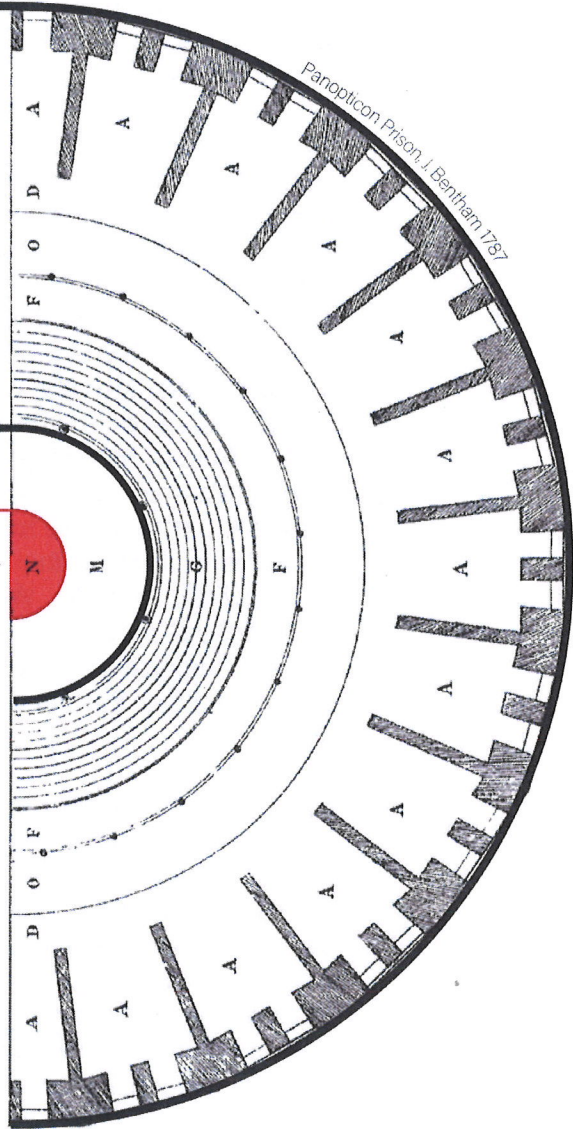


**96% Private Holdings** \$38.775 Billion

**3% Cash** \$1.2 Billion

**1% Public Holdings** \$425 Million

\$3 Million of which is invested in the PIC  
*\*if taken as a representative sample of the 96% of the endowment which remains private, then Harvard potentially has **\$291 million invested in the PIC***



the harvard-to-prison pipeline report

**Above:**  
A breakdown of the  
Harvard Endowment.

3

**Private Holdings**

**Asset Classes**

- Private Equity
- Private Debt
- Hedge Funds
- Real Estate
- Natural Resources
- Other

4

An ETF is essentially a bundle of different stocks, bonds, and other securities that a customer (like HMC) can buy as a single security, rather than investing in hundreds or thousands of individual companies.

To find the specific companies that comprise the ETFs in which Harvard is invested, we first retrieved the ETFs' unique numbers (known as CUSIPs) from the HMC's most recent SEC filing of FORM 13F. After pasting the CUSIP numbers into a search engine, we navigated directly to each respective fund's website and downloaded the spreadsheet (usually a csv file) that lists the fund's portfolio. The ETF portfolios are important because they typically indicate, among other types of data, not only the names of companies but also the weight (in percentage) allocated to each company from the fund, a number that can and does vary slightly from day-to-day. We followed these steps for all of the ETFs in Harvard's holdings, capturing spreadsheets and the weight allocations as of February 19, 2019.

5

**Public Holdings**

- 60% Direct Stock
- 2% Gold
- 38% ETFs

The remaining \$38 billion is invested into a range of financial entities. In general, these entities fall into two large categories: public (or exchangeable) holdings and private (generally non-exchangeable) holdings. To the best of our estimation using the most recent available data, we approximate that Harvard invests just \$474.6 million (1%) of the endowment into public holdings and a staggering \$37.5 billion (96%) into private holdings.

We have more questions than answers about the 96% of the endowment invested in private holdings; these asset classes are relatively unregulated (compared to public assets) and frustratingly obscure.<sup>3</sup> Our frustration, we note, is shared by Kat Taylor, a Harvard alumnus and former member of the Harvard Board of Overseers who resigned her seat in March 2018 to protest the endowment's opacity. Thus, the first and most basic demand we have of the university is to disclose the specifications of its private portfolio. While the 2018 HMC annual report provides percentage allocations into these various asset classes, specific firms and funds remain undisclosed.

Opponents to disclosure often argue that Harvard's status as a private university should shield it from such a demand. However, this opposition occludes two salient factors. First, Harvard and every other technically private, non-profit institution of higher education in the U.S. receive billions of dollars in public funding every year. The Internal Revenue Service classifies Harvard and its private peers as "public charities" for a reason: they

receive direct taxpayer subsidies from local, state, and federal governments. Each and every U.S. taxpayer helps to fund Harvard. Second, Harvard's particularly troublesome history with its endowment, recounted in Section 1.3, demands transparency. In its past, the university has invested in and benefited directly from the transatlantic slave trade, South African apartheid, and the crisis in Darfur. If the university wants to hold the trust of its faculty, staff, students, donors, and neighbors, then it must produce its receipts.

What the university does disclose about its endowment, in accordance with federal law, is its public holdings, which are also known as securities. The connections we have identified between the endowment and the prison-industrial complex so far come exclusively from the university's public portfolio holdings, which, as noted above, amount only to \$474.6 million, or 1%, of the endowment. The public portfolio, which is disclosed via quarterly filings with the U.S. Securities and Exchange Commission, is available through the commission's EDGAR database. As reflected in the most recent filing from February 8, 2019, the endowment's public portfolio includes a mixture of direct stock investments into a few companies (e.g., Facebook, Microsoft, Google, and Apple), investments in exchange-traded funds (ETF's),<sup>4</sup> and investments in gold.<sup>5</sup>

While the university asserts that it does not hold direct stock in prison companies, this statement is technically true, but misleading. Harvard only directly invests in eight corporations: the aforementioned four tech giants plus Aduro

Biotech, Magenta Therapeutics, Neon Therapeutics, and T. Rowe Price. Combined, Harvard pours \$283 million into these companies, roughly 60% of its public portfolio. It devotes 2% of the portfolio to gold shares, apportioning the remaining \$178 million (or 38%) to exchange-traded funds (ETFs).

Several of Harvard's ETF investments include companies profiting from the prison-industrial complex. Our calculations show this figure to approximate close to \$3 million. After combining all of these ETF portfolio data into one large data set, we simply cross-checked this listing against a targeted list of roughly 100 prison-industrial complex companies.

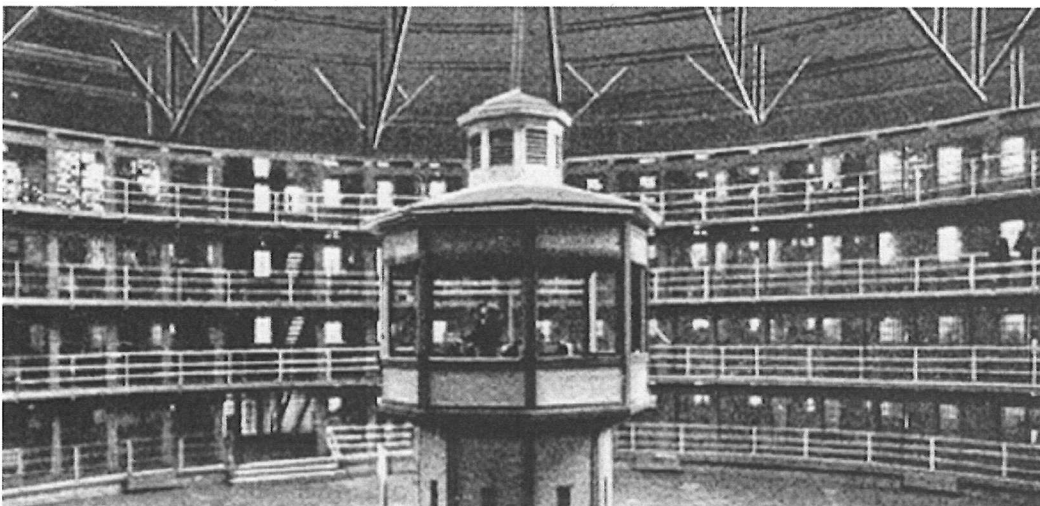
President Bacow's peculiar reference to Harvard investing only \$18,000 in private prisons (which again, are only a small part of the prison-industrial complex) simply does not fit the facts. Based on our calculations from the

mere 1% of the endowment that is publicly disclosed, Harvard has invested approximately \$3 million in some of the companies most complicit in the prison-industrial complex.

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**Based on our calculations from the mere 1% of the endowment that is publicly disclosed, Harvard has invested approximately \$3 million in some of the companies most complicit in the prison-industrial complex.**

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02.2/ **Industry Profiles**  
profiteering from pain

The Harvard Prison Divestment Campaign has demanded divestment from the prison-industrial complex since the beginning—not just divestment from private prisons. On April 18, 2019, President Lawrence Bacow side-stepped the larger question about Harvard’s propagation of the prison-industrial complex and directed his focus on only private prisons. Harvard is invested in private prisons, but these investments make up only a fraction of the 3 million dollars we know is invested in the larger prison-industrial complex. And while the abuses by private prison operators often attract the most media attention, they make up only a fraction of the misery inflicted on people by the prison-industrial complex.

**Bail Bonds-**

Take the example of Mr. Brown.<sup>1</sup> He has been arrested and he has no money to post his bail. He can call a family member but they likely don’t have the funds either. The median bail amount represents 8 months of income for the average defendant. Though he has not been convicted of a crime, the effects of his arrest can be catastrophic. In addition to being separated from his loved ones, Mr. Brown will likely lose his job and, if he is a renter, his housing. In order to avoid these disastrous

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**Harvard *is* invested in private prisons, but these investments make up only a fraction of the 3 million dollars we know is invested in the larger prison-industrial complex.**

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repercussions, Mr. Brown will likely have no choice but to go into debt to a bondsman, a company that will pay his bond in exchange for a substantial percentage of the bail amount.

While bail bonds companies often pretend to be “mom and pop shops,” multinational insurance companies dominate the industry, underwriting each bond in exchange for a share of the profit extracted from people like Mr. Brown. Trapping people like Mr. Brown in debt has become incredibly lucrative. The bail bond industry currently runs around \$2 billion of revenue per year. According to the ACLU, only nine bail insurance companies in the United States reap the vast majority of these profits. Harvard currently invests

<sup>1</sup> To respect the privacy of incarcerated people, we are protecting their identities and amalgamating different examples together.



## the story of Mr. Brown

(as told through harvard's investment in the prison-industrial complex<sup>A</sup>)

11

12

13

14

15

### **Bail Bonds**

Fairfax Financial Holdings Ltd.  
Tokio Marine Holdings Inc.

### **Telecommunications**

CenturyLink  
Unisys  
TKC Holdings

### **Money Transfer**

Western Union

### **Prison Labor**

3M Company  
Avery Dennison  
Lincoln Electric

### **Death Management**

Centene Corporation  
Universal Health Services

### **Food & Commissary**

Summit Food Services

### **Probation**

Constellation Software  
Providence Service Corp

### **Weaponry**

AeroVironment  
Axon Enterprise Inc.  
Sturm Ruger & Co  
Vista Outdoor  
General Dynamics  
BAE Systems

### **Private Prison Operators**

CoreCivic  
GEO Group  
G4S  
Mitie Group Plc.  
Serco  
Sodexo

### **Construction**

Ferrovial SA  
Hochtief

### **Banks**

Bank of America  
Goldman Sachs  
SunTrust Banks Inc  
U.S. Bancorp  
Wells Fargo  
BNP Paribas

### **Analytics & Surveillance**

Amazon  
Harris Corporation  
Honeywell International Inc.  
L3 Technologies  
Motorola Solutions  
Stanley Black & Decker Inc.  
Thermo Fisher Scientific Inc.  
Tyler Technologies  
Methode Electronics Inc.  
Gemalto  
NEC Corporation  
NICE

### **Transportation**

Greyhound Lines

SHERIFF'S INMATE

**A**  
Companies currently  
invested in by Harvard  
organized by their  
role within the prison-  
industrial complex.



in at least two of these nine companies — Tokio Marine and Fairfax Financial Holdings Limited — through the Vanguard FTSE Developed Markets ETF.

The May 2017 report, "Selling Off Our Freedom: How insurance corporations have taken over our bail system," outlines the consequences of the shockingly exploitative industry:

Just over two decades ago, most people arrested for felonies were released without having to pay bail. But today, millions of people must pay bail in order to avoid detention in jail while their case is underway, though they are still innocent in the eyes of the law. If they cannot pay the amount set for their bail, they remain in jail for their inability to pay. Many plead guilty regardless of the case against them and suffer the long-running consequences of convictions in order to be released.

To come up with the money for release, far too many people and their families are lured into exploitative arrangements with bail bond corporations that typically charge a nonrefundable fee of 10 percent of the full bail amount. Many are trapped in a cycle of debt and fees related to their payments, and even people whose charges are dropped or who are determined to be innocent do not get their money back.<sup>2</sup>

At any given time, 70% of the people caged in jails have not been convicted of any crime. They are legally innocent, but they are still vulnerable to exploitation by predatory companies like Fairfax and Tokio Marine while they await their trial. Using the threat of continued imprisonment to squeeze money out of pre-trial detainees, these insurance giants are able to boost their quarterly earnings, which now flow into the pockets of investors like Harvard. For

those found to be innocent, the debt owed to bail bonds companies can be a long-lasting burden. But for those who are convicted, Tokio Marine and Fairfax are only the first of a long line of predatory companies that will profiteer from their incarceration.

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**At any given time, 70% of the people caged in jail have not been convicted of any crime. They are legally innocent, but they are still vulnerable to exploitation by predatory companies like Fairfax and Tokio Marine while they await their trial.**

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### **Telecommunications**

Let us return to Mr. Brown. Now a prisoner, Mr. Brown needs to call his daughter for her 9th birthday. Because the state has caged Mr. Brown, he cannot celebrate his daughter's birthday with her in person. Prison is no place for a little girl, especially on her birthday. So, he calls her, like any loving father would. But phone calls aren't free in prison. In fact, private, for-profit phone companies charge prisoners to speak to their own loved ones. CenturyLink is one of these companies. It charges \$3.75 for a 15-minute phone call in Alabama. For

<sup>2</sup> ACLU, "Selling Off Our Freedom." Published May 2017.

Mr. Brown, that 15 minutes might cost him 15 hours of work, where prisoners work for as little as 25 cents per hour.

CenturyLink is the third largest telecommunication provider in the United States and a corrections telecom provider. It strikes contracts with ten different states to charge prisoners for phone calls by the minute in addition to other fees and taxes. CenturyLink promises hefty commissions to the Alabama Department of Corrections in order to win contracts. The Prison Policy Initiative (PPI) noted in their 2012 report:

Prison phone companies are awarded these monopolies through bidding processes in which they submit contract proposals to the state prison systems; in all but eight states, these contracts include promises to pay “commissions” — in effect, kickbacks — to states, in either the form of a percentage of revenue, a fixed up-front payment, or a combination of the two. Thus, state prison systems have no incentive to select the telephone company that offers the lowest rates; rather, correctional departments have an incentive to reap the most profit by selecting the telephone company that provides the highest commission.<sup>3</sup>

In 2018 alone, CenturyLink provided \$3,912,675.63 in kickbacks to the state of Alabama. In order to maintain profitability and keep Alabama DOC happy, CenturyLink raises the price of phone calls to exorbitant rates. These telecom companies know that incarcerated people are a captive market and they have no choice, but to use the overpriced services to keep in touch with their loved ones and their lawyers.<sup>4</sup> According to some estimates, this captive

market provides some \$1.2 billion in profits to prison phone providers. As an investor in CenturyLink through the iShare Core S&P 500 ETF, Harvard - like Alabama DOC - shares in the profits extracted from incarcerated people and their families. Through the same ETF, Harvard also invests in Unisys, a private global tech company based in Pennsylvania that also provides prisoner phone services to prisons and jails.

### **Money Transfer**

Having cornered the market in for-profit calls from prisons, many telecoms have joined financial services companies to profit from prison-based payment systems. They arrange for hidden profits in third-party payment systems such as Western Union. Often, the prisoners and their loved ones cannot afford to have bank accounts so they rely on services like Western Union and MoneyGram to transport money. For a \$25 payment to a telecoms company, Western Union charges an atrocious \$10 to \$12. And then Western Union shares some of these fees with the telecoms providers in order to evade FCC regulations that otherwise attempted to prevent this exploitation. The Harvard endowment is invested in Western Union through the iShares Core S&P 500 ETF.

### **Prison Labor**

In order to keep up with the debt and fees piled up by bail bonds, telecom, and financial service industries, Mr. Brown likely has to find a job in the severely underpaid prison labor industry. Prison labor is unregulated and, as a result, reliable information about the

<sup>3</sup> Kukorowski, Drew. “The price to call home: state-sanctioned monopolization in the prison phone industry.” A Prison Policy Initiative Report, September 11, 2012.

<sup>4</sup> PPI released a 2019 February report, which can be found here: [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)

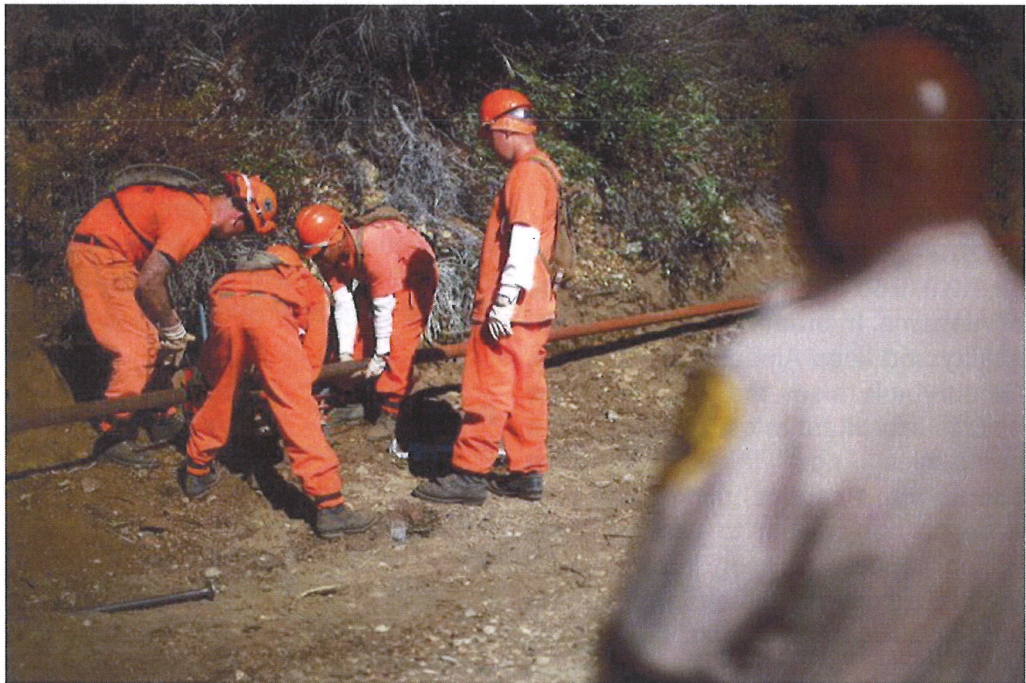
major users of prison labor can be difficult to obtain.

The National Corrections Industry Association (NCIA) is an international nonprofit association of companies in the correctional industry. It is the group that monitors the Prison Industry Enhancement Certification Program (PIECP). Prisons that want to use prison labor can sometimes do so under this program. But given that the NCIA board of directors are usually prison industry officials and leaders, the NCIA is essentially charged with monitoring itself. NorthStar Assets, which advocates for socially responsible investing, explains the complex relationship between NCIA and prison labor:

[T]he National Corrections Industry Association (NCIA) has a publicly available

listing of its Corporate Members...Although the relationships between these companies and the NCIA are not disclosed, we assume there is a mutually beneficial relationship between each company and prison labor. Some companies may benefit directly by hiring inmates to make products or provide services (or hiring subcontractors who do so), others may be providing supplies to prison labor industries for inmates to use to create products, and others on this list appear to be companies dedicated solely to providing products to prisons themselves (officer clothing and weapons, inmate bedding, inmate recreational materials, etc.).<sup>5</sup>

The PIECP requires that prisoners be paid the "prevailing wage" or the wages that a non-incarcerated worker would make for the same job in the same region. But supplier companies easily circumvent these regulations through various schemes. For example, the



<sup>5</sup> Goodridge, Julie, Schwartzer, Mari, Jantz, Christine, and Leslie Christian. "Prison Labor in the United States: an Investor Perspective." *NorthStar Asset Management* May, 2018.



company can employ the inmates as “trainees” instead of “employees” and pay a lower wage.

And this is only if the prisoner is in the PIECP program at all. Only about 5,000 prisoners work under the PIECP. In comparison, 1.37 million prisoners work in state prisons external to the PIECP and 16,891 in federal prisons.

Furthermore, prisoner labor programs, both in and out of the PIECP, have drastic payroll deductions, which force prisoners to pay for their own “room and board” and other legal obligations. A PIECP laborer could earn as little as \$1.45 an hour. Non-PIECP laborers in state and federal prisons could earn as little as \$0.04 an hour. Mr. Brown, even if he is lucky enough to be a PIECP laborer, is working for pittance wages.

While Mr. Brown may not make much from his employment, this web of modern-day slavery and exploitation of prisoners is very profitable for employers. Three companies in particular, Avery Dennison, 3M, and Lincoln Electric, stand out as Corporate Members in the NCIA. The notable WorthRises Report, a report written for investors who want to avoid investing in the prison-industrial complex, also names Avery Dennison and Lincoln Electric as companies that prop up the prison-industrial complex through the use of prison labor.<sup>6</sup> Harvard is invested in Avery Dennison through the iShares Core S&P 500 ETF, in 3M through the iShares Core S&P 500 ETF and the Vanguard Dividend Appreciation ETF, and in Lincoln Electric through the iShares Core S&P Mid-Cap ETF.

### **Death Management**

And what if he is injured on the job? Factory labor can be dangerous, which brings us back to Mr. Brown. One of Lincoln Electric’s machines crush Mr. Brown’s hands when he is assembling a welding tool part. His fingers are swollen and badly crooked. For weeks, he had been asking the correction officers (CO) to see a doctor to get treatment. They ignored him for weeks and then finally took him to a hospital — a mere five minute drive from his cell. The doctor informed him that he had two fractured fingers among other injuries, and he would need to tape his fingers daily so they could heal properly and take painkillers as needed. His doctor gave him a roll of tape so he could do this himself. When he returned to the prison, the COs took his tape and threw it away in front of him, without giving a reason. Mr. Brown went to the prison clinic that next day. They sent him away with no tape and no medication, dismissing his complaint as nothing. Mr. Brown filed complaint after complaint, but every day is a battle for him to get basic health care.

Private healthcare companies such as Universal Health Services and the Centene Corporation strike contracts with state departments of corrections with the promises of cutting costs of healthcare and delivering kickbacks to the state. Reporting on correctional healthcare providers reveals a crisis level shortage of staff inside facilities, patterns of delayed and inadequate care, and contracts that disincentivize companies from sending incarcerated people to hospitals for treatment. With profit as the largest incentive and

<sup>6</sup> Worth Rises, “The Prison-Industrial Complex: mapping the private sector players,” April 2018. <https://worthrises.org/picreport2019>.

the humanity of the prisoners on the backburner, these private healthcare “providers” rack up many complaints about their neglectful practices.

One of the biggest costs for these companies is the salaries for doctors and nurses, so companies like Centene seek to minimize such costs by keeping prisons understaffed. Therefore incarcerated people can’t get access to medical professionals on the inside and are routinely denied access to hospitals on the outside. Over half a million incarcerated people are under the care of for-profit correctional health care every day. While companies earn billions from striking up attractive contracts, incarcerated people are left with substandard care, sometimes resulting in life-threatening emergencies and death. In 2016, for example, a subsidiary/joint venture of the Centene Corporation, Centurion was sued in three different wrongful death suits. One prisoner died of a brain hemorrhage because they were refused adequate medical care. Various class actions have been brought on behalf of prisoners with Hepatitis C who cannot get treatment for it. MHM Services, another subsidiary of Centene, has starved and neglected its patients—or in other cases, medicated patients against their will.

#### **Food & Commissary**

Prisoners’ health is often worsened by the substandard food provision services inside prisons. Mr. Brown used to have a job working in the prison kitchen. In his time there, he sees rat corpses, maggots, expired and rotten food, even when it came freshly unloaded

off the truck, a stench he describes as unbelievable. The food is inedible and unsanitary. Mr. Brown’s account of his kitchen facility echoes national trends. The growing privatization of food services in prisons and jails has decreased the quality and quantity of food offered in correctional facilities.

Many states now outsource their kitchen operation—staffing, equipment, and food preparation—to companies like Summit Food Service and Compass Group Plc. Summit Food is no exception to the complaints regarding lack of food quality and reports of starvation.

And because the food is so inedible, and the kitchen so unsanitary, Mr. Brown only eats in the chow hall a few times a week. He survives on an almost daily diet of off-brand ramen noodles. Mr. Brown purchases his noodle “meals” from the commissary, which is run by groups like Summit, Compass, and Sodexo. Commissary contracts are also very lucrative, with some state contracts reportedly as high as \$160 million. Commissary prices are exorbitantly high, up to 5 times the retail price on the outside. Prison commissaries are a \$1.6 billion industry annually, while states

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**The money that Harvard pockets from companies like Providence is the result of threatening to send poor people back to jail.**

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get millions in kickbacks. Harvard also profits through their investments in Sodexo and in TKC Holdings, the parent company of the commissary company the Keefe Group, via the Vanguard FTSE Developed Markets ETF.

### Probation

If Mr. Brown were ever to finish his sentence, his nightmarish experience with the mass incarceration system would not end there. Over 4.5 million people in the United States were on probation in 2016. Likely, he would have to undergo probation, where the state surveils his every move and he must submit to the power of his parole officer—otherwise, risk getting sent back to the cage. To facilitate this surveillance, companies like Constellation Software and Providence Service Group help. These tech companies provide corrections technology, like an algorithm that attempts to predict the likelihood that people will commit crime in the future. These algorithms have an air of sophistication, but they amount to little more than sophistry. One corrections officer described this algorithm as a “giant corrections pinball machine[.]”<sup>7</sup> Ellora Israni, Harvard Law School Class of 2019 and former Facebook software engineer, warns of an algorithm called COMPAS: “States trust that even if they cannot themselves unpack proprietary algorithms, computers will be less biased than even the most well-meaning humans, But shifting the sentencing responsibility to a computer does not necessarily eliminate bias; it delegates and often compounds it.”<sup>8</sup> Providence is a probation company with an “offender-funded”<sup>9</sup> business model. This is a industry-term meaning that

it charges parolees monthly to be supervised. People pay the state for their own surveillance and Providence and its shareholders make a pretty profit. Providence charges ‘supervision fees.’ When probationers cannot pay these fines and fees, Providence notifies the state so the probationers are sent back to prison.

It is not uncommon that Providence charges higher fees than the probationers earn in actual income. One Human Rights Watch report tells the story of a Georgia man: “Thomas Barrett pled guilty to stealing a can of beer from a convenience store and was fined US\$200. He was ultimately jailed for failing to pay over a thousand dollars in fees to his probation company, even though his entire income—money he earned by selling his own blood plasma—was less than what he was being charged in monthly probation fees.”<sup>10</sup>

Another Georgia man, 64-year-old, Vietnam War veteran Van Houston had 24 months of probation for a DUI. With his fees to the court and to Providence, his monthly payments totaled \$216, which came out to more than a third of his income. Over the course of 24 years, he would owe more than 10 percent of his entire annual income to Providence.

In 2015, the civil rights group Equal Justice Under Law sued Providence for sending people back to jail despite a Supreme Court ruling that it is illegal to incarcerate someone for not being able to afford to pay these fees. Providence “even refused to let destitute probationers complete their required community service hours without first

<sup>7</sup> Angwin, Julia, et al. “Machine Bias.” *ProPublica*, May 23, 2016.

<sup>8</sup> For those interested in how technology compounds racism, see: Benjamin, Ruha. *Race after Technology: Abolitionist Tools for the New Jim Code*. Medford: Polity, 2019.

<sup>9</sup> Human Rights Watch. “Profiting from Probation.” February 5, 2014.

<sup>10</sup> Human Rights Watch. “Profiting from Probation.” February 5, 2014.

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## So the more TASERs the police buy to assault children, the better returns Harvard makes.

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paying a community service fee[.]”<sup>11</sup> In 2011, filed a class action lawsuit<sup>12</sup> against Providence alleging the extortion of fees out of probationers using falsified drug tests and sexual harassment.

The New Yorker<sup>13</sup> covered the story of one mother who was \$13 short on her “supervision” fees. She had to beg her family and friends for money in an attempt to scrounge up the dollars before the 5pm deadline—otherwise, she would be sent back to jail over a mere \$13. These are the type of stories that shareholders like Harvard prop up by investing in companies that profit from this exploitation. Harvard is invested in Constellation Software through the iShares Core S&P 500 ETF and in Providence Service Corp through the iShares Core S&P Small-Cap ETF. The money that Harvard pockets from companies like Providence is the result of threatening to send poor people back to jail.

### Weaponry

And even if Mr. Brown were to surpass the exploitative probationary system of surveillance and micro-control, he would still likely face a lifetime of police brutality, a leading cause of death for Black men in the United States. In all

likelihood, Mr. Brown is Black, given the racism that the criminal legal system is built upon. And Harvard profits off of police brutality as well. All the ways that the police abuse, maim, and threaten their mostly Black victims, provides sources of cash inflow for various actors in the prison-industrial complex and that money ends up in the pockets of institutional investors like Harvard.

For example, in recent years, there have been calls for the police to use TASERs instead of guns, as a well-intentioned but deeply naive solution to police brutality. Although Axon, its seller, claim TASERs are safe and non-lethal, studies suggest that Axon is not to be trusted<sup>14</sup> and that giving police officers an additional weapon doesn’t actually reduce police gun violence.<sup>15</sup>

Despite this evidence, Axon is heavily expanding. And Harvard is invested in Axon through the iShares Core S&P Small-Cap ETF. So as Axon increases quarterly growth and attracts new customers, Harvard pockets returns on its investment. Harvard profits whenever Axon sells a TASER. For example, the increased presence of police officers in schools means that police officers are TASERing and assaulting students.<sup>16</sup> So the more TASERs the police buy to assault children, the better returns Harvard makes.

And when it comes to gun violence, we can find blood on President Bacow and the Corporation’s hands. Harvard is invested in the iShares Core S&P Small-Cap ETF, so the endowment money is invested in both Sturm Ruger & Co and Vista Outdoor. Sturm Ruger provides

<sup>11</sup> Dewan, Shaila. "Private Probation Company Accused of Abuses in Tennessee." *The New York Times*, Oct. 1, 2015.

<sup>12</sup> Hall, Ben. "Rutherford Co, PCC Settle Class Action Lawsuit Over Private Probation Fees." *News Channel Five Nashville*, Sep 19, 2017.

<sup>13</sup> Stillman, Sarah. "Get Out of Jail, Inc." *The New Yorker*, June 16, 2014.

<sup>14</sup> Gilbert, Curtis, Caputo, Angela, Geoff, Hing. "When Tasers Fail." *APM Reports*, May 9, 2019.

<sup>15</sup> Franck, Thomas. "There's 'no evidence' Tasers reduce police use of firearms, new study shows." *CNBC*, Oct 22, 2018.

<sup>16</sup> Klein, Rebecca. "The Other Side Of School Safety: Students Are Getting Tasered And Beaten By Police." *Huffpost*, Sept 8, 2018.



guns and Vista Outdoor provides the ammunition. Harvard is invested in the Vanguard FTSE Developed Markets ETF, which includes BAE Systems. BAE also provides services to the police and national security agencies. For example, BAE won a lucrative \$600 million contract<sup>17</sup> to provide laser-guided rockets to the US Navy.

Sometimes, police brutality can be expensive for the city, who can face a hefty settlement expense or litigation costs when the victims sue. But thanks to banks like Goldman Sachs and Bank of America, both of which are included in the iShares Core S&P 500 ETF, conjured up Police Brutality Bond. Just as it sounds, cities sell municipal bonds in order to cover police brutality-related costs. According to this report from Action Center on Race & the Economy (ACRE),<sup>18</sup> the city of Chicago, in the years 2008 to 2017, borrowed \$709.3 million to cover police brutality settlements. In this time period, the investors earned \$1 billion in interest, costing the taxpayers \$1.71 billion total. ACRE explains,

While legal system assumes that hefty financial consequences for police violence serve as a deterrent to abusive policing, this does not appear to be the case. Instead, settlements and judgments—including those a city or county can't pay without going into debt—appear to be an acceptable cost of the business of policing for cities and counties across the country.<sup>19</sup>

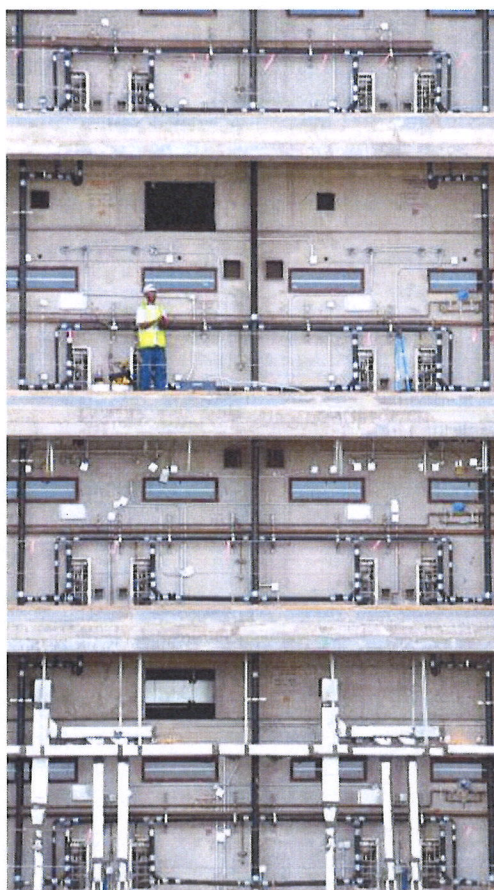
### Private Prison Operators

President of Harvard University Lawrence Bacow has stated that Harvard

only has \$18,000 invested in private prison operators. As we noted in Section 2.1, our analysis indicates that this figure is wrong. His estimate includes that Harvard is invested in private prison operators such as CoreCivic, GEO Group, G4S, Mitie Group Plc, and Serco. He and the Harvard Management Company forget that Sodexo is also a private prison operator—a curious mistake for people who are supposedly amongst the best financial asset managers in the world.

### Construction

Bacow's focus on private prisons and repeated refusal to discuss the larger



<sup>17</sup> Bae Systems. "U.S. Navy awards \$600 million multi-service contract for laser-guided rockets." Published Oct 19, 2016.

<sup>18</sup> Goodwin, Alyxandra, Shepard, Whitney, Sloan, Carrie. "Police Brutality Bonds." Action Center on Race & the Economy.

<sup>19</sup> Ibid.



**20**  
 Kilgore, James. "Five Corporations You've Never Heard of Are Making Millions From Mass Incarceration." Truthout, 2015.

**21**  
 Ibid.

**22**  
 Goodwin, Alyxandra, Shepard, Whitney, and Carrie Sloan. "Police Brutality Bonds" Action Center on Race & the Economy.

**23**  
 "The Banks that Finance Private Prison Companies." *In the Public Interest*, 2016.

**24**  
 President Bacow, at an alumni event in Chicago in the summer of 2019, publicly scoffed at our demands to divest from Amazon. He asked the audience if they ever shopped at Amazon. This is a common tactic with Bacow and other university presidents; when someone challenges the institution, they flip the question into one of individual choices. It is a logical fallacy and a false equivalency that Bacow should know better than to stoop. The question is not what every individual contributes to Amazon; the question is whether Harvard, one of the most powerful institutions in the world, likely the most power academic institution on planet Earth, sitting on centuries of accumulated wealth and an endowment that is soon to grow to be over 40 billion dollars will do something to challenge its provision of cash flow to encourage and profit from Amazon's role in caging, abusing, and killing poor brown migrants.

prison-industrial complex illustrates his lack of understanding of the scale of the problem at hand. Private prisons are relatively small players in the industry, yet are popular enough for construction contractors to bid on those lucrative contracts. Companies like Ferrovial SA and Hochtief jump at the chance to construct a prison. One reporter describes Turner Construction, a subsidiary of Hochtief:

Despite prisons and jails not being their core business, they are still virtually omnipresent in the sector. Turner did construction management for a 6,000-bed facility in Bunker Hill, Indiana, participated in an \$800 million overhaul of several state prisons in Pennsylvania in 2009, led work on jail construction in Forsyth County, Georgia (\$100 million), Fort Bend County, Texas (\$75 million), Johnson City, Kansas (\$50 million), Kenton County, Ohio (\$41 million), as well as on two jails

custom-built for Corrections Corporation of America in Georgia's Wheeler and Coffee counties at an estimated total cost of \$80 million.<sup>20</sup>

Despite all of this booming prison-construction business, should a shareholder, direct or indirect, demand to pull out of such profiteering, Turner would only lose 3 percent of its yearly revenue.<sup>21</sup>

### Banks

Like everything under global capitalism, things cost money. Private prison companies need big lines of credits with banks in order to get the capital to literally get a prison up off the ground and running. Policy center In The Public Interest released a report in November 2016 called "The Banks That Finance Private Prison Companies," and named six banks as the largest bank financiers of CoreCivic and GEO Group's debts: Bank of America, JPMorgan Chase, BNP Paribas, SunTrust, U.S. Bancorp, and Wells Fargo.

Harvard is invested in all six, through the iShares Core S&P 500 ETF and in the BNP Paribas through the Vanguard FTSE Developed Markets ETC. Of course, these banks made news when JP Morgan decided to no longer finance private prisons in March of 2019 and the others soon followed. These banks' decisions to divest exemplifies how simple a procedure it can be—if Jamie Dimon, the CEO of the largest bank in the world, can do it, surely President Bacow can take our demands seriously too.



According a report published by the Action Center on Race & the Economy, Bank of America, BNP Paribas, SunTrust, U.S. Bancorp, and Wells Fargo had “(1) extended revolving credit to [CoreCivic] and GEO Group, and (2) provided the two companies with term loans, and (3) underwritten the two companies’ bonds.”<sup>22</sup> Lauren Brooke-Eisen, the author of *Inside Private Prisons: An American Dilemma in the Age of Mass Incarceration* and also a senior fellow at NYU Law’s Brennan Center for Justice, explained that private prisons became Real Estate Investment Trusts (REITs) in 2013 and as a tax consequence, they rely on banks for quick and large influxes of cash flow.<sup>23</sup> So banks like Bank of America extended such lines of credit to CoreCivic and GEO Group, scraped up their easy money, and passed it along to investors like Harvard. Even though these banks have now divested from extending credit to private prison operators, it speaks volumes that they did so for many years without any concern from the Harvard President nor its Fellows.

### **Analytics & Surveillance**

Investments in companies supplying prisons with surveillance technology are a significant part of Harvard’s holdings in the prison-industrial complex. Amazon,<sup>24</sup> for example, provides facial recognition technology,<sup>25</sup> which aids ICE in their relentless detention of immigrants in prisons, commonly run by CoreCivic and GEO Group. Now, this technology can detect the emotion of fear in people’s faces. Harvard is invested in Amazon through the iShares Core S&P 500 ETF.

Amazon, along with companies like Gemalto and Unisys,<sup>26</sup> provide the IT infrastructure for the government to track and keep databases on immigrants. “These technologies expand the reach of immigration enforcement by enabling ICE to accumulate, query, and mine large amounts of biographic, biometric, and personal data for the purposes of identifying, monitoring, and targeting immigrants for deportation and removal,” according to the American Friends Service Committee (AFSC).<sup>27</sup>

These big-swinger companies include Gemalto and Unisys, both in which Harvard is invested, through the Vanguard FTSE Developed Markets ETF for Gemalto and iShares Core S&P Small-Cap ETF for Unisys. Companies like the NEC Corporation, in the Vanguard FTSE Developed Markets ETF, track immigrants’ biometric information. The Smith Group, also in the Vanguard FTSE Developed Markets ETF, provides x-ray technology and vehicle inspection technology to the Customs and Border Protection. NICE Systems, in the same ETF, is using technology built to militarize Israel’s illegal segregation barrier to also control the US-Mexico border. Even infamous Sheriff Joe Arpaio<sup>28</sup> of Arizona was a client of NICE Systems. Weapons manufacturers like General Dynamics, in the iShares Core S&P Small-Cap ETF, provide manpower<sup>29</sup> to aid in the militarization of the US border.

The AFSC describes Unisys:

In 2016, CBP awarded Unisys a three year \$229.7 million contract to implement biometric checks at U.S. ports of entry and exit in order to confirm the arrival and departure from the United States of all travelers. In response to President

<sup>25</sup> Romano, Benjamin. “Protesters in Seattle petition Amazon to stop selling technology to ICE.” *The Seattle Times*, July 15, 2019.

<sup>26</sup> Investigate. “High-Tech Surveillance of Immigrants.” Accessed Oct 1, 2019.

<sup>27</sup> Ibid.

<sup>28</sup> Rivas, Jorge. “Department of Homeland Security and ICE End Sheriff Arpaio’s 287(g) Contract.” *Color Lines*, Dec 15, 2011.

<sup>29</sup> Dayen, David. “How Private Contractors Enable Trump’s Cruelties at the Border.” *The Nation*, June 20, 2018.

Trump's 2018 Executive Order 13780, "Protecting the Nation from Foreign Terrorist Entry into the United States," the Biometric Entry-Exit project awarded to Unisys was expedited. Unisys was accordingly awarded an additional contract to implement systems that would allow for supplementing documents such as passports with biometric information for travelers entering and exiting the United States.<sup>30</sup>

In this way, Harvard is a benefactor in Trump's crackdown on undocumented and documented immigrants. The world is witnessing the horrors of ICE and the United States government in terrorizing migrants and separating families indiscriminately. Little do most people know, these horrors are very profitable for investors like Harvard, where people work very hard to keep its image squeaky clean in the public eye. Keeping databases on people in order to track them before deportation requires technology and Harvard invests in those tech companies in the name of expanding the \$40 billion endowment to supposedly fund Harvard students' education.

And it is not just oppressed people within the United States borders who are feeling the surveillance state's grip on Harvard's investments. Companies like Harris Corporation and L3, who are planning to merge to create a gargantuan global weapons company, provide surveillance technology and weapons to Israel's army. For example, in 2012

the Israeli army used Merkava tanks that had L3 engines to attack Palestinians in Gaza. The 2012 attack killed 101 civilians, 33 of which were children, according to the [RAND Corporation](#).<sup>31</sup> Another Israeli attack in 2014 using Merkava tanks killed 1,462 civilians, 551 of whom were children. Harvard made money from the sales of these weapons. Harvard is invested in Harris and L3 through the iShares Core S&P 500 ETF. Motorola also provides technology to the Israeli army and is included in the iShares Core S&P 500 ETF. In August of 2019, [AeroVironment](#),<sup>32</sup> of the iShares Core S&P Small-Cap ETF, won a \$45 million contract from the U.S. Army Security Force Assistance Brigades to provide "Tactical Unmanned Aircraft Systems." AeroVironment also builds drones, which is a tool that militaries use to execute civilians and commit other war crimes.

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It's hard to believe that an institution like Harvard, with its sterling reputation, profits off of these wrongdoings in the world. But they do.

It doesn't have to be this way. The Corporation, under the guidance of Bill Lee, the Chairperson of the Corporation Committee on Shareholder Responsibility, and President Lawrence Bacow, both have the power to direct the Harvard Management Company to change its investments and divest.

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**It doesn't have to be this way.**

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<sup>30</sup> Investigate. "High-Tech Surveillance of Immigrants." Accessed Oct 1, 2019.

<sup>31</sup> Cohen, Raphael, et al. "From Cast Lead to Protective Edge." Rand Corporation, 2017.

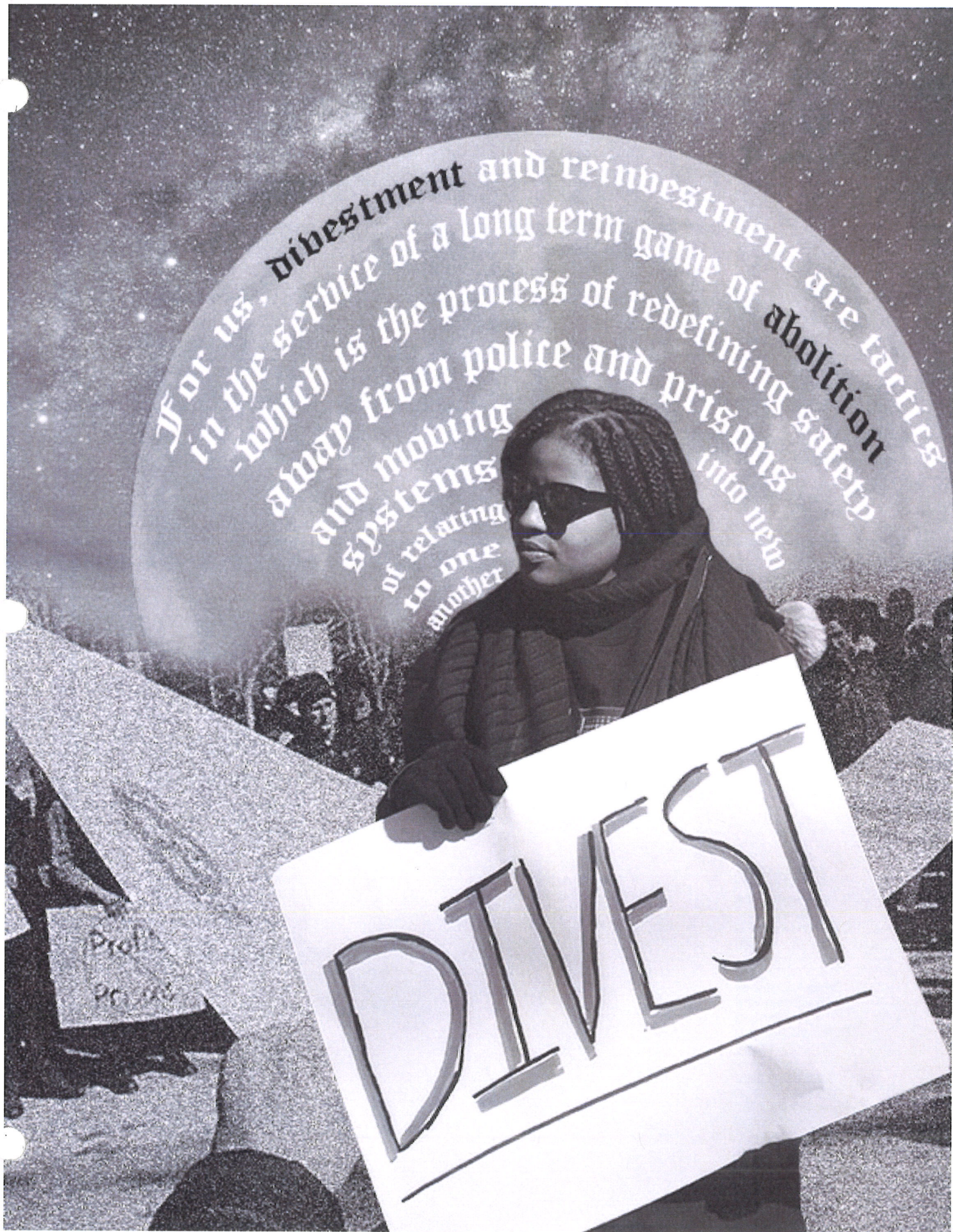
<sup>32</sup> AeroVironment. "Tactical Aircraft Systems." Accessed Oct 1, 2019.



For us, divestment and reinvestment are tactics  
in the service of a long term game of abolition  
- which is the process of redefining safety  
away from police and prisons  
and moving systems of relating  
into new  
to one another

DIVEST

Prof.  
Prison





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# 03 | Reflections on the Human Costs of Incarceration

from those<sup>1</sup> impacted by Harvard's investment in the prison-industrial complex

the harvard-to-prison pipeline report

**1**

"Letter to Harvard"  
Ron L. is currently  
incarcerated at the  
Massachusetts  
Correctional Institute at  
Norfolk.

"Truth"  
James K. is currently  
incarcerated at the  
Massachusetts  
Correctional Institute at  
Norfolk.

"Dear Ma, I'm Sorry"  
Ashley Lipscomb is a  
MDiv student at Harvard  
Divinity School.

Ron L.  
Massachusetts Correctional Institute at Norfolk  
2 Clark St  
Norfolk, MA 02056

September 2019

Office of the President  
Harvard University  
Massachusetts Hall  
Cambridge, MA 02138 USA

**Letter to Harvard University,**

I am currently serving a life sentence without the possibility of parole. The only way I will ever leave prison is a commutation by the governor. To survive and keep my mental sanity, I've had to find a purpose - a reason to keep on living behind these walls. I've found that purpose and reason in my fellow incarcerated brothers, most of whom will return to prison again.

One of the things I preach to all young brothers that I come across is the value of education. It doesn't matter if you are finishing your High School education or aiming toward a college degree, completing your educational goals is the key. It's a fact that people with Bachelor's degrees, two year college degrees, and those continuing their education are not the ones being incarcerated at staggering levels. When it was communicated to me that Harvard University funds itself with the help of profits made from incarcerated students and people like myself I was shocked. **How is it that an institution of higher learning and such a renowned reputation could be profiting off the backs of the incarcerated?** It seems to me that institutions like Harvard should be investing their educational resources inside prisons with a focus toward education and rehabilitation instead of profiting from those individuals behind prison walls.

In 2010 I earned my Bachelor's of Science Degree from Boston University, obtaining this degree behind the walls of Norfolk prison. Boston University is not profiting off the backs of the incarcerated. No, they are investing their resources and time in the EDUCATION AND REHABILITATION of incarcerated people in Massachusetts. **As an incarcerated person who only wants to see rehabilitated people returning to our communities, I am appalled and hurt by the actions of Harvard University.** I find it hard to fathom that the powers that be at Harvard are satisfied and overall content with this stance toward incarcerated people? Harvard University should divest immediately in every single one of its business ventures that profit off the backs of incarcerated people anywhere in the U.S. and the World. Harvard University should be a model for the positive benefits that education will provide and stand for human well-being, not human wealth seeking!

Sincerely,

Ron L.

James K.  
Massachusetts Correctional Institute at Norfolk  
2 Clark St  
Norfolk, MA 02056

September 2019

Office of the President  
Harvard University  
Massachusetts Hall  
Cambridge, MA 02138

### Truth,

Today is canteen day. Later this morning I will be called to stand in a line to receive a plastic bag filled with items that I ordered last week. Inside the bag will be toothpaste, razors, a bag of coffee, and some packets of oatmeal. When I review my receipt, I will be reminded that I could have bought each of these items for at least 10 percent less money at most grocery stores and that the prices in the canteen have gone up each year of my incarceration, but pay rates for prisoners have remained unchanged for nearly 30 years. I will also think about how 14 percent of all canteen sales will be funneled back into the Department of Corrections' account.

After lunch I will call my mother. The 20 minute phone call will cost me more than \$2.50. After I hang up the phone, I will consider how the majority of the fee from my calls will flow back to the DOC and how they will use that money to pay the salaries of correctional officers.

I also have a medical appointment today. I twisted my ankle yesterday when I stepped out of the shower. Like people on the outside, I will be charged a co-pay for my visit. Unlike people on the outside, I will have no choice in where I go for treatment, and the co-pay will be equal to two times the average daily pay for a prisoner.

This evening, I will send an email to my sister using the prison's secure messaging system. **The message will cost me 25¢ to send, as it will cost for my sister to respond. A private equity firm in Houston will collect all the money from each incoming and outgoing message.**

My prison sentence has been strategically monetized by corporate America. Large companies have discovered a way to nickel and dime many of my daily activities. **It seems that every time I turn around, another company is profiting off my incarceration.**

Over the last two decades, the Massachusetts Department of Correction, like most state and federal prison systems, has outsourced basic activities like canteen sales, telephone service, and medical care to third-party vendors. Many of these vendors are public companies that are required to maximize profits for the benefit of their shareholders. While most businesses have their greed checked by their customers' needs, prisoners are a customer base that can go nowhere else. Corporations who prey on incarcerated people are able to focus on squeezing as much as they can out of prisoners and prisoner's families.



If you examine the modern prison in America today, you will find the results of a Wall Street experiment that has sought to combine the forced labor strategies of slavery with the economic vice grip of company towns. Like the residents of both the plantation and company town, I am a resident who has no choice and no voice.

The motto of Harvard University is Veritas, or truth. My favorite definition of truth is "sincerity in action, character, and utterance." Since the school was founded on the land John Harvard donated, Harvard University has aspired to serve as both an educational and moral beacon. Harvard has experienced its shortcomings. Edward Holyoke, who served as the school's president in the 1700's owned slaves. While William Stoughton, for whom Stoughton Hall is named, sent 19 women to their executions during the Salem Witch Trials.

Truth is not easy. It would have been difficult for Holyoke to turn his back on slavery, but it would have been the right thing to do. It would have been unpopular for Stoughton to have acquitted the innocent women of Salem accused of witchcraft, but again, it would have been the right thing to do. I urge Harvard to do the right thing and show sincerity in action, character, and utterance by ending its relationships with all companies profiting from the Prison Industrial Complex.

Years from now, people will look back on today and view much of the corporate actions inside of prisons in much the same way we see slavery and witch trials. **When these future people ask in the future days how people back then could have been so cruel and biased and shortsighted, will they be speaking of Harvard University and its administration?** In all truth I certainly hope not.

In the Struggle,

James K.

Ashley Lipscomb  
Harvard Divinity School  
45 Francis Ave  
Cambridge, MA 02138

September 2019

Office of the President  
Harvard University  
Massachusetts Hall  
Cambridge, MA 02138

Dear Ma, I'm Sorry

Dear Ma,

Do you remember the day I surprised you with my acceptance letter to Harvard Divinity School? You opened a copy of the letter and screamed immediately. Jumping up and down you created your own sing-songy chant "Harvard, Harvard! I got a Ivy League, I got a Ivy League!" There was a combination of screaming and laughing that made that surprise worth it. I am humbled to know that I could do that for you. I am aware that your story is mine, which is why you celebrated jubilantly, and that my story is yours. There is no way I could have known that the place I was entering into is complicit in our story. For that, I'm sorry. I know you are going to say that I do not need to apologize because in your eyes I'm perfect. But honestly, **now that I attend Harvard University my story is complicit with a system that would choose to dehumanize you instead of treating your disease.**

We recently had a conversation about the conditions of the women's facility where you were incarcerated last year. Although, penal institutions intend to "reform," as sociologist Kaia Stern notes in her book *Voices from American Prisons* they actually "deform." The "house of correction" where you are "housed" is designed to ensure that recidivism rates never decline and the revolving door continues to turn. I write "house of correction" in quotes because this euphemistic language is problematic and dangerous. How can this oppressive institution become home and also "correct" behavior? The language is traumatic and a prison can never be home; thus can it be expected of someone like yourself suffering from a substance use disorder to have your "behavior" corrected by inadequate treatment programs? Currently, the "opioid epidemic" has brought awareness to addiction, but we both know, that is because of those who are affected by the said "epidemic" have the "right" color. Unfortunately, you do not. I'm sure, from your experience, you can testify that the Prison Industrial Complex (PIC) does not "house correction," it dehumanizes. For example, you described the conditions you were living in that included a run-down facility with "holes that allow the animals to come in and live." You told me that you lived with animals. My mother lived with animals.

Therefore, I grieve for you, and I stand with you.

Harvard University, however, does not stand with you. Harvard University invests in that experience. Harvard University continues to invest in corporations that profit from prisons like CoreCivic, GeoGroup, Sodexo, the 3M Company, which uses prison labor in China to manufacture its packaging supplies; and

Axon, which sells surveillance technology and weaponry to prisons. Privately owned prisons have persons of incarceration working for little to no pay which is unsettlingly familiar and feels a lot like slavery. Therefore, "Harvard is funding itself through the exploitation of incarcerated people, [our] families, and communities-and helping to perpetuate the American institution of slavery in spirit and in practice." Not only are they complicit in supporting the PIC, but they are also complicit in the way you have been devalued.

A group of fellow Harvard students met with President Bacow to demand divestment; he said, "One thing you have to understand about me is that I don't respond to demands, I respond to reason." During a different interview about why Harvard could not divest from fossil fuel, Bacow disclosed that he believes that Harvard's endowment should not be used "as an instrument of social policy" and he thinks "there are far more effective ways for us to influence social policy, public policy, as well, through our research, our scholarship, through our actions and through our teaching." Bacow believes that social policy can be affected by "our actions." I don't know about you Ma, but those "actions" should include divestment.

**I sit and wonder how the video of you reading my acceptance letter would be different if we knew then what we know now.** Would you have insisted that I rethink this decision? Or would charge me to walk on this campus and make them listen? I believe it would be the latter. You are my mother and I refuse to allow this system to forget your existence and deem you unworthy of fundamental human rights. I apologize for what my presence here at Harvard means for your story, and I pray that Harvard University will, someday, see you as I see you. I pray that Harvard University would own the harm they have caused you, and divest from companies that invest in your previous "enslavement."

Love Always,

Your favorite daughter (I don't care what my sisters say)  
Ashley

# 04 | THE EFFICACY

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## A Time-Tested Form of Political Action

During the course of our campaign, we have been asked why we are pursuing divestment rather than other forms of political action. The answer is simple. Divestment is a time-tested form of political action. While consumer boycotts have been around since the 18th century and contributed to the British abolition of the slave trade and the movement for civil rights in America, divestment, which is an investor boycott, gained political currency during the global struggle against apartheid South Africa. In the 1980s, activists forced states, municipalities, corporations, and universities to stop doing business with apartheid South Africa and divest from all South African companies. Though Harvard itself failed to fully divest,<sup>1</sup> the global divestment campaign is credited with helping pressure the white minority government into holding the country's first democratic elections and thereby ending apartheid.

Harvard itself has acknowledged the effectiveness and ethical merit of divestment through its public comments<sup>2</sup> and past actions. In 1989, the university

divested from the tobacco industry in 1989,<sup>3</sup> and in 2005 and 2006, Harvard divested from certain companies involved in oil production<sup>4</sup> in Sudan during the genocide.

Arguments for divestment are primarily moral in nature (i.e. that it is unethical to profit from industries built on injustice and immiseration). But there are strong arguments for the strategic efficacy of divestment in effecting radical political change. In the anti-apartheid struggle, divestment successfully indicted those who participated and collaborated with the apartheid state. By the late 1980s, the apartheid government, once seen as an important U.S. ally in the Cold War, was widely regarded as a pariah state, while Nelson Mandela, once designated a terrorist, had become a global icon for peace and social justice.

Stigmatization of the industry often has indirect economic effects on targeted companies. In response to escalating pressure from organizers with the Corporate Backers of Hate campaign, JP Morgan Chase announced<sup>5</sup> in March 2019 that it would no longer bank the private prison industry. Chase competitors

<sup>1</sup> Rodman, Melissa, and Yehong Zhu. "Calls for Divestment: A Retrospective." *The Crimson*, May 27, 2015.

<sup>2</sup> Harvard University. "Shareholder Responsibility Committees." Accessed Oct 1, 2019.

<sup>3</sup> Lewin, Tamar. "Harvard and CUNY Shedding Stocks in Tobacco." *The New York Times*, May 24, 1990.

<sup>4</sup> "Harvard announces decision to divest PetroChina stock." *The Harvard Gazette*, April 4, 2005.

<sup>5</sup> Rueb, Emily S. "JPMorgan Chase Stops Funding Private Prison Companies, and Immigration Activists Applaud." *The New York Times*, March 6, 2019. <https://www.nytimes.com/2019/03/06/business/jp-morgan-prisons.html>



# OF DIVESTMENT

Wells Fargo, Bank of America, BNP Paribas, Suntrust, and Fifth Third Bancorp quickly followed<sup>6</sup> suit. Because the private prison industry depends heavily on borrowed money to survive, divestment has had significant impact on the private prison industry. After JP Morgan's announcement, GEO Group stock declined 16%.<sup>7</sup>

Divestment also aims to impose direct economic costs on the targeted industries. While some have questioned the efficacy of divesting from stocks, the rise of investing through mutual funds and exchange-traded funds (ETFs) is fundamentally shaping how change can be affected through investments. By refusing to invest in funds that include corporations in the prison-industrial complex, Harvard - as a significant institutional investor - can force the investment industry to end its vulgar dependency on incarceration.

This shift would deprive the prison industry of capital secured through the issuance of new shares and discourage the founding of new companies or ventures geared towards profiteering from prisons.



the harvard-to-prison pipeline report

**6**

Ludwig, Mike. "Big Banks Are Divesting From Private Prisons, Thanks to Anti-ICE Activism." *Truthout*, July 23, 2019.

**7**

Stockler, Asher. "Private Prison Company GEO Group Says Activists Pose Risk To Bottom Line." *Newsweek*, May 8, 2019.

## 04.2/ A Plan for Divestment

In the summer of 2019, a year after our campaign was formed, prison divestment news abounded in the media. In quick succession, SunTrust, Bank of America, BNP Paribas, and Fifth Third Bancorp joined JP Morgan Chase and Wells Fargo pledging to no longer finance private prison companies. The New York State Senate passed Senate Bill 5433, which would prohibit state-chartered banks from “investing in and providing financing to private prisons.” And at summer’s end, the state of California banned private prisons altogether. It was clear that momentum was gathering for prison divestment.

We greeted this news with mixed emotions. On the one hand, we were overjoyed for our fellow organizers around the country. We knew that each new high-profile divestment decision would not only move us closer to the horizon of abolition, but also strengthened our one case for divestment. Divestment is not only a moral necessity, but eminently possible and financially feasible for even the most profit-hungry institutions. On the other hand, we knew that Harvard can be especially unyielding, even in the face of overwhelming evidence and withering public condemnation. *We don’t run with the pack*, Harvard likes to boast, even if the pack is running away from moral

disaster. Case in point: Harvard has the ignominious distinction of being the very last university to divest from companies doing business with the apartheid regime in South Africa.

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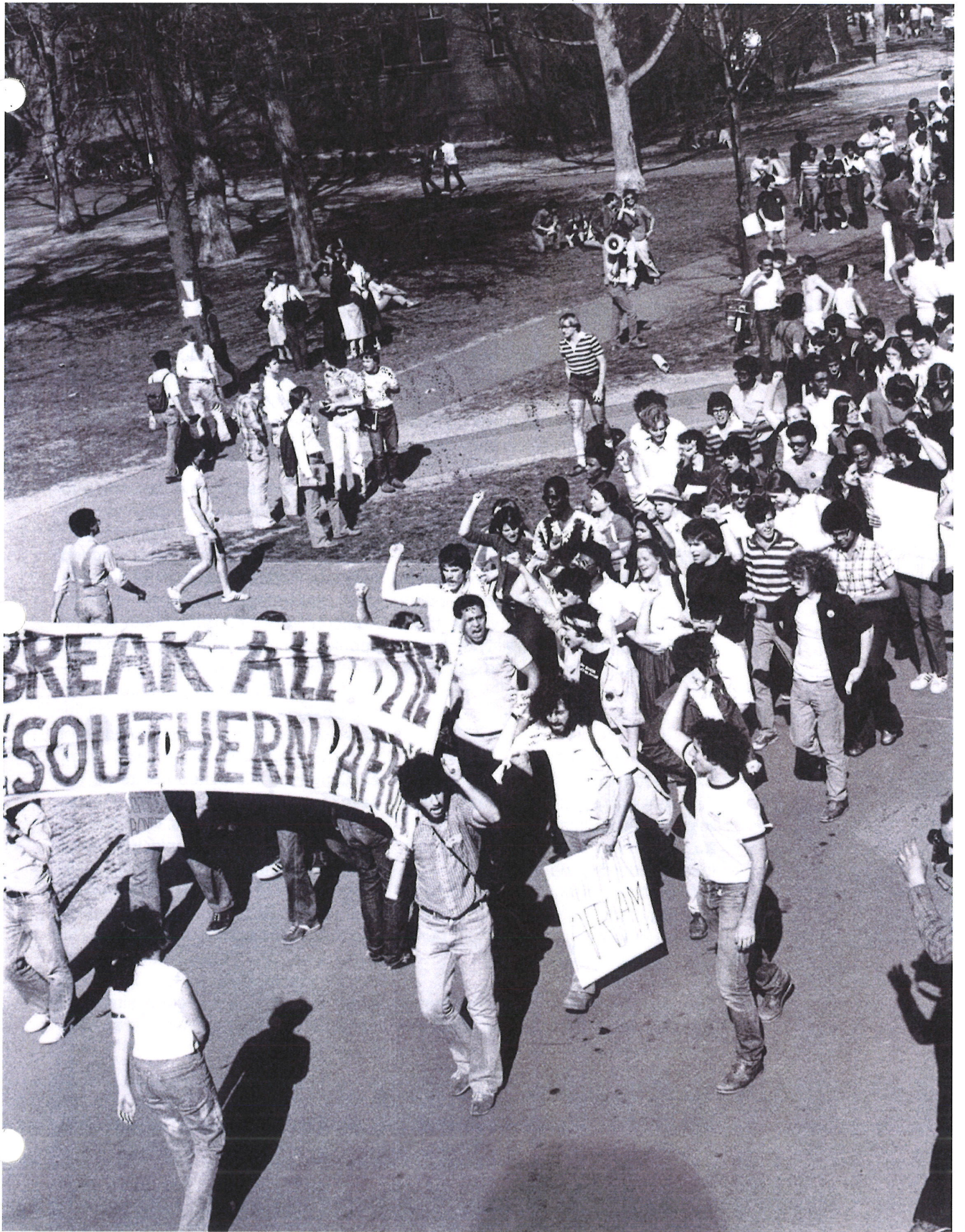
**Case in point: Harvard has the ignominious distinction of being the very last university to divest from companies doing business with the apartheid regime in South Africa.**

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Not only did the University only partially divest from apartheid SA, but it did so when the gesture was all but meaningless. The fight had been fought and won. Harvard simply realized it would not be prudent to go down in history as supporters of Hendrik Verwoerd and P.W. Botha.

And while times have changed and university presidents have come and gone, this brand of moral neglect seems to be an indelible feature of the institution. Harvard President Bacow demonstrated this when he low-balled Harvard’s investments in the prison-industrial







complex to HPDC organizers in April 2019. In Section 2.1, we have shown how this figure, presented by Bacow, is false and misleading. But we noted at the time that logic could have taken President Bacow in one of two directions: *this is so low, we may as well divest; or, this is so low, there is no need to divest.*

We know which direction he chose as there have been no good-faith efforts to engage our demands. Instead, his actions suggest that Harvard believes it has a right to profiteer from caging Black, Brown, and poor people.

Knowing that we would continue facing this type of resistance from Harvard leadership — a kind of narcissism that admits no flaws and permits no criticism - we consulted with a team of investors to investigate two of Harvard's three claims about the impossibility of divestment. Those truth claims, in summary, are:

**Those truth claims, in summary, are:**

- 1./** Divestment would politicize an endowment that is not political and cannot sustain politicization;
- 2./** Divestment would threaten the institution financially; and,
- 3./** Divestment of funds that are managed externally and consist of instruments whose composite funds are fluid (funds of funds) is unfeasible.

This first claim can be easily demolished by Harvard's own past words and actions. Harvard is - after all - signatory to the United Nations' Principles for Responsible Investment, which holds that fiduciary decisions be made with

consideration given to pressing issues of social, environmental, and corporate governance. And Harvard has acknowledged that the political valence of some of its investments merit divestment. In addition to its partial divestment from apartheid, it divested in from the tobacco industry in 1989; and in 2005 and 2006, Harvard divested from certain companies involved in oil production in Sudan during the genocide. To claim now that its investment portfolio is not political and should not be subject to political considerations is dishonest at best.

However, assessing the second and third claims we knew would require more financial expertise than we ourselves possess. Fortunately, we reached out to a national network of responsible investment experts for opinion. Additionally, we consulted with several people who have experience with large investment portfolios about the validity of Harvard's claims. Although, from our position we see no compatibility between abolition and the structures of financial capitalism, we entertain their challenges to the stated points for the sake of addressing the fallacies of these claims on their own terms. We also consulted with several people who have experience with large investment portfolios about the validity of Harvard's claims. According to these investors, the news for Harvard is not good. The second and third claims about divestment's feasibility and its potential to bring on economic insecurity simply do not hold up. *What follows is a summation of their findings:*

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## The Feasibility of Re-structuring the Endowment

Early on in our consultation with the racial justice investors, one of them told us in no uncertain terms:

"It's unfortunate that Harvard continues to give obsolete arguments for why the endowment can't be restructured. The truth is that universities can ethically restructure their endowments and many have. Harvard really should be a leader in this movement rather than being so far behind the curve."

So what would it take to ethically re-structure Harvard's endowment so that it no longer includes investments in the prison-industrial complex?

As we have detailed, the complex is immense and far-reaching. It encompasses innumerable industries and shaped fundamentally contemporary society. As such, it can seem daunting to consider divesting from all companies that benefit from human caging. But there are ways to sever its major limbs, stem its profitability, and clear the path towards abolition. Doing so involves identifying companies of foremost concern, which we have provided above, and slating them for divestment.

Feasibility is also a matter of cost. Here there is also reassuring news. These responsible investment experts stress that divestment screens can be managed and rebalanced to prevent a decrease in performance. Indeed, analysis of the aggregated evidence of 2,200 empirical studies found that responsible investment perform just as well as traditional investments.<sup>1</sup> Other studies back these findings. A TIAA

analysis of leading socially responsible investing equity indices in 2017 found no statistical difference in return compared to broad market benchmarks, while another study comparing screened socially responsible investment with conventional indices found that responsible investing does not result in lower returns. Far from being a drain on performance, in fact, experts say that avoiding harmful industries is sound risk management.<sup>2</sup> The decisions of large banks like JPMorgan Chase to cut ties with CoreCivic and GEO Group partly reflected their determination that the private prison sector had become too risky. Private prison stocks swung wildly between the Obama and Trump administrations, and future legal changes would bring more volatility and risk. Overall, leading research suggests that responsible business practices and SRI are linked to better financial performance.<sup>3</sup> That's why smart investors are paying new attention to social and environmental issues. That includes a wave of big investors (now totalling \$6 trillion in assets)<sup>4</sup> that have divested from risky oil companies.

And while the investment industry is thick with technical and legal complexities that might seem to be obstacles to divestment, Harvard with its immense resources can draw on the expertise of its neighbors. As one racial justice investor put it, "socially responsible investing (SRI) is everywhere in the industry right now, and Boston is the world capital." Harvard need only cross the street to find the expertise necessary to execute a plan for divestment.

**1** Gunnar Friede, Timo Busch & Alexander Bassen (2015) ESG and financial performance: aggregated evidence from more than 2000 empirical studies, *Journal of Sustainable Finance & Investment*, 5:4, 210-233.

**2** Stringer, Scott M. and Javier H. Valdés. "More Cities and States Should Divest From Private Prisons." *The New York Times*, July 30, 2018.

**3** Clark, Gordon L., Andreas Feiner, and Michael Viehs. "From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance." *SSRN Electronic Journal*, 2014.

**4** Carrington, Damian. "Fossil fuel divestment funds rise to \$6tn." *The Guardian*, Sept 10, 2018.

What's more, the size of Harvard's portfolio allows it significant power in making what the investment industry at large might be considered the unconventional demands. Having led so many innovations in modern nonprofit endowment management, Harvard is well positioned to convene peers, service providers, and other actors in order to bring new innovations. "External fund managers and investment consultants can be directed to do things," one investor said, "And funds of funds can be screened. These are not unthinkable steps." In fact, they are becoming more and more commonplace.

### **The Process of Divestment**

The plan to divest, therefore, begins with a strategic divestment plan or process. First, Harvard, directly or more likely via the HMC, would approach its fund managers. These are internal (HMC) money managers or external shops that manage funds on behalf of the university. Harvard would first instruct its managers to locate problematic investments - guided by a list of companies of concern determined in collaboration with the Harvard Prison Divestment Campaign. Managers would be instructed to report to Harvard on those investments so that the university can review and publish them annually. Once the extent of Harvard's investments is established, fund managers would proceed with divestment — proceeding carefully but expeditiously on a "best efforts" basis. Fund managers would execute Harvard's overall instruction to divest in good faith, and each year report on progress — this includes disclosing any divestments that were

not achieved along with a reason and a plan of action or intention for the following year.

For mutual funds and other co-mingled vehicles where Harvard is a minority investor and cannot dictate screening, Harvard must make and report on best efforts to find alternative funds/vehicles. In this, Harvard can work with consultants and gather peers who might similarly want to invest in such products. Harvard can help convene a market for new pooled products that screen out companies profiting from the prison industrial complex. This would be a gradual process, but considering Harvard's position, it would not take very long to embark on the first steps.

Moreover, this process would occur in the name and with the express goal of transparency. As the asset owner, Harvard has the right and the power to insist on transparency from its fund managers, and to pass that transparency on to its grateful community in the form of public reporting. This reporting process would take place on at least an annual basis, ensuring that companies of concern do not creep back into Harvard's indirect investments and that companies that become newly entangled in the prison-industrial complex are adequately divested from.

While we seek to avoid the stock and bonds of companies that profit from the PIC, companies, to be clear, are just one asset class of concern. But we also seek to avoid involvement via venture capital, private equity, and other asset classes. Divestment of these assets would be largely similar to the process

outlined above, in which Harvard iteratively instructs fund managers of their divestment expectations, receives and reviews annual reports on their progress, course-corrects each year where necessary, and publishes information to ensure transparency and accountability to the broader community.

The above is not a prescription. It is the institution's obligation and prerogative to pursue divestment in good faith and in keeping, to the best of its ability, to the full scope of its obligations, opportunities, and constraints. Rather, our purpose in laying out a blueprint for divestment is to dispel the myths that it is impossible. We hope that Harvard's reticence will soon yield to courage and that it will trust in its ability to divest.

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**“A wall  
is just a  
wall and  
nothing  
more at all.  
IT CAN BE  
BROKEN  
DOWN.”**

**- Assata Shakur**

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the harvard-to-prison pipeline report





- REINVEST  
THE PEOPLE  
THE LAND

HARVARD DONORS DIVEST  
HARVARD ACCL.ORG

DIVEST - REINVEST  
FREE THE PEOPLE  
FREE THE LAND

BIT.LY/HARVARD DONORS DIVEST  
HARVARD ACCL.ORG





## Repair and Reinvest

reinvestment is an opening to the path to reparative justice.<sup>1</sup>

04.3/

At the start of Black History Month two years ago, the Black Student Union at California State University, Los Angeles, asked the school to divest from then-private prison contractor Wells Fargo. The BSU also demanded that the money be reinvested into funding the recruitment of black prospective students to the campus, developing a living-learning residence community for black students, and implementing mandatory coursework beyond the white-western canon, and race and ethnicity studies for the entire student body.

This focus was critical. In addition to divestment, reinvestment is critical for uplifting communities that have been harmed by systems of oppression. We need reinvestment to build the liberatory, supportive communities where each of us can thrive. For example, as communities rally to close jails and prisons, local governments<sup>2</sup> sell so-called "modernized prisons" plans to build essentially the same monuments to violence that historically led to community devastation. Prison profiteers sell ankle monitors as "more humane" alternatives, all while expanding the tendrils of who is under state surveillance.

Our demands, therefore, are explicitly twofold. We demand that Harvard

disclose and divest, but we also demand that it reinvest in the communities that have borne the burden and violence of incarceration, enslavement, policing and control since the founding of this school in 1636.

Our calls for and commitment to reinvestment have led to the birth of our "Just Reinvestment Fund."<sup>3</sup> Through the Just Reinvestment Fund, we called on alumni to stop donating to Harvard until it takes meaningful steps toward these demands, instead redistributing its wealth to local organizations, including the Boston Ujima Project,<sup>4</sup> that are working toward building wealth for black, brown, and poor communities.

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**We demand that Harvard disclose and divest, but we also demand that it reinvest in the communities that have borne the burden and violence of incarceration, enslavement, policing and control since the founding of this school in 1636.**

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<sup>1</sup> A version of this chapter was originally published in *The Nation*.

<sup>2</sup> Lau, Maya. "In landmark move, L.A. County will replace Men's Central Jail with mental health hospital for inmates." *The Los Angeles Times*, Feb 13, 2019.

<sup>3</sup> Center for Economic Democracy. "Just Reinvestment Fund." Accessed Oct 1, 2019.

<sup>4</sup> Boston Ujima Project. Accessed Oct 1, 2019.

In Boston, the Ujima Project, a recipient of money raised through the Just Reinvestment Fund, is practicing in real time what a self-determined “community economy” looks like. Part of the Ujima Project’s work includes showing the marked difference between representative democracy and deep democracy: In the former, a local government builds a park and then, in order to get buy-in, asks the community to vote on whether the benches should be painted red or blue. In contrast, deep democracy engages the community at the start, asking: Do you even want a park? If so, what would you like to be included in a park? If not, what should go there instead?

By formulating these questions and engaging neighbors to answer them—through community-wide assemblies, workshops, and creative mechanisms to facilitate voting—Ujima embodies the process of building new decision-making structures—the scaffolding of a people’s economy. Alongside more than 450 voting and solidarity members rooted in Boston’s black, brown, and working-class neighborhoods, the Ujima Project aims to model an economy that can begin to heal generations of structural racism, and make way for a future where all community members can not only survive but thrive in the city they call home.

Many communities, like the one that has formed around the Ujima Project in Boston, are building out systems of self-governing cooperative economics that allow us to practice our politics in real time, building community land trusts, worker coops, and time banks

where relational co-building occurs daily. In doing so, they are seizing their right to self-determination, acknowledging the often-devalued labor of marginalized people, and redefining “wealth” outside of exploitation.

These new, non-exploitative, and democratic economic systems will hold together the world without prisons, without borders, and without violence—but they need support. For centuries, the most powerful figures in our economy have systematically benefited from, and then divested from, the communities built by black, brown, poor, and working-class people.

Oppression bars communities from resources to facilitate the dreaming needed to contemplate liberated futures. For us, divestment and reinvestment are tactics in service of a long-game vision of abolition, which is the process of redefining safety away from police and prisons, but also moving into new systems of relationship with one another.

The creation of the Just Reinvestment fund recognizes that the journey to reinvestment is as important as the destination. For reinvestment to accurately reflect relationships on the ground, it has to be locally based, democratically self-governed, and rooted in community values and mutual aid. The processes appropriate for any given community will need to be determined collaboratively—and those decisions can be made only through deep relationships. We thus ask that Harvard work with and hear the voices of communities that its investments in the prison-industrial-complex have

harmed. Instead of gentrifying these communities, its vast resources can be used to empower them.

Typically, our system of wealth distribution reproduces hierarchy. Most philanthropists set charitable priorities based on personal interest. Neither is the current system of tax distribution designed to help those most in need: the government increased spending on criminalization to \$180 billion per year in this country, rather than allocating sufficient funding for social investments in housing, education, and health care.

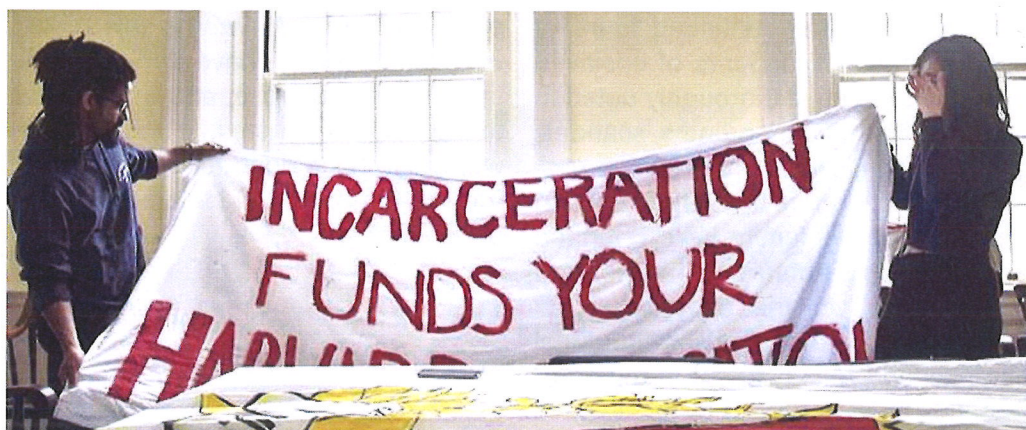
Yes, we are calling for Harvard University to reinvest and for alumni and donors to engage in this work. This university has gained power through stolen wealth, but it can act as an agent of the ethical and civic leadership it claims to espouse by repairing the harm it has profited from through allocating resources for the work that heals the core of the intergenerational exploitation it has perpetuated.

We have inherited a society in which we bear witness to the unaddressed harms every day—the disrepair of our

environment, disrepair of an economy based in violence, disrepair of our relationships with each other and with ourselves.

Reinvestment is an opening to the path to reparative justice. As such, a reinvestment conversation cannot be disconnected from reparations. Many people, including presidential candidates, struggle to understand reparations, despite the fact that black and indigenous communities have been demanding and explaining it for centuries. What politicians often miss is that reinvestment as reparatory justice is not just about moving money; it requires redesigning our whole society's relationship to resources.

As young people, we see that the world is at a turning point. We can heal our relationships with ourselves only as we heal our relationships with each other—and that cannot happen when we are resourcing our separation with walls, borders, and systems of control and domination. Through reinvestment, we are choosing to turn toward non-exploitation and the liberation of all people.





# 05 | CONCLUSION

## Harvard's Legacy

Harvard can be a leader in the fight to end the prison-industrial complex. While peer universities like Columbia<sup>1</sup> and Georgetown<sup>2</sup> have already moved away from investing in private prisons, Harvard would be the first university to divest from prisons (private and public), youth facilities, immigrant detention and a broad range of companies that help expand the role of these violent institutions in our society. The scale of Harvard's holdings and its reputation as an important institutional investor could affect a historic change in higher education and beyond.

Recently, Harvard has acknowledged its historical culpability in upholding and profiting from the system of slavery. However, beyond a commemorative plaque, the university has done little to substantively address slavery's pernicious legacies and continued to inflict harm on the descendants of enslaved people (as we have thoroughly noted in Section 1.3). In recent months, scandals involving admissions and the high profile crimes of donors like Jeffrey Epstein and the Sackler family have reignited abiding doubts about whether Harvard is committed to the common good. Divestment from the prison-industrial complex and reinvestment in the communities most impacted by its violence

<sup>1</sup> Chan, Wilfred. "Columbia becomes first U.S. university to divest from prisons." *CNN*, June 24, 2015.

<sup>2</sup> Pankova, Elizabeth. "Board Of Directors Announces Continued Avoidance Of Investment In Private Prisons." *The Georgetown Voice*, Oct 14, 2017.

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**It is time this institution demonstrate some of the courage of its students and set itself on the long path towards justice.**

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would signal that Harvard is committed to more than just self-preservation by taking a concrete step to address its historical failures.

We have laid out in this report in detail the scope and horror of the prison industrial complex, the scale and specifics of Harvard's entanglement with it, the feasibility of divesting from it, and the necessity of reinvesting to repair harm done. In writing this report, we - as students - have dedicated our time, labor, expertise, and imagination to the vision of a more just and liberated world. We have done for Harvard what the institution should have long ago done for itself.

**We demand Harvard disclose, divest, and reinvest.**







# 06 | SOURCES

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**Images:**

cover: Harvard Prison Divestment Campaign, 2019.  
 p13: Harvard Prison Divestment Campaign, 2019.  
 p17: Jackson, Bruce. *Cummins Prison Farm, Grady*. 1975. Albright-Knox Art Gallery, New York.  
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**Appendix:****Section 2.1, The Numbers:**

Using the definition of the prison-industrial complex provided in Chapter 1, we identified, read, and fact-checked a range of publications listing specific companies whose business models rely heavily on human caging, control, and confinement. See *the top sources we used to identify our list of target companies below*:

**Investigate**

<http://investigate.afsc.org/prisons>

(maintained by the American Friends Service Committee)

**The Prison Industrial Complex: Mapping Private Sector Players**

<https://worthrises.org/resources>

(published by Worth Rises)

**U.S. For-Profit Privatized Correctional Services**

[https://www.prisonlegalnews.org/media/publications/Other%20privatized\\_1.pdf](https://www.prisonlegalnews.org/media/publications/Other%20privatized_1.pdf)

(compiled by Prison Legal News)

**Prison Labor in the United States: An Investor Perspective**

<https://northstarasset.com/creating-change/prison-labor/>

(published by NorthStar Asset Management)

**Police Brutality Bonds: How Wall Street Profits from Police Violence**

<https://www.acrecampaigns.org/pbb>

(published by the Action Center on Race & the Economy (ACRE))

**The Banks That Finance Private Prison Companies**

<https://www.inthepublicinterest.org/report-the-banks-that-finance-private-prison-companies/>

(published by In The Public Interest)

**For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice**

<http://www.justicepolicy.org/research/4388>

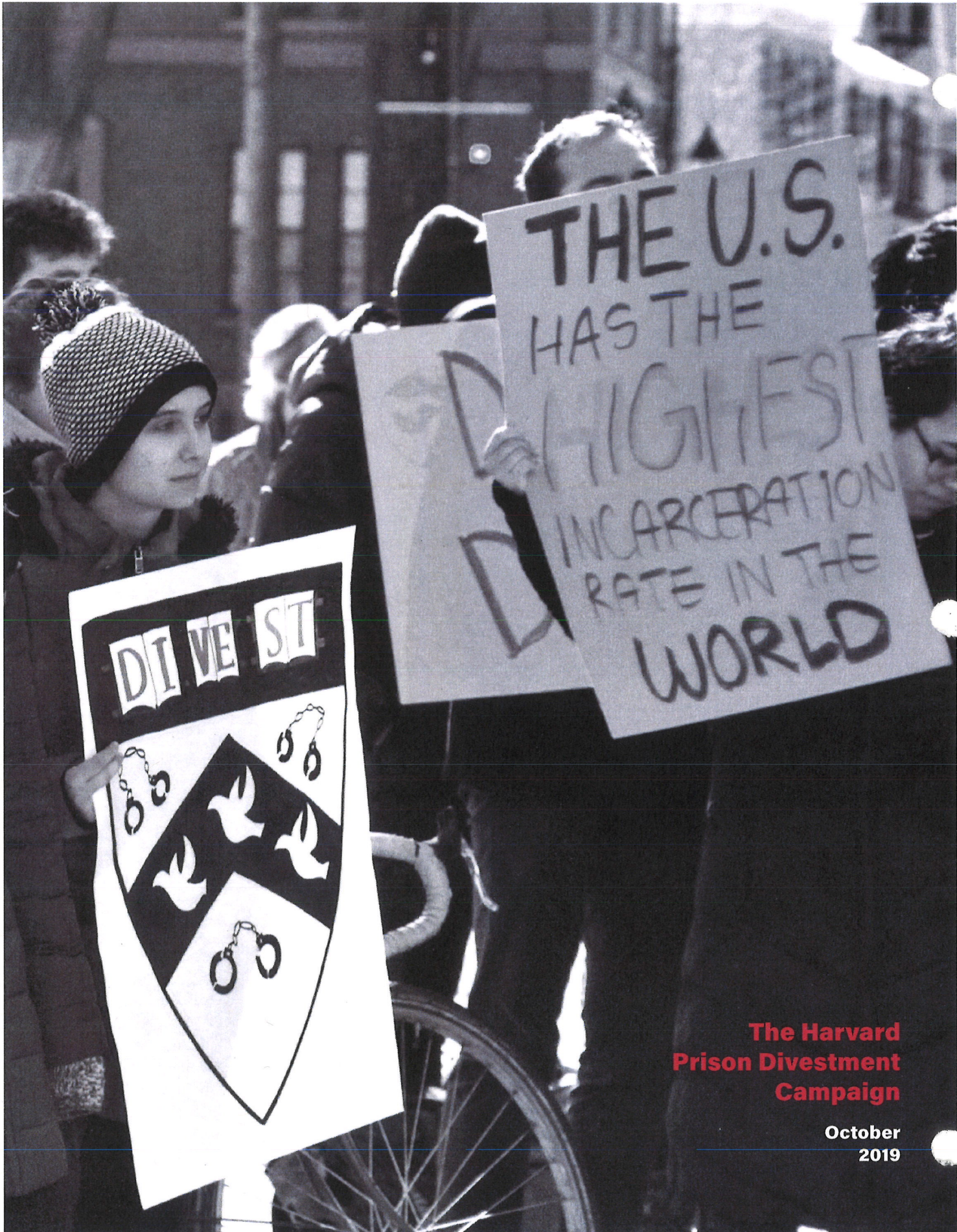
(published by the Justice Policy Institute)

**Who's Behind ICE? The Tech and Data Companies Fueling Deportations**

<https://mijente.net/2018/10/23/whos-behind-ice-the-tech-companies-fueling-deportations/>

(published jointly by Mijente, the National Immigration Project, and the Immigrant Defense Project.





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THE U.S.  
HAS THE  
HIGHEST  
INCARCERATION  
RATE IN THE  
WORLD

**The Harvard  
Prison Divestment  
Campaign**

October  
2019



# EXHIBIT F

The Securities and Exchange Commission has not necessarily reviewed the information in this filing and has not determined if it is accurate and complete.

The reader should not assume that the information is accurate and complete.

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 13F**

**OMB APPROVAL**

OMB Number: 3235-0006  
 Expires: Oct 31, 2018  
 Estimated average burden hours per response: 23.8

**FORM 13F INFORMATION TABLE**

COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5	COLUMN 6	COLUMN 7	COLUMN 8
NAME OF ISSUER	TITLE OF CLASS	CUSIP	VALUE (x\$1000)	SHRS SH/ OR	PUT/ INVESTMENT	OTHER	VOTING AUTHORITY
				PRN AMT	DISCRETION	MANAGER	SOLE SHARED NONE
ALPHABET INC	CAP STK CLA	02079K305	89,518	66,835 SH	SOLE		66,835 0 0
BOOKING HLDGS INC	COM	09857L108	194,663	94,785 SH	SOLE		94,785 0 0
FACEBOOK INC	CL A	30303M102	283,253	1,380,037 SH	SOLE		1,380,037 0 0
FULCRUM THERAPEUTICS INC	COM	359616109	6,834	410,714 SH	SOLE		410,714 0 0
INVESCO QQQ TR	UNIT SER 1	46090E103	11,425	53,738 SH	SOLE		53,738 0 0
ISHARES TR	CORE S&P500 ETF	464287200	22,704	70,238 SH	SOLE		70,238 0 0
ISHARES TR	CORE S&P MCP ETF	464287507	5,434	26,403 SH	SOLE		26,403 0 0
ISHARES TR	CORE S&P SCP ETF	464287804	5,104	60,873 SH	SOLE		60,873 0 0
MAGENTA THERAPEUTICS INC	COM	55910K108	5,042	332,610 SH	SOLE		332,610 0 0
NEON THERAPEUTICS INC	COM	64050Y100	597	505,871 SH	SOLE		505,871 0 0
NUCANA PLC	SPONSORED ADR	67022C106	17,263	2,911,111 SH	SOLE		2,911,111 0 0
PALO ALTO NETWORKS INC	COM	697435105	207,726	898,273 SH	SOLE		898,273 0 0
SPDR GOLD TRUST	GOLD SHS	78463V107	14,409	100,835 SH	SOLE		100,835 0 0
UBER TECHNOLOGIES INC	COM	90353T100	53,515	1,799,418 SH	SOLE		1,799,418 0 0



VANGUARD GROUP	DIV APP ETF	921908844	356	2,858	SH	SOLE	2,858	0	0
VANGUARD INTL EQUITY INDEX F	FTSE EMR MKT ETF	922042858	7,702	173,197	SH	SOLE	173,197	0	0
VANGUARD TAX MANAGED INTL FD	FTSE DEV MKT ETF	921943858	13,763	312,360	SH	SOLE	312,360	0	0
VANGUARD WORLD FD	EXTENDED DUR	921910709	6,144	47,266	SH	SOLE	47,266	0	0

# EXHIBIT G

and disclosure on climate change related policy activity.

Harvard is also a signatory to the PRI's [Global Statement on Investor Obligations and Duties](#). This statement calls for policymakers to clarify investors' obligations and duties, in particular, in relation to the integration of ESG issues into investment practice. In turn, the statement calls for investors to take account of ESG issues in their investment processes and decision-making, encourage high standards of ESG performance in the companies or other entities in which they are invested, and support the stability and resilience of the financial system.

Members of HMC's Compliance team have joined the PRI's Hedge Fund Advisory Committee. This Committee aims to develop tools to facilitate the implementation of ESG factors in the investment process across the hedge fund industry. Current projects include a responsible investment due diligence questionnaire for hedge funds, as well as an industry guide for asset owners.

We are also a signatory to the [CDP's climate change program](#). The CDP, formerly known as the Carbon Disclosure Project, is an international non-profit organization that works with governments, public companies, and over 800 institutional investors to drive environmental disclosure and performance of publicly listed companies.

### **Ethical Considerations and Investment Exclusions**

As an academic institution, Harvard holds its endowment funds in trust to advance its programs of education and research, which constitute the University's distinctive way of serving society. These funds have been given to Harvard by generous benefactors over many years to advance academic aims, not to serve other purposes, however worthy. As such, the University maintains a strong presumption against divesting investment assets for reasons unrelated to the endowment's financial strength and its capacity to further Harvard's academic goals. Harvard conceives of the endowment fundamentally as an economic resource, not as a lever to advance political positions or to exert economic pressure for social purposes, which could entail serious risks to the independence of the academic enterprise and the ideal of free inquiry.

At the same time, the University recognizes that very rare occasions may arise when companies' activities are so deeply repugnant and ethically unjustifiable as to warrant the University's institutional dissociation from those activities. In recent decades, such ethical considerations have led the Harvard Corporation to instruct HMC not to own shares in certain companies involved in the perpetuation of apartheid in South Africa, in the manufacture of tobacco products, and in enabling genocide in Darfur.

When, on rare occasions, the University issues investment restrictions, limitations, and instructions to HMC, we extend these restrictions to direct holdings by our internal portfolio managers, as well as to direct holdings by investment advisers trading in the name of President and Fellows of Harvard College through separately-managed accounts. We do not extend these restrictions to investment advisers of commingled funds where Harvard is not the sole investor.

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[Sustainable Investment Policy](#) >



# EXHIBIT H

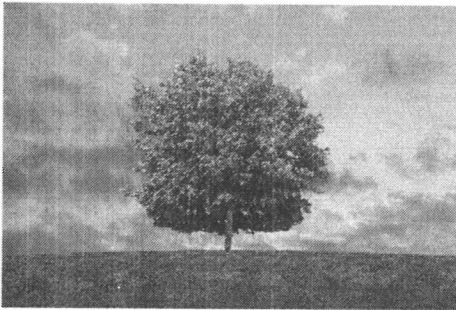
# Investing for the Long-Term

As a long-term investor, HMC focuses on environmental, social, and governance (ESG) factors that may impact the performance of our investments. ESG factors are conditions, circumstances, or issues that can be found in areas such as energy consumption, greenhouse gas emissions, climate change, resource scarcity, water use, waste management, health and safety, employee productivity, diversity and inclusion, supply chain risk management, human rights (including workers' rights), and effective board oversight.

We believe that considering ESG risk factors in our investment analysis and decision-making processes is aligned with our mission to help ensure that Harvard University has the financial resources to confidently maintain and expand its leadership in education and research for future generations.

## Approach to Sustainable Investing

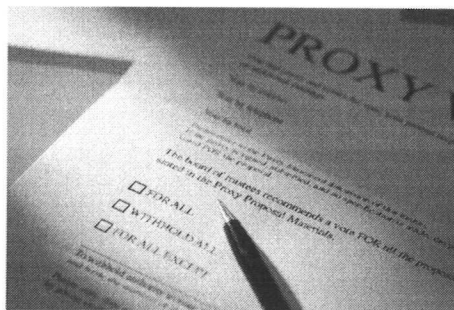
A three-pronged approach guides HMC's sustainable investment work and priorities:



### ESG INTEGRATION

Incorporate environmental, social, and governance factors into manager selection, underwriting, analysis, and monitoring.

[Read More](#)



### ACTIVE OWNERSHIP

Exercise our client's shareholder voting rights.

[Read More](#)



### COLLABORATION

Work with global investors and endowments to develop and define sustainable investment best practices.

[Read More](#)

## Environmental, Social, and Governance Integration

ESG integration is a term used to describe the incorporation of environmental, social, and governance factors—both risk factors and opportunity sets—into the investment underwriting process. In particular, investors should consider ESG factors that, when relevant, may have a material impact on the financial performance of an investment. ESG factors could include: energy consumption, greenhouse gas emissions, climate change, resource scarcity, water use, waste management, health and safety, employee productivity, diversity and inclusion, supply chain risk management, human rights, and effective board oversight.

HMC strongly believes that considering all data is not only in line with our fiduciary duty, but simply something that thoughtful investors do.

### Financial Materiality

The degree to which ESG factors are relevant to an investment depends on the company or asset, the industry in which it operates, and the type of investment strategy and vehicle. For example, ESG factors may have a direct impact on a company's profitability: increased regulation, such as changes to environmental laws or governance codes, may lead to rising operating costs; health or safety violations may lead to fines or legal liability; and issues around emissions, such as methane management for natural gas and oil operations, may equate to lost product and lead to reputational damage. These factors may also have an indirect financial impact by affecting a company's long-term performance, such as its ability to attract talented employees, retain customer loyalty, and protect its brand.

### Natural Resources

As a long-term investor, HMC aims to be a good steward of the land we own and manage. We believe that ethical conduct, responsible stewardship of the environment, and respect for those with whom we do business are essential to the performance of our farmland and forestry investments. We work closely with our managers and operators to support sound agricultural/forestry practices and look to meet or exceed all environmental standards and labor regulations. Learn more about our priorities in the Natural Resources Sustainable Investing Guidelines.



## Active Ownership

As stewards of Harvard's largest financial asset, we believe that our managers should adopt and promote best practices in corporate governance. This means engaging with portfolio companies where appropriate and responsibly exercising voting rights.

and deep body of precedent, in areas that range from human rights to environmental practices, from equal employment opportunity to corporate political contributions, and beyond.

The ACSR presents its recommendations, along with its reasoning, to the Corporation Committee on Shareholder Responsibility (CCSR)—a committee comprised of members from the Harvard Corporation (President & Fellows of Harvard College). In light of the ACSR's analysis of issues and consideration of precedent, the CCSR exercises the Harvard Corporation's fiduciary duty to determine how Harvard votes on social responsibility proxies each year.

Recent reports and further background on the committees' work may be found on the University's Shareholder Responsibility Committees website.

While we do not require our external managers to follow these recommendations, or even necessarily expect them to share our views on every issue, we do expect our managers to have a general approach to shareholder responsibility and to make informed decisions in their voting activity.



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## Collaboration

Harvard University was the first U.S. endowment to become a signatory to the United Nations-sponsored Principles for Responsible Investment (PRI). Accordingly, we are committed to considering ESG factors in the course of our underwriting, analysis, and monitoring process.

We have joined initiatives that align with—and help guide—our approach to sustainable investment, and we actively work with peers and investors to advance shared goals. For example, HMC is an active member of the PRI Investor Working Group on Corporate Climate Change Lobbying. This initiative urges businesses to take action on climate change, including through lobbying actions that are consistent with the goal of preventing climate change. As a lead investor of this working group, the Harvard endowment is a signatory to the Investor Expectations on Corporate Climate Lobbying, setting out expectations for company practice and disclosure on climate change related policy activity.

Harvard is also a signatory to the PRI's Global Statement on Investor Obligations and Duties. This statement calls for policymakers to clarify investors' obligations and duties, in particular, in relation to the integration of ESG issues into investment practice. In turn, the statement calls for investors to take account of environmental, social, and governance issues in their investment processes and decision-making, encourage high standards of environmental, social, and governance performance in the companies or other entities in which they are invested, and support the stability and resilience of the financial system.

Members of HMC's Compliance team have joined the PRI's Hedge Fund Advisory Committee. This Committee aims to develop tools to facilitate the implementation of environmental, social, and governance factors in the investment process across the hedge fund



international non-profit organization that works with governments, public companies, and over 800 institutional investors to drive environmental disclosure and performance of publicly listed companies.

When we engage with new external managers, we look for a knowledge of ESG factors that could have a material impact on the financial performance of their portfolios, a willingness to engage in a dialogue on sustainability, and a shared desire to see continuous improvement in this arena. For existing managers, we hope that this information will serve to clarify our sustainable investing practices and add value to our ongoing collaboration.

We expect our managers to report to us on a regular basis and in sufficient detail regarding their investment activities, including ESG integration, shareholder engagement, proxy voting activities, and the relevant outcomes. Through disclosure and dialogue, we can evaluate the full performance of our investment.



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## Additional Resources

[HMC Sustainable Investment Policy](#)

[Sustainable Investing Overview for Managers](#)

[2019 Sustainable Investing Update](#)



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## Affiliated Organizations

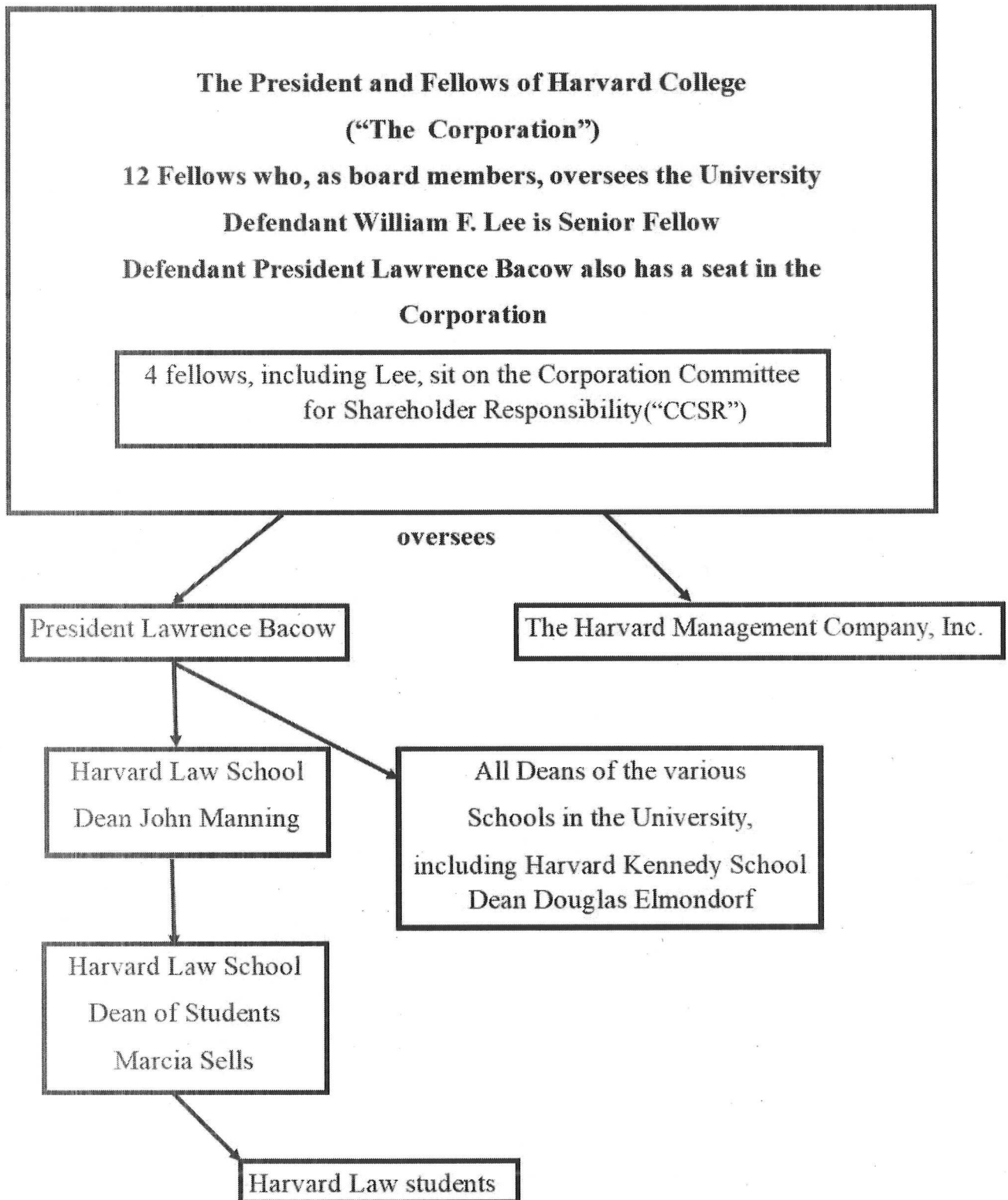


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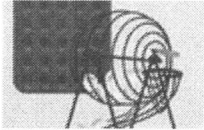
# EXHIBIT I

# Harvard University Bureaucracy





# EXHIBIT J

**NEWS**The New Gen Ed Lottery System,  
Explained**NEWS**Armed Individuals  
Harvard Square Arr

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## Op Eds

# Recognizing Slavery at Harvard

By Drew G. Faust

March 30, 2016

371

I write today about history, about legacies, and about our responsibility to our past and our future. On the morning of April 6, I, joined by Congressman John Lewis, will install a plaque on Wadsworth House in memory of four enslaved persons who lived and worked there during the 18th century in the households of two Harvard presidents. I have also convened a committee of historians from our faculty to advise me about other sites on campus that should be similarly recognized as significant symbols of Harvard's connections to slavery. Next March, with support from the Office of the President, the Radcliffe Institute will host a major conference on universities and slavery, offering a broader exploration of the complexities of our past.

Although we embrace and regularly celebrate the storied traditions of our nearly 400 year history, slavery is an aspect of Harvard's past that has rarely been acknowledged or invoked. The importance of slavery in early New England was long ignored even by historians, and the presence and contributions of people of African descent at Harvard have remained a largely untold story. But



## The Harvard Crimson

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in 1783, and Harvard continued to be indirectly involved through extensive financial and other ties to the slave South up to the time of emancipation. This is our history and our legacy, one we must fully acknowledge and understand in order to truly move beyond the painful injustices at its core. As the late John Hope Franklin, distinguished historian and Harvard Ph.D., put it, “Good history is a good foundation for a better present and future.”

We must explore this past first of all to recognize and honor the place and importance of enslaved individuals in our history. The plaque at Wadsworth will record the names of four women and men, Bilhah, Venus, Titus, and Juba, whose work formed a foundational part of what Harvard was in the 18th century and what it has since become. Until now, these laborers and their contributions, as well as the broader participation of people of color in early life at Harvard, have been all but invisible. The plaque is the beginning of an effort to remember them and our shared history.

There is a second essential purpose in confronting the distressing realities of America’s racial past and Harvard’s place within it. We need to understand the attitudes and assumptions that made the oppressions of slavery possible in order to overcome their vestiges in our own time. It should not be because we feel superior to our predecessors that we interrogate and challenge their actions. We should approach the past with humility because we too are humans with capacities for self-delusion, for moral failure and blindness, for inhumanity. If we can better understand how oppression and exploitation could seem commonplace to so many of those who built Harvard, we may better equip ourselves to combat our own shortcomings and to advance justice and equality in our own time. At its heart, this endeavor must be about “Veritas,” about developing a clear-sighted view of our past that can enable us to create a better future.

The past never dies or disappears. It continues to shape us in ways we should not try to erase or ignore. In more fully acknowledging our history, Harvard must do its part to undermine the legacies of race and slavery that continue to divide our nation.

*Drew G. Faust is the President of Harvard University.*

# Harvard and Slavery

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*The past never dies or disappears. It continues to shape us in ways we should not try to erase or ignore. In more fully acknowledging our history, Harvard must do its part to undermine the legacies of race and slavery that continue to divide our nation.*

—President Drew Gilpin Faust—

Under the leadership of University President and Lincoln Professor of History Drew Gilpin Faust, a range of scholarly, research, and engagement efforts are underway in order to more fully examine the history and legacy of slavery at Harvard. In April 2016, President Faust and Congressman John Lewis unveiled a [plaque on Wadsworth House](#) honoring four women and men -- Bilhah, Venus, Titus, and Juba -- who lived and worked there as enslaved persons in the 18th century. President Faust has also convened a faculty committee of historians from across Harvard to advise, research, and provide recommendations on University efforts and initiatives. The University hosted a [national academic conference](#) on March 3, 2017, which explored the relationships between slavery and universities, across the country and around the world.

## Recognizing Slavery at Harvard



By Drew Gilpin Faust, originally published March 30, 2016 in The Harvard Crimson

I write today about history, about legacies, and about our responsibility to our past and our future. On the morning of April 6, I, joined by Congressman John Lewis, will install a plaque on Wadsworth House in memory of four enslaved persons who lived and worked there during the 18th century in the households of two Harvard presidents. I have also convened a committee of historians from our faculty to advise me about other sites on campus that should be similarly recognized as significant symbols of Harvard's connections to slavery. Next March, with support from the Office of the President, the Radcliffe Institute will host a major conference on universities and slavery, offering a broader exploration of the complexities of our past.

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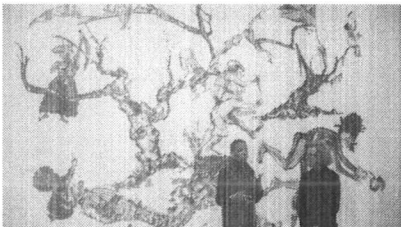
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## News

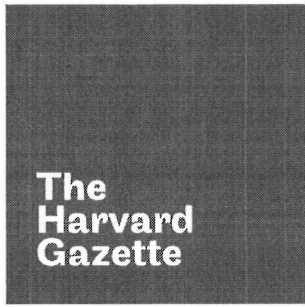


GAZETTE

### **At Art Museums, a new Kara Walker work**

Massive drawing and collage by the contemporary artist explores slavery's history and ongoing legacy

# EXHIBIT K



CAMPUS &amp; COMMUNITY

# Understanding Harvard's ties to slavery

In a discussion prior to a major conference, Faust amplifies the expanding effort to document a painful part of the University's past

Colleen Walsh  
Harvard Staff Writer  
February 28, 2017

*Last spring, Harvard President Drew Faust joined with Civil Rights icon and U.S. Rep. John Lewis to affix a plaque on Harvard's Wadsworth House in honor of Titus, Venus, Bilhah, and Juba, who lived and worked there as enslaved persons during the presidencies of Benjamin Wadsworth and Edward Holyoke in the 1700s. "Today we take an important step in the effort to explore the complexities of our past and to restore this painful dimension of Harvard's history to the understanding of our heritage," said Faust during the unveiling. "The past never dies or disappears. It continues to shape us in ways we should not try to erase or ignore."*

*This Friday, the University will take another step in exploring its long-ago ties to slavery with a major daylong symposium at the Radcliffe Institute for Advanced Study that will examine the relationship between slavery and universities.*

*Leading into the conference, the Gazette spoke with Faust about Harvard's ongoing commitment to acknowledging and understanding the grimmer aspects of its past.*

**GAZETTE:** Last year you, along with Congressman John Lewis, unveiled a plaque on Wadsworth House in honor of four enslaved persons who worked and lived there during the 18th century, and you urged in a Crimson editorial that the University more fully acknowledge



and understand its links to slavery. Is the upcoming conference at Radcliffe a next step in that commitment?

**FAUST:** We started planning the conference at the same time we were talking about and planning for the plaque, recognizing that we knew something about the history of slavery at Harvard — the four individuals honored on the plaque are a bit of our knowledge — but we knew there was much more. And we also knew that it would be beneficial to have a way of understanding what our peer institutions have learned about slavery on their campuses and how they've responded to it. And so the whole genesis of the conference was to bring the attention of the community here at Harvard to this part of Harvard's past, to explore it more fully, and to understand the ways other institutions have responded to the history of slavery in their environments. So it's as much an effort to raise awareness as it is an effort to learn more.

**GAZETTE:** How does Harvard come to grips with its early involvement in slavery when it, as with other early American colleges, has so few records on those who were considered property and often not even noticed historically? How do we properly honor what we barely can document now?

**FAUST:** This is so much the essence of expanding understanding of the history of slavery, which coincides with my time as a historian. When I got my Ph.D. in 1975, we were in the midst of an explosion of inquiries into the history of slavery. And for many generations people said, "Oh, we can't know anything about it." Then historians just got much more imaginative about the kinds of sources they used and the ways they looked for the past. And it affected what we knew about enslaved people and the system of slavery, but also more generally. It was called at the time "the history of the inarticulate," meaning we can't just settle for the history of statesmen and generals and people who kept extensive records.

If we want to understand the past in its full form, we have to be more ingenious in order to be able to trace the lives of women, of workers, of people who were not literate — and of people who were forbidden literacy, Americans who were enslaved. And so this whole explosion of historical resources came out of that commitment to expand the compass of who was included in our history.

One of the things happening now is that archivists, who have never looked for these things, are finding them in odd places. Titus, one of the enslaved persons from Wadsworth House, didn't leave extensive personal papers the way Charles William Eliot did, but if you dig around you can find property records, you can find baptismal records. For instance, we have found a lot about Native American history through archaeology here on campus, and similar kinds of archeological research have yielded a great deal of information about slave plantations in the South. So what are the means that we could employ to really look more assiduously for a

record that is there? I know it will be there. It may not be as full as the written records of the presidents of Harvard, but we are going to find a lot and already have found a lot.

**GAZETTE:** You are a historian of the Civil War, which was fought to end slavery in America. Do you see this effort by Harvard as a logical extension of your career and concerns?

**FAUST:** I grew up in Virginia, and Southern history was a really rich area of historical practice when I entered the profession. It was around the time that the Civil Rights Movement had brought issues of race front and center in American life. Studying Southern history always meant trying to understand a burdensome past and a past that, for me, had messages about the kind of delusions and inhumanities we may be embracing in the present.

So how do we learn to interrogate ourselves and to understand the complexities of what humans of any era face and how they come to find a moral path, or not? That to me is a fundamental lesson of this history. And I think for much of my lifetime that had been confined to thinking about the American South. I would say that has needed to extend much more broadly to the history of the nation as a whole. And indeed the historiography, what scholarship has done in the last 20 years, is to emphasize much more the complicity of the North and the presence of, first, slavery itself, and then the influences of slavery.

**GAZETTE:** Like many institutions of its age, Harvard has a long and complicated history related to race and slavery. It made efforts to end discrimination against African-Americans earlier than many other universities, and a large number of its students died fighting in the Civil War. What part of the past did Harvard eventually get right, and how do you see the University projecting that into the future?

**FAUST:** I think there have been very important voices here. We've had some extraordinary scholars of slavery. John Hope Franklin did his Ph.D. work at Harvard, W.E.B. Du Bois was here, so we've had a wonderful tradition of people contributing to understanding this past and to communicating about it to the larger American community. I think we should be really proud of that. But we've also had challenges throughout our history as well, and looking at the complexity of it, I think, is an important part of understanding our history as we move forward.

I also think that part of feeling you belong in this community is feeling that its history is your history. So I see this as aligned with the Presidential Task Force on Inclusion and Belonging, which we launched earlier this year. To have a more inclusive history is part of having a more inclusive present.

**GAZETTE:** The Harvard University Archives is mounting an exhibit to coincide with the Radcliffe conference. I understand you reviewed the material and even suggested additions to

the exhibition. Can you tell me what you suggested, and why you think this exhibition is so important?

**FAUST:** One of the things I suggested was the addition of materials and images related to Greenleaf, which now serves as the home for the dean of Radcliffe. When I was dean, I lived in Greenleaf for 6½ years. That house was built by a man named James Greenleaf who made his money in the cotton trade and spent half of every year in New Orleans and would bring his children and family — and as I understand it his cows — from Louisiana. The children wanted to have the same milk all year round, so presumably the cows grazed on that area that's between the A.R.T. [American Repertory Theater] and Greenleaf. His wealth and his ability to build that house was made possible by his history as a merchant and by the labor of enslaved cotton workers.

That was a piece of Harvard's heritage and an example of how slavery, which was illegal in New England, in Massachusetts after 1783, nevertheless was very much a presence in the economy in Massachusetts and New England. Slavery in that sense was nationwide even though the ownership of slaves after the end of the 1820s was restricted to the Southern states.

**GAZETTE:** What do you hope people will take away from the exhibition?

**FAUST:** Harvard is very conscious of and concerned about its history, and when I give speeches I am frequently referring to something Charles William Eliot said, or something talked about in 1636. We are very aware of the importance of our traditions, but we've only partially understood them. We need a fuller rendition of what the history of Harvard is, and it includes things that we are not proud of, but it also includes things that we are proud of.

We have to understand how those things fit together, the complexity of what builds an institution and how an institution evolves. One of the aspects of Harvard's past with slavery includes debates over it: how people in this community both defended it and opposed it, how there were abolitionists as well as really active anti-abolitionists on our campus. How do we understand those things? And how can people like us reconcile that people we see as our forebears took positions that we today find unthinkable?

**GAZETTE:** Last year you mentioned the appointment of a committee of Harvard historians to advise you on how to carry forward further research on the history of slavery and Harvard. Can you give us an update on the status of that committee and Harvard's plans moving forward for how to shed more light on this period?

**FAUST:** A number of the faculty have been advising and working on the conference happening later this week, so much of the early activity has been focused on that. But one thing I hope we will do is commemorate the history of slavery at Harvard in a very literal and

physical sense, which that plaque represents. Slavery was a part of this institution and I would like to have other sites that were significant in that history that we memorialize. I'd like to draw attention to the fact that this history had a physical place on our campus.

Then we will see what else comes out of the discussions this week. I am also going to fund a researcher to continue some of the work that students in Sven Beckert's seminar began in 2007, and that the researchers have undertaken recently in the treasure hunt in the archives, someone who will be charged with recreating the history, discovering the history of slavery at Harvard.

*For more information about the Radcliffe conference, [Universities and Slavery: Bound by History](#), visit its [website](#). The conference, which has reached attendance capacity, will be webcast live, in its entirety, and videos will be available online after the conference.*

*A recently unveiled Harvard [website](#) will focus on ongoing efforts to understand the history and legacy of slavery at the University.*



# EXHIBIT L



**Caitlin G DeAngelis**  
@cgdhopkins

Replying to @GilliamReport @profmarylewis and @arothmanhistory

I hope that Harvard will devote permanent resources to studying its history of profiting from slavery, rather than relying on temporary fellowships and student research to do the important work. I hope they'll work with descendants to set research priorities as well.

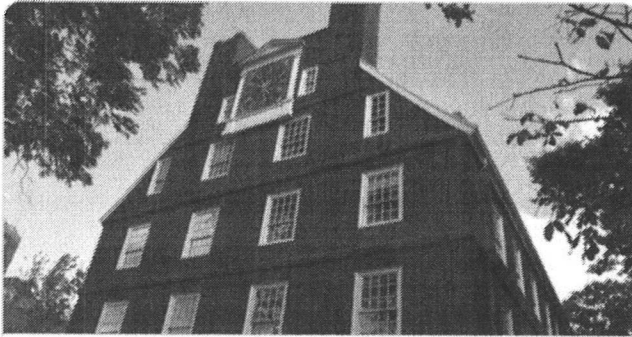
10:48 PM · Sep 18, 2019 · Twitter Web Client

2 Likes



**Caitlin G DeAngelis** @cgdhopkins · Nov 6, 2019

I would also like to see reporters stop letting **Harvard** get away with the "we are doing more research" dodge. That is not true. I was the **Harvard and Slavery Research Associate** for two years. That **fellowship** is dead.  
@thecrimson @Meagan\_Flynn



Prime Minister of Antigua and Barbuda Demands Reparations for Har...  
Antigua and Barbuda's Prime Minister Gaston Browne demanded reparations from Harvard for the University's historical ties to slavery ...  
@thecrimson.com

4 108 227

Show this thread



**Caitlin G DeAngelis** @cgdhopkins · Jul 1, 2019

I have sent off an email asking **Harvard** to rescind former Gov. Snyder's **fellowship**.

This reminds me of the Loring incident in 1854, when the **Harvard Corporation** and Overseers (and students) fought over whether the judge who sent Anthony Burns into **slavery** should teach at **Harvard**

#AbolitionMeansNoPrisons @prisonculture · Jun 30, 2019

Please join me in writing to Prof Liebman and demanding that he **RESCIND** this fellowship. #NoSnyderFellowship -  
hks.harvard.edu/faculty/jeffre...

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# EXHIBIT M

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# Office of the President

## Initiative on Harvard and the Legacy of Slavery

**November 21, 2019**

Dear Members of the Harvard Community,

Over four years ago, Harvard undertook an effort to better understand the historical and enduring connections to slavery on our campus and in our community. That effort built on years of work within the context of undergraduate seminars on Harvard and slavery. A number of activities on this topic followed: memorials commemorating the lives and contributions of enslaved individuals were installed at Wadsworth House and Harvard Law School; a faculty committee convened by President Faust initiated research on the university's historical ties to slavery through work with the Harvard Archives and other university collections; the university hosted and joined academic collaborations and conferences with peers from across higher education; and numerous classes, seminars, exhibitions, performances, and discussions have taken place across our campus.

Today, I am pleased to announce the formation of a new university-wide initiative on Harvard and the Legacy of Slavery, which will build on the important work undertaken thus far, provide greater structure and cohesion to a wide array of university efforts, and give additional dimension to our understanding of the impact of slavery. This work will allow us to continue to understand and address the enduring legacy of slavery within our



university community.

MENU

I am grateful to Tomiko Brown–Nagin, [Radcliffe Dean](#), Daniel P.S. Paul Professor of Constitutional Law, and professor of history, who has accepted my invitation to lead a new university committee composed of faculty from across schools and disciplines (members listed below), which will steer this interdisciplinary initiative, working in close collaboration with library and museum staff and community experts. Dean Brown–Nagin and the Radcliffe Institute will also anchor a range of programmatic and scholarly efforts within this new initiative, for which the University is initially committing \$5 million. By engaging a wide array of interests and expertise, as Radcliffe is uniquely suited to do, this initiative will reflect the remarkable power of bringing together individuals from across Harvard in pursuit of a common purpose.

This new initiative will bring focus to some key elements of the university's collective efforts in this area. First, it will have a strong grounding in rigorous research and critical perspectives that will inform not only our understanding of facts, but also how we might address the ramifications of what we learn. Our commitment to *Veritas* guides our teaching and our research—it also evokes our identity as a human community and our obligation to the society we serve.

Second, the initiative will concentrate on connections, impact, and contributions that are specific to our Harvard community. Harvard has a unique role in the history of our country, and we have a distinct obligation to understand how our traditions and our culture here are shaped by our past and by our surroundings—from the ways the university benefitted from the Atlantic slave trade to the debates and advocacy for abolition on campus.

Last, the initiative will provide opportunities to convene academic events, activities, and conversations that will encourage our broader university community to think seriously and rigorously about the continuing impact and legacy of slavery in 2019 and beyond. Over the course of Harvard's four-century history, the composition of our community has changed and evolved, becoming more diverse and more inclusive. This emphasis will help us build on efforts through the Office for Inclusion and Belonging and across the Schools, to ensure that discussion and understanding about our past can help us think differently and move us ever closer to a Harvard where all of us can thrive.

## MENU

Before dedicating the plaque at Wadsworth House, President Faust acknowledged the work of the distinguished historian and Harvard alumnus John Hope Franklin, who said, “Good history is a good foundation for a better present and future.” It is my hope that the work of this new initiative will help the university gain important insights about our past and the enduring legacy of slavery—while also providing an ongoing platform for our conversations about our present and our future as a university community committed to having our minds opened and improved by learning.

Undoubtedly, there is much work to do. But both our progress and our aspirations in this area are a testament to remarkable effort and commitment from so many of you. I am particularly grateful for the contributions of the faculty committee and staff first convened under President Faust’s charge, which has provided an essential foundation for efforts moving forward. The experience of every member of our community matters, and each of us has the potential to shape the future of this institution through our work and our collaboration. This initiative will be an important next step for us all.

All the best,  
Larry

Members of the Presidential Committee on Harvard and the Legacy of Slavery will include:

**Tomiko Brown-Nagin, Chair**

Dean, Radcliffe Institute for Advanced Study

Daniel P. S. Paul Professor of Constitutional Law, Harvard Law School

Professor of History, Harvard University Faculty of Arts & Sciences

**Sven Beckert**

Laird Bell Professor of History, Harvard University Faculty of Arts & Sciences

**Paul Farmer**

Kolokotronis University Professor of Global Health and Social Medicine, Harvard Medical School

# EXHIBIT N

MAR 20 2019



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPT. CLERK  
CIVIL ACTION NO.:

TAMARA LANIER,

Plaintiff,

v.

PRESIDENT AND FELLOWS OF HARVARD  
COLLEGE AKA HARVARD CORPORATION,  
HARVARD BOARD OF OVERSEERS,  
HARVARD UNIVERSITY, THE PEABODY  
MUSEUM OF ARCHAEOLOGY AND  
ETHNOLOGY,

Defendants.

COMPLAINT AND  
JURY DEMAND

MARCH 20, 2019

INTRODUCTION

*"History, despite its wrenching pain, cannot be unlived,  
but if faced with courage, need not be lived again."  
--Dr. Maya Angelou, On the Pulse of Morning*

1. The plaintiff, Tamara Lanier, brings this action against Harvard for its wrongful seizure, possession and expropriation of photographic images of the patriarch of her family – a man known as Renty – and his daughter, Delia, both of whom were enslaved in South Carolina.

2. The images, known as daguerreotypes, were commissioned in 1850 by Harvard's leading scientist, Louis Agassiz, as part of his quest to "prove" black people's inherent biological inferiority and thereby justify their subjugation, exploitation, and segregation.

3. At Agassiz's behest, Renty and Delia were stripped naked and forced to pose for the daguerreotypes without consent, dignity, or compensation.

4. Responsibility for that crime lies squarely with Harvard, which elevated Agassiz to the highest echelons of academia and steadfastly supported him as he promoted and legitimized the poisonous myth of white superiority.

5. Harvard has never reckoned with that grotesque chapter in its history, let alone atoned for it.



6. As of March 20, 2019, Harvard's website describes Agassiz as "celebrated" and "charismatic" and lauds him as "a great systematist, paleontologist and renowned teacher of natural history."

7. Historical amnesia – particularly where racism is concerned – is an American tradition. But Harvard's transgressions run much deeper.

8. In 1976, Harvard discovered that the daguerreotypes were stored on its campus, realized their incalculable value as the earliest known photographs of American slaves, and commenced a decades-long campaign to sanitize the history of the images and exploit them for prestige and profit.

9. The plaintiff, Tamara Lanier, is a direct descendant of Renty and Delia. She has asked Harvard to recognize her lineage and relinquish the daguerreotypes to her family.

10. By turns dismissive and arrogant, Harvard has refused to do either.

11. Harvard has asserted an exclusive right to possess, restrict access to, and profit from the daguerreotypes – without ever explaining the basis for that purported entitlement.

12. Harvard has also denigrated the legitimacy of Ms. Lanier's heritage, which she has established based on a rich and detailed family history passed down through generations.

13. Every day that Harvard maintains those positions compounds the injustices inflicted on Renty and Delia in its name, and further harms Ms. Lanier as their descendant and the rightful owner of images taken without their consent.

14. By denying Ms. Lanier's superior claim to the daguerreotypes, Harvard is perpetuating the systematic subversion of black property rights that began during slavery and continued for a century thereafter.

15. And by contesting Ms. Lanier's claim of lineage, Harvard is shamelessly capitalizing on the intentional damage done to black Americans' genealogy by a century's worth of policies that forcibly separated families, erased slaves' family names, withheld birth and death records, and criminalized literacy.

16. Slavery was abolished 156 years ago, but Renty and Delia remain enslaved in Cambridge, Massachusetts. Their images, like their bodies before, remain subject to control and appropriation by the powerful, and their familial identities are denied to them.

17. This lawsuit seeks immediate restitution of the images from Harvard to Ms. Lanier, just damages, and other legal and equitable redress, to be determined by a jury.

18. It was an act of both love and resistance that Renty and Delia's kin kept their memories and stories alive for well over a century. It is unconscionable that Harvard will not allow Ms. Lanier to, at long last, bring Renty and Delia home.

## **PARTIES**

19. The defendant Harvard University was founded in 1636 and is a private educational institution based in Cambridge, Massachusetts.
20. The President and Fellows of Harvard College (also known as Harvard Corporation) and the Harvard Board of Overseers govern Harvard University.
21. The Peabody Museum of Archaeology and Ethnology is owned and controlled by Harvard.
22. From 1847 until his death in 1873, Louis Agassiz was an agent and employee of Harvard.
23. The plaintiff Tamara Lanier is an individual currently residing in Norwich, Connecticut. Ms. Lanier worked as the Chief Probation Officer in Norwich for 27 years, retiring with distinction in 2017.
24. Ms. Lanier is a direct lineal descendant of Renty, the patriarch of her family and the man depicted in one the daguerreotypes within Harvard's possession.
25. Delia, the woman depicted in one the daguerreotypes within Harvard's possession, was Renty's daughter and is also an ancestor of Ms. Lanier.
26. Ms. Lanier brings this action individually and on behalf of Renty and Delia for claims accrued to her as their direct descendant.

## **JURISDICTION AND VENUE**

27. This Court is vested with original jurisdiction pursuant to Massachusetts General Laws, Chapter 212, Section 4.
28. Venue is proper pursuant to Massachusetts General Laws, Chapter 223, Section 1, because the defendant lives in the Commonwealth and has its usual place of business in Middlesex County.

## **FACTUAL BACKGROUND**

29. The conduct that gives rise to this lawsuit is part of a longstanding policy and practice by Harvard to avoid accountability for its complicity in the institution of slavery and the systematic subjugation of black Americans after emancipation.
30. The story of this case spans 175 years. It is a story about opportunism, greed, and profound moral abdication by one of the country's most revered educational institutions.

31. It is a story about the extent to which history is told and appropriated by the powerful – and denied to the powerless.
32. Part I tells the story of Harvard's cultivation of Louis Agassiz in the years leading up to 1850, when he commissioned the daguerreotypes of Renty and Delia.
33. Part II tells Renty's story as it was passed down to his descendant, Tamara Lanier.
34. Part III tells the story of Harvard's steadfast support of Agassiz in the decades that followed the making of the daguerreotypes, a time when Agassiz's work helped lay the groundwork for 100 years of segregation, discrimination, and violence against African-Americans.
35. Parts IV and V tell the story of Harvard's capitalization on that shameful legacy from 1976 to the present – at the expense of truth, the public interest, and most importantly, Tamara Lanier's legal rights and dignity.

## **PART I THE MAKING OF A HARVARD MAN**

36. The story of Harvard's relationship with and elevation of Louis Agassiz begins in 1845, the year that Harvard initiated plans to establish a specialized scientific school.
37. At the time, almost every American scientist underwent specialized training in Europe. An American school devoted to developing scientific researchers would revolutionize scientific training in the United States, and Harvard wanted the distinction of being first.
38. The only obstacle was money; the establishment of such a school necessitated significant capital, and none had materialized.
39. That same year, a Swiss natural scientist named Louis Agassiz was making plans to visit the Northeast. He had enjoyed tremendous success in Europe, but by 1845 he was facing strained finances and a broken marriage.
40. With the help of well-placed friends, Agassiz sought and obtained greener pastures. He secured a grant to study the natural history of North America and an invitation to deliver a series of lectures at the Lowell Institute in Boston.
41. Agassiz's passion was classifying the natural world. His field of study, known as comparative zoology, entailed grouping living things together based on anatomical characteristics and placing them in hierarchical order. Agassiz's painstaking classification of Brazilian fish had established him as a leader within the discipline.
42. Up until the time he arrived in Boston's port, in 1846, Agassiz's career had never involved the study of racial groups.

43. Within months of arriving in the United States, two things happened to Agassiz that would shift the course of his career and position him to be an invaluable asset to Harvard.

44. First, Agassiz encountered a black person for the first time in his life. In a letter to his mother, Agassiz describes his disgust at the sight of a black woman's lips, teeth, hair, knees, hands, and even nails. "[I]t is impossible for me to repress the feeling that they are not of the same blood as us," Agassiz wrote.

45. Second, Agassiz crossed paths with Samuel George Morton, an anthropologist living in Philadelphia who was known for his collection of some 600 human skulls.

46. Morton was devoted to the classification and ranking of human beings based on race. He was an ardent believer in polygenism, the theory that racial groups do not share a common origin and are thus fundamentally and categorically distinct.

47. Morton claimed he could place racial groups in a descending order of intelligence by measuring the interior capacity of human skulls. His methodology was a sham, but it conveniently "confirmed" Agassiz's newfound prejudices by placing black people at the very bottom of the racial hierarchy.

48. Agassiz embraced polygenism with a convert's zeal.

49. At his first lecture in Boston, delivered just months after he arrived in America, Agassiz announced for the first time in his career that white and black people had separate origins.

50. Several months later, Agassiz was invited to South Carolina to repeat his lecture, and his view that black people were a distinct species, at a meeting attended by local scientists, theologians, and politicians.

51. "The brain of a negro," Agassiz announced to the men gathered in the Charleston Literary Club, "is that of the imperfect brain of a 7 month's infant in the womb of a White."

52. His audience was thrilled. At a time when South Carolina's slave population outnumbered whites and the abolitionist movement was gaining traction, Agassiz's message – wrapped in the trappings of science – was a gift.

53. But it wasn't just the South that was listening. Agassiz's newfound passion made him an unlikely, but important, asset to Harvard.

54. The same year that Agassiz committed to the polygenism crusade, Harvard procured \$50,000 to establish its scientific school. At the time, it was the largest single gift ever donated by an individual to an American institution of learning

55. Notably, the donation guaranteed the salary for a new academic appointment intended specifically for Agassiz.



56. The deal was struck between Harvard's president, Edward Everett, and Abbott Lawrence, a textile magnate and prominent Bostonian.

57. Lawrence had originally intended to underwrite a school of applied science, which would pay dividends in the form of better engineers for his textile mills.

58. Lawrence's plans appear to have changed when Agassiz entered the picture, a shift that was likely propelled as much by self-interest as philanthropic vision.

59. Most of the textiles Lawrence's business sold, a business that had made him extraordinarily wealthy, were made from cotton that was planted, picked, ginned, baled, and shipped by enslaved men, women, and children. In other words, his livelihood depended on slavery's preservation – or, at a minimum, on access to cheap, black labor.

60. The Lawrence family professed to be anti-slavery. But business came first. As Ralph Waldo Emerson once observed, "Cotton thread holds the Union together; unites John C. Calhoun and Abbott Lawrence."

61. Fifty thousand dollars bought Lawrence a school named in his honor – it was dubbed the Lawrence Scientific School – and something even more valuable: a field of "science" sanctioned by Harvard that would help keep supplies of cheap cotton flowing north.

62. Agassiz's views on race also appear to have been consistent with those of Harvard's president, Everett. While serving as a U.S. Representative years earlier, Everett had given a 3-hour speech during congressional debate where he noted that "the New Testament says 'Slaves obey your masters.'"

63. In 1847, Everett offered Agassiz the newly-created Lawrence Scientific School on a silver platter. Naturally, Agassiz accepted.

64. Almost overnight, Agassiz was catapulted to the highest echelons of Boston high society. Agassiz married Elizabeth Cabot Cary, a daughter of a Boston Brahmin family, who would later co-found Radcliffe College. His standing in the famous Boston "Saturday Club," a literary dining and conversation society that included Hawthorne and Emerson among its ranks, was such that the gathering was popularly referred to as "Agassiz's Club."

65. From this gilded perch, Agassiz spent the next fifteen years lending celebrity status and "scientific" legitimacy to the poisonous myth of white racial superiority and championing the vital importance of separation of the races.

66. Harvard steadfastly supported Agassiz every step of the way.

67. 1850 was a pivotal moment for polygenists and the political implications of their theory. The Fugitive Slave Act, widely seen as a barometer of the relative strength of the pro-slavery and abolitionist camps, was being hotly debated in Congress.

68. Not coincidentally, Agassiz was invited that year to return to Charleston for a meeting of the American Association for the Advancement of Science. He delivered a paper at the meeting in which he explained that racial groups, “viewed zoologically,” could not be considered part of the same species.

69. After hearing Agassiz’s lecture, a fellow polygenist wrote excitedly to Samuel Morton in Philadelphia: “With Agassiz in the war, the battle is ours.”

70. For Agassiz, the final frontier in the battle to establish the legitimacy of polygenism was the collection of empirical data.

71. Agassiz was singularly focused on perceived physical differences between whites and blacks. He had written, with a frightening lack of humanity, about being repulsed by black people’s “thick lips and grimacing teeth, the wool on their head, their bent knees, their elongated hands, their large curved nails, and especially the livid color of their palms.”

72. Fueled by this racist obsession, Agassiz sought what he believed would be the *pièce de résistance* of his “scholarship”: enduring, *photographic* evidence of the otherness of the black body.

73. This was newly possible thanks to an invention known as the daguerreotype process – the first-ever, publicly available and commercially successful photographic process.

74. Agassiz embarked on a tour of South Carolina plantations in search of subjects for this endeavor: racially “pure” slaves born in Africa, a dwindling population since the ban on the importation of slaves in 1807.

75. With Morton’s help, Agassiz was introduced to Dr. Robert Gibbes, a wealthy South Carolinian who rubbed elbows with the slave-owning elite. Gibbes took Agassiz to several plantations, including the B.F. Taylor plantation in Columbia.

76. At the Taylor plantation, Agassiz selected several enslaved men and women to be photographed.

77. One was an older man named Renty. Another was his daughter, Delia.

78. To Agassiz, Renty and Delia were nothing more than research specimens. The violence of compelling them to participate in a degrading exercise designed to prove their own subhuman status would not have occurred to him, let alone mattered.

79. Agassiz would never know that he had selected a man whose life and accomplishments, even within the crushing constraints of slavery, made a profound mockery of his theories.

80. We know that today, nearly 170 years later, because of the resilience of Renty and his descendants, and the power of oral history in preserving their family in the face of a system designed to obliterate it.

## PART II PAPA RENTY

81. “Always remember we’re Taylors, not Thompsons.”

82. Tamara Lanier grew up hearing her mother, Mattye Thompson-Lanier, repeat these words like a mantra.

83. Mattye was a Thompson by birth, born in Montgomery, Alabama in 1923 to sharecropper parents, and she carried the name proudly even after marriage.

84. Mattye’s admonition to her children that they never forget that they were Taylors was not an abdication of the family name. It was a reminder to never forget the history that had come before – an extraordinary family history passed down for 150 years.

85. Mattye was a gifted storyteller. She told stories about what it was like to be the daughter of sharecroppers, helping her parents work the fields “from can to can’t.”

86. Mattye’s memory for detail was impeccable. She would describe a beloved corn husk doll from her early childhood, or a particular Christmas where she was delighted to receive a piece of fruit as her only gift.

87. But far and away Mattye’s favorite story to tell was the story of their family.

88. The story always began with a man named Renty Taylor, or Papa Renty, whose indomitable character defied slavery’s tyranny.

89. Renty was known in this oral history as the Black African. He was described as small in stature but towering in the minds of those who knew him.

90. While enslaved in South Carolina on the B.F. Taylor plantation, Renty somehow obtained a copy of something called the “Blue Back Speller,” an early publication of Noah Webster’s that was marketed for children but became a powerful tool of literacy among slaves.

91. When Frederick Douglass recounted his experience of learning to read and write, he referred to “copying the Italics in Webster’s Spelling Book.”

92. After working in the fields all day, Renty would pore over the Blue Back Speller at night.

93. In defiance of South Carolina laws that made his education a crime, and against all odds, Renty taught himself, and then those around him, to read.

94. With literacy came further forms of quiet resistance. As a rebuke to slave masters' efforts to control and manipulate access to religion, Renty conducted secret Bible readings and study on the plantation where he was enslaved.

95. Renty's name, and story, was passed down through generations. This was not only an homage to an extraordinary man; it was an essential and rebellious act of family preservation.

96. Frederick Douglass wrote that "genealogical trees do not flourish among slaves," a poetic summation of slavery's brutal and calculated assault on the integrity of the black family.

97. Slaves were not permitted to use their own family names, a policy enforced through violence. A report commissioned by the federal government after the Emancipation Proclamation noted that "[t]he slave was not permitted to own a family name; instances occurred in which he was flogged for presuming to use one."

98. Forcing slaves to adopt the surnames of their masters made it easy to identify to whom slaves "belonged." More importantly, it denied enslaved men and women the basic humanity of having their families recognized and prevented them from locating loved ones who had been sold and forced to assume new surnames.

99. Renty was called Renty Taylor after his owner, Benjamin Franklin (B.F.) Taylor.

100. Renty had a son and a grandson who were both named Renty Taylor as well.

101. Renty Taylor III was transferred from South Carolina to the Thompson family in Montgomery, Alabama, and became known as Renty Taylor Thompson.

102. Renty Taylor Thompson had nine children, including sons named Frederick Douglass ("Fed") and Renty William Thompson.

103. Fed Thompson is Mattye Thompson's father and Tamara Lanier's grandfather.

104. Fed also had a son whom he named Renty William. This Renty – the fifth in the family line – was called "Willie" by his family.

105. Those who carried Renty's name seem to have carried a piece of his spirit also.

106. Mattye's brother, Renty "Willie," walked to his job as a plumber throughout the Montgomery Bus Boycott. He never got rid of the shoes from that time, which were worn all the way through. He called them his "civil rights shoes."



### PART III AGASSIZ'S LEGACY

107. In the winter of 1850, on Agassiz's orders, Papa Renty was led into a plush photography studio in Columbia, South Carolina.

108. The studio belonged to photographer Joseph T. Zealy, who was known for his portraits of society women. The space, designed with their comfort in mind, included an elegant parlor and a piano.

109. Renty was ordered to disrobe. His daughter, Delia, was stripped naked to the waist.

110. Zealy positioned Renty and Delia in various poses and photographed them from the front, side, and back, in accordance with Agassiz's instructions.

111. The completed daguerreotypes received just the enthusiastic reception Agassiz hoped for.

112. "I have just finished daguerreotypes for Agassiz of native Africans of various tribes. I wish you could see them," Dr. Gibbes wrote Morton in June of 1850. He noted excitedly that Agassiz had "found enough [evidence] to satisfy him that they have differences from other races."

113. The next month, Agassiz published the results of his research in an article entitled *The Diversity of Origin of the Human Races*. In it, he referred to his recent study of black bodies and the insight he had gained as a result:

The writer has of late devoted special attention to this subject, and has examined closely many native Africans belonging to different tribes, and has learned readily to distinguish their nations, without being told whence they came; and even when they attempted to deceive him, he could determine their origin from their physical features.

114. Agassiz went on to describe, with the detached voice of an empiricist, the essential characteristics of Africans as "submissive, obsequious, [and] imitative," possessing "a peculiar indifference to the advantages afforded by civilized society."

115. Agassiz professed to approach the subject from an exclusively scientific perspective, with no interest in the political implications: "Here we have to do only with the question of the origin of men; let the politicians, let those who feel themselves called upon to regulate human society, see what they can do with the results."

116. But Agassiz did not bother to disguise his allegiance to the political agenda his work was designed to legitimize. He derided as "mock-philanthropy and mock-philosophy" the

idea that different races “are entitled to the same position in human society,” and declared that it would be dangerous to treat “the colored races . . . on terms of equality.”

117. Harvard did not challenge or disavow Agassiz for this naked display of racist pseudoscience; on the contrary, it continued to promote him wholeheartedly.

118. The Lawrence School – with Agassiz at the helm – was simply too good for business to object.

119. Other educators had taken note. For example, in 1854, William Greenleaf Eliot, the president of Eliot Seminary, wrote enviously, “Harvard University is, at this time, gaining more credit and accomplishing greater good, by the Lawrence Scientific School than by any other agency. We need just such a school, here.”

120. Harvard’s moral abdication had real and devastating consequences.

121. Agassiz’s work, which offered an ostensibly scientific defense of racial inequality based on immutable physical characteristics, was immensely appealing in the North, both economically and politically.

122. Economically, a long list of business interests stood to benefit from a justification for ongoing control of black labor: textile industrialists like Abbott Lawrence who depended on vast quantities of cotton, New England merchants trading in slave-grown goods, and New York bankers funding plantations across the South.

123. Politically, even those who favored abolition were generally opposed to true equality and the concept of inherent white superiority as scientific fact was a useful tool.

124. As the Civil War grew near, polygenism was cited as evidence that slavery did not violate the spirit of the declaration of independence, on the grounds that Jefferson’s reference to “all men” did not, *scientifically*, include black men.

125. In 1859, when Charles Darwin’s *On the Origin of Species* was published and provided a definitive rebuke to polygenism, Harvard continued to celebrate Agassiz while he derided Darwin’s impeccably researched work as “a scientific mistake” that was “mischievous in its tendency.”

126. Indeed, the very next year Harvard dedicated the Museum of Comparative Zoology to Agassiz. The museum was founded with specimens from Agassiz’s personal collection and funded through his extensive connections. It was unofficially called “Agassiz’s Museum,” a name that retained its relevance when Agassiz’s son, Alexander, was made curator and then director after his father’s death.

127. In 1863, the year the Emancipation Proclamation went into effect, President Lincoln formed the American Freedmen’s Inquiry Commission to formulate policies for dealing with a large freed black population.

128. Lincoln appointed Samuel Howe to lead the Commission. Howe was a physician, philanthropist, and true abolitionist. He founded and edited an antislavery paper in Boston and was one of John Brown's Secret Six, the group that funded the doomed raid on Harpers Ferry.

129. Yet, in his official capacity with the Commission, Howe looked to Agassiz for advice – a courtesy that speaks volumes about the power of Harvard's backing.

130. Agassiz responded eagerly and definitively. The government, he declared, ought “to put every possible obstacle to the crossing of the races” and “beware . . . any policy which may bring our own race to their level.”

131. Perhaps most destructively, Agassiz warned:

Social equality I deem at all times impracticable. It is a natural impossibility, flowing from the very character of the negro race. . . . [T]hey are incapable of living on a footing of social equality with the whites, in one and the same community, without becoming an element of social disorder.

132. This toxic ideology disguised as science would be used to rationalize and justify 100 more years of legally-sanctioned segregation, ghettoization, and discrimination against black Americans.

133. In the aftermath of the Civil War, Harvard continued to embrace Agassiz's reprehensible beliefs and provide a premier academic platform for their dispersion.

134. Agassiz retained his professorship and served as Director of the Harvard Museum of Comparative Zoology until his death in 1873.

135. After his death, Harvard chose Nathaniel Shaler, an Agassiz protégé, to lead the Lawrence Scientific School.

136. Under Harvard's banner, Shaler inveighed against black people's “animal nature,” “very low morality,” and the “feeble nature” of their familial ties.

137. In 1881, the Harvard Register ran a retrospective on Agassiz's work and contributions to Harvard. It asked, rhetorically, “Great was Agassiz, but what could Agassiz have done without his army of friends?”

138. It perhaps went without saying that Agassiz's greatest and most influential friendship was with Harvard itself.

## PART IV AN OPPORTUNITY FOR HARVARD

139. Harvard cannot unlive its history. But it could have chosen to face it with courage and honesty; and it could have tried to repair some of the damage inflicted in its name.

140. Instead, Harvard chose to embark on a different path – one that repeats and multiplies the dominion and dishonesty of its past.

141. In 1976, a Peabody Museum researcher named Ellie Reichlin stumbled across the daguerreotypes of Renty and Delia.

142. While cataloguing the museum's holdings that were languishing in storage, Ms. Reichlin discovered a nondescript wooden cabinet in the corner of the museum attic. Inside were the daguerreotypes from 1850.

143. Reichlin's discovery made national headlines. The New York Times described the daguerreotypes as the "earliest known photographs of American slaves."

144. This was a moment for Harvard to face its history with courage. This was a moment for Harvard to refuse to perpetuate the wrenching pain of its past. This was a moment for Harvard to make amends.

145. Instead, Harvard saw an opportunity for Harvard.

146. Harvard chose not to publicly grapple with the profound consequences of its relationship with Agassiz and institutional support for his work.

147. Despite Ms. Reichlin's expressed concern for the families of the men and women depicted, Harvard made no effort to locate next of kin.

148. Despite knowing that the images were taken under the most extreme form of duress and were thus the spoils of theft, Harvard claimed the daguerreotypes as property within its exclusive control.

149. Today, Harvard insists that anyone who wishes to lay eyes on the daguerreotypes first sign a contract promising not to use any of the images without permission.

150. Those who wish to use reproductions of the images can, with Harvard's permission, pay a hefty "licensing" fee.

151. Those who use the images without permission face the threat of being hauled to court and ordered to pay thousands of dollars to Harvard.

152. In other words, Harvard, the wealthiest university in the world with an endowment of \$40 billion, has seen fit to further enrich itself from images that only exist because



a Harvard professor forced human beings to participate in their creation without consent, dignity, or compensation.

153. Harvard, the wealthiest university in the world with an endowment of \$40 billion, has seen fit to further enrich itself when reparations have never been made to the families of the men and women who were debased in a grotesque exercise of white supremacy.

154. In the early 1990s, New York artist Carrie Mae Weems traveled to the Peabody Museum to view the daguerreotypes. Before entering the archives, she signed a contract promising not to use any of the images without permission from the Peabody.

155. When she laid eyes on the men and women in the daguerreotypes, however, Weems felt unable to accept the ongoing dominion over them embedded within Harvard's contract.

156. Weems photographed the daguerreotypes and included them in her 1995-96 series *From Here I Saw What Happened and I Cried*. She enlarged the images, tinted them red, and emblazoned them with phrases. Renty's read, "A Negroid Type," and Delia's, "& A Photographic Subject."

157. Harvard threatened to sue Weems, asserting that she had violated their copyright to the daguerreotypes as well as her contractual promise not to use images without Harvard's permission.

158. Weems urged Harvard to reckon with the implications of their position. She told University representatives, "I think that your suing me would be a really good thing. You should. And we should have this conversation in court."

159. This was another moment for Harvard to face its history with courage. This was another moment for Harvard to refuse to perpetuate the wrenching pain of its past. This was another moment for Harvard to make amends.

160. Once again, Harvard declined to do so. In a move that calls to mind Nina Simone's observation that "slavery has never been abolished from America's way of thinking," Harvard refused to engage in dialogue and simply expanded its dominion over the daguerreotypes by purchasing Weems' collection for its own museum.

## PART V HISTORY REPEATS ITSELF

161. In 1976, the year Harvard appropriated the daguerreotypes for the second time in its history, Tamara Lanier was a teenager who had already heard the story of Papa Renty dozens of times from her mother, Mattye.

162. As Mattye got older, she told the story more frequently and with greater urgency. Eventually even her grandchildren knew it by heart.

163. In 1996, Tamara's daughter wrote a book for her fifth-grade class about Renty called *From These Roots I Came*. The first page reads: "Dedicated to my little sister so she knows where she came from."

164. At the very end of her life, in 2010, Mattye Thompson-Lanier implored her children to document the 150-year-old oral history of their family. "Write it down," she would say, "write it down."

165. Tamara recorded her mother telling the story of Renty and his lineage one last time from her hospital bed.

166. When Mattye died, Tamara was compelled to learn the rest of Renty's story so that she could fulfill her mother's wish and commit the family's history to paper. Though her mother was gone, she knew where to start: "Always remember we're Taylors..."

167. Tamara scoured libraries and archives in South Carolina for information about the Taylors, plumbed the depths of genealogy sources online, and spoke to anyone who might have a sliver of information.

168. The project became a years-long journey that led Tamara, finally, to the daguerreotypes and Harvard.

169. In May of 2011, Tamara Lanier wrote a letter to Drew Faust, Harvard University's then-president. In it, she relayed the history of the daguerreotypes as she understood it and explained that she believed she was a direct descendant of Renty and Delia.

170. Her requests to Dr. Faust were modest: "to learn more about the slave daguerreotypes and how they have or will be used," and "a formal review of my documentation to reaffirm that Renty and Delia Taylor are indeed my ancestors."

171. This was yet another moment for Harvard to face its history with courage. This was yet another moment for Harvard to refuse to perpetuate the wrenching pain of its past. This was yet another moment for Harvard to make amends.

172. Again, Harvard chose not to.

173. Dr. Faust's response to the letter was evasive and vague, making no mention of Ms. Lanier's invitation to discuss her heritage. She wrote that the Peabody Museum was "involved in projects regarding those daguerreotypes" and that Peabody employees "have agreed to be in touch with you if they discover any new information."

174. Harvard never contacted Ms. Lanier about ongoing projects, new information, or interest in verifying her lineage and connection to the daguerreotypes.

175. In fact, despite making no effort to meet with Ms. Lanier or conduct any investigation of her relation to Renty and Delia, Harvard demeaned Ms. Lanier in her own community by publicly casting doubt on the legitimacy of her claim.

176. In a 2014 article in the Norwich Bulletin about Ms. Lanier's story, the Director of External Relations for the Peabody Museum, Pamela Gerardi, was quoted as saying of Ms. Lanier: "She's given us nothing that directly connects her ancestor to the person in our photograph."

177. Throughout this time, Ms. Lanier continued to conduct research and consult experts in an effort to confirm that Renty and Delia were her ancestors.

178. In March of 2016, Ms. Lanier was interviewed by the Crimson, Harvard's student newspaper, about her investigation into her family history and the connection to the daguerreotypes.

179. Soon thereafter, Ms. Lanier received an email from an editor at the Crimson informing her that the story was being killed due to "concerns the Peabody Museum has raised."

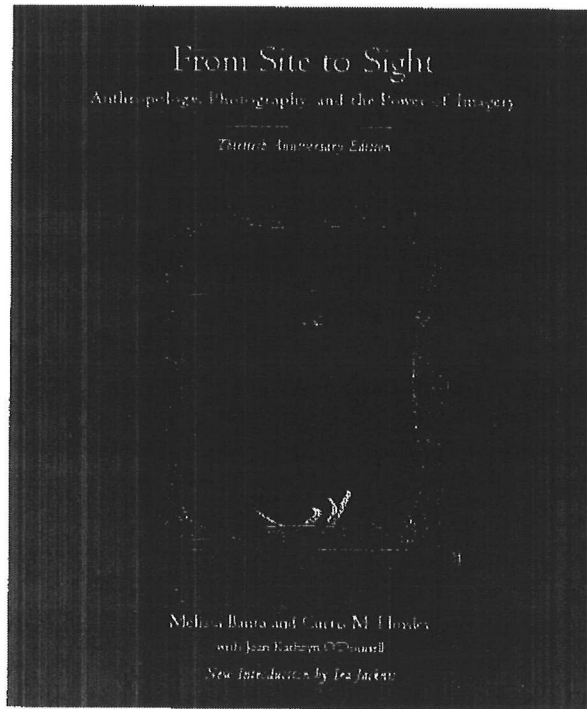
180. In a rich twist, the Crimson instead ran an op-ed by then-president Dr. Faust. In it, Dr. Faust acknowledges Harvard's complicity in slavery. "This is our history and our legacy," she wrote, "one we must fully acknowledge and understand in order to truly move beyond the painful injustices at its core."

181. The purpose of that reckoning, according to Dr. Faust, is to "better equip ourselves to combat our own shortcomings and to advance justice and equality in our own time."

182. This public display of soul-searching was a charade. In the two years since, Harvard has demonstrated a complete unwillingness to either acknowledge its history or advance justice today. It has continued to sanitize Agassiz's legacy, profit from the fruits of his crimes, and treat Ms. Lanier as little more than a pest.

183. In 2017, Harvard used Renty's image to sell its 30th Anniversary edition of "From Site to Sight: Anthropology, Photography, and the Power of Imagery."

184. The cover of the book looks like this:



185. Harvard describes the book as an exploration of “the historic and contemporary uses of photography in anthropology” – even though Harvard knows Agassiz’s purpose in photographing Renty and Delia cannot fairly be described as anthropologic in nature.

186. Perhaps Harvard believed that Renty’s arresting face and semi-nude body would sell more copies. *From Site to Sight* costs \$40.00.

187. But the most egregious example of Harvard’s ongoing exploitation of Renty and subversion of the truth occurred in March of 2017, when Harvard hosted a national academic conference that Ms. Lanier attended. The conference was called *Universities and Slavery: Bound by History*.

188. As writers and scholars discussed educational institutions’ complicity in slavery and Harvard congratulated itself for this ostensible public reckoning with the past, Renty’s image was emblazoned onto a massive screen onstage.

189. The conference program, which was also adorned with Renty’s image, contained a description of the photograph that took Ms. Lanier’s breath away:

The man you see on the program’s front cover, Renty, lived and worked as a slave in South Carolina in 1850, when his photograph was taken for the Harvard professor Louis Agassiz as a part of Agassiz’s scientific research. While Agassiz earned acclaim, Renty returned to invisibility.



190. These words, no doubt carefully chosen, are as dishonest as they are manipulative.

191. Harvard conspicuously omits the nature of Agassiz's work – even having the gall to characterize the photograph as a part of “scientific research” rather than a racist and dehumanizing crusade – and implies that Agassiz had rightfully “earned acclaim” for his work.

192. Even more insidiously, Harvard relegates Renty to “invisibility,” in flagrant disregard for Ms. Lanier's repeated attempts to share Renty's story and restore a measure of the humanity that Agassiz stripped from him.

193. At this moment, Tamara Lanier realized – sitting in the audience with her two daughters – that Harvard would never face its history with courage. It would never stop perpetuating the wrenching pain of its past. And it would never willingly make amends.

194. As Frederick Douglass once reminded us, “power concedes nothing without a demand. It never did and it never will.”

195. On October 27, 2017, Ms. Lanier made her demand.

196. By letter addressed to Dr. Faust, Ms. Lanier explained that in the absence of any action by Harvard she had completed her own research and confirmed that she is a lineal descendent of Renty.

197. The letter concluded with a formal request to have the daguerreotypes of her family members “immediately relinquished” to her.

198. Harvard's response, from Ms. Gerardi of the Peabody Museum, was straight from its playbook: it was nonresponsive and deceptive.

199. It made no mention whatsoever of Ms. Lanier's demand to have the daguerreotypes returned to her.

200. And it offered a new version of history that conveniently distanced Harvard from the daguerreotypes: “As you know the photographs were commissioned by Dr. Robert W. Gibbs [*sic*] of Columbia, South Carolina in 1850.”

201. It is well-established that Agassiz was behind the daguerreotypes and there is no chance that Harvard is confused on that point; this is a blatant lie.

202. It is long past time for Harvard to live up to the word that adorns its seal and shield: *veritas*. Truth.

**COUNT ONE: Mass. Gen. Laws ch. 247, § 7  
(Replevin)**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. The daguerreotypes of Renty and Delia have a value greater than twenty dollars.

204. The daguerreotypes were taken without the consent of the subjects and were never lawfully possessed by Louis Agassiz or his son, Alexander Agassiz.

205. Good title never passed to Harvard because the daguerreotypes were never lawfully possessed by the estate of Alexander Agassiz.

206. Good title never passed to Harvard because the daguerreotypes were given without consideration.

207. The daguerreotypes were unlawfully taken and have been unlawfully detained up until the present by Harvard.

208. The plaintiff established in 2017 that she was the next of kin of the man named Renty depicted in the daguerreotype.

209. In October of 2017, the plaintiff informed Harvard that she had certified that she was the next of kin of Renty and requested that Harvard relinquish the daguerreotypes to her.

210. On November 13, 2017, Harvard sent the plaintiff a nonresponsive letter that made no mention of the plaintiff's request.

211. The plaintiff, as next of kin of Renty, is the person entitled to possession of the daguerreotypes of Renty and of his daughter, Delia.

212. The plaintiff's right of possession is superior to Harvard's.

213. The plaintiff has been deprived of the daguerreotypes as a result of Harvard's ongoing unlawful and/or inequitable possession.

**COUNT TWO: Conversion**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203-210. Paragraphs 203-210 of Count I are hereby incorporated as if fully set forth herein.

211. Harvard has intentionally and/or wrongfully exercised acts of ownership, control, and/or dominion over the daguerreotypes of Renty and Delia.

212. At the time of said acts, Harvard had no right of ownership or possession with respect to the daguerreotypes.

213. At the time of said acts, Ms. Lanier's right of ownership and/or possession was superior to Harvard's.

214. Ms. Lanier demanded the return of the daguerreotypes and Harvard refused.

215. Ms. Lanier was damaged as a result of Harvard's conduct.

**COUNT THREE: Mass. Gen. Laws ch. 214, § 3A  
(Unauthorized Use of Name, Picture, and/or Portrait)**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. The daguerreotype photographs of Renty and Delia were taken without their consent.

204. The daguerreotype photographs of Renty and Delia have been and continue to be used within the Commonwealth of Massachusetts by Harvard for advertising and commercial purposes.

205. Harvard used and continues to use the daguerreotype photographs of Renty and Delia for advertising and commercial purposes with knowledge that they were taken without Renty and Delia's consent.

206. Harvard has used the daguerreotype photographs of Renty and Delia for advertising and commercial purposes with knowledge that Ms. Lanier did not consent to such use.

207. Harvard's conduct, as set forth above, is in violation of Massachusetts General Laws, chapter 214, § 3A.

**COUNT FOUR: U.S. Const. Amend. XIII § 1**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. Section 1 of the Thirteenth Amendment outlaws – and provides a cause of action to redress – core components and incidents of slavery.

204. The prohibition on slaves' right to make or enforce contracts was a core component or incident of slavery.

205. The prohibition on slaves' right to own property was a core component or incident of slavery.

206. The prohibition on slaves' right to inherit was a core component or incident of slavery.

207. The prohibition on slaves' right to access the courts was a core component or incident of slavery.

208. The conscious policy of separating and weakening black families was a core component or incident of slavery.

209. At the time the daguerreotypes were made, Renty and Delia could not make or enforce contracts, own property, inherit or cause their heirs to inherit, access the courts, or protect the integrity of their familial relationships.

210. Harvard's ongoing possession of the daguerreotypes reflects and is a continuation of core components or incidents of slavery.

211. Harvard's ongoing refusal to recognize Ms. Lanier's superior claim to the daguerreotypes as next of kin to Renty and Delia reflects and is a continuation of core components or incidents of slavery.

212. Harvard's ongoing profiting from the daguerreotypes reflects and is a continuation of core components or incidents of slavery.

**COUNT FIVE: 42 U.S.C. § 1982**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. Tamara Lanier is African-American.

204. Ms. Lanier's family does not have possession of the daguerreotypes of Renty and Delia as a direct result of incidents and badges of slavery that prevented black Americans from inheriting, holding, and conveying personal property.

205. Harvard's refusal to recognize Ms. Lanier's superior claim to the daguerreotypes is based on incidents and badges of slavery that prevented black Americans from inheriting, holding, and conveying personal property.

206. Harvard's conduct, as set forth above, is in violation of 42 U.S.C. § 1982.

**COUNT SIX: Restatement (Second) of Torts § 871  
(Intentional Harm to a Property Interest)**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. Harvard's ownership and/or control over the daguerreotypes was and is intentional, culpable, and unjustifiable.



204. Ms. Lanier has a legally protected property interest in the daguerreotypes of Renty and Delia.

205. Harvard's ownership and/or control over the daguerreotypes represents an interference with Ms. Lanier's property interest and rights.

**COUNT SEVEN: Negligent Infliction of Emotional Distress**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. Harvard knew or should have known that its appropriation of the daguerreotypes, denial of Ms. Lanier's heritage, and demeaning treatment of her over an eight-year period would likely cause embarrassment, humiliation, and emotional distress.

204. Harvard's conduct – including but not limited to its use of the daguerreotypes for profit, refusal to engage in good faith with Ms. Lanier, its denial of her claim of lineage, and its deception about the images' provenance – was undertaken in negligent or reckless disregard for how it would affect Ms. Lanier.

205. Ms. Lanier has suffered ongoing physical manifestations of emotional distress, including insomnia, anxiety, and nausea, as a direct result of Harvard's conduct.

**COUNT EIGHT: Equitable Restitution**

1-202. Paragraphs 1-202 are hereby incorporated as if fully set forth herein.

203. Ms. Lanier is the rightful owner of the daguerreotypes of Renty and Delia.

204. Ms. Lanier is entitled to the daguerreotypes of Renty and Delia as a matter of equity.

205. To the extent Harvard holds legal title to the daguerreotypes of Renty and Delia, said title was acquired through fraud and/or other misconduct.

206. Harvard has been unjustly enriched through its possession of the daguerreotypes.

207. In the absence of equitable restitution, Harvard will continue to be unjustly enriched.

## REQUEST FOR RELIEF

WHEREFORE, the plaintiff, Tamara Lanier, requests the following:

- a. Repair by Harvard of the damage inflicted by its conduct;
- b. Immediate restitution of the daguerreotypes depicting Renty and Delia to the plaintiff;
- c. Acknowledgement by Harvard that it was complicit in perpetuating and justifying the institution of slavery;
- d. Acknowledgement by Harvard that it bears responsibility for the degradation and humiliation forced upon Renty and Delia through its employee and agent, Louis Agassiz;
- e. Acknowledgement by Harvard that Ms. Lanier is a descendant of Renty and Delia;
- f. Disgorgement;
- g. Compensatory damages for emotional distress, humiliation, anxiety, and other emotional pain and suffering;
- h. Punitive damages;
- i. Attorney's fees;
- j. Just compensation as determined by a jury; and
- k. Such other legal and equitable relief that this Court deems proper.

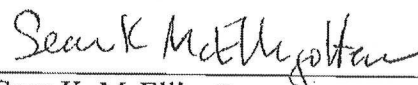
WHEREFORE, the plaintiff, Tamara Lanier, requests that this Court declare a constructive trust in the daguerreotypes and all profits derived therefrom held by the defendants for the benefit of the plaintiff.

## JURY DEMAND


The plaintiff claims a trial by jury.

RESPECTFULLY SUBMITTED,

*THE PLAINTIFF,*  
BY HER ATTORNEYS,



Sean K. McElligott  
BBO# 651710  
Michael P. Koskoff  
Joshua D. Koskoff  
Katherine L. Mesner-Hage  
**KOSKOFF, KOSKOFF & BIEDER, P.C.**  
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Ben Crump  
Scott Carruthers  
Talley Kaleko  
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122 S. Calhoun Street  
Tallahassee, FL 32301

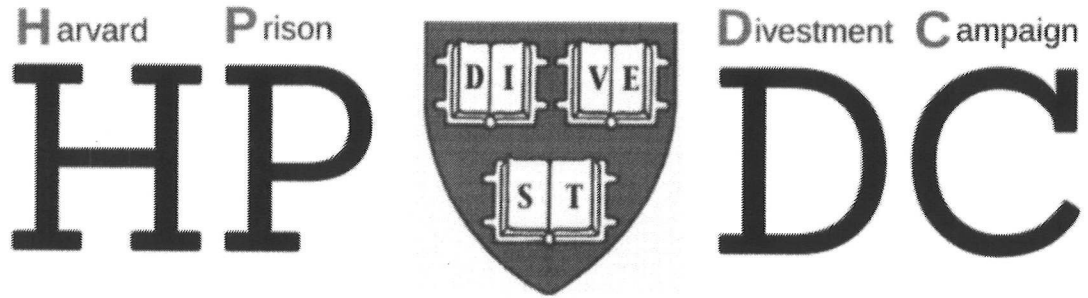
Mark Marderosian  
**COHEN & MARDEROSIAN**  
One Penn Plaza, Suite 6180  
New York, NY 10019

# EXHIBIT O



# Harvard Petition for Prison Divestment

\* Required



## Petition to the President of Harvard University

President Bacow,

We, the undersigned, call upon you and the Harvard Management Company to immediately divest Harvard's holdings from the prison-industrial complex and take specific steps to repair the grievous harms these investments have inflicted and continue to perpetuate.

Beginning in early 2016, Harvard's leadership took steps to publicly acknowledge and express remorse for the university's direct complicity in the institution of slavery. Nevertheless, Harvard continues to profit from the caging and forced labor of Black people through its investments in the prison-industrial complex, through which the legacies of slavery persist. After the Civil War, the 13th amendment's abolition of slavery "except as punishment for a crime" facilitated efforts by Southern elites to preserve slavery—through the passage of the Black Codes, convict leasing programs, and Jim Crow-era laws—that would eventually evolve into the modern prison system.

Today, the prison-industrial complex—defined as "the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to what are, in actuality, economic, social, and political problems"—has ensnared close to 2.3 million people in prisons and jails at the local, state, and federal levels, with an additional 4.5 million people under correctional control on probation or parole. These statistics so shock the conscience that over 75% of undergraduates who voted in the most recent Undergraduate Council election support divestment from the prison-industrial complex.

We demand that you and the Harvard Management Company divest Harvard's holdings from companies that profit from the prison-industrial complex and reinvest in communities disproportionately affected by mass incarceration by doing the following:

### Disclose and Divest

- a) Publicly disclose and release endowment holdings in all funds with stock in companies whose existence depends on the prison-industrial complex.
- b) Provide an authenticated copy of endowment holdings to the Harvard community in the interests of transparency, prior to divestment and regularly thereafter.

### Repair and Rebuild

- a) Apportion a significant percentage of divested funds towards companies, organizations, and initiatives in Cambridge and Boston that are led by people directly impacted by the prison-industrial complex. Establish an accountability structure for the appropriate redistribution of funds, with timed mandates and oversight accorded to people and communities who have been the central victims of mass incarceration.
- b) Launch a cross-school initiative to research and teach creative ways to eliminate structural social harms that do not rely on prisons and police. Develop funded academic projects (e.g. scholarships, centers, institutes, departments, and concentrations) that employ formerly incarcerated people, organizers, and scholars. End discrimination against and create opportunities for current and formerly incarcerated persons.

Signed,

Name \*

Your answer



# EXHIBIT P

# Zevin Asset Management, LLC

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**Remarks of Pat Miguel Tomaino, Zevin Asset Management,  
as prepared for a meeting held October 28, 2019 with  
The President and Fellows of Harvard College and  
the Harvard Prison Divestment Campaign**

Good afternoon,

My name is Pat Miguel Tomaino. I am the Director of Socially Responsible Investing (SRI) at Zevin Asset Management<sup>1</sup>, a socially responsible investing firm based in Boston.

Zevin Asset Management invests approximately \$500 million on behalf of institutional clients and families who trust us to deliver superior returns and create positive social and environmental impact with their money. To build socially responsible, risk-managed stock portfolios, we routinely exclude (or “screen” out) companies in harmful industries, such as companies that profit substantially from incarceration and immigration detention, firearms and weapons of war, tobacco products, and, for many of our clients, fossil fuels.

My overall message to the Harvard Corporation is that the above strategies — including exclusion screens — are fundamental to sustainable investment practice, as it is now implemented by a diverse range of investors now managing approximately \$12 trillion, according to a recent analysis.<sup>2</sup> That means that portfolios equal to approximately 1 in 4 dollars invested globally employ positive screening, negative screening, divestment, and/or other methods of integrating environmental, social and governance (ESG) insights into the investment process.

These types of strategies should be adopted by Harvard. In my view, screening and divestment to reduce risk are not currently being properly employed by Harvard. As a result, a range of harmful and risky activities, from military weapons firms to fossil fuels to prison profiteering, shows up in Harvard’s investment portfolios.

My urgent and particular message today is that the University can and should divest from companies that profit from the prison-industrial complex. It will be a process, but Harvard can start now with purpose and transparency.

I wish to encourage the Harvard Corporation as you consider embarking on this process. I also wish to reassure you in the following ways.

## **1. The prison-industrial complex is a risky investment.**

Harvard must divest, particularly because it is becoming more and more clear that companies that profit from the prison-industrial complex are inherently risky.

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<sup>1</sup> Information at [www.zevin.com](http://www.zevin.com)

<sup>2</sup> “2018 Report on US Sustainable, Responsible and Impact Investing Trends,” US SIF, October 31, 2018. <https://www.ussif.org/trends>



This is what the City of New York cited when it decided to divest from private prison companies in 2018. New York's decision was motivated by conviction: to align public funds with the city's public values. In a *New York Times* op-ed City Comptroller Scott Stringer wrote, quite rightly, that the prison industry "has turned human suffering into a billion-dollar business."<sup>3</sup> For example, a British security company called G4S has large corrections and U.S. border patrol contracts and a history of human rights issues — but it is widely held in institutional investing portfolios.<sup>4</sup>

Here is what Comptroller Stringer also said: private incarceration companies like G4S, in addition to being morally suspect, fail a basic risk assessment; divesting from the prison-industrial complex means decreasing risk in investment portfolios. New York is right. Private prison stocks swung wildly between the Obama and Trump administrations, and future legal and policy changes could bring more volatility and risk. Prison-profiteers are at the whim of the policy pendulum and the preferences of politicians. For instance, private prison stocks crashed when the Obama-era Department of Justice decided to move away from using private prison facilities after presenting findings indicating that private facilities were too costly and that they may not be consistent with inmates' rights.<sup>5</sup>

Major financial institutions are also realizing the riskiness of the prison-industrial complex. Recently, JPMorgan Chase started the process of divesting from and ending banking relationships with private prison companies.<sup>6</sup> JPMorgan has been joined to some extent by major banks like Wells Fargo, Barclays, Bank of America, SunTrust, and BNP Paribas.<sup>7</sup> At the time of its decision, JPMorgan Chase noted that it has a "robust and well-established process to evaluate the sectors that we serve" and this process resulted in the decision to cut ties with private prisons.<sup>8</sup>

Large pension funds are doing even more. Many of America's largest and most-watched public funds have begun the process of divesting from the prison-industrial complex. In addition to New York City, this also includes New York State's Pension Plan, the New Jersey Pension Fund, the Rhode Island Employees' Retirement System, the Chicago Teachers Pension Fund, the California State Teachers Retirement System (CalSTRS), and the California Public Employees' Retirement System (CalPERS), one of the largest investment funds in the world.

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<sup>3</sup> Stringer, Scott M. (New York City comptroller) and Javier H. Valdes, "Opinion: More Cities and States Should Divest From Private Prisons," *The New York Times*, July 30, 2018. <https://www.nytimes.com/2018/07/30/opinion/private-prisons-immigration-divest.html>

<sup>4</sup> G4S PLC research profile, American Friends Service Committee Investigate website, updated October 30, 2018. <https://investigate.afsc.org/company/g4s>

<sup>5</sup> "Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons," Office of the Inspector General, U.S. Department of Justice, August 2016. <https://oig.justice.gov/reports/2016/e1606.pdf>; "US Justice Department Ends Use of Private Prisons," Human Rights Watch, August 18, 2016. <https://www.hrw.org/news/2016/08/18/us-justice-department-ends-use-private-prisons>; "US Govt. to phase out use of private prisons over cost, prisoner health & safety concerns," Business & Human Rights Resource Centre, 2016. <https://www.business-humanrights.org/en/us-govt-to-phase-out-use-of-private-prisons-over-cost-prisoner-health-safety-concerns>

<sup>6</sup> "JP Morgan Chase Stops Funding Private Prison Companies," *The New York Times*, March 6, 2019. <https://www.nytimes.com/2019/03/06/business/ip-morgan-prisons.html>

<sup>7</sup> "Barclays Is Latest to Cut Finance Ties With Private Prisons," *Bloomberg*, July 31, 2019. <https://www.bloomberg.com/news/articles/2019-07-31/barclays-is-latest-to-cut-finance-ties-with-private-prison-firms>

<sup>8</sup> "JPMorgan Ends Financing of Private Prisons After Criticism," *Bloomberg*, March 5, 2019. <https://www.bloomberg.com/news/articles/2019-03-05/jpmorgan-ends-financing-of-private-prisons-following-criticism>

## **2. Socially responsible investment (SRI) and divesting from harmful, risky industries do not hurt portfolio performance.**

Evidence indicates that there is no significant performance penalty for taking steps such as the above. Most socially responsible investment screening does not materially constrain the universe of investment options. Where there are constraints, a skilled investment advisor can manage limitations by creatively finding needed exposure (investing in alternative sectors or sub-sectors) and also by seizing opportunities to invest in attractive, socially responsible companies.

An RBC study comparing the performance of screened SRI indices with conventional indices found that socially responsible investing does not result in lower investment returns. RBC said: "This is an important finding because it provides support to individual investors and trustees of institutional funds that they can pursue a program of socially responsible investing with the expectation that investment returns will be similar to traditional investment options."<sup>9</sup>

A nuveen/TIAA analysis of leading SRI equity indices in 2017 found no statistical difference in returns compared to broad market benchmarks, which, to them, suggested no systematic performance penalty for SRI.<sup>10</sup>

More generally, it is clear that SRI practice can reduce long-term risks in portfolios. A 2015 Oxford University study found that responsible business practices are linked to better financial performance.<sup>11</sup> In the same year, a meta-study of sustainable investment practices found a positive or neutral effect on investment performance 90 percent of the time.<sup>12</sup>

I have found the above to be consistent with my work helping to create responsible investment portfolios for institutional clients. In my experience and in the view of Zevin Asset Management, environmental and social risks have a measurable effect on a company's market value, as well as its reputation. Companies have seen their revenues and profits decline, for instance, after worker safety incidents, waste or pollution spills, weather-related supply-chain disruptions, and similar incidents — which especially impact companies in harmful sectors. Environmental and social issues have harmed brands, which can account for much of a company's market value. Investors also rightly question whether companies are positioned to succeed in the face of risks stemming from long-term trends such as climate change and water scarcity.

## **3. Divestment is practicable.**

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<sup>9</sup> "Does socially responsible investing hurt investment returns?" RBC Global Asset Management, September 2012. <http://funds.rbcgam.com/assets-custom/pdf/RBC-GAM-does-SRI-hurt-investment-returns.pdf>

<sup>10</sup> "Responsible Investing: Delivering competitive performance," nuveen/TIAA Investments, July 2017. [https://www.tiaa.org/public/pdf/ri\\_delivering\\_competitive\\_performance.pdf](https://www.tiaa.org/public/pdf/ri_delivering_competitive_performance.pdf)

<sup>11</sup> Clark, Gordon (Oxford University) and Andreas Feiner (Arabesque Asset Management), "From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance," March 6, 2015. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2508281](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2508281)

<sup>12</sup> Friede, Gunnar et al, "ESG and Financial Performance: Aggregated Evidence From More Than 2,000 Empirical Studies," *Journal of Sustainable Finance & Investment*, October 2015. <https://paxworld.com/esg-and-financial-performance-aggregated-evidence/>

The Harvard Corporation can begin the process of divesting from the prison-industrial complex right now. This would entail giving the Harvard Management Company (HMC) and sub-managers clear instructions roughly regarding the following, for example:

- A. HMC and sub-managers should report to the Corporation and to the public on the University's exposure to the prison-industrial complex.
- B. HMC and sub-managers should begin divesting on an expeditious, best-efforts basis.
- C. HMC and sub-managers should report substantively to the Corporation and to the public in successive years on their progress regarding (A) and (B). The Corporation should in turn report to the public on its assessment of progress.

The above is a standard process scaffold for divestment in use by several large institutional asset owners like Harvard. From what I understand of Harvard's resources and the services provided by HMC and other service providers, the above is all within Harvard's capabilities. The point is to leverage the expertise of expert consultants, vendors and service providers to get the job done in a thorough and deliberate manner in keeping with fiduciary duty.

HMC and the sub-managers are your service providers, and they are eager to please you with solutions and product innovation. Harvard is the client. It might take some time, but Harvard's expert vendors will mobilize to help the University to cease its support for and exposure to the prison-industrial complex.

In closing, as I have said, major pension funds, asset managers, foundations and other institutions like Harvard are putting all of the above insights into action. They have already begun to implement socially responsible investment strategies, divest from harmful industries like private prisons and fossil fuels, re-invest in regenerative assets, and reap the attendant benefits.

I urge Harvard to follow suit and divest from the prison-industrial complex. I remain at your disposal to assist in that process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat Miguel Tomaino', enclosed within a hand-drawn oval.

Pat Miguel Tomaino  
Director of Socially Responsible Investing  
Zevin Asset Management, LLC

# EXHIBIT Q



FEDERAL IDENTIFICATION  
no. 04-2103580  
Fee: \$15.00

  
Examiner

**The Commonwealth of Massachusetts**  
William Francis Galvin  
Secretary of the Commonwealth  
One Ashburton Place, Boston, Massachusetts 02108-1512

**ARTICLES OF AMENDMENT**  
(General Laws, Chapter 180, Section 7)

Name  
Approved

We, Drew Gilpin Faust, \*President / \*Vice-President,

and Marc Goodheart, \*Clerk / \*Assistant-Clerk,

of President and Fellows of Harvard College,  
(Exact name of corporation)

located at Massachusetts Hall, Cambridge, Massachusetts 02138,  
(Address of corporation in Massachusetts)

do hereby certify that these Articles of Amendment affecting ~~articles numbered:~~

Charter of 1650  
(Number those articles 1, 2, 3, and/or 4 being amended)

~~of the Articles of Organization~~ were duly adopted at a meeting held on December 4 2010, by vote of:

members, seven directors, or shareholders\*\*,

- Being at least two-thirds of its members legally qualified to vote in meetings of the corporation; OR
- Being at least two-thirds of its directors where there are no members pursuant to General Laws, Chapter 180, Section 3; OR
- In the case of a corporation having capital stock, by the holders of at least two-thirds of the capital stock having the right to vote therein.

C   
P   
M   
R.A.

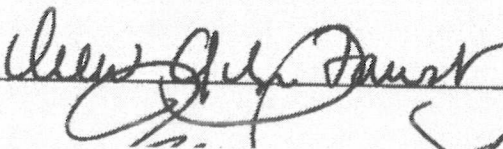
The Charter of 1650 of President and Fellows of Harvard College, as amended, shall be and is hereby further amended as follows:

- (i) The Corporation shall consist of the President, the Treasurer, and eleven Fellows or such other number of Fellows as the Corporation shall determine from time to time with the consent of the Overseers.
- (ii) A member of the Corporation shall serve for such duration as the Corporation may determine from time to time.
- (iii) The Corporation, with the counsel and consent of the Overseers, shall have the authority to elect new members of the Corporation to fill any vacancy in the Corporation arising as a result of an increase in the number of Fellows or the departure of any Corporation member for any reason.
- (iv) Unless the context otherwise requires, references in the Charter of 1650 to "seven" members of the Corporation shall be deemed to refer to the collective membership of the Corporation.
- (v) References in the Charter of 1650 to approval of certain actions by the President and at least three Fellows shall be deemed to refer to approval of such actions by the President and such number of other members as together with the President shall constitute a majority of the Corporation.

The foregoing amendment(s) will become effective when these Articles of Amendment are filed in accordance with General Laws, Chapter 180, Section 7 unless these articles specify, in accordance with the vote adopting the amendment, a later effective date not more than *thirty days* after such filing, in which event the amendment will become effective on such later date.

Later effective date: \_\_\_\_\_

SIGNED UNDER THE PENALTIES OF PERJURY, this 5th day of December, 20 10



\_\_\_\_\_, \*President / \*Vice-President,



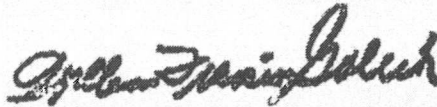
THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF AMENDMENT  
(General Laws, Chapter 180, Section 7)

#390915

I hereby approve the within Articles of Amendment and, the filing fee in the amount of \$ 15 having been paid, said articles are deemed to have been filed with me this 6<sup>th</sup> day of December 20 10.

Effective date: \_\_\_\_\_



WILLIAM FRANCIS GALVIN  
*Secretary of the Commonwealth*

1130805

SEC  
2010 DEC -6 AM 9:17

TO BE FILLED IN BY CORPORATION  
Contact information:

Christopher A. Klem

Ropes & Gray

800 Boylston Street, Boston, MA 02199

Telephone: 617 951 7410

Email: [christopher.klem@ropesgray.com](mailto:christopher.klem@ropesgray.com)

A copy this filing will be available on-line at [www.state.ma.us/sec/cor](http://www.state.ma.us/sec/cor) once the document is filed.



# EXHIBIT R

From: Lawrence S. Bacow [REDACTED]  
Subject: RE: Follow-Up on "Run with the President"  
Date: May 16, 2019 at 5:03 PM  
To: Harvard Prison Divestment Campaign [REDACTED]  
Cc: Bellinger, Patricia S. [REDACTED]

LB

Dear Members of the Harvard Prison Divestment Campaign,

Thank you for your email. I welcome the opportunity to review your research on this issue and continue our dialogue to determine the most effective way to address these critical matters.

Let me begin by noting that I am confident that the information I shared with you at our last meeting regarding the University's indirect exposure, via index funds (ETFs), to companies that operate private prisons was accurate. In reviewing your research, I note that the discrepancy between our calculations is due to the breadth of organizations your work has tied to the daily operations of such facilities. Identifying the limited indirect exposure of Harvard's endowment to those companies is, by no means, an endorsement of their operations. Rather, I share that data point with you to stress the negligible effect that divesting from those index funds would achieve toward upsetting their operations.

We agree that the system of mass incarceration in the United States is the culmination of decades (if not centuries) of ill-advised, punitive, and, at times, intentionally racist public policy measures that have had exceedingly disproportionate effects on communities of color and those without the means or the agency to seek redress.

Where we disagree is in the tactics that will effectively address this urgent need. I believe that your goals are more directly and immediately achieved through engagement with federal and state legislatures, county sheriffs' offices, and attorneys general and district attorneys—those who set the standards for prison operations, maintain the contracts for outsourced services, and control the myriad hurdles that pervade the criminal justice system.

Harvard has a fiduciary duty to maintain the endowment for current and future generations. These gifts were made, dating back to the early days of the College's existence, with the understanding that perpetual funding was the promise made in return for their generosity and shared commitment to our mission. To inject public policy goals or social objectives, absent a concern for financial materiality, into the investment process would not only limit our ability to sustain this funding, but also signal that an endowed gift is not just funding for teaching and research, but a political statement.

There are certain, rare circumstances where divestment is warranted. Those decisions are made by the Corporation Committee for Shareholder Responsibility (CCSR) in consultation with the Advisory Committee on Shareholder Responsibility. On those occasions, the CCSR issues a directive to Harvard Management Company that restricts direct holdings by their investment team, as well as direct holdings by investment advisers trading in the name of President and Fellows of Harvard College through separately managed accounts.

As I have stated before, I would be happy to coordinate a meeting between representatives of the HPDC and CCSR to discuss the issue in further detail.

All the best,  
Larry

---

Lawrence S. Bacow  
President  
Harvard University

**From:** Harvard Prison Divestment Campaign <harvardpdc@gmail.com>  
**Sent:** Sunday, May 5, 2019 8:31 PM  
**To:** Lawrence S. Bacow <president@harvard.edu>  
**Cc:** Bellinger, Patricia S <patricia\_bellinger@harvard.edu>  
**Subject:** Follow-Up on "Run with the President"

Dear President Bacow,

Thank you for taking the time today to host a run with the Harvard community. It provided a great opportunity for our members to express our concerns regarding Harvard's investments in the prison-industrial complex (PIC) on behalf of the Harvard Prison Divestment Campaign (HPDC).

As promised, we are attaching our report for your convenience and review. We are glad you have committed to comment on this report by June 1. You can find the report here: ([LINK](#))

To avoid future confusion, and to honor the collective voice of our campaign, this address will be the official channel of email communication with HPDC.

As we discussed today, HPDC is only interested in a meeting with the HMC Shared Responsibility Committee insofar as it is a concrete step towards the disclosure of Harvard's investments in the PIC, full divestment from these holdings, and reinvestment in communities that have been the targets of mass incarceration. We look forward to your presence at this meeting, should it happen.

Candidly, we are deeply concerned that you still have not condemned the incredible harm perpetuated by Harvard's investments in the prison industry. It is our firm belief that these investments uphold and further entrench white supremacy. As our campaign and allies see it, until we divest and reinvest, these injustices will remain a part of Harvard's reputation and your legacy.

In this vein, we ask: **Have you brought this issue to the HMC Shared Responsibility Committee?** We understand that it is the committee's job to ensure Harvard's investments are ethical. Yet, their failure to investigate and take action against investments in the PIC has forced members of our campaign, including undergraduate and graduate students, incarcerated leaders, and community advocates to force your attention to this issue. Harvard has more than ample resources to ensure that its financial stakeholders are properly educated

on this humanitarian crisis. If Harvard wants to live up to its claim to moral leadership, this matter cannot go unaddressed.

To reiterate, thank you for your two short-term commitments:

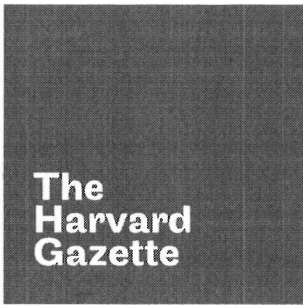
1. To comment on our attached report by June 1.
2. To attend the meeting between the Harvard Management Company Shared Responsibility Committee and HPDC, if it should happen.

Thank you for your time. We are hopeful you will help capitulate Harvard's swift divestment from the PIC and reinvestment in communities that have been harmed by mass incarceration. We will be in communication about the meeting with the HMC Shared Responsibility Committee and, of course, your comments on our report.

Sincerely,  
HPDC



# EXHIBIT S



NEWS & ANNOUNCEMENTS

# Statement by Harvard Corporation Committee on Shareholder Responsibility (CCSR) Regarding Stock in PetroChina Company Limited

April 4, 2005

We are announcing today the Harvard Corporation’s decision to direct Harvard Management Company (HMC) to divest itself of stock held by HMC in PetroChina Company Limited (PetroChina).

This decision reflects deep concerns about the grievous crisis that persists in the Darfur region of Sudan and about the extensive role of PetroChina’s closely affiliated parent company, China National Petroleum Corporation, as a leading partner of the Sudanese government in the production of oil in Sudan. Oil is a critical source of revenue and an asset of paramount strategic importance to the Sudanese government, which has been found to be complicit in what the U.S. Congress and U.S. State Department have termed “genocide” in Darfur and what a United Nations commission of inquiry recently characterized as “crimes against humanity and war crimes . . . [that] may be no less serious and heinous than genocide.”

Although Harvard maintains a strong presumption against the divestment of stock for reasons unrelated to investment purposes, we believe that the case for divestment in this instance is persuasive, in view of the confluence of circumstances summarized below, under the heading “Recommendation to Divest from PetroChina.”

The Corporation, on our recommendation, has reached this decision in light of the advice of the University's Advisory Committee on Shareholder Responsibility (ACSR) to divest from PetroChina. The ACSR is comprised of four faculty members, four students, and four alumni. We asked the ACSR to study the issue and offer its advice to us after concerns had been expressed by members of the Harvard community about PetroChina and the situation in Darfur. We are especially grateful for the efforts of an ACSR subcommittee chaired by Joseph Badaracco, Shad Professor of Business Ethics and former chair of the ACSR. The subcommittee, after hearing from representatives of the group urging divestment from companies doing business with Sudan and otherwise inquiring into the circumstances, prepared a report that thoughtfully addresses the relevant considerations, and we therefore quote from it at length below.

### **The Crisis in Darfur**

The ACSR subcommittee report begins by describing the grave situation in Darfur: A grievous crisis exists in the Darfur region of Sudan. In March 2004, the United Nations humanitarian coordinator for Sudan described the situation in Darfur as an instance of "ethnic cleansing" and "the world's greatest humanitarian crisis." In July 2004, both houses of the U.S. Congress passed a resolution declaring the atrocities in Darfur to constitute genocide. In September 2004, U.S. Secretary of State Colin S. Powell similarly declared that genocide has been committed in Darfur, for which the Sudanese government and the so-called Janjaweed militia groups bear responsibility.

On January 25, 2005, a special United Nations commission of inquiry, while stopping short of declaring that "genocide" is underway in Sudan, concluded that "the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law," including "killings of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur." It stated that such acts have been "conducted on a widespread and systematic basis," and that "the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide."

Numerous other observers have condemned the Sudanese government for complicity in actions that have reportedly resulted in the deaths of more than 70,000 Sudanese civilians (some estimates are far higher) and the displacement of 1.5 million more. [See note below, regarding a more recent and much higher estimate of death toll.] There have also been reports linking oil production activities in Sudan directly to mass displacement of civilians and other human rights abuses. The grave situation in the Darfur region persists, notwithstanding the recent signing of a peace accord to end the longstanding north-south civil war in Sudan, and several rounds of negotiations concerning Darfur.

Note: On March 29, 2005, after the ACSR subcommittee had completed its report, a British parliamentary report stated that the death toll in Darfur may be as high as 300,000.

### **The importance of oil to the Sudanese government, and the involvement of CNPC**

The ACSR report also discusses the central importance of oil to the governing regime in Sudan, as well as the extensive involvement of China National Petroleum Corporation, the parent company of PetroChina, in the production of Sudanese oil: Oil production is widely understood to be a crucial source of revenue for the Sudanese government, essential to the government's capacity to fund military operations, and an asset of exceptional strategic importance to the regime. According to a recent report of the U.S. Department of Energy, "With the start of significant oil production (and exports) beginning in late 1999, . . . Sudan's economy is changing dramatically, with oil export revenues now accounting for around 73% of Sudan's total export earnings." [Energy Information Administration, U.S. Department of Energy, Sudan Country Analysis Brief, July 2004.]

As of January 2004, Sudan's estimated proven reserves of crude oil stood at 563 million barrels, more than twice the 2001 estimate. As of June 2004, crude oil production had risen to 345,000 barrels per day, up from 270,000 barrels per day just a year earlier. [*Ibid.*] The China National Petroleum Corporation ("CNPC") is wholly-owned by the Chinese Government. [CNPC] conducts oil operations in Sudan. CNPC is the largest single shareholder of the Greater Nile Petroleum Operating Company ("GNPOC"), a consortium that "dominates Sudan's oil fields." ["China Invests Heavily in Sudan's Oil Industry," *The Washington Post*, December 23, 2004 (*Post* article).] GNPOC was created by the Sudanese government and includes, among its joint venturers, the Sudanese state-owned oil company, Sudapet. (United States investors are prohibited by U.S. sanctions law from investing in the GNPOC joint venture.) CNPC recently reported that its production of crude oil in Sudan exceeded 16 million tons in 2004, which appears to account for a substantial fraction of its total foreign oil production.

It has also been observed that the production of Sudanese oil has been a matter of attention within the United Nations Security Council in discussions of possible international sanctions against Sudan based on the situation in Darfur, and that substantial revenue from Sudan's oil production has gone toward the purchase of weapons.

### **CNPC and PetroChina**

The ACSR report also addresses the relationship of CNPC to PetroChina: In April 1999, CNPC announced its plans to sell \$10 billion shares on the New York Stock Exchange. Human rights groups and others objected to the initial public offering, contending that the deal would be tantamount to U.S. support for genocide in [southern] Sudan. In response, CNPC restructured



the transaction. It created a new subsidiary, PetroChina, which would operate only inside China, to be owned 90% by CNPC and 10% by private investors.

On April 6, 2000, \$2.9 billion dollars of shares in PetroChina were sold on the New York Stock Exchange to private investors. At that time, CNPC's investment bankers from Goldman Sachs asserted to investors that none of the money raised in the IPO would be used to fund CNPC's projects in Sudan. [Post article; China's Involvement in Sudan: Arms and Oil, Human Rights Watch, November 2003 (Human Rights Watch Report).]

Despite CNPC's assurances, several potential investors viewed with considerable skepticism CNPC's firewall strategy. Opponents of the IPO pointed out that when PetroChina was created, it incurred \$15 billion in debt from CNPC, some of which was incurred in connection with the GNPOC project. [Human Rights Watch Report.] Fund managers were skeptical that PetroChina could make independent business decisions because CNPC owned 90% of its shares. As a result of these concerns, several major institutions, including such pension funds as TIAA-CREF and Calpers, elected at the time of the IPO not to invest.

Within the past few months, there have been further complaints that "[t]ransparency in the relationship between PetroChina and CNPC is so poor that investors are often in the dark about potential cross-subsidies." ["Assets Plan for PetroChina in Global Drive," *The Standard*, October 25, 2004.]

In an effort to determine whether PetroChina can exercise independence from CNPC despite CNPC's 90% ownership interest in it, the subcommittee examined the management of the two companies. The results of that review were striking. The chairman of PetroChina is the president of CNPC; PetroChina's legal counsel is CNPC's president; PetroChina's vice chairmen, executive directors, and non-executive directors are also CNPC's vice presidents; and the four subcommittees of PetroChina's board of directors contain substantial representation from CNPC. Indeed, the investment and development subcommittee of the board of PetroChina is comprised solely of two vice presidents of CNPC.

Against this background come new reports that suggest the two companies are contemplating the integration of their operations. According to *The Standard*, "Beijing plans to create an integrated oil giant capable of competing on the global stage with the likes of Exxon-Mobil and Royal Dutch Shell by restructuring PetroChina and its parent China National Petroleum Corp. (CNPC)." [*Ibid.*] As a result of this contemplated corporate restructuring, PetroChina itself may become the direct owner of substantial oil assets in Sudan now owned by CNPC, or CNPC and PetroChina may establish a joint venture through which they would jointly own such assets.

### **The Recommendation to Divest from PetroChina**

Finally, the ACSR report recommends that Harvard divest itself of PetroChina stock,

recognizing the strong presumption against divestment for reasons unrelated to investment purposes, but also pointing to the unusual combination of circumstances presented by this particular holding: The subcommittee understands that Harvard manages its endowment to achieve maximum returns to support the academic purposes and programs of the University, consistent with a prudent level of risk. The University maintains a strong presumption against divesting itself of securities for reasons unrelated to investment purposes, and against using divestment as a political tool or a “weapon against injustice” — not because there are not many worthy political causes or deeply troubling injustices in the world, but because the University is first and foremost an academic institution.

During his tenure as president of Harvard, Derek Bok wrote thoughtfully and extensively about the reasons for that approach. His writings are a compelling reminder that the University, as an academic rather than a political institution, must take great care to avoid leveraging its endowment or prestige in ways that could embroil the institution in political and social controversies not directly related to its academic pursuits, and thus compromise the core values and independence of the academic enterprise.

Nevertheless, there are exceptional cases in which the strong presumption against divestment may be overcome. As President Bok noted, “Although trustees have a legal and moral obligation to enhance and conserve the university’s resources, there are rare occasions when the very nature of a company’s business makes it inappropriate for a university to invest in the enterprise.” Typically, in such cases, the act of divestment is not taken with the expectation that it will induce a company to cease its objectionable operations; rather, to paraphrase President Bok, the University simply does not consider it proper to make investments in the enterprise in question.

We believe the unique pattern of circumstances relating PetroChina to the crisis in Sudan counsels in favor of taking the extraordinary step of divestment: the declarations by the U.S. Congress and the U.S. Secretary of State describing the situation in Darfur as involving a “genocide” in which the Sudanese government is complicit; the judgment of a United Nations commission of inquiry that the Government of Sudan shares responsibility for “widespread and systematic acts” in Darfur amounting to “crimes against humanity and war crimes . . . [that] may be no less serious and heinous than genocide”; the apparent persistence of the crisis in Darfur notwithstanding the recently negotiated peace agreement intended to end the north-south civil war in Sudan and several rounds of negotiations focused on Darfur; the salient importance of oil to the Sudanese government as a strategic asset and source of revenue, available to fund military and other operations; the reports that oil-related activities themselves have exacerbated the humanitarian crisis in Sudan; the magnitude and scope of CNPC’s active involvement in Sudanese oil production activities (especially in GNPOC), the importance of its Sudanese activities in its overall range of foreign oil activities, and CNPC’s

status as a direct joint venture partner of Sudapet, owned by the Sudanese government; the express inclusion of the GNPOC joint venture on the list of entities with which persons in the United States are prohibited from doing business under U.S. sanctions law; CNPC's 90 percent ownership of PetroChina, and the lack of realistic opportunity for an owner of a small fraction of PetroChina's publicly traded shares to exercise "voice" in a way that could be expected to exert significant influence on the conduct of CNPC, which is wholly owned by the Chinese government; the fact that PetroChina's Board of Directors is dominated by CNPC's senior management; the recent reports that PetroChina itself may soon become the direct owner of international oil assets (including Sudanese assets) now owned by CNPC, or that CNPC and PetroChina may form a joint venture through which they would jointly own such assets, as a result of a contemplated corporate restructuring.

### **Conclusion**

The CCSR is persuaded, and the Corporation agrees, that this particular combination of circumstances, taken together, warrants the rare step of divestment. We accordingly are directing Harvard Management Company to divest its holdings of PetroChina stock.

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# EXHIBIT T





# PRESS RELEASE: Harvard President claims without evidence that investments in prisons total only \$18,000, still refuses to divest

by HPDC | Apr 18, 2019 | News



The Harvard Prison Divestment Campaign

April 18, 2019

PressRelease

## **HARVARD PRESIDENT CLAIMS WITHOUT EVIDENCE THAT INVESTMENTS IN PRISONS TOTAL ONLY \$18,000, STILL REFUSES TO DIVEST**

Student organizers from the Harvard Prison Divestment Campaign (HPDC) met with Harvard President Lawrence Bacow on Thursday, April 18, 2019. They sought to learn why he has not disclosed Harvard's \$39 billion endowment portfolio that includes investments in private prisons and companies that significantly profit from the prison-industrial complex. President Bacow holds "office hours" twice a semester, where he allows students to schedule 10-minute slots with him to discuss a topic of their choosing.

"President Bacow," asked Joe Pinto, MDiv '20, "you've called for a conversation around questions of divestment, yet the way in which you've engaged this issue suggests that you don't really want one — for example, we've heard you repeat [only] prepared talking points, and you were clearly unreceptive to arguments from your faculty at last week's [fossil fuel] divestment forum. Our questions for you are: 1) are you listening; 2) how do we know; and 3) what have you found most persuasive so far in calls for divestment?"

"We have no direct holdings in companies that operate private prisons," Bacow replied, in a marked pivot from the university's previous strategy of saying only that Harvard "does not instrumentalize the endowment for particular causes" and reproaching students' acts of civil disobedience. Since HPDC has already acknowledged, in its original petition to Bacow, the lack of direct holdings in private prisons – versus investments through index funds and holdings in companies that profit significantly from prisons – his statement all but confirmed the students' impression that he is not listening to his community.

Bacow further indicated that Harvard's total financial stake in the carceral system amounts to "only about \$18,000." He subsequently refused to disclose the endowment's holdings so that his numbers could be verified. HPDC has

gathered through Harvard's SEC filings and publicly available data that, of the 1% of the endowment that is currently known, \$2 million is invested in the prison-industrial complex, roughly \$100,000 of which is associated with private prisons alone.

"I believe in the goodness of Harvard," Bacow added. When a student questioned how "goodness" factors in Harvard's recent decision not to relinquish daguerreotypes of slaves to a known descendant, he replied, "Those images belong to history."

Today's meeting closely follows HPDC's disruption of a public event at the Harvard Kennedy School Institute of Politics on Thursday, April 4 at which Bacow was scheduled to speak. Following the disruption, Bacow reiterated his long-standing position that he responds to "reason, not demands." In turn, HPDC organizers launched the campaign #2.2millionreasons that invited students, administrators, and faculty to affirm the 2.2 million people incarcerated in the United States as their "reason" for supporting divestment.

At a public forum on fossil fuel divestment on Thursday, April 11, Bacow then publicly said he "would be happy" to engage HPDC and faculty members on their concerns about Harvard's investments in the prison-industrial complex. In today's office hours, he proposed a meeting between HPDC and the Harvard Management Company, but dismissed students' request that such a meeting happen on terms that account for and counteract the unequal playing field between Harvard and its students that has been evident in Harvard's disciplinary posture toward peaceful student protestors.

## Recent Posts

PRESS RELEASE: Student Protestors Protest Senior Fellow Bill Lee's Keynote Speech

PRESS RELEASE: Harvard Senior Fellow Bill Lee Confronted on Prison Divestment Stance

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Susan "Robin" Bancroft McLane on Of the 1% Disclosed, \$3 Million of Harvard's Endowment is Invested in the Prison-Industrial Complex

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