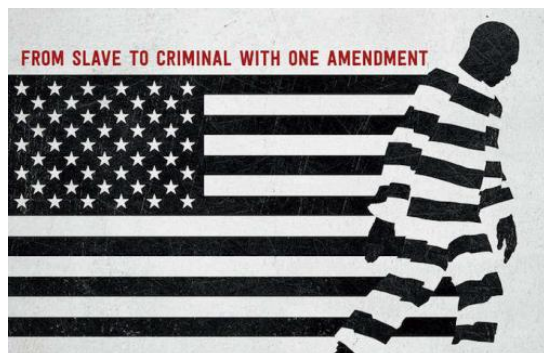


# Mass Incarceration and Its Mystification: A Review of "The 13th"

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When prisoners in Alabama last spring proposed a national strike to protest “prison slavery,” they called out the infamous clause in the Thirteenth Amendment. The amendment most known for abolishing slavery included a rider that sanctioned slavery “as punishment for a crime wherein the party shall have been duly convicted.”

That exception provides the foundation for Ava DuVernay’s *The 13<sup>th</sup>*, an exploration of racial criminalization from the end of slavery to the present. The documentary features interviews with several leading scholars, pundits, and activists working on the issue, as well as a host of other commentators, including journalists and politicians. It moves quickly through more than 150 years of history, with a clear goal of providing the backdrop to the present moment of racial violence and resistance.

The film is at its best when it chronicles individual fates of those who encounter the carceral state. For example, the tragedy of Khalief Browder, the 22-year-old New Yorker who committed suicide after being held for three years in Rikers Island awaiting trial on charges—ultimately dropped—of having stolen a backpack, is portrayed with wrenching grace. Browder’s courage is evident in his refusal to accept a plea bargain for something he did not do. Yet the violence he faced during his imprisonment, some of it captured on film, led him to take his own life after his release. The film also presents a thoughtful, searing discussion among Black scholars and activists about the ethics of visualizing Black suffering, from lynching to contemporary killings by police.

*The 13<sup>th</sup>* effectively demonstrates that criminalization has been a persistent feature of anti-Black racism. It shows the recursive nature of “law and order” politics, as DuVernay juxtaposes scenes from Trump’s speeches and rallies with police and vigilante attacks on Black activists in the 1960s. Such scenes, with the accompanying commentary, vindicate the mission, purpose, and structure of Black Lives Matter as the latest manifestation of a long struggle against criminalization. The footage underscores Malkia Cyril’s powerful comment that Black Lives Matter is “about changing the way this country understands human dignity.”

*The 13<sup>th</sup>* describes mass incarceration as a backlash to the civil rights and Black Power movements, with some compelling footage of Black Panther Assata Shakur and other activists. Yet the film focuses more on what FBI Director J. Edgar Hoover and President Nixon thought than on what they—or others—did. The reference by CNN contributor Van Jones to the imprisonment, exile, or death of Black activists in the 1960s appears only in the context of why there was not more opposition to the 1994 Crime Bill rather than as part of examining the foundations of mass

incarceration in the political repression of 1960s-era social movements. The film does not discuss the policies that gave greater power to police, prosecutors, and prisons in those critical years.

Mass incarceration is the recent expression of a larger edifice of carceral power. It is a political project that began in response to the rebellious social movements in U.S. cities and prisons during the 1960s. It began with state and national politicians giving greater resources and authority to police and prosecutors and expanding the criminal code before embarking on the world's biggest prison construction program. It now maintains an interlinked system of policing, surveillance, and imprisonment concentrated on the most marginalized sectors of society.

Mass incarceration began through twinned campaigns of targeted antiradicalism alongside the broad political economic destabilization of working class communities of color in the 1960s. It was not simply the "evolution of racial caste," as Michelle Alexander states. Rather, mass incarceration has always been a bipartisan political project of social control—a counterrevolution by liberals and conservatives alike. It is too narrow to, as the film does, date mass incarceration to Ronald Reagan's expansion of the war on drugs in the 1980s and Bill Clinton's 1994 crime bill. That puts the onus on federal prison policy, when 90 percent of the 2.3 million people incarcerated in this country are in state prisons and local jails. Prisons, as Ruth Wilson Gilmore documents in *Golden Gulag*, were the state-by-state geographic solution to the American government in crisis.

In discussing the time between Bill Clinton's presidency and the present, the film makes several significant factual errors: it states that arrests spiked after the 1994 Crime Bill when arrests have actually *fallen* since that time (the bill's more pernicious effects concerned sentencing policy, not arrest rates); it shows a graph claiming that the prison population has expanded dramatically since 2010, when incarceration rates have plateaued or even fallen since that time; and it says that Black men account for 40% of the prison population, which has not been the case for several years. Although Black people remain dramatically overrepresented in prisons, the last several years have seen the number of Black men in prison drop and the number of white and Latino men—as well as women—rise.

The prison system is racist and violent, but in ways that constantly evolve. Presenting old statistics or inventing new ones overlooks the deadly dynamism of mass incarceration. It can also reinscribe some of the same connections between Blackness and criminality that the film seeks to interrupt, such as the mistaken idea—taken from Bureau of Justice Statistics projections and debunked by professor Ivory Toldson—that there are more Black men in prison than in college or that one in three Black men will serve time in prison.

The film also suggests that mass incarceration is a profit-driven system controlled by the American Legislative Executive Council (ALEC), the shadowy lobbying group of major corporations and mostly Republican officials. *The 13<sup>th</sup>* implies that mass incarceration is driven by private prisons and prison labor, and that ALEC oversees this nefarious scheme. These claims are simply false. As loathsome as ALEC is, it is a minor player in a complex network of public and private interests shaping crime policy. And as the Prison Policy Initiative has documented, private prisons account for less than ten percent of the overall prison population in the United States and are now at the frontlines of pursuing privatized alternatives to incarceration rather than mass incarceration itself. (The one exception is in the realm of immigrant detention, where more than seventy percent of detainees are held in privately run facilities.)

Beyond inflating the role of ALEC and companies like the Corrections Corporation of America, this focus on private prisons obscures the real ways money moves through or is extracted from the prison system, including both the vast expenditure of public funds dedicated to caging human beings as well as the nefarious ways private companies seek to profit off of incarceration. The film

does cover the exorbitant rates charged for phone calls incarcerated people make to their loved ones, but only after the long and misleading emphasis on private prisons. Private companies, especially private prison companies, are not *the driving forces* of mass incarceration. They are the venal *byproducts* of racial state violence in a capitalist society. And as these entities now seek to steer the ship of prison reform, blaming ALEC for mass incarceration overlooks the true centers of gravity in the terrifying evolution of carceral control. It leaves students or others fired up by the film's moral power with few places to turn to express their outrage.

Such missteps muddle the issue of where mass incarceration comes from or what it means to end it. One would be hard-pressed to find more astute analysts of racial criminalization and mass incarceration than Malkia Cyril, Angela Davis, Marie Gottschalk, James Kilgore, Khalil Muhammad, and some of the other commentators who appear in the film. Yet they appear alongside several people who have promoted and upheld anti-Black, free-market "solutions"—first to crime and now to mass incarceration. The film makes no narrative intervention to differentiate between its many interviewees, suggesting they are all equally reliable and trustworthy experts. While the cacophony of voices in the film—38 interviewees in 100 minutes—may be meant to suggest the breadth of voices opposed to the American carceral state, in practice it normalizes some dangerous or misleading analyses.

Some of the most robust avenues for understanding mass incarceration are unexplored in the film. The loudest silence is the inattention to women's incarceration as well as the incarceration of lesbian, gay, bisexual, transgender, and queer people. As many do, *The 13<sup>th</sup>* treats mass incarceration as only a story of Black men in prison. Yet while women have always been a small percentage of the overall number of prisoners, between 1980 and 2014 the growth of incarceration increase—initially for Black women, and now for white women—has been higher than men. The film also overlooks the other labor women and queer and trans people do as a result of mass incarceration in maintaining families and communities. Other distinctive, and distinctly racist, areas of American prisons—such as the death penalty and long-term solitary confinement—are barely mentioned or overlooked entirely.

DuVernay is exactly right to insist that criminalization has been and remains yoked to racism. And she has assembled some of the sharpest minds—if also, sadly, some of the dullest—to excavate why that is the case. The end result, however, is underwhelming. Overall, the film is too inattentive to the historical ebb and flow of racial criminalization, and it misses some of the most damning components of punishment. As Brett Story, director of another recent documentary on mass incarceration, *The Prison in 12 Landscapes*, told me, "dehumanization is the consequence, not the cause, of mass incarceration. It is not an attitude but a relation systematically organized and corroborative of other structures of abandonment." Attending to those structures of abandonment is critical to understand and eradicate mass incarceration.

**Dan Berger** is an assistant professor of comparative ethnic studies at the University of Washington Bothell. He is the author of several books including *Captive Nation: Black Prison Organizing in the Civil Rights Era*. The book shows that prisons produce a unique and influential form of antiracist politics. Follow him on Twitter @dnbrgr. This article originally appeared on the website of the African American Intellectual History Society.