



OREGON'S SENATOR JEFF MERKLEY

The Abolition Amendment

The Problem

The 13th Amendment abolished slavery after the Civil War—but not for all. Lawmakers left a loophole, also known as the “Punishment Clause,” within the Amendment that outlawed slavery “*except as a punishment for crime whereof the party shall have been duly convicted.*” As a result, slavery was not outlawed in prisons. To this day, **legalized slavery has bent the American criminal justice system, fanned the flames of mass incarceration, and stripped millions of people—particularly Black Americans and people of color—of their most basic human rights.**

Immediately following the ratification of the 13th Amendment, during Reconstruction and accelerating after Reconstruction ended, Southern jurisdictions arrested Black Americans in large numbers for minor crimes codified in new “Black Codes,” like loitering or vagrancy. Then sheriffs would exploit the Punishment Clause to lease out the imprisoned individuals to work landowners’ fields—in some cases on the very plantations where they had previously been enslaved. This re-enslavement was so prevalent that by 1898, 73% of Alabama’s state revenue came from renting out the forced labor of Black Americans.

Engine of Modern Mass Incarceration: By facilitating and incentivizing the conviction of Black Americans for minor crimes, the 13th Amendment’s loophole drove the over-incarceration of Black Americans, and especially Black men. This pattern has continued unbroken through the Jim Crow era, the “war on drugs,” and the proliferation of “three strikes” laws, more severe plea deals, and harsh mandatory minimums—all of which disproportionately impact communities of color.

Profiting From Forced Labor: To this day, many states and the federal government mandate that all able-bodied incarcerated people work. Incarcerated people are not protected by workplace safety laws that help keep other Americans safe on the job. Even today, 155 years after slavery was supposedly abolished in the United States, private prison corporations profit from forced labor, as do companies that sell their goods—which are made by forced labor from un- or under-compensated people—to unsuspecting consumers.

Undermining America’s Global Human Rights Leadership: Even as this slavery loophole persists, the United States bans imports of goods produced with forced labor in other nations. For instance, the Trump administration—with bipartisan support from Congress—recently implemented a ban on products from Xinjiang, China that are made using forced labor from Uighurs and other Muslim minorities held in detention facilities. The use of forced labor in American prison systems undermines our international human rights leadership and gives our foreign adversaries propaganda that they can use to challenge the legitimacy of American leadership abroad and Americans’ trust in their government at home. There cannot continue to be daylight between our domestic and international positions on forced labor, and this slavery loophole must be closed.

The 13th Amendment’s Punishment Clause is indisputably racist in origin and in impact. There should be no exceptions to a ban on slavery. Our constitution should reflect our values. It is time to end slavery once and for all.

By The Numbers

- America is home to 5% of the world’s total population but is home to **25% of the world’s incarcerated population.**

- This population has exploded in the past four decades. We had a prison population of 357,000 in 1970, while today we have a prison population of 2.3 million.
- Forced prison labor has contributed to the growth of an \$80 billion detention industry.
- Currently, **all able-bodied federal inmates** are required to work, as are **most state inmates**.
 - According to the Bureau of Justice Statistics, there are **900,000** people engaged in forced labor in the United States.
- **97%** of incarcerated people never had a trial. Instead, many are coerced into plea deals for non-violent offenses.
 - Defendants who are unable to post bail—disproportionately low-income Americans and people of color—feel much greater pressure to reach plea deals than defendants who are able to await trial outside of jail. And plea deals themselves are filled with racial disparities, with evidence showing that prosecutors offer Black defendants [significantly harsher plea deals](#) than white defendants.
- In some states, prisoners are **not paid at all** for their labor, and in most others, wages are **less than \$1 per hour**.

The Solution

A constitutional amendment, led by Senator Merkley (OR) and Representative William Lacy Clay (MO-1st District), striking the “except as punishment” clause from the 13th Amendment. This amendment would close this loophole that has been used for a century and a half to perpetuate mass incarceration and allow others to profit from the forced labor of their fellow Americans, disproportionately Black Americans and people of color. Work programs and training opportunities for incarcerated individuals could continue—but not without consent.

For further questions or to cosponsor this joint resolution, please contact Tara Stutsman at tara_stutsman@merkley.senate.gov or at 202.306.3891.