



Libertarians should celebrate Emancipation as much as they do the end of Prohibition

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Every year on December 5, many libertarians and libertarian organizations hold events celebrating the anniversary of Prohibition's repeal by the Twenty-First Amendment. This observance serves as an opportunity to socialize over a few drinks, but also to remember that there was a time in our nation's history when we could collectively realize we've made a massive policy mistake by banning a popular intoxicant and, in our present day, reminding us that we should likewise end the Drug War. Repeal Day is, in short, a celebration of personal freedom and a call for more of it.

Yet libertarians seem less eager to celebrate December 6, the anniversary of the Thirteenth Amendment's ratification, which legally banned chattel slavery in the United States. Emancipation was the greatest single advancement of liberty in American history and yet the people whose political identity evokes liberation rarely celebrate the Thirteenth's anniversary.

Emancipation provides an opportunity to contemplate the legal and social subversion of human freedom. And just as the lessons from Prohibition apply to our Drug War, our national tolerance for the caging of so many of our fellow citizens—a disproportionate number of whom descend directly from slaves freed over 150 years ago—should give self-proclaimed proponents of human liberty great pause.

The Thirteenth Amendment reads:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

It is ironic that the most liberating constitutional amendment provides an exception that helped lead to mass incarceration. Most other nations on the planet have found ways to punish and rehabilitate criminal offenders without caging them for decades on end and exposing them to mental and physical horrors as a matter of course.

Many American jails and prisons are overcrowded and fail to provide adequate mental and physical health care for inmates. Among the incarcerated, the rates of infectious diseases—such as tuberculosis, hepatitis, and HIV/AIDS—are far higher than the general public, and prison conditions often exacerbate and spread those illnesses. In particular, prison rape that can spread these infections and inflict horrific psychological damage is so common it is a well-worn trope in American culture, to our great shame.

Americans like to think of our country as enlightened and intolerant of the barbarity of slavery, despite housing more than two million people in these dangerous cages. We abhor racism as an abstract concept, but far too few are troubled with the endless lines of black boys and young black men in orange jumpsuits and shackles in courthouses throughout the nation. We pay for these atrocities under the guises of law, order, and safety. We excuse the damage the government inflicts with “do the crime, do the time” canards, over-punishing acts that may or may not warrant sanction at all, with callous disregard for the personal costs to the offenders, their families, or their (often impoverished, racially segregated) communities. “Accountability” and the “Rule of Law” have become rubber stamps for whatever sentence the prosecutors feel appropriate to offer in the plea agreement. Without irony, we call these carceral mechanisms our “justice” system.

Such cruelty in the name of higher virtue and civil order is not new.

Not quite 160 years ago, Vice President of the Confederacy Alexander Stephens said the institution of racial slavery was based on a “moral truth” and that the South would reap “a full recognition of this principle throughout the civilized and enlightened world.” The Confederacy, after all, claimed it was fighting for its “freedom” to enslave others—many of whom were the progeny of slavers’ rapes themselves—and that the Republican platform to halt the expansion of slavery into new American territories was, in fact, tyranny.

After Reconstruction, the South seized upon the “except as a punishment for crime” language of the Thirteenth Amendment. As Douglas A. Blackmon laid bare in his book, *Slavery by Another Name*, authorities throughout the former Confederacy criminalized all sorts of minor transgressions and behaviors to put African Americans in cages and then impress them into service through the convict-lease system. Although these laws were not explicitly racist—no mention of race typically appeared in their texts—they were primarily used against freedmen and their descendants, rather than impoverished whites guilty of the same alleged ‘crimes.’

This system was added on top of the already exploitative sharecropping that tied many ex-slaves to the lands and former slavers without much realistic hope for prosperity or economic freedom. If a sharecropper quit and had trouble finding work on another farm or in another job, he could be jailed for loitering or vagrancy and leased out to a company by the local sheriff when he couldn’t make bail. The South effectively criminalized being poor and black.

The more things changed, the more they stayed the same.

Although today’s inmates still labor without livable wages for private companies, the convict-lease system has ended. And while many activists attack the private prison industry, most jails and prisons are run by county or state governments, and duly elected public prosecutors are responsible for filling them up. Removing the profit motive from the carceral state makes the system only marginally more just, while its effects on black communities particularly are sometimes hard to distinguish from the racist policies of a century ago.

The United States has greatly expanded its promises of freedom to millions of people in ways the Founders never intended. But it still is not as free as it could or should be. The Twenty-First and Thirteenth Amendments should be celebrated as great victories for freedom, but they also serve as stark reminders of the many ways the United States fails to live up to its founding ideals.

Too many people remain in chains.

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