

Yep, slavery is still legal

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(Photo: Gerry Broome, AP)

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On Sept. 15, 1963, the bomb that killed four girls at the 16th Street Baptist Church in Birmingham, Ala., showed America just how far we had to go to fulfill the promise of justice and equality for all, even a century after the 13th Amendment ended slavery. Half a century after the bombing, the struggle is not over, in part because language in that same amendment still undermines the equal humanity of more than 7 million Americans who have been convicted of a crime.

Ratified at the end of the Civil War, the amendment abolished slavery, with one critical exception: Slavery and involuntary servitude actually remain lawful "as a punishment for crime whereof the party shall have been duly convicted." In other words, according to this so-called punishment clause, if you get pulled over with the wrong controlled substance in your trunk, there's nothing in the 13th Amendment to ensure you can't be considered a slave of the state.

The punishment clause was taken directly from the Northwest Ordinance of 1787 and reflected the belief of the time that hard work was essential to prisoners' moral rehabilitation. But the language was also ambiguous enough to be grossly abused. Soon, the clause was being used to reinstitute slavery under another guise.

Excuse for new abuse

In 1866, just a year after the Civil War, a black man convicted of theft in Maryland was advertised for sale in the newspaper as punishment. "Vagrancy" — code for being young, black and unemployed — could yield similar results.

Decades later, famed abolitionist Frederick Douglass described how the widespread "convict lease system" exploited the punishment clause to subvert the noble intent of the 13th Amendment: "(States) claim to be too poor to maintain state convicts within prison walls. Hence the convicts are leased out to work for railway contractors, mining companies and those who farm large plantations. These companies assume charge of the convicts, work them as cheap labor and pay the states a handsome revenue for their labor. Nine-tenths of these convicts are negroes." Douglass went on to note that so many blacks were behind bars because law enforcement tended to target them.

Importantly, Supreme Court decisions of the 20th century ensured that no one today is sentenced to actual slavery as a form of criminal punishment, but shades of Douglass' critique still ring true. Black men are incarcerated at six times the rate of white men, thanks in part to uneven enforcement and sentencing in the "war on drugs." While drug use rates vary little among racial groups, people of color stand a much better chance of being searched, prosecuted and convicted than whites, and government studies have found that they serve longer sentences.

Racially imbalanced enforcement also means that minorities are more likely to suffer consequences that outlast their sentences: difficulty finding jobs and housing, lost access to government benefits and, in some places, disenfranchisement.

Next year, the United States will mark the 150th anniversary of the abolition of slavery when, at the cost of 600,000 lives, we concluded that all people, regardless of color, are made in the image of their creator and that slavery is an abomination. Not just because it compels labor, but because it denies the full dignity and value of the enslaved person. As long as it remains in the Constitution, the punishment clause is an offensive vestige of the legacy of dehumanizing and often racist practices in the American criminal justice system.

No less human

Breaking the law does not make the 7 million Americans behind bars, on probation or on parole any less human. While it's true that offenders properly forfeit certain rights and privileges, including their freedom, they also retain many others carefully laid out in the Bill of Rights and elsewhere. By definition, slavery goes far beyond the removal of freedom; it denies the humanity of the enslaved. Why should language that calls into

question the basic equality and dignity of millions of Americans persist in our country's Constitution?

Meaningful work can be part of a restorative corrections policy. Many prisoners need to learn skills that will make them employable after release. Prison jobs also help people maintain a sense of purpose and structure during long sentences. Society as a whole also benefits when prisoners' labor allows them to pay restitution. But slavery — labor that dehumanizes one person for the profit of another — has no place in prisons or in the Constitution.

We need a national dialog about amending the 13th Amendment. Current implications of the punishment clause should be the talk of every college course in criminal justice. It should be debated in every state legislature and in the halls of Congress. Here, in the home of nearly a quarter of the world's prisoners, every American should know about the scandalous persistence of slavery in our nation's most fundamental document.

Afterward, to paraphrase British abolitionist William Wilberforce, we can choose to look the other way, but we can never say again that we did not know.

Jim Liske is the president of Prison Fellowship.