

FARMERS BEHIND BARS: A CRITICAL ANALYSIS OF PRISON FARM LABOR IN KENTUCKY AND BEYOND

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I'm not as nasty as Confederate flags being tattooed across my city. Maybe the South actually is going to rise again. Maybe for some it never really fell. Blacks are still in shackles and graves, just for being black. Slavery has been reinterpreted as the prison system in front of people who see melanin as animal skin.

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I. INTRODUCTION

The United States contains a mere 5 percent of the world's population, yet it boasts 25 percent of the world's inmates.² The upkeep of this system of mass incarceration has proven costly.³ The United States spends more than \$80 billion on incarceration each year.⁴ Local, state, and federal government spending on prisons and jails ranges from \$20,000 to \$50,000 annually.⁵ Most credit the strict "tough on crime" policies arising from the 1980s and 1990s for the steep increase in incarceration rates.⁶ Yet according to one study, "[T]he private contracting of prisoners for work fosters incentives to lock people up. Prisons depend on this

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¹ Rebecca Sullivan, *Nina Donovan is the 19-year-old Poet Who Wrote Ashley Judd's Viral 'I Am a Nasty Woman' Speech*, NEWS.COM.AU (Jan. 23, 2017, 10:01 PM), <http://www.news.com.au/lifestyle/real-life/news-life/nina-donovan-is-the-19yearold-poet-who-wrote-ashley-judds-viral-i-am-a-nasty-woman-speech/news-story/d40dc60b10853ef21423b247e598ebd0> [<https://perma.cc/W3WC-7WC3>].

² *Mass Incarceration*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/issues/mass-incarceration> (last visited Jan. 9, 2017) [<https://perma.cc/U7NR-SGKA>].

³ *See id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

income. Corporate stockholders who make money off prisoners' work lobby for longer sentences, in order to expand their workforce. The system feeds itself."⁷

One of the many industries benefitting from the use of prisoner labor is agriculture. The use of prisoners in agricultural work has existed since slavery's zenith in the United States.⁸ When the Thirteenth Amendment to the United States Constitution was passed, it abolished slavery except for those imprisoned for crimes.⁹ During the Reconstruction era, prisoners were leased to private farmers on plantations for free.¹⁰ When this practice ended, prisoners were used in chain gangs.¹¹ Finally, even recent practices have included sentencing prisoners to "hard labor."¹² While today's prison farm programs tend to be more voluntary than the history they are founded upon, some argue that the similarities are too close for comfort.

In spite of the concerns raised about reviving slavery, many states are adopting farm programs in their prisons to teach inmates marketable skills, improve health, cut costs, promote sustainability, and reduce rates of recidivism. Some of these programs have sparked hope for rehabilitation among their organizers, but others have been unsuccessful ventures that were scaled back or eliminated entirely.

This Note will address how these programs have evolved through history, will explore arguments for and against them, and will look at these programs in Kentucky through the lens of both arguments. Based on its position in the Southern United States, Kentucky holds an important space within this discussion due to the South's high rate of incarceration, especially among

⁷ Vicky Peláez, *The Prison Industry in the United States: Big Business or a New Form of Slavery?*, GLOB. RES. (Aug. 28, 2016), <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289> [<https://perma.cc/VEV4-5QAB>].

⁸ See Andrea C. Armstrong, *Slavery Revisited in Penal Plantation Labor*, 35 SEATTLE U. L. REV. 869, 876 (2012).

⁹ *Id.* at 872.

¹⁰ Rebecca McCray, *A Disturbing Trend in Agriculture: Prisoner-Picked Vegetables*, TAKEPART (Apr. 14, 2014), <http://www.takepart.com/article/2014/04/14/prison-ag-labor> [<https://perma.cc/TX4M-9YCG>].

¹¹ *Id.*

¹² Robert Winters, *Evaluating the Effectiveness of Prison Farm Programs*, CORRECTIONS.COM (Sept. 23, 2013), <http://www.corrections.com/news/article/33907-evaluating-the-effectiveness-of-prison-farm-programs> [<https://perma.cc/5PZV-C8A6>].

racial minorities.¹³ It is important to note that as with any system, there is some diversity in their operation across the nation. Prison farms produce a variety of crops and animals. Some of these farms raise crops that are then served to the inmates, while other farm produce leaves the prison grounds and is placed on the market instead. Some prison farms exist as one of many work options for prisoners who qualify, but others compel participation. Thus, this Note declines to make any broad statement regarding prison farms as a whole and instead argues that there are certain practices that are more problematic than others and attempts to offer remedies for those practices.

II. HISTORY OF PRISON FARMS

A. *Slavery and Beyond*

The space occupied by prison farms in American culture cannot be fully understood without examining its ties to slavery. Many of the prison farms that exist in the South today were converted slave plantations that retained the names of the families that formerly owned the land.¹⁴ While slavery based solely on race has been actively outlawed since the passage of the Thirteenth Amendment, lawmakers at the time carved out an important exception: “Neither slavery nor involuntary servitude, *except as punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.”¹⁵ With slavery abolished, the booming agriculture industry of the South needed to replenish its source of free labor.¹⁶

The so-called “Punishment Clause” exception was exploited by a number of Southern states, which passed “Black Codes” that created new offenses and lengthened sentences for

¹³ See Desiree Evans, *Doing Time in the South*, FACING SOUTH (Mar. 5, 2009), <https://www.facingsouth.org/2009/03/doing-time-in-the-south.html> [https://perma.cc/7524-6DZ7].

¹⁴ Jeremy Lybarger, *Doing Time on a Southern Prison Farm*, MOTHER JONES, (Apr. 19, 2013, 6:00 AM), <http://www.motherjones.com/media/2013/04/southern-prison-farm-bruce-jackson> [https://perma.cc/YQV6-KHYU].

¹⁵ U.S. CONST. amend. XIII, § 1.

¹⁶ See Armstrong, *supra* note 8, at 876.

crimes targeting African Americans to ensure their continued enslavement.¹⁷ Another solution to this shortage was convict leasing, which allowed the state to lease out the labor of incarcerated workers in the form of hired work crews.¹⁸ This system turned out to be cheaper than slavery because private farm owners and companies did not have to provide healthcare for their workers.¹⁹ The combination of the Black Codes and convict leasing meant that freed African Americans were imprisoned and sent to work for private entities, including plantations.²⁰ In the early 1900s, public opinion turned against the use of convict leasing after stories of abuse and deplorable conditions spread.²¹

After the end of convict leasing, the lost work force was replaced by prisoner chain gangs, until 1955, which also disproportionately targeted African Americans.²² Chain gangs were groups of convicts who were chained together while being forced to conduct grueling tasks, such as road construction, ditch digging, or farming.²³ These prisoners suffered painful ulcers and infections from the heavy shackles around their ankles and could be injured by another prisoner's misstep or aggression.²⁴

Another alternative was sentencing convicts to "hard labor", which meant days spent working the fields in agricultural regions.²⁵ Prison farms that eerily resembled slave plantations existed in the South until the 1980 decision in *Ruiz v. Estelle*, which required Texas prisons to improve working conditions and struck down the policy of allowing prisoners to guard each other with weapons.²⁶ Despite such efforts regarding prisoner's rights, some prisons still have predominantly black inmates working the

¹⁷ *Id.*

¹⁸ McCray, *supra* note 10.

¹⁹ *Id.*

²⁰ Armstrong, *supra* note 8, at 877.

²¹ *Chain Gangs*, PUB. BROADCASTING SERVICE, <http://www.pbs.org/tpt/slavery-by-another-name/themes/chain-gangs/> (last visited Jan. 23, 2017) [<https://perma.cc/FUK5-BE9Y>].

²² McCray, *supra* note 10.

²³ *Chain Gangs*, *supra* note 21.

²⁴ *Id.*

²⁵ Winters, *supra* note 12.

²⁶ Maurice Chammah, *Prison Plantations*, THE MARSHALL PROJECT (May 1, 2015, 7:15 AM), <https://www.themarshallproject.org/2015/05/01/prison-plantations#.I7uoaCIDA> [<https://perma.cc/2WBB-9JYH>].

land for dismally low wages,²⁷ handpicked and sold to quasi-government entities like Prison Enterprises, the business arm of Louisiana's Department of Corrections.²⁸ Some have even called the agricultural system used at Angola "faith-based slavery" due to Warden Burl Cain's aim at converting inmates to Christianity and his decision to use mule-drawn plows instead of tractors.²⁹

As a result of this history, Southern states lead the nation in rates of incarceration.³⁰ By 2008, ten of the twenty states with the highest incarceration rates were in the South.³¹ All of the top five incarceration rates are from Southern states.³² In the Deep South especially, where the majority of African Americans live, racial disparities are a hallmark of state prisons.³³ The result has been the disenfranchisement of millions of voters who would most likely vote Democrat and, therefore, change the tough criminal policies, which have upheld the status quo in the South.³⁴

B. Payment of Prisoners

While most prisoners who work today are paid for their labor, wage amounts vary widely across the United States.³⁵ According to one study conducted in 2002, state inmates could make anywhere between \$0.30 and \$7.00 per hour.³⁶ In federal prisons, the range was from \$0.18 to \$1.15 per hour.³⁷ A more recent study places the median wage in state prisons at \$0.20 per

²⁷ James Ridgeway, *God's Own Warden*, MOTHER JONES, <http://www.motherjones.com/politics/2011/07/burl-cain-angola-prison> (last visited Jan. 9, 2017) [https://perma.cc/9U87-94QM].

²⁸ Liliana Segura, *Dispatch from Angola: Faith-Based Slavery in a Louisiana Prison*, COLORLINES (Aug. 4, 2011, 10:03 AM), <http://www.colorlines.com/articles/dispatch-angola-faith-based-slavery-louisiana-prison> [https://perma.cc/YR29-XGS6].

²⁹ *See id.*

³⁰ Evans, *supra* note 13.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *See id.*

³⁵ *See* Shafaq Hasan, *Should Inmates in Prison Earn a Living Wage?*, NONPROFIT QUARTERLY (Apr. 8, 2015), <https://nonprofitquarterly.org/2015/04/08/should-inmates-in-prison-earn-a-living-wage/> [https://perma.cc/WH97-A89Q].

³⁶ *Id.*

³⁷ *Id.*

hour, while the federal median is \$0.31 cents per hour.³⁸ Compare these figures to the federal minimum wage, which is currently set at \$7.25, and it becomes apparent that prisoners' compensation is nowhere near national standards for the labor they perform.³⁹ Efforts to unionize can be thwarted if a warden feels there is a threat to prison security based on the U.S. Supreme Court's decision in *Jones v. North Carolina Labor Prisoners' Union*.⁴⁰ Because prisoners are unable to claim any rights as an "employee" under any current labor laws, this reality seems unlikely to change anytime soon.⁴¹

III. ARGUMENTS AGAINST PRISON FARMS

A. *Modern Slavery and Exploitation*

One of the most compelling arguments against the use of prison farming programs is that it embodies a modern form of slavery that exploits the cheap labor of the people who are vulnerable and disenfranchised. Important to this argument is the fact that African Americans make up 1 million of the 2.3 million people incarcerated in the United States.⁴² According to Rebecca McCray,

The racial composition of today's massive prison population reflects laws and policies, such as those ushered in by the war on drugs, that have disproportionately affected minorities. These laws particularly affect people of color. Black males have a one-in-three chance of being imprisoned in their

³⁸ Beth Schwartzapfel, *Modern-Day Slavery in America's Prison Workforce*, THE AM. PROSPECT (May 28, 2014), <http://prospect.org/article/great-american-chain-gang> [https://perma.cc/6GJE-MY4G].

³⁹ *Minimum Wage*, U.S. DEPT OF LABOR, <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Jan. 9, 2017) [https://perma.cc/5EGS-M6LP].

⁴⁰ Mike Elk, *The Next Step for Organized Labor? People in Prison*, THE NATION (July 11, 2016), <https://www.thenation.com/article/the-next-step-for-organized-labor-people-in-prison/> [https://perma.cc/C99V-NVUJ].

⁴¹ Schwartzapfel, *supra* note 38.

⁴² *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/criminal-justice-fact-sheet/> (last visited Jan. 9, 2017) [https://perma.cc/KS5V-87UM].

lifetime, while black women are incarcerated in prison at a rate 2.5 times higher than that for white women. It's not hard to deduce the predominant race of prisoners who may now be seen working in fields and orchards around the country.⁴⁴

Prisoners themselves also lack the same rights and protections that others are afforded. Private employers who hire prisoners can pay low wages and do not need to offer sick days, vacation time, or insurance.⁴³ Prisoners also lack the ability to unionize and cannot effectively file workplace complaints.⁴⁴ In a number of states, stricter immigration laws have led legislators to propose shifting the need for agricultural work, the dangers of which have been well documented by the Department of Labor's Occupational Safety and Health Administration, from immigrant guest workers to prisoners.⁴⁵ The convenience of this shift is that it replaces one set of workers who lack status in our society to another.⁴⁶

In some states, the program is not entirely voluntary and refusal to work can lead to punishments including deprivation of resources, solitary confinement, or mistreatment by staff.⁴⁷ Some Arizona prisoners who refused to work at Martori Farms, a supplier of produce for Walmart, were given "disciplinary tickets" and taken to another job.⁴⁸ Other prisoners have been rewarded with sentence reductions for participating in agricultural work, meaning by implication that a refusal to do so can lead to longer sentences.⁴⁹

⁴⁴ McCray, *supra* note 10.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

B. Financial Losses

Another argument against the use of prison farms is that inmate labor simply cannot keep up with the new demands of technological advances in “agribusiness”.⁵⁰ As a result, many states have either reduced or eliminated their prison farms completely.⁵¹ One example of this comes from Pennsylvania, which shut down its prison farm system in the 1990s after years without profits.⁵² Iowa’s Department of Corrections eliminated its prison farms as well, choosing to rent out the farmland for cash instead.⁵³ According to the 1997 report of the Iowa Department of Corrections Prison Industries, labor-intensive work by inmates is obsolete for today’s technologically advanced agricultural system, and the typical length of stay is insufficient for the training they would need to operate such equipment.⁵⁴

A study conducted at the University of Central Florida in 2005 determined that only ten states would financially benefit from having prison farms rather than a traditional food service program.⁵⁵ The remaining thirty-seven included in the study would see an increase in costs from running such a program.⁵⁶ The study also analyzed the result when the assumed cost of training, which was \$1,000 per inmate, was cut in half.⁵⁷ This increased the number of states that would benefit from ten to twenty-seven, which supports the questionable viability of prison farms in an age of increasing technology.⁵⁸

C. Ineffectiveness

Finally, many prison farm programs are criticized to some extent for not bringing rehabilitative benefits to the prisoners

⁵⁰ See Winters, *supra* note 12.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

who need them the most.⁵⁹ At Woodbourne Correctional Facility in New York, participants of the farm program are chosen for their model behavior and intellectual curiosity.⁶⁰ While eligibility is not based on the crimes they were convicted of, prisoners must show some capacity for reform.⁶¹ Thus, some prison farms are used only to rehabilitate those with the most potential for success rather than those who have the greatest need for personal development.

Some argue that prison farms do not even rehabilitate those who participate in them.⁶² When commenting on the closing of Ohio's ten prison farms in 2016, Gary Mohr, director of the Department of Rehabilitation and Correction, called them an anachronism today that no longer prepare inmates for life after prison.⁶³ Mohr also mentioned concerns with security on these farms, which have allowed civilians the opportunity to drop off drugs, tobacco, and other contraband to be taken into the prison.⁶⁴

IV. ARGUMENTS IN FAVOR OF PRISON FARMS

A. Rehabilitation

Despite arguments that prison farms are unsuccessful at rehabilitating those convicted of crimes, others have found such programs effective at doing so. California's Farm and Rehabilitation Meals ("FARM") program has seen prison reentry rates of only 5 to 10 percent from its participants.⁶⁵ This figure is

⁵⁹ Jesse Hirsch, *Convict Cultivation: Growing Organic Behind Bars*, MODERN FARMER (Aug. 29, 2013), <http://modernfarmer.com/2013/08/growing-organic-behind-bars/> [<https://perma.cc/LD4U-F78L>].

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See generally Alan Johnson, *State to Close All 10 Prison Farms, Sell Land*, THE COLUMBUS DISPATCH (Apr. 13, 2016, 9:32 AM), <http://www.dispatch.com/content/stories/local/2016/04/12/ohio-to-close-all-10-prison-farms-to-sell-land.html> (arguing prison farms no longer prepare prisoners for life after prison) [<https://perma.cc/G4FA-389K>].

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Lydia O'Connor, *How A Farm-To-Table Program Could Revitalize Prisons*, HUFFINGTON POST (May 29, 2014), http://www.huffingtonpost.com/2014/05/27/california-inmate-farm-program_n_5400670.html [<https://perma.cc/44DJ-935Y>].

particularly impressive given California's 61 percent recidivism rate, one of the highest rates in the country.⁶⁶ The prison's healthcare staff proposed the program after noting the decreased recidivism rates recorded at other programs.⁶⁷ FARM program chair Wehtahnah Tucker said of the program,

We wanted to create more opportunities for inmates to have a more meaningful experience while they're here, so when they leave, they can not come back. We want them to be productive while they're incarcerated . . . and show that when they're invested in something, they have something they can look to as an achievement.⁶⁸

In addition to providing opportunities for achievement among the inmates, Tucker said that the program gives its participants a sense of ownership over something in a place where most things are temporary.⁶⁹ The hope is that the program will help inmates find employment after release in San Diego's sustainable farm industry and that they will eventually be able to offer certificates for agricultural skills.⁷⁰

A similar program implemented by the Vermont Department of Corrections hopes to decrease recidivism through the development of farming skills as well as access to freshly grown produce.⁷¹ This program also focused on improving the infrastructure of the prison kitchen facilities, offering training in food production, and establishing three greenhouses on the prison grounds.⁷² The Montana Women's Prison also built a greenhouse

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Morgan Bulger, *Six U.S. Correctional Facilities with 'Farm to Prison' Local Food Sourcing Programs*, SEEDSTOCK (Jan. 4, 2015), <http://seedstock.com/2015/01/04/six-u-s-correctional-facilities-with-farm-to-prison-local-food-sourcing-programs/> [<https://perma.cc/42W9-U5ML>].

⁷² *Id.*

on its grounds to increase produce consumption by prisoners, while offering job-training in gardening and food production.⁷³ Similarly, Oregon State Correctional Institution's greenhouse produces over 20,000 pounds of produce which is distributed between the prison cafeteria and donations to local food banks, adding to the positive impact of the program.⁷⁴ In addition, this program also teaches inmates about ecology, conservation, and sustainability.⁷⁵

Other programs extend beyond a prisoner's sentence, providing opportunities for current and former inmates. One such program is the "horticultural therapy" program at Rikers Island in New York City, which feeds into a complementary vocational internship program for newly-released offenders called "GreenTeam".⁷⁶ A 2011 pilot program in Georgia also provided work on local farms to low-risk, non-violent probationers in response to a severe shortage in farm labor.⁷⁷

Important to successful rehabilitation through these programs is education, which typically comes in the form of job skills training. However, in six New York prisons, the Bard Prison Initiative allows participants to earn liberal arts college degrees while incarcerated.⁷⁸ At Woodbourne Correctional Facility, a large organic garden allows prisoners to focus on food justice and nutrition as part of the public health program.⁷⁹ These students learn how to garden sustainably, cook what they harvest, and understand where these skills fit into the larger sociological landscape.⁸⁰ Part of this education includes addressing topics such as food deserts and the use of industrial farming.⁸¹ In sum, rehabilitation-focused programs see farming and gardening programs as a way to reclaim self-sufficiency.⁸²

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Winters, *supra* note 12.

⁷⁷ *Id.*

⁷⁸ Hirsch, *supra* note 59.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

B. Health Benefits

One of the most compelling benefits of agricultural programs on prison grounds is the improved health of prisoners through access to fresh produce. Prisons are hardly considered beacons of nutritional health; many serve food from pre-made meal bags that remain frozen for up to seven years before being reheated.⁸³ In *Hutto v. Finney*, the U.S. Supreme Court struck down the use of a food substitute known as “grue” as being cruel and potentially harmful to Arkansas’ prison population.⁸⁴ In line with the modern industrial trend of increasing efficiency, cheap, highly processed foods are generally served to those incarcerated in the United States.⁸⁵ This processed food shows no marked improvement from grue, as evidenced by a class action filed by Vermont prisoners in 2008 who stated that they were served meals “so awful, they’d rather go hungry than eat.”⁸⁶ The quality of food served in prisons is a major concern for many prison inmates, and general dissatisfaction with the food in a particular prison can lead to disciplinary issues.⁸⁷

One important distinction to make is that the benefit of increased health is only available in programs where at least some of the produce harvested by inmates is used in the prison’s kitchen rather than being sold off for cash. Partnerships with non-profit farming initiatives also bring healthier diets into prisons, as seen with Vermont’s efforts to bring locally grown potatoes and apples into prisons through Salvation Farms.⁸⁸ In addition to providing a healthier diet that includes fresh fruits and vegetables, prison farm programs can teach inmates about nutrition so that they have the skills to remain healthy after their release from incarceration.⁸⁹

⁸³ *Id.*

⁸⁴ Kyleen Breslin, *Farms on Prisons Will Reduce National Prison Budget*, POLICY.MIC (May 25, 2012), <https://mic.com/articles/8869/farms-on-prisons-will-reduce-national-prison-budget#.PwOmaKb9s> [<https://perma.cc/JH5Y-CQDH>].

⁸⁵ Winters, *supra* note 12.

⁸⁶ Breslin, *supra* note 84.

⁸⁷ Winters, *supra* note 12.

⁸⁸ Bulger, *supra* note 71.

⁸⁹ *See* O’Connor, *supra* note 65.

C. Sustainability

Another benefit common to prison farming projects is increased sustainability within the prison's operations. The Sustainability in Prisons Project in Washington state offers programming in ecological conservation, environmental education, sustainable operations, community contributions, and biophilia.⁹⁰ Prison-grown produce is given to food banks to prevent waste.⁹¹ While each prison in the project does not have the exact same agenda, programs offered include diversity gardens, beekeeping, pumpkin patches, and salmon habitat restoration.⁹² The Sustainability in Prisons Project is unique in its approach, but other prisons can increase sustainability by producing their own food and composting the waste product.

D. Cost Benefits

While some argue that prison farm programs are a losing venture, a number of programs have managed to come out in the black. California's FARM program hopes to save money by producing food on prison grounds for its approximately 3,300 inmates.⁹³ It has been estimated that each day, it costs \$106,680,000 to house the United States's prisoners and 29 percent of this budget comes from food alone.⁹⁴ Self-sufficient prison farms could cut this cost by \$1.7 billion per year.⁹⁵ Health improvements brought on by increased access to produce could also decrease the money spent on prison medical services by lowering the risk of certain health conditions.⁹⁶

⁹⁰ *What We Do*, SUSTAINABILITY IN PRISONS PROJECT, <http://sustainabilityinprisons.org/what-we-do/> (last visited Jan. 9, 2017) [<https://perma.cc/4892-MVJ2>].

⁹¹ *Id.*

⁹² *Id.*

⁹³ O'Connor, *supra* note 65.

⁹⁴ Breslin, *supra* note 84.

⁹⁵ *Id.*

⁹⁶ *Id.*

V. KENTUCKY PRISON FARMS

Kentucky currently uses prison farms on four of its thirteen adult institution campuses.⁹⁷ These institutions are Blackburn Correctional Complex, Northpoint Training Center, Roederer Correctional Complex, and Western Kentucky Correctional Complex.⁹⁸ All four farms sell and breed cattle.⁹⁹ For the two smaller farms, this is the only income generated through farming.¹⁰⁰ The prison farms in Kentucky used to show cattle as well, and would often win at competitions.¹⁰¹ After local farmers complained, the prison farms were instructed to refrain from competing with the local economy and stopped showing cattle.¹⁰² Kentucky prisons used to cultivate over 100 acres of gardens as well but have drifted from this practice in recent years after Aramark took over the prisons' food supplies, which provides all prison food needs.¹⁰³

Kentucky's use of prison labor on farms is authorized by statute.¹⁰⁴ KRS § 196.120 allows the Department of Corrections to lease or purchase farmland for inmate employment, subject to approval by the Governor.¹⁰⁵ KRS § 197.130 states that prisoners shall not be required to work outside of the prison's walls except in certain circumstances, including working on state farms.¹⁰⁶ Up to 100 inmates are authorized to work on these prison farms at any given time.¹⁰⁷ Inmates who work on the farms in Kentucky are generally assigned to work on the farm, just as they would be assigned to work in the kitchen or on the maintenance staff.¹⁰⁸

⁹⁷ Interview with Truman Tipton, Farm Branch Manager, Kentucky Correctional Industries, in Frankfort, Ky. (Jan. 13, 2017).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ KY. REV. STAT. ANN. § 196.120(1) (2017).

¹⁰⁵ KY. REV. STAT. ANN. § 196.120(1)–(2) (2017).

¹⁰⁶ KY. REV. STAT. ANN. § 197.130(1) (2017).

¹⁰⁷ *Kentucky Department of Corrections Annual Report 2015*, KY. DEP'T OF CORR. 37 (2015), <http://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/2015%20Annual%20Report.pdf> [https://perma.cc/9Z8E-KN7N].

¹⁰⁸ Interview with Truman Tipton, *supra* note 97.

Inmates who request to work on the farm are generally accepted, but the majority of inmates working on the farms have not requested to do so.¹⁰⁹

In 2015 alone, the four institutions sold roughly \$1,000,000 in cattle.¹¹⁰ The farm at Western Kentucky Correctional Complex sold \$400,000 in corn and beans during the same year.¹¹¹ Combined, the farm programs bring in approximately 1.3 to 1.5 million dollars each year.¹¹² Despite the obvious financial success of these programs, they hardly offset the \$311.7 million-dollar cost of incarcerating an average daily population of 21,347 individuals.¹¹³

A. *Kentucky Correctional Industries*

Kentucky's prison farm programs stem from Kentucky Correctional Industries ("KCI"), which runs inmate production in private sector industries.¹¹⁴ KCI employs more than 700 inmates across the state and seeks to teach job skills to reduce recidivism and to make inmates more productive members of society.¹¹⁵ KCI's programs include a Printing Division, License Plate Plant, Metal Plant, Recycling, Welding, Braille Services, Portion Pac Services, Soap Plant, Office Furniture Production, Coupon Plant, Garment Plant, Digital T-shirt Printing, Modular Office Systems, Signage, and Mattress Plant.¹¹⁶ In addition to running these programs, KCI also houses a Farm Branch Manager who oversees the farming operations on all four prison farms in the

¹⁰⁹ *Id.*

¹¹⁰ *Kentucky Department of Corrections Annual Report 2015*, *supra* note 107, at 37.

¹¹¹ *Id.*

¹¹² Interview with Truman Tipton, *supra* note 98.

¹¹³ *The Price of Prisons: Kentucky*, VERA (2012), <http://archive.vera.org/files/price-of-prisons-kentucky-fact-sheet.pdf> [<https://perma.cc/P2JX-D5H7>].

¹¹⁴ See *Kentucky Correctional Industries*, COMMONWEALTH OF KY., <http://kci.ky.gov/Pages/About-Us.aspx> (last visited Jan. 23, 2017) [<https://perma.cc/2SYN-MCA9>].

¹¹⁵ *Id.*

¹¹⁶ *Id.*

state.¹¹⁷ Everything raised on the farm is sold off at local auctions rather than at the KCI showroom.¹¹⁸ The excess crops are donated to local charities.¹¹⁹

Kentucky Correctional Industries is not state-funded and functions off of its own revenue.¹²⁰ Truman Tipton, KCI's farm branch manager, and the other KCI staff are paid from KCI revenue as well.¹²¹ The rest of the farm staff, which include farm directors on the individual prison grounds, are not paid through KCI.¹²² The revenue generated by the farms comes back to Kentucky Correctional Industries, which in turn goes back to the farms.¹²³ The money is then used to buy tractors, fuel, and other farm expenses.¹²⁴ The biggest financial challenge for these farms is feeding the cattle.¹²⁵ In the off-seasons, the cattle are also vaccinated, treated for pink eye, castrated, and de-horned.¹²⁶ Calves are then bred to arrive in the Spring and Fall.¹²⁷

B. History of Kentucky's Prison Farms

The historical background of prison farms in Kentucky is traced back to a system of convict leasing. In 1855, the Kentucky State Penitentiary ("KSP") was leased to an entrepreneur who housed, fed, and cared for the inmates and leased out convict labor to business interests or employed inmates for manufacturing inside the prison.¹²⁸ During this time, the prisoners produced furniture, wagons, harnesses, shoes, skirts,

¹¹⁷ See *Tipton's Efforts Recognized as "Best in Business,"* JUST. AND PUB. SAFETY CABINET (June 3, 2005), <http://migration.kentucky.gov/Newsroom/justice/tipton.htm> [<https://perma.cc/KTK9-G2CW>].

¹¹⁸ Interview with Truman Tipton, *supra* note 97.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Important Dates in Kentucky's Correctional System*, <http://www.angelfire.com/ky/ksp/KSPhistory.htm> [hereinafter *Important Dates in Corrections*] (last visited Jan. 23, 2017) [<https://perma.cc/H6ZT-2XWS>].

and shirts while being regularly abused.¹²⁹ In 1891, a new state constitution was passed and the leasing of convict labor outside the penitentiary was prohibited by Article 253.¹³⁰

In 1930, Governor Flem Sampson acquired 1,500 to 2,000 acres of land to establish a prison farm, and KSP intended to produce goods for use by the state.¹³¹ Six years later, Governor A.B. Chandler recommended the use of convict labor for the upkeep of small county roads, which entailed living on portable barracks.¹³² In 1953, an inmate trustee at KSP was accused of attacking a woman a grocery store in Kuttawa.¹³³ Local residents from Lyon County petitioned Governor Wetherby to discontinue prison labor on KSP farms and sell the farm immediately.¹³⁴

The Courier-Journal responded to the petition with an editorial entitled “Selling the Farms Won’t Cure What’s Wrong at Eddyville”.¹³⁵ The article argued,

“Indeed the request that the farms be sold would greatly intensify the trouble: idleness. After last year’s riots, Warden Jess Buchanan remarked: ‘Ninety-five per cent of our trouble here in the prison is caused by idle prisoners. Give me facilities for working these men and we’ll have no more trouble.’”¹³⁶

From 1956 to 1960, Warden Dan Grey doubled farm production at the Kentucky State Reformatory.¹³⁷

The Western Kentucky Correctional Complex was opened in 1968 as a satellite farming facility for KSP.¹³⁸ Inmates who

¹²⁹ *See id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *See id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *See id.*; see also *Selling the Farms Won’t Cure What’s Wrong at Eddyville*, COURIER J. (July 12, 1953), <https://www.newspapers.com/image/108463739/> [<https://perma.cc/MFJ8-AT28>].

¹³⁶ *Selling the Fars Won’t Cure What’s Wrong at Eddyville*, *supra* note 135.

¹³⁷ *See Important Dates in Corrections*, *supra* note 128.

¹³⁸ *About WKCC*, KY. DEP’T. OF CORR., <http://corrections.ky.gov/depts/AI/WKCC/Pages/AboutWKCC.aspx> (last visited Jan. 23, 2017) [<https://perma.cc/CH5G-5FZ6>].

worked on the early farms stayed in barracks on the farm grounds rather than living within the prison's walls.¹³⁹ The farms were completely self-sufficient, including having their own canneries and slaughterhouses.¹⁴⁰ In 1976, Roederer Farm Center opened along with several other prisons to combat overcrowding in other state institutions.¹⁴¹ Ten years later, Charles Fred Cash, the Farm Supervisor at Western Kentucky Farm Center was bludgeoned to death by William Eugene Thompson, an inmate working the farm who escaped after the murder.¹⁴²

The farms were closed down between 1988 and 1990 by Governor Wallace Wilkinson and re-opened by Governor Brereton Jones two years later without the canneries or slaughterhouses.¹⁴³ The prisons also used to house a hog operation, which was primarily used to dispose of waste from the mess halls.¹⁴⁴ This continued until 2002 when it became illegal to do so in Kentucky under 302 KAR 20:100.¹⁴⁵ The hogs were removed from the prison and replaced by composting systems to reduce institutional costs.¹⁴⁶

Inmates who work on the farms are now required to be classified as minimum security based on KRS 197.140.¹⁴⁷ This statute was passed after some prisoners broke out at Western Kentucky Correctional Complex.¹⁴⁸ The statute specifically applies to an inmate "serving a sentence for rape, attempted rape, or who has been convicted of robbery in the first degree, assault in the first degree, or who has been sentenced to life

¹³⁹ Interview with Truman Tipton, *supra* note 97.

¹⁴⁰ *Id.*

¹⁴¹ *Important Dates in Corrections*, *supra* note 128.

¹⁴² *Thompson v. Commonwealth*, 862 S.W.2d 871, 872–73 (Ky. 1993) (overruled by *St. Clair v. Commonwealth*, 451 S.W.3d 597 (Ky. 2014)).

¹⁴³ Interview with Truman Tipton, *supra* note 97; *see also Kentucky: Past Governors Bios*, NAT'L GOVERNORS ASS'N, https://www.nga.org/cms/home/governors/past-governors-bios/page_kentucky.default.html?beginbc4b5652-2d44-4bd6-9b62-9b787aa6661d=10&endbc4b5652-2d44-4bd6-9b62-9b787aa6661d=19&pagesizebc4b5652-2d44-4bd6-9b62-9b787aa6661d=10& (last visited Jan. 23, 2017) [<https://perma.cc/D4GY-FPGS>].

¹⁴⁴ Interview with Truman Tipton, *supra* note 97.

¹⁴⁵ *Id.*; *see* 302 KY. ADMIN. REGS. 20:100 (2017).

¹⁴⁶ Interview with Truman Tipton, *supra* note 97.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

imprisonment.”¹⁴⁹ It is questionable whether the statute applies to prisoners convicted of other offenses, including murder resulting in a sentence less than that of life imprisonment.

The overall effect of the statute is that prisoners who work on farms are close to going home, though they may have anywhere from three months to two years left to serve their sentences.¹⁵⁰ This makes training the inmates to use advanced equipment difficult.¹⁵¹ As a result, most of the difficult, technical work is left to farm managers at each of the institutions.¹⁵² Most inmates start out using a weed-eater.¹⁵³ They can work up to using a lawn mower and eventually move on to more advanced equipment if they demonstrate they can handle the equipment well.¹⁵⁴

C. Blackburn Correctional Complex

The farm at Blackburn Correctional Complex, located in Lexington, Kentucky, is a relatively small farm.¹⁵⁵ While Blackburn Correctional Complex does not harvest any crops on its land, two programs use inmate labor to care for large animals and livestock.¹⁵⁶ The campus has a cattle farm using inmate labor for approximately 127 registered Angus cattle.¹⁵⁷ Blackburn also allotted some of its farmland to The Thoroughbred Retirement Foundation, which allows inmates to accommodate 102 retired thoroughbred horses that can then be adopted.¹⁵⁸ This program is not affiliated with KCI.¹⁵⁹

¹⁴⁹ KY. REV. STAT. ANN. § 197.140 (2017).

¹⁵⁰ Interview with Truman Tipton, *supra* note 97.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See Inmate Programs, *Blackburn Correctional Complex*, KY. DEP'T OF CORRECTIONS, <http://corrections.ky.gov/depts/AI/BCC/Pages/InmatePrograms.aspx> (last visited Jan. 9, 2017) [<https://perma.cc/ER96-M39Z>].

¹⁵⁷ *Id.*

¹⁵⁸ Inmate Programs, *supra* note 156.

¹⁵⁹ Interview with Truman Tipton, *supra* note 97.

D. Northpoint Training Center

Northpoint Training Center also has a small farming operation that raises cattle.¹⁶⁰ Inmates at Northpoint participated in the composting program used at other prisons in the state before many of the buildings were burned down in a 2009 inmate riot.¹⁶¹ The state previously allocated Phase II funds for aquaculture at Northpoint Training Center.¹⁶² They used bulldozers to put in two man-made ponds, which raised shrimp and tilapia, which would then be sold off at a competitive price.¹⁶³ The ponds used to pump ground water, but after the riot they opted to use the water company instead.¹⁶⁴

E. Roederer Correctional Complex

Roederer Correctional Complex has one of the state's largest prison farms, comprised of about 2,500 acres of farmland on the prison's campus and a smaller 500-acre farm a short distance away.¹⁶⁵ Inmates here mostly raise cattle and cut the hay used to feed them.¹⁶⁶ Roederer's "Vocation/Horticulture" program provides opportunities to receive two different diplomas.¹⁶⁷ Inmates can receive their Grounds Keeper Diploma after completing 1,185 hours of work.¹⁶⁸ A Horticulture Technician Diploma is available after completing 2,085 hours of labor.¹⁶⁹ The program seeks to provide inmates with "skills and work ethics [sic], and confidence to seek and retain gainful employment" as well as increasing their earning capacity after

¹⁶⁰ *Id.*

¹⁶¹ Interview with Truman Tipton, *supra* note 97; *Riot at Northpoint Training Center*, WKYT.COM (Aug. 21, 2009, 11:21 PM), <http://www.wkyt.com/home/headlines/54015242.html> [<https://perma.cc/7CYB-8KV6>].

¹⁶² Interview with Truman Tipton, *supra* note 97.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Inmate Programs, *Roederer Correctional Complex*, KY. DEPT OF CORR., <http://corrections.ky.gov/depts/AI/RCC/Pages/InmatePrograms.aspx> (last visited Jan. 9, 2017) [<https://perma.cc/6BZT-H9LG>].

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

release.¹⁷⁰ Like Blackburn Correctional Complex, Roederer also has a horse program that is separate from KCI.¹⁷¹

F. Ross-Cash Center

The Ross-Cash Center, a new all-female institution that was previously encompassed by Western Kentucky Correctional Complex, has roughly 2,500 acres of farmland¹⁷² On the grounds of the Ross-Cash Center, corn, soybeans, and hay are grown to feed the 200 cattle kept there.¹⁷³ The farm raises 500 acres of each, and sets aside 100 acres of the crops to feed the cattle.¹⁷⁴ When the soybeans are finished being harvested, the farm grows wheat as a cover crop and sells it off.¹⁷⁵ In 2009, inmates grew 70,000 bushels of corn on the grounds.¹⁷⁶ Between 10,000 and 15,000 bushels were used to feed the cattle, while the rest was sold at market for approximately \$3 per bushel.¹⁷⁷ The resulting profit put about \$30,000 into the state's general fund.¹⁷⁸

Ross-Cash, known as the Western Kentucky Correctional Complex at the time, received some media attention in 2010 when the female inmates of Otter Creek Correctional Complex, a private prison owned by Corrections Corporation of America, was shut down following a sex scandal involving prisoners and guards.¹⁷⁹ Hundreds of women were transferred to the Western Kentucky Correctional Complex and had to adapt to the new prison farm environment.¹⁸⁰ This meant living with certain restrictions they had not experienced in their former setting, including regular head counts, strict uniform regulations, and

¹⁷⁰ *Id.*

¹⁷¹ Interview with Truman Tipton, *supra* note 97.

¹⁷² *Id.*

¹⁷³ *Ky. Inmates Adjust to New Farm Prison_Driving Tractors, Raising Cattle_After Sex Scandal*, FOX NEWS (July 3, 2010), <http://www.foxnews.com/us/2010/07/03/ky-inmates-adjust-new-farm-prison-driving-tractors-raising-cattle-sex-scandal.html> [<https://perma.cc/BU9V-YLRJ>].

¹⁷⁴ Interview with Truman Tipton, *supra* note 97.

¹⁷⁵ *Id.*

¹⁷⁶ *Ky. Inmates Adjust to New Farm Prison_Driving Tractors, Raising Cattle_After Sex Scandal*, *supra* note 176.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

mandates that inmates show up for work on the farm.¹⁸¹ According to one inmate, the other prisoners refer to the prison as “boot camp” because of the additional regulations.¹⁸²

G. Kentucky’s Inmate Farmers

Although there is no demographic data available for those inmates who work on the farms, the Department of Corrections does provide data for each of the prisons in the state.¹⁸³ In 2015, the racial breakdown of all inmates in the Department of Corrections system was approximately 75 percent white, 22 percent black, and 3 percent other.¹⁸⁴ The breakdown at the Blackburn Correctional Complex was similar, with 72.47 percent white, 26.86 percent black, and 0.68 percent other.¹⁸⁵ At the Northpoint Training Center, inmate demographics were 69.20 percent white, 26.68 percent black, and 4.12 percent other.¹⁸⁶ Roederer Correctional Complex had a racial composition of 70.71 percent white, 25.98 percent black, and 3.31 percent other.¹⁸⁷ Finally, the Ross-Cash Center had the highest disparity between races with 91.28 percent white, 6.40 percent black, and 2.33 percent inmates belonging to other racial categories.¹⁸⁸

Comparing these demographics with population data in conventional prisons from the same year, 88.1 percent of Kentucky’s population was white, 8.3 percent was black, 3.4 percent were Hispanic or Latino, and the remaining population was comprised of American Indian, Alaskan Native, Asian, Native Hawaiian, and Pacific Islander people, as well as those who identified as having two or more races.¹⁸⁹ Thus, racial minorities appear to be overrepresented in Kentucky’s penal institutions.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See *Kentucky Department of Corrections Annual Report 2015* *supra* note 107, at 46.

¹⁸⁴ *Id.* at 45.

¹⁸⁵ *Id.* at 53.

¹⁸⁶ *Id.* at 77.

¹⁸⁷ *Id.* at 80.

¹⁸⁸ *Id.* at 83.

¹⁸⁹ *QuickFacts Kentucky*, U. S. CENSUS BUREAU (2015), <https://www.census.gov/quickfacts/table/PST045215/21> [<https://perma.cc/6UC8-BLD4>].

Also notable is the fact that one of the four prison farm programs in the state is at a female-only institution. This is significant because Kentucky has the third highest female incarceration rate in the nation.¹⁹⁰ On the whole, the population of women incarcerated in the United States tends to disproportionately target women of color, poor women, women who are uneducated and unemployed, women who are abused, addicted, or mentally ill, and mothers.¹⁹¹

H. Payment of Prisoners

According to the Kentucky Corrections Policy on inmate wages, Category I workers are paid \$0.80 each day for four hours of work.¹⁹² Category II workers earn \$1.30 each day for completing eight hours of work.¹⁹³ Category III workers, who are given more specialized assignments, are paid \$2.00 per day.¹⁹⁴ Inmates who are eligible and choose to receive time credit are paid half of these amounts.¹⁹⁵ In comparison with national rates, Kentucky's prisoner wages fall on the low end of the spectrum.

VI. CONCLUSION

While numerous concerns are raised about the existence of prison farm labor, especially given the history of slavery and racial discrimination in the United States prison population, programs can be positive and worthwhile if they engage inmates effectively. Prison officials who are implementing or seek to implement such programs must remain cognizant of many issues, including racial disparities within their prisons, whether the

¹⁹⁰ Allison Connelly, James and Mary Lassiter Professor of Law, Univ. of Ky. Coll. of Law, *Class, Crime, and Punishment: Women Behind Bars* (Oct. 23, 2014).

¹⁹¹ *Id.*

¹⁹² *Inmate Wage/Time Credit Program*, KY. CORR. POLICIES AND PROCEDURES 4 (July 31, 2015), [http://corrections.ky.gov/communityinfo/Policies and Procedures/Documents/CH19/PPP_19-3_Effect_7-31-15.pdf](http://corrections.ky.gov/communityinfo/Policies_and_Procedures/Documents/CH19/PPP_19-3_Effect_7-31-15.pdf) [<https://perma.cc/W9HU-R3JT>].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

program's voluntariness, prisoner's rate of pay, and whether the inmates are eating the food they produce in the fields.

Prison farm programs may be suspect and should consider revising their policies if they do any of the following: (1) establish a system that primarily targets minorities for labor; (2) force or coerce inmates to work on the farm for any period of time; (3) pay prisoners wages below the generally acceptable guidelines; or (4) use prisoner labor to sell agricultural products on the market without offering these products to inmates. Other factors worth considering are the financial effects of the programs and whether or not they exclude inmates who are in the greatest need of rehabilitation.

Kentucky's prison farm system does have several strengths. First, sustainability efforts have been improved through the implementation of composting programs for food waste on prison campuses. Additionally, as a business venture, the farm program is clearly successful and does not drain the state's budget. Finally, donations of excess crops to local charities expand the impact of these programs beyond prison walls to better the community.

Kentucky's prison farms, however, also foster some suspect practices. While the racial distribution of Kentucky inmates includes significantly more white inmates than minorities, black and Hispanic inmates are still overrepresented in farming jobs based on Kentucky demographic data. Inmate labor on the farms is also an involuntary job placement that requires manual labor in varying weather conditions without electing to do so. Prisoners in Kentucky are paid dismally low wages, well below the typical range for state or federal institutions. Finally, the labor used on inmate-run farms does not supply fresh, nutritional food to Kentucky's incarcerated population; instead it is sold by the Department of Corrections's industrial arm for profit.

In order to improve the flaws in Kentucky's prison farms, the Department of Corrections should prioritize increasing inmate wages for prison jobs. Prisons should also eliminate mandatory farm labor and consider increasing the voluntariness of these programs, which would improve worker's outlooks and increase their potential for rehabilitation. This purpose would also be served by improving inmate nutrition and fostering a

sense of pride and ownership through serving inmate-raised food in the prison kitchens. Finally, all players in Kentucky's criminal justice system must remain vigilant in fighting the over-incarceration of racial minorities, the poor, and the drug-addicted. This reform is not an easy remedy and will require participation from the Department of Corrections, Kentucky legislators, judges, prosecutors, and police officers. These changes are necessary to ensure that prison farms disrupt the narrative of slavery and promote positive change among our incarcerated population.

