

New England Journal of Public Policy

Volume 30

Issue 1 *Wealth, Power, and the Public Interest:*

*Building Equity Culture and Civic Stewardship | Select
writings by Marcy Murningham*

Article 11


3-20-2018

Equity Culture and Decent Work: The Case of Amazon (2017)

Marcy Murningham

marcy.murningham@gmail.com

Follow this and additional works at: <https://scholarworks.umb.edu/nejpp>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Criminology and Criminal Justice Commons](#), [Economic Policy Commons](#), and the [Political Economy Commons](#)

Recommended Citation

Murningham, Marcy (2018) "Equity Culture and Decent Work: The Case of Amazon (2017)," *New England Journal of Public Policy*: Vol. 30 : Iss. 1 , Article 11.

Available at: <https://scholarworks.umb.edu/nejpp/vol30/iss1/11>

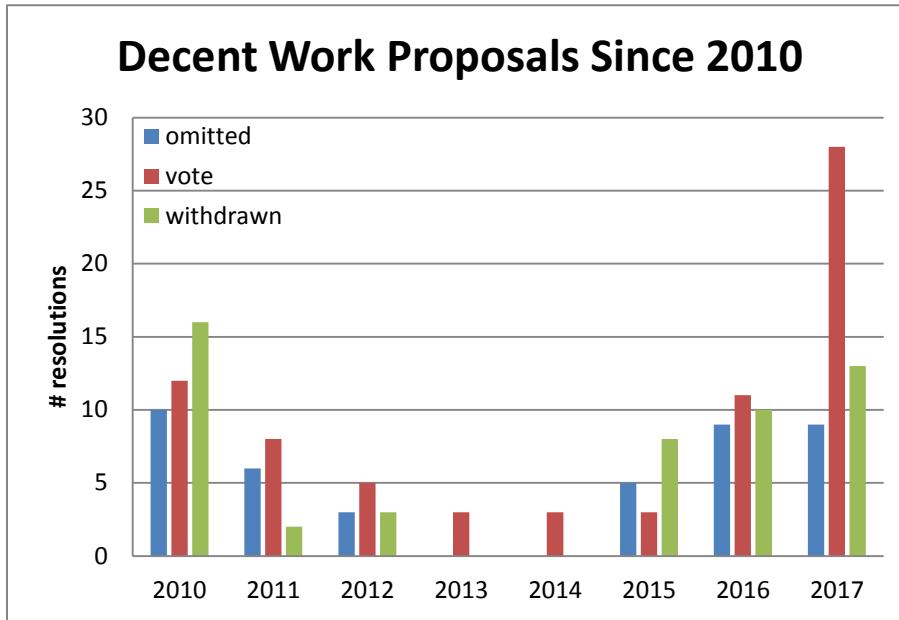
This Article is brought to you for free and open access by ScholarWorks at UMass Boston. It has been accepted for inclusion in New England Journal of Public Policy by an authorized editor of ScholarWorks at UMass Boston. For more information, please contact library.uasc@umb.edu.

Equity Culture and Decent Work: The Case of Amazon

Every year, publicly traded companies hold annual meetings at which management presents a summary of the year's accomplishments and shareholders vote on a slate of ballot issues, referred to as "proxy resolutions," that are placed there by either management or shareholders. As in public life, in theory this form of corporate governance relies on a division of authority and checks and balances among shareholders, the board of directors, and company management. In theory, shareholders function much like registered voters, boards serve as their elected representatives, and management operates much like the executive branch to carry out the mandates accorded to it. Management is, in theory, accountable to shareholders, and their duly elected representatives on director boards. In practice, however, management authority holds sway, and corporate directors are typically nominated and accountable more to a CEO than to shareholders. Moreover, votes on proxy resolutions are nonbinding. Nevertheless, they serve as an important check on corporate power, and they need to be understood more widely by a concerned public that is affected by the impact of corporate decisions. One could argue persuasively that taxpayers, as underwriters of the investment portfolios—which include publicly-traded equities—are in a position to voice their views on the array of social, environmental, economic, and governance proxy resolutions that are filed each year for consideration at annual meetings. This article examines a shareholder resolution that was filed by the AFL-CIO with Amazon and voted on this past May. The proxy resolution concerned the use of criminal background checks for employees, which has a disproportionate impact on African Americans at a time when entry level jobs are disappearing, and wealth and income gaps have widened considerably. Commissioned by the Sustainable Investments Institute, it was circulated to Si2's subscriber base, which includes major institutional investors, as a guide to their deliberations over how best to vote their proxies. The analysis makes no recommendations. It does analyze the shareholder campaign and presents the pros and cons of the resolution, all against a backdrop of (1) tectonic shifts affecting the U.S. economy, particularly concerning the nature of work, and (2) the bipartisan push for criminal justice reform, which has generated changes in sentencing and prison policies.

Author's Note: This article is based on a report written for the [Sustainable Investments Institute \(Si2\)](#), which examines a shareholder resolution filed by the AFL-CIO concerning Amazon's potentially discriminatory policy involving criminal background checks in the hiring and promotion of Amazon employees, independent contractors, and subcontractors. It sets forth the content, context, and related considerations affecting the proposal, which was filed by the AFL-CIO through its Office of Investment and Capital Stewardship program. The resolution received 7.33 percent of the vote at Amazon's annual general meeting (AGM), held on May 23, 2017 in Seattle.

"Equity Culture and Decent Work: The Case of Amazon" (Sustainable Investments Institute, 2017).
Reprinted by permission of the Sustainable Investments Institute.



The Shareholder Campaign

Last year shareholder-activist proponents started to focus in earnest on the growing concerns about economic inequality in the United States and the erosion of the middle class and they are continuing to do so in 2017, with particular emphasis on gender pay equity. This year, they have filed 50 resolutions and just under half are still pending. While resolutions that ask questions about gender and pay seem to have no trouble making it onto proxy statements, those that inquire about whether pay levels are adequate have had trouble and most have been omitted.

Resolved Clause

RESOLVED: Shareholders of Amazon.com (the “Company”) request that the Board of Directors prepare a report on the use of criminal background checks in hiring and employment decisions for the Company’s employees, independent contractors, and subcontracted workers. The report shall evaluate the risk of racial discrimination that may result from the use of criminal background checks in hiring and employment decisions.

The report shall be prepared at reasonable cost and omit proprietary information, and shall be made available on the Company’s website no later than the 2018 annual meeting of shareholders.

Lead Proponent

AFL-CIO

Vote History

The company unsuccessfully challenged the proposal at the SEC, which disagreed it concerns ordinary business (Rule 14a-8(i)(7)). The resolution is new in 2017 and was co-filed by Zevin Asset Management.

Summary

Proponents say that the use of arrest and conviction records in making hiring decisions may violate provisions of the Civil Rights Act of 1964 and EEO guidelines, because they disproportionately impact people of color. Given the high level of previously-incarcerated adults in the U.S. population—one estimate is one-third of the total population—excluding them from the talent pool also may impact competitive performance. Amazon’s board opposes the resolution, citing both its commitment to equality and the “nature” of its business, which includes the use of contracted delivery drivers who operate independently in the field. Amazon’s board believes that the preparation of the report requested by the proposal would not be an effective and prudent use of its time and resources.

Context

The criminal background check resolution exists within the wider context of two major forces: (1) tectonic shifts affecting the U.S. economy, particularly concerning the nature of work, and (2) the bipartisan push for criminal justice reform, which has generated changes in sentencing and prison policies. Both of these realms involve different actors and regulatory regimes, but there are many overlaps—chief among them how best to assure access to economic opportunity—that pose significant challenges to existing practices.

Equity Culture

Underlying notions of an inclusive economy is a core value central to the American ideal of *equity*. “Equity culture” involves not just fairness and justice, but citizenship and access to opportunity. It involves political, economic and civic moral claims about “the good life,” a precondition for a self-governing democracy. As applied to decent work, it ties together non-discriminatory respect and a shot at earning a living. With respect to criminal background checks, ideas about equity culture and inclusive economy irrevocably involve matters of race, who gets access to what and why. Because they involve matters of race, consideration includes the multiple disproportionate impacts of mass incarceration on communities of color, particularly African Americans.

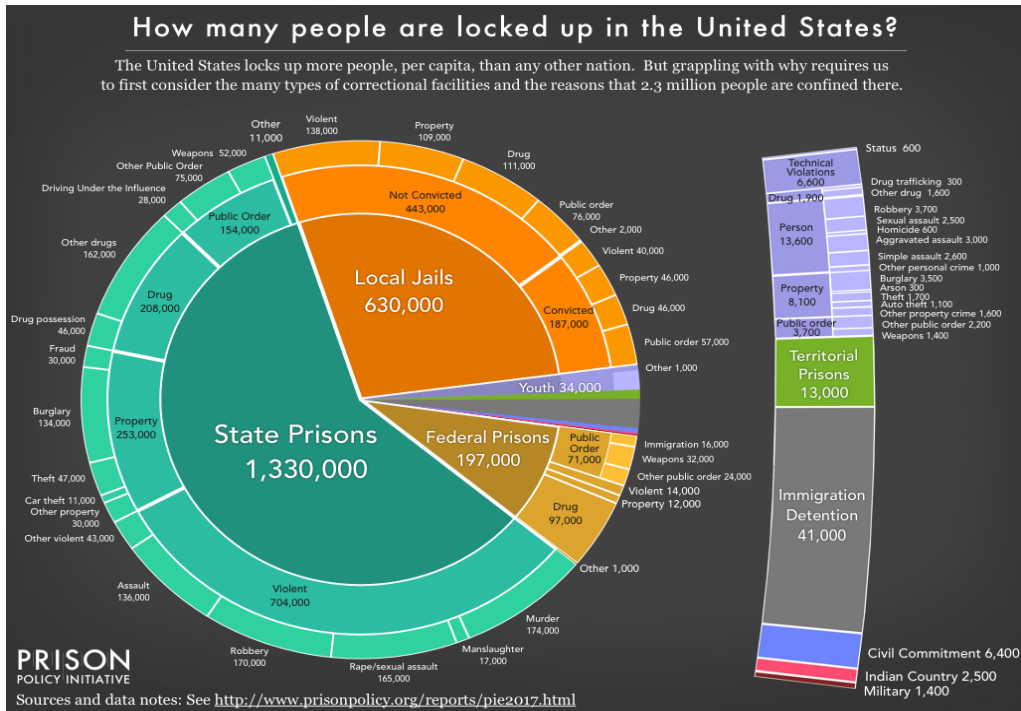


Figure 1: U.S. Incarceration Demographics (Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative, March 14, 2017, <https://www.prisonpolicy.org/reports/pie2017.html>)

Mass Incarceration

The United States has the dubious distinction of **locking up more people**—693 for every 100,000 residents—than any other country, with incarceration rates more than five times higher than those in most countries around the world. (See Figure 2.) According to the Justice Department, nearly a quarter of Americans has experienced an encounter with the criminal justice system, typically for minor non-violent infractions. Current estimates are that roughly 20 percent of these offenses were committed decades ago. The bulk of federal inmates were convicted of nonviolent drug charges. Overall, justice expenditures are hefty. The Bureau of Justice Statistics estimates **that more than \$80 billion is spent on corrections every year**, comprising federal, state and local levels. According to the nonprofit Vera Institute, **it costs the taxpayers \$39 billion** a year to maintain the corrections system.

According to the nonpartisan, nonprofit **Prison Policy Initiative**, the American criminal justice system holds more than 2.3 million people in 1,719 state prisons, 102 federal prisons, 901 juvenile correctional facilities, 3,163 local jails, and 76 Indian Country jails, as well as in military prisons, immigration detention facilities, civil commitment centers and prisons in the U.S. territories.¹ According to the Bureau of Justice Statistics, in addition, more than **7 million people are under correctional control**, which includes parole (840,000) and probation (3.7 million). After 40 years of unabated growth, the state prison population has begun to level off in some states and decline in others, **according to** the Urban Institute’s Prison Population Forecaster project.

Each year, more than 641,000 people return to neighborhoods after serving time in federal and state prisons, and each year another 11.4 million people cycle through local jails. “Jail churn is particularly high because most people in jails have **not been convicted**,” the Prison Policy Initiative reports. “Some have just been arrested and will make bail in the next few hours or days, and others are too poor to make bail and must remain behind bars until their trial. Only a small number (187,000 on any given day) have been convicted, generally serving misdemeanors sentences under a year.” The Initiative found that 99 percent of jail growth over the past 15 years has been the result of increases in the pre-trial population—people who are legally presumed innocent until proven otherwise in court.

As for racial and ethnic disparities, incarceration figures as a whole show a disproportionate impact on African Americans. According to the Prison Policy Initiative, whites are underrepresented and blacks are overrepresented, with incarceration rates for Latinos showing a slight increase relative to their percentage of the U.S. population.

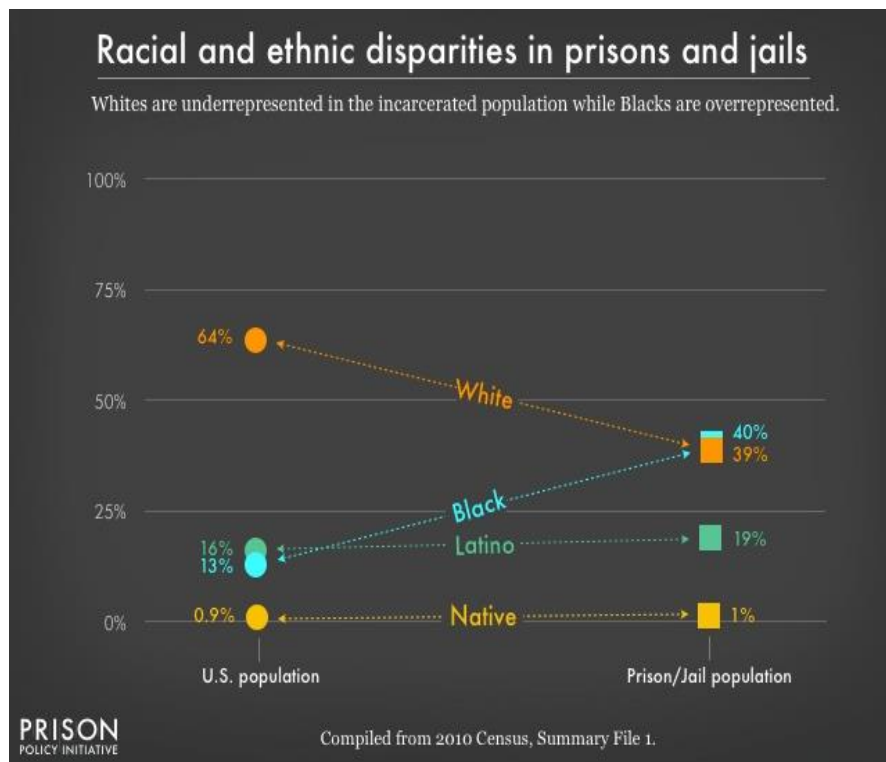


Figure 2: Racial and Ethnic Demographics (Wagner and Rabuy, *Mass Incarceration: The Whole Pie*)

Reform Pressures Converge

In recent years, particularly in urban settings, a long list of criminal justice grievances—many recorded by dashboard cameras or smartphones and then circulated by social media—have fostered a policy and political environment hospitable to reform. Some experts credit this unique historical moment to several factors, including the economic downturn and high costs of incarceration.

Evidence of this heightened interest abounds, from the impact of Michelle Alexander’s best-selling 2010 book, *The New Jim Crow: Mass Incarceration in the Age of Color Blindness*—which became the Bible for many sentencing reform activists—to Pope Francis making time to meet with inmates in Philadelphia’s largest prison during his September 2015 visit.

In 2015 a host of bipartisan legislative and civil society proposals and projects cropped up, each seeking systemic solutions to different parts of the problem and offering different gateways to citizen involvement. Even conservatives and liberals are finding common ground. According to Bill Keller, former executive editor of *The New York Times* and currently editor of *The Marshall Project*, the Koch brothers and the ACLU co-sponsored conferences on judicial reform, and a number of bipartisan bills have been introduced in Congress and the states that would do the following:

- cut back mandatory-minimum sentences;
- use probation, treatment and community service as alternatives to prison for low-level crimes;
- raise the age of juvenile-court jurisdictions;
- limit solitary confinement;
- curtail the practice of confiscating assets;
- rewrite the rules of probation and parole to avoid sending offenders back to jail on technicalities;
- restore education and job training in prisons;
- allow prisoners time off for rehabilitation; and
- ease the reentry of those who have served time by expunging some criminal records and by lowering barriers to employment, education, and housing.

Founded in November 2014, the Marshall Project, named after Supreme Court Justice Thurgood Marshall, is a nonprofit, nonpartisan news organization covering America’s criminal justice system. It is funded by venture capitalist and chair of the *Columbia Journalism Review* Neal Barsky, who [said he was moved to do so](#), in part, due to Michelle Alexander’s book.

“We have this ‘bubble moment,’” Vera Institute of Justice President Nick Turner told attendees at a two-day conference in November 2015 on the [media and criminal justice reform at Harvard Law School](#). Speaking to the shift in public opinion, as well as remedies within reach, he went on to say, “There’s been no single event, but an accretion of events that’s so deep, so complicated, that we’ve now got an infrastructure.” Founded in 1961, the Vera Institute is a nonprofit that sponsors research, demonstration projects and technical assistance aimed at improving criminal justice systems.

Changes to Sentencing and Prison Policy

The bipartisan consensus on the failures of mass incarceration was on vivid display in late 2015 when the Justice Department granted [early release for more than 14,000 nonviolent offenders](#) from halfway houses and federal prisons throughout the country. The early releases were the result of changes made by the bipartisan, independent [U.S. Sentencing Commission](#), which determined that mandatory minimum sentences helped create a situation in which the number of federal prisoners increased by 178 percent between 1995 and 2010, wreaking havoc with the budget and contributing to overcrowding. Moreover, the Justice Department has found that keeping people in prison longer does not seem to impact recidivism rates.

About a year later, in August 2016, the Justice Department announced plans to [phase out the use of privately-run federal prisons](#)—such as those operated by CoreCivic (the [new name](#) for Corrections Corporation of America, or CCA), The GEO Group and Management & Training Corporation—because, [in the words of then-Deputy Attorney General Sally Yates](#), “They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, they do not maintain the same level of safety and security.”

Reentry Programs

In 2016, former Attorney General Loretta Lynch declared the last week of April as “National Reentry Week” to spotlight the Obama administration’s efforts to make the criminal justice system “more fair, more efficient, and more effective at reducing recidivism and helping formerly incarcerated individuals contribute to their communities.”

Little information exists on the capacity and success rate of reentry programs, which vary in design, for former inmates—including whether or not they are able to obtain jobs. While numerous state and local partnerships exist with faith-based and community organizations, the Trump Administration has removed the “reentry” link on the Department of Justice webpage for “Prisoners and Prisoner Re-Entry.”

In theory, “inmate transition” to society, including searching for meaningful work, “begins on the first day of incarceration,” according to the Federal Bureau of Prisons. In practice, according to a 2015 report by the conservative-leaning Heritage Foundation, considerable debate exists over the effectiveness of these programs. Following a 2015 review of various evaluation studies, it found that differences in research design and desired outcomes produced, at best, mixed results, particularly for employment-based reentry programs. The critical question, the Heritage Foundation reports, seems to be “the timing of employment transitions in relation to desistance from crime”—or how long it takes for released prisoners to find a job, and whether he or she has made a decision to give up criminal behavior and be a law-abiding citizen.

The Heritage Foundation concludes that prisoner reentry programs that adopt a multifaceted approach—such as a case-management strategy embodied by the [Minnesota Comprehensive Offender Reentry Plan \(MCORP\)](#), which focuses on helping offenders access services related to employment, vocational training, education, housing, chemical health, mentoring, faith-based programming and income support—may have more realistic chances of success. Nevertheless, the Heritage Foundation says that “more experimental evaluations, especially large-scale multisite evaluations, are needed to shed light on what works and what does not.”

As for recidivism, differences exist at the federal and state level. [According to a February 2017 report released by the U.S. Sentencing Commission](#), “federal drug trafficking offenders had a substantially lower recidivism rate compared to a cohort of state drug offenders released into

the community in 2005 and tracked by the Bureau of Justice Statistics. Over two-thirds (76.9 percent) of state drug offenders released from state prison were rearrested within five years, compared to 41.9 percent of federal drug trafficking offenders released from prison over the same five-year period.” An offender’s criminal career history, as well as age, were cited as factors associated with recidivism.

“Ban the Box”

Largely in response to problems facing formerly incarcerated people as they reenter society, the so-called “Ban the Box” campaign—sometimes referred to as “fair hiring” or “fair chance”—addresses the pernicious effects of a criminal record on those seeking gainful employment, housing, social services, insurance and loans. In an effort to destigmatize the job application process, twenty-six states and more than 150 cities and counties nationwide have adopted policies that remove the question and checkbox regarding a public job applicant’s criminal conviction history.

The [Ban the Box campaign](#) was launched in 2004 and is one of several projects launched by the group [All of Us or None](#), a national human rights group comprising formerly incarcerated people and their families. Initially focused on the hiring policies of government agencies, the state of Minnesota [was the first](#), in January 2010, to adopt “Ban the Box.” The campaign received a big boost on November 2, 2015, when President Obama [announced in Newark](#) that he was directing the federal Office of Personnel Management to delay inquiries into a job applicant’s history until later in the hiring process; the status of this directive during the Trump administration remains unclear.

Beyond government employment, the Ban the Box campaign components now include national promotion of a “[Fair Chance Pledge](#)” that extends to nonprofits and foundations. More recently, the Ban the Box movement has expanded to housing with the City of Newark’s adoption of an ordinance that prohibits discrimination based on conviction history; the Newark ordinance also applies to public and private employment. The [National Employment Law Project](#) (NELP) is [helping to coordinate](#) these efforts.

Private Sector Employers

As for the private sector, the Ban the Box movement gained ground last December when Los Angeles became the nation’s fifteenth locality to adopt a fair-chance hiring policy that applies to companies, [according to NELP](#). Nine states and major cities such as Austin, Baltimore, Boston, Chicago, New York City, San Francisco and Seattle already have done so.

The Amazon Effect

Meanwhile, on the job front, opportunities for entry-level jobs with little training are eroding quickly. The retail sector is especially hard hit, primarily due to the popularity of online shopping. While Amazon growth shows [no sign of ending anytime soon](#), employment in the U.S. retail market continues to suffer. According to the federal government, retailers shed nearly 30,000 jobs in March, after similar numbers in February. According to the Bureau of Labor Statistics, there are about [16 million retail workers throughout the U.S.](#), including online sellers. Average hourly earnings for these workers is about [\\$15.24](#). In March, the sector unemployment rate was [5.2 percent](#), higher than the national [4.5 percent rate reported for the same period](#).

Amazon’s impact on the industry—often called the “[Amazon effect](#)”—is a direct challenge to the traditional retail business model, particularly brick-and-mortar stores; Sears, Macy’s, J.C. Penney, Best Buy and Kohl’s have [lost billions in market value](#). In addition, the company is having an impact on jobs, income, tax revenues, [bankruptcies](#), real estate (both store and mall closings, which *Business Insider* calls a “[retail apocalypse](#)”) and consumer goods manufacturing and distribution.

As job losses continue to proliferate in the sector, which currently employs 10 percent of the entire American workforce, some observers view the Amazon effect as [rivaling lost manufacturing jobs to China](#). In a recent *New York Times* [article](#), [one outplacement expert](#) noted that the number of jobs lost in retail “outpaces the number being created in the sectors that are taking their place.”

Amazon.com and Decent Work

Amazon.com is an online retailer that serves consumers, sellers, enterprises and content creators through three segments: North America, International and Amazon Web Services (AWS).

For consumers, Amazon operates retail websites that sells its own products as well as those of third parties. It also sells electronic products including Kindle e-readers, Fire tablets, Fire TVs, Echo and Fire phones. Through the Amazon Prime program, it offers an annual membership that includes unlimited free shipping on millions of items, access to unlimited instant streaming of thousands of movies and TV episodes, and access to hundreds of thousands of books to borrow and read for free on a Kindle device.

For sellers, Amazon offers programs that enable them to sell their products on its websites and their own branded websites and to fulfill orders through the Amazon distribution network, which allows the company to earn fixed fees, revenue share fees and/or per-unit activity fees.

For enterprises, it offers AWS to developers and enterprises of all sizes, including global compute, storage, database, analytics, applications and deployment services that enable virtually any type of business.

For content creators, it operates Kindle Direct Publishing, an online publishing platform, and Amazon Publishing for authors, musicians, filmmakers, app developers and others to publish and sell content.

Financial Performance

Amazon’s total revenues grew by just over 27 percent in 2016, and net income rose by nearly 300 percent. The increases came from substantial growth in sales, which have increased by about one-quarter for at least the last three years, both inside and outside the United States. North America

made up 57 percent of net sales in 2016 and International operations contributed 38 percent. Revenues from AWS accounted for about 5 percent of 2016 earnings, down from 7 percent last year and 9 percent in 2015.

Financials			
<i>(\$ millions)</i>	2015	2016	% Change
Total Revenue	\$107,006	\$135,987	27.8%
Net Income	\$596	\$2,371	297.8%

External Pace-Setting

Amazon is one of the nation's largest online retailers, and because it engages in continuous evolution, its reach extends into many aspects of American economic, social and political life. In February, *Fast Company* magazine [dubbed Amazon](#) the most innovative company of 2017. At the end of April, *The Wall Street Journal* [reported](#) that Amazon was experimenting with the use of self-driving cars, as it builds out its supply chains and logistics network; this is the latest twist on the 2013 announcement of its drone delivery program, which was [tested in the U.K. last December](#). (With current regulations, it will be some time before any American drone debut).

Employee and Diversity Issues

Workforce

Amazon's employee base has grown substantially. It employed 341,400 full- and part-time employees at the end of 2016, up from 230,800 a year earlier and more than double the number at the end of 2014. Management notes that employment levels fluctuate due to seasonal factors affecting its business. It also uses independent contractors and temporary personnel to supplement its workforce. Amazon has works councils, statutory employee representation obligations, and union agreements in certain countries outside the United States.

New Jobs

In January 2017 the company announced it was going to [add 100,000 new full-time U.S. jobs in the following 18 months](#), many at the 70+ fulfillment centers located throughout the country. These new jobs represent a 56 percent increase in the number of full-time jobs at fulfillment centers (180,000) by the end of 2016. As for part-time jobs, in April Amazon announced it would hire [an additional 30,000 part-time](#) workers, mostly for customer service and fulfillment center positions.

Diversity Programs

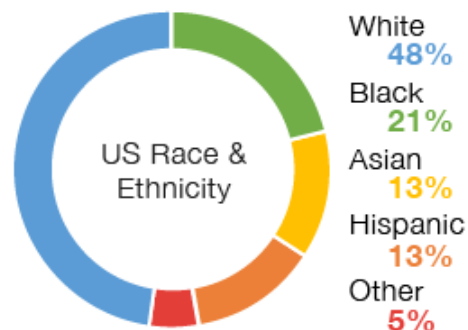
On Amazon's [diversity webpage](#), it states,

We believe that diversity and inclusion are good for our business, but our commitment is based on something more fundamental than that. It's simply right. Amazon has always been, and always will be, committed to tolerance and diversity. These are enduring values for us, which are reflected in our [Leadership Principles](#).

The company has several Affinity Groups, such as Latinos@Amazon and Amazon Women in Engineering, that "bring people together across businesses and geographies." The company adds that these groups also provide critical inputs and insights about where the company should focus its diversity efforts. Amazon provides data on the racial composition of its workforce, as shown below.

Gender Pay Equity

Last year, following shareholder pressure to disclose its policies and practices on female pay disparities, Amazon, after initial resistance that was rebuffed by the SEC, declared it is [on track](#) to achieve gender pay equity, and that it pays women 99.9 percent of what it pays men.



Same-Day Delivery to Minority Neighborhoods

In 2016, Amazon faced complaints that it was not offering its Prime Free Same-Day Delivery service to minority neighborhoods. An [analysis](#) by *Bloomberg News* highlighted racial disparities in areas where the service was available in Atlanta, Boston, Chicago, Dallas, New York and Washington and prompted criticism from elected representatives that the company’s data-driven service boundaries unfairly left out some minority communities. In early 2016, for instance, Amazon offered same-day delivery to all neighborhoods in Greater Boston – [except](#) for three zip codes in the predominately Black neighborhood of Roxbury. Following several news articles and calls from Boston Mayor Martin J. Walsh and Massachusetts Senator Ed Markey for Amazon to provide similar services to Boston’s excluded Roxbury neighborhood, Amazon [included Roxbury](#) in April 2016. In May 2016, Amazon announced it would bring free same-day delivery to the Bronx and Chicago’s South Side.

Background Check Lawsuits

Amazon is facing complaints and lawsuits over alleged improper use of background checks in hiring. These include:

- [January 2017](#): The Boston-based nonprofit Lawyers’ Committee for Civil Rights and Economic Justice filed class action complaints on behalf of eight black and Latino delivery drivers with the Massachusetts Commission against Discrimination, alleging that Amazon violated federal and state anti-discrimination laws.
- In October 2016, the Lawyers’ Committee sent a [letter](#) to Amazon CEO Jeff Bezos, expressing concern about a purported new Amazon directive in August 2016 that requires third-party contractors to institute more stringent background check procedures. The letter alleges that changes in policies resulted in the termination of dozens of primarily black and Latino Amazon delivery drivers in the Boston area. One Boston area delivery company, Miller’s Express, summarily “deactivated” approximately 30-40 drivers on a single day, nearly all of whom were people of color, according to the Lawyers’ Committee.
- [January 2017](#): Amazon was denied a motion to dismiss a lawsuit alleging that it violated the Fair Credit Reporting Act (FCRA) through its background check system. Plaintiffs alleged Amazon violated the FCRA by failing to provide two separate forms for the job application and the background check authorization to job applicants at a Florida-based fulfillment center. In denying the motion, the judge noted that “Amazon is involved with other background check-related

- litigation, meaning it is unlikely that the company was unaware of its obligations under the FCRA.”
- [April 2015](#): Amazon and its staffing company were sued for failing to provide the results of a background check to a worker hired-then-fired for a warehouse job. The plaintiff said that he would have disputed the result of the background check had he known the negative result. In October 2015, an Illinois federal judge denied Amazon’s summary judgment motion for this case.

Sustainability

The company prides itself on accommodating stakeholder concerns. Amazon’s “[About Amazon](#)” touts the company’s sustainability leadership and bold array of innovations, with story-rich links including “[Transformations](#),” which recounts stories of individuals whose life or business has been transformed after working with the company; “[Opportunities](#),” which encourages entrepreneurship; “[Economic Impact](#),” which features an interactive map of the United States showing the number of authors, sellers and developers benefitting from Amazon’s services; “[In the Community](#),” which lists the company’s community outreach and charitable giving programs, including pro bono legal services for “local community members;” “[Our Innovations](#),” which shows a number of what Amazon calls “bold bets” ranging from web services to environmental stewardship, product development and product fulfillment; and “[Working at Amazon](#),” which includes a number of stories about [employees](#) along with [various programs](#) that address diversity, veterans and their spouses, internships, career development, tuition reimbursement and its Seattle-based urban campus.

Proponent Position

Lead proponent AFL-CIO, joined by Zevin Asset Management (ZAM), is asking Amazon’s board of directors “to prepare a report on the use of criminal background checks in hiring and employment decisions for the company’s employees, independent contractors, and subcontracted workers.” The proponents are concerned that these background checks may both “hurt our Company’s competitiveness in attracting and retaining top talent” and also create “significant legal, reputational and operational risks” based on possible racial discrimination. They maintain the board “has an obligation to adequately inform itself of and manage these material risks.”

ZAM told Si2 that “Investors note that Amazon has improved its disclosure of environmental risks in its business. However, Amazon refuses to provide an informative account of how it manages risk related to hiring-related background checks, proper oversight of contractors and temporary workers engaged by third-parties on behalf of Amazon, and the broad human capital management risks associated with those issues. ZAM added,

Amazon’s corporate responsibility and investor relations personnel flatly refused to discuss these issues on an investor call that they convened in March. Our proposal is a simple request for this missing disclosure.

The proponents’ statement provides information related to the trends and developments related to economic opportunity for people with criminal records presented in *Section I*. Among other concerns, the proponents point to:

- The National Employment Law Project’s statistic that approximately one third of U.S. adults have a criminal record, saying that excluding individuals who have had previous contact with the criminal justice system limits the talent pool and “in effect imposes a second sentence.”
- The possibility of Amazon running afoul of both the Civil Rights Act of 1964 and Equal Employment Opportunity Commission (EEOC) [guidelines](#) on consideration of arrest and conviction records in employment decisions.

In making their case, the proponents note the company’s rapid growth and increasing use of staffing agencies and independent contractors for various positions, including warehouse jobs and delivery drivers. They believe that “while it may be appropriate to disqualify certain individuals with relevant criminal records” from specific positions, “previously incarcerated individuals who have paid their debt to society deserve a chance to achieve gainful employment.” The proponents add that the “disparate impact that such practices may have on people of color may also work against our Company’s commitment to diversity.”

Management Position

Amazon opposes the resolution, asserting that it already is strongly committed “to providing an equal opportunity in all aspects of employment and will not tolerate any illegal discrimination or harassment of any kind.” It says that the process for performing background checks on prospective employees and contracted service providers “serves significant public safety and business purposes.”

Management says that its processes for conducting background checks “involve complex considerations that are designed to be fair, reasonable, and lawful and to achieve the primary goal of protecting employees, customers, and the public.” Management goes on to say,

The nature of our business requires that we implement certain controls to protect our customers, employees, and the public and serve the interests of our shareholders. For example, our contracted delivery drivers operate largely independently in the field without direct supervision. They are in contact with customers and other members of the public, including children and vulnerable adults, often face-to-face at the customer’s doorstep and, in some cases, after dark. In this context, it is critically important to managing our reputational, operational, and legal risks that background checks are performed. Accordingly, taking into account the nature of a conviction, the time that has elapsed, and the nature of the job for which an individual is being considered, we do consider certain types of serious criminal convictions to be disqualifying.

With respect to the proponents’ concerns about racial discrimination, Management then reiterates its commitment to providing “an equal opportunity in all aspects of employment” and that its “diverse population of drivers who serve our customers” is a source of pride. It says it “will not tolerate any illegal discrimination or harassment of any kind,” and that “diversity is a cornerstone of our continued success” because the company benefits from “the diverse perspectives of our employees that come from many sources, including gender, race, age, national origin, sexual orientation, disability, culture, education, as well as professional and life experience.

Given its professed commitment to equality and “the nature of our business,” the Management says that producing the requested report “would not be an effective and prudent use of the Company’s time and resources.”

Analysis

Key Points at Issue

- How much information is currently available on Amazon’s approach to conducting criminal background checks?
- What are the legal, reputational, and performance risks associated with criminal background checks?

Amazon’s business strategy poses a direct challenge to the traditional retail business model, and employment in the U.S. retail market is in decline. While primarily brick-and-mortar stores such as Sears, Macy’s, J.C. Penney, Best Buy and Kohl’s have lost billions in market value and shed jobs, Amazon’s workforce has seen significant growth and is continuing to expand at a rapid pace. In early 2017 the company announced it was going to add 100,000 new U.S. full-time jobs in the next 18 months and an additional 30,000 part-time workers. The company also uses independent contractors and temporary personnel to supplement its workforce.

Current Practice

Amazon currently offers limited information on its use of criminal background checks in hiring and employment decisions, including oversight of third-party contractors and staffing agencies. The proponent suggests that the company may employ a ban on employing all individuals with any criminal record. Management says in its statement of opposition that “taking into account the nature of a conviction, the time that has elapsed, and the nature of the job for which an individual is being considered, we do consider certain types of serious criminal convictions to be disqualifying.” The company further references “complex considerations” that are taken into account, but it does not reveal its framework or system for evaluating these considerations, and the various scenarios that may result. Investors will need to decide if more information and clarity on this issue is warranted.

Operating Environment

The proponents acknowledge that many companies use criminal background checks in hiring and employment decisions. Yet, as described in *Section I*, the operating environment in which Amazon does business includes numerous reform efforts underway that address challenges posed by mass incarceration. Given its size and ubiquity, Amazon likely will be affected by the growing number of state and local policies that affect private employer use of criminal background checks. If the Ban the Box movement spreads, for example, it could directly impact Amazon’s hiring policies in those jurisdictions that have adopted it. As of December 2016, nine states and major cities such as Austin, Baltimore, Boston, Chicago, New York City, San Francisco and Seattle, have adopted a fair-chance hiring policy that applies to companies, [according to NELP](#).

The proponents also point to several complaints and lawsuits brought against Amazon over the alleged improper use of criminal background checks. These include a recent case in Boston, Mass, involving the “deactivation” of dozens of black and Latino delivery drivers following a

change in background check policies. These cases are described in *Section II*. Amazon also has faced public criticism for not offering its Prime Free Same-Day Delivery service to some minority neighborhoods.

Voting Considerations

Votes in Favor

Investors who are concerned about possible significant legal, reputational and operational risks associated with Amazon's use of criminal background checks are likely to vote in favor of this proposal. They may want to underscore to management that, despite its assurances, current publicly available information provides an incomplete picture of the process for conducting criminal background checks and managing any resulting racial discrimination, if any. They may agree that management also would benefit from a review of the changing operating environment and related risks.

Votes Against

Shareholders who believe that decisions about the use of criminal background checks and other hiring practices are best left to management are likely to vote against the proposal. These investors are likely satisfied with the company's assurances that its hiring and EEO policies are fair, reasonable and lawful and believe that Amazon should not bear responsibility for addressing impacts of the nation's criminal justice system.

Resources

- Amazon.com 2017 Proxy Statement
<https://www.sec.gov/Archives/edgar/data/1018724/000119312517120195/d334778ddef14a.htm>
- Amazon.com 2016 10-K Statement
<https://www.sec.gov/Archives/edgar/data/1018724/000101872417000011/amzn-20161231x10k.htm>
- Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie – 2017*, Prison Policy Initiative (March 14, 2017):
<https://www.prisonpolicy.org/reports/pie2017.html>
- David Muhlhausen, *Studies Cast Doubt on Effectiveness of Prisoner Reentry Programs*, The Heritage Foundation (December 2015): <http://www.heritage.org/crime-and-justice/report/studies-cast-doubt-effectiveness-prisoner-reentry-programs>
- Lauren Glaze and Danielle Kaebler, *Correctional Populations in the United States, 2013*, Bureau of Justice Statistics (December 2014):
<https://www.bjs.gov/content/pub/pdf/cpus13.pdf>

Note

¹ Peter Wagner and Bernadette Rabuy, *Mass Incarceration: The Whole Pie 2017*, Prison Policy Initiative, March 14, 2017, <https://www.prisonpolicy.org/reports/pie2017.html>.