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**Prison Privatization in the United States:
The Limits and Consequences of the
Transfer of Public Power into Private Hands**

Diplomová práce

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Abstrakt

Diplomová práce *Privatizace vězení v USA: důsledky a limity převodu kompetencí státu do soukromých rukou* představuje vybrané důsledky privatizace vězeňství ve Spojených státech amerických. Přestože v USA se novodobý fenomén privatizace vězeňství objevuje poprvé až na začátku osmdesátých let dvacátého století, fungování soukromých „věznic“ zde má dlouhou historii. Z tohoto důvodu je nejprve představena privatizace vězeňství v obecné rovině – historie a filosofie. Následují příčinné faktory, které vedly k rozhodnutí privatizovat věznice – přeplněnost věznic, tlak na veřejné rozpočty a tzv. *PIE Program*, který umožnil mezistátní obchodování s výrobky vězňů. Práce dále na základě detailních statistik ilustruje strmý růst ve vězeňské populaci, na což je následně navázáno důsledky z toho vyplývajícími – narůstající daňová zátěž, demografické změny v populaci nejvíce zatížené uvězněním a krize trestního systému. Není zde opomenuta ani často zmiňovaná otázka ekonomické výhodnosti privatizační politiky ve vězeňském sektoru a její kritika. Důležitou roli hraje také představení tzv. vězeňsko-průmyslového komplexu, který označuje propojení byrokratických, politických a ekonomických zájmů, které vedou ke zvýšenému tlaku na udržování nebo růst vězeňské populace, a s tím související zvýšené výdaje na vězeňství.

Abstract

The thesis *Prison Privatization in the United States: The Limits and Consequences of the Transfer of Public Power into Private Hands* analyzes selected consequences of prison privatization in the United States. Although the prison privatization in the US is considered a modern phenomenon, the private sector was involved in corrections from the very early history of the US. Therefore, the thesis introduces history and philosophy of private sector involvement in corrections. The thesis then examines factors that led to the decision to privatize prisons, namely overcrowding of prisons, other political factors, and so-called *PIE-program* that enabled interstate trade with prisoner-made goods. Further, it provides detailed statistics to illustrate the steep rise in the prison population. It also addresses the question of cost-savings and efficiency and it provides examples of specific factors that influence economic performance of private prisons. Important part is dedicated to the growth of prison-industrial complex characterized by the overlapping interests of bureaucracy, politicians and private prison companies that lead to increased pressure to maintain or increase the prison population. In the final chapter, the thesis analyzes the consequences such as increasing tax burden; demographic changes in the population most affected by mass incarceration, and distorted justice.

Klíčová slova

USA; vězení; privatizace vězení, vězeňství, trestní řízení, trest za účelem zisku

Keywords

U.S.; prison; prison provatization; corrections; criminal justice system; punishment for profit

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Prohlášení

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V Praze dne 12. 5. 2016

Martina Kršková

Poděkování

Na tomto místě bych ráda poděkovala PhDr. et Mgr. Kryštofu Kozákovi, Ph.D. za jeho připomínky, užitečné rady a zejména trpělivost, kterou projevil při vedení této práce.

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Vedoucí práce: PhDr. Mgr. et Mgr. Kryštof Kozák, Ph.D.		
V čem se oproti původnímu zadání změnil cíl práce? The goal is to analyze the limits and consequences of the prison privatization in the U.S. Contrary to the original idea, there is more space dedicated to the understanding of the original reasons for prison privatization, which should help to better understand the roots of analyzed consequences.		
Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu? This thesis analyses the consequences of almost four decades of growth of private prisons in the United States. The prison privatization affects both state and federal prisons and each state has its own legislature, which may allow or ban the use of private prisons. For this reason, the thesis does not examine each state individually but addresses the overall impacts of prison privatization.		
Jak se proměnila struktura práce (vyjádřete stručným obsahem)? The thesis has been broken into three main chapters – each devoted to a certain area of prison privatization. The chapters are logically structured, dividing the thesis into introductory chapter about the overall “idea” of prison privatization. Follows a chapter about the “reality” of prison privatization and concluding chapter deals with the “consequences” of prison privatization in the U.S.		
Jakým vývojem prošla metodologická koncepce práce? This thesis is analysis of the consequences of prison privatization phenomenon.		
Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce? I studied reports of various sources studying prison privatization and its impacts. I also studied the Bureau of Justice Statistics report about the development in numbers of prisoners, prisons, incarceration costs, etc.		
Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech): <ol style="list-style-type: none"> 1) Specification of the topic 2) Specification of the structure 3) Research of the topic and analysis of new sources 		
Podpis studenta a datum:		
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Introduction

The United States tries to portray itself as the beacon of freedom and democracy for the rest of the world, yet it has the most prisoners of any developed country and possibly¹ the most prisoners of any country in the world. Based on these statistics, one could even speculate that the United States has been on the edge of falling from its pedestal of the land of freedom and opportunity and instead devolving into a violent and oppressive police state. How can this paradox be explained?

The criminal justice system in the United States is to blame as it is unfair and broken. It should ensure the safety of the public and fair treatment of the prisoners, but it has been failing on most counts. Moreover, it is becoming more and more obvious that equal justice under law is not for everybody. Unequal treatment of minorities is blatantly obvious; the manifestation of the unequal treatment is the structure of the prison population as such. Over-crowded prisons are mostly filled with black and Hispanic population. At year-end 2014, the United States has held an estimated 1,561,500 prisoners² in state and federal correctional facilities out of which were an estimated 516,900 black males (2.7 % of black male residents of all ages), 308,700 Hispanic males (1.1 % of Hispanic male residents of all ages) followed by 453,500 white male inmates (0.5 % of white male residents of all ages).³ Furthermore, there is also a gender imbalance in prisons. In 2014, the

¹ Prisoners counts in certain countries are not available, e.g. Eritrea, Somalia, Democratic People's Republic of Korea, also Chinese statistics are based on different set of data and are not fully comparable. (Source: Roy Walmsley, "World Prison Population List (11th Edition)" (International Centre for Prison Studies, February 2016), http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition.pdf).

² The number of prisoners is lower than the total correctional population. At year-end 2014, an estimated 6,851,000 persons were under the supervision of U.S. adult correctional systems. (Source: E. Ann Carson, "Prisoners in 2014" (Bureau of Justice Statistics, September 2015), <http://www.bjs.gov/content/pub/pdf/p14.pdf>).

³ Ibid.

number of female prisoners was only 112,961 (7.2 % of the total prison population).⁴

Moreover, in the past 25 years, the prison population has been increasing while the number of violent crimes in the United States has been decreasing.⁵ In 2014, the Bureau of Justice Statistics estimated that half of all males and more than half of all females held in federal prisons were serving time for drug offenses.⁶ Despite the fact that white people and people of color use drugs at similar rates, black people are almost 10 times more likely to be arrested and jailed on drug charges.⁷ Although the Civil Rights movement in the United States has generally made significant gains toward the objective of ensuring equal treatment under the law for all citizens, criminal justice appears to be a critical area where the racial inequality may have increased rather than receded. Criminal laws, while not explicitly discriminatory are enforced in a manner that is massively and pervasively biased.⁸ In addition, those who are affected most are in many cases unable to voice their opinion because they are denied the right to vote due to felony disenfranchisement.

This thesis links the overcrowded prisons and the so-called war on drugs, officially declared by President Nixon in 1971 with an emergence of the private prisons. Firstly, the criminal justice system as set more than four decades ago favors crime-control model and emphasizes incarceration instead of rehabilitation. It favors a repressive approach to drug issue, but the repressive approach and the significant financial incentives vested into the war on drugs did not bring equally significant results. On the contrary, the illicit drug use had been increasing and the Unites

⁴ Ibid.

⁵ Benjamin Minegar, "FBI Reports Decrease in Violent Crimes, Property Crimes," accessed April 4, 2016, <http://www.jurist.org/paperchase/2014/02/fbi-reports-decreases-in-violent-crimes-property-crimes.php>.

⁶ Carson, "Prisoners in 2014."

⁷ "Racial Disparities in Criminal Justice," *American Civil Liberties Union*, accessed April 3, 2016, <https://www.aclu.org/issues/mass-incarceration/racial-disparities-criminal-justice>.

⁸ *Justice on Trial: Racial Disparities in the American Criminal Justice System* (DIANE Publishing, 2000).

States has been facing far-reaching consequences related to overcrowding of state and federal prisons as well as the emergence of private prisons.

While the overall “tough-on-crime” approach usually plays well among the voters, investing tax-payer dollars from local, state or federal budgets into providing for the inmates, not so much. Therefore, when the costs associated with growing number of prisoners started increasing, it created an opportunity for private sector involvement in the prison industry. The idea behind prison privatization stemmed from the fact that a competitive market would force private companies to be more cost-effective and efficient and would provide inherently better service in all relevant correctional areas than any government run facility ever could. Additionally, prison privatization allowed state governments to circumvent voters’ approval of construction bonds, usually needed for a publicly operated facility. It is a problematic issue because it enabled politicians to address the overcrowding of public prisons with a costly solution of construction of more prisons instead of adopting a more systematic solution that would not attempt to fix the consequences but rather address the origin of the issue.

The crucial question is what are the limits of privatization? Some promoters of privatization go so far as to argue that nearly all public sectors could be potentially transferred to the private sector. However, transferring public power to private hands can have a notable impact. It may pose a challenge to accountability of the private sector, security of public and even democracy. Prison privatization in the U.S. is still small in its scope, only 8 percent of all prisons are privatized. However, the consequences assigned to the existence of private prisons are already significant.

It is important to note that the consequences of prison privatization analyzed in this thesis are closely linked to mass incarceration. Hence, it is possible to argue that the negative consequences of private prisons are exaggerated because they should be mainly considered negative results of criminal justice policies not related to prison privatization. However, I argue that repressive criminal justice favoring mass incarceration and private prisons is a policy influenced by lobbying of private prison companies and other interest groups. Therefore, consequences of mass

incarceration are in many aspects interchangeable with consequences of private prisons emergence.

Conceptualization of the key terms

Prison Privatization

The term prison privatization can be assigned to a variety of arrangements that involve nongovernmental contractors. The various forms of prison privatization include “contracting out” of prison services, facility construction and private management and “privatization” which contains the ownership, management and operation of the sector by for-profit firms.⁹ This thesis primarily centers on the “extreme” alternative of correctional privatization involving the private ownership and operation of the facilities and while it will address the “light” form of privatization as well, the focus will remain on the fully privatized institutions.

Broken Criminal Justice System

The criminal justice system in the United States is comprised of three major institutions – law enforcement, adjudication, and corrections. While each part of the system is independent, the criminal justice system requires coordinated functioning of its distinct parts. This thesis works with a term “broken criminal justice system”, which is a concept operationalized on empirical data. The current criminal justice system in the U.S. favors repression among other methods of crime control. In the 1970s, repression was considered the most important and effective function of criminal justice. Scholars argue that criminal justice policies of postindustrial America are managing the rising inequality and “surplus populations” called also “marginal classes” or “dangerous classes” (the terms suggest economically

⁹ “The Perverse Incentives of Private Prisons,” *The Economist*, August 22, 2010, http://www.economist.com/blogs/democracyinamerica/2010/08/private_prisons. AND Kim Richard Nossal and Phillip J. Wood, “The Raggedness of Prison Privatization: Australia, Britain, Canada, New Zealand and the United States Compared,” in *Prisons 2004 Conference on Prisons and Penal*

marginal, unemployed or unemployable population) of the United States by targeting these classes and incarcerating them.¹⁰ However, the effectivity of mass incarceration is doubtful. Considering that approx. half of all inmates in state prisons are serving time for nonviolent offenses, the expenditures used for providing for prisoners could be used for other purposes. The criminal justice as it has been set almost four decades ago, expects prisons, punishment, and control to solve many issues e.g. social problems of poverty, lack of opportunity, and mental illness that are impossible to solve only by incarceration.

Thesis and hypothesis

The aim of this thesis is to assess the prison privatization in the U.S., introduce key concepts and issues in the prison privatization debate and provide the reader with a better understanding of actual consequences of the growing influence of private prison industry. Therefore, the *policy shifts and differences between the old criminal justice system before Nixon and the new attitude represented by the declared “war on crime” and consequent privatization* are the *independent variable*; the *impact of the changes on social, economic and human rights issues* are the *dependent variable*.

This thesis aims to answer the following question:

What are the limits and consequences of the prison privatization in the United States?

To answer the question, several sub-questions need to be answered first:

Policy: International Perspectives, 2004,

http://post.queensu.ca/~nossalk/papers/nossal_wood_prisons_0604.pdf.

¹⁰ Gregg Barak, Jeanne Flavin, and Paul Leighton, *Class, Race, Gender, and Crime: The Social Realities of Justice in America*, vol. 2001 (Los Angeles: Roxbury Publishing Company), accessed May 8, 2016,

https://www.academia.edu/547480/Class_Race_Gender_and_Crime_The_social_realities_of_justice_in_America.

What are the key issues that should be addressed when it comes to privatization of corrections? Do private prisons distort justice? How is the transfer of public power (corrections) to private hands justified? The dominant argument for private prisons is that they will save taxpayers money as for-profit owners have an incentive to seek efficiencies bureaucrats overseeing government institutions lack. How is it then possible that there is no clear data suggesting that private prisons are truly more cost-effective? Even more so, how is it possible that private prisons have demonstrably worse security and insufficient rehabilitation programs? Should private prisons be reformed or abandoned completely?

The following hypotheses are based on preliminary research and findings:

- 1) The criminal justice system in the United States is broken. It disproportionately criminalizes only certain groups of people and favors imprisonment before rehabilitation. A range of justice system policies known as “truth in sentencing” (policies that mandates that those sentenced to prison serve most or all of their time, so they are not allowed early release or parole) is one of many examples of legislations made to benefit correctional industries rather than the society.
- 2) Private prison has its share in the growth of incarceration in the United States. Interests groups are able to influence/manipulate the U.S. justice system. The involvement of interest groups and other actors creates an iron triangle (interest groups, politicians, and bureaucracies) where all the entities concentrate only on the benefits they can get from higher incarceration rates.
- 3) The cost-efficiency and better performance of private prisons in comparison with their public counterparts have not been proven. Furthermore, it is argued that the pursuit of economic efficiency in corrections is morally and ethically wrong.

- 4) The “broken” criminal justice system and privatization of prisons are closely linked. The prison privatization in the United States has caused an extensive damage to the society. In particular, the impact on the overall security, change in demographics of the U.S. population and the state budget has been proven.

In order to be able to answer the research questions and to verify the validity of the hypotheses, it is first necessary to introduce the idea behind the prison privatization in the United States. The first chapter introduces the history of contracting correctional facilities in the U.S., the political thoughts behind privatization of prisons and major factors that influenced the decision to privatize prisons. Thereby the first chapter anchors conceptually the independent variable – the shift from the old system to the new one.

Second chapter seeks to operationalize the number of factors that establishes the dependent variable – the impacts of the new system on U.S. society, politics, etc. by examining the reality of prison privatization, identifying some major issues of the growing prison industry. It provides detailed numbers and statistics to illustrate the trends in soaring prison population and in a distribution of both public and private prisons in particular areas of the U.S. This chapter also analyzes the growth of prison industrial complex and the overall influence of private corporations on public policies.

Third chapter concludes the thesis with the actual consequences of the growth of the private prison industry, which is supposed to show a causal relationship between changes in the prison system and the deterioration or stagnation of factors that demonstrate the effectiveness of the justice system.

In the conclusion, the author revisits the original research questions and hypotheses and provides the final answers.

Literature review

The purpose of this thesis is to fill the relative void on the subject of overall consequences of prison privatization. This thesis presents a comprehensive analysis of selected factors that according to this thesis author's opinion led to prison privatization and the actual consequences that stemmed from the growth of the private prison industry in the U.S.

Much has been written about prison privatization in the United States. Nevertheless, the impact of prison privatization has not been thoroughly studied and the literature is fragmented at least. The prison privatization analyzed in this thesis dates back to the early 1980s when the "war on crime" and overall "get-tough" approach towards declared criminals resulted in the overcrowding of public prisons. Rising costs associated with the growing number of prisoners created an opportunity for the private sector to become involved in what has soon become a prison industry.

This thesis uses a number of primary sources. A respected source of data is the Bureau of Justice Statistics and their annual reports on changes in the demography of U.S. prison population. Further, I would like to mention the census of private prison population – part of *Private Corrections Project*, which offers valuable data about private prison population prior to the mid-1990s – when the Bureau of Justice Statistics first started gathering data on private prison population as well. Vera Institute and Hamilton Project assessed the costs of incarceration and the individual contribution of each taxpayer to the correction budget and thus became a valuable source of hardly accessible data on taxpayers money spent on corrections.

This thesis also benefited from number of studies – namely *A Tale of Two Systems: Cost, Quality, and Accountability in Private Prisons*; *Cost Analysis of Public and Contractor Operated Prisons*; and *Do Private Prisons Really Offer Savings Compared with Their Public Counterparts?*, which analyzed the cost-effectiveness of private prisons and numerous consequences that evolved as an after-effect of privatization of prisons.

The original literature on prison privatization had mostly focused on the economic questions – cost-effectiveness and efficiency of private companies in comparison with the government bureaucracies. The focus of recent research has shifted and great effort has been devoted to studies of issues that arise as consequences of the growth of private prisons – the question of growing incarceration, human rights of prisoners, changing society, prison labor, etc.

A key limitation of both approaches – studies of economic questions, e.g. the cost-effectiveness of private and public prisons and studies of consequences, e.g. the societal impact, demographic changes, etc., is the problematic access to relevant and comparable data. While Bureau of Justice Statistics is gathering data on prisons, prison population, prison operations, etc., it is challenging to make an unbiased comparison of public and private facility operations and consequently its economic performance.

Richard Kish and Amy Lipton¹¹ identified major challenges for analysts trying to compare the cost-effectiveness of public versus private prisons. First, it is an incomplete cost disclosure, followed by infrequent accounting for hidden or indirect costs, and finally, uncertainty when quantifying the impact of cost savings on quality. An independent analysis of effectiveness research regarding privatizing prisons conducted at the University of Utah in 2009 has researched eight cost comparison studies resulting in vastly different conclusions. The researchers have concluded that the data reviewed do not support a move to privatization; however, the data do not clearly discourage privatization either. Therefore, a key limitation of the previous studies is that there is no clear evidence that would support either side of the discussion regarding superior economic performance of private prisons.

¹¹ Richard J. Kish and Amy F. Lipton, “Do Private Prisons Really Offer Savings Compared with Their Public Counterparts?,” *Economic Affairs (Institute of Economic Affairs)* 33, no. 1 (February 2013): 93–107.

Another challenge regarding the studies is a conflict of interest. Temple University study¹² by Simon Hakim and Erwin Blackstone claimed that private prisons “generate [12 to 58 percent] in long-run savings and help relieve overcrowding without sacrificing the quality of the services.”¹³ However, Hakim and Blackstone’s research has received funding by members of the private prison industry, a fact that was not originally acknowledged in the paper. This consequently raises questions about possible bias of the findings.

A great source of information about the costs and benefits of private prisons was provided by the book *Prison Privatization in America: Costs and Benefits* by Melvin Mahone, who actually maintains that private sector is uniquely equipped to operate efficiently and to provide superior service compared to publicly operated facilities. His study and findings are based on review of the literature of sources from the late 1980s and early 1990s when it was still difficult to assess the negative impact of prison privatization, which however nicely illustrates the hopes and overall enthusiasm about privatization at that time. Mahone’s findings are supported by interviews with the inmates. Therefore, the results of the interviews provide lots of insight and interesting observations. Nevertheless, his findings are based more on assumptions that private facilities have the propensity to operate superiorly rather than on actual data that would prove the superiority.

Considering this thesis presents the reader with mostly negative consequences of prison privatization it is important to explain that there are privatization pundits who support the prison privatization movement. Apart from aforementioned Melvin Mahone it is also criminologist Charles H. Logan, whose publications *Private Prisons: Cons and Pros*¹⁴ and *Well Kept: Comparing Quality*

¹² Simon Hakim and Erwin A. Blackstone, “Cost Analysis of Public and Contractor Operated Prisons,” April 29, 2013, <https://www.academia.edu/18579132/Cost-Analysis-of-Public-and-Contractor-Operated-Prisons-FINAL3>.

¹³ Joe Brandt, “Criticism of Professors’ Study Grows as University Finishes Ethics Review,” *The Temple News*, July 9, 2014, <http://temple-news.com/news/criticism-professors-study-grows-university-finishes-ethics-review/>.

¹⁴ Charles H. Logan, *Private Prisons: Cons and Pros* (New York: Oxford University Press, 1990), <https://books.google.cz/books?id=LHJIfV8L6NIC&printsec=frontcover#v=onepage&q&f=false>.

*of Confinement in Private and Public Prisons*¹⁵ and *Public vs. Private Prison Management: A Case Comparison*¹⁶ are even now almost two decades later one of the most cited works about the private prisons. This thesis draws from these sources, however, finds the conclusions outdated and outclassed by newer studies that better reflect the reality of private prisons consequences.

¹⁵ Charles H. Logan, "Well Kept: Comparing Quality of Confinement in Private and Public Prisons," *Journal of Criminal Law and Criminology*, 1992, 577–613.

¹⁶ Charles H. Logan, "Public vs. Private Prison Management: A Case Comparison," *Criminal Justice Review* 21 (1996): 62.

1. The Idea of Prison Privatization in the United States

While the primary intent of this thesis is to examine the limits and consequences of the prison privatization in the United States, it is also necessary to introduce the reader to the prison privatization concept in general. To analyze the outcomes of the transfer of public power into private hands, we first need to understand the philosophical arguments used to legitimate/justify the practice and its history in the United States. Then we can examine the unique occurrence of factors that led the government officials to adopt policies leading to a privatization of corrections.

The idea of the prison privatization, or any kind of privatization for that matter, sounds simple. In a capitalist economy, the private sector organization can generally outperform the public sector agency in many (if not most) activities. While that statement might be legitimate, there has to be an incentive for the private sector to have superior results compared to its public counterparts. Otherwise, the only reasonable objective for the private company is to do well economically, which in turn will undoubtedly affect the operations and the important goals of the corrections e.g. rehabilitation, deterrence of crime, supervision of criminals and the preparation of offenders for re-entry into society.

This chapter introduces the history of the private sector involvement in corrections, the overall idea of the prison privatization, the roots of the prison privatization in different political philosophies and ideologies, and then the political factors that influenced decision makers in the U.S. This chapter does not attempt to present the reader with an exhaustive list of all philosophies that may have (or may have not) influenced the prison privatization phenomenon in the United States. Neither with the complete history of every aspect of the prison privatization or all factors that could have somehow played a role in the prison privatization that would have been task for an entire thesis. However, knowing more about the crucial influences and the most important moments in the prison

privatization will help us better understand the overall problematic and then find appropriate answers for our research questions.

1.1. A Historical Overview of Contracting Correctional Facilities

The private sector was involved in the corrections from the very early history of the United States. The first mention of private subject involvement in the corrections dates back to the first settlement of Virginia. Between 1610 and 1770, America served as a British Empire penal colony.¹⁷ The English colonists coming to America were followed by a handful of convicted felons sent to the New World to be sold into servitude. Those felons were transported by private entrepreneurs in exchange for the privilege of selling them as indentured servants – an English innovation that transformed the administration of criminal justice and allowed to increase the state’s penal capacity while keeping the administrative structure at the same level.¹⁸

However, this is not comparable to the modern prison systems. The colonies adopted the modern prison concept during the 18th century, as an alternative to servitude or the death penalty. The criminal justice procedure was mostly copied from English customs including the use of privately operated facilities. This system was quite similar to the contemporary private prisons. For a fixed fee, the states allowed private contractors to operate the prisons and, although the government appointed the head jailer, he was considered an independent operator.¹⁹

In the 18th and 19th centuries, there were two types of prisons in the United States, privately operated or state-owned prisons. In each case, the primary intent was for prisons to be cost-effective. In order for prisons to achieve self-sufficiency, inmates were required to work to cover the cost of their incarceration. Prison labor was expected to generate a profit to cover the

¹⁷ John Hostettler, *A History of Criminal Justice in England and Wales* (Hook: Waterside Press, 2009), 157.

¹⁸ John Ashcroft, “Emerging Issues on Privatized Prisons. Series: Monograph,” *NCJ*, 2001, <https://www.ncjrs.gov/txtfiles1/bja/181249.txt>.

¹⁹ *Ibid.*

expenses or, if that was not possible, the prisoners had to pay the costs of their incarceration.²⁰

The Reconstruction period was a significant period in the history of punishment for profit. After the end of the Civil War, the South had to accept the end of slavery. However, many southern states created so called Black Codes. Black Codes, later Jim Crow laws, were primarily designed to prevent the former slaves from exercising their newly acquired rights. Further, they also introduced a new penal system of “hiring out prisoners” i.e. the convict-lease system. The convict-lease system allowed the plantation owners to “lease” convicted criminals from the state to use in hard labor. This system represented a continuation of the plantation system that had existed under slavery, the only difference was that the plantation owners did not own slaves but were only leasing them for the use in hard labor.²¹

The beginning of the 20th century marked the end of the private involvement in corrections. The convict-lease system was strongly opposed by those who were economical harmed by cheap prison labor, e.g. organized labor, manufacturers, and farmers. Those groups considered prison labor to be unfair competition and pushed the legislation to restrict the use of convict labor. Furthermore, states investigations of the conditions in the privately run facilities exposed serious misconduct, which first led to modifications to the leasing system and then to prohibition of the use of convict labor on federal projects, and later to a ban on the import of products created by inmates between the states.²² At this time, the public also began to support the idea, that prisons should serve a rehabilitative function rather than be a source of hard labor.

Further restrictions were established during the Great Depression (1929-1939), when Congress and state legislatures passed laws, particularly, the Hawes-Cooper Bill (1929) and the Ashurst-Sumners Act (1935) that ended the

²⁰ Antje Deckert and William R. Wood, “Prison Privatization and Contract Facilities,” in *Key Issues in Crime and Punishment*, ed. William J. Chambliss (Thousand Oaks: SAGE Publications, 2011), 221, accessed December 7, 2015,

https://www.academia.edu/2911049/Prison_Privatization_and_Contract_Facilities.

²¹ Pelaez, “The Prison Industry in the United States: Big Business or a New Form of Slavery?,” *Global Research*, accessed May 12, 2016, <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.

²² “Emerging issues on privatized prisons.”

sale of prison-made goods for private profit and curtailed the “unfair business practice” of the use of inmates in private enterprise. Consequently, the for-profit prisons were abandoned and states started to provide for all correctional services. However, the rising costs, associated with running penal institutions, soon forced state and local governments to contract out at least some parts of the prison services, e.g. food preparation, medical services, transportation, rehabilitative services, etc.²³

While the private sector involvement in corrections prior the 1980s is quite different compared to its modern version, it is interesting to notice few similarities that will be discussed in detail later, i.e. the convict lease system and its modern version of prison labor and the cooperation between government and private contractors. It is more than clear that in the past, the cooperation between private and public in many areas was foremost a matter of need. The government at that time was still small and weak compared to a modern style government and the scope of its power, which led to a need for a greater (in a scope) cooperation between the public and private sector. Nowadays, governments are much larger and involved in many areas of public policy or the private sector, and still they are in most cases unable to be efficient and responsive. The privatization of many governmental functions is conceived as a solution. In the following subchapters, I will discuss why understanding the privatization is perhaps more difficult than it may appear and why privatization of prisons and its justifications are often misunderstood.

1.2. The Philosophy and Political Ideology behind Private Prisons

Over the last few decades, privatization has become a phenomenon that spread in many countries around the globe. Nowadays, private firms run many formerly state only industries such as military, education, healthcare, corrections, etc. However, the privatization of corrections is one of those industries that seem to be raising the most controversy and subsequent questions about the ethics and legitimacy of prison privatization.

²³ Deckert and Wood, “Prison Privatization and Contract Facilities.”

In order to answer some of these questions, let us examine three main schools of thought related to the prison privatization. First, it is classical liberalism and the liberal concept of the state's authority over its citizens; second, we will look at prison privatization through a rather extreme lens of libertarianism and explain why not even a libertarian political philosophy is clear on whether it is "right" to privatize the corrections. Finally, I will explain the linkage between neoliberalism and the emergence of private prisons in the 1980s.

1.2.1. The Origin of the Coercive Authority

The crucial question when it comes to prison privatization is whether the government should be allowed to privatize the corrections. In addition, does the state have the legal authority to delegate its coercive powers to private entities? It is interesting to note that partial private sector involvement does not raise nearly as much dispute as the private management and ownership of prison facilities, why is that so? Why are we not disturbed by the fact that a private contractor is delivering a service, on the other hand, we are concerned when the private firm takes over the management of prison?

The authors studying the prison privatization say that the difference is in the conception of state's authority over its own citizens and the state's authority to administer punishment. Michael Reisig and Travis Pratt ²⁴ refer to a work of German social theorist Max Weber and his interpretation of the traditional western liberal conception of the state's coercive authority. According to Weber, a fundamental attribute of legal punishment is that it "must be imposed and administered by an authority constituted by a legal system against which the offense is committed."²⁵ Hence, the state is the only subject with the legitimate authority to use the coercive power to administer punishment. Individuals do not have the right to harm each other because it is a responsibility vested in the state, so called monopoly on violence. This understanding of the coercive authority

²⁴ Reisig, Michael D. and Pratt, Travis C., "The Ethics of Correctional Privatization: A Critical Examination of the Delegation of Coercive Authority," *The Prison Journal* 80, no. 2 (June 2000): 210–22.

²⁵ Max Weber IN Ibid..

excludes any possibility to delegate the coercive authority to the private sector. Viewed this way, there are privatization alternatives that do not necessarily violate this principle because they do not require or involve the use of coercive force – such as contracting out a certain service e.g. prison construction, lease-purchase agreements to build prison facilities, and contracting with private firms for specific service. On the other hand, the private prison management and private personnel, specifically prison officers are in positions where coercive force is required and thus, this type of privatization according to Reisig and Pratt is violating the tenets of liberalism as explained by Weber.²⁶

This being said, Weber's interpretation of the coercive power represents only one side of the discussion – the opponents. The other side does not challenge the state's monopoly over penal authority, but also does not agree with Reisig and Pratt's interpretation of Weber. As Charles Logan wrote in his 1985 article on prisons and competition:

“It is one thing to believe that only the state has a right to imprison someone. It is another matter entirely to believe that only the state can run a prison in a fair, humane, effective, and economical fashion. The first belief is a matter of political philosophy; the second is an empirical proposition. Given the dismal performance of the state in running its prisons, many people now are willing to entertain, and to test, the proposition that private enterprise can do it better.”²⁷

Logan implies that political philosophy is somehow inferior to empirical proposition. We cannot possibly measure whether it is morally/philosophically right to privatize prisons, but we should (theoretically) be able to measure effectiveness and economic performance of privately run prisons. Even though there are empirical data on private and public prison performance, it turns out to be extremely difficult to process the data and draw adequate conclusions. In over 30 years history of privately run prisons, there is still disagreement over the initial proposition that “private enterprise can do it better”.

²⁶ Ibid..

²⁷ Charles Logan, “Competition in the Prison Business | Charles Logan,” *Foundation for Economic Education*, August 1, 1985, <https://fee.org/articles/competition-in-the-prison-business/>.

Nevertheless, given the sensitive matter of corrections, the market nature of the private prisons raises justifiable concerns. Corrections Corporation of America (CCA) in *2010 Annual Report* clearly stated that its “growth is generally dependent upon [its] ability to obtain new contracts to develop and manage new correctional and detention facilities.”²⁸ And while it is understandable for a private enterprise to want to ensure a constant demand for its services, it is equally justifiable to be concerned that there are powerful actors trying to make sure enough people will be sentenced to a time in prison (preferably for a long time) so their business is not affected. The CCA has clearly stated a problematic part of its business:

“The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. 20 legislation has been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities.”²⁹

Any legislative changes aiming to lower minimum sentences or increased eligibility for early release could seriously affect its future. As will be discussed in later part of this thesis, the CCA and other private enterprises involved in running the for-profit prisons are not only aware of the risks but they are also actively lobbying to influence the legislators in order for them to eliminate this economic vulnerability.

²⁸ “CCA - Annual Report 2010,” Form 10 -K (Corrections Corporation of America, December 31, 2013), <http://cca.com/investors/financial-information/annual-reports>.

²⁹ Ibid.

1.2.2. Through the Lens of Libertarianism

This sub-chapter will explain how libertarians perceive prison privatization. For the purpose of this thesis and the developing argument, libertarianism has been chosen to illustrate that even rather extreme ideology such as libertarianism is not entirely supportive of prison privatization. Furthermore, prison privatization supporters often times not quite accurately argue that the liberal theory and libertarian thought justify the privatization of corrections. We have already established that the liberal conception of the state's authority not only does not justify the prison privatization but it goes directly against the main tenets of the liberal understanding of the state's authority. How is it then with libertarianism?

Libertarianism, in the most general sense,

“is a political philosophy that affirms the rights of individuals to liberty, to acquire, keep, and exchange their holdings, and considers the protection of individual rights the primary role for the state.”³⁰

While this definition is not perfect, it nicely illustrates libertarian perception of individualism – the very core of the libertarian philosophy, and the role of the state in the civil society as envisioned by libertarians. It may come as a surprise that libertarians are not by default “anti-government” extremists as usually portrayed by the mainstream media.

Libertarianism emphasizes that the government should be limited in size and more importantly in the scope of its powers. However, it would be wrong to automatically assume that the ultimate goal of libertarians is no government. Nevertheless, considering an ideal (utopist) civil society where people would live peacefully together and consequently, no government would be necessary, the government disappearance would be an inherent development and by no means the ultimate goal of libertarianism. But libertarians are not utopist and such a society does not exist³¹.

³⁰ Peter Vallentyne and Bas van der Vossen, “Libertarianism,” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Fall 2014, 2014, <http://plato.stanford.edu/archives/fall2014/entries/libertarianism/>.

³¹ There are stateless societies, although very limited in number of members - isolated peoples of Amazon, hunter-gatherer groups in Africa and a few islands of India, etc.

Therefore, in order to achieve libertarian goals:

“peaceful coexistence and voluntary cooperation require an institution to protect us from outside threats, deter or punish criminals, and settle the disputes that will inevitably arise among neighbors—a government, in short.”³²

Therefore, the problem with assigning the libertarian thought to justify private prisons is that in the ideal libertarian world, where the society is based on market anarchist ideals and the private system of justice is similar to our justice system, everything would be privatized. However, as we are not living in the ideal world, the very existence of a state changes the dynamic, and thus changes the libertarians view on the prison privatization.³³

Gus diZerega, a political scientist studying libertarianism, sums up the actual consequences of the prison privatization and the abuse of the private prison industry:

“Privatization of prisons creates corporations with a vested interest in maintaining current crimes as illegal even when there is no just reason for doing so, because it guarantees keeping their cells filled and their profits high. They also have a vested interest in criminalizing additional behavior. They demonstrably use some of their profits to support friendly legislators and lobby for legislation they desire. And their political favors are returned.”³⁴

To sum up, in a world where state exists, the “public-private partnership” as formed when government delegates its authority over to the private entity creates corrupt lobbying that influences the legislation to its benefit and consequently leads to more regulations, which goes directly against the very core of the libertarian philosophy.³⁵

As a result, we can conclude that, despite a prevailing notion about liberal and libertarian philosophies being the core philosophies and ideologies behind prison privatization, neither of them is truly justifying the privatization of

³² David Boaz, “Are Libertarians Anti-Government?,” *Cato Institute*, April 16, 2010, <http://www.cato.org/blog/are-libertarians-anti-government>.

³³ “Are Private Prisons Compatible With Libertarianism?,” *Government Denies Knowledge*, April 29, 2015, <http://governmentdeniesknowledge.com/are-private-prisons-compatible-with-libertarianism/>.

³⁴ “Gus DiZerega » Private Prisons as an Example of the Bankruptcy of Libertarian Ideology,” accessed March 14, 2016, <http://dizerega.com/2014/04/17/private-prisons-as-an-example-of-the-bankruptcy-of-libertarian-thought/>.

³⁵ “Are Private Prisons Compatible With Libertarianism?”

prisons. It just shows us how many uncertainties is involved in the prison privatization discourse and that the surface does not always reflect the core of the issue.

1.2.3. The Role of Neoliberalism

The modern prison privatization efforts are linked with the re-emergence of neoliberalism in the 1970s. At that time, conservative parties around the world, in accordance with neoliberalism, were adopting economic reforms that were supposed to reduce the role of the state in the market economy as well as restructure the state institution and policy. One of the most notable steps, taken in order to achieve the objective, was privatization of many formerly government only operations among them also the privatization of prisons.

To understand the linkage between neoliberalism and prison privatization it is necessary to first introduce neoliberalism as a political ideology and then analyze the connection between neoliberalism and the prison privatization.

Neoliberalism as defined by Encyclopedia Britannica is an “ideology and policy model that emphasizes the value of free market competition”³⁶. However, the meaning of the term “neoliberalism” has changed during the past century. While the word “neoliberalism” was coined already in 1938, the current meaning of the term has only emerged couple decades later in Chile to describe the free market regime pursued by Augusto Pinochet.³⁷

The original meaning of neoliberalism as put by Hadar Aviram³⁸ was to describe “fairly moderate economic policies, consisting of a free market with competition, but supported by a strong and impartial state”³⁹ while the current common usage of the term neoliberalism has shifted to mean “broad support for a capitalist, free-market economy, and for a reduction in the regulatory power of the state”⁴⁰.

³⁶ “Neoliberalism,” *Encyclopedia Britannica*, accessed March 30, 2016, <http://www.britannica.com/topic/neoliberalism>.

³⁷ Hadar Aviram, “Are Private Prisons to Blame for Mass Incarceration and Its Evils: Prison Conditions, Neoliberalism, and Public Choice,” *Fordham Urb. LJ* 42 (2014): 411.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

It follows that the foremost difference between the two meanings is the role of the state. The later meaning, promotes restructuring of state institutions and policy regimes. It has been influenced by work of Chicago-school libertarian economists, most notably Milton Friedman.

The Chicago School of Economics emphasized non-intervention from government and a *laissez-faire* ideology with one notable exception of central bank regulation of the money supply – monetarism. The core idea behind the modern neoliberal ideology derives from Adam Smith’s concept of the “invisible hand” of the market. The same way, Smith argued that state policies were less effective in promoting social welfare than were the self-interested acts of individuals trying to maximize their self-interest. Milton Friedman argues that it is a social responsibility of business “to use its resources and engage in activities designed to increase its profits [...] [through] open and free competition.”⁴¹

Although neoliberalism was from the beginning criticized for being shorthand for rule by the rich and the imposition of limits on democracy, it was also the driving model behind the economic policies of Ronald Reagan. As neoliberalism policies are more or less still driving the world, even many decades later, the connotations suggesting exploitation, privatization and inequality has been around equally as long.⁴²

In a world driven by neoliberalism, privatization is the key to all problems. While this thesis is by no means supposed to promote or condemn the privatization, the interim findings suggest that there is no ultimate key (privatization) to all problems (prison system). The prison privatization is the very example of the detrimental effects of neoliberalist policies, which will be analyzed in detail later.

After explaining neoliberalism, the linkage between the ideology and prison privatization is palpable. However, neoliberalism did not play the main

⁴¹ Milton Friedman in “Keynes and Friedman: Both Saviours of Capitalism?,” accessed April 9, 2016,

https://www.academia.edu/6307705/Keynes_and_Friedman_Both_Saviours_of_Capitalism.

⁴² Jean Hardisty, “From the New Right to Neoliberalism: The Threat to Democracy Has Grown | Political Research Associates,” jean, accessed March 20, 2016, <http://www.politicalresearch.org/2014/10/07/from-the-new-right-to-neoliberalism-the-threat-to-democracy-has-grown/#sthash.2WmpoMcI.dpbs>.

role in a privatization of prisons. It was other aspects that have led the states to succeed the competence of prison administration, most notably overcrowding of prisons and the inability of the state's bureaucracies running the prisons to quickly adapt to the growing demand. The combination of urgent need for more prison space and neoliberalist policies has opened the floodgates to the privatization of a very core of the state competency – the corrections.

1.3. Major Factors that Influenced the Privatization of Prisons

The privatization of prisons would likely not happen if it would not be for some unique factors that have emerged in the 1970s, and set the stage for the return to private prisons. The authors studying prison privatization and its roots, namely Antje Deckert and William R. Wood, have identified three major factors that helped to design the conditions for prison privatization.

First, the growing crime rates ultimately led to an overcrowding of public prisons and its operations at or above capacity. Second, in the early 1980s, Reagan administration promoted the minimization of government and later also the privatization of many public sectors, e.g. education, healthcare, social services, infrastructure, and corrections. Finally, in 1979, Congress passed the Prison Industry Certification Program (PIECP) that exempts certified state and local departments of correction and other eligible entities from federal restrictions on prisoner-made goods in interstate commerce.⁴³

While these factors ultimately influenced the prison privatization, they were themselves a result of a series of other factors, which are examined in the following subchapters.

1.3.1. Overcrowding of Prisons

One of the major factors that ultimately led to a privatization of prisons is the overcrowding of public prisons. Overcrowding is itself a product of a series of other factors, including but not limited to racial politics, correctional policy changes, the changing form and the role of the state, shifts in macroeconomic

⁴³ Deckert and Wood, "Prison Privatization and Contract Facilities,".

policy, and new conceptions of social order.⁴⁴ Furthermore, the economic crisis that followed the 1973 oil crisis led to the loss of public support for correctional rehabilitation programs. Moreover, in the 1970s, mental health facilities started to be deinstitutionalized which also contributed to the growth of the prison population.⁴⁵

The postwar population and economic boom combined with the achievements of Franklin Delano Roosevelt's New Deal, the G. I. Bill and Lyndon B. Johnson's Great Society had an impact not only on the American society but on the prison population as well.⁴⁶ While between 1945 and the 1970s, prison population remained largely stable, and during the 1970s, the total prison population in the United States was still less than 200,000, by the end of the decade, the number of prisoners was already attacking 300,000, and at the end of 1981, it was already 353,000 sentenced prisoners.⁴⁷ What were the causes of such a steep increase in incarceration rates?

Before World War II, the criminal justice policy in the United States was almost exclusively within the purview of the states and local authorities. Nevertheless, already during the 1940s, the public officials and policy makers at all levels of government started demanding changes in judicial, policing, and prosecutorial behavior and in criminal justice policy and legislation. The ultimate goal was to increase government's capacity to pursue and punish lawbreakers.⁴⁸

It was a uniquely American combination of crime, race, and politics enabled the politicization of criminal justice in a punitive direction to such extent. According to National Research Council study, the main forces that explain the demand for change towards harsher penalties were social and political unrest that followed World War II and in particular has grown in the

⁴⁴ Nossal and Wood, "The Raggedness of Prison Privatization."

⁴⁵ Antje Deckert and William R. Wood, "Prison Privatization and Contract Facilities," in *Key Issues in Crime and Punishment* (Thousand Oaks: SAGE Publications, Inc., 2011), https://www.academia.edu/2911049/Prison_Privatization_and_Contract_Facilities.

⁴⁶ Deckert and Wood, "Prison Privatization and Contract Facilities," 222.

⁴⁷ Chet Bowie, "Bureau of Justice Statistics (BJS) - Prisoners, 1925-81," December 1, 1982, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=3414>.

1960s; a major shift in a Democratic Party electorate alienated over civil rights and other emerging issues, and the unexpected growth in popularity of the Republican Party in the south for the first time since the end of the Civil War; increasing crime rates beginning in 1961; and major transformations in urban economies, which led to the disappearance of many well-paid jobs for low-skilled workers.⁴⁹

The Second Great Migration and the civil rights movement in the 1960s and 1970s has led to increasing unease among the northern and southern whites who demanded more law enforcement power in response to rising crime rates. As a response, the Johnson Administration reformulated the already existing “law and order” concept and expanded federal support for crime policy. President Johnson launched the “war on crime”, but he also linked it to a “war on poverty” and addressed the need to eliminate the root causes of crime first. Johnson was aware that the battle he so unfortunately started, he will not be able to finish. As the President stated:

“The war on crime will be waged by our children and our children's children. But the difficulty and complexity of the problem cannot be permitted to lead us to despair. They must lead us rather to bring greater efforts, greater ingenuity and greater determination to do battle.”⁵⁰

Nowadays, the war on crime and its consequences determine everyday lives of many disadvantaged Americans as well as the law-abiding citizens.

1.3.2. PIE-Program

The American Legislative Exchange Council (ALEC) played an important role in the return to private sector involvement in the corrections. Because it introduced the *Prison Industries Act*, and a federal program known as the *Prison Industries Enhancement Certification Program* (PIE-program).

⁴⁸ Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: National Academies Press, 2014), <http://www.nap.edu/catalog/18613>. p. 109.

⁴⁹ Ibid.

⁵⁰ “Lyndon B. Johnson: Special Message to the Congress on Crime and Law Enforcement.,” accessed April 11, 2016, <http://www.presidency.ucsb.edu/ws/?pid=27478>.

ALEC is an organization that portrays itself as “America’s largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism.”⁵¹ However, its role in American politics is usually perceived in a more negative sense.⁵² ALEC has been repeatedly accused of having strong ties to major corporations and lobbying in their interests.

Nevertheless, in 1979, the Prison Industries Enhancement Program pioneered by ALEC, passed the Congress:

“to encourage states and units of local government to establish employment opportunities for offenders in realistic working environments, pay them wages, and enable them to acquire marketable skills to increase their potential for successful rehabilitation and meaningful employment upon release.”⁵³

Furthermore, the PIE-Program allowed interstate trade with prison-made goods, and overwrote Hawes-Cooper Bill and the Ashurst-Sumners Act, which previously banned the sale of prison-made goods for private profit.

The program is an important factor that allowed private prison companies to benefit from the prison labor. It essentially allowed the private sector to use prison labor for the manufacturing of goods and services, which turned out to be one of the main sources of revenues for the privatized prisons. Therefore, the program played an important role in the events that led to the privatization of prisons.

⁵¹ “About ALEC,” accessed April 30, 2016, <https://www.alec.org/about/>.

⁵² For more information on the topic: http://www.alecexposed.org/wiki/ALEC_Exposed
<http://www.theguardian.com/world/2013/dec/03/alec-funding-crisis-big-donors-trayvon-martin>
<http://www.pfaw.org/rww-in-focus/alec-the-voice-of-corporate-special-interests-state-legislatures>.

⁵³ “TCI - Programs - Prison Industry Enhancement (PIE) Certification Program,” accessed April 17, 2016, <http://www.tci.tdcj.texas.gov/programs/pie/default.aspx>.

2. The Reality of Prison Privatization in the United States

The reality of privately run prisons in the United States is proving to be a case of failed promises and ruthless business tactics. While it would be easy to condemn the private corporations for their interest in capitalizing on the inmates, the blame is not entirely on their side, but on the government. It was, after all, the government, who allowed prisons to be privatized and one of its core functions to become a for-profit venture.

In 1983, the Correction Corporation of America (CCA) was founded as the first private prison management company and soon had entered into its first federal contract with the U.S. Department of Justice for an Immigration and Naturalization Services (INS). INS initiated the first “full privatization” of adult detention facilities (mainly aimed at the detention of illegal immigrants) and almost immediately has become one of the best customers of the growing private prison industry.⁵⁴

This chapter analyzes the proportion of prisoners in private and public prisons and the economic question – the claimed cost-effectiveness and overall efficiency of the private prisons. One of the hypotheses argued that the private prisons have a keen interest in a constant influx of prisoners. This chapter explains how the main players in the prison business are influencing the politics and assuring that their assets are safe from unfavorable policies, and how the prison privatization created a variation on a military-industrial complex – the so-called prison-industrial complex.

2.1. The Private Prison Population

The United States has one of the highest prison population rates in the world. In 2014, it was 612 inmates per 100,000 citizens.⁵⁵ The total prison population in the U.S. increased from 329,800 in 1980 to 1,561,500 prisoners in

⁵⁴ Melvin Mahone, *Prison Privatization in America: Costs and Benefits* (Silver Spring, Maryland: Beckham Publishing Group, 2012). p 24.

⁵⁵ Carson, “Prisoners in 2014.”

2014 that account for 373 percent change (figure 2).⁵⁶ During the same period, U.S. population had grown from 226,542,199 in 1980 to estimated 320,282,544 in 2014; this represents only 41 percent change.⁵⁷ The growth in prison population is thus 9 times higher than the increase in population. Since the late 1970s, the prison population has been steadily increasing (figure 1). In 2009, the prison population reached an estimated 1,615,487 prisoners – the highest total number of prisoners held in the state, federal and private correctional facilities ever in the history.⁵⁸ However, since 2009, the number of incarcerated people has been decreasing, and at the end of 2014, the decline has been already 3.5 percent (figure 5, figure 6).

How much of the total prison population is housed in the private prison facilities and how is the decrease in prisoners affecting their business?

At year-end 2009, the private facilities housed estimated 129,336 prisoners, which accounted for 8.0 percent of the total prison population. While the total prison population started decreasing in 2009, the proportion of prisoners in private prisons had continued increasing until 2012. Only then, the private prisons caught up with the trend, and between 2012 and 2014, decreased by 4.3 percent from 137,220 to 131,261 prison inmates. Since 2009, the total prison population has decreased by almost 3.5 percent, while at the same time the private prison population managed to slightly increase by 1.5 percent (figure 6).⁵⁹

While the overall U.S. prison population declined only slightly, and we should not expect any drastic cuts in the prison population anytime soon, it is a trend unfavorable to the private prison industry. As Carl Takei, a staff attorney at the ACLU's National Prison Project, said:

“The fate of the private prison industry and the fate of mass incarceration are inextricably intertwined. [...] If mass

⁵⁶ Bowie, “Bureau of Justice Statistics (BJS) - Prisoners, 1925-81.”

⁵⁷ US Census Bureau, “Census Bureau Projects U.S. and World Populations on New Year’s Day,” accessed April 3, 2016, <http://www.census.gov/newsroom/press-releases/2014/cb14-tps90.html>.

⁵⁸ Carson, “Prisoners in 2014.”

⁵⁹ Bowie, “Bureau of Justice Statistics (BJS) - Prisoners, 1925-81.”

incarceration ends, that destroys the entire reason the private prison corporations exist.”⁶⁰

The question then arises whether there is any mechanism for private prison corporations to ensure that their business will not be threatened by a possibility of a continuing decline in the prison population. The obvious answer is lobbying. However, even CCA acknowledged that given the sensitive nature of its business, the company should not be involved in influencing the politics.⁶¹ Nevertheless, the two largest private prison companies, CCA, and GEO Group are despite the self-proclaimed inappropriateness generously contributing to candidates and committees. CCA and GEO Group have hired federal lobbyists, who are involved in number of issues, specifically, homeland security, immigration, taxes, and various law enforcement and crime issues being discussed in Washington.⁶²

From the data available about CCA and GEO contributions to candidates and committees (figure 7, figure 8), it is apparent that both companies also started to have significantly bigger expenditures around the end of the 2000s – the same time the total prison population, for the first time in decades, began to decline. Although the connection between these occurrences may exist, it must be emphasized that at the same time another event that could have affected the spending – *Citizens United v. Federal Election Commission* occurred.

In 2010, the Supreme Court of the United States decided that it was unconstitutional to ban campaign finance contributions by corporations, associations, and unions because “the government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”⁶³ With this decision, corporations similar to

⁶⁰ “How Private Prisons Are Profiting From Locking Up US Immigrants,” *VICE News*, accessed April 22, 2016, <https://news.vice.com/article/how-private-prisons-are-profiting-from-locking-up-us-immigrants>.

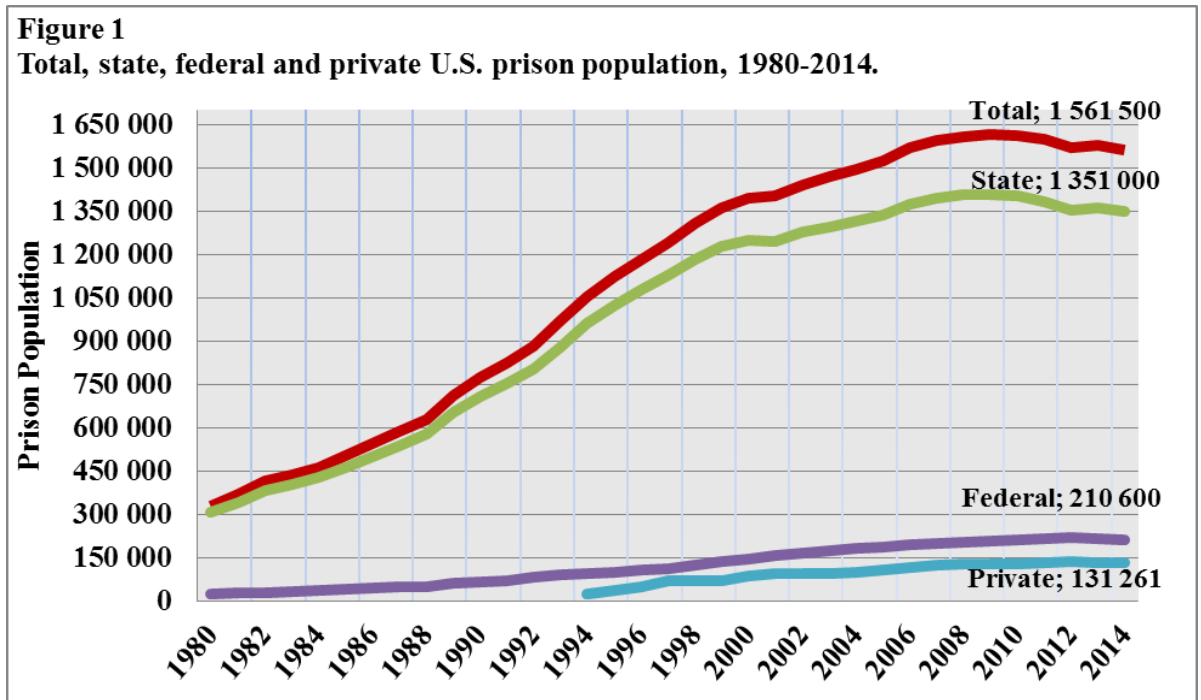
⁶¹ “Summary of Corrections Corp Of America - Yahoo! Finance,” accessed April 22, 2016, <https://biz.yahoo.com/e/150507/cxw10-q.html>.

⁶² “Lobbying Spending Database-Corrections Corp of America, 2015 | OpenSecrets,” accessed April 22, 2016,

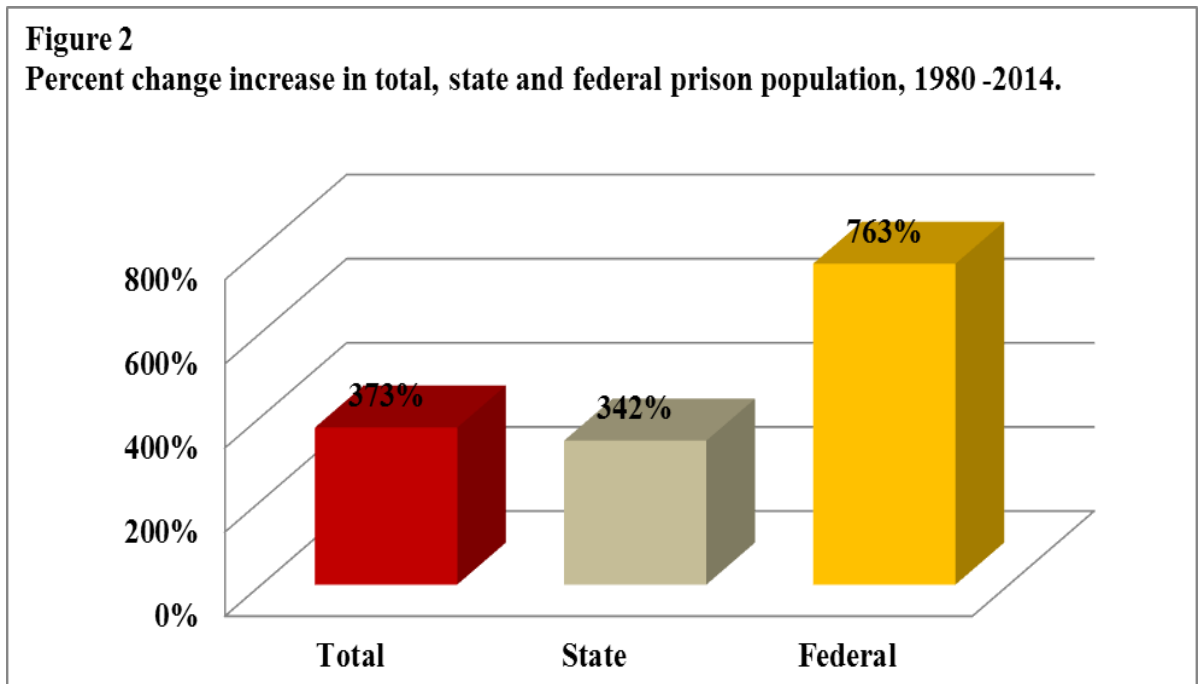
<https://www.opensecrets.org/lobby/clientissues.php?id=D000021940&year=2015>. AND

⁶³ Kristin Sullivan, Terrance P. Adams, and Legislative Analyst II, *Summary of Citizens United V. Federal Election Commission* (Connecticut General Assembly, Office of Legislative Research, 2010), http://lwvwacustudy.homestead.com/Summary_of_CU_v_FEC.docx.

CCA and GEO have been allowed unlimited election spending which may result in an overall greater influence on politics.

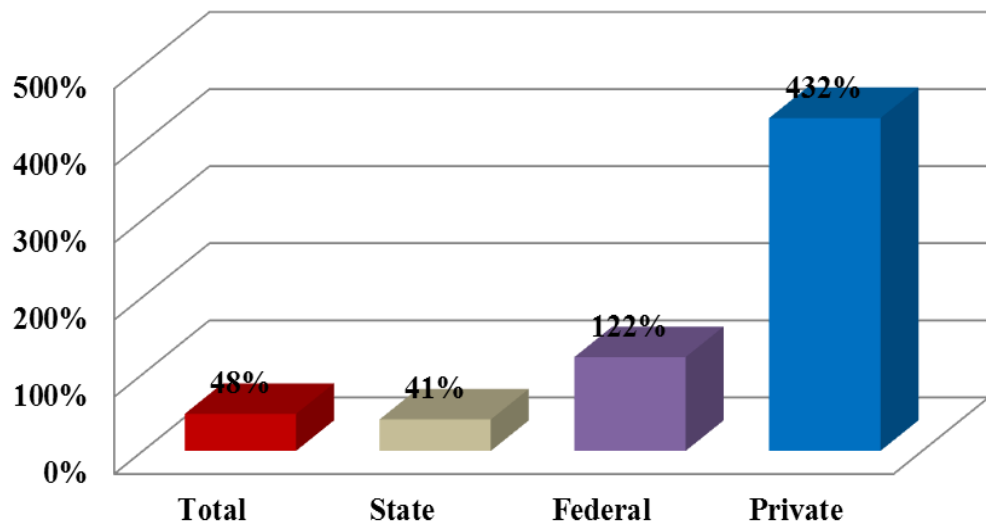


Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 1980–2014; Sourcebook of Criminal Justice Statistics 1994-1999.



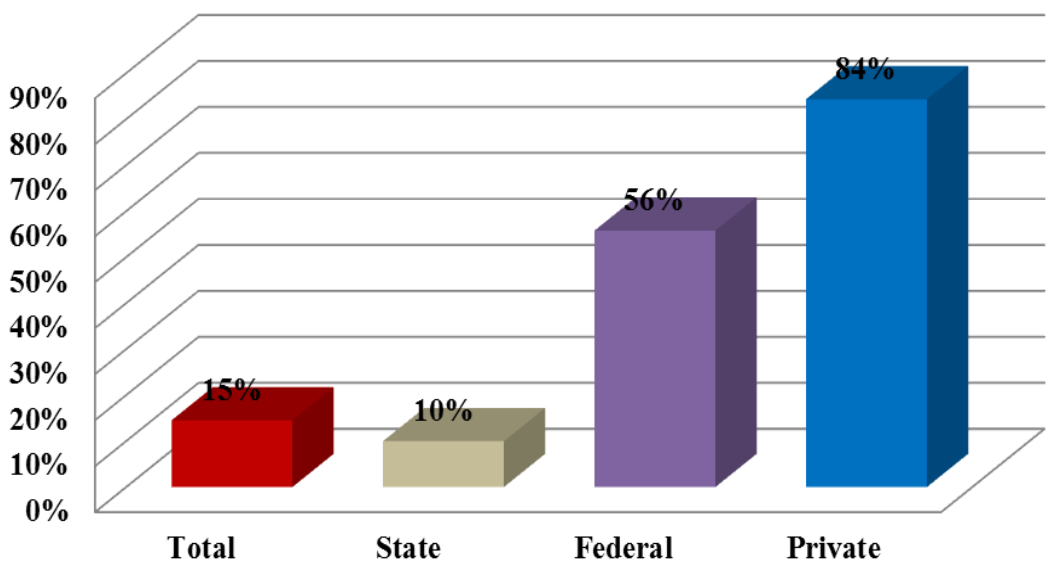
Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 1980–2014.

Figure 3
Percent change increase in total, state, federal and private prison population, 1994-2014.

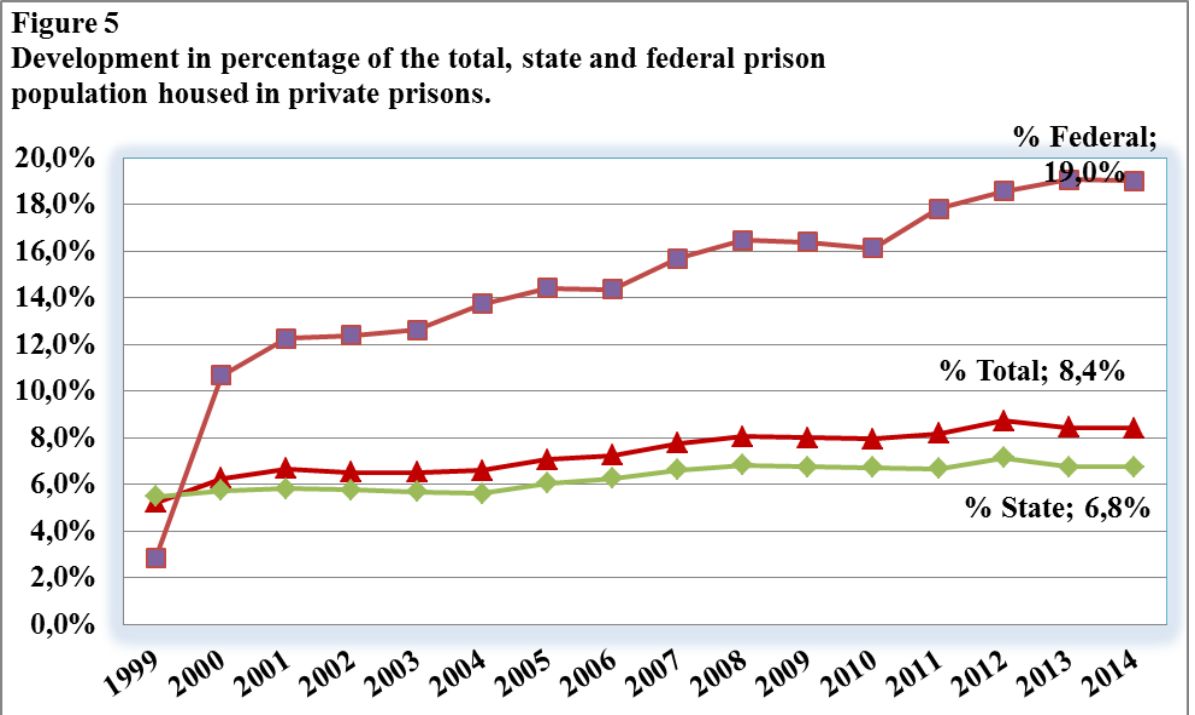


Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 1999–2014. Sourcebook of Criminal Justice Statistics 1994-1999.

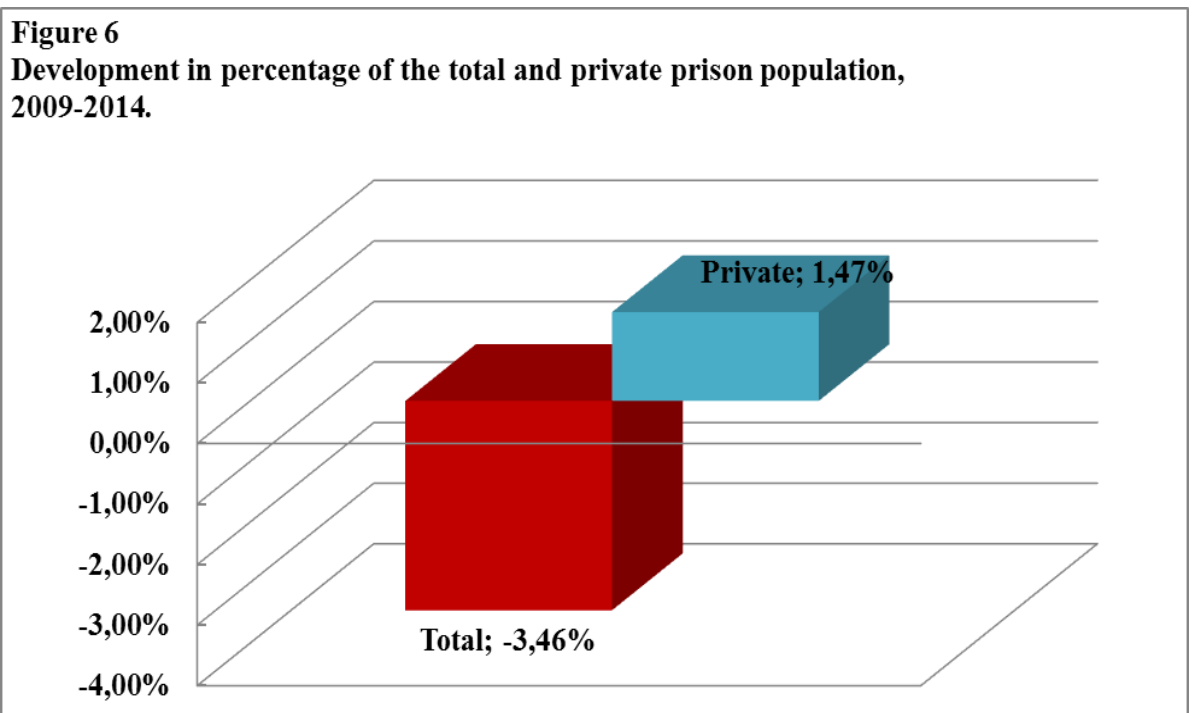
Figure 4
Percent change increase in total, state, federal and private prison population, 1999-2014.



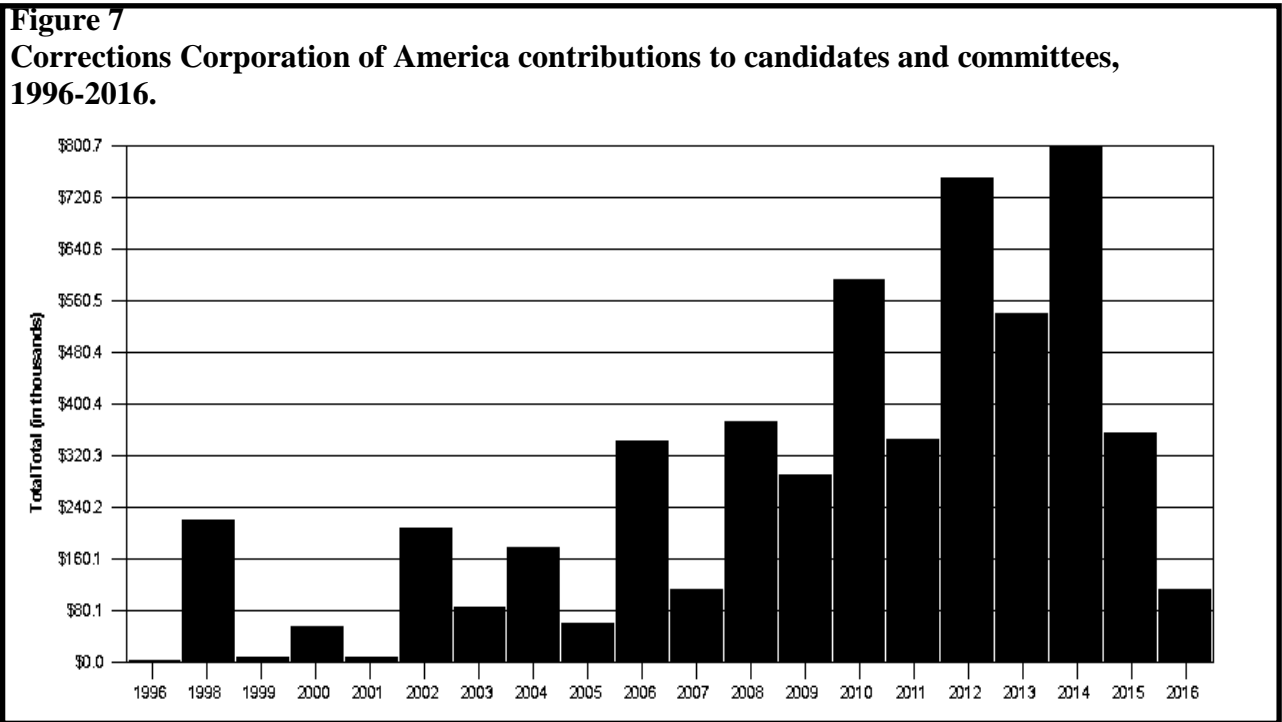
Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 1999–2014.



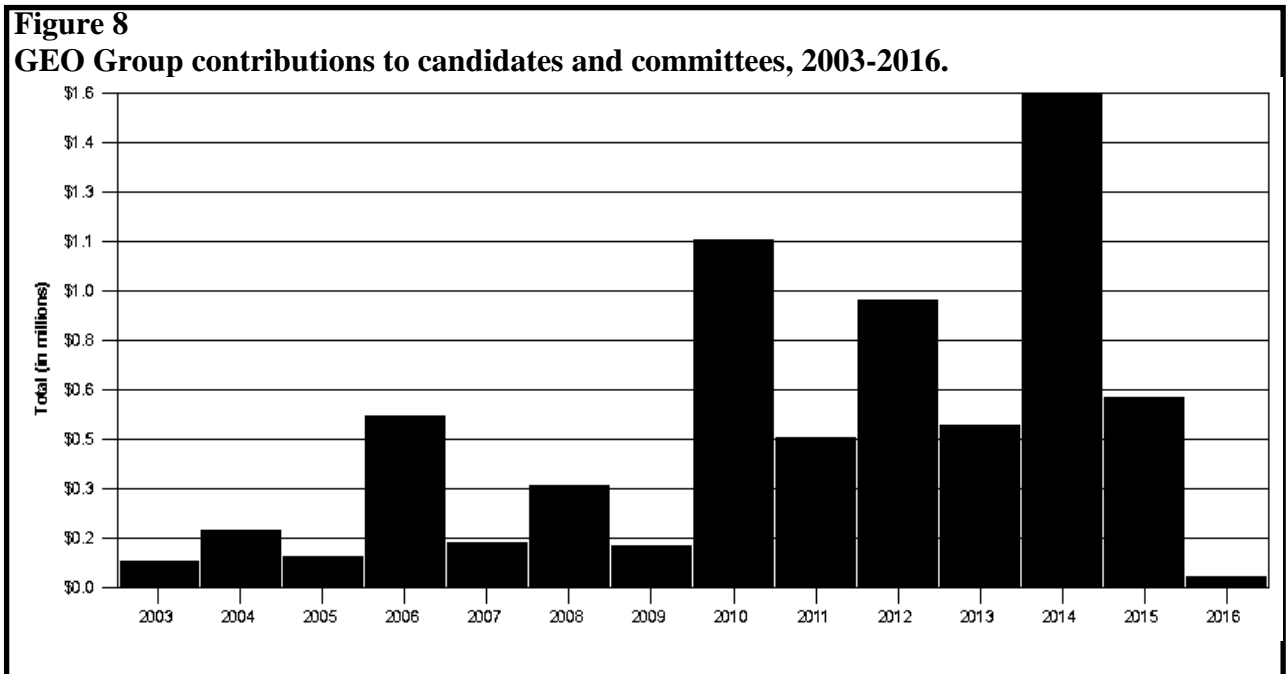
Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 1999–2014.



Data Source: Bureau of Justice Statistics, National Prisoner Statistics, 2009–2014.



Source: "Show Me - FollowTheMoney.org," accessed April 22, 2016, [http://www.followthemoney.org/show-me?d-eid=695#\[{3}gro=y](http://www.followthemoney.org/show-me?d-eid=695#[{3}gro=y).



Source: "Show Me - FollowTheMoney.org," accessed March 25, 2016, [http://www.followthemoney.org/show-me?f-core=1&d-eid=1096#\[{2}|{1}](http://www.followthemoney.org/show-me?f-core=1&d-eid=1096#[{2}|{1}).

2.2. The Question of Efficiency and Cost Savings

Over the years, the question of whether private prisons are, in fact, more cost-effective than its public counterparts has caused much debate between supporters and opponents of privatization. Actually, the economic argument is one of the most misused arguments on behalf of the privatization. The word “misused” is here used on purpose because there is, unfortunately, lack of credible data that would either confirm or deny the perceived cost savings.

Nevertheless, the proponents and the private prison companies are citing studies such as the 2013 Temple University study⁶⁴ that allegedly proves that privatization produces cost savings. The issue with this and similar studies is twofold. First, the Temple University study was partially financed by the private correction industry – a fact the authors failed to disclose when it was first published. Consequently, conflict of interest associated with financing or other predispositions to favor the private sector hampers much of the research on the topic.⁶⁵ Second, comparability and measurement issues associated with matching prison facilities and population tend to cast doubt on many conclusions, as well as hidden costs, asymmetric information, variations in policies and contract specifications that generally vary from state to state.⁶⁶

Yet, there are areas in which private prison companies have a proven competitive advantage. In particular, the area of prison construction – while the public sector has an average construction time in years, the private company can build a new facility in a matter of months. As Adrian T. Moore puts it:

“When a private firm is asked to build a new facility or expand an existing one, only one person has to approve the request—the CEO. This is in sharp contrast to the often laborious approval process and multiple contract requirements a government construction project must go through. The speediness of private

⁶⁴ Hakim and Blackstone, “Cost Analysis of Public and Contractor Operated Prisons.”

⁶⁵ “Research Study Finding Benefits from Prison Privatization Funded by Private Prison Companies | Prison Legal News,” accessed April 23, 2016, <https://www.prisonlegalnews.org/news/2013/jun/15/research-study-finding-benefits-from-prison-privatization-funded-by-private-prison-companies/>.

⁶⁶ Kish and Lipton, “Do Private Prisons Really Offer Savings Compared with Their Public Counterparts?”

construction gives public officials more flexibility in making corrections policy than does the slower-moving government construction process.”⁶⁷

Therefore, a government bound by its own bureaucracy lacks the opportunity to build new prisons in a quick and efficient way. Many states have opted to enter into contracts with private companies because they have been ordered by the court to immediately resolve overcrowding of public prisons. In such case, the speed of constructions is essential and can be the main determinant and a comparative advantage.⁶⁸

The fundamental difference between bureaucratic government and more competitively motivated private companies, according to Charles Logan, is also the motivation for a better performance.

“Profit-and-loss incentives differ fundamentally from budget-driven bureaucratic incentives. Entrepreneurs are competitively motivated to provide maximum satisfaction at minimum cost. In contrast, bureaucrats are rewarded not so much for efficiency, but in direct proportion to the size and total budget of their agencies.”⁶⁹

Private prisons generally have more opportunities where to save costs. Unlike the public prisons, private prisons operators are not bound by strict purchasing guidelines and generally have lower direct labor costs achieved among other things by employing a non-union workforce.⁷⁰

On the other hand, profit-driven private prisons may pose a significant moral hazard. A recent study⁷¹ by Anita Mukherjee found that privatized prisons are keeping inmates locked up longer (according to the study two to three months longer) in order to boost profits.⁷²

⁶⁷ Adrian T. Moore, “Private Prisons: Quality Corrections at a Lower Cost” (Reason Foundation, 1999), <http://reason.org/files/d14ffa18290a9aeb969d1a6c1a9ff935.pdf>.

⁶⁸ Kish and Lipton, “Do Private Prisons Really Offer Savings Compared with Their Public Counterparts?”

⁶⁹ Logan, *Private Prisons: Cons and Pros*. p. 84.

⁷⁰ Moore, “Private Prisons: Quality Corrections at a Lower Cost.”

⁷¹ Anita Mukherjee, “Does Prison Privatization Distort Justice? Evidence on Time Served and Recidivism,” *Evidence on Time Served and Recidivism (July 7, 2014)*, 2014, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2523238.

⁷² “Study Finds Private Prisons Keep Inmates Longer, without Reducing Future Crime,” accessed April 20, 2016, <http://news.wisc.edu/study-finds-private-prisons-keep-inmates-longer-without-reducing-future-crime/>.

“The number of days a prisoner serves relates directly to the cost of housing that inmate, so if inmates sent to private prisons somehow serve longer terms, this undermines the very cost benefit that makes private prisons attractive relative to public prisons.”⁷³

Another important factor to consider is that the price should not be the primary determinant because prisons should be about security and rehabilitation.

While private prisons are in many cases bound to be more cost-effective and report cost reductions by a contract, it can also produce negative consequences. Particularly, in case of private prisons, it is the employment of less experienced guards. Benjamin R. Inman explains that “although private prison guards are seemingly less expensive than their public counterparts, research has shown that they are also less experienced.”⁷⁴ Hence, we may assume that the less experienced guards can pose a higher security risk, which makes private prisons a liability for public safety.

Furthermore, American Civil Liberties Union study analyzed the security of private prisons and came up with a conclusion that there is no evidence that would support private prisons to be able to operate facilities with lower costs while maintaining security of facilities:

“Privately operated prisons appear to have systemic problems in maintaining secure facilities [...] Advocates of prison privatization have argued that private prisons can pay workers less, offer fewer benefits, and still deliver a product that is as good or better than that provided by the public sector. The evidence to date contradicts such an encompassing assertion.”⁷⁵

Furthermore, private prisons have a very high employee turnover rate, which is again attributable to the low staffing costs, and which adds to the inexperience of the private prison employees.⁷⁶ The same applies to

⁷³ Ibid.

⁷⁴ Benjamin R. Inman, “Comparing Public and Private Prisons: The Trade-offs of Privatization,” in Byron Eugene Price and John Charles Morris, *Prison Privatization: The Many Facets of a Controversial Industry* (ABC-CLIO, 2012), [http://www.thefreelibrary.com/Prison privatization; the many facets of a controversial industry; 3v.-a0312256489](http://www.thefreelibrary.com/Prison+privatization;+the+many+facets+of+a+controversial+industry;+3v.-a0312256489).

⁷⁵ Scott D. Camp & Gerald G. Gaes in “Banking on Bondage: Private Prisons and Mass Incarceration,” *American Civil Liberties Union*, accessed March 26, 2016, <https://www.aclu.org/banking-bondage-private-prisons-and-mass-incarceration>.

⁷⁶ “Punishment & Profits: A Cost-Benefit Analysis of Private Prisons,” *Oklahoma Policy Institute*, August 7, 2013, <http://okpolicy.org/punishment-profits-a-cost-benefit-analysis-of-private-prisons/>.

rehabilitation programs – research indicates that well-structured programs are effective in reducing recidivism.⁷⁷ However, the Bureau of Justice Statistics conducted a survey – the *Census of State and Federal Correctional Facilities* that has indicated that private facilities are less likely to offer some of these beneficial rehabilitation programs, e.g. inmate work activities, educational and counseling programs or work assignments, which in effect may turn out in higher recidivism rates.⁷⁸

Several variables may influence the cost-effectiveness of private prisons. For the purpose of the thesis, three factors have been identified – the type of contract established between government and the private corporation, the impact of prison labor on the profit and cost-savings of private prisons, and the differences in management of publicly and privately run facilities.

2.2.1. Types of Contracts

In general, the principles of contract law are common in most states but they can significantly differ in details. Each state writes its own contracts, creating different arrangements between the government and private companies. In other cases, the contracts are vague and do not specify any standard necessary for the prisoners proper care.⁷⁹ Consequently, some states have better results in achieving the original goal of the privatization than others.

It is a common mistake to enter into a contract based solely on price, because “if governments were to write prisons contracts solely based on price, then they would get cheap prisons of low quality.”⁸⁰ Ideally, the governments should write complex multidimensional contracts that would allow them to achieve the privatization goals while still sustaining the control over the prisons.

⁷⁷ Kevin Wright, “Strange Bedfellows? Reaffirming Rehabilitation and Prison Privatization,” *Journal of Offender Rehabilitation* 49, no. 1 (January 2010): 74–90.

⁷⁸ James J. Stephan, “Bureau of Justice Statistics (BJS) - Census of State and Federal Correctional Facilities, 2005,” October 1, 2008, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=530>.

⁷⁹ Henrie M. Treadwell, „Private prisons and freedom of access to information: Community benefit and the taxpayer,“ IN Byron Eugene Price and John Charles Morris, *Prison Privatization: The Many Facets of a Controversial Industry* (ABC-CLIO, 2012), <http://www.thefreelibrary.com/Prison+privatization;+the+many+facets+of+a+controversial+industry;+3v.-a0312256489>.

⁸⁰ Alexander Tabarrok, *Changing the Guard: Private Prisons and the Control of Crime* (Oakland, Calif.: Independent Institute, 2003), p 2.

Yet, the initial argument for privatization was the supposed lack of incentives for governments to work efficiently, mainly due to a low accountability of public officials. This leads to a question, why should we expect governments to write effective multidimensional contracts that would ensure cost-effectiveness as well as accountability of the private subjects?⁸¹ Consequently, growing number of contracts seems to be much more profitable for the private corporations rather than the states, e.g. a contract between the state of Mississippi and former Wackenhut Corporation:

“Although Wackenhut bears the risk of a contract that may not be renewed by the state (or a legislature that refuses to appropriate funds to pay the contract), the full costs of construction are borne by state. However, because Wackenhut owns the debt, it is able to depreciate the facility for tax purposes, and thus receive a substantial federal tax subsidy. Coupled with profit margins generated through the management portion of the contract, the arrangement is a lucrative one for the private company.”⁸²

Further, private prisons enjoy legal privileges such as tax funding or contracts, which often include a “low-crime tax” or “lock-up quota”. These so-called occupancy requirements, are clauses demanding the state to keep private prisons capacity filled based on prearranged quotas at all times, regardless of whether crime is rising or falling, which basically means that the tax payers are required to pay for empty cells if the number of prisoners falls below a set of predefined quota. This makes the private prisons income secure even when the number of prisoners is lower.⁸³ It also explains the previously mentioned 1.5 percent increase in occupancy of private prisons between 2009 and 2014, while at the same time the total number of prisoners has decreased almost 3.5 percent. The same way the U.S. government financial bailout program is considered to increase moral hazard in the markets by infusing capital into banks that caused the financial crisis, the occupancy requirements could cause private prison

⁸¹ Ibid.

⁸² Amy M. McDowell and John C. Morris, „Private Prisons and Contracts,“ IN Byron Eugene Price and John Charles Morris, *Prison Privatization: The Many Facets of a Controversial Industry* (ABC-CLIO, 2012), [http://www.thefreelibrary.com/Prison privatization; the many facets of a controversial industry; 3v.-a0312256489](http://www.thefreelibrary.com/Prison+privatization;+the+many+facets+of+a+controversial+industry;+3v.-a0312256489).

⁸³ Wendy McElroy, “Cage Complex | Wendy McElroy,” January 21, 2014, <https://fee.org/articles/cage-complex>.

companies to take unnecessary risks and build useless prisons. The private prison companies are private entities, whose only client is the government. Thereby, including the occupancy requirement in its contracts, governments are insuring a private profit with taxpayer money.

2.2.2. Prison Labor

The cost-effectiveness of private prisons is often confused with the revenues private corporations generate out of the prison labor. While inmates in federal prisons can receive up to the minimum wage⁸⁴ for their work, in private prisons, they generally receive as little as 17 cents⁸⁵ per hour.⁸⁶ Global Research summed up the biggest advantages and benefits of prison labor:

“They [private prisons corporations] don’t have to worry about strikes or paying unemployment insurance, vacations or comp time. All of their workers are full-time, and never arrive late or are absent because of family problems; moreover, if they don’t like the pay of 25 cents an hour and refuse to work, they are locked up in isolation cells.”⁸⁷

On the other hand, prison labor gives prisoners skills that enable them to find decent jobs after serving their sentences. However, not all prison labor programs are effective and designed the way to be rehabilitative and some are even exploiting the current legal system to their advantage while not generating any benefit for the prisoners and society.

The Washington Correctional Industries (CI) has secured millions of dollars by inflating prices of furniture it sells to state agencies and public institutions. CI exploited the law that requires public institutions to buy goods and services from prison factories. However, instead of the inmates learning how to make the furniture and building it on their own, CI bought prebuilt furniture

⁸⁴ The wage differs according to the states. In Colorado, the average wage of the prisoner is only \$2. (Source: Pelaez, “The Prison Industry in the United States: Big Business or a New Form of Slavery?,” *Global Research*, accessed May 12, 2016, <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.)

⁸⁵ The highest paying private prison is CCA in Tennessee, where prisoners receive about 50 cents per hour for highly skilled positions. (Source: Pelaez, “The Prison Industry in the United States: Big Business or a New Form of Slavery?,” *Global Research*, accessed May 12, 2016, <http://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.)

⁸⁶ Pelaez, “The Prison Industry in the United States: Big Business or a New Form of Slavery?”

⁸⁷ Ibid.

that was only duly assembled by the inmates and then resold with solid markups.⁸⁸ This is an example of private prison company misusing the system and taking advantage of public funding which could be avoided by strengthening controls whether the private prison is working effectively and following key responsibilities towards society as stated in the contract.

2.2.3. Management and Quality of Operations

The management and organization of private prisons is different from that of public prisons. A primary difference is that private prisons often operate with much smaller staffs than federal or state prisons while, on the other hand, they usually invest much more into technology to replace some of the guards. Today, maintenance of public prisons and the use of technology in them are so costly that the states usually prefer the private sector to deal with the administration and costs rather than investing in improvements to their own facilities. According to the data collected in previous studies, privately operated facilities due to a significantly lower staffing level in comparison to publicly operated prisons and lack of management information system support, report a significantly higher rate of 49 percent of assaults on staff and inmates.⁸⁹

According to Melvin Mahone “the opposition to privatized prisons is based on the viewpoint that operation by private sector organizations will produce incentives to cut costs by cutting quality.” Consequently, the assumption is that the private prisons do not maintain constructive programs to help inmates prepare for life outside of the prison because it is not profitable. Furthermore, the private prisons managers have incentives to maintain full occupancy in their facilities. Accordingly, it has been argued that the profit motive may cause prison staff to place negative information in inmates’ files to obstruct inmates’ early release on parole. However, the same often happens in the public prisons but for different reasons, such as monetary gain, sexual favors or personal grudges.⁹⁰

⁸⁸ Michael J Berens and Mike Baker, “Sell Block: The Empty Promises of Prison Labor,” The Seattle Times, accessed May 12, 2016, <http://projects.seattletimes.com/2014/prison-labor/1/>.

⁸⁹ Ashcroft, “Emerging Issues on Privatized Prisons. Series.”

⁹⁰ Mahone, *Prison Privatization in America*. p. 147.

2.3. *The Players*

The U.S. private prison industry is an oligopoly of two dominant corporations – the Corrections Corporation of America (CCA) and Geo Group, Inc. (GEO)⁹¹. Combined CCA and GEO control over 75 percent of the private prison industry.⁹² From a definition of oligopoly, the price is determined by other factors than in a market competition:

“In oligopolistic markets, independent suppliers (few in numbers and not necessarily acting in collusion) can effectively control the supply, and thus the price, thereby creating a seller's market.”⁹³

The basis for belief that private prisons would be more economical is that they would operate in a competitive market that would drive down costs.⁹⁴ However, oligopoly market situation produces different results. Encyclopedia Britannica explains the price behavior in oligopoly:

“A cut in price by one, may lead to an equal reduction by the others, with the result that each firm will retain approximately the same share of the market as before but at a lower profit margin.”⁹⁵

It follows, on the oligopoly market where a government is a primary actor the average price is determined by the price government sets rather than the market itself. The private prison sector has always been more or less concentrated between the two corporations. Private Adult Correctional Facility Census shows that at the end of 1994, there were 19 private prison companies operating 84 facilities out of which CCA operated 23 facilities and GEO run 18 facilities, the closest follower was Concept, Inc. with 8 facilities under contract.⁹⁶ Only two years later, at the end of 1996, there were already only 17 private prison companies operating 132 facilities out of which CCA had 52

⁹¹ Formerly known as the Wackenhut Corporation.

⁹² Pelaez, “The Prison Industry in the United States: Big Business or a New Form of Slavery?”

⁹³ “What Is an Oligopoly? Definition and Meaning,” *BusinessDictionary.com*, accessed April 25, 2016, <http://www.businessdictionary.com/definition/oligopoly.html>.

⁹⁴ “Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies” (Justice Policy Institute, June 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf.

⁹⁵ “Oligopoly.” *Encyclopedia Britannica*, accessed April 25, 2016, <http://www.britannica.com/topic/oligopoly>.

⁹⁶ Charles W. Thomas, “Private Adult Correctional Facility Census: Seventh Edition,” Private Corrections Project (Gainesville, Florida: Center for Studies in Criminology & Law University of Florida, June 30, 1994), <https://www.ncjrs.gov/pdffiles1/Photocopy/149685NCJRS.pdf>.

facilities under contract followed by GEO's 32 facilities and U.S. Corrections Corporation with 8 facilities.⁹⁷ Currently, CCA, the U.S. largest private prison company, controls 66 correctional, detention and reentry facilities, closely followed by GEO overseeing the operation and management of 64 correctional and detention facilities.^{98,99}

Economies of scale played a role in the shrinking number of firms in the market and it plays a role in the private prison industry's pursuit for a bigger share of the market.

“[Private prison] industry benefits from significant economies of scale, resulting in lower operating costs per inmate as occupancy rates increase. We believe we have been successful in increasing the number of residents in our care and continue to pursue a number of initiatives intended to further increase our occupancy and revenue.”¹⁰⁰

Over the past decade, both companies reported a growing profit (figure 9). The annual financial reports indicate that CCA collected almost \$222 million in profits last year, while GEO reported a little over \$139 million in profit. That accounts for 66 percent increase in 8 years for CCA and 233 percent increased profit for GEO.

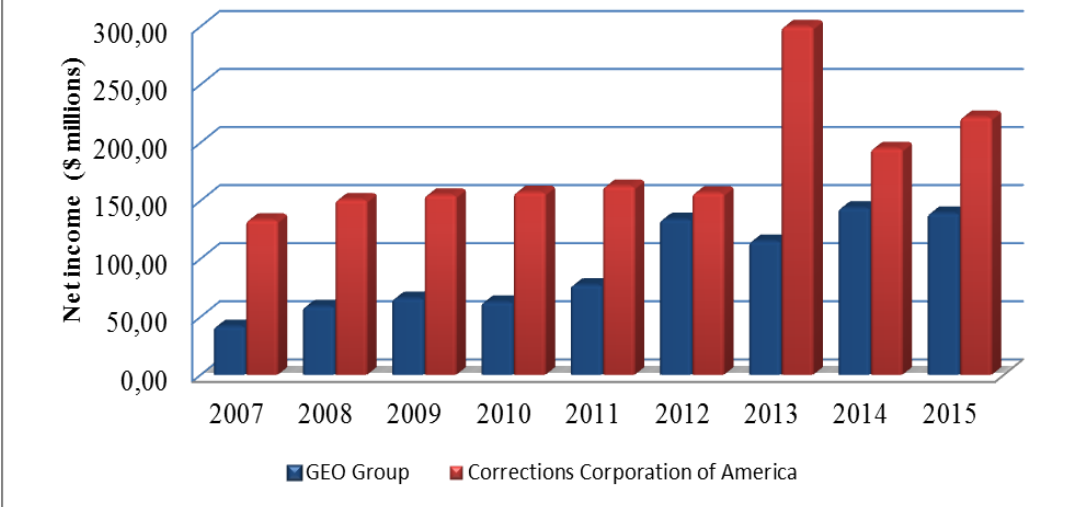
⁹⁷ Charles W. Thomas, Dianne Bolinger, and John I. Badalamenti, “Private Adult Correctional Facility Census: Tenth Edition,” Private Corrections Project (Gainesville, Florida: Center for Studies in Criminology and IAW University of Florida, March 15, 1997), <https://www.heartland.org/policy-documents/private-adult-correctional-facility-census-tenth-edition>.

⁹⁸ “2015 Annual Letter to Shareholders,” Annual Report (Corrections Corporation of America, 2015), http://media.corporate-ir.net/media_files/IROL/11/117983/2015%20Annual%20Letter%20to%20Shareholders%20-%20Final.pdf.

⁹⁹ “The GEO Group, Inc. - Annual Report 2015,” Annual Report (The GEO Group, Inc., 2015), <http://www.snl.com/Cache/1001209212.PDF?Y=&O=PDF&D=&FID=1001209212&T=&IID=4144107>.

¹⁰⁰ “CCA - Annual Report 2010.”

Figure 9
Corrections Corporation of America and GEO Group: The
development of net profits, 2007 - 2015.



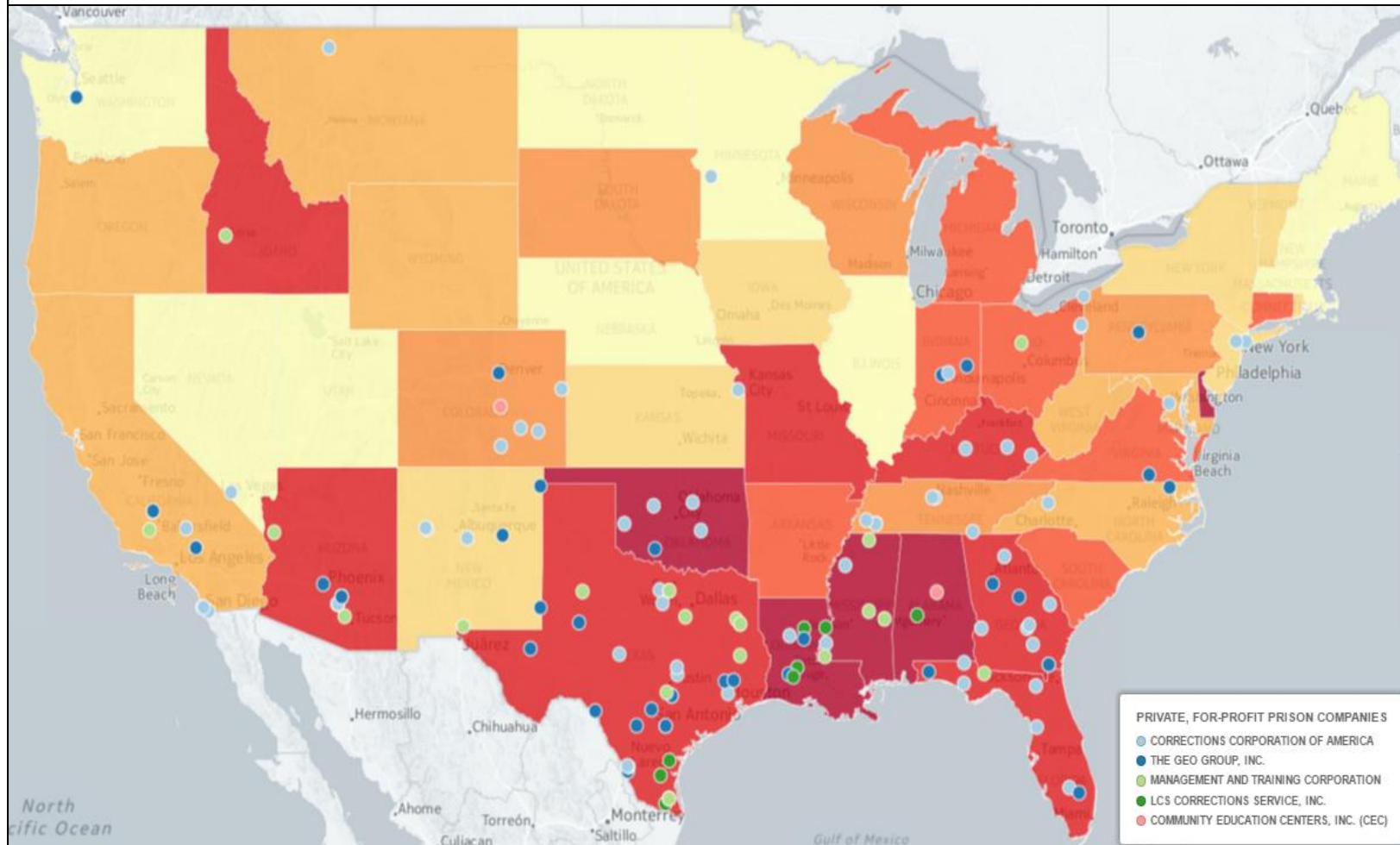
Data Source: GEO GROUP INC (GEO) 10-K and 10-Q SEC Filings: Last10K.com,” accessed April 25, 2016, <https://www.last10k.com/sec-filings/geo>. CORRECTIONS CORP OF AMERICA 10-K - Annual Report Thu Feb 25 2016: Last10K.com,” accessed April 25, 2016, <https://www.last10k.com/sec-filings/CXW/0001193125-16-477634.htm>.

Most privately run prison facilities are located in the southern portion of the United States. The increased need for private facilities in these regions is caused historically – based on the initial collaboration between CCA and the U.S. Department of Justice for an Immigration and Naturalization Services (INS). INS took advantage of the emerging market of private prison operators and contracted with CCA for the detention of illegal aliens. Therefore, most facilities were built in southern and western portions of the U.S. to accommodate illegal Mexican immigrants.¹⁰¹

¹⁰¹ Ashcroft, “Emerging Issues on Privatized Prisons. Series.”

Figure 10

U.S. Private Prisons by Owner and State Incarceration Rate, 2012.



Source: "U.S. Private Prisons by Owner and State Incarceration Rate, 2012," accessed May 1, 2016, <http://carlvlewis.net/private-prisons/>.

As follows from the map shown above, not only are the most private facilities concentrated in the southern portions of the U.S. but also the incarceration rate there is the highest (darker the color of the state on the map higher the incarceration rate). It is mainly caused by a higher percentage of immigrants in these areas and their placement in the detention centers run by private prison facilities.

2.4. The Prison Industrial Complex

In his farewell address of 1961, President Dwight D. Eisenhower warned against what he called the military-industrial complex. Eisenhower acknowledged a growing possibility of a potentially disastrous rise of misplaced power in the wrong hands and he urged the councils of government to “guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex.”¹⁰² As he further put it:

“The total influence economic, political, even spiritual is felt in every city, every State house, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications. Our toil, resources and livelihood are all involved; so is the very structure of our society.”¹⁰³

Similarly, in recent years, a formation of a prison-industrial complex characterized by “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems”¹⁰⁴ is endangering American liberties and democratic processes.

“Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense

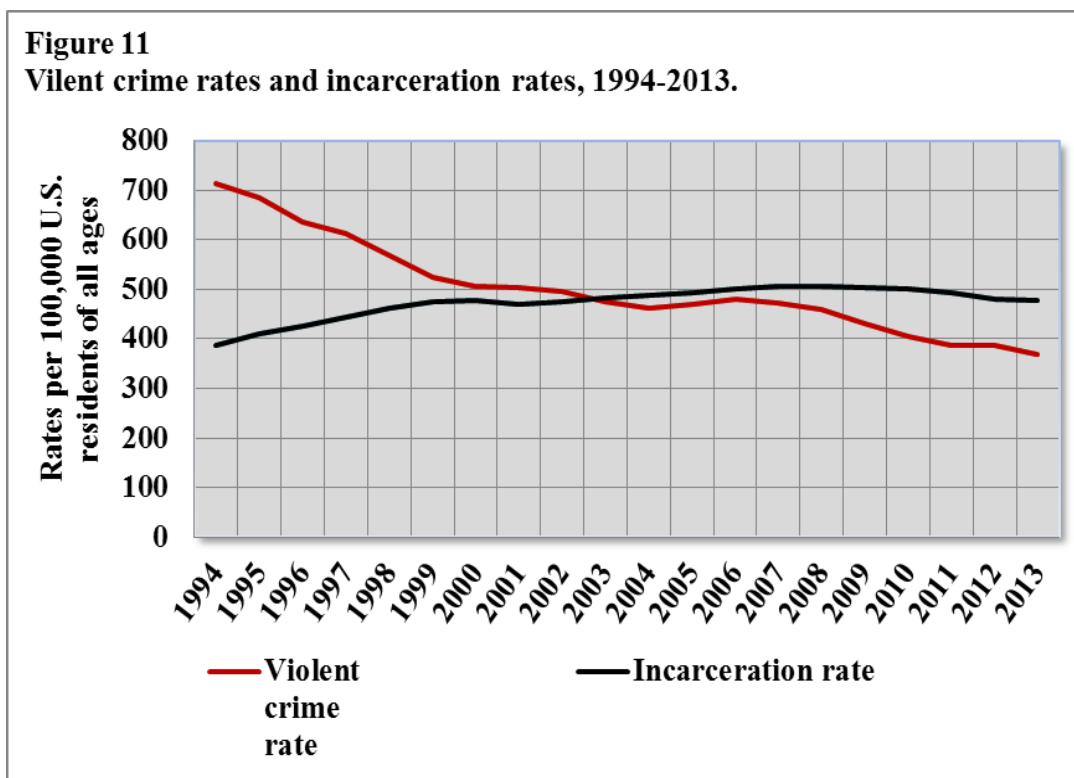
¹⁰² “Military-Industrial Complex Speech, Dwight D. Eisenhower, 1961,” accessed April 27, 2016, <http://coursesa.matrix.msu.edu/~hst306/documents/indust.html>.

¹⁰³ Ibid.

¹⁰⁴ “What Is the PIC? What Is Abolition?,” *Critical Resistance*, accessed April 27, 2016, <http://criticalresistance.org/about/not-so-common-language/>.

with our peaceful methods and goals, so that security and liberty may prosper together.”¹⁰⁵

The resemblance between Eisenhower’s warning pronounced more than five decades ago and the recent developments in the prison industry is striking. Back then, communism was “the enemy” and the cause of the growth of the military-industrial complex. Likewise, nowadays, “criminals” and “violence” serve as the primary justification of growing incarceration rates as well as the emergence of the prison-industrial complex.¹⁰⁶ However, while the incarceration rates have been steadily increasing, the violent crime rates have been decreasing (figure 11).



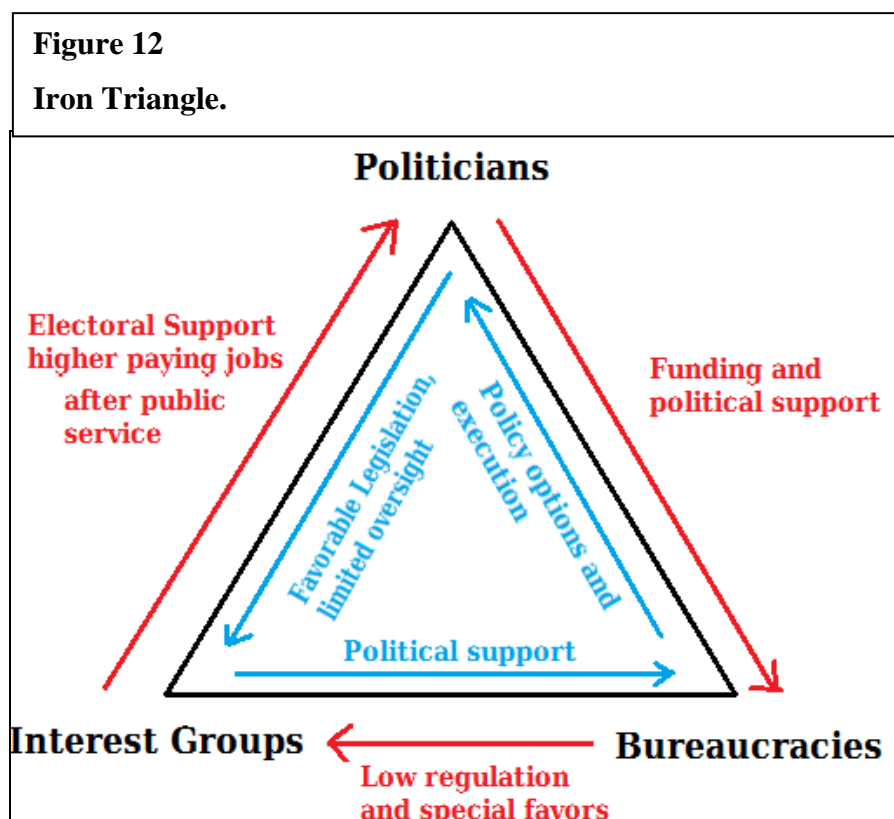
Data Source: “Table 1,” FBI, accessed April 29, 2016, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/1tabledatadecoverviewpdf/table_1_crime_in_the_united_states_by_volume_and_rate_per_100000_inhabitants_1994-2013.xls. Bureau of Justice Statistics, National Prisoner Statistics, 1994–2013.

¹⁰⁵ “Military-Industrial Complex Speech, Dwight D. Eisenhower, 1961.”

¹⁰⁶ Linda Evans and Eve Goldberg, *The Prison-Industrial Complex & the Global Economy* (PM Press, 2009). p7.

2.4.1. Iron triangle

The formation of the prison-industrial complex creates an iron triangle where all the entities, namely the interest groups of privatized prisons, prison guard unions, and police administrators; the politicians; and the bureaucratic entities representing mainly the Drug Enforcement Administration (DEA) and local police enforcement agencies, concentrate on the profit they can get from the higher incarceration rates, their primary incentive.¹⁰⁷



Source: Lenny, "The Prison Industrial Complex and The Iron Triangle – Mediocracy: A Citizen's Guide to the Mechanics of Modern Governments," accessed April 29, 2016, <http://mediocracy.net/2014/11/14/the-prison-industrial-complex-and-the-iron-triangle/>.

The interests groups provide money (usually through campaign financing or lobbying) to make politicians favor long prison terms and harsher prison sentences to guarantee high incarceration rates. The politicians not only support

¹⁰⁷ Lenny, "The Prison Industrial Complex and The Iron Triangle – Mediocracy: A Citizen's Guide to the Mechanics of Modern Governments," accessed April 29, 2016, <http://mediocracy.net/2014/11/14/the-prison-industrial-complex-and-the-iron-triangle/>.

the legislature necessary but also appropriate funds to various enforcement agencies as well as funds necessary for prison constructions. In return, bureaucracies and the entities they represent fulfill their role in incarcerating enough people to fill the newly constructed prison. The bureaucratic agencies in many cases also directly benefit from higher incarceration rates due to an emergence of “favorable” legislations such as the civil forfeiture. Bureaucracies also interact with the interest groups, which are not only able to pull out special favors but also benefit from low regulations.¹⁰⁸

2.4.2. Revolving Door

In general, the revolving door concept refers to “the movement of high-level employees from public sector jobs to private sector jobs and vice versa.”¹⁰⁹ In our case, it can be applied to the revolving door – a movement of people from one point on the iron triangle to the other, from politician to bureaucrat, to lobbyist, etc.

CCA’s early history could be the sourcebooks on how the revolving door with government works:

“Back in 1983, three enterprising leaders came together, united under the banner of a game changer that would transform the way government and private business work together. T. Don Hutto, Tom Beasley and Doctor Robert Crants were each distinguished in their own right.”¹¹⁰

Let us take a close look at the notable careers of CCA’s founders. Before entering the private corrections market Tom Beasley served as a chairman of the Tennessee Republican Party while Doctor Robert Crants had ties to Sodexo-Marriott – company that has invested in CCA and further profited on the correctional business.¹¹¹ However, maybe the most interesting is Don Hutto’s apparent conflict of interest.

¹⁰⁸ Ibid.

¹⁰⁹ “Revolving Door Definition,” *Investopedia*, December 28, 2010, <http://www.investopedia.com/terms/r/revolving-door.asp>.

¹¹⁰ “CCA - Our History,” CCA, accessed April 30, 2016, <http://cca.com/our-history>.

¹¹¹ “PMP’s Commentary on a Sodexo Marriott Facts Sheet That Attempts to Discredit the PMP Campaign,” accessed April 30, 2016, http://www.uvm.edu/sparc/nwom/sodexo/sms_facts.html.

In the early 1980s, Don Hutto was originally the highest state corrections director in Virginia; he had just become the president of the American Correctional Association (ACA) – a private non-profit organization, which provides accreditation¹¹² to prisons, jails, and other detention facilities while he was also involved with the newly established CCA. Later, ACA played an important role supporting the prison privatization. The organization not only has supported the privatization of prisons but also on many occasions has spoken on behalf of the private prison industry.

“It is consistent with good correctional policy and practice to consider (the) use of profit and non-profit organizations to develop, fund, build, operate, and/or provide services, programs and facilities when such an approach is cost-effective, safe, and consistent with the public interest.”¹¹³

Recent examples of the revolving door between the public and private corrections involved Stacia Hylton and Harley G. Lappin. In 2010, Stacia Hylton was elected director of the U.S. Marshals Service. Prior to heading the U.S. Marshals Service, Hylton has served as Federal Detention Trustee and she had formed a consulting company, Hylton Kirk & Associates LLC a month before leaving the federal agency. During her tenure, the federal agency awarded a number of contracts to GEO Group, the same company she later provided her consultancy services to.¹¹⁴

¹¹² According to ACA “Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings.” (Source: “Standards FAQ,” accessed April 30, 2016, http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards___Accreditation/About_Us/FAQs/ACA_Member/Standards_and_Accreditation/Standards___FAQ.aspx?hkey=b1dbaa4b-91ef-4922-8e7d-281f012963ce).

¹¹³ Criminal Justice Newsletter 1 February 1985 p. 3. IN Mahone, *Prison Privatization in America*. p 29.

¹¹⁴ “Anti-Private Prison Group Rips Revolving Door for Federal Employees After CCA Hires Former BOP Director | Prison Legal News,” accessed April 30, 2016, <https://www.prisonlegalnews.org/news/2011/jul/15/anti-private-prison-group-rips-revolving-door-for-federal-employees-after-cca-hires-former-bop-director/>.

Only a year later, in 2011, CCA announced the hiring of former federal Bureau of Prisons director Harley G. Lappin as an executive vice president and the company's Chief Corrections Officer.¹¹⁵

Federal ethics rules do not prohibit use of the revolving door. However, President Obama has pledged to shut Washington's revolving door and limit the influence of special interests.

“President Obama has taken historic steps to close the ‘revolving door’ that carries special interest influence in and out of the government by prohibiting former lobbyists from working on issues on which they lobbied or in agencies they previously lobbied and barring them altogether from holding future positions on advisory boards and commissions.”¹¹⁶

Nevertheless, the revolving door has not been shut. The Center for Responsive Politics has identified almost 800 current or former Obama administration officials that have spun between the public and private sectors.¹¹⁷ Furthermore, there have been a number of waivers granted and the ethical rule did not apply to people serving outside of the Obama administration.

The revolving door issue is not limited to corrections. It is a general problem that affects most government or regulatory agencies. While it creates a conflict of interest in general, it is even more sensitive when it affects industries like defense and corrections. Therefore, the revolving door creates a conflict of interest that should be addressed by a legislation specifically aimed to ban the re-entry between public and private sector.

¹¹⁵ “Anti-Private Prison Group Rips Revolving Door for Federal Employees After CCA Hires Former BOP Director | Prison Legal News,” accessed April 30, 2016, <https://www.prisonlegalnews.org/news/2011/jul/15/anti-private-prison-group-rips-revolving-door-for-federal-employees-after-cca-hires-former-bop-director/>.

¹¹⁶ “Shutting the Revolving Door | The White House,” accessed May 12, 2016, <https://www.whitehouse.gov/21stcenturygov/actions/revolving-door>.

¹¹⁷ “Obama Officials Who Have Spun through the Revolving Door | OpenSecrets,” accessed April 30, 2016, <https://www.opensecrets.org/obama/rev.php>.

3. The Consequences of Prison Privatization in the United States

Perhaps the most important and least discussed part of prison privatization is its consequences. The consequences of private prison industry involvement in corrections are mostly indirect but all the more significant. As was already illustrated, the prison industry has significant stakes in a stable and growing prison population. It raises justifiable concerns that the prison industry could attempt to influence sentencing policies in its favor – causing longer sentences and demand prison sentences for not so serious crimes instead of promoting the alternatives to incarceration. There is more than one proven way, for example campaign finance, lobbying, and association with friendly influential organizations, how the private industry is already having a significant impact on the above-mentioned policies.

Generally, the policies private prison companies promote have had one crucial negative effect – mass incarceration.

As Barreras, Drucker and Rosenthal see it:

“Incarceration impacts the life of a family in several important ways: it strains them financially, disrupts parental bonds, separates spouses, places severe stress on the remaining caregivers, leads to a loss of discipline in the household, and to feelings of shame, stigma, and anger.”¹¹⁸

While growing incarceration has been the cause of private prisons emergence it has soon become its greatest consequence as well. CCA, the founder of the private prison industry inadvertently states the root of the problem on its website: “New companies are created every day. But it’s not every day

¹¹⁸Ricardo Barreras, Ernest Drucker, and David Rosenthal, “The Concentration of Substance Use, Criminal Justice Involvement, and HIV/AIDS in the Families of Drug Offenders,” *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 82, no. 1 (2005), 168. IN Christian Henrichson and Ruth Delaney, “The Price of Prisons: What Incarceration Costs Taxpayers” (Center on Sentencing and Corrections, January 7, 2012), http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf?utm_source=viz&utm_medium=viz.referral&utm_campaign=viz.ref&utm_viz_id=hHmrlDeZn81&utm_pubreferrer=pix11.com%2F2016%2F04%2F29%2Fthe-15-states-with-the-highest-cost-per-prisoner%2F.

that new industries are established.”¹¹⁹ Even though, the original growth in incarceration rates was a result of conservative, repressive criminal justice policies, the continuance in these policies can be assigned to variety of factors including private prison industry interest in the sustainability of the private prison sector.

Back in the late 1970s, when the incarceration started growing, prison privatization was mostly perceived as a short-term solution. Most of the contracts between the government and private prison companies were signed for a fixed period of time with added option of a contract renewal.¹²⁰ However, as the private prison industry started growing there appeared the crucial question about the sustainability of the business. In 1985, CCA proposed to lease the whole Tennessee’s state prison system for ninety-nine years, and while the state legislature rejected CCA’s bid, the proposal has become the company’s first attempt to secure a permanent position in the incipient industry.¹²¹

This chapter examines the main impacts of the growth of the private prison industry on American society. First, the actual costs will be analyzed and compared to other governmental expenses. Second, we will take a closer look at the demographic changes mass incarceration has caused in the society. Third, this chapter will be concluded with a final note on distorted justice.

3.1. Financial Burden on Taxpayers

In 2010, the United States spent roughly \$80 billion on corrections expenditures at the federal, state, and local levels.¹²² According to a 2012 report by Vera Institute of Justice¹²³, the total per-inmate cost in the fiscal year 2010 averaged \$31,286 and ranged from \$14,603 in Kentucky to \$60,076 in New

¹¹⁹ “CCA - Our History,” CCA, accessed May 2, 2016, <http://cca.com/our-history>.

¹²⁰ Ashcroft, “Emerging Issues on Privatized Prisons. Series.”

¹²¹ Mahone, *Prison Privatization in America*. p 29.

¹²² Melissa S. Kearney et al., “Ten Economic Facts about Crime and Incarceration in the United States,” *Policy Memo of the Hamilton Project* [Http:// Wwww. Brookings. Edu/ Research/ Reports 5](http://www.brookings.edu/research/reports/5) (2014), http://mass-gov-courts.org/files/v8_THP_10CrimeFacts.pdf.

¹²³ Numbers calculated from the 40 states that participated in the study, representing more than 1.2 million inmates (of 1.4 million total people incarcerated in all 50 state prison systems) (Source: Henrichson and Delaney, “The Price of Prisons: What Incarceration Costs Taxpayers.”).

York.¹²⁴ At the same time, Federal Register estimated the average cost of incarceration for federal inmates is \$28,284 (\$77.49 per day).¹²⁵ A 2014 report by the Hamilton Project estimated each U.S. resident on average contributed \$260 to corrections expenditures in 2010, in comparison to the \$77 each resident paid in 1980.¹²⁶ These numbers represent the official corrections budgets; however, Vera Institute calculated that the total taxpayer cost of prisons was roughly 13.9 percent higher than the official numbers. Moreover, the discrepancy between the actual costs and the reported costs might be even higher due to indirect costs such as the costs of social services, child welfare, and education, that are usually borne by government agencies other than the department of corrections and that are not included in any calculations.¹²⁷

However, the most illustrative example of the actual total cost of prisons is depicted in figure 13. From this figure, it can be seen how much government money was spent in 2010 to educate an elementary/secondary school student compared to the cost of keeping an inmate imprisoned.¹²⁸ According to the opinion of this thesis' author, it is mainly caused by the states inability to address the cause of the issue – school dropouts, unemployment, etc. Instead, states are concentrating taxpayer money to corrections. The 2010 numbers might be further elevated by deep cuts in government spending that have been implemented during the financial crisis on education; however, the same cuts have not been applied to prisons due to long-term contracts with guaranteed prices and other constrictions.

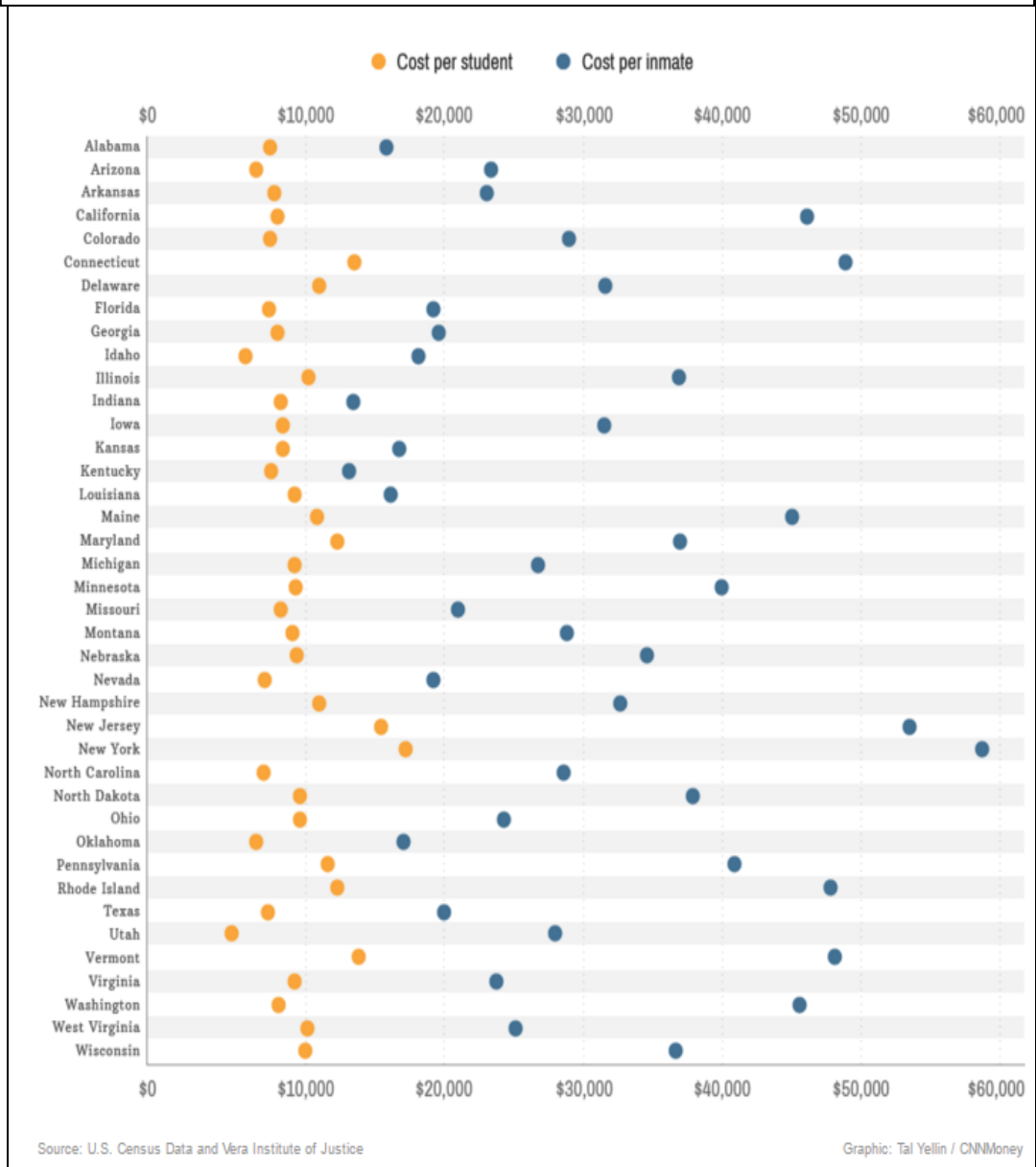
¹²⁴ Ibid.

¹²⁵ “Federal Register | Annual Determination of Average Cost of Incarceration,” accessed May 2, 2016, <https://www.federalregister.gov/articles/2015/03/09/2015-05437/annual-determination-of-average-cost-of-incarceration>.

¹²⁶ Kearney et al., “Ten Economic Facts about Crime and Incarceration in the United States.”

¹²⁷ Henrichson and Delaney, “The Price of Prisons: What Incarceration Costs Taxpayers.”

Figure 13
Education vs Prison Costs, 2010.



Source: "Education vs Prison Costs," *CNNMoney*, accessed May 2, 2016, <http://www.money.cnn.com/infographic/economy/education-vs-prison-costs/>.

¹²⁸ "Education vs Prison Costs," *CNNMoney*, accessed May 2, 2016, <http://www.money.cnn.com/infographic/economy/education-vs-prison-costs/>.

Furthermore, a report from the American Academy of Arts and Sciences estimated 141 percent growth in state spending on corrections between 1986-2013, while the growth in state general fund spending on higher education during the same period was only 5.6 percent and the growth in spending on elementary and secondary education was 69 percent. Additionally, the report identified 11 states¹²⁹ where the corrections budget has surpassed higher education as a percentage of funding.¹³⁰

The financial burden of mass incarceration is increasingly becoming an important political topic. In 2016, during his presidential campaign, even Republican Senator Rand Paul acknowledged the elevated spending on corrections, stating:

“As taxes on hard-working Americans have increased to help pay for prison spending, there are fewer resources available for law enforcement, rehabilitative programs, and proven investments in children to prevent crime in the first place. The result has been a cycle of spending and incarceration that led to more than a quarter of a trillion dollars a year drained from our economy going to unproductive uses.”¹³¹

Moreover, Rand Paul was the only Republican presidential candidate who supported a criminal justice reform and even introduced a legislation – the REDEEM Act that is supposed to improve chances of finding an employment for those with federal criminal records by giving federal courts sealing authority over their files.¹³²

¹²⁹ The states are Michigan, Oregon, Arizona, Vermont, Colorado, Pennsylvania, New Hampshire, Delaware, Rhode Island, Massachusetts and Connecticut. (Source: Katie Lobosco, “11 States Spend More on Prisons than on Higher Education,” October 1, 2015, <http://money.cnn.com/2015/10/01/pf/college/higher-education-prison-state-spending/index.html>).

¹³⁰ “Public Research Universities: Changes in State Funding,” The Lincoln Project: Excellence and Access in Public Higher Education (American Academy of Arts & Sciences), accessed May 2, 2016, https://www.amacad.org/multimedia/pdfs/publications/researchpapersmonographs/PublicResearchUniv_ChangesInStateFunding.pdf.

¹³¹ “Sens. Paul and Booker Re-Introduce the REDEEM Act | U.S. Senator Rand Paul of Kentucky,” accessed March 13, 2016, <https://www.paul.senate.gov/news/press/sens-paul-and-booker-re-introduce-the-redeem-act>.

¹³² Joshua Gaines, “Dissecting the REDEEM Act || CCRC,” accessed May 2, 2016, <http://ccresourcecenter.org/2015/06/30/dissecting-the-redeem-act/>.

In general, there is a bicameral consensus regarding the need for criminal justice reform. In practice, data gathered by the Center for Responsive Politics¹³³ suggest why the reform has not been already passed by the Congress. Hillary Clinton's campaign says that she wants to "end the era of mass incarceration, reform mandatory minimum sentences, and end private prisons."¹³⁴ Furthermore, as stated on the official website, Clinton's "campaign does not accept contributions from federally registered lobbyists or PACs for private prison companies, and will donate any such direct contributions to charity."¹³⁵ Nevertheless, in 2015, the Intercept informed that Clinton's and other presidential candidates' reports of contributions bundled by lobbyists "revealed a number of lobbyists who are serving as 'bundlers' for their campaigns"¹³⁶, while they are also registered lobbyists for the private prison companies.¹³⁷

3.2. Endangered Society

Among widely accepted reasons for the use of imprisonment are deterrence, punishment, personal reform and protection.¹³⁸ While deterrence, punishment, and personal reform aim to put people off committing crimes – rehabilitate them, the protective function of prisons aims to protect the society from becoming a victim of criminal activity.

Even though removing criminals can initially improve the feeling of safety in communities, in a long-term perspective, increasing incarceration rates are not shown to improve public safety.¹³⁹ On the contrary, the effects of mass incarceration are mostly negative and often harm the places from which the felons were removed. Crutchfield and Weeks found out that when "the number

¹³³ "Top Donors Data for Hillary Clinton, 2016 Cycle | OpenSecrets," accessed May 12, 2016, <https://www.opensecrets.org/pres16/contrib.php?id=N00000019>.

¹³⁴ "Hillary Clinton on Criminal Justice Reform," accessed March 12, 2016, <https://www.hillaryclinton.com/issues/criminal-justice-reform/>.

¹³⁵ Ibid.

¹³⁶ "Private Prison Lobbyists Are Raising Cash for Hillary Clinton," *The Intercept*, accessed March 16, 2016, <https://theintercept.com/2015/07/23/private-prison-lobbyists-raising-cash-hillary-clinton/>.

¹³⁷ Ibid.

¹³⁸ "Prison," *Encyclopedia Britannica*, accessed March 12, 2016, <http://www.britannica.com/topic/prison>.

of felons removed from a community is 'too high', it may actually harm the places where they use to live.”¹⁴⁰ As they further explain:

“Most people who are incarcerated return to the same neighborhoods, or very similar places as those they were removed from, their presence in large numbers, when they go home, adds a substantial burden there, too.”¹⁴¹

They also point out that it mainly affects the so-called “disadvantaged communities” comprising mostly of poor people of color. The key issue is that those people lack real opportunities for change. Therefore, they often struggle with a re-entry into a society. While there are programs specifically aimed to help inmates reenter society, it is critical to address the future reintegration while still in prison. However, as the aforementioned Bureau of Justice Statistics survey concluded, private prisons are less likely to offer some rehabilitation programs that have proven beneficial for the inmates’ reintegration into society.¹⁴²

3.2.1. Recidivism Rates

How does the time spent in either public or private prison affect the inmates’ likelihood to recidivate? The previous research on this subject is very limited and the results are mostly inconsistent.

For example, Lanza-Kaduce, Parker, and Thomas study¹⁴³ found that inmates released from private prisons recidivated significantly¹⁴⁴ less.¹⁴⁵ A more

¹³⁹ “Gaming the System.”

¹⁴⁰ Gregory A. Weeks and Robert D. Crutchfield, “The Effects of Mass Incarceration on Communities of Color,” *Issues in Science and Technology* 32, no. 1 (Fall 2015), <http://issues.org/32-1/the-effects-of-mass-incarceration-on-communities-of-color/>.

¹⁴¹ Ibid.

¹⁴² Stephan, “Bureau of Justice Statistics (BJS) - Census of State and Federal Correctional Facilities, 2005.”

¹⁴³ The study analyzed recidivism data from 198 male inmates released from two private prisons in Florida during 1996 and compared them with data from 198 matched inmates released from public prisons in the State during the same year to determine recidivism rates during the 12 months after release. It was later re-analyzed, extending the follow-up period through 48 months after release with the same results. (Source:L. Lanza-Kaduce, K. F. Parker, and C. W. Thomas, “Comparative Recidivism Analysis of Releases From Private and Public Prisons,” *Crime and Delinquency* 45, no. 1 (January 1999): 28–47.).

¹⁴⁴ Specifically, within 12 months following release, 10% of the private inmates were arrested compared with 19% of the public inmates; 6% of private inmates were convicted compared with

extensive study¹⁴⁶ by Farabee and Knight revealed that adult males released from private and public prisons displayed similar rates of re-offense, which was confirmed in a later study by Bales¹⁴⁷. In contrast, adult females released from privately run facilities were, according to Farabee and Knight 25 percent less likely to re-offend and 34 percent less likely to return to prison than female inmates released from public prisons.¹⁴⁸ However, most recent and most comprehensive study so far by Spivak and Sharp came up with a very different conclusion.

Spivak and Sharp analyzed 22,359 state prison inmates released from state and private prisons in Oklahoma between June 1, 1997, and May 31, 2001, and found out there was a higher rate of recidivism among inmates released from private prisons compared to state prisons.¹⁴⁹ The evidence is thus highly inconclusive. Nevertheless, the level of recidivism alone might be an indication of an inefficiency of prisons and its rehabilitative programs in general.

3.2.2. Demographic Implications

Petit and Sykes study of the demographic implications of mass incarceration concluded that growth in the prison population over the past 30 years marks a “third demographic transition” characterized by “exceptionally low fertility, high morbidity due to infectious and communicable diseases, and high involuntary migration and enumeration in non-metro areas among prisoners”.¹⁵⁰ They further add that it “may represent a new cleavage between

10% of public inmates; and 10% of private inmates were imprisoned for new offenses compared with 14% of public inmates. (Source: “Prior Studies of Private/Public Inmate Recidivism,” accessed May 4, 2016, <http://www.dc.state.fl.us/pub/recidivismfsu/priorstudies.html#note4>).

¹⁴⁵ “Prior Studies of Private/Public Inmate Recidivism,” accessed May 4, 2016, <http://www.dc.state.fl.us/pub/recidivismfsu/priorstudies.html#note4>.

¹⁴⁶ The study analyzed only inmates who had spent at least six months in the facility from which they were released, between 1997 – 2000 from the Florida public (4,912 inmates) and private prisons (2,341 inmates). (Source: “Prior Studies of Private/Public Inmate Recidivism.”)

¹⁴⁷ W.D. Bales et al., “Recidivism of Public and Private State Prison Inmates in Florida,” *Criminology and Public Policy*, 4 2005, no. 10 (n.d.): 101–27.

¹⁴⁸ “Prior Studies of Private/Public Inmate Recidivism.”

¹⁴⁹ A. L. Spivak and S. F. Sharp, “Inmate Recidivism as a Measure of Private Prison Performance,” *Crime & Delinquency* 54, no. 3 (April 14, 2008): 482–508.

¹⁵⁰ Becky Pettit and Bryan Sykes, “The Demographic Implications of the Prison Boom: Evidence of a ‘Third Demographic Transition’?,” *Unpub. Manuscript*, 2008,

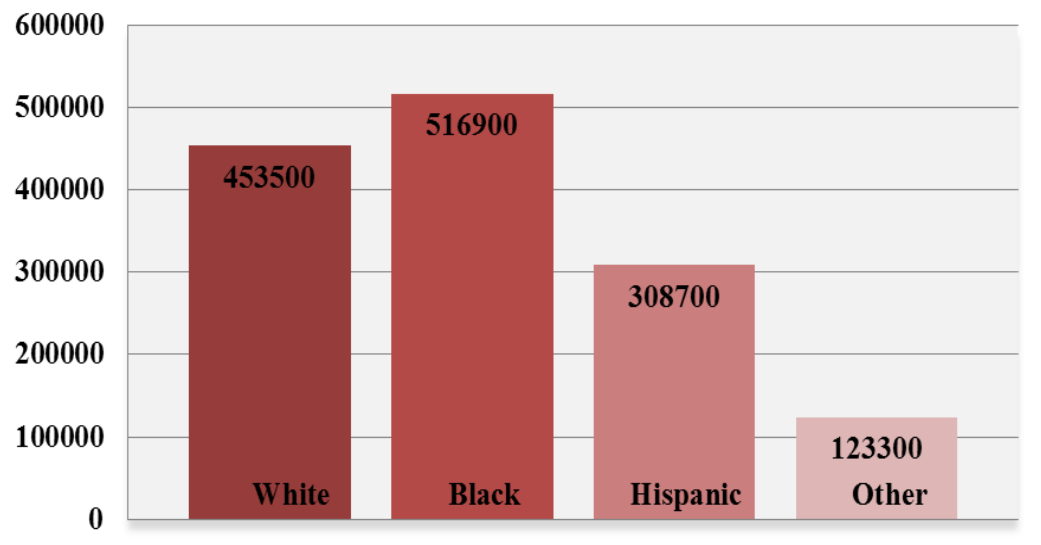
the demographic lives of inmates and those at risk of incarceration from the non-institutionalized population.”¹⁵¹

The nature of the cleavage represents the growing demographic differences between those who are affected by mass incarceration and those who are not. The composition of prison population implies that the “third demographic transition” does not affect whole society equally. The Bureau of Justice Statistics estimated that in 2014, 2,724 per 100,000 black male residents and 1,090 per 100,000 Hispanic male residents were serving sentences of at least 1 year in prison, compared to only 465 per 100,000 white male residents (figure 14). These numbers show that the ones affected most are people of color. Considering the implications of imprisonment on the U.S. demography, it is important to ask how the increasing institutional involvement in the lives of the disadvantaged has further affected their lives. In this thesis’ author opinion, it created a vicious circle of poverty, lack of opportunity and insufficient access to education that amplified the already growing phenomenon. It also corresponds with Petit and Sykes’ finding suggesting, “racial and educational inequalities in exposure to the criminal justice system among adults are transmitted to their children.”¹⁵²

https://www.researchgate.net/profile/Bryan_Sykes/publication/268438446_The_Demographic_Implications_of_the_Prison_Boom_Evidence_of_a_Third_Demographic_Transition/links/551c10be0cf2fe6cbf762eec.pdf.

¹⁵¹ Ibid.

¹⁵² Ibid.

Figure 14**Incarceration by race and ethnicity, 2014.**

Data source: E. Ann Carson, “Prisoners in 2014” (Bureau of Justice Statistics, September 2015), <http://www.bjs.gov/content/pub/pdf/p14.pdf>.

3.3. *Distorted Justice*

Do private prisons distort justice? The previous sections have shown that private prisons industry can be a powerful lobby when it comes to sentencing policies. What are other ways in which private prisons manipulate the justice system in their favor?

An already mentioned study by Anita Mukherjee exposed that private prisons have an impact on prisoner time served while the additional time does not contribute to reduced recidivism rates. It relates to the original concern discussed in the section about liberalism about the state monopoly on violence.

Mukherjee concludes that:

“Since the state does not seek to punish prisoners randomly based on private prison assignment, systematic differences in release policies constitute a distortion of justice.”

Mukherjee studied private prisons in Mississippi between 1996 and 2004. In Mississippi, state law requires private facilities to provide cost savings of at least 10 percent. Therefore, the study, which concluded that an average prisoner in the private facility is more likely to spend 60 to 90 days more in prison, also implicated that those additional 60 days in prison, leads to an additional cost per

prisoner-sentence of about \$3,000¹⁵³. This study has contributed an important set of evidence on the impact of private prisons on justice.

Another distortion of justice can be assigned to private prisons “cherry picking” of prisoners. A study by UC-Berkeley graduate student revealed that for-profit prisons house more inmates of color. In the nine states examined in the study, private facilities housed a distinctively higher percentage of people of color than the public facilities. The overrepresentation, according to the study, has been caused by the nature of a contract the private companies signed with the states.

“Younger, healthier inmates, [...] who've come into the system since the War on Drugs went into effect — are disproportionately people of color. Older inmates, who generally come with a slew of health problems, skew more white.”¹⁵⁴

From the above-mentioned studies, it is possible to assume that the private prisons distort justice in more than one way. First, they contribute to the longer sentencing of their inmates and second, the longer sentences disproportionately affect the people of color who are overrepresented in private prisons.

The aforementioned studies already suggest the concept of distorted justice by private prison industry is a real issue. Nevertheless, there are other disturbing cases, highlighting the private prison alarming practices.

In 2007, two Pennsylvania judges were sentenced to 28 and 17 and half years in federal prison for their involvement in the so-called “kids-for-cash” scandal. Judge Michael Conahan and Judge Mark Ciavarella were found guilty of accepting nearly \$2.6 million in bribes from two private for-profit juvenile facilities in exchange for sending them to private detention centers.¹⁵⁵

¹⁵³ The contractual payment in Mississippi is on average \$50 for each bed occupied. (Source: Mukherjee, “Does Prison Privatization Distort Justice? Evidence on Time Served and Recidivism.”).

¹⁵⁴ “Why For-Profit Prisons House More Inmates Of Color,” *Illinois Public Media*, March 13, 2014, <http://will.illinois.edu/news/story/why-for-profit-prisons-house-more-inmates-of-color>.

¹⁵⁵ “Luzerne County Kids-for-Cash Scandal | Juvenile Law Center,” accessed May 12, 2016, <http://jlc.org/luzerne-county-kids-cash-scandal>.

The case raises one important question. Was it an isolated incident, or are there more people like the Pennsylvania's judges who have made deals with private prisons across the United States? Also, it clearly shows the dangerous new set of incentives created by the new industry.

In any case, the evidence on detrimental effects of private prison companies in corrections is expanding. In the past, the criminal justice reform used to be a wedge issue between Republicans and Democrats. Recently, it is one of the few initiatives on which one finds bipartisan agreement in Congress.¹⁵⁶ Theoretically, there is nothing standing in the way of the reform. Practically, even though there is an agreement on the need of a reform, there are still legislators who are not eager to give up on the original idea that mass incarceration is a beneficial policy. Furthermore, the opposition to criminal justice reform while fewer in numbers is backed by a strong lobby.

In the meantime, President Obama's administration former Attorney General Eric Holder has made it a top priority to reduce American reliance on incarceration. In 2013, Holder introduced a new strategy of being "smart" rather than "tough" on crime.

"By targeting the most serious offenses, prosecuting the most dangerous criminals, directing assistance to crime 'hot spots,' and pursuing new ways to promote public safety, deterrence, efficiency, and fairness - we can become both smarter and tougher on crime."¹⁵⁷

It is too soon to make conclusions, but recent data about prison population are showing decreasing trends in the prison population and similar strategies and initiatives might be helpful in this respect – despite pressures from the private industry.

¹⁵⁶ David Cole, "The Disgrace of Our Criminal Justice," *The New York Review of Books*, accessed May 5, 2016, <http://www.nybooks.com/articles/2014/12/04/disgrace-our-criminal-justice/>.

¹⁵⁷ "The Attorney General's Smart on Crime Initiative | DOJ | Department of Justice," accessed May 5, 2016, <https://www.justice.gov/ag/attorney-generals-smart-crime-initiative>.

Conclusion

The United States is often imagined as the land of opportunity, where one could achieve anything they put their mind to, no matter who they are. But is the United States still a land of opportunity? This thesis explored the development, implementation and consequences of prison privatization in the United States. In many aspects, the private prison industry is an example of what we would call “the American dream”. Founded by three enterprising leaders, one company has developed into a corporation and established completely new industry. They came from different backgrounds, they did not have appropriate experience, the only thing they had was a vision – business idea, and they decided to bring it to life. However, one man’s dream can quickly become another man’s nightmare. The growth of private prison industry is unmistakably intertwined with the growth of incarceration rates.

The United States is proud to present itself as the champion of human rights. However, the land of freedom and opportunity has a long history of abusing human rights through slavery – one of many practices that Americans judge and call barbaric abroad but have had proven record of doing themselves. Considering the lengthy fight against slavery and its legacy – abolitionist movement, Civil War, Reconstruction period, Black Codes, Jim Crow Laws and the 20th century civil rights movement, it is surprising that not long after the Civil Rights Act of 1968 was signed and made it a crime to “by force or by threat of force, injure, intimidate, or interfere with anyone [...] by reason of their race, color, religion, or national origin”¹⁵⁸, the United States adopted policies, which have since then grown into what many critical voices started calling “a new form of slavery”.

The “war on crime”, followed by “war on drugs” significantly influenced sentencing and corrections. Mandatory sentencing laws such as “three-strike” laws, and longer delays until release under “truth-in-sentencing” laws have

¹⁵⁸ Emanuel Celler, *Civil Rights Act*, 1968, <https://www.gpo.gov/fdsys/pkg/STATUTE-82/pdf/STATUTE-82-Pg73.pdf>.

placed the U.S. on top of the list of countries with the highest incarceration rates. The Pyrrhic victory of these policies has made the United States spend more on corrections than on education (costs per prisoner/student). Moreover, the people who profit most of it are the private prison companies.

The purpose of this thesis was to explain the role of prison privatization in the growth of the mass incarceration – the key factor that is presented here as the reason for and the consequence of prison privatization (growth in prison population has forced public officials to find alternatives to overcrowded public prisons and the sole existence of private prison industry is putting pressure on public officials to maintain policies favoring higher incarceration).

The private prison industry has been established as a matter of need. Overcrowding of prisons and court orders to immediately remedy the situation have forced states to find a quick solution to relieve the overcrowded public prisons. As the private prison companies fully established themselves, they had to start considering the sustainability of their business.

The for-profit prisons have one crucial concern, which is a constant inflow of inmates. The previous chapters have shown that private prison companies have proven record of influencing the politics. Whether it is through campaign finance, lobbying or association with friendly influential organizations, all is aiming to ensure continued demand for their services. The politicians often argue that the cooperation with private prison company has economic benefits – cost-savings for the budget. However, how the private contractors achieve the cost-savings? First, it has been found that majority of studies that confirmed private prison's efficiency and cost-effectiveness have been either financed or otherwise influenced by the private correction industry. Second, insufficient disclosure requirements complicate any research on the topic. If there are any cost-savings, they are often achieved at the expense of optional expenditures, for example rehabilitation programs and through lower staffing costs.

In four decades of private prison existence in the United States, there has been no clear evidence that private prison corporations are in fact beneficial to taxpayers, inmates, American society or in general the United States. On the

contrary, there is a growing body of evidence pointing towards the negative consequences of the rise of private prison facilities. Private prisons have been shown to have more incidents of misconduct than public prisons. The sole existence of private prisons is putting a pressure on public officials to maintain stable levels of incarceration. Many recently surfaced cases illustrate the extent to which the criminal justice as it is comprised of three major institutions – law enforcement, court system and corrections has been affected on all those levels and at least in some of the cases private prisons are to blame.

The prison privatization has proved to pose significant risks; it represents a threat to the state's monopoly on violence, characterized by altering of prison sentences; it is a threat to the society because of inadequately trained staff and insufficient state controls of private prisons; and finally, it may negatively affect the human rights of prisoners.

Prevailing aggressive law enforcement strategies to curtail the use and distribution of illegal drugs are favoring the private prison industry. Over-criminalization has become a part of everyday life in some communities and, more often than not, the “justice” is disproportionately being served among people of color. The United States suffers from the effects of mass incarceration, which led to overcrowded prisons, ruined lives and taxpayer money being drowned in prisons.

Shrnutí

Tématem této práce byla analýza důsledků částečné privatizace vězeňství ve Spojených státech amerických. Přestože soukromé věznice představují jen asi 8 % celkové vězeňské kapacity, jejich zastoupení se stále zvyšuje. O tom svědčí i 90% nárůst počtu vězňů umístěných v soukromých věznicích od roku 1999, kdy *US Bureau of Justice Statistics* poprvé začala sledovat populaci soukromých věznic. To s sebou ovšem přináší i mnohá úskalí. Hlavním takovým úskalím je zájem soukromých věznic na růstu počtu uvězněných.

Tato práce analyzovala důvody, které původně vedly k přistoupení k privatizaci vězeňského systému. Jednalo se zejména o přelidněnost stávajících veřejných věznic, politicky příznivou situaci spočívající v nástupu Ronalda Reagana a přijetí principů neoliberalismu, a pak také povolení mezistátního prodeje vězeňských výrobků, které umožnilo navýšení výdělků z vězeňské práce.

Často skloňovaným argumentem pro privatizaci je její předpokládaná finanční výhodnost. Propagátoři soukromých věznic argumentují tím, že soukromé věznice nemají problém s přehnanou byrokracií, a navíc jsou pod tlakem konkurence, která přirozeně vede firmy k hledání takových řešení, která jsou efektivní a ekonomicky výhodná. Ovšem tento argument nebyl potvrzen. Naopak studie, které se zabývaly finanční výhodností soukromých věznic, ve většině případů našly žádné nebo minimální úspory. Příčinnou může být nedostatečná motivace soukromých firem – současný trh je víceméně rozdělen pouze mezi dvě dominantní společnosti, které si nekonkurují natolik, aby bylo nutné stlačovat cenu poskytovaných služeb dolů. Dále se diskutuje, že finanční výhodnost soukromých věznic přímo souvisí se smlouvou, kterou stát se soukromou věznicí uzavírá. Tyto smlouvy jsou v mnohých případech velmi nevýhodné pro stát, a naopak umožňují značnou volnost soukromých věznicím. V mnohých případech se také za tzv. úsporami neskrývají skutečné úspory, ale příjmy plynoucí z vězeňské práce.

Soukromé firmy, které vlastní a spravují soukromé věznice ve Spojených státech, představují silnou lobby proti iniciativám zahrnujícím zmírňování

přísných postihů v rámci tzv. „války proti drogám“, upuštění od politiky „tříkrát a dost“ a nemožnosti individuálního posouzení přestupku z důvodu předepsaných minimálních trestních sazeb. Ačkoli se zdá, že reformě nevyhovujícího systému nic nestojí v cestě právě silná lobby a skoro čtyři desetiletí budované odvětví soukromého vězeňství jsou nepodcenitelnou překážkou.

Cílem této diplomové práce bylo poukázat na rizika, která s sebou privatizace vězeňství přináší. Ze závěrů vyplývá, že privatizace vězeňství představuje hrozbu pro stát, kterou je ohrožení státního monopolu na násilí. Dále jsou soukromé věznice možným rizikem pro společnost, která je ohrožena nedostatečným zabezpečením a méně zkušenými dozorci, což může vést k častějším útěkům. A v neposlední řadě soukromé věznice i z důvodu nedostatečného nastavení kontrolních mechanismů ve svých smlouvách mohou představovat hrozbu pro vězně, která vyplývá ze zanedbání péče a nepřímo souvisí i s nedostatečnými rehabilitačními programy.

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