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Should Private Prisons in the U.S. be Abolished

By: Nancy Anzalone

A thesis submitted in partial fulfillment of the requirements for the degree of

Masters in Criminal Justice

Molloy College

2021

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### **Abstract**

Private prisons were established as a possible solution to alleviate the serious overcrowding issue affecting prisons during the 1980's. This thesis supports the reasoning behind why private prisons should be abolished as they did not deliver on the claims made in support of their existence but rather, reveals the multitude of negative repercussions when the financial interests of a few large and powerful private corporations override the basic safety and security of our prison system. The studies contained in this thesis attempt to reveal that the data meant to support private prisons is not only inadequate, but often, inaccurately depicted by the same corporations who benefit from their existence. The evidence contained in this thesis offers reasoning that suggest private prisons were not the appropriate solution to the problem and only created a host of other ethical issues, mainly the incentive to incarcerate when a profit is to be made. Suggestions have been made as possible alternatives to private prisons, as well as the need to examine the factors contributing to mass incarceration and how private prisons create obstacles to reform.

### **Acknowledgements**

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To my husband Domenic, my daughters Gabrielle and Isabella, and my sister Grace, it is because of your understanding, patience and encouragement that I was able to continue on this path when I believed the road was too long or when I experienced self-doubt, I thank you.

Last but certainly not least, I would like to thank my parents, Francesco and Francesca Piarulli, for all the hard work and sacrifices they made their entire lives enabling me to live a better life and pursue my goals. I am eternally grateful.....

## Introduction

In a market rally the day after the election of Donald Trump in 2016, the stock that outperformed all other stocks was Corrections Corporation of America, the largest private prison company in the United States. The stocks skyrocketed 43 percentage points. Stock shares of its main competitor, GEO Group, also increased a significant 21 percent, pleasing their investors while disturbing critics (Sommer, 2016). Prior to this new development, the Obama administration had begun plans to phase out private prisons after reports from the Department of Justice revealed serious safety issues for both inmates and staff, as well as the discovery that the claims to private prisons' cost effectiveness were not accurate. So, when former deputy general, Sally Yates announced that the U.S. would begin reducing, with the intention of ultimately abolishing private prisons, shares of CoreCivic (then Corrections Corporation of America) dropped 35.5% and shares for GEO Group dropped 40 percent (Sommer, 2016). However, once in office, President Trump's attorney general Jeff Sessions, reversed the ban and the stocks not only rebounded but skyrocketed (Williams, 2018). With these contrasting views, one must analyze both the proposed benefits as well as the immediate and long-term risks to accurately assess whether private prisons in the U.S. should be abolished.

The soaring stocks in private prisons did not come as a shock to market analysts. As a presidential candidate, Donald Trump often claimed quite boldly that violent crime in the U.S. was rising and that "America's streets are filled with carnage", despite evidence to the contrary (Eisen, 2018). Attorney General Jeff Sessions, also called for harsher sentencing and severe enforcement of immigration offenses. In late 2017, in an unheard-of move, Immigration and Customs Enforcement (ICE) began requesting information from contractors who would be able to provide additional detention space in major cities, but now in interior parts of the country,

such as Salt Lake City, Chicago, Detroit and St. Paul. As expected, they also requested information on contractors who could provide space along the U.S. border in Texas. Immigrants who are arrested at the border are usually detained for 27 days. However, those detained in interior cities such as Salt Lake City etc. are detained for almost double the time. “More days behind bars in their detention centers translates into more profits for the company” (Eisen, 2018).

As stated by Ryan Meliker, a senior analyst with Canaccord Genuity (a leading, independent financial services firm), “It’s an extreme case of politics affecting the stock market”. “Politics drove down the shares of the companies over the summer – and now the situation is reversed.” The main goal of for-profit prisons is simply to make money. Meliker added that the implications for investors are clear, “there is a big upside for these companies” (Sommer, 2016).

This relegation of supervision of the incarcerated from state and federal governments to private corporations is one of the most important developments to have occurred in the criminal justice system. However, these changes have occurred in somewhat of a silo within criminal justice policy circles, without understanding what the public’s feelings on this issue is (Enns & Ramirez, 2018). The private sector of prisons first became part of the corrections arena in 1983, when it fueled a strong interest in a few companies that eventually began to hold an enormous power in the American prison system (Enns & Ramirez, 2018).

### **Objectives that Justify Criminal Punishment**

The rehabilitation of an inmate to successfully reenter into society as a law abiding and productive individual is an ideal goal of incarceration. Unfortunately reality has proven that this is most often not the case. However, there are other reasons, besides rehabilitation, that justify an individual having to serve time behind bars. Retribution is one reason. Crimes committed affect

not only the victims themselves, but especially with violent crimes or murder, the victims' families as well. Although the punishment received generally does not equal the crime committed, it is a way in which the criminal justice "hits back" a criminal in various forms including taking away their freedom through incarceration or having to pay significant penalties (Sample, 2019).

Deterrence is another objective, both specific to the individual and to the public. Having a criminal pay for their crime with prison time hopefully sends a message not only to the criminal that they will be held accountable, but also to others considering committing crimes as well. Getting criminals off the streets, thereby protecting the safety of communities can be achieved through incapacitation. This of course can be temporary or permanent in the case of serious crimes in which a criminal receives a life sentence or perhaps although controversial, the death penalty, ensuring that an individual can no longer pose a threat to society. And lastly, restitution whereby the objective is to help make the person victimized feel "whole" again by restoring or repairing the damage that has been inflicted upon them. This may be achieved several ways including monetary. Although these reasons are surely justifiable, one must still consider whether private prisons should be part of the equation (Sample, 2019).

Prior to the mid 1970's, a key component of prison was rehabilitation whereby prisoners were encouraged to learn occupational skills which would help them reenter into society with a greater chance of leading a productive life. Another problem that attempted to be resolved in prison was an inmates' psychological issues, particularly substance abuse which without intervention, would make recidivism much more likely. However, rehabilitation is no longer on the forefront, instead a tougher approach has taken its place. This has taken a particular toll on those inmates that are mentally ill which accounts for approximately 20 percent of those in



prison. Unfortunately, prisons have become somewhat of a de facto mental institution as well, however, without the resources to effectively treat or manage these inmates (Benson, 2003).

### **A Brief History of Prison Privatization**

President Ronald Regan's War on Drugs of the 1980's led to much harsher sentencing policies and higher rates of incarceration. This created a problem of overcapacity in the public prisons. Private corporations saw an opportunity in this situation and took full advantage of it. The first for-profit prison opened in Tennessee in 1984 and over the next six years, an additional 66 more were established (Joy, 2018). A major claim made by for-profit prisons is that they are saving money for the government. However, their true goal is to make a profit. They can achieve this by minimizing spending and cutting corners on many of the services, but mainly by reducing staff and paying and training them less (Joy, 2018). These factors contributed to situations where inmate-on-inmate assaults were 28% higher private facilities as well as the harboring of more than twice the number of illegal weapons by inmates (Joy, 2018).

The privatization of prisons began to spread throughout the system for several reasons including (a) an increasing prison population due to changes in sentencing policy which included imposing minimum sentences and (b) requiring longer time served before an inmate is eligible for parole, (c) overcrowding and (d) the increase in detention of illegal immigrants (a 400 percent increase in the U.S. over the four-year period 2005-2009) (Kish & Lipton, 2013). Private prisons companies have spent a massive amount of money, in the millions, lobbying legislators in state capitals and in Washington D.C. Corrections Corporations of America (C.C.A.) has basically said that changes to drug laws and sentencing, in addition to immigration reform, would negatively impact their business (Smith, 2016).

In 2013, another big player in the private prison industry, GEO Group, funded efforts to prevent immigration reform. In doing this, 11 million undocumented individuals who were on a path to legalization, were prevented in doing so, thereby rerouting these people to flow into their facilities instead. Furthermore, over the last 10 years, C.C.A has spent \$17.4 million on lobbying expenditures and another \$1.9 million on political contributions to prevent drug law and immigration reform policies (Joy, 2018).

A 2005 annual report from C.C.A. stated the following:

Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities....the demand for our facilities could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or throughout the decriminalization of certain activities that are currently proscribed by our criminal laws. For instance, any changes with respect to drugs and controlled substances of illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correction facilities to house them (Smith, 2016).

### **Incarceration in the United States**

When comparing the U.S. with every other nation in the world, the U.S. comes in first place as having the most people incarcerated in the world, spending \$80 billion per year to do so (Cipriano, 2020). As of 2020, an estimated 2.3 million people are incarcerated in U.S. prisons (Bryant, 2020). The other five countries that follow the U.S. with having the highest rates of incarceration rates include El Salvador, Turkmenistan, Thailand, and Palau (Statista, 2021).

Additionally, 73 percent of all people being held in immigration detention were detained in privately-run facilities (Gotsch & Basti, 2018). From 2000 to 2016, the number of people incarcerated in private prisons increased at a rate five times higher than the prison population (Gotsch & Basti, 2018).

Regarding those individuals being held in privately run immigration facilities, the increase was a staggering 442 percent (Gotsch & Basti, 2018). In fact, immigration detention centers have now become the sector within the prison industry with the highest growth (Enns & Ramirez, 2018). As cited in Gottschalk (2016), immigration detention centers run by private companies are not required to have the same level of transparency as government-run facilities. However, it was discovered that many detainees, including women and children, were often subjected to conditions that included overcrowding and incidents of violence and sexual abuse that were worse than even those for hardened criminals. In 2016, the U.S. Department of Justice's *Review of the Federal Bureau of Prison's Monitoring of Contract Prisons* discovered that the private prisons they had analyzed had higher safety and security violations in six of eight categories (Enns & Ramirez, 2018).

Whereas public prisons are completely owned by the government, private prisons are institutions that are either being run by or owned by corporations that have contracts with federal or state governments to incarcerate individuals who have been convicted of a crime as well as for undocumented immigrants waiting to be processed for deportation (Eason, 2019). In a public prison, the government provides the buildings, staff, and administration. The government is also responsible for overseeing everything that goes on within its walls. However, in private prisons, the services provided are done so by private companies. A public prison is non-profit with the

goal of incarcerating a prisoner to either remove them from society or to ideally, rehabilitate them for reentry back into society (Bryant, 2020).

In 2016, approximately 8%, which equates to 128,000 of 1.5 million U.S. prisoners were incarcerated in private prisons. Although only 13.5% of the 1,663 prisons in the U.S. are private, more than 55% of the 206 immigration detention centers are (Eason, 2019). Most private prisons are operated by only five companies with CoreCivic (formerly Corrections Corporation of America) controlling 53% of the market (Eason, 2019). According to Nathan English of The Northwest Missourian, the main objective of privatized prisons is not to rehabilitate prisoners but rather to make a profit off the inmates any way possible (English, 2019).

At the state level, 27 states used private prisons with contracts ranging from 12 in South Carolina to 13,692 in Texas. Six states have doubled the number of individuals in private prisons since 2000. The largest increase was seen in Arizona where the holding rate increased 479% from 2000 to 2016. Other states that saw major increases were Indiana at 296%, Ohio at 226%, Florida at 211%, Georgia at 113% and Tennessee at 112%. Although both federal and state governments have privatized since 2000, it is the federal prison system that grew more significantly. The number of federal prisoners held in private prisons rose 120 percent in 2016, while the number of state prisoners grew by 31 percent over the same time (Gotsch & Basti, 2018).

### **Proposed Benefits to Prison Privatization**

Initially, the idea of a private prison seemed to have its merits. For example, if it costs the government \$200 per day per inmate, and a private company claims they can provide the same services at \$150 per day per inmate, it appears to make sense, at least economically. Although

the goal of the prison system in general is rehabilitation, the recidivism rate for inmates, over a nine-year period, is a staggering 83% which makes one doubt if that goal is even a legitimate one. However, with a private prison who is expected to earn money and profits, one will have to question if it really makes economic sense to rehabilitate the prisoners and empty the prisons or is having full capacity what the institutions aim for (Bryant, 2020).

Since the financial goal of a for-profit entity is to make money, certain measures must be taken to cut corners and save money, thereby ensuring a profit. For example, if a prison reduces its cleaning services \$10 per day, this amount will eventually become significant with a steady stream of new inmates pouring into the facility. However, reducing cleaning services can seriously impact the living conditions for an inmate, making it possibly one that is not only unhealthy, but even inhumane. (Bryant, 2020). With less services, there is also less effort made on true rehabilitation while the inmate is incarcerated, a major factor which could help the inmates avoid returning to prison (Barasch, 2017).

When the Department of Justice, during the Obama administration, announced the phase out of private prisons in 2016, several reasons were cited to validate the change. Firstly, private prisons “compared poorly” to those facilities that were being run by the federal Bureau of Prisons (Marguiles, 2016). In cutting costs to meet their goal of a modest savings, fundamental operations and services were impacted creating significant security and safety risks to both the inmates and staff. Officers in private prisons not only receive a lower salary, but they also receive much less training than their counterparts. Additionally, the report cited significantly more violence for both inmates and the guards in private prisons compared to government run facilities (Williams, 2018). Not surprisingly, because of these factors, the turnover rate for the corrections officers in the private prisons is also much greater (Marguiles, 2016).

In an effort to spend less and profit more, private prisons pay their correctional officers much less than government run facilities. A consequence of this is that it then becomes difficult to attract and retain qualified staff. For example, the East Mississippi Correctional Facility pays their security staff even less than the \$12 paid by their counterparts. The officers receive only three weeks of training, which amounts to half the time that prison guards in state-run facilities are required to complete. The lack of sufficient and qualified corrections officers creates many other problems. During a federal civil rights trial, an expert witness described how without an adequate number of guards to maintain order around the facility, inmates took it upon themselves to protect themselves against other inmates with handmade knives and other weapons. Similar situations have occurred with not having a sufficient number of doctors and nurses to treat inmates with mental disorders. Without proper treatment and supervision, violence most likely ensues (Williams, 2018).

A private facility in East Mississippi is one where the state assigns inmates that are mentally ill to be incarcerated. Although four out of five inmates receive psychiatric medication regularly, the facility has been without a psychiatrist for months. When examining the qualifications of the prison's mental health director, it was discovered that the individual was not a medical doctor, but rather a marriage and family therapist. It also came as a surprise to learn that the prison's chief medical officer Gloria Perry, claimed that she had never actually been to the East Mississippi prison (Williams, 2018).

During a trial brought about by inmates of the East Mississippi Correctional Facility and run by a private company Management & Training, the warden Frank Shaw could not attest that his prison could perform the main functions expected at an institution (Williams, 2018). Additional testimony revealed that dangerous situations were occurring including a mentally ill

inmate on suicide watch who hanged himself, guards allowing gang members to beat other prisoners, and inmates whose pleas for medical attention were ignored and who eventually set fires to their cells to get attention. (Williams, 2018).

Although Mr. Shaw is the warden of East Mississippi Correctional Facility, he is actually employed by Management & Training, a private company that runs the East Mississippi facility. Even though four prisoners died that year under suspicious circumstances, Shaw was not penalized but rather he received incentives for staying within budget (Williams, 2018). In inquiring about Shaw's previous work experience, it was revealed that he had been warden at an Arizona facility, also operated by Management & Training and where a riot occurred in 2015. A critical report issued after the incident revealed that Management & Training had a "culture of disorganization, disengagement and disregard" of "policies and fundamental inmate management and security principles." (Williams, 2018).

According to a study conducted by Washington State University, the findings show that when states go from government run prisons to privately owned, the number of criminals incarcerated increases along with the length of the sentences received. Once private prisons were established, non-violent crimes such as property damage, fraud or non-violent drug crimes received lengthier sentences since the judges have more latitude in sentencing. With sentences for violent crimes, where judges do not have as much leeway, sentence lengths were not affected. (Weybright, 2020). For private prisons to earn a profit, they basically depend on laws that encourage a continuous stream of inmates into their institutions. Simply said, more people equal more money (Bryant, 2020). In Kentucky, the opioid crisis has moved lawmakers in the state to draft severe drug penalties, which had a direct effect on increasing its prison population to a record high of more than 24,000 inmates (Eisen, 2018).

The authors of the Washington State University study believe that there are two reasons for this effect on private prison sentences. Corruption is the main reason whereby judges may be influenced to impose much harsher sentences and legislators to write laws with tougher penalties. Another possible reason cited is increased capacity. Usually if a judge is to sentence an individual who has committed a lower-level crime and the capacity at a prison is high, the judge is less likely to send the person to prison. However, since occupancy at private prisons are not an issue, this leads to more people being sent to prison (Weybright, 2020).

It is understood that unfortunately, along with privatization and the goal of making a profit, corruption becomes more likely. Since private prisons lack sufficient oversight and public accountability, they are much more susceptible to corruption than state run institutions. This also leads to cases of poor living conditions for inmates, and human rights abuses. Another concern of private institutions is that they are more likely to prevent early release of inmates not because of safety issues, but rather to keep their occupancy rate high and full (Enns & Ramirez, 2018). It has been reported that on several occasions, some private prisons illegally engaged in activities such as bribing judges in return for approving the construction of a new prison (Enns & Ramirez, 2018).

One blatant and egregious example of corruption in sentencing involved a former Pennsylvania judge who was involved in what is notoriously known as the “kids for cash” scandal. In 2007, a call from a concerned parent was the impetus to an investigation by the Juvenile Law Center into questionable practices in Pennsylvania’s Luzerne County juvenile court. The result of the investigation found that hundreds of children who regularly appeared before Judge Mark Ciavarella without counsel were promptly found guilty of minor offenses such as underage drinking or fighting in school. These offenses could equate to doing hard time



in a juvenile detention center. However, the real scandal was that the judges were receiving kickbacks from the private detention facilities. Not only were the detention centers full, but the judges received cash as their reward. (NPR Staff, 2018).

In 2016 a privately run facility in Texas came under fire when it was discovered that thousands of non-citizens were being exposed to dangerous and abusive conditions. The investigation, which began in 2009, cited severe overcrowding, filthy conditions with insect-infested facilities, overflowing toilets, insufficient medical care, and an overuse of solitary confinement even for months at a time, especially for those who voiced their complaints about the conditions. Many of these people are part of what is known as the “shadow” system whereby almost of these people have been convicted of only non-violent crimes such as illegal entry into the United States or drug charges (Edelman, 2014). It was also revealed that inmates with serious health conditions were denied medical attention. Since private prisons must cover the cost of an inmate’s medical treatment, while keeping costs down, there exists an incentive for the prison to do as little as possible and because they do not have to follow all prison bureau regulations, there is significant room for disparity of treatment (Edelman, 2014).

The for-profit prison industry has always been able to find silver linings to social ills since they often benefit from these problems. In 2008, an executive in the private prison industry wrote a letter to the shareholders saying that he believed that due to the high unemployment at the time, that prisoners that were soon to be released would find it challenging to find a job, this would increase the chances of the individual returning to prison. When the recidivism rate is high, the more beds are filled which equals more profits to the prison (Smith, 2016). However, not all private prisons are concerned with recidivism rates as they have contracts guaranteeing them a set number of inmates. In 2013, a privatization watchdog In the Public Interest found that

two-thirds of private prison contracts include a guaranteed number of inmates in addition to a provision that any empty beds still be paid for with taxpayer dollars (Smith, 2016).

This leads to another question of whether private prisons are more cost effective than government run institutions, especially since this is the claim made by supporters of privatized prisons. However, according to the *American Economic Journal: Economic Policy*, this is not true since whatever savings the prison claims to have made, is overshadowed by the fact that incarcerated individuals in private prisons tend to serve longer sentences which ultimately costs more money. Also, the claim that private prisons made that by following through with a tougher incarceration system, that recidivism rates would be reduced also proved to be false. Even though inmates in private facilities spent on average, 3 months longer in prison, their recidivism rates were close to those of public prisons (Cipriano, 2020).

Those in favor of private prisons believe that privatization leads to competition which inevitably lead to cost savings. However, this theory ignores the intangible costs due to incomplete contracting. Also, since the industry is dominated by only a few large providers, it is not likely that costs are any less (Kish & Lipton, 2013). One of the biggest areas within the private prison industry where costs are cut, is staffing. However, without technical innovation to counteract the reduction in staffing, an increase in violence is more likely (Kish & Lipton, 2013).

Even though there is significant cost cutting, there evidence claiming that private prisons are more cost effective is inadequate. Another means in which a private prison may try to save money is by not accepting prisoners that have severe physical illnesses or a history of violent behavior. By doing this, the private prison does not have to spend the money on medical care or security for these inmates, keeping their costs down as opposed to the public prison which does not have the option to refuse an inmate (Joy, 2018).

Over the last 40 years, the U.S. has seen its prison population experience unprecedented growth. In conjunction with this growth is the mass incarceration that has plagued low-income communities of color. Throughout the past decades, both public institutions and lawmakers have put forth policies that have not only led to mass incarceration but to the consequences that arose from these actions. The private prison industry has taken advantage of this and continue to try their best to maintain the status quo (Gotsch & Basti, 2018). In addition, considering the percentage of incarcerated individuals who have serious mental illness but are no longer in mental hospitals for various reasons including budget cuts to mental hospitals and the introduction of psychotropic drugs, many of these people have now entered the criminal justice system.

### **Literature Review**

Although the controversy surrounding private prisons in the U.S. is a complex one, when analyzing the scholarly research conducted, several key issues consistently arise. As is the case with many social problems, most issues are not separate ones but rather the result of other factors, policies, and laws. The current research conducted, along with statistics, expose a substantial association between private prisons and other matters such as the rise of private immigration facilities, racialized mass incarceration and the impact that mental illness in the U.S. has had on incarceration rates. Most importantly, the studies reveal that an incentive of making a profit, as is the case with private prisons, can have negative social, ethical, and economic impacts.

### **The Impact of Mental Illness and Substance Abuse on Incarceration Rates**

The deinstitutionalization of mental health has had a significant impact on mass incarceration. Institutions that formerly treated the poorest of Americans with the most severe types of mental disorders are constantly closing. An estimated 10-20% of jail inmates and 25% of prison inmates have serious mental disorders including bipolar disorder and schizophrenia, and approximately 400,000 inmates have a mental health disorder (Allison, Bastiampillai & Fuller, 2017). Many of these inmates have severe symptoms such as paranoia and agitation which can be made much worse when incarcerated in prison.

The number of beds available in psychiatric wards are far below what is needed to treat serious mental disorders. On average, there are 12 beds available per 100,000 individuals in comparison to what is needed which is 50 beds per 100,000. In many ways, prisons have now become the default alternative location for many of these individuals. This is mainly because it costs less to incarcerate someone than provide certain accommodations, community programs and rehabilitation beds (Allison, Bastiampillai & Fuller, 2017).

A part of the 1965 Medicaid Act, the Institutions for Mental Diseases (IMD) Exclusion was meant to be a solution for the harsh and dysfunctional mental healthcare system that had existed in hospitals. In the years since Medicaid was created, what has occurred instead was that the IMD Exclusion prevented thousands of individuals that desperately needed treatment from receiving it. This then lead many of these people to head to the streets, where they often pose a danger to others or themselves, eventually leading them to have interactions with law enforcement and ultimately, the criminal justice system (Onah, 2018). The mental health crisis in the United States is not only a serious one, but one that goes underreported. This dilemma is only made worse by lawmakers and policies whose focus is not on patients' needs, but rather on financial concerns (Onah, 2018).

IMD Exclusion prohibits federal contribution to mental health treatment for people aged 21-65 in facilities known as “institutions of mental disease”. These institutions would include a hospital, nursing facility or any other facility that has more than 16 beds. The intention of this act is to create new, smaller, state-created approaches to mental healthcare. However, low-income, and mentally ill persons are removed from state hospitals and subsequently placed in private facilities that are notoriously understaffed with people with minimal training who are not capable of effectively dealing with these patients (Onah, 2018).

This is where the mental health crisis and mass incarceration intersect. In 2012, the U.S. incarcerated 356,268 people who had severe mental illness in both jails and prisons. At the same time, the number of psychiatric beds was reduced from 558,268 in 1955, to a significantly less number of 35,000. Additionally, reports show that 47 states were incarcerating more people who have mental disorders in prisons than treating them in hospitals. According to the Treatment Advocacy Center (TAC), based on an analysis of data provided by the Substance Abuse & Mental Health Services Administration, people with mental illness are three times more likely to be in the criminal justice system than hospitals. Nevada and Arizona have even higher ratios with the mentally ill being 10 more likely to be incarcerated (Insel, 2010).

Although some of the inmates have committed serious crimes, most have committed low-level crimes such as trespassing, disorderly conduct and public urination (Onah, 2018). All too often these inmates face challenges when trying to access medicine and treatment while also enduring harsh treatment such as solitary confinement or the allowance by corrections officers for the inmates to sexually assault each other and harass them. Ultimately, these conditions worsen the mental health of many of these inmates which sends many of them into a depression and even suicide (Onah, 2018).

When studying mental illness and incarceration rates, one must also include substance abuse. According to a special report conducted by the U.S. Department of Justice in June 2017, more than half (58%) of state prisoners and two-thirds (63%) of sentenced jail inmates meet the criteria for drug dependence or abuse (Bronson, Stroop, Zimmer and Berzofsky, 2017). When comparing the total general population aged 18 and older, approximately 5% met the criteria for drug dependence and abuse. These grim statistics reveal the level of concentration of substance abusers in the U.S. prison system.

Prisons are ideally a place with the potential to improve the well-being of generally, the most marginalized people of society. Access to health-related programs offers a host of benefits considering that most inmates suffer from mental issues and substance abuse disorders (Fazel & Baillargeon, 2011; Wilper et al., 2009). Bacak and Ridgeway (2018) state that current studies show that prison health programs help control chronic health conditions and help prepare the inmate for re-entry into their communities. These programs can have an enormous impact when they uncover the underlying causes of criminality such as mental illness and substance abuse (Bacak & Ridgeway, 2018).

However, what makes analyzing the resources available to protect the health of inmates in private prisons is that there is not adequate information in comparison to their public counterparts. In a first national-level study that examined access to health-related programs in both public and private prisons in the United States, the researchers applied propensity score weighting and a strong estimation to compare private prisons to comparable public prisons. Data were self-reported by the administrators of the facilities as part of the 2005 Census of State and Federal Adult Correctional Facilities. The goal of the study was to estimate the average effect of being private on the private prisons. The results of the study found that private prisons offered

fewer substance dependency, psychological/psychiatric, and HIV/AIDS-related programs (Bacak & Ridgeway, 2018).

The researchers admit that the need to study privatization more extensively exists, but it can also be challenging because of the lack of information available. What adds to the challenge is that the private corporations that run the prisons in the United States also have no legal requirement or incentive to either collect or make public any data that could negatively impact them. Results of the study do reveal that there is little evidence to support the claim to cost effectiveness and that these institutions are less likely to offer the health-related programs they claim to (Bacak & Ridgeway, 2018).

### **Mass Incarceration and Race**

Mass incarceration refers to extreme levels of incarceration that are disproportionately concentrated among a few groups that it achieves some level of normalcy which is consistent with the Critical Race Theory (CRT) concept of ordinariness. One of the major contributors of mass incarceration has been the War on Drugs, as well as other criminal justice policies such as three-strike and mandatory sentencing laws, in addition to the deinstitutionalization of people with mental illness. However, mass incarceration becomes an issue of race when it involves racial profiling, disproportionate rates of police use of force, discrepancies in the use of police force, and the long-term accumulation of arrests (Smith, 2018). Smith (2018) uses river terminology to explain the different aspects of the racialized War on Drugs. “The source of the river is the school-to-prison pipeline (the antecedent). The phenomena of interest are racialized mass incarceration and the for-profit prison system/prison industrial complex” (Smith, 2018).

It is a fact that the United States incarcerates more people than any other country in the world with the current number at 2,217,000. Although this fact alone is astounding, what must be

noted is the disproportionate number of those incarcerated by race. Approximately 3000 of 1000,000 Black male residents are imprisoned, compared to 488 whites. Additionally, when examining incarceration rates among all age ranges, the incarceration rates for Black males were at least six times those of white males. For males 18-19 years old, Blacks were nine times more likely to be incarcerated (Blankenship, Gonzalez, Keene, Groves and Rosenberg, 2018). One of the reasons for these statistics can be attributed to the hyper policing that exists in certain communities, usually minority neighborhoods. Law enforcement will not only “notice” more crime in these communities but will also define the area and its dwellers as prone to criminal activity (Blankenship et al., 2018). Blankenship et al. (2018) states that incarceration history, community supervision, hyper surveillance, and hyper policing combined, contribute to mass incarceration, identifying measures to provide a snapshot into how race differences are experienced differently in regards to the criminal justice system. **(Figure 1)**

Moreno and Price (2016) also studied the social, political, and economic effects that the War on Drugs had on Black and Brown individuals and communities throughout the United States. The results of their study details how the War on Drugs was a state initiative that represented private interests, particularly the private prison industrial complex and which brought immense profits for these corporations through the mass incarceration explosion. This boom was the result of the creation of severe legislation which was written, sponsored, and lobbied for, by the corporations themselves.

Mass incarceration, which is a direct result of the private prison industry’s powerful lobby had a detrimental impact on Black and Brown men by charging offenders with fees and a criminal record. The fees collected were then used to help grow and expand private prisons. A cycle is created whereby the individual now has a prison record which can negatively impact the



chances of gaining employment after release from prison which “research consistently shows that finding quality steady employment is one of the strongest predictors of desistance from crime” (Moreno & Price, 2016).

### **Immigration and Private Detention Centers**

The criminalization of immigrants, especially of those fleeing Latin America attempting to enter the United States has been well documented. However, what has not been as thoroughly reported and analyzed is the political economy of criminalization. It is clear however, that certain industries are profiting from the further criminalization of immigration. This was especially true after the election of Donald Trump in 2016. Not only were the right-wing activists pleased, but the private prison companies understood they would soon be profiting in a big way. Investors knew that with the increased detainment of immigrants, private prisons would surely benefit financially.

The prison industrial complex, which was traditionally public domain, has now become predominately privatized as the result of relentless lobbying, policymaking, and managing private contracts. Moreno and Price (2017) claim that their research has revealed that driven more by profit motives, private companies aggressively push for a more secured state which has negative implications for the groups that they are targeting, such as Latino immigrants. An initial exploratory study revealed how the prison industrial complex has looked to immigration detention centers as new untapped markets where they could earn more profits. The study also shows that private prisons have spent approximately 90% of their lobbying dollars in those states that have pushed for harsher and stricter immigration laws, such as Arizona’s infamous Senate Bill (S.B.) 1070.

Currently, approximately three-quarters of US immigration detention centers are for-profit. The focus of treatment of the detainees within private detention centers has received much attention especially after the deaths of two Guatemalan children who died in custody in December of 2018. Both human rights activists and legal advocates, as well as the Immigration and Customs Enforcement agency (ICE) documented many cases of systematic violations of a detainees' right to humane medical care. In 2016, an Inspector General's report revealed that private facilities consistently failed to meet federal standards, which resulted in extremely unsafe conditions within the facility. Since one of the main objectives of a private prison is to not only spend as little money as possible, but to also make a profit, cutting costs to medical care is seen as a necessity. Coupled with a lack of adequate oversight, situations such as this are all too common. An independent analysis of immigrant detainee deaths revealed that half of the deaths which occurred within the facilities were the cause of sub-standard medical care. CoreCivic for example, and its subcontracted medical groups, intentionally underspent money by not making timely hospital transfers and understaffing as well as punishing detainees who did request care (Saadi & Tesema, 2019).

A particular study attempted to answer the question what is the social and political impact of securitization in the U.S. on racial, ethnic minorities and immigrants? Moreno and Price (2016) study the issue of prison privatization, its role in growing mass incarceration due to profit motive, and its social and political effects on minorities in the U.S. due to the belief that these areas of research overlap in several areas. A review of the social, political, and economic effects of mass incarceration on racial and ethnic minorities in the U.S. were the direct result of private interests influencing key legislation, which is the status of immigration and security. A series of quantitative analyses using hierarchical regression models to test the data and compare with

dependent variables measures social and political elements across different social groups. The findings revealed that Latinos and immigrants in the U.S., represent the groups most vulnerable to securitization, and are worse off in comparison to whites and African Americans (Moreno & Price, 2016).

The initial analysis of Moreno and Price (2016) revealed evidence that the private prison industrial complex has adapted and revised their same business strategy from the War on Drugs to the current War on Terror (which in this case is immigration. A visual representation shows the cycle beginning with CCA and returning to CCA (**Figures 2 & 3**).

Due to the overwhelming similarities in both actions and the players, it is predicted that the outcome of immigration and privatization of prisons will be similar to how the prison industrial complex expanded mass incarceration which has had damaging effects to African Americans in the U.S. (Moreno & Price, 2016). Because of mass incarceration in the United States, there is a disproportionate and unequal marginalizing of African Americans. “Like Jim Crow, mass incarceration marginalizes them physically (in prisons, jails, and ghettos), and then authorizes discrimination against them in voting, employment, housing, education, public benefits, and jury service” (Alexander 2010, p. 11).

### **Profit Incentive and its Effect on Private Prisons**

As seen in **Figure 4**, the number of prisoners incarcerated in private prison facilities was 115,954 with a breakdown of 27,409 being in federal prisons and 88,545 under state jurisdiction. Since 2000, the number of federal inmates in private prisons has increased by 77 percent (Bureau of Justice Statistics). It is estimated that private prisons earn a profit of approximately \$374 million a year driving them to cut costs more than their public counterparts. They can achieve

this through employing less people, providing less training, and paying their employees a lower salary as well.

According to Statistica.com, at the end of 2019, the number of people incarcerated in U.S prisons totaled 1.43 million with an additional 700,000 in county and city jails. The privatization of prisons has been heavily accepted as a major factor for these high numbers since there is a financial incentive to keep the prisons full while simultaneously cutting operating costs which results in serious safety issues for both inmates and staff as well as less than average performance regarding preparedness of inmates for life after release (Richter, 2021).

#### *The Federal Bureau of Prisons (BOP)*

The Federal Bureau of Prisons (BOP) is a division of the Department of Justice responsible for incarcerating all federal inmates sentenced to prison. To help solve the overcrowding issue, in 1997, the BOP began to contract with privately operated institutions initially on a small scale, then eventually much larger. As of December 2015, private prisons contained approximately 22,600 of federal inmates or 12 percent of the BOP's total inmate population (U.S. Dept. of Justice, Office of the Inspector General, 2016).

These contract prisons were operated by three private corporations: Corrections Corporation of America; GEO Group, Inc.; and Management and Training Company. The annual expenditure by BOP increased from \$562 million in 2011 to \$639 million in 2014. Due to reports of riots, property damage, physical injuries and the death of a Correctional Officer, a review was initiated by the Office of the Inspector General to examine how the BOP monitors these facilities (U.S. Dept. of Justice, Office of the Inspector General, 2016).

#### *Cutting Costs Create Unsafe Conditions*

The Office of the Inspector General (OIG) set forth a review to examine how the BOP monitors the prisons. Other assessments were made to whether contractor performance meets inmate safety and security requirements and analyzed how contract prisons and similar BOP facilities compared. The results of the review revealed that private prisons had more safety and security incidents than comparable BOP institutions and that the BOP also needs to improve on how it monitors private prisons in several areas. The data that was analyzed from 14 private prisons from 2011 through 2014 focused on eight different areas: (1) contraband, (2) reports of incidents, (3) lockdowns, (4) inmate discipline, (5) telephone monitoring, (6) selected grievances, (7) urinalysis drug testing, and (8) sexual misconduct. The results showed that except for less positive drug tests and sexual misconduct, the private prisons had more incidents per inmate in all the other categories. Private prisons also had a much higher rate of assaults by both inmates on other inmates and by inmates on staff, as much as twice as many incidents each month in comparison to BOP institutions (U.S. Dept. of Justice, Office of the Inspector General, 2016). **(Figures 5 & 6).**

Another discovery made in the inquiry was that several of the prisons improperly housed new inmates in what is known as Special Housing Units (SHU). These units are designated as ones used for disciplinary and administrative segregation, until regular beds are available in the general population area. The American Correctional Association has set standards for behaviors that would justify an inmate being placed in either administrative or disciplinary segregation for which these inmates did not fall under. In addition, since the private prison system lacks sufficient oversight, certain areas such as health services has a checklist that does not include observation to ensure that inmates are receiving exams, immunizations, and tuberculosis testing as is required by BOP standards (U.S. Dept. of Justice, Office of the Inspector General, 2016).

In addition, the claim by supporters of prison privatization that a 20-percent savings in operational costs will be achieved has not occurred. Any minimal savings has been achieved through reductions in staffing, training, fringe benefits and other labor related costs. These cuts have led to poor performance in many private prisons in Colorado, Louisiana, Oregon, South Carolina, and Texas (U.S. Department of Justice, 2016). One CCA operated facility in Youngstown, Ohio served as an example of poor performance with 17 inmates being stabbed, 2 murdered, and 6 escaping within the first 2 years of operation. Most of the deficiencies in operations were due to inexperienced staff, inadequate training, as well as a willingness on behalf of the prison to accept inmates that should have gone to another type of facility (U.S. Department of Justice, 2016).

#### *Prison Privatization and Abstract Space*

In a study focusing on policing and punishment for profit, claims are made to how policing and punishment are big business in the U.S., one which accounts for a \$300-billion-a-year industry where many players profit from. From January 2001 through May 2017, Standard & Poor's 500 index had doubled, with companies such as Microsoft, Exxon Mobil and Nike having a return of 300-800% during this period. However, the two biggest winners were CoreCivic and the GEO Group, each having an enormous return of 5000% to their investors. As stated in the article, CoreCivic and the GEO Group are "not small companies, and business has been very, very good over the last 16 years (Suprenant, 2017).

Mitchelson (2014), analyzes the Annual Reports for Corrections Corporation of America and GEO Group, the two largest private prison companies in the United States. Mitchelson (2014) expresses that considerable study has been conducted on privatization and imprisonment, but much less has been done on the idea of bed space which the study identifies as the digressive

area in which private prison industrialists and the state meet. Mitchelson (2014) applies Henri Lefebvre's theorization of "abstract space" to imprisonment whereby bed space emerges as a product that is fully commodified and bureaucratized.

For private prisons, to sustain a flow of funds into the institution, human occupancy is vital. Inmates are no longer profitable merely because of their labor, but for their ability to create per diem payments for the staff. Owners of empty prisons very often go unpaid and are firmly disciplined by the investors of the prison. Irwin (2005) states that private prisons operate similarly to other businesses such as motels or even lecture halls of a university where for them to reap a financial reward, all the seats must be full. Institutions do not earn profits "until such time as the beds are filled" with people. Additionally, no firm earns a profit until the abstraction of bed space is firmly imposed upon human life. In this view, all "private" prisons are expansions of the state's abilities to criminalize and possess a holding on violence (Mitchelson, 2014).

### *Updates*

In January of 2021, President Biden signed an executive order instructing the Department of Justice to not renew contracts with privately owned prisons. The reasons cited for this decision was the profit incentive associated with prison privatization which leads to lengthier prison sentences, corruption, lobbying, increase of capacity and higher rates of violence (Buchholz, 2021).

Additionally, states may seek to alter their private prison contracts without violating the Contracts Clause of the (1) of the United States Constitution. Because private prisons externalize the real cost of rehabilitation and incapacitation, the State's interest is defeated by corporate thrift, but the social and financial costs of private prisons have also become materially

greater than what a State might have expected when striking a deal with the corporation (Whiting, 2017).

### **Why Private Prisons in the U.S. Should be Abolished**

The evidence in support of why private prisons in the U.S. should be abolished is extensive. A major reason why private prisons should be abolished is due to the profit incentive that is intrinsically tied to privatization in general. When earning a profit is a primary goal of any institution or business, ways to cut costs naturally ensue. In some instances, reducing costs have minimal effects and can outweigh the downsides of cost reduction. However, based on the evidence contained in current research related to private prisons, this is not the case. Reducing costs has created conditions for both the inmates and the employees working within these institutions that have been dangerous and, in some cases, deadly.

Conversely, the desire to earn considerable profits has created a powerful incentive to incarcerate as many individuals as possible contributing to the mass incarceration problem in the U.S., with a specific focus on private immigration detention centers. The profit incentive associated with private prisons has also created temptations for some in powerful positions to engage in corrupt activities, leading to harsh sentencing for individuals accused of even minor offenses. What is lacking, is the evidence claimed by supporters of private prisons showing a substantial savings to taxpayers. However, documentation of colossal earnings on behalf of the major private prison corporations is abundant. To continue the cycle, substantial funding has been poured into the political campaigns of those who support private prisons by these very same corporations.

### **Legislative Behavior on Private Prisons**



It is well understood that by criminalizing immigration, that there are some that will certainly benefit financially from doing so, including some private companies, industries, and individuals. Some of the more drastic measures taken recently enabled a marketplace for private prisons. Collingwood, Morin and El-Khatib (2018) show that for the 113<sup>th</sup> and 114<sup>th</sup> Congresses, that private prisons had exerted influence that co-sponsored severe anti-immigration laws. From 1980 and 2015, when the U.S. saw a significant rise in incarceration rates, a direct correlation was observed with the rapid growth of partnerships between the government and private institutions, all of which benefit from mass incarceration. In districts where there are privately owned detention facilities, the legislators that represent these same districts are much more likely to recommend anti-immigration bills (Collingwood et al., 2018).

### **Economics and Prison Privatization**

The Justice Policy Institute (2011) states that although many policy makers are reviewing criminal and juvenile justice reforms that would safely minimize the prison population, the existence of private facilities counter those efforts due to the financial payoffs they receive, thereby making every effort to maintain the status quo and even increase incarceration rates. An entire correctional complex has been developed driven by the incentive of making a profit. In addition, regarding how this has affected policy, the results of research have been disturbing. Due to an overzealous manner of incarcerating people, the “crime control” policies may be exacerbating the conditions that initially led to engaging in criminal activity (Moreno & Price, 2016).

In many rural and economically depressed areas within the U.S., many of the residents become somewhat dependent on a prison economy. In the past, especially when many towns enjoyed a level of economic prosperity, the idea of building a prison would have been met with

strong opposition. However, because of economic hardship that many rural areas experienced due to the impact of the disappearance of manufacturing and agricultural jobs, prison developers saw an opportunity and seized it. Not only is there very little opposition now, but the residents welcome the building of the prisons as they believe it will bring job opportunities and tax revenue for public services. It comes as no surprise that the elected officials in those areas enthusiastically embrace the opening of a prison within their district knowing it will appease their constituents. In addition, since the inmates add to a town's population number, even if it is somewhat artificially inflated, the increased population numbers enable the town to be eligible for increased government funding (Collingwood et al., 2018).

Although the residents tend to believe in the potential for economic prosperity due to the existence of the prison, the evidence contradicts that belief. In fact, not only has prison development not led to long-term economic growth, but it also tends to prevent it. In areas that are already struggling for resources, the reallocation of resources must occur to carry the expenses of the incoming prisons. Since private prisons do not hire unionized labor, and they pay their employees less than their government counterparts, the ability to move up economically is not viable. But a positive attitude towards prison development remains among the residents believing that the prisons provide a source of economic stability for them. It is thought that many of the residents are just accepting at face value the claims made by their elected officials and prison representatives as to the proposed benefits, even if they are not experiencing the perks firsthand. Also, many prison companies create what is known as a "buy-in" with the residents by having charity events and by doing community outreach. For example, the GEO Group's charity organization, the GEO Foundation, has donated a considerable amount of money to the community's schools, hospitals, and other organizations which in turn are received positively by

the residents. Although one can certainly appreciate the “generosity” displayed by the GEO Group, what makes these donations quite controversial is that their incentive for doing so seems to be less about philanthropy and more about buying the residents’ acceptance regarding policies they might otherwise disagree with. (Collingwood et al., 2018).

Suprenant (2017) states that for citizens who are aware of private prisons and the controversies surrounding them, the reaction against the use of them is a formidable one. In fact, due to all the negative attention from the public towards a particular facility, an investigation was initiated by the US Department of Justice (DOJ) Office of the Inspector General (OIG) to compare private prisons to state run facilities. As mentioned earlier, the findings from the investigation concluded that private prisons did not provide any significant cost savings compared to public facilities. In addition, when comparing the different areas used to measure performance in a prison such as contraband, lockdowns and incidents involving inmates, the private prisons performed poorly in comparison to the government run facilities. Although the DOJ had announced that month that it would begin of eliminating the use of private prisons with the goal of eventually ending their use entirely, officially no contracts had been terminated. Then in 2017, with a new administration in power, that directive was overturned. Although no formal explanation was given at the time, as is often the case, one must follow the money to find out why this change occurred (Suprenant, 2017).

In “following the money”, it was reported that considerable contributions were made to super PACs during the 2016 election, in support of Republican candidates, with \$225,000 to pro-Trump super PAC Rebuilding America Now. Although federal law implicitly prohibits any federal contractors from making political contributions, a loophole was created by GEO Group. This was made possible by having the contributions made instead to “GEO Corrections Holdings

Inc.” which although it is a separate subsidiary of GEO Group, it is still owned by it. A subsequent complaint was filed with the Federal Election Commission (FEC) stating that the GEO Group knowingly violated federal law. However, in response, the GEO Group hired three former aides of Jeff Sessions, who was the current Attorney General and head of the DOJ at the time, to serve as lobbyists for the company, basically cementing the fact that there would be no repercussions (Suprenant, 2017).

### **Other Areas within the Prison System that Benefit**

There are also other areas within the prison system that do not necessarily come to mind, but nonetheless, benefit as well from a facility that has maximum occupancy. Prison health care is one of them. Currently, a 12.3-billion-dollar industry, this area of the prison system is included in an expanding list of services that are being outsourced to for-profit companies. One of the largest of these companies is Corizon. Corizon has contracts with approximately 300 facilities in 22 different states. However, what enables Corizon to acquire additional contracts while maintaining its current ones, is not its ability to provide quality healthcare at a better price, but rather its lobbying skills towards decisive lawmakers at both the state and local levels. When examining punishment in the U.S., it is evident that private entities will shell out generous funds to lobby government agents or agencies if the end-result will benefit their profit margins, even at the expense of good public policy (Suprenant, 2017).

Most people would agree that the safety of our communities is of utmost importance. Criminals, especially those who have committed violent crimes should be prosecuted to the full extent of the law and removed from the streets to keep communities safe. However, with an economic incentive infiltrating the criminal justice system, other problems follow especially for the most marginalized in society. Even more damaging, is the mistrust in the criminal justice

system created, not only for those that are directly impacted but by others who are aware of this issue.

Although private prison companies often claim that they are not in the “business” of lobbying for legislative changes in the criminal justice system, existing evidence reveals the opposite. As cited in a report by the Justice Policy Institute in 2011, private prisons use a three-part strategy to increase their earnings. They achieve this goal by giving generous contributions to federal and state politicians. Most of the contributions which amounted to more than \$6 million were donated to state politicians in California and Florida since these states have the highest prison population in the country. In addition, CCA and The GEO Group consistently lobby different state legislatures and the US Congress.

Another method that private prisons use to impact prison population numbers is by establishing relationships with different organizations such as the American Legislative Exchange Council (ALEC). It should come as no surprise that a key component of ALEC’s corporate mission is to ‘advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a non-partisan public-private partnership of America’s state legislators, members of the private sector, the federal government, and the general public’ (American Legislative Exchange Council, 2012).

The controversy regarding private corporations making large donations to political campaigns is nothing new and continues to exist. However, it seems that when dealing with the criminal justice system, with an emphasis on the word justice, where the issue of money pouring in from private entities that could possibly influence an election outcome and ultimately legislation, should be viewed as an obvious conflict of interest and should not be controversial at all.

### **Political Representation for African Americans and Latinos**

A result of mass incarceration which disproportionately affects African Americans and Latinos, is the marginalizing of both groups which negatively impacts them in other areas including education, housing, employment, and voting. The impact runs deep and wide due to their interactions with the criminal justice system and subsequent distrust of the government. These sentiments then lead to being less engaged in the political process which impacts their role in helping shape American democratic practices. This pervasive distrust of the government and the criminal justice system extends beyond the individual inmate, often permeating the consciousness of their families and other members of their social circle. Cynicism regarding the system is further exacerbated with the knowledge that there is money to be made by certain corporations and groups of people as a result of certain systems and practices, and as discussed here, private prisons.

Gerber, Huber, Meredith, Biggers and Hendry (2014) state that once formerly incarcerated individuals do become eligible to vote, the rates of participation are low. Within the U.S., approximately 5.85 million people are denied to right to vote due to laws which prohibit them from doing so because of felony convictions. In conjunction with the racial disparities evident in the criminal justice system, these factors translate into 1 out of every 13 African Americans in the U.S. being unable to vote (Moreno & Price, 2016). This undoubtedly leads to decreased political representation and power within these same communities.

A particular disturbing effect of felony disenfranchisement laws that primarily affect the representation of African Americans and Latinos is the prison-based gerrymandering. As cited earlier, when conducting a census, inmates are included in the location of the prisons where they are incarcerated rather than where they live. The inmate population numbers are then included in

the population totals which are subsequently used for congressional reapportionment and for redistricting state legislatures, county governments and state councils. An example of this type of action was challenged by a federal appeals court in 2006 whereby tens of thousands of inmates from New York City, who were African American and Latino, were included in a census count for upstate New York rather than New York City, possibly and illegally diminishing the voting rights of individuals in downstate New York under section 2 of the Voting Rights Act (Moreno & Price, 2016). Although approximately 66% of the prisoners were from downstate New York, 91 % were imprisoned upstate. With the 8-to-5 appeals court decision, general counsel of the Community Service Society, Juan Cartegna, said this decision would open a “small window” in support of change. Additional support was cited by Peter Wagner, executive director of the Prison Policy Initiative, a Massachusetts-based research and advocacy group, when he states that wherever the window leads, the court’s decision is significant (Roberts, 2006)

Scenarios such as this would certainly create a political incentive for having a prison facility in a particular area. Based on the business model that private prisons employ, it is to the benefit of these private corporations that racial and ethnic minorities, and immigrants remain disconnected from the political process thereby maintaining weaker political power and influence.

### **Incarcerating the Most Vulnerable of Society**

Insel (2010) states that each year in the U.S., there are double the number of suicides than the number of homicides, with the average life expectancy of an individual with mental illness at 56 years of age. In addition, mental disorders and substance abuse are the leading cause of disability in both the U.S. and Canada. According to the Treatment Advocacy Center (TAC),

another statistic that may be added to the list is the number of individuals with mental disorders who are incarcerated.

Allison, Bastiampillai and Fuller (2017) estimate that 400,000 inmates within the U.S. prison system have some type of mental disorder. These sobering numbers may be attributed to the deinstitutionalization of mental health which sent many individuals who should have received treatment in a mental health facility to instead wind up in the criminal justice system and ultimately prisons. Another contributing factor is the mandatory sentencing requirements for people who have committed drug related crimes who commonly have substance abuse issues. Due to the lack of outpatient continuity programs, as well as the lack of alternatives in mental health, jails and prisons have become the de facto mental health facility for many of those incarcerated (Insel, 2010). Private healthcare providers claim that the inmates are receiving adequate care while simultaneously saving the taxpayers money.

However, cutting costs in this area has proven to have negatively impacted inmates that require greater medical care and services. According to physicians at the Cambridge Health Alliance and Harvard Medical School, the number of serious medical conditions among inmates is much higher than expected compared to the average American population. Although many of the inmates have chronic conditions including mental illness and addiction, the risk of an inmate's health has been negatively impacted by the reduced coverage provided by private healthcare companies within these institutions (Singh, 2017).

It is quite egregious to think that people with mental disorders, who should be receiving treatment, will fall into the net of incarceration where their mental health will most likely deteriorate due to being imprisoned. Although there is the potential in state run prisons for programs that may help an inmate receive the treatment they require, when cost cutting is a



priority in a private facility, this is reflected in the lack of programs available for substance abusers and those with other psychological issues.

In addition, it is difficult to make an accurate assessment of the availability of necessary programs since the private corporations are not legally bound to provide that information (Bacak & Ridgeway). This is yet another reason why the privatization of prisons presents a major problem. Since there is no legal requirement for these corporations to be as transparent as their public counterparts, there is also less incentive to provide better programs knowing the institution will not be held accountable. With a lack of transparency combined with a profit incentive and a cost reduction business model, it is not difficult to understand the negative implications this would have on facility and more specifically, on an inmate.

### **The Impact of Cost Reductions**

When reviewing the claims of significant cost savings when an institution becomes privatized, the evidence is lacking. In theory, private prisons should operate in a comparable manner to government run institutions, while simultaneously cutting “unnecessary costs”.

However, the theory sounds better than the reality. Budget cuts for private institutions have had serious implications for the inmates and the staff. The U.S. Department of Justice (2016) published a report detailing the inadequacies witnessed within some private prisons. Most budget cuts were related to staffing. One would expect that to work in a prison that incarcerates often violent criminals, that staff members would receive expert training and compensation comparable to the work that they are doing but that is not the case as cited by the report by the U.S. Department of Justice (2016). It should be without surprise that these inadequacies have then led to greater violence being perpetrated by inmates on fellow inmates as well as assaults on

the prison guards. There are simply some environments that cannot afford to have subpar training for their employees creating incompetence at best, and possible deadly situations at worse.

Since there is less oversight with a private prison, certain standards for behaviors set forth by the American Correctional Association, can easily be overlooked such as health services, physical exams and immunizations. Although there are certain industries where a customer may receive a standard of quality equivalent to what they have paid for, this should not be the case in a prison. A national standard should be in place with full transparency and accountability to ensure the safety, and decency for both the inmates and the employees.

One might be able to make a strong argument that prisons should be a tough place on criminals to be a deterrent for future criminal activity and not wanting to ever return. Perhaps there is some truth in that, but at what point does it become unethical for an institution to not be held to a decent standard of safety one comes to expect from the United States, not only for its inmates but for the staff employed in these institutions. The employees have also become victims of the profit incentive whereby they may be forced to accept the conditions such as they are, even if dangerous, to maintain employment.

The statement by Mitchelson (2014) that owners of empty prisons often go unpaid or are even punished for having less than maximum occupancy sounds more like a concern of a business owner or a manager of an events venue rather than a prison. Earning a profit is undoubtedly a common motivator for any business. But to make necessary changes in the current system that incarcerates so many Americans each year, it requires either the minimizing or abolition of the financial incentive which has infiltrated many aspects of the criminal justice system.

However, attempting to do this is quite challenging as there are both individuals and corporations that have their financial interests tied to maintaining the current system and attempting to dismantle it is difficult. Suprenant (2017) states that the most significant obstacle to collective outrage regarding these practices is the pervasive culture or mindset which views prisoners and second-class citizens, at best. It therefore makes it easy for many within society to disregard or accept the status quo since the well-being of the inmates or detainees is not high on their list of concerns.

The various factors that might lead to an individual to become incarcerated need to be considered. Especially the most vulnerable within society such as the mentally ill, or those with substance abuse issues that should really be in rehabilitation facilities rather than prisons and non-violent immigrant detainees. However, what the profit incentive does is view these individuals as numbers instead of people and these numbers equal money, with the higher the number, the greater the profit.

### **Why Proponents of Private Prisons are Wrong**

Sociologist Emile Durkheim's theory of punishment argues that because actions perpetrated by a criminal attacks a society's beliefs and morals concerning what is right and what is wrong, it is only the state on behalf of that society that can punish an offender (Burkhardt & Connor, 2015). Mukherjee (2021) states that a person's prison sentence is of great significance since it is the primary punishment that has been imposed upon them to repay their debt to society. However, depending upon where the offender is sent to serve their sentence has the potential to not only be unfair since a private prison sentence may be longer, but the cost savings also that proponents claim, ceases to exist since an inmate is spending more days incurring more expenses. By definition, a private entity's goal is to maximize profits, maintaining as close to

maximum capacity as possible is the driving force, often by sacrificing the quality and quantity of services for the inmates.

Private prisons were thought to be a viable solution for the overcrowding problem within prisons. When a court demands a reduction in overcrowding, states must comply with the mandates. This makes it challenging for those states that have less than generous budgets for prison construction, so they often turn to private corporations to build prisons both quickly and inexpensively. Private corporations can attain an accelerated rate of construction since they do not need to follow the typical governmental procurement route which usually slows down the process. In addition, private prisons have the advantage of not having to rely on voter approval, whether through a vote on the building construction or on an election for a particular politician who supports or opposes private prisons (Kish and Lipton, 2013).

Proponents of private prisons often claim that these institutions effectively provide an equivalent, if not greater, level of operational standards in comparison to government run institutions. Supporters further the claim by stating that private prisons administer these services more efficiently, thereby significantly saving U.S. taxpayers' money. Duwe and Clark (2013) state that at least 30 economically challenged states have gone in the direction of private prisons in hopes that in doing so, that the privately run facilities will come through on another promise claimed by supporters, improved rates of inmate rehabilitation leading to subsequent lowered rates of recidivism. In addition, they propose there exists an economic benefit to communities where these prisons are located since they may be a source of employment for many who live there.

Duwe and Clark (2013) claim that for many individuals, a general distrust of the government contributes to their strong feelings for private enterprise over government run ones.

This sentiment extends to the public whereby they may support private prisons believing that these institutions are run more effectively and produce lower rates of recidivism. However, few studies have compared the cost and recidivism rates and those that have, have received mixed results.

Current studies reveal that many of these claims have proven to be inaccurate. Austin and Coventry (2001) state that there is a lack of solid evidence to back the claims made by supporters. In contrast, there exists a host of reasons, supported by research, that counter the claims. These include a minimal if any, economic savings, a lack of any verifiable data on the impact of recidivism, possible longer sentences in order to maintain high occupancy rates, a greater number of assaults for both inmates and staff due to understaffing and undertrained officers, a foundation for corruption due to the profit incentive and the overall incentive to incarcerate, ensuring that the U.S. maintains its lead position as the country with the highest rates of incarceration in the world. By definition, a private entity's goal is to maximize profits, maintaining as close to maximum capacity as possible is the driving force, often by sacrificing the quality and quantity of services for the inmates.

Spivak and Sharp (2008) explain that to maximize occupancy some inmates may be transferred from their current facility to another one in a different state. With the change in location, a change in certain policies and services may ensue. This can affect whether the inmate receives court-mandated treatment that they were supposed to receive since the new institution may not have a comparable program or even provide one. Visitation by family members for many of these inmates quite often become far and few between or even cease since traveling to another state could present a hardship for the family. In addition, non-violent offenders may be

transferred to higher security facilities which house more violent offenders who they are now forced to interact with.

### **Proposed Economic Savings**

Due to the 1980's War on Drugs, private prisons reappeared as a supposed possible solution to deal with the subsequent overcrowding and costs associated with the higher incarceration rates. The claim made was that by privatizing, private companies would operate more efficiently than government run institutions, potentially saving taxpayers money. Logan and Rausch (1985) summarized that public-private partnerships benefit individuals since private companies tend to be more efficient than ones run by the government. A main goal of a private company is to keep the costs down, while maintaining a high level of services, all while staying competitive in a free marketplace.

Proponents of private prisons have claimed that these institutions have saved approximately 20% in operating costs as opposed to government run facilities. They claim that these institutions can cut costs by hiring nonunion workers giving them more control over the wages and benefits their employees receive. Furthermore, the belief is that since private companies do have an incentive to earn a profit, there is a strong emphasis put on operating with higher efficiency (Duwe & Clarke, 2013). Whereas private prisons may have the advantage of being able to construct a facility faster and less expensively, the cost savings is most evident on the labor side with reduced non-wage benefits, less staffing and less training leading to more incidents of violence among inmates and upon staff members.

In fact, approximately sixty-five to seventy percent of a typical prison budget is spent on labor. Not only is staffing the most expensive component of a prison's budget, but it is also the most essential one ensuring the safety, security, and effectiveness of an institution. Although

private prisons claim that these can be achieved by reducing staffing costs, without any negative impact, the claims made are heavily doubted due to the high turnover rate among staff which negatively impacts a facility's security (Tartaglia, 2014).

An example was cited by Lappin, Kane, Saylor and Camp (2005) when they evaluated the performance of private prisons between a federal facility operated by Wackenhut (a private provider of corrections) and several BOP that shared similarities in the way of design, security level and types on inmates. The study was conducted by surveying both staff and inmates as well as reviewing incident reports. Although the BOP had included in their contract with Wackenhut that they were to pay their employees more than what employees at other Wackenhut facilities were receiving, this particular facility still experienced higher turnover rates in comparison to the BOP prisons. The inmate survey also indicated that the prisoners perceived worse sanitation and food services at the private institution. Rates of misconduct was also higher at the Wackenhut facility in comparison, including a higher-than expected level of drug use which was confirmed by collecting data retrieved from random drug tests conducted (Spivak & Sharp, 2008).

A common claim made in support of private prisons is that the private sector will reduce costs, which then benefit state governments and eventually the tax-payer. However, the U.S. private prison industry is an oligopoly of three (which has been reduced to two) powerful players: Corrections Corporation of America (CCA), Geo Group, Inc. (GEO), and Cornell Companies, Inc. (CRN) which was actually acquired by GEO in 2010. With this type of business structure and little completion, any proposed cost advantage is minimal at best, with their vow of innovation never having materialized (Kish & Lipton, 2013).

In addition, the Bureau of Prisons (BOP) offers more favorable terms in private contracts than in state contracts. Kish and Lipton (2013) explain that once a facility population exceeds 50

percent of the contract capacity, the BOP pays the private operator a set monthly operating price for the remainder of the contract. The private operator subsequently earns the increment regardless of whether the actual future inmate populations is 51 per cent or 89 per cent of capacity. Private prisons companies are generally paid a per diem for each bed that is occupied with a few other conditions, which increases the likelihood for nefarious incentives to keep the occupancy full. Examples of this were seen with the discovery that two judges had received over \$2.6 million in bribes from a private prison company to lengthen sentences and send juveniles to facilities for minor infractions.

Furthermore, the contractor receives additional money when the inmate population exceeds 90 percent of what the contracted capacity is, aside from whatever the census is over that percentage. This then creates a conflict of interest whereby the contractor may attempt to maintain a low census to acquire the premium but without having the costs. These factors then lead to the institution earning a much higher profit margin, allowing for overcrowding, negatively impacting quality as a trade-off for profits (Kish & Lipton, 2013).

In addition, Mukherjee (2021) states that in her analysis, inmates serving time in private prisons serve about 4 to 7 percent larger portions of their sentences which generally equates to approximately 3 months longer for the average prisoner which tends to then negate any proposed cost savings. When looking at the even bigger picture with an increased prison sentence of even 90 days, Mukherjee (2021) states that the estimated marginal incarceration costs is about \$15,000 in lost wages and increased reliance on welfare which in turn impacts the tax payer.

#### *Data Limitations*



Due to data limitations as well as the misuse of data, very few studies have provided sufficient evidence to back the claim that the private institutions operate at a comparable level while simultaneously being cost efficient. Private prisons tend to accept minimum or medium-security inmates with less health and behavioral problems than the government run ones, misrepresenting the true costs due to this selection process. Where the cost cutting is evident is in the poor performance observed within the private institutions which includes higher rates of inmate-on-inmate assaults and inmate-on-staff assaults (Duwe & Clark, 2013).

Kish and Lipton (2013) explain that in order to legitimately determine whether or not private prisons actually produce a cost savings, there would need to be peer reviewed evidence backing the claim. However, this is not the case. In fact, comparability issues occur across all levels of security, accounting methods, defining services and cost analysis. Prisons costs are often estimated by utilizing a per diem contact price as a proxy for government spending on private prisons. The per diem price is then multiplied by the prison's capacity, and then subtracted from the corrections budget in order to arrive at an estimate of the public-prisoner cost of corrections. However, the steps taken in the process do not sufficiently line up with the components of the private and public institutions. The requirements in reporting can vary quite a bit from state to state creating formidable obstacles to analyzing accurate information. What makes this task an even greater one is that the BOP is not required to collect the same data from private prisons as it does from public institutions.

The major data sources for many prison studies within the United States are the *Corrections Yearbook* and the National Association of State Budget Office *State Expenditure Report*. However, these sources have been chastised for their inaccuracies and lack of transparency. What also makes these studies that boast claims of cost savings not only suspicious

but a conflict of interest, is that many of these same studies are funded by the private prison industry itself (Kish & Lipton, 2013).

Tartaglia (2014) states that the Bureau of Justice Statistics and the Arizona State Auditor found that the private prison savings claimed is “illusory”. Another study conducted by Temple University whose results claim that prison privatization creates significant savings, was partially funded by the private prison industry. CCA and GEO have cited this study conducted by Temple quite often in both their websites and publications. What was not included in their publications was unsurprisingly, the fact that these studies were funded by the private prison industry. The admission of the obvious conflict of interest arose only after an ethics complaint was issued against Temple University.

The lack of transparency on the part of private prisons in regard to financial reporting requirements in addition to the lack of peer reviewed evidence, other than those backed by private prisons, contribute to the failure of the private prison industry making their case, at least in part because of economic savings they propose.

### **Recidivism Rates**

Analyzing recidivism rates is one way in which to determine the relative performance of a prison and another major claim made by private prison supporters. The term recidivism can be generally defined as the reversion or relapse to criminal acts of an offender who has received disciplinary action in the penal system or rehabilitative treatment. This can qualify as re-arrest, reconviction, or even disappearing. Using varied measures of time between an inmates release and the event that causes the recidivism can muddle the interpretation of the data. For example, some jurisdictions use the date in which the new arrest occurred or the new offense as the date of

the recidivism, whereas others may use the date of the actual conviction instead (Spivak & Sharp, 2008).

Traits of an individual including prior criminal history, age, gender and race, used to predict criminal offending in general are similar to the ones used to predict rates of recidivism as well. In the case of gender, almost all studies conducted that compared recidivism among men and women found that significantly higher numbers were the males. Although there is some uncertainty regarding the correlation between a person's level of education and rates of recidivism, most research does show that having a high school diploma and even some college can be attributed to lower rates of recidivism. Other variables including both legal and behavior variables must also be considered. A person having already committed a crime increases the likelihood that the individual will reoffend. Some evidence shows that rates of recidivism may also be related to the length of one's sentence. In addition, certain type of crimes had higher likelihood of recidivating such as property offenders surprisingly in comparison to violent offenders. Another factor when evaluating an inmate's post-release performance, is looking at if the individual was paroled or released to probation as opposed to being discharged without post release supervision (Spivak & Sharp, 2008).

Although the proportion of total state correctional operating costs designated to incarcerate individuals in private facilities at the national level is comparatively lower (6%) that is not the case at the state level. The state of Oklahoma for instance, ranks fourth, at 30%, whereby they spend a significantly higher amount of their prison budget on incarcerating individuals in private facilities. Oklahoma also came in sixth place as the percentage of the total prison population incarcerated in private prisons.

Therefore, Spivak and Sharp (2008) used Oklahoma as a model to compare the effectiveness of private prisons in reducing recidivism as they consider it be an exemplary location to use for comparison. The study conducted replicated another study by Bales (2005) using treatment and control group categories.

They control for age; education; race; prior incarceration; offense type; probation; parole; sentence length; time served; length of time in a public medium-security prison; and proportion of time served. The study expanded upon the Bales study by incorporating measures of the time served in private facilities and proportion of time spent in public facilities as continuous independent variables to predict recidivism (Spivak & Sharp, 2008). To acquire a general extent of variation in the control variables between inmates serving in private and public prisons, these inmates had spent a significant proportion of their sentence in either type, for at least 75% of the time or for at least 12 months (Spivak & Sharp, 2008).

The results revealed that the inmates who spent more time in private prisons were most likely younger, slightly more likely to be racial minorities and drug offenders. The population was made up of a slightly less number of men as compared to public prisons. These inmates were also more likely to be serving split sentences (release to probation), had shorter average sentences and time served in comparison to their public counterparts. The inmates in private prisons were more likely to recidivate, albeit not by a significant amount. However, the differences were most evident in the gender category whereas men who spent more time in private prisons were more likely to recidivate (35.1% to 30.1%) as opposed to women. Although the sample used for the women was small, therefore the results were considered inconsequential. The results from the Oklahoma study are different than other studies conducted since they did reveal a greater risk of recidivism for inmates in six of a total of eight models tested. In the

continuous models, a moderately increased risk of recidivism as opposed to public facilities (Spivak & Sharp, 2008).

Grant and Duwe (2013) claim that although the correlation between lower recidivism rates and private prisons have not received sufficient scholarly attention, results from five studies that compared the recidivism rates of public and private prisons were analyzed. In one study, researchers matched 200 male prisoners from medium security private and public prisons based on the inmates' race, offense, age, and criminal record and followed them for a period of 12 months. Another study followed the former inmates for a longer period (4 years). Although the results of these two studies showed a lower rate of recidivism for the former prisoners of the private facilities, once several methodological improvements were implemented including a more accurate measurement of prison exposure, any suggestions that private prisons contributed to lower recidivism rates disappeared.

This was due partly because many of these prisoners are incarcerated in states that have both types of prisons and are very often housed in both during their sentences. The study conducted by Bales, Bedard, Quinn, Ensley, and Holley (2005) analyzed which institutions the offenders were incarcerated in. A sample of 80,000 Florida inmates were followed for up to 5 years after their release. The results of their study showed that private prisons had no effect on whether adult males, females or juveniles were convicted of any new crimes.

Farabee and Knight (2002) discovered that the results varied for both institutions based on the prisoners' gender but not the age. In this study, 9,000 inmates released from Florida prisons between 1997 and 2000 were followed for a period of up to 3 years. In this study, recidivism is defined as a new conviction and reincarceration. The results showed that male prisoners released from private prisons did not have different rates of recidivism.

Austin and Coventry (2001) state that studies comparing recidivism rates with private prisons to government run are lacking and inconsistent and therefore, cannot substantiate this claim. Mukherjee (2021) also claims that the estimates of private prisons and recidivism are not consistently statistically significant. Once again, the scientific data necessary to back the claim made in support of private prisons because they reduce rates of recidivism is insufficient and inconsistent and therefore cannot be included in a debate which supports it.

### **Economic Opportunities for Communities**

An additional claim made by supporters of prison privatization is that these institutions provide a source of income to some communities who are in need of improved economic opportunities and stability. However, as previously stated, although many residents believe in the potential for economic prosperity that a prison might bring, the reality is that this often does not materialize with the existence of private prison especially in smaller, rural areas (Collingwood, Morin & El-Khatib, 2018).

Proponents of private prisons claims that prisons in these areas would lead to long-term economic growth did not come to pass. In fact, the prisons prevented long-term growth since the community's funds and resources would have to be reallocated to support the incoming prison. In addition, private prisons do not hire unionized labor and pay their employees less than their government counterparts (Collingwood et al., 2018).

### **Analysis**

As quoted by political activist, author, and Professor Angela Y. Davis, "Prisons do not disappear social problems, they disappear human beings. Homelessness, unemployment, drug addiction, mental illness, and illiteracy are only a few of the problems that disappear from public

view when the human beings contending with them are relegated to cages”. “Prisons relieve us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly global capitalism”.

With over 2 million people incarcerated in prisons, the United States has the highest rates of incarceration in the world. As previously stated, a major impact of President Ronald Regan’s War on Drugs of the 1980’s was its effect on the criminal justice system, specifically the carceral system. Harsher and longer sentencing policies such as the three-strike and mandatory minimum sentences led to soaring levels of incarceration, specifically impacting African Americans and Latinos at disproportionately higher rates. The deinstitutionalization of mental illness led many individuals suffering from mental disorders to have greater contact with the criminal justice system, quite often leading them to serve prison sentences rather than receiving treatment in mental health facilities. In addition, the increase in detention of illegal immigrants, were all contributing factors that led to mass incarceration and the subsequent overcrowding of prisons (Kish & Lipton, 2013)

A solution to this problem was claimed to be found in the creation of private prisons with its first for-profit prison opening in the state of Tennessee in 1984, and an additional 66 more added over the next six years. Although the overall percentage of private prisons in the U.S. is much less compared to all prisons, between 1990 and 2005, their population numbers increased at a much higher rate of 1600 percent. As of 2015, the Bureau of Justice Statistics reported that for-profit prisons incarcerated approximately 18 percent of federal prisoners and seven percent of state prisoners (Joy, 2018). However, as the empirical evidence contained in this thesis suggests, the proposed remedy did not deliver on the promises made of economic savings to taxpayers and lowered rates of recidivism. The reduction in costs came at a price paid for mainly by the

inmates and the employees within the institutions, while the reaper of the economic rewards was awarded to the private prison corporations.

Proponents claimed they could build the necessary facilities faster than their government counterparts, while providing the same services but with greater efficiency thereby saving both the government and the taxpayer's money. Additional claims were made professing that those incarcerated in private prisons had lower rates of recidivism (Joy, 2018). However, the research cited throughout this thesis suggest that the claims made by supporters of improved efficiency, taxpayer savings and lowered rates of recidivism, is seriously lacking in factual data to back up these claims and is quite often inconsistent.

Studies such as the one published by Temple University, which claimed that private prisons offered significant savings, were revealed to have been funded by the major players of the private prison industry, which makes one certainly question the study's credibility and ability to be impartial (Tartaglia, 2014). The empirical evidence in this paper not only suggests that the claims made by supporters are not legitimate ones, but there is ample evidence that supports why private prisons in the U.S. should be abolished.

Generally, for a private business to earn a profit, ways to minimize costs must be included as part of the business model. This is most successful when a business can reduce its costs but still operate at a comparable level of service. Since approximately sixty-five to seventy percent of a prison's budget is spent on labor, it is challenging to cut costs without this component being impacted. It should therefore come as no surprise that with private prisons, the bulk of the economic savings earned is made by cutting costs related to labor in the way of staffing, training, fringe benefits and other similar expenses (U.S. Department of Justice, 2016).



This presents a major problem as one of the measures of overall success for a correctional facility lies in how safe it is for both its employees and the inmates. With private prison employees earning on average over \$5,000 less than their government counterparts, and 58 hours less in training, these factors contribute to a higher turnover rate for private prison employees. A direct impact of the higher turnover rate has been a subsequent 28 percent higher rate of inmate-on-inmate assaults, and more than double the number of inmate-on-staff assaults (Joy, 2018).

Although reductions in labor costs may be an effective way to increase profits for other types of private industries, due to the nature of a prison's environment and its potential for violence, reduction in labor costs is not only not conducive for a correctional facility, but also potentially dangerous as was witnessed at the East Mississippi Correctional Facility. With the officers receiving half the amount of training in comparison to their state-run counterparts, these officers were not prepared to handle situations that often occur in prisons such as incidents of violence. This sentiment trickled down to the inmates who resorted to creating makeshift weapons knowing that they would have to rely on themselves for protection from other inmates.

Since private prisons also pay their officers less than state-run facilities, attracting and retaining qualified staff becomes a challenge further contributing to this problem (Williams, 2018). Another cost related to prison guards involves lawsuits. Whereas public prison guards are given "qualified immunity", this is not given to officers within private prisons. Therefore, private prison guards are more susceptible to lawsuits, larger damage awards and different contractual obligations (Kish & Lipton, 2013).

The investigation by the Office of the Inspector General of the U.S. Department of Justice (2016) where data from 14 contract prisons were analyzed and compared to comparable government run facilities that looked at eight key categories such as contraband, reports of

incidents, lockdowns, inmate discipline, telephone monitoring, selected grievances, urinalysis drug testing and sexual misconduct, found that the private prisons had more incidents per capita compared to the government run, with the exception of drug testing and sexual misconduct.

Whereas some industries can operate at acceptable levels with reduced staffing such as a grocery store that has implemented self-check kiosks to cut labor costs, or a customer service line with automated service, the potential downside is more often one of inconvenience or slight frustration on the part of the consumer. However, the evidence contained in this thesis suggests that prisons are one sector that cannot afford to have reductions in staffing as there always exists the potential for dangerous situations for both the employees and the inmates that sometimes even turn deadly.

Furthermore, the claim that a 20-percent savings in operational costs will be achieved did not materialize. According to the New York Times (2011, May 18), in-depth research from the state of Arizona revealed that the cost for inmates in private prisons rarely cost less than the government run ones and, in some cases, cost more, at approximately \$1,600 more per year. The claims of cost savings were somewhat misleading as the research showed that the private prisons did not accept inmates that had severe illnesses or were known to be violent. These exceptions made by the private prisons allowed the institutions to spend less money on medical care and security. Since government run prisons are unable to refuse inmates based on the same criteria, the inmates would then be sent to state prisons whereby their sentences would be funded by taxpayers. A report released by the American Civil Liberties Union (ACLU) found similarities in other states including Hawaii, New Jersey, and Florida.

Although the U.S. operates as a capitalistic economy whereby private enterprises have the opportunity and legitimate incentive to earn a profit, one must consider whether aspects of the criminal justice system should be excluded. As long as there is money to be made by the incarceration of others, the incentive to imprison individuals will persist. A statement made by one of the co-founders of Corrections Corporation of America (C.C.A.), Tom Beasley (1988), accurately depicts their business philosophy when he said, “you just sell prisons like you were selling cars, or real estate or hamburgers.” In 2005 C.C. A’s annual report echoed this line of thinking with an acknowledgement that the growth of their facilities was dependent upon obtaining additional contracts to build and manage both correctional facilities and immigration detention centers.

It follows suit that a major concern of these corporations is how reforms in drugs laws and less stringent enforcement of non-violent crimes, as well as illegal immigration could negatively impact them in achieving their goals of building new facilities and filling them with the maximum number of inmates (Smith, 2016). This level of concern is evident in the generous financial contributions that these corporations are willing to spend to support certain candidates that are against drug law reforms as well as immigration reform policies.

An example of this would be the \$17.4 million that C.C.A. has spent on lobbying and donations to political campaigns for candidates that align with their financial goals (Joy, 2018). Big money is unfortunately a part of U.S. political campaigns that in a sense quiet the voices of ordinary Americans while allowing the wealthy and powerful to ultimately influence legislation because they have the resources to do so. It is particularly egregious knowing that many of the most marginalized of individuals in society such as the mentally ill, or economically

disadvantaged, will be caught up in this scheme, being viewed not as individuals but rather as numbers contributing to financial goals of private corporations, in this case, private prisons.

Private prison corporations such as the GEO Group and CoreCivic claim that they are saving the government and taxpayers money, but it is in fact these corporations that benefit financially, not the government or the taxpayers. Between January 2001 and May 2017, the two biggest earners on the Standard & Poor's 500 index were Core Civic and the GEO Group which had colossal returns of 5000% to their investors. Suprenant (2017) states that for CoreCivic and GEO Group, "business" has been very, very good over the last 16 years.

Additionally, the Bureau of Prisons (BOP), offers better contract terms to private ones as opposed to government contracts. If a facility population exceeds 50 percent of the contract capacity, the BOP then pays the private operator a set monthly operating price for the rest of the contract. This allows the private contractor to earn the increment regardless of whether the future inmate population exceeds 90 per cent of contracted capacity regardless of actual census over that percentage. This creates a potential problem whereby the contractor might then try to maintain a low census to get the premium without incurring additional costs. This could then lead to overcrowding and to a lower level of quality in order to earn the incremental revenue (Kish and Lipton, 2013).

The focus is not in protecting the safety of the staff or inmates, but rather safeguarding their bottom lines. The various studies included in this thesis expose the deficiencies that exist within private prisons, as well as the obvious conflict of interest that exists when the goal of a for-profit prison is to have maximum occupancy and for their inmates to have sentences which are longer in length. Although the rehabilitation of an inmate is an ideal goal of any prison,

which unfortunately, is seldom achieved, the clear objective of a private prison is to earn a profit, even if it is attained at the detriment of the inmate, or the staff employed in the facility.

The numbers of incarcerated individuals in the U.S. today are shocking enough, however what is even more distressing is the disproportionate number of those individuals according to race. (Blankenship, Gonzalez, Keene, Groves and Rosenberg, 2018) state that across all ages, Black males were six times more likely to be incarcerated than White males. For Black males aged 18-19 years old, the rate increased to nine times more likely. A prominent police presence in certain communities, such as minority neighborhoods, contribute to law enforcement being more aware of even low-level offenses, that might go have otherwise gone unnoticed within neighborhoods of a different demographic. This quite often leads to individuals within these communities to have increased contact with law enforcement and perhaps the carceral system.

Moreno and Price (2016) examined the social, political, and economic effects that the War on Drugs had on Black and Brown people and how the mass incarceration of these individuals delivered lofty profits to the private prison industrial complex. As their study revealed, this War on Drugs was initiated by the state that represented private interests, in particular the private prison industry. Much of the harsh legislation that led to this War on Drugs was written, sponsored, and lobbied for by the very same corporations that financially benefitted from these more severe laws (Moreno & Price, 2016).

One particularly profitable sector of the private prison system with the highest growth has been immigration detention centers that increased at a rate five times higher than the prison population from 2000 to 2016 (Gotsch & Basti, 2018). Although about less than 14% of the

1,663 prisons in the U.S. are private, more than 50% of the 206 immigration detention centers are privately owned (Eason, 2019).

In addition, since private detention centers do not have to maintain the same level of transparency as their government run facilities, this allows some facilities to accept otherwise unacceptable conditions and treatment such as was reported by the U.S. Department of Justice (2016). The report revealed that private facilities consistently failed to meet federal standards of safety. Incidents included women and children who were subjected to conditions similar to those of hardened criminals whereby they experienced overcrowding, violence and sexual abuse. Other cases of abuse were cited by human rights activists, legal advocates as well as the Immigration and Customs Enforcement Agency (ICE) which included the deaths of two children that were being held in custody at the detention centers.

One cannot deny the impact of a profit incentive when learning that for instance, for the 113<sup>th</sup> and 114<sup>th</sup> Congresses, private prisons were influential in co-sponsoring harsher immigration laws which they would greatly benefit from. Lawmakers who preside over areas that have private detention facilities tend to support these same anti-immigration bills (Collingwood, Morin and El-Khatib, 2018). The obvious conflict of interest is glaring and would certainly lead one to question how much of these laws are enacted truly in the interest and safety of a community, and how much of it is because there are substantial profits to be made.

The notorious scandal better known as the “kids for cash” scandal whereby two Pennsylvania judges accepted bribes from private juvenile detention centers in exchange for sentencing juvenile offenders to do time for committing low level offenses such as shoplifting DVD’s or failing to appear at a hearing that they were never notified for is a prime example of

how actions taken such as this are defended as taking a tough stance to deter children from committing more serious crimes later. It might appear on the surface as an action taken in the best interest of the children and society, while, when delving deeper, these actions were in the best interest of the judges who profited financially with kickbacks from the private detentions centers for keeping their centers at maximum capacity (NPR Staff, 2018). Although most judges would not abuse their power in this egregious manner, the reality is that behind every title, position, status, etcetera, is a human being. Human beings by nature are flawed and unfortunately in every sector there are bad apples that may be prone to temptations that exists when financial rewards are offered for even unethical actions. When considering the criminal justice system as a whole, with an emphasis on the word “justice” whose very definition implies qualities as being “just; righteousness, equitableness, or moral rightness to uphold the justice of a cause” (Dictionary.com), it seems that any inclination to profit making should be eliminated from the equation.

Since public prisons are paid for by taxpayer dollars and government spending, they must also legally report information regarding the prison such as the number of inmates they are housing, and how the facilities are being operated. However, this is not the case with privatized prisons since they are being privately funded. Therefore, information about the operations within a facility are not readily available, especially to the public who may have very little knowledge to how the inmates are being treated. Whereas government run institutions must adhere to certain standards while also being transparent in their operations, this is not the case with private institutions.

With a lack of transparency, the potential for sub-standard services, and even corrupt activities become more probable. An example of this was cited in a report published by the

Bureau of Prisons whereby a private facility operated for several months without having a full-time doctor, which led to inmates not receiving the medical attention they needed. Since the inmates are incarcerated, there is little they were able to do to remedy the situation (Joy, 2018). The obstacle of minimal transparency also makes it quite challenging for certain services such as those pertaining to mental health or substance abuse to be accurately evaluated for effectiveness. These factors make claims made by private prisons in support of their services questionable and even doubtful.

Bacak and Ridgeway (2018) admit that there is a need for further study into prison privatization because of the information that is lacking especially regarding services related to mental health and substance abuse. Since these facilities have no legal requirement to publicize any data, there is insufficient evidence to back up any claims made that these institutions do provide comparable levels of service. The lack of transparency inadvertently provides ammunition to debate whether the claims of effective services are actually accurate or not.

### **Conclusion**

Although private prisons seemed to have been a potential remedy for the problem of overcrowded prisons in the U. S., the empirical evidence suggest that the privatization of these institutions was not the answer. When President Biden signed an executive order in January 2021 instructing the Department of Justice to not renew contracts with privately owned prisons, a similar opinion was echoed by Representative Scott Holcomb, D-Atlanta, of Georgia (2021), when he said he would make every attempt to ban his state from using private prisons as well. He went on to say that the use of private prisons was an experiment that began more than 20 years ago, but it was an experiment that has not only failed, but has been more costly, with less



transparency and accountability and that they did not deliver on the promises that they were supposed to. Holcomb (2021) goes on to say that “they were an experiment that incentivizes the profit of incarcerating human beings. And I think that’s wrong”.

When earning a profit is an incentive, specifically regarding prisons, it makes logical financial “sense” that an institution would want to always have maximum capacity and for longer lengths of time. This scenario was discovered in a Washington State University study which showed that when states transitioned from government run to privately owned facilities, the number of individuals being incarcerated increased along with the lengths of their sentences. The evidence showed a strong correlation between prison privatization and incarceration rates, as well as lengths of sentences since for the prison to earn a profit it is necessary to have a consistent influx of inmates (Weybright, 2020).

According to the Equal Justice Initiative (2013), most of the private prisons in the U.S. have contracts that require them to have at least 90% of the beds within a facility used. If they fall below this number, they must pay a fine to the private, for-profit corporations. Advocacy Groups such as *In the Public Interest* accessed over 62 contracts that were executed between states and local jurisdictions. After analyzing these contracts, they found that sixty-five of these facilities were able to meet their requirements with between 80% and 100% capacity. States such as Arizona, Louisiana, Oklahoma, and Virginia had the highest quotes ranging from 95-100%. Although crime rates have dropped approximately a third in Colorado, the quotas covering three private prisons have cost taxpayers \$2 million. With these contract clauses, the incentive to keep maximum capacity persists. The necessity to fill the facilities with inmates overrides public safety needs and does not accurately reflect lowered crime rates. One facility in Arizona had to

pay \$3 million in fines for empty beds because the state stopped sending inmates to this facility after it was discovered to be “dysfunctional” when several of their inmates escaped.

One cannot discuss the prison privatization debate without including the serious issue of mass incarceration in the United States. Although there are certainly reasons that justify criminal punishment such as the potential to rehabilitate an inmate to become a productive member of society, retribution by paying their debt to their victim(s) and society, deterrence, and incapacitation to keep communities safe from dangerous individuals, making a profit from the many factors that might lead someone to become incarcerated is not justifiable. There are many reasons that might lead someone to enter the criminal justice system whether it be individual or societal ones. As attempted to be explained in this thesis, quite often the most vulnerable of society such as the mentally ill, individuals suffering from substance abuse, or non-violent immigrant detainees, are most likely to enter the carceral system. The privatization of prisons, with the goal of earning profits, is less concerned with the reasons that brought these individuals there as they are with the numbers since simply said, the greater the number, the greater the earnings.

### **Recommendations**

Since alleviating the overcrowding of prisons is a major reason that private prisons came into existence, alternative solutions need to be offered. One proposed solution is to use space in facilities that are not being used, even county jails. However, this solution is only viewed as a short-term solution as facilities need to house prisoners from their own jurisdictions rather than seeking available space in other areas. Although the idea of limiting sentences for minor offenses while focusing more on more serious crimes might sound like a workable solution, it is not well received in high crime areas (Kish & Lipton, 2013).

It appears that a viable solution would be to build more government run facilities whereby the costs are determined by the actual census, not artificially inflated ones. Since the public sector quite often uses labor unions, this usually equates to higher salaries, better benefits and ultimately the ability to attract and retain more qualified staff. The use of technology has also assisted the government to reduce costs without resorting to privatization. An example of technology being used was observed in 2000 when the Office of the Federal Detention Trustee was created to control the costs associated with detention by centralizing the prison procurement process. This resulted in a centralized posting of bed space and services across state and local facilities and different levels of detention. This contributed to a reduced workload, creating more efficiency and less labor costs without sacrificing quality or safety (Kish & Lipton, 2013).

As the evidence in this thesis suggests, the existence and continuation of operating private prisons is in direct conflict to achieving an acceptable level of criminal justice reform since the concerns are not focused on the incarcerated but rather their own financial interests. Stephenson (2020) acknowledges the obstacles to not only prison reform but to criminal justice reform in general mainly due to the lack of political support. In addition, due to lower levels of crime nationally and along with bipartisan support for criminal justice reform, the private prison industry has been quite strategic in attempting to rebrand itself as a rehabilitation service instead. The GEO Group recently spent \$360 million to purchase Community Education Centers that provide rehabilitation services both inside and outside of correctional facilities. As stated by the CEO Group CEO, George Zoley, regarding this decision, “this important transaction represents a compelling strategic fit for our company as it further positions GEO to meet the demand for increasingly diversified correctional, detention, and community reentry facilities and services across the United States.”

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## Illustrations

Variable	% or Mean (SD)		
	Black (N = 146)	White (N = 97)	Total (N = 302) Includes Black, white, Hispanic and Other
<i>History of CJ Involvement</i>			
Ever incarcerated	98.0% (143)	96.9% (94)	97.7% (294)
<b># of adult convictions**</b>	<b>7.5 (6.0)</b>	<b>9.7 (6.5)</b>	<b>8.1 (6.2)</b>
<b>Total# adult incarcerations**</b>	<b>7.4 (5.8)</b>	<b>5.5 (4.9)</b>	<b>6.5 (5.5)</b>
Ever convicted as a juvenile	54.8% (80)	45.4% (44)	50.8% (153)
<b>Ever incarcerated as juvenile***</b>	<b>52.7% (77)</b>	<b>23.7% (23)</b>	<b>42.5% (128)</b>
<b>Ever time in juvenile facility**</b>	<b>37.7% (55)</b>	<b>18.6% (18)</b>	<b>31.6% (95)</b>
<b>Ever time in adult facility as a juvenile**</b>	<b>34.9% (51)</b>	<b>16.5% (16)</b>	<b>28.6% (86)</b>
<b>First incarceration &gt; 1 year*</b>	<b>39.9% (55)</b>	<b>26.1% (23)</b>	<b>35.8% (101)</b>
<b>First charge a drug charge**</b>	<b>57.0% (77)</b>	<b>26.5% (22)</b>	<b>51.3% (141)</b>
<i>Community Supervision</i>			
<b>Ever on parole***</b>	<b>81.8% (117)</b>	<b>62.8% (59)</b>	<b>73.8% (217)</b>
Ever had parole revoked	49.6% (58)	49.2% (29)	47.9% (104)
Ever on probation	97.3% (142)	96.9% (94)	97.0% (292)
Ever probation revoked	51.4% (73)	50.0% (47)	51.0% (149)
<i>Criminal Justice Surveillance</i>			
Any surveillance	76.2% (109)	69.8% (67)	74.9% (221)
Ever parole bracelet	62.7% (74)	54.1% (33)	60.0% (132)
Ever parole home visit	77.1% (91)	68.9% (42)	74.1% (163)
Ever probation bracelet	21.8% (31)	13.8.0% (13)	20.9% (61)
Ever probation home visit	43.7% (62)	54.3% (51)	49.0% (143)
<b>More than one form of surveillance*</b>	<b>60.8% (87)</b>	<b>45.8% (44)</b>	<b>56.6% (167)</b>
<i>Hyperpolicing/Exposure to Police Control and Power</i>			
Police ever stopped (on street or in car) to search or question (no arrest)	72.3% (99)	74.7% (71)	70.7% (205)
<b>Ever caught doing something illegal and let go**</b>	<b>42.3% (58)</b>	<b>60.0% (57)</b>	<b>45.5% (132)</b>

Variable	% or Mean (SD)		
	Black (N = 146)	White (N = 97)	Total (N = 302) Includes Black, white, Hispanic and Other
Ever had sex with police officer to avoid arrest	3.6% (5)	3.2% (3)	4.1% (12)
Ever given \$ or drugs to police officer to avoid arrest	8.0% (11)	9.5% (9)	8.6% (25)
<b>Ever an outstanding warrant for arrest*</b>	<b>73% (100)</b>	<b>84.2% (80)</b>	<b>75.9% (220)</b>

^indicates p < .10, \*indicates p < .05, \*\*indicates p < .01, \*\*\*indicates p < .001.

Figures 2 & 3

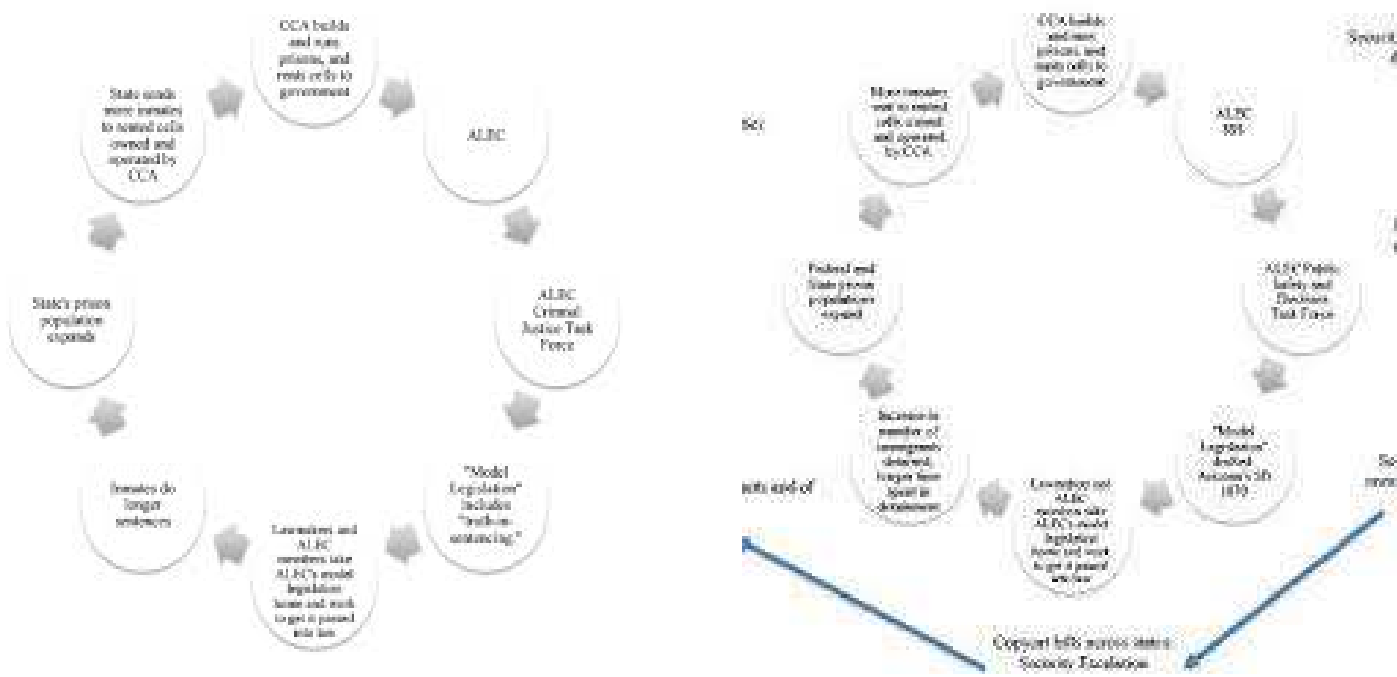


Figure 4

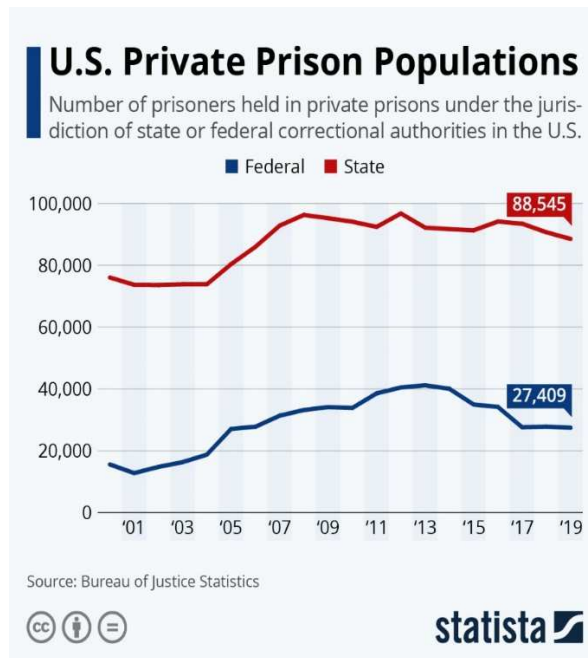


Figure 5

