

Corporate Corrections:

Private Prisons and the Public Good: The Politics of For-Profit Punishment

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Abstract

The prison privatization movement in the United States has a long and controversial history. In its modern form, privatization not only includes the construction and operation of penitentiaries, but immigration detention centers, privatized probation and parole services and even telecommunication services. A handful of giant multinational corporations control majority of the market. These corporations contribute vast sums to candidates and Political Action Committees to gain favor for their industry. These contribution skew heavily to one political party. These corporations are the frequent target of legal action challenging how they operate their facilities and programs.

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Private Prisons and the Public Good: The Politics of For-Profit Punishment

When the term “privatized corrections” is used, it likely reminds most people of Corrections Corporation of America (CCA, now CoreCivic), a company formed in January 1983, by Tom Beasley, T. Don Hutto and Robert Crants (CCA, 2010). While CoreCivic is one of the largest and most notable providers of privatized correctional services in the world, its founding represented a new configuration of a very old model, rather than a completely new idea. Indeed, the history of public-private “partnerships” in corrections is centuries old. In the United States, it extends back to the colonial era.

According to Gould & Pate (2020:29), “The history of privatized correctional practices in the United States can be framed in the context of three major epochs: the colonial and antebellum periods; post-Civil War convict leasing; and modern corporate management.” As Gould and Pate (2020:29) further argue, the three periods can be differentiated by “original intent.”

The colonial era workhouses run by Puritans were intended as a place where petty criminals and people on the margins of society could be reformed and retrained into positive members of society, while selling their work products to fund the operation. The convict leasing era of the Antebellum period was largely an exercise in providing a de facto replacement for slavery (Blackmon, 2008). Because agreements between governments and private parties were often “statutorily unregulated” (Harding, 2001:266), abuse of the leased convicts was rampant and lethal. As Bauer (2018:56) writes, “[This system] was more deadly than slavery.... annual convict death rates ranged from 16 percent to 25 percent, a mortality rate that would rival the Soviet gulags to come. There was simply no incentive for lessees to avoid working people to death.” The modern era of privatized corrections is also profit-driven but done so in a more formalized legal climate. As one of CoreCivic’s co-founders remarked, the company was

founded on the principle that you could sell prisons, “just like you were selling cars, or real estate, or hamburgers” (Stroud, 2013: para. 3).

Schlosser (1998) picks up this theme by comparing a prison to a hotel:

An inmate in a private prison is like a guest in a hotel – a guest whose bill is being paid and whose check-out date is being set by someone else. A hotel has a strong economic incentive to book every available room and encourage every guest to stay as long as possible. A private prison has exactly the same incentive. The labor costs constitute the bulk of operating costs for both kinds of accommodation. The higher the occupancy rate, the higher the profit margin.

Comparing a for-profit prison with a hotel is ironic because CCA’s very first facility was in fact a converted hotel. In a 2015 interview, CCA co-founder T. Don Hutto described the company’s foundational moments to a reporter for *Time* (Bauer, 2018):

Hutto explains, they convinced the owner of a motel in Houston to lease his property to them, eventually hiring ‘all his family’ as staffers to seal the deal. They surrounded the motel with a 12-foot fence topped with coiled barbed wire. They left up the ‘Day Rates Available’ sign. ‘We opened the facility on Super Bowl Sunday the end of that January,’ Hutto recalls. ‘So about 10 o’clock that night, we started receiving inmates. I actually took their pictures and fingerprinted them...Several other people walked them to their ‘rooms,’ if you will, and we got our first day’s pay for 87 undocumented aliens.

While this management philosophy might be ideal for selling “cars, real estate or hamburgers” it is much more problematic when applied to human beings, whether free citizens, inmates, or illegal aliens. As Schlosser (1998, para. 27) states, “Fundamental choices about public safety,

employee training, and the denial of personal freedoms are increasingly being made with an eye to the bottom line.”

Bauer (2018, para. 3) observes that such priorities have a long and detailed historical provenance:

Louisiana first privatized its penitentiary in 1844, just nine years after it opened.

[It was run] as a factory, using inmates to produce cheap clothes for enslaved people. One prisoner wrote in his memoir that, as soon as the prison was privatized, his jailers “laid aside all objects of reformation and re-instated the most cruel tyranny, to eke out the dollar and cents of human misery.”

Of course, in the modern era where private corporations construct facilities, provide staff, and manage inmate populations, is different from the ravages of convict leasing, but by a smaller margin than we might be comfortable believing. The principal differences are technological and contractual. Modern laws have curbed the most egregious excesses. Inmates are no longer worked to death or starved, but that doesn't mean corporate-run facilities are not without significant issues.

Social and Political History

The prison privatization movement is not something that just accidentally happened. Rather, it is a somewhat predictable natural extension of the social and political currents of the 1950s - 1970s. The austerity required by World War II relaxed into a relative prosperity and social ease as marked by the rise of suburbs, affordable housing, greater mobility, and the US Interstate Highway system. This peace and prosperity were not without costs. In particular, a new culture of surveillance began to arise with the emerging threat of the Communism.

This renewed vigilance against perceived enemies is exemplified by investigative bodies such as the House Un-American Activities Committee, where Rep. Richard Nixon rose to fame and Sen. Joseph McCarty's Permanent Subcommittee on Investigations. Not only were fears fanned over the rise of Communism but of changing race relations, gender roles, the rise of bohemian and hippy culture, rock and roll, increases in illicit drug use, and the dawning sexual revolution.

Such eras are tailor-made for a conservative and reactionary backlash. In 1955, *The National Review* was founded by William F. Buckley. The publication's editor, Frank Meyer argued that the rise of conservatism was a delayed response to the New Deal (Critchlow, 2007, Himmelstein, 1990). As Himmelstein (1990: 14015) argues, this staunch pro-military, anti-Communist, social traditionalism, and conservative political thought reflected the mounting middle-class fear of threats against post-World War affluence and comfort.

As Sen. Barry Goldwater, the reactionary firebrand and 1964, Republican presidential candidate stated during his party's convention, "Tonight, there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elderly, and there's a virtual despair among the many who look beyond material successes toward the inner meaning of their lives" (Washington Post, 1998).

While Goldwater was trounced by President Lyndon Johnson, the Democratic party took note of the strong social current. His formation of the President's Commission on Law Enforcement and Administration of Justice made a comprehensive study of the American criminal justice system. Nixon followed in 1971, by declaring, "America's public enemy No. 1 in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive" (Nixon, 1971). Thus began America's "War on Drugs."

For decades, New York Gov. Nelson Rockefeller had been a champion of rehabilitation, but in 1973, he made a remarkable about-face. The so-called “Rockefeller Drug Laws” represented some of the harshest penalties for drug offenses to date. Moreover, these laws were extremely influential across the United States.

Joseph Persico, a Rockefeller staffer, described the governor’s actions, “Finally he turned and said, ‘For drug pushing, life sentence, no parole, no probation’ And we all looked a little bit shocked, and one of the staff said, ‘Sounds a little bit severe.’ And he said, ‘That’s because you don’t understand the problem.’ And then we realized he was very serious” (Mann, 2013). With the influential paradigm shift in New York, the new course of national sentencing policy gave rise to the modern carceral state (Mann, 2013).

As a natural extension of these “tough on crime” laws, a boom in prison and jail construction swept across the nation. According to Gramlich (2018), in the 1970s, the U.S. prison population exploded, reaching a peak of 1,000 inmates per 100,000 residents during 2006-2008. Due to a drop in crime rates and arrests rates as well as a reduction in the number of individuals sent to prison for drug offenses, the correctional population has declined some. Even so, the U.S. still has the largest raw number of people incarcerated and the highest rate of incarceration in the entire world (Gramlich, 2018).

As units of government at all levels struggled to house and manage bursting inmate populations during the 1980s and 1990s, enterprising correctional administrators like Arkansas

Department of Correction head, T. Don Hutto, proposed a new way. Thus the modern era of prison privatization was born (Gould & Pate, 2020).

The Era of Transition

In many ways, Don Hutto's professional trajectory mirrors the rise of prison privatization. This is best illustrated through an examination of the challenges he faced and changes he made when in 1971, he was appointed to head the Arkansas Department of Correction (ADC). Hutto's predecessor, Robert Sarver, had twice been named in landmark court cases that exposed a rampant culture of inmate mistreatment, torture, and the general inhumanity of life behind Arkansas' prison bars.

As something of an exclamation point for the end of Sarver's controversial tenure U.S. Eastern District for Arkansas Chief Judge J. Smith Henley ruled in *Holt v. Sarver* that ADC was in violation of the Eighth and Fourteenth Amendments to the Constitution, declaring conditions to be cruel and unusual. In specific, Henley ordered ADC to improve conditions, "that have caused the Court to condemn the System.... The lives, safety, and health of human beings, to say nothing of their dignity, are at stake.... Unless conditions at the Penitentiary farms are brought up to a level of constitutional tolerability, the farms can no longer be used for the confinement of convicts" (Henley, 1970).

Hutto came to Arkansas from Texas. He brought with him a vision to modernize and professionalize the ADC. He also brought a number of fellow Texan correctional administrators.

Some of Hutto's biggest achievements included an end to the dubious old system of armed "trusty" inmate guards. He established educational programs and generally brought ADC closer to national correctional standards (Gould & Pate, 2020).

Whatever progressive urges Hutto may have had were routinely offset by practices best described as "old habits die hard." According to Woodward (2017), Hutto permitted the use of controversial disciplinary methods, "such as 'Texas TV,' which involved an inmate standing two feet from a wall or fence and leaning his forehead or nose against the wall or fence for extended periods, sometimes for hours." A Hutto appointee, Robert Britton, the superintendent of the Tucker Unit violently beat prisoners and was notorious for making handcuffed inmates lie on the hood of his car while he drove at speeds up to forty miles per hour (Woodward, 2017). Hutto also allowed inmates to be punished by feeding them a bar of compressed vegetables and meat called "grue." In 1978, the U.S. Supreme Court ruled in *Hutto v. Finney* that feeding prisoners grue for extended periods constituted cruel and unusual punishment. By the time *Finney* was decided, Hutto had left Arkansas for the Virginia Department of Corrections. He stayed at VDC until 1982. Corrections Corporation of America was founded in 1983.

As Gould & Pate, (2020:39) observe:

The vast prison farms of Arkansas in the 1960s were long heralded for their "profitability." Inmates grew their own food, raised livestock, and farmed massive row crops of cotton and soybeans. It was difficult for state leaders to abandon the

idea of prisons as revenue centers. Of course, the labor that made them profitable came at the expense of dignity and humane treatment.... Hutto represented a force of innovation and professionalization. He improved inmate welfare and ended some of the more nefarious management traditions. At the same time, Hutto did not abandon all the old ways. Some reforms during the Hutto era were compelled under court order. Even corporal punishment remained a regular feature of “unofficial discipline” into the 1980s – long after the Supreme Court had banned the practice.

With this as a professional backstop, Corrections Corporation of America, the company founded by Hutto, and his partners quickly became the center of multiple serious controversies.

Private Prisons in Action

In August 1998, The U.S. Attorney General Janet Reno called for an extensive review of the Northeast Ohio Correctional Center (NEOCC) in Youngstown, Ohio, which owned and operated by the Corrections Corporation of America (CCA). The report released in November of that year reads as though a Soviet Gulag or French penal colony were being described, rather than conditions report from the greatest modern democracy. As noted by John Clark (1998, sec. F-7), the corrections trustee in charge of the report, “In a pattern of flawed security attributable to both corporate and institutional management deficiencies, NEOCC failed to accomplish the basic mission of correctional safety. Most notably, there were two homicides, a major escape, numerous stabbings, assaults against inmates and staff, and the widespread presence of

dangerous weapons among inmates.” Clark (1998, sec. F-6) also notes that CCA employees, “systematically employed... harsh and inhumane procedures.” Much of the trouble arose from the rush to get the facility populated and in operation despite a lack of completed living quarters, short-staffing, inadequate DOC oversight, inmate idleness and a litany of lesser concerns (Clark, 1998).

While all prisons experience problems, privately run prisons as a group tend to be more problematic than most government-run correctional facilities. One area where this difference is readily apparent is recidivism. According to a Bureau of Justice Statistics report, half of all persons incarcerated in the U.S. will return to prison within three years of release (DuRose, 2014). Similarly, a report published by the watchdog group, In the Public Interest (2016), found a redoubling relationship between increased recidivism rates and private prisons:

[R]esearch has found that incarcerating people in prisons operated by private companies, which have business models dependent on incarceration, increases the likelihood of those people recidivating. Evidence also suggests that prison telephone and video call companies make business decisions that increase the likelihood of recidivism among prisoners subjected to their services.

While only eight percent of the total U.S. prison population is housed in privately run prisons, states like Montana and New Mexico house more than a third of their correctional populations in private prisons (In the Public Interest, 2016: 3). Beyond federal Bureau of Prisons facilities, nearly half of the U.S. Immigration and Custom Enforcement’s prisoners and a third of U.S.

Marshals Service detainees are held in facilities owned and run by either CoreCivic or GEO Group, the two largest providers (In the Public Interest, 2016: 3). In the same report, In the Public Interest (2016) notes that the exact number of inmates held in state and local private prisons is difficult to calculate because the internal records of these companies are not covered under the Freedom of Information Act access requirements.

All of this goes to the point that private prison companies leave very little to chance when it comes to public policy and keeping lawmakers amenable to their demands. They obtain favorable rulings and policy changes through extensive lobbying efforts and contributions to political candidates.

The Role of Campaign Finance

In 2010, the U.S. Supreme Court issued a ruling in the case, *Citizens United v. Federal Election Commission*. The effect of this ruling was immediate and profound. The decision paved the way for the creation of Political Action Committees (PACs) and so-called Super PACs. According to Lau (2019):

Super PAC money started influencing elections almost immediately after *Citizens United*. From 2010 to 2018, super PACs spent approximately \$2.9 billion on federal elections. Notably, the bulk of that money comes from just a few wealthy individual donors. In the 2018 election cycle, for example, the top 100 donors to super PACs contributed nearly 78 percent of all super PAC spending.

The private prison industry was quick to embrace the newly opened floodgates for political contributions. Writing for the campaign finance watchdog, OpenSecrets, Swan (2017) provides insight into how this has manifested, “In the 2016 election cycle, private prisons gave a record \$2.8 million to candidates, parties, and outside spending groups. That was nearly triple what they’d given in 2014 and more than double their contributions in the 2012 presidential cycle” (para. 2). Of particular note is that 85 percent of their 2016 election cycle contributions went to Republican candidates. Of private prison industry contributors GEO Group was the top contributor giving over \$1.2 million with CoreCivic (formerly CCA) giving approximately \$1.1 million (Swan, 2017, para. 5).

In 2022 alone, private prison companies have given conservative and Republican candidates almost \$600,000. Whereas contributions to Democratic or liberal candidates have received approximately \$61,000 (Swan, 2017[section updated 2022]). This ten to one imbalance demonstrates that private prison companies understand which “constituency” is more likely to favor policies that build prisons, fill beds, increase tough sentencing, and expand the private prison marketplace.

Expanding the Privatization Marketplace

Campaign finance is one of several different strategies these companies employ to exert influence over government officials and policies. As Woodruff (2017) observes, it is common for former BPO, state corrections, and Immigration and Customs officials to take executive positions

with these companies after leaving government service. This “revolving door” practice, Woodruff (2017, para. 8) says, “...encourages government officials to develop cozy relationships with corporate leaders so they can get lucrative gigs there after finishing their time in government.”

Privatization isn’t limited to just facility management. A growing subcontractor industry involves the provision of telephone and video call services for inmates. Companies like Securus Technologies provide these services in thousands of state, local and federal facilities. The rates are often exorbitant and prohibitive. Multiple studies report rates in excess of one dollar per minute (Barrick, et al., 2015; Federal Communications Commission, 2015; In the Public Interest, 2016). These same studies also confirm the positive relationship between regular family/community contact and reduced recidivism rates.

These providers also work the equation by influencing public policy. In specific, Securus Technologies lobbied Congress for the passage of the Cellphone Contraband Act of 2010 (which banned the use of cellphones by inmates), lobbied for the end of in-person visits (thus increasing demand for their call services), and filed suit against FCC regulations limiting the per-minute rate for inmate calls (In the Public Interest, 2016:8).

A booming new market for private corrections is the construction and management of administrative detention facilities for U.S. Immigration and Customs Enforcement. Bauer (2018) notes that a quarter of CoreCivic’s (CCA) revenue comes from contracts with ICE. This figure is

reflected in the fact that more than 66 percent of all ICE detainees are held in privately run facilities, and nine of the ten largest ICE detention facilities are privately run.

Perhaps the most lopsided aspect of the expanding role of private prisons is the contractual stipulation that these companies will be paid based on their capacity to hold rather than the actual number of persons housed in their facilities. Without their well-funded political influence, such golden contracts would likely not exist (Bauer, 2018). At the 2018 stockholders' meeting the CoreCivic CEO told the group, this is probably the most robust kind of sales environment the industry had seen in a decade (Bauer, 2018).

Another area of robust growth in the privatized corrections marketplace is privatized probation and court administration services. According to Schwartzapfel (2017), one of the biggest selling points for privatized probation service is that they are "offender funded." Through administrative fees billed to the offender, state and local governments can avoid many of the costs associated with management of probationers. As Gould & Pate (2020:45) observe, "[Th]ese private companies often exist in an unregulated wild west climate of fee and penalty inflation. Even though probation clients enrolled in these services are typically convicted of misdemeanor offenses, they often rack up thousands of dollars in supervision fees and penalties.

Balko (2018) contends there is an inherent conflict between the goals of probation and the profit objectives of privatized providers, "Private probation companies make their money from people on probation. This means that every person they help move off of probation is one

less paying ‘client.’ The incentives are exactly backward.” This system has gotten so contorted that there was even an instance where two Arkansas judges were sued by a private probation provider when the judges granted amnesty to a number of the company’s clients. The provider, the Justice Network, alleged the judges violated its rights under the “Takings Clause” of the Constitution by taking its “property” ... [probationer contracts] without giving the company “just compensation” (Cohen, 2014).

The Prison as Political Objective

In the waning days of the Obama administration, U.S. Attorney General Sally Yates released a memo that could have effectively ended the private prison industry. The memo acknowledged that private prisons had been a useful tool during the explosion of federal prison populations in the period 1980 – 2013, but citing a substantial decline in prisoner populations, ordered them to be phased out:

Private prisons served an important role during a difficult period, but time has shown that they compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security (Yates, 2016).

Yates’ memo went on to note important disparities in educational and job-training programs.

Had the memo been fully implemented, the privately held federal inmate population would have

decreased by 50 percent by May 2017 (Yates, 2016). In the days following this announcement both CoreCivic and GEO Group stock prices were in freefall (Nasdaq, 2018).

Within a month of Donald Trump taking office in 2017, the new Attorney General Jeff Sessions, rescinded Yates's memorandum citing the need for greater "flexibility" in the federal system (Prado Ocasio, 2017: para. 8). CoreCivic and GEO Group the world's two largest providers of private correctional services were both very generous Trump campaign supporters. Their share prices rebounded strongly after the November 2016 election (Nasdaq, 2018).

In response to the rollback of Yates' order, Sen. Cory Booker (D-NJ) remarked, "Attaching a profit motive to imprisonment undermines the cause of justice and fairness. This damaging decision cuts against our deeply held values of justice and liberty, while creating vast wealth for private prison operators" (Prado Ocasio, 2017: para. 14).

Conclusion

As the preceding consideration documents, the history of privatized corrections in America is older than the U.S. itself. Controversy has followed the practice of privatization from the early 19th century onward. During the modern era, privatization has expanded beyond just running correctional facilities into immigration detention, a parole/probation services, and telecommunications. Along with this expansion, the political influence of the largest providers has grown as well.

Perhaps the most concerning aspect of this growth is the fact that only eight percent of the federal prison population is held in private facilities, but the providers are allowed to have tremendous influence on federal contracts, sentencing, and other administrative decisions that are typically the exclusive purview of the government. Supporting this structure of disproportionate influence are the turnstile jobs private prison companies often offer their allies in government. All this demands that we as a nation seriously consider whose interests are being served by these trends. Is it the general public, the correctional, probation and parole populations, or simply those who have devised a way to profit from a bad situation?

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