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**Privatization of the California Prison System**

*Diplomová práce*

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## **Bibliografický záznam**

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## **Abstrakt**

Privatizace vězeňství je žhavým tématem veřejné diskuze ve Spojených státech amerických. Privatizace věznic je závažným společensko-ekonomickým tématem, který má své místo na politické scéně a vyvolává reakce mnoha zainteresovaných skupin, zabývajících se veřejnými zájmy. Spojené státy americké disponují největší vězeňskou populací na světě, jež byla zapříčiněna tvrdými praktikami v soudnictví, uzákoněnými v 80. letech 20. století. Kalifornie měla největší systém trestního soudnictví ve Spojených státech do nedávné doby, kdy ji nahradil stát Texas. Kalifornie se potýká s problémem přelidněných věznic již po tři desetiletí. Stát Kalifornie se smluvně zavázal předat kontrolu nad svými věznicemi soukromé firmě v naději, že to uleví státnímu vězeňskému systému, který byl tak přelidněn, že operoval na dvojnásobku své kapacity. Tato diplomová práce je případovou studií, která se zabývá privatizací věznic na území státu Kalifornie. Cílem této práce je zhodnotit, zda předání kontroly nad věznicemi do soukromých rukou bylo správným krokem k vyřešení krize přelidnění a zda soukromé věznice přispívají k veřejnému zájmu kalifornské společnosti. Tohoto cíle bude dosaženo analyzováním dosavadních zkušeností s privatizací věznic na území státu Kalifornie.

## **Abstract**

Prison privatization is a hotly debated topic in the United States that has its place in the political agendas of both political parties and generates opinion by various public interest groups. United States has the biggest prison population in the world caused by the harsh sentencing policies that were implemented in the 1980s. California has had the largest criminal justice system in the nation until it was very recently surpassed by Texas. The State of California has been fighting with the overcrowding crisis for three decades. It began contracting out with private prison companies for the management of its prisons in hope it would ease the situation in state prison system that operated at double of its designed

capacity. This thesis is a case study that concerns itself with the prison privatization in the state of California. The purpose of this thesis is to evaluate whether contracting with private prisons helped California to solve its overcrowding crisis and whether privately-run prisons are a good choice that benefits California society. This goal will be achieved by evaluating existing experience with the private prisons in California's context.

## **Klíčová slova**

privatizace věznic, vězeňský systém, soukromý sektor, Kalifornie, systém trestního soudnictví v USA, soukromé věznice, soukromé vězeňské firmy

## **Keywords**

prison privatization, prison system, private sector, California, American criminal justice system, for-profit prisons, private prison companies

**Rozsah práce:** 90 735 znaků

## **Prohlášení**

1. Prohlašuji, že jsem předkládanou práci zpracovala samostatně a použila jen uvedené prameny a literaturu.
2. Prohlašuji, že práce nebyla využita k získání jiného titulu.
3. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 13. května 2016

Zuzana Trubačová

## **Poděkování**

Na tomto místě bych ráda poděkovala vedoucímu diplomové práce panu doc. PhDr. Francisi D. Raškovi, Ph.D. a konzultantce Mgr. Janě Sehnálkové za cenné připomínky a rady při vytváření práce.

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**V čem se oproti původnímu zadání změnil cíl práce?**

Cíl diplomové práce se od původního záměru změnil. Nebude se jednat o komparaci státních a soukromých věznic, jak předpokládal původní návrh, a to z důvodu špatně dostupných statistických dat týkajících se soukromých věznic. Novým cílem práce je zhodnotit, zda je privatizace vhodným řešením pro přeplněné věznice ve státu Kalifornie a zda má pozitivní vliv na fungování státního vězeňského systému.

**Jaké změny nastaly v časovém, teritoriálním a věcném vymezení tématu?**

Teritoriálně je téma pevně vázano názvem diplomové práce - limituje se tedy na území státu Kalifornie. Časově se práce vymezuje od 80. let 20. století po současnost (respektive po nejaktuálnější zveřejnění statistik věznic). V první části práce je nutné jít do minulosti a vysvětlit počátky a příčiny privatizace věznic a následně představit aktuální situaci ve vězeňském systému USA. V druhé části práce, která se zabývá problémy, jež vznikají následkem privatizace věznic, bude využíváno aktuálních statistických dat z posledních let, názoru veřejnosti a dosavadních zkušeností se soukromými věznicemi. Věcné vymezení tématu zůstává stejné, je ovšem možné, že s dalším nastudováním tématu budu považovat za nutné zařadit další faktory, aby podklady pro zkoumané oblasti byly co nejúplnější.

**Jak se proměnila struktura práce (vyjádřete stručným obsahem)?**

Struktura práce zůstává stejná - bude se dělit na dvě přibližně stejně velké části - první by měla přiblížit privatizaci věznic v Kalifornii, důvody pro tento krok a výhody a nevýhody takového modelu. V druhé části by měl být zhodnocen význam a funkčnost soukromých

věznic tím, že budou analyzovány dosavadní zkušenosti s těmito věznicemi a zhodnoceny problémy týkající se privatizace. První část bude mít deskriptivní a analyzační charakter - bude seznamovat s privatizací věznic, s důvody pro takový krok a aktuální situaci v americkém vězeňském systému.

### **Jakým vývojem prošla metodologická koncepce práce?**

Práce byla původně metodologicky koncipována jako komparace. Privatizace věznic a problémů s ní spojenými bude předvedena na jednom konkrétním státu – Kalifornii - bude se tedy jednat o případovou studii. Vzhledem k nedostupnosti informací týkajících se soukromých věznic (například útěky vězňů, vzpoury ve věznicích) byla přehodnocena výzkumná otázka a s ní i metodologie práce, která nyní bude kvalitativní analýzou. Jako podklady mi poslouží jak statistická data, tak zkušenosti s oběma modely - názor veřejnosti, recidivita, soudní žaloby proti věznicím atd.

### **Které nové prameny a sekundární literatura byly zpracovány a jak tato skutečnost ovlivnila celek práce?**

Práce je prozatím zpracovávána z internetových databází - volně přístupných statistických údajů (např. FBI Uniform Crime Report, Bureau of Justice Statistics) a knih a studií k dispozici v univerzitní a národní knihovně. V následujícím semestru se pokusím domluvit si v Americkém centru a v Ústavu pro soudobé dějiny přístup k dalším materiálům. Plánuji si také zakoupit 2-3 knihy ze zahraničí. Momentálně jsem ve stádiu pročítání zdrojů uvedených v projektu práce. Hlubší seznámení s tématem vedlo k přehodnocení metodologie práce, která nyní bude koncipována jako kvalitativní analýza s drobnými prvky komparace v určitých částech.

### **Charakterizujte základní proměny práce v době od zadání projektu do odevzdání tezí a pokuste se vyhodnotit, jaký pokrok na práci jste během semestru zaznamenali (v bodech)?**

- hlubší seznámení s tématem - prostudování obecněji pojatých knih o daném tématu
- pročítání a analyzování již nalezených zdrojů
- hledání nových primárních zdrojů
- změna metodologie práce
- bylo rozhodnuto, že práce bude psaná v angličtině

**Podpis studenta a datum:**

**Schváleno:**

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**Vedoucí práce:**

**Vedoucí diplomového semináře:**





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## **Introduction**

Privatization of public services serves as matter of interests to analysts, theorists and public managers. Private prison business has become a billion dollar business which makes money by putting people behind bars. Prison privatization is a live topic on the political scene and generates many opinions on its business strategies. Private prison companies are reaping billions in revenue and exert enormous political clout. Private prison firms are the fastest growing part of the so called prison-industrial complex. Private prisons are able to influence legislation by lobbying or by direct contribution to political campaigns. Private prison firms' revenue is dependent on high incarceration rates and policies that support law enforcement.

Private prison companies use several strategies how to ensure financial prosperity of their business. Besides the lobbying efforts in both Congress and statehouses, private prison companies use the occupancy clauses in their contracts to ensure profit should the U.S. prison population decline.

In my thesis I will address many concerns associated with the private prisons in the second part of my paper. The purpose of this thesis is to assess whether the presence of private prisons help the California society to tackling some of its problems. More generally, I will try to examine whether private prisons are a good choice for the California criminal justice and how they influence California society in general.

I chose the state of California for my case study because of its unprecedented criminal justice problems- the huge overcrowding. California is a case that did not accept private prisons so easily. Thus, it was interesting for me to watch how California fought the private prisons even though other U.S. states have accepted them as a solution to their strained budgets and packed prisons.

### ***Structure, Methodology and Periodization***

My thesis is divided into two parts. In the first part I would introduce the topic and put it in the broader context by explaining its historical origins. Thus, first part will be mainly descriptive and analytical. In the first chapter I will discuss the origin of prison privatization in the United States and how it evolved over the time to become current modern private prison business. In the second chapter I will examine the reasons for the great boom of private prisons that occurred in the mid- 1980s. At this place the private prison companies will be introduced. Starting with the third chapter I move in time to the current situation regarding the

prison privatization. In this chapter I will analyze the overall criminal justice system in the United States. I will address important legislation that is pending nowadays but might have a prominent impact in the future. Here I will break down the current U.S. prison population, analyze other aspects of the criminal justice system like recidivism, incarceration rate etc. Starting with the fourth chapter I will focus mainly on California. I will produce here the same break down of criminal justice system that I did on the national level in the previous chapter.

In the second part of my thesis I will focus on the common concerns associated with the private prisons. I will try to address and analyze these issues through the lens of California's experience and make a general conclusion. The topics I will cover include the contractual relationship between the government and the private prison company, as next I will examine the strategies utilized by the private prisons to exert influence on policymakers in Congress and national statehouses. And lastly I will address the long-debated issue whether private prisons really do save the taxpayer's money.

Regarding the methodology, my thesis will be a qualitative analysis with an occasional aspects of comparison. My thesis is a case study. I will assess the implications of prison privatization on the California society and by doing so I will try to come to a more general conclusion regarding the topic. Periodically, my thesis deal with the current topic so most of my text is placed in present day.

### ***Overview of Sources***

Prison privatization is a current topic heavily talked about in newspaper and a research topic of many studies. Thanks to that I was able to find most of the sources used for this thesis on the Internet. My thesis contains a lot of statistical data which I was able to obtain from online databases. For national figures I look to the Bureau of Justice Statistics that publish a number of information-packed publication series like the *Prisoners* or *Correctional Population in the United States*. For older data before the year 2000 I was helped by the Sourcebook of Criminal Justice Statistics. Although, the statistics data are rather limited the older they get. Another useful database is maintained by the California Department of Corrections and Rehabilitation where I found a lot of useful data connected with California crime, recidivism, composition of prison population etc.

Information on the private prison companies I retrieved directly from their website. The two largest private prison companies publish annually a report on form. In these documents I was able to find about the numbers and locations of their correctional institutions,

achievements for the past year, their business goals and strategies they will pursue to ensure a company's financial growth. Additionally, these publications contain a lot of economic data on their performance.

California is very open about sharing statistical data. Prison privatization is a much debated topic which means there is a lot of studies, monograph and research papers commenting on this topic. However, it needs to be noted that most of them focus on the same aspects-mainly the cost-efficiency of the private prisons. So after reading a number of studies I kept receiving repetitive information. One of the most comprehensive study that helped me to gain the basic knowledge is a monograph titled *Emerging Issues on Prison Privatization* published by Bureau of Justice Assistance, U.S. Department of Justice. Another useful publication I used is a research paper on lobbying and strategies how to influence public policies. Its title reads *Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies* published by the Justice Policy Institute.

Whenever I was in need to track down money contributed by the private prison companies to state or federal candidates I went to the National institute on Money in State Politics website [www.followthemoney.org](http://www.followthemoney.org). Although, I was sometimes unable to find out how the company voted on any particular bill I was still able to use information on which legislation the private prison companies voted and how much they contributed to this or that measure.

The only problems I encountered was when I was trying to find out about statistics associated with the performance of private prisons. I am aware, that private prisons are exempt from the Freedom of Information Act and thus are not bound by law to disclose any internal statistics. However, I was left to be reliant on research studies made by other authors who got the access to that information through inmate survey etc.

## **Part I. Prison Privatization in the United States**

Private sector in the United States has had a long history of involvement in the provision of correctional services and operation of prison facilities. From the early American history the private enterprise was actively involved in shaping American criminal justice system. In a lot of cases when government could not or would not respond to the demand of increasing sanctions, the private sector came up with an innovative solution. The model has repeated itself throughout the centuries up to these days. The privatization of the prison industry

usually gained momentum when the demand for increasing penal capacity was rising and the trust in government fading.

### ***1. Correctional Privatization in Historical Context***

The involvement of private sector is found in all segments of the American criminal justice process. This fact stems, to a part, from the Anglo-American political culture that distrusts a big government and promotes private enterprise.<sup>1</sup> Also, the American criminal justice procedures were modeled on the English custom, the history of which has a long involvement of the private sector in operating prisons.<sup>2</sup>

The late 17<sup>th</sup> century saw a change in the choice of punishment which coincided with the rise of modern detention facilities. The traditional methods of punishment, like torture or death, were abandoned, and the emphasis on rehabilitation of the convicts was put instead.<sup>3</sup>

Throughout the 18<sup>th</sup> century the prevalent idea was that prisons should have been financially self-sufficient in order not to burden a government's treasury. Privately-operated prisons became a very popular choice as running a prison was very costly for colonies/states. For a fixed fee, the states would allow private contractors to supervise inmates in the prisons. Head jailers were not paid salaries, despite being appointed by government, they were deemed to be independent managers of a for-profit company.<sup>4</sup> In order to generate a profit for operating of the prison, the inmates were put to work. In this system, fees were charged from prisoners' rewards to reimburse for clothing and food supplied.<sup>5</sup>

The prison labors took various forms throughout the country at this point. At some prisons raw material was provided by the outside company and then refined in prison workshops and

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<sup>1</sup> Malcolm M. Feeley, "Privatization of Prisons in Historical Perspective", in *The Philosophy and Practice of Corrections*, ed. Marilyn McShane and Frank P. Williams III. (New York: Routledge, 2012), 134, [https://books.google.cz/books?hl=cs&lr=&id=XQ6BTBUH0C&oi=fnd&pg=PA133&dq=california+prison+privatisation+history&ots=w7XCMpSXvd&sig=zKM59KUSofVBqHVwvVULExhl\\_aQ&redir\\_esc=y#v=onepage&q&f=false](https://books.google.cz/books?hl=cs&lr=&id=XQ6BTBUH0C&oi=fnd&pg=PA133&dq=california+prison+privatisation+history&ots=w7XCMpSXvd&sig=zKM59KUSofVBqHVwvVULExhl_aQ&redir_esc=y#v=onepage&q&f=false) (accessed February 15, 2016)

<sup>2</sup> James Austin and Garry Coventry, "Emerging Issues on Privatized Prisons". *Monograph. Bureau of Justice Assistance, U.S. Department of Justice*, 2001, 9, <https://www.ncjrs.gov/pdffiles1/bja/181249.pdf> (accessed February 14, 2016).

<sup>3</sup> Martin P. Sellers, *The History and Politics of Private prisons: A Comparative Analysis*. (Madison: Fairleigh Dickinson University Press, 1993), 49, <https://books.google.cz/books?id=3KMTThjTDdtMC&pg=PA50&lpg=PA50&dq=history+of+prison+privatization+california&source=bl&ots=eFCMBvLBco&sig=Q7DhHbmma6fQPbXY2IihMOhJuHQ&hl=cs&sa=X&ved=0ahUKEWjvqJustbjJAhVGPBQKHZvjDwk4ChDoAQheMAc#v=onepage&q=history%20of%20prison%20privatization%20california&f=false> (accessed February 15, 2016)

<sup>4</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons", 9.

<sup>5</sup> Sellers, "The History and Politics of Private Prisons", 49.

later sold by private companies. At other prisons, the inmates were leased out to private businesses when the item could not be produced within the prison. Elsewhere, private contractors paid a state a fee or a percentage of its profit for the right to employ the prisoners.<sup>6</sup> Even when the prisons were not managed entirely by private sector, the inmates were used as a cheap source of labor. Inmates were employed in labor at many public programs, like building railways, working in mines, etc.<sup>7</sup>

A number of states preferred privatization in a full extent. For example, the State of Kentucky leased out its entire prison system to a private contractor. The businessman managed to run the prison successfully until the 1880s when workers succeeded in getting the legislature to restrict the "unfair competition" of the prison labor.<sup>8</sup> A different situation occurred in the State of California, the legislature of which passed the Prison Act of 1851 allowing the California inmates to be handed over to private contractors. These contractors would feed, clothe and house the prisoners in exchange for their labor. Only two years after winning statehood, California reached an agreement with a private contractor to build and operate its first detention facility - San Quentin Prison. However, the private administration was not to last long as its management was marked with rampant escapes and the company went soon bankrupt.<sup>9</sup> The prison was eventually handed over to the State of California and remained under its control till nowadays.

The convict lease system thrived especially in the Deep South. In the aftermath of the Civil War, the southern economy was thrown into turmoil and the newly freed blacks found it hard to fight mistreatment and get a decent job. The dire economic circumstances eventually turned many of them into criminal offenders. Because of that southern states had a huge number of prisoners at their disposal whom they could employ in labor. The southern reliance on criminal sanctions and inmate labor also functioned as a tool to keep the vast black population in check. Southern states were able to incarcerate more people and impose longer sentences than any other U.S. state. The system was very efficient and operated at a far lower cost compared to the rest of the country.<sup>10</sup>

The convict lease system represented cheap labor force that a number of groups, such as organized labor or farmers, resented as an unfair competition. The public also opposed the

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<sup>6</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons", 10.

<sup>7</sup> Ibid., 10.

<sup>8</sup> Feeley, "Privatization of Prisons in Historical perspective", 137.

<sup>9</sup> Sellers, "The History and Politics of Private Prisons", 50.

<sup>10</sup> Feeley, "Privatization of Prisons in Historical perspective", 137.

system due to exploitative nature of the convict labor and terrible conditions in many of the privately run prisons. During the 1880s opposition against the convict lease system gradually rose which led some states to conduct an investigation into prisons. In reactions to results, the number of states restricted prison labor as well as prison manufactured goods, thus modified the convict lease system. Finally, in 1905 President Theodore Roosevelt signed an executive order that outlawed the convict labor on federal projects. In the next 25 years Congress and state legislatures issued a number of laws restricting the use of prison labor by private sector.<sup>11</sup>

The demise of the convict lease system and the era of Progressivism in the 1920s ushered in a new trend that pushed for government involvement in the corrections industry. All aspects of a prison administration were now managed by state governments. Prison facilities were staffed by government employees, funded by state governments and operated by governmental agencies created for this purpose.<sup>12</sup> From this point until the 1970s state governments were virtually responsible for the entire management of prisons, including its correctional services which were carried out by the governmental agencies of each state. The involvement of private sector was rather lessened during this period of time.

So after several decades of state supremacy in the corrections industry, the 1970s saw the return of private sector back in business. Growing prison management costs, caused by the expanding inmate population, together with expenses associated with the provision of prison services slowly undermined states' financial stability. To alleviate financial burden, state governments started to contract out prison services to both private companies and non-profit firms. These correctional services would include prison transportation, food preparation, health services or vocational training.<sup>13</sup> Step by step, private sector began to make its way back to corrections market.

The trigger that precipitated private sector reintegration into corrections market was the general change in the direction of public policies, followed by corresponding criminal justice practices. The disillusionment with the rehabilitative approach to criminal behavior created the right condition for the rise of private prison companies.

## ***2. Reemergence of Private Prisons in the 1980s***

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<sup>11</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons", 11.

<sup>12</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons", 11.

<sup>13</sup> *Ibid.*, 11.



During the 1970s state politicians as well as the public were fed up with the rehabilitative approach that dominated criminal justice policies for the most of the 20<sup>th</sup> century. The rehabilitative ideal was believed to produce indeterminate and disparate criminal justice sentences while failing to curtail recidivism and crime rate.<sup>14</sup> The general idea was that current criminal justice laws are too lenient and the society is not well protected from the criminal individuals. New penal values which favored incapacitation and retribution took hold and influenced the American criminal justice policy for three decades, contributing to the overcrowding crisis which was to come.

In 1971 President Richard Nixon proclaimed the drug abuse to be “public enemy number one”<sup>15</sup> and proceeded to enact a number of drug-related policies that were later dubbed as Nixon’s “War on Drugs”. The “War on Drug” and the new retributive policies enacted during the 1970s and 1980s, for example mandatory minimum sentences, resulted in disproportionately more people being convicted for lesser offenses and getting longer prison sentences. Starting with Nixon, the rhetoric of “tough on crime” continued over decades and produced punitive sentencing policies that drove the incarceration rate to unprecedented heights. In 1970 the imprisonment rate in the United States was 363 per 100,000 inhabitants. In the early 1973 (417 per 100,000 inhabitants) the incarceration rate started to climb and increased every year until it rose to 729 in 1990.<sup>16</sup>

A continuous growth of inmate population over the 1970s meant more prison costs to state authorities. With states already contracting out with private sector for prison services it was only a matter of time until the first attempts would be made to lease out entire prisons. The first contacts with private sector usually involved small special purpose detention institutions that were easily manageable – e.g. drug treatment centers and half-way houses and only later moved on to secure confinement facilities.<sup>17</sup> For instance, the federal Bureau of Prisons (BOP) contracted with private companies to operate corrections facilities for adult prisoners who were preparing to be released. In other case, the Immigration and Naturalization Services

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<sup>14</sup> Mary Sigler, “Private Prisons, Public Functions, and the Meaning of Punishment”, *38 Florida State University Law Review* 149 (2010), 158, <http://www.law.fsu.edu/docs/default-source/journals/law-review/volume-38.pdf?sfvrsn=2> (accessed February 20, 2016)

<sup>15</sup> WGBH Educational Foundation, PBS.org Interview with Dr. Robert DuPont, PBS.org (February 18, 1970), <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/interviews/dupont.html> (accessed February 20, 2016)

<sup>16</sup> The incarceration rate stayed over 700 per 100 000 inhabitants until 1994 when it started to drop. Estimated number and rate (per 100,000 inhabitants), *Sourcebook of Criminal Justice Statistics Online (1960-2012)*, Table 3.106.2012, <http://www.albany.edu/sourcebook/pdf/t31062012.pdf> (accessed February 23, 2016)

<sup>17</sup> Deborah M. Carrow, Kent John Chabotar and Joan Mullen, “The Privatization of Corrections”, *The National Institute of Justice, U.S. Department of Justice*, 1985, 5, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015051509175;view=1up;seq=3> (accessed February 22, 2016)

(INS) contracted with Behavioral System Southwest to manage a secure immigrant detention facility in Pasadena, California.<sup>18</sup>

The involvement of private sector in prison industry was further facilitated with Ronald Reagan's ascend to power. Adhering to the liberal democratic thought, Reagan's presidency championed the laissez-faire economics, characterized by the belief in the productive capacity of private enterprise and reduced government oversight. In accordance with this philosophy, the Reagan administration pushed for reduced public spending, promoted fiscal austerity and argued for a smaller government. The small government would benefit by outsourcing services to private firms which would create a free market competition to reduce costs. Indeed, in 1982 President Reagan took an important step to promote legitimacy of the privatization when he created the President's Private Survey on Cost Control, also known as the Grace Commission. The Commission's task was to identify government services that could be better provided by private enterprise. The report helped to elevate privatization as a solution and became a springboard for privatization efforts, including prison privatization.<sup>19</sup> Under such political circumstances the stage was set for the rebirth of private prison companies.

Cuts in federal funding and soaring prison population created a desperate situation for the most of the U.S. state governments. Many prisons under state jurisdiction were overcrowded and operated well above their design capacity, yet they could not afford to build new prisons due to budgetary deficiencies.<sup>20</sup> Of course, states had the alternative to finance the new detention facilities by issuing bonds. However, this practice is not easy-to-do. Usually, a state authority must ask its voters to authorize a new bond issue because it constitutes a huge financial commitment on the part of the citizens to pay off the costs of a new project. Despite the fact that the public favored incarceration policies, they were not always willing to sanction such measures. In 1980, about 60% of local referenda for jail bonds were rejected.<sup>21</sup> In 1983

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<sup>18</sup> Brett C. Burkhardt, *Private Prisons in Public Discourse: Measuring Moral Legitimacy* (Oregon State University, 2012), 5, [http://www.disc.wisc.edu/archive/prisonnews/prisonnews\\_data/201201Burkhardt.pdf](http://www.disc.wisc.edu/archive/prisonnews/prisonnews_data/201201Burkhardt.pdf) (accessed February 23, 2016)

<sup>19</sup> Paul Leighton and Donna Selman, *Punishment for Sale* (Lanham: Rowman & Littlefield Publishers, Inc., 2010), 53, <http://sacredartichoke.com/latarsha/Nonfiction%20Ebook%20Pack%20January%202012%20PHC/Punishment.for.sale.Donna.Selman..Paul.Leighton.9781442201729.pdf> (accessed February 25, 2016)

<sup>20</sup> Sharon Dolovich, "Punishment and Profit: The Case of Private Prisons", 55 *Duke Law Journal* 437-546 (2005), 456, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1274&context=dlj> (accessed February 26, 2016)

<sup>21</sup> Dana C. Joel, "The Privatization of Secure Adult Prisons: Issues and Evidence," in *Privatizing Correctional Institutions*, ed. Gary W. Bowman, Simon Hakim, and Paul Seidenstat (New Brunswick, N.J.: Transaction, 1993), 58.

there were about 439,000 prisoners in American prisons which meant their population almost doubled in the ten-year time span.<sup>22</sup> In 1984 prisons in 32 states and the District of Columbia were under court order or consent decrees to relieve the overcrowding.<sup>23</sup> So under these circumstances the states turned to private sector for help. Lacking sufficient capital to build prisons on their own and being in an urgent need of additional prison bed space, the states began contracting out to private sector en masse. The demand for prison privatization resulted in the boom of new private prison companies as well as the invitation for already established corporations to enter the prison industry.

The Correctional Corporation of America (CCA)<sup>24</sup> was the first modern private prison company that emerged in the US in 1983. A year later, CCA won a contract for a facility in Hamilton County, Tennessee, which was the first case of the state authority contracting with private sector for a detention facility. In 1985, CCA tried to take over the whole Tennessee prison system. However, the state legislature decided to reject the proposal due to CCA's already tarnished reputation for cost overruns and prisoner escapes.<sup>25</sup> Notwithstanding this failure, CCA managed to secure many contracts for managing prison facilities and became a leader among private prison companies.

In 1984 the Wackenhut Corrections Corporation (WCC)<sup>26</sup>, nowadays known as the GEO Group, was formed as a division of the Wackenhut Corporation, a security services company.

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<sup>22</sup> In 1974 there were roughly 230 000 inmates in the U.S. prisons. US Department of Justice, Bureau of Justice Statistics, "Prisoners in 1983", <http://www.bjs.gov/content/pub/pdf/p83.pdf> (accessed February 26, 2016)

<sup>23</sup> In the same year about 17000 inmates were released due to overcrowding problems. Joseph T. Hallinan, *Going Up the River: Travels in a Prison Nation* (Random House Publishing Group, 2001, 164, <https://books.google.cz/books?id=gA6R9gZ9UNsC&printsec=frontcover&dq=going+up+the+riverhallinan%20up%20the%20ruver#v=onepage&q&f=false> (accessed February 26, 2016)

<sup>24</sup> The Corrections Corporation of America (CCA), based in Nashville, Tennessee, is the oldest and largest private prison company in the United States. Its 2015 revenue reached 1,79 billion which was a 8,48% increase compared to fiscal year 2014. Today it owns or control 66 detention facilities with a bed capacity of 75, 000 and operate another 11 facilities owned by government authorities with a design capacity of 14, 000 beds. It operates its prisons in 18 US states and the District of Columbia.

"CCA Reports Fourth Quarter and Full Year 2015 Financial Results", *Nasdaq Globenewswire*, February 10, 2016, <https://globenewswire.com/news-release/2016/02/10/809594/0/en/CCA-Reports-Fourth-Quarter-and-Full-Year-2015-Financial-Results.html> (accessed February 26, 2016)

<sup>25</sup> Cody Mason, "Too Good To Be True: Private Prisons in America", *The Sentencing Project*, (Washington, 2012), 2, [http://sentencingproject.org/doc/publications/inc\\_Too\\_Good\\_to\\_be\\_True.pdf](http://sentencingproject.org/doc/publications/inc_Too_Good_to_be_True.pdf) (accessed February 27, 2016)

<sup>26</sup> WCC, based in Florida, is the closest competitor for CCA in the US. In 1988 the WCC was incorporated as a Wackenhut subsidiary (now a subsidiary of G4S Secure Solutions) and in 1994 became separately traded public company. During the 2000s the firm acquired smaller companies like Cornell Companies and Correctional Services Corporation (CSC). In 2003 WCC repurchased all common stock held by G4S, thus changing its name to GEO Group. Historic Milestones, *GEO Group*, <http://www.geogroup.com/history> (accessed February 28, 2016). GEO Group operates prisons in Australia, United Kingdom, South Africa and North America. In the US it manages 64 detention facilities with a 75, 145 bed capacity. 2015 Annual Report, *The GEO Group*,

Other smaller private prison companies that took part in the prison privatization boom were the Cornell Companies, Behavioral Systems Southwest or the Eclectic Communications.

### ***3. Current Trends in Prison Privatization***

Since the 1980s the situation with overcrowded prisons has got only worse. Mass incarceration remains a national problem that is in need of a permanent solution. The following statistical data shows the problem in its magnitude. According to the latest data, published by the Bureau of Justice (BJS) in 2014, there were 2,217,900 individuals incarcerated under federal, state or local authorities.<sup>27</sup> Furthermore, if we include persons supervised by the community who are on parole or probation<sup>28</sup>, we arrive at the total number of 6,851,000. This means that every 1 in 36 US adults was under some type of correctional supervision.<sup>29</sup> If we compare the United States with other developed countries, we find out that the United States has the highest incarceration rate among them. In the US there are 690 incarcerated individuals per 100,000 US residents of all ages.<sup>30</sup> The US total prison population alone constitutes almost a quarter of all persons incarcerated worldwide and dwarfs those of other nations.<sup>31</sup> For illustration, the second largest jailer after the US is Turkmenistan with 583 prisoners per 100,000 inhabitants.<sup>32</sup> However, most of the industrialized countries have much lower incarceration rate - for example, England, Germany and Japan with 147, 76 and 47 per 100,000 respectively.<sup>33</sup> In sum, the US mass prison population stems from its large incarceration rate, which is more than four times the world average.<sup>34</sup>

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<http://www.snl.com/Cache/1001209212.PDF?Y=&O=PDF&D=&FID=1001209212&T=&IID=4144107>  
(accessed February 28, 2016)

<sup>27</sup> US Department of Justice, Bureau of Justice Statistics, "Correctional Populations in the United States", December 2015, 22, <http://www.bjs.gov/content/pub/pdf/cpus14.pdf> (accessed March 6, 2016)

<sup>28</sup> Parole and probation serve as alternatives to incarceration. Parole is a provisional release of a prisoner who agrees to certain conditions prior the completion of his sentence. Person on probation is supervised by the community instead of being sent to a prison.

<sup>29</sup> US Department of Justice, Bureau of Justice Statistics, "Correctional Populations in the United States", Table 1-2, 2-3.

<sup>30</sup> Ibid., Appendix Table 5, 22.

<sup>31</sup> Stephanos Bibas, "The Truth about Mass Incarceration", *National Review*, September 21, 2015, <http://www.nationalreview.com/article/424059/mass-incarceration-prison-reform> (accessed March 6, 2016)

<sup>32</sup> I omitted Seychelles and St. Kitts and Nevis (1st and 3rd in the list of world highest incarceration rates) as disproportionately smaller countries.

<sup>33</sup> Highest to Lowest-Prison Population Rate, *World Prison Brief*, Institute for Criminal Policy Research, [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All) (accessed March 6, 2016)

<sup>34</sup> "Economic Perspectives on Incarceration and the Criminal Justice System", *Executive Office of the President of the United States*, April 2016, 7, [https://www.whitehouse.gov/sites/default/files/page/files/20160423\\_cea\\_incarceration\\_criminal\\_justice.pdf](https://www.whitehouse.gov/sites/default/files/page/files/20160423_cea_incarceration_criminal_justice.pdf) (accessed April 27, 2016)

The statistical data shows that the US prison population has increased by 350% since 1980.<sup>35</sup> This is a result of harsher sentencing policies implemented during the 1980s and 1990s. Especially, minimum mandatory sentences and the “three strikes laws”<sup>36</sup> policies reflected badly on the incarceration rate and prison population in the US. These policies have been heavily criticized for their harshness that borders on unfairness as the offenders receive disproportionately harsh sentences for nonviolent, even petty crimes. Mandatory sentencing rules tend to target moral crimes, such as drug possession. Indeed, it is estimated that each year about 1,500,000 people get arrested for a drug-related offense.<sup>37</sup> In 2013, there were 96,300 offenders sentenced under the federal authority and about 208,000 under state jurisdictions.<sup>38</sup> The drug problem is especially visible in the federal prison system where over 50% of males and 59% of females are serving their time for drug offenses.<sup>39</sup>

As of now, there are about 28 states that have some kind of the three strikes laws. Most of the US states adopted these laws in the 1990s but a number of the states have passed similar laws only recently - for example, the state of Massachusetts in 2012.<sup>40</sup> In some states attempts have been made to amend these habitual offender policies. One successful case took place in California in 2012 where the voters passed the new version of Proposition 36, regarding the three strikes law. However, the majority of the legislative attempts failed to acquire approval or simply produced inconsiderable results.

On a federal level, there were a number of federal criminal justice reform bills introduced in the 114<sup>th</sup> Congress in 2015. None of them has been passed yet, for they are to be found in the early stages of the approval process. The bills are co-sponsored by the representatives of both parties, so it seems the criminal justice reform has become a bipartisan issue lately. One

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<sup>35</sup> US Department of Justice, Bureau of Justice Statistics, "Total Adult Correctional Population 1980-2014", Key Statistics: Total Correctional Population, <http://www.bjs.gov/index.cfm?ty=kfdetail&iid=487> (accessed March 15, 2016)

<sup>36</sup> These policies are designed to incapacitate repeated offenders. Mandatory sentencing require the judges to give the defendants for certain crimes at least minimum sentence as stipulated by the laws. The three strikes laws are habitual offender laws that give the courts the mandate to impose harsh sentence in case the offender has already committed two violent crimes in the past. Such a defendant usually get a life sentence. However, some states give life imprisonment even for nonviolent crime if the person has violated law for the third time. The term three strikes law comes from baseball where a batter is allowed two strikes before striking out on a third attempt.

<sup>37</sup> Uniform Crime Reports, FBI, "Crime in the United States 2014", Table 29-Estimated number of arrests in 2014, <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-29> (accessed March 16, 2016)

<sup>38</sup> US Department of Justice, Bureau of Justice Statistics, "Prisoners in 2014", September 2015, Appendix Table 4.5, 30, <http://www.bjs.gov/content/pub/pdf/p14.pdf> (accessed March 16, 2016)

<sup>39</sup> As of September 30, 2014. *Ibid.*, 2.

<sup>40</sup> Nicole Shoener, "Three Strike Laws in Different States", *Legal Match*, January 21, 2015, <http://www.legalmatch.com/law-library/article/three-strikes-laws-in-different-states.html> (accessed March 16, 2016)

of the most prominent bills is the *Smarter Sentencing Act* of 2015. If passed, this bill would reduce certain 20-year, 10-year and 5-year mandatory minimum drug sentences by half. Also, it would reduce minimum mandatory life sentences for individuals who committed the third drug offense.<sup>41</sup> If enacted, the bill would also expand the drug safety valve, which basically means the drug offenders would be sentenced according to US Sentencing Commission guidelines instead of the statutory minimum mandatory sentences. And third, the bill would also make the Fair Sentencing Act of 2010 retroactive, which would allow certain federal prisoners to petition the court for resentencing. In such a case, they would be given a new, considerably shorter, sentence.<sup>42</sup> The second bill under consideration is *The Corrections Act* of 2015. The bill would allow prisoners to earn a certain amount of time off of their prison sentences if they participated in education programming or be engaged in other productive activities. The amount of time earned depends on the recidivism status of each offender. The most dangerous type of offenders and those most prone to recidivism would be excluded from this measure.<sup>43</sup> The third bill worth mentioning is the *Justice Safety Valve Act* of 2015. If passed, this bill would allow federal judges to give sentences below mandatory minimum sentencing rules. It is considered it would promote rehabilitation and prevent unjust punishment or irrational penalties.<sup>44</sup>

Some legislations on state and federal levels manage to accomplish a small reduction in incarceration. However, the changes made are not sufficient enough to substantially ease the overcrowding problem. The constant demand for additional bed space paved the way for the private prison companies' success. Nowadays, the private prison industry constitutes a billion dollar business. Prison privatization as a solution to overcrowded state and federal prisons is perceived by the governments as the only viable move that produces quick results. Several states even allowed its prisoners to be incarcerated in out-of-state facilities as a measure to decrease the overcrowding in their prisons. States maintain that such a solution is cheaper than building and managing new prison facilities. Currently, there are about 10,000 prisoners who are housed in private prison facilities outside the state of their conviction.<sup>45</sup> Among the states which send their inmates outside their borders are Vermont, Idaho and Washington.

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<sup>41</sup> Lauren Galik and Leonard Gilroy, *Annual Privatization Report 2015: Criminal Justice and Corrections* (Reason Foundation, 2015), 9, <http://reason.org/files/apr-2015-criminal-justice.pdf> (accessed March 17, 2016)

<sup>42</sup> Galik and Gilroy, "Annual Privatization Report 2015: Criminal Justice and Corrections", 9.

<sup>43</sup> *Ibid.*, 9.

<sup>44</sup> *Ibid.*, 9.

<sup>45</sup> Daniel Rivero, "These states' prisons are so full that they have to ship inmates thousands of miles away", *Fusion*, June 8, 2015, <http://fusion.net/story/146671/these-states-prisons-are-so-full-they-have-to-ship-inmates-thousands-of-miles-away/> (accessed March 17, 2016)

However, by far the biggest exporter is California which alone sent over 7,000 prisoners to be housed in other US states.<sup>46</sup>

For the past three decades the private prisons have steadily grown in numbers and private prison providers have amassed considerable wealth and made their presence felt in shaping public policies. Despite this fact, private prisons still constitute only a small share of the whole corrections market. At year-end 2014, there were 131,261 inmates held in private prison facilities, either under the state jurisdictions (in 30 US states)<sup>47</sup> or the federal authority -Federal Bureau of Prisons (BOP,) which constitutes roughly 8,5 % of total private prison population.<sup>48</sup> The figure is a 1.6 % decrease in private prison population compared to the previous year. Also, the federal prison system housed 1,100 fewer inmates (down 3%) in private facilities than in 2013, for a total of 40,000, which represents 19% of all BOP prison population. The data for private prisoners under the state jurisdictions also shows a slight decline (1%) in prison population.<sup>49</sup> These numbers tell us that federal prison system relied much more on private prisons than state authorities. Also, as it is shown the private prison population experienced a minor decrease in its total numbers. But overall, the number of private prisoners has been rising steadily. Between 1990 and 2009, the number of private prisoners has increased by 1,600% growing from 7,000 to around 129,000.<sup>50</sup> The utilization of private prisons reached its highest peak in 2012 when there were 137,200 (9% of total prison population) housed in private prison facilities.<sup>51</sup>

Starting with the 1980s, there have been two forms of privatization. In the first version the private sector offers its capital financing to construct new prisons. This approach is called the “nominal privatization” and places the ownership of the detention facility in private hands.<sup>52</sup> Furthermore, the private sector may act independently and opt to build a prison facility “on spec”, hoping to win a government contract. This type of behavior is very common nowadays

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<sup>46</sup> Ibid.

<sup>47</sup> Some US states have never utilized private prisons and some have abandoned this practice. States which do not use private prisons are Arkansas, Delaware, Illinois, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Oregon, Rhode Island, Utah, Washington, West Virginia and Wisconsin. Some of them, however, house its prisoners in private out-of state facilities.

<sup>48</sup> Figure includes private prisoners under federal and state authority, as well as private prisoners housed in out-of-state facilities. Bureau of Justice Statistics, “Prisoners in 2014,”12.

<sup>49</sup> Ibid,13

<sup>50</sup> Bureau of Justice Statistics, “Census of State and Federal Correctional Facilities“, 1995 iv (1997); United States Department of Justice, Bureau of Justice Statistics, “Prisoners in 2009“, 33 App. Table 19 (2010).

<sup>51</sup> US Department of Justice, Bureau of Justice Statistics, “Prisoners in 2014“, 13.

<sup>52</sup> Herman B. Leonard, “Private Time: The Political Economy of Private Prison Finance”, in *Private prisons and the Public Interest*, ed. Douglas C. McDonald (New Brunswick: Rutgers University Press, 1990), 70-71.

and usually pays off given the government's constant need for more prison bed space. Actually, the local communities often team up with the private sector, seeking the economic development, to lure the government to build a prison in their area.<sup>53</sup> Another type of the nominal privatization is the so-called "purchase lease" agreement. Under this scenario the government authority may be involved in the prison construction process but the financing comes entirely from the private sector. The private sector then usually leases the facility for several decades. At the end of the lease agreement the ownership of the facility either goes back to the state authority or the state has an opportunity to buy it at a below market price.<sup>54</sup>

The second type of prison privatization refers to the term "private prisons" as we understand it today. The private sector takes over the management of the entire correctional facility. Private prison companies argue that they can run prison for considerably lower costs than the state authority while preserving the quality of prison services. The process of contracting out goes as follows: The state identifies the facility which it wants to be privatized and issues a "request for proposal".<sup>55</sup> The private prison firms then bid for winning the contract from the state. Under such a contract the state pays the private company a set payment for an inmate per day in exchange for taking over the prison management and a provision of prisoners' needs. Should the private firm violate the contract in any respect or fail to deliver the agreed services the state can terminate the contract. However, this is not so easily done, given the mutual interdependence that ensues after privatization which I will discuss in later chapters. Under this scenario the government is virtually left with nonexistent power to exercise scrutiny over sold correctional facility. Moreover, in private prisons there is no state authority that can oversee the internal affairs of the private prisons. Therefore, it is very difficult to assess the level of performance by the private provider. Currently, most private correctional facilities are run as "private prisons". Now, let us have a closer look on the private prison companies themselves.

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<sup>53</sup> Sasha Abramsky, "Incarceration, Inc.: Private Prisons Thrive on Cheap Labor and the Hunger of Job-Starved Towns", *The Nation*, July 19, 2004, 22, 24–25, <http://www.thenation.com/article/incarceration-inc/> (accessed March 1, 2016)

<sup>54</sup> Leonard, "Private Time: The Political Economy of Private Prison Finance", 71.

<sup>55</sup> Request for proposal (RFP) - in these requests the government agency states its requirements and bidder answer with their proposals including detailed information on the construction of a planned prison. Richard Harding, *Private Prisons and Public Accountability* (Transaction Publishers, 1997), 12, [https://books.google.cz/books?id=RtAu3fji7ewC&pg=PA10&hl=cs&source=gbs\\_toc\\_r&cad=3#v=onepage&q&f=false](https://books.google.cz/books?id=RtAu3fji7ewC&pg=PA10&hl=cs&source=gbs_toc_r&cad=3#v=onepage&q&f=false) (accessed March 1, 2016)



Currently, two largest private prison companies CCA and GEO Group, account for around 75 % of the \$7.4 billion private prison market.<sup>56</sup> Combined both companies generated approximately \$3.63 billion in revenue in the fiscal year 2015. Over the last two years the GEO Group has managed to surpass CCA, a long-time leader in total revenues.<sup>57</sup> GEO Group and CCA are public traded companies that present an extremely lucrative financial investment. Indeed, private prison companies demonstrate a higher profit margin than most private firms. In 2015 the average US private company had a net profit margin of 7.3%<sup>58</sup> but CCA enjoyed nearly double of that at 12.37%.<sup>59</sup> And despite the fact that both CCA and GEO Group stock prices suffered a setback (-17% both) in most of 2015, overall stock prices have been rising by 106% and 169%, respectively over the last 10 years.<sup>60</sup>

In both companies, the biggest section of their revenue pie comes from the federal agencies. These agencies include U.S. Marshals Service (USMS), Federal Bureau of Prisons (BOP) and Immigration and Custom Enforcement (ICE).<sup>61</sup> In the Geo Group's case, the income generated from contracting with federal agencies accounts for 45% (12% USMS, 15% BOP and 18% ICE). GEO Group also operates correctional facilities in South Africa, England and Australia but the share of this international business unit makes up only 8% of GEO's total revenue.<sup>62</sup> According to a CCA report, contracts with federal agencies make up over half (51%) of their total revenue.<sup>63</sup> It is clear that the federal detention will continue to be a major market for private prison companies. Both companies also practice the acquisition strategy of buying out other existing private prison companies. It represents a good way how to increase the company's market share and at the same time eliminate a direct competitor. For

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<sup>56</sup> Thierry Godard, "The Economics of the American Prison System," *Smart Asset*, March 23, 2016, <https://smartasset.com/insights/the-economics-of-the-american-prison-system> (accessed March 25, 2016)

<sup>57</sup> In the fiscal year 2015 the CCA and GEO Group earned \$1,79 billion and \$1,84 billion respectively. The GEO Group, Inc., "2015 Annual Report", 1. CCA, "2015 Annual Report on Form 10-K", 52, <http://www.cca.com/investors/financial-information/annual-reports> (accessed March 20, 2016)

<sup>58</sup> Sage Works, Data Releases, *The Most Profitable Industries in the US*, August 28, 2015, <https://www.sageworks.com/datareleases.aspx?article=329&title=The-Most-Profitable-Industries-in-the-U.S.&date=August-28-2015-> (accessed March 20, 2016)

<sup>59</sup> Guru Focus, Screeners, *Corrections Corporation of America (CXW): Summary*, <http://www.gurufocus.com/stock/CXW> (accessed March 20, 2016)

<sup>60</sup> Guru Focus, Screeners, Insider, *Corrections Corporation of America (CXW)-10yrs*, <http://www.gurufocus.com/insider/CXW> (accessed March 21, 2016), Guru Focus, Screeners, Insider, *The GEO Group, Inc. (GEO)-10yrs*, <http://www.gurufocus.com/insider/GEO> (accessed March 21, 2016)

<sup>61</sup> ICE and USMS together supervise federal detainees who need to be placed in a detention facility while awaiting trial. ICE was formed after the 9/11 terror attacks as a replacement for U.S. Customs Service and the Immigration and Naturalization Service. It detains undocumented immigrant adults, refugees and other immigrants groups who violated the immigration law or do not have valid documentation. USMS was established in 1789 as a support to federal courts. Its responsibilities varied over centuries but its current task is to apprehend and detain fugitives and transport federal detainees from custody to their prison facility.

<sup>62</sup> The GEO Group, "2015 Annual Report", 1.

<sup>63</sup> CCA, "2015 Annual Report on Form 10-K," 10.

illustration, only in 2015 the CCA has acquired Avalon Correctional Services Inc. that operated 11 community corrections facilities with 3000 beds.<sup>64</sup> Similarly GEO Group took over the LCS Corrections that owned 8 corrections and detention facilities with a capacity of 6,500 beds.<sup>65</sup> This is a trend that will continue to decrease the number of competitors in the corrections industry and will only increase the 2 corporations' huge control over the market. At the present time the third largest private prison company in the corrections market is Management & Training Corporation.<sup>66</sup> It operates 26 state and federal correctional facilities in 8 US states with a 27,000 bed capacity.<sup>67</sup> Just for completeness, there are other much smaller private prison companies that own up to ten facilities and are usually located in the Texas-Louisiana region. These include Community Education Centers, Emerald Companies or LaSalle Corrections, to name a few.

Generally, the detention and corrections facilities are to be found along the Mexican border and in the states of the Deep South. Most of correctional and detention facilities are concentrated in the Texas-Louisiana-Mississippi region, in the states with high incarceration rate, harsh sentencing policies and many immigrant detention centers.

### **3.1 California**

The state of California has been struggling with its high prison population for nearly two decades. Following the implementation of punitive sentencing policies in the 1990s, the continually buoying prison population resulted in overcrowded prisons that operated well above their capacity. Until very recently, the California state prison system was considered to be the most overcrowded one in nation. It was not uncommon to see inmates double or triple bunked in a hurriedly converted open gymnasium instead of prison cells. In 2006, the then Governor Arnold Schwarzenegger issued an emergency proclamation regarding the disastrous situation in the California state prisons. As he put it: *"I believe immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding... (which) gets worse with each passing day, creating an emergency in the California prison system... This crisis spans the eastern, western, northern, and southern parts of the state and compromises the public's safety, and I find that local authority is inadequate to cope with the*

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<sup>64</sup> Ibid, 9.

<sup>65</sup> The GEO Group, "2015 Annual Report", 2.

<sup>66</sup> MTC is a privately-held corporation, established in 1987 and headquartered in Centerville, Utah. It is one of the world's largest private prison providers but compared to CCA and GEO Group its bed capacity is third the size of the capacity either of CCA or GEO Group.

<sup>67</sup> Management & Training Corporation, "Corrections Overview", <https://www.mtctrains.com/corrections/corrections-overview> (accessed March 21, 2016)

*emergency*.”<sup>68</sup> Indeed, California state prisons have been the most overcrowded ones in nation, making it an extreme case.

The overcrowding crisis culminated in 2009 when the three-judge federal panel ruled that the conditions in California state prisons are deplorable and inmates are denied the basic quality of life. At the time of this ruling, the California state prison population numbered around 170,000 and the state prisons operated at double the design capacity.<sup>69</sup> The federal panel ruling was upheld by the US Supreme Court ruling in 2011. It was declared that the overcrowded prison constituted a violation of the Eight Amendment to the US Constitution that prohibits cruel and unusual punishment. The state of California was ordered to reduce its prison population by 110,000, which makes 137.5% of its design capacity.<sup>70</sup> Following the ruling, California passed the *Public Safety Realignment* plan that shifted the responsibilities for housing offenders from state jurisdiction to local authorities. Moreover, new sentenced low-risk offenders were sent to serve their time in county jails rather than state prisons.<sup>71</sup> The considerable part of the solution was contracting with private prison facilities to house California inmates in out-of-state prisons. The contract with CCA was extended for housing California inmates in their four facilities in Arizona, Oklahoma and Mississippi.<sup>72</sup> Also the California Department of Corrections and Rehabilitation (CDCR)<sup>73</sup> contracted with CCA and GEO Group for housing some of the California prisoners. In 2013 the CDCR reached a lease agreement with CCA for the company’s California City Correctional Center, a 2,560 beds medium-security facility.<sup>74</sup> Thanks to all these efforts the California state prison population began dropping, thus easing the overcrowding problem in compliance with the court ruling. As of December 2015, the California state prison population decreased by 31,000, which resulted in the reduction to 113,000 or 136.5% of the state prison capacity thus meeting the

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<sup>68</sup> Arnold Schwarzenegger, Governor of California, “Prison Overcrowding State of Emergency Proclamation” (Office of the Governor, October 4, 2006), <https://www.gov.ca.gov/news.php?id=4278> (accessed March 22, 2016)

<sup>69</sup> US Department of Justice, Bureau of Justice Statistics, *Prisoners in 2009*, Appendix Table 4, Appendix Table 23 (Washington D.C. : Government Printing Office, December 2010) 19,37, <http://www.bjs.gov/content/pub/pdf/p09.pdf> (accessed March 23, 2016)

<sup>70</sup> Daniel B. Wood, “Supreme Court orders California to slash prison population by more than 30,000”, *The Christian Science Monitor*, May 23, 2011, <http://www.csmonitor.com/USA/Justice/2011/0523/Supreme-Court-orders-California-to-slash-prison-population-by-more-than-30-000> (accessed March 23, 2016)

<sup>71</sup> California Department of Corrections and Rehabilitation, Public Safety Realignment, *Realignment Fact Sheet*, <http://www.cdcr.ca.gov/realignment/docs/Realignment-Fact-Sheet.pdf> (accessed March 23, 2016)

<sup>72</sup> CCA, “2015 Annual Report on Form 10-K,” 75.

<sup>73</sup> California Department of Corrections and Rehabilitation (CDCR) is a state agency responsible for the operation of the California state prison and parole systems.

<sup>74</sup> CCA, “2015 Annual Report on Form 10-K,” 22.

Federal court order quota.<sup>75</sup> Despite all the success, in 2015 California still belongs among the top 10 US states with the most serious overcrowding problem.

There are several factors that contribute to the current overcrowding crisis. First of all, we must look at the specific composition of the California inmate population. California is a state of a vast expanse with a very diverse and large population, large urban areas and criminal street gangs. Moreover, it serves as an entry point for both immigrants and drugs to the United States. Because of this California has a multiracial population and specific environment that invites criminal behavior. The state is also a birthplace of many American infamous prison gangs, for instance the Aryan Brotherhood, Nuestra Familia or the Mexican mafia, that are very powerful and well-known throughout the United States.

Second, California has always been a proponent of punitive sentencing policies. Its three strikes laws have been widely considered to be the harshest in the country. Since its implementation in 1994 it has been the main drive behind the rising California prison population.<sup>76</sup> California three strikes laws required a double sentence for second felony when the first one was violent or serious and demanded 25 years or life sentence for a third crime.

The unique toughness of the California three strikes laws lies in the fact that the third offense did not have to be violent or serious. However, the laws originally designed to incapacitate repeat serious felons, also put many nonviolent offenders behind bars for petty crimes. According to Michael Romano, a director of Stanford's Three Strikes program and an avid proponent of the three strikes laws reform, a typical California three strike offender was "a homeless guy on drugs."<sup>77</sup> Moreover, the overall "tough on crime" atmosphere pushed district attorneys to seek maximum for every possible third strike. Simultaneously judges were obliged legally to give offenders a maximum sentence whether they deem it an appropriate punishment or not. Additionally, some 40% of the three strikers are mentally ill or retarded and they also tend to be black.<sup>78</sup>

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<sup>75</sup> Ibid., 67.

<sup>76</sup> The California three strikes law has its origins in a 1993 horrendous case, that shattered the whole country. Back then, a violent offender named Richard Allen Davis kidnapped, raped and murdered a 12-year-old girl. Californians were adamant that never ever should a repeat felon be given a chance to commit another crime. Next year, the California citizens passed Proposition 184-the three strike law, with astonishing 72% of votes. Ballotpedia, "California Proposition 184, The Three Strikes Initiative (1994)" [https://ballotpedia.org/California\\_Proposition\\_184\\_the\\_Three\\_Strikes\\_Initiative\\_\(1994\)](https://ballotpedia.org/California_Proposition_184_the_Three_Strikes_Initiative_(1994)) (accessed March 22, 2016)

<sup>77</sup> Matt Taibbi, "Cruel and Unusual punishment: The Shame of Three Strikes Laws" *The Rolling Stone*, March 27, 2013, <http://www.rollingstone.com/politics/news/cruel-and-unusual-punishment-the-shame-of-three-strikes-laws-20130327> (accessed March 23, 2016)

<sup>78</sup> Ibid.

Indeed, the three strikes laws were often subject to criticism for its alleged targeting of black people. In California, blacks account for 7% of the total population, but 28% of the prison population and 45% of the three-strikers.<sup>79</sup> Despite the controversies, the three strikes laws managed to weather even a challenge in the US Supreme Court for alleged violation of the Eight Amendment to the Constitution (cruel and unusual punishment). However, the Supreme Court in a 5-4 decision upheld the constitutionality of the three strikes laws.<sup>80</sup>

There were several attempts to reform the laws for the last 20 years. First successful amendment to the statute came in 2000 through Proposition 36. It required that persons convicted of possession, transportation or use of drugs would be given a drug treatment and probation, rather than imprisonment.<sup>81</sup>

Still, the most drastic change occurred in 2012 through another ballot initiative - Proposition 36 (2012). Under this amendment, the offenders would receive life sentence only when their new third crime was either serious or violent. Additionally, felons serving their life sentences could petition the court to have their penalty reduced if their third strike conviction was not violent or serious. Judges were given more autonomy to determine whether the punishment is appropriate and does not pose a danger to public safety. In contrast, life sentences for the third strike crime remained in place when previous crimes included rape, child molestation or murder or the third offense was of serious or violent character.<sup>82</sup>

In 2011, there were about 8,800 third-strikers held in California prison system<sup>83</sup>, constituting less than 6% of the 147,000 California prisoners.<sup>84</sup> Roughly half of them were convicted of a violent crime thus being ineligible to benefit from the initiative's proposition.<sup>85</sup> Although the impact of this change was somewhat limited in regard to easing the

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<sup>79</sup> Ibid.

<sup>80</sup> Doyle Horn, "Lockyer vs Andrade: California Three Strikes Law Survive Challenge Based on Federal Law That is Anything but Clearly Established", *Journal of Criminal Law and Criminology*, Volume 94, Issue 3, (Spring 2004), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7162&context=jclc> (accessed March 25, 2016)

<sup>81</sup> Ballotpedia, "California Proposition 36(2000)", [https://ballotpedia.org/California\\_Proposition\\_36,\\_Probation\\_and\\_Treatment\\_for\\_Drug-Related\\_Offenses\\_\(2000\)](https://ballotpedia.org/California_Proposition_36,_Probation_and_Treatment_for_Drug-Related_Offenses_(2000)) (accessed March 24, 2016)

<sup>82</sup> Ballotpedia, "California Proposition 36, Changes in the Three Strikes Law (2012)", [https://ballotpedia.org/California\\_Proposition\\_36,\\_Changes\\_in\\_the\\_%22Three\\_Strikes%22\\_Law\\_\(2012\)](https://ballotpedia.org/California_Proposition_36,_Changes_in_the_%22Three_Strikes%22_Law_(2012)) (accessed March 26, 2016)

<sup>83</sup> California Department of Corrections and Rehabilitation, "Second and Third Striker Felons in the Adult Institution Population", March 31, 2011. Sacramento, California, 2, [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/Quarterly/Strike1/STRIKE1d1103.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Quarterly/Strike1/STRIKE1d1103.pdf) (accessed March 26, 2016)

<sup>84</sup> California Department of Corrections and Rehabilitation, "Weekly Report on Population", June 8, 2011, [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOPIA/TPOP1Ad110608.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOPIA/TPOP1Ad110608.pdf) (accessed March 26, 2016)

<sup>85</sup> California Department of Corrections and Rehabilitation, "Second and Third Striker Felons in the Adult Institution Population," 2.

overcrowding, it made the punishment fit the crime in most cases. Despite this change, the California three strikes law still remains the strictest in the US.

The most recent ballot initiative affecting the three strikes laws was Proposition 47 approved in 2014. Under this measure some minor crimes like drug possession or petty theft related offenses can be reduced from potential felonies to misdemeanors. A report by the Stanford University Justice Advocacy Project reported that the law had reduced the state prison population by 13,000 and that it would save the state about \$150 million.<sup>86</sup> However, despite the decrease in prison population in recent years, the costs for housing California prisoners have increased.

Following the California *Realignment Plan*, the state prison population shrunk in numbers by 11.5%. As of May 2016, California's 34 state prisons house about 127,700 compared to 144,456 in the pre-realignment era.<sup>87</sup> This is slightly more than the state housed in 1994-5 but yet the cost per inmate has doubled over time from \$33,000<sup>88</sup> to \$64,000 annually.<sup>89</sup>

Currently, California belongs among the states with the most expensive prisoners. This is partly due to the substantial rise in payments for the corrections officers who are shielded and supported by the powerful California Correctional Peace Officers Association (CCPOA).<sup>90</sup> As of May 2016, the annual mean salary for a California corrections officer was \$69,040 compared to the national mean wage of \$45,320.<sup>91</sup> Beside the higher wage, the CCPOA members also enjoy generous retirement benefits. Staffing costs are one of the factors why the state of California continues to spend more and more on corrections.

Beside the wages for prison officers, medical services in state prisons are in dire need for funding. *Plata vs Schwarzenegger*, a federal class action civil rights lawsuit alleged that California's medical services in state prisons are inadequate and in violation with the Eight

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<sup>86</sup> Clifton B. Parker, "California's early release of prisoners proving effective so far, Stanford experts say", *Stanford News*, November 2, 2015, <https://news.stanford.edu/2015/11/02/prison-early-release-110215/> (accessed March 27, 2016)

<sup>87</sup> California Department of Corrections and Rehabilitation, "Weekly Report on Population", May 4, 2016, [http://www.cdcr.ca.gov/Reports\\_Research/Offender\\_Information\\_Services\\_Branch/WeeklyWed/TPOP1A/TPOP1Ad160504.pdf](http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad160504.pdf) (accessed May 6, 2016)

<sup>88</sup> Scott Graves, "Fewer State Prisoners, Higher Cost per Inmate", *California Budget & Policy Center*, August 7, 2013, <http://calbudgetcenter.org/blog/fewer-state-prisoners-higher-cost-per-inmate/> (accessed March 27, 2016)

<sup>89</sup> The Times Editorial Board, "California's Prison Spending Is Out of Whack", *The LA Times*, January 14, 2016, <http://www.latimes.com/opinion/editorials/la-ed-de-incarceration-dividend-20160114-story.html> (accessed March 27, 2016)

<sup>90</sup> CCPOA is a labor union, founded in 1957, that represents around 30,000 correctional officers in California. It exercises a huge influence in California politics and spends a lot of money on political campaigns and lobbying legislators. It heavily supports harsh sentencing policies and acts actively against prison privatization. „About Us“, official website of California Correctional Peace Officers Association, <https://www.ccpoa.org/about-us/> (accessed March 27, 2016)

<sup>91</sup> Occupational Employment and Wages, May 2015“, Bureau of Labor Statistics, US Department of Labor, <http://www.bls.gov/oes/current/oes333012.htm#nat> (accessed March 27, 2016)

Amendment to the US Constitution. As a result the state medical system was held in civil contempt and put into receivership.<sup>92</sup> In response to the court order California allotted a significant amount of money on medical health care. Additional financing was given to counties, in order to accommodate the inflow of offenders coming as a result of the California *Realignment Plan*.<sup>93</sup> So temporarily, higher spending seems to be unavoidable in the light of the medical services being under supervision of a federal Receiver and ongoing changes in criminal justice system that needs funding.

And finally, one of the main factors driving up the prison population is the state's high recidivism.<sup>94</sup> Since the mid-1990s, California's budget for its corrections department has kept rising. Such a thing would be understandable, given the buoying prison population, only if the state's mission to rehabilitate offenders was successful. Unfortunately, the data shows that the state failed in this regard. California's recidivism rate has held steady high since 1994 and even recorded a minor increase since 2005.<sup>95</sup> After the introduction of the California *Realignment Plan* it seems it could have a positive impact on decreasing the recidivism rate. However, the real consequences of the law are still debated as it is too early to assess the implications in the long term.

For the last two decades, California's recidivism rate was one among the highest in the nation. According to the survey data provided by the Pew Center on the States, California was among top six states with the highest recidivism rates based on the findings from the 2004 release cohort.<sup>96</sup> 58% of released California offenders returned to prison either for committing a new crime or technical violation within three years. Interestingly, out of the 58% rearrested individuals, only 18 % committed a new crime, the rest ended up in prison for violating

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<sup>92</sup> In law, receivership is a situation where an institution is held by receiver, a person who has a custodial responsibility for others' property.

<sup>93</sup> Robin Respaut, „California prison reforms have reduced inmate numbers, not costs“, *Reuters*, January 6, 2016, <http://www.reuters.com/article/us-california-prison-budget-insight-idUSKBN0UK0J520160106> (accessed March 27, 2016)

<sup>94</sup> Recidivism is an act of reengaging in criminal activities after being punished in the past. Recidivism is measured in recidivism rates - a proportion of felons who after release from prison are rearrested, reconvicted or returned to custody within a specific time frame. Agencies usually track released prisoners in a follow-up period of 1, 3, or 5 years. Acquiring and compiling data on recidivism is challenging as it requires to process robust and longitudinal data. For example, up to date Bureau of Justice Statistics published only three studies on national recidivism for the prisoner cohorts released in 1983, 1994 and 2005.

<sup>95</sup> California Department of Corrections and Rehabilitation, "2013 Outcome Evaluation Report," January 2014, [http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_Documents/ARB\\_FY\\_0809\\_Recidivism\\_Report\\_02.10.14.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf) (accessed March 28, 2016), 40.

<sup>96</sup> Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, DC: The Pew Charitable Trusts, April 2011), 13, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs\\_assets/2011/pewstateofrecidivism.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2011/pewstateofrecidivism.pdf) (accessed March 28, 2016)

conditions of community supervision.<sup>97</sup> In California, there was a practice that everyone released from prison went on mandatory parole, usually for three years. During that time an ex-offender had to abide by the strict rules that a lot of them found challenging. This partly explains why there was such a high proportion of re-offenders (40%) who were returned to prison for technical violation of the parole conditions.<sup>98</sup> Moreover, the state of California chose to routinely punish violators of the parole supervision by a short prison stay, which significantly contributed to the rising prison population. This practice was abandoned with the passage of the California *Realignment Plan* that sent the parole violators into county jails rather than back to state prisons.

According to the most recent data on California recidivism provided by the CDCR for the 2008-9 release cohort, 61% of released offenders returned to prisons within three years, 42% out of which were for parole violation. However, the first estimation suggests that following the *Realignment Plan* the numbers of returned parole violators decreased by 18%.<sup>99</sup> It remains to be seen how this trend will unfold. However, as of now the state of California might be on the right path to reform its criminal justice system and reduce its prison population.

The growing prison population which escalated into an overcrowding crisis was the main impetus why California began to utilize private prisons. Prior to Schwarzenegger's proclamation of the overcrowding crisis in state prisons, the state contracted with private firms for the management of prisons only on a small scale. It was partially due to the strong opposition of the CCPOA to private prisons as well as public service contracts. In the subsequent years, California opted to relocate its inmates in out-of-state private facilities whose numbers grew tenfold to roughly 10,000 in 2010.<sup>100</sup> As of 2014, there were about 8,700 inmates serving their times in CCA managed out-of-state facilities in Arizona, Oklahoma and Mississippi. Additionally, another seven private prisons operate within California, holding 4,100 inmates. Altogether, every 1 in 10 of California prisoners is housed in a privately-run facility.<sup>101</sup>

The decrease in California prison population in recent years as a result of Proposition 47 and the *Realignment Plan* might cause a financial damage to private prison companies if the trend continues. Indeed, the North Folk Correctional Facility, owned by CCA was idled as a

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<sup>97</sup> Ibid, 14.

<sup>98</sup> Ibid, 18-19.

<sup>99</sup> California Department of Corrections and Rehabilitation, "2013 Outcome Evaluation Report," 37.

<sup>100</sup> Jason Smith, "Cal's cash flow to private prisons grows", Roseville & Granit Bay Press Tribune, January 22, 2015, <http://www.thepresstribune.com/article/1/22/15/cal%E2%80%99s-cash-flow-private-prisons-grows> (accessed March 28, 2016)

<sup>101</sup> Ibid.



consequence of a reduced inmate population.<sup>102</sup> However, this is only a minor setback given by the fact that a number of contract renewals or agreements for the capacity expansion of the private facilities have been reached in the last years. As of now, GEO Group operates within California three federal immigrant detention facilities (Adelanto Detention Facility, Mesa Verde Detention Facility and Western Region Detention Facility) with a capacity of 3,100 beds. Additionally, GEO Group manages three community correctional facilities and one reentry female facility, housing together some 2,400 inmates and seven city jails with a capacity of 250 beds.<sup>103</sup> CCA owns and operates two federal community corrections and one immigrant detention center (Otay Mesa Detention Center) with a bed capacity of 2,100. CCA leased one of its facilities to the CDCR (California City Correctional Center) which houses 2,560 inmates.<sup>104</sup> On top of that CCA manages 3 out-of-state facilities for California, holding roughly 6,400 California prisoners.<sup>105</sup> MTC currently operates one correctional facility (Taft Correctional Institution) and detention center Imperial Region Detention Facility with a combined capacity of 3,280.<sup>106</sup>

## **Part II. California: Specific Issues in Prison Privatization**

In this chapter I would like to address concerns arising from the privatization of prisons. Outsourcing of the prisons has become a widely accepted solution for governments regarding the prison overcrowding issue. The main incentive for contracting out with private firms is the promise of cutting costs and finding additional bed space that is lacking in the state prison system. Moreover, private prison companies are able to build new prisons at much quicker pace than the governments due to sufficient capital, fewer bureaucratic delays and less red tape. Private prison companies pledge to save money in the range of 10-15% over state-run prisons.<sup>107</sup> Several studies have been conducted on the cost-efficiency of the private prisons but came out with various results. Some studies showed considerable savings to the state budget, some concluded that the operational costs are roughly the same between public and

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<sup>102</sup> CCA, "2015 Annual Report on Form 10-K," 55.

<sup>103</sup> The GEO Group, "2015 Annual Report", 10-11.

<sup>104</sup> CCA, "2015 Annual Report on Form 10-K", 15-17.

<sup>105</sup> California Department of Corrections and Rehabilitation, „Out of-state Facilities“, Sacramento, California, 2016, [http://www.cdcr.ca.gov/Visitors/CA\\_Out\\_Of\\_State\\_Facilities.html](http://www.cdcr.ca.gov/Visitors/CA_Out_Of_State_Facilities.html) (accessed March 28, 2016)

<sup>106</sup> Management&Training Corporation, "Corrections", [https://www.mtctrains.com/sites/default/files/1pager\\_Corrections.pdf](https://www.mtctrains.com/sites/default/files/1pager_Corrections.pdf) (accessed March 28, 2016)

<sup>107</sup> Leonard C. Gilroy, Adam B. Summers, Anthony Randazzo and Harris Kenny, *Public –Private Partnerships for Corrections in California: Bridging the Gap between Crisis and Reform* (Reason Foundation, 2010), 1, [http://reason.org/files/private\\_prisons\\_california.pdf](http://reason.org/files/private_prisons_california.pdf) (accessed March 30, 2016)

private prisons and some even suggested that for-profit prisons cost the taxpayers more money due to hidden expenses. In sum, three decades after introducing private prisons it is still debatable whether private prisons really do save money.

Privately-operated prisons have long been subject to many debates whether their existence is indeed compatible with criminal justice policy goals, like the public safety, rehabilitation of offenders or lower incarceration rates. Prison privatization is raising concerns within the public interest groups that stem from the basic nature inherent in the private prison business. Privately-run prisons are institutions the main objective of which is to make profits out of their “products” - the prisoners. The responsibility for prisoners was entrusted upon the government by the people, so the delegation of such an authority to a private sector invokes legitimacy issues. Besides the question of legitimacy of private prisons, there are also moral and legal concerns regarding prison privatization.

Private prisons revenues are dependent on several factors that stand in stark contrast with the public policy objectives. Since private prison companies’ contracts with the governments are based on a *per diem* model of payment, the profit is made from the number of “man-days”, i.e. the number of prisoners multiplied by the number of days each serves. In other words, the higher the occupancy of the correctional facility is, the more profit the institution generates. Thus, private prisons’ interest is to keep incarceration rates high in order to have a sufficient number of prisoners to house. To achieve this goal private prison companies have been lobbying federal and state representatives and contributing a huge amount of money to political campaigns. Historically, private prison companies cooperated with various organizations that had a say in shaping criminal justice policies. For example, both GEO Group and CCA were until recently the members of the American Legislative Exchange Council (ALEC)<sup>108</sup> that played a massive role in drafting minimum mandatory sentencing and “three strikes” legislations.

There are also concerns about the lower standard of quality services in private prisons. Governments give privately-run prisons a set payment for their services, which means the private corrections have to cut their operational costs in order to achieve a margin profit. The reduction in costs has to inevitably come at the expense of lower quality service. Usually, private prisons tend to hire less trained staff which gets to be paid much lower salaries than

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<sup>108</sup> American Legislative Exchange Council (ALEC) is a non-profit organization of conservative state legislators and representatives of private corporations that advances federalism, limited government and free market enterprise. Private corporations use ALEC as a tool to promote their business interests. Typically, representatives of private corporations work with state legislators in task forces where they draft and approve model bills that are subsequently distributed among the US statehouses.

their state-employed counterparts. Moreover, there were concerns about inadequate health care service and insufficient safety standards, etc.

In this chapter I would like to highlight the main issues arising from the prison privatization and demonstrate them on a concrete example of the state of California.

#### ***4. The Contractual Relationship between Government and Private Prison Company***

The contractual relationship between private prisons and the contracting government party is laid down in the contracts. The contracting party stipulates its expectation of the contractor's performance and determines conditions that have to be met under the agreement. Theoretically, contracts should guarantee that the contracting party's requirements are fulfilled by the contractor. However, in the private prison business the dynamics tends to work in the opposite direction.

First of all, it has to be stressed that obtaining detailed information regarding the contents of the private prisons' contracts is very demanding, time-consuming and in many cases an unsuccessful journey. Private prison companies as such, are exempt from the Freedom of Information Act and thus not required to disclose any detailed information on their business. As of now, there is a bill called the Private Prison Information Act that was introduced in the Congress in 2015. If passed, this legislation would require the non-federal correctional and detention facilities which house federal inmates to comply with the Freedom of Information Act.<sup>109</sup> The bill was introduced in the House of Representatives but has not yet proceeded to the later stages of the approval process.

In 2012, CCA made a bold move when it sent a letter to 48 state governors offering to buy their public prisons in exchange for a 20-year contract which would include a 90% occupancy rate for the entire period.<sup>110</sup> Fortunately, none of the states agreed to this scandalous offer, yet occupancy clauses remain to be the most troubling section of private prison contracts. Following this incident, a transparency watchdog group, In the Public Interest (ITPI), decided it was time to shed some light into the contract practice. ITPI managed to get access to then contracts copies between local and state jurisdictions and private prison companies through

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<sup>109</sup> Congress.gov, "Private Prison Information Act of 2015"- H.R.2470, <https://www.congress.gov/bill/114th-congress/house-bill/2470> (accessed April 10, 2016)

<sup>110</sup> Terry Shropshire, "What?!? Private prisons suing states for millions if they don't stay full," *Rollingout*, September 26, 2013, <http://rollingout.com/2013/09/26/what-private-prisons-suing-states-for-millions-if-they-dont-stay-full/> (accessed April 11, 2016)

a state-level organization that had already had the contracts in its possession. Each of these contracts related to the management of one concrete facility.<sup>111</sup> The ITPI report found out that out of 62 contracts reviewed 41 (65%) contained lock-up quotas. The occupancy requirements ranged between 80 and 100%, with many of them around 90%.<sup>112</sup> The highest occupancy clauses were to be found in Arizona, Louisiana, Virginia and Oklahoma contracts.<sup>113</sup> California's private prison contracts fall into the common range of 90%. Three out-of-state prisons (located in Arizona, Oklahoma and Mississippi) run by CCA have a 90% occupancy clause. Similarly, three out of four reviewed GEO Group facilities in California have a 90% lock-up quota (the fourth bed guarantee clause is 70%).<sup>114</sup> Private prison companies tend to impose occupancy clauses in cases where there is a risk of revenue loss. Given the drop in the California crime rate over recent years, the private prison companies might feel their business is threatened. For example, the sample prison contracts from Texas do not include occupancy clauses at all, most likely because the state harsh sentencing policies and high incarceration rates keep the prisons at full capacity. Interestingly, the watchdog group warned that the omission of a bed guarantee clause from the initial contract did not mean that it could not be added at later stages through contract amendments. Another option is the lock-up quota might have been imposed entirely outside the contract process.<sup>115</sup>

Overall, private prison companies are quite successful in implementing bed guarantee clauses into their contracts with governments. Of course, one can wonder why the state authorities would even sign an agreement that might prove to be very disadvantageous for them. Private prison companies often lure the governments into signing the contract by lowering the *per diem* payment. Occupancy clauses are a win-win situation for the prison contractors. Either the company turns revenue because it enjoys a high occupancy rate in its facilities or the government has to pay the contractor a compensation in millions if this bed guarantee clause is not observed. So if the government initially saves money due to lower *per diem* fees and is subsequently obliged to pay the contractor a compensation for not adhering to the contract conditions it might find itself spending even more. Or in similarly unfavorable scenario, the government observes the contract but has to pay for the unused beds anyway.

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<sup>111</sup> In the Public Interest, *Criminal: How Lock-up Quotas and "Low-Crime Taxes" Guarantee profits for Private Prison Corporations* ( Washington: In the Public Interest, 2013), 6, <http://www.njjn.org/uploads/digital-library/Criminal-Lockup-Quota,-In-the-Public-Interest,-9.13.pdf> (accessed April 11, 2016)

<sup>112</sup> Ibid.

<sup>113</sup> Arizona had 3 contracts with 100% bed guarantee clauses, a number of Louisiana's contracts ranged around 96% and Virginia had 1 contract with 96% lock-up quota. Ibid.

<sup>114</sup> In the Public Interest, "Criminal: How Lock-up Quotas and „Low-Crime Taxes“ Guarantee profits for Private Prison Corporations", 6.

<sup>115</sup> Ibid.

Moreover, the contracts curtail governments' flexibility to respond to changes in the criminal justice system. If the crime rates drop, the government is unable to use its free bed space in its public prisons because it has to fulfill the lock-up quota in a private prison. Thus, the taxpayers foot the bills of private prisons in the end and also have to pay extra money for the empty beds in public prisons.

The contractual relationship between the state or local authorities and the private prison providers was further strained by the insufficient controlling mechanism given the contracting party. If the private prison company violates the agreement or does not satisfyingly fulfill its obligations, the government can terminate the contract. However, this is not as simply done as said. Some governments face overcrowding problems in their state prison systems and might find it difficult to find a spare bed space where to house the inmates from the private facility. In the cases where the state cannot afford to terminate the contract private prison companies, they often go unpunished for violating the contract's provisions. This could lead to unsafe conditions and inadequate prisoner care within the prisons as the private prison company is not held accountable for its actions and would seek to cut its operational cost at the expense of prison safety and quality of its services. Of course, governments try to prevent this situation by appointing monitors who are either permanently present on-site or regularly visit the private facility. However, the experience showed this practice did not produce desired results. In both cases, there are certain limitations. With on-site monitoring, a state-employed official who monitors the contract, might develop personal relationships with private facility employees during his stay and might find it difficult to report on their wrongdoing. On the other hand, regular visits intended to assess the conditions of private facility are often purposeless as these visits are announced beforehand so the private prisons have time to fix the deficiencies and make a good impression.<sup>116</sup>

As demonstrated above, the private prison contracts play very much into the private contractor's hands. All the financial risk is borne by the public - the taxpayers while private prison companies turn profits. Lock-up quotas represent a huge risk for governments as they may end up paying more for the incarceration of inmates, which is precisely the opposite of what was expected from private prisons. Occupancy clauses should be abolished as they solely serve a corporation's financial interest and not the public interests. Private prisons financial prosperity is dependent on the high prison occupancy rates, which is in stark contrast

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<sup>116</sup> Donna Selman and Paul Leighton, *Punishment for Sale: Private Prisons, Big Business, and the Incarceration Binge* (Lanham: Rowman & Littlefield Publishers, Inc., 2010), 118, <http://sacredartichoke.com/latarsha/Nonfiction%20Ebook%20Pack%20January%202012%20PHC/Punishment.for.sale.Donna.Selman..Paul.Leighton.9781442201729.pdf> (accessed April 12, 2016)

with public goals that champion a low crime rate, low recidivism and rehabilitation of the offenders. Governments' options how to react to changes in criminal justice trends are limited once they enter into contract with a private prison company. Governments have no leverage on private prisons should the private contractor violates the contract provisions. On the other hand, private prison companies are dependent on being able to attract other government contracts so the belief in the private prisons' cost-efficiency and quality of service has to be maintained. Private prison company's reputation is vital for its survival that is why private prisons keep blaming badly written contracts and inadequate communication between the contracting parties for all their inmate escape scandals and prisoner mistreatment cases. Furthermore, a lack of transparency is plaguing the private-public partnership. Private prison companies are not obliged to disclose any statistics regarding the management of private prisons as contrary to their public counterparts.

### ***5. Private Prisons' Influence on Public Policies***

Over the last three decades, the private prison industry has become a million dollar business thanks to the unprecedented growth in the U.S. prison population. Financial prosperity of private prisons is heavily dependent on favorable public policies that greatly affect the private prison companies' bottom line. Not surprisingly, private prison firms have been engaged in massive lobbying and donated a lot of money to political campaigns in attempt to influence criminal justice policies. It is calculated that the three largest private prison companies - GEO Group, CCA and MTC have spent around \$32 million on federal lobbying and campaign contributions since 2000.<sup>117</sup> Despite this obvious fact, private prisons consistently deny lobbying efforts and notion that they are trying to influence public policies to its benefits. The following CCA example may serve as an illustration. Steve Owen, a senior director of public affairs for CCA, was quoted as saying: *"Our policy prohibits us from engaging in lobbying or advocacy efforts that would influence enforcement efforts, parole standards, criminal laws, or sentencing policies."*<sup>118</sup> This slightly varied statement can be also found in the 2015 CCA Annual Report. Undermentioned excerpt from the same report summarizes public policy related risks that could harm the company's business. It reads: *"This*

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<sup>117</sup>Keegan Hamilton, "How Private prisons Are profiting from Locking Up US Immigrants", Vice News, October 6, 2015, <https://news.vice.com/article/how-private-prisons-are-profiting-from-locking-up-us-immigrants> (accessed April 15, 2016)

<sup>118</sup> Steven Hale, ,, CCA has eight lobbyists on Capitol Hill-and yet it says it doesn't lobby on incarceration issues. Maybe it doesn't have to.", *Prison Legal news*, May 22, 2014, <https://www.prisonlegalnews.org/in-the-news/2014/pln-managing-editor-quoted-article-cca-lobbyists-tn/> (accessed April 15, 2016)

*possible growth depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions, governmental budgetary constraints, and governmental and public acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by criminal laws. For instance, any changes with respect to drugs and controlled substances or illegal immigration could affect the number of persons arrested, convicted, and sentenced, thereby potentially reducing demand for correctional facilities to house them. Immigration reform laws are currently a focus for legislators and politicians at the federal, state, and local level. Legislation has also been proposed in numerous jurisdictions that could lower minimum sentences for some non-violent crimes and make more inmates eligible for early release based on good behavior. Also, sentencing alternatives under consideration could put some offenders on probation with electronic monitoring who would otherwise be incarcerated. Similarly, reductions in crime rates or resources dedicated to prevent and enforce crime could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities. Our company does not, under longstanding policy, lobby for or against policies or legislation that would determine the basis for, or duration of, an individual's incarceration or detention.”<sup>119</sup>*

Although, it is explicitly stated that CCA would not lobby on federal and state legislation it simultaneously recognizes the dangers to its business related unfriendly public policies. In other report CCA indirectly acknowledges that some actions have to be taken to ensure continuous financial growth. As the 2010 CCA report says, *”Our industry benefits from significant economies of scale, resulting in lower operating costs per inmate as occupancy rates increase. We believe we have been successful in increasing the number of residents in our care and continue to pursue a number of initiative intended to further increase our occupancy and revenue. Our competitive cost structure offers prospective customers a compelling option for incarceration.”<sup>120</sup>* Of course, private prison companies cannot afford to publicly declare that they lobby for legislation that would enhance their business interest and do nothing to improve communities.

As the private prison population has kept steady growing for the past decades, the revenues of private companies have increased. With more resources they could build a political power and subsequently use it for championing policies that favored higher incarceration. Private

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<sup>119</sup> CCA, "2015 Annual Report on Form 10-K", 31.

<sup>120</sup> CCA, "2010 Annual Report on Form 10-K", 16.

prisons have been the fastest growing segment of the prison-industrial complex. It is estimated that current U.S. prison population has grown into its current dimension largely due to the political influence of private prison companies. Private prisons use predominantly three tactics to influence the public policy: direct campaign contributions, lobbying and creation of personal relationships and networks.<sup>121</sup>

First, campaign contributions represent a powerful tool how to get access to elected policymakers who usually approve or initiate private prison contracts. Close personal ties between corporation employees and public officials create a chance to influence criminal justice policies and promote prison privatization. Private prison companies generally contribute to both state and federal politicians through their Political Action Committee (PAC) and contribution by their employees.<sup>122</sup> According to the findings of the Western Prison Project report, private prison companies tend to contribute to incumbent officials who win elections, regardless of party affiliation. In this scenario, access to power is more important than party philosophy or values.<sup>123</sup> For illustration, in the fiscal year 2015, CCA contributed to Republican and Democrat candidates to California Senate or Assembly over \$165,500,000.<sup>124</sup>

Given the state's large prison population, California has been in the past heavily lobbied by both CCA and GEO Group. Between 2003 and 2012, CCA contributed to the state campaigns around \$626,350 and employed 18 lobbyists while GEO Group donated \$230,000 in contributions and hired 8 lobbyists.<sup>125</sup> Back in 1998, California, received the highest level of investment by private prison companies as the most populous state and a hotbed of harsh sentencing policies.<sup>126</sup>

Lobbying represents another alternative how to push for desired public policies. Private prison companies hire lobbying firms and also their own in-house lobbyists who argue for

<sup>121</sup> Brigitte Sarabi and Edwin Bender, *The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom* (Portland, OR: Western States Center and the Western Prison Project, 2000), 7, [http://www.safetyandjustice.org/files/Prison\\_Payoff\\_Report\\_WPP\\_2000.pdf](http://www.safetyandjustice.org/files/Prison_Payoff_Report_WPP_2000.pdf) (accessed April 15, 2016)

<sup>122</sup> Justice Policy Institute, *Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies*, June 2011, 15, [http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming\\_the\\_system.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf) (accessed April 15, 2016)

<sup>123</sup> Brigitte Sarabi and Edwin Bender, "The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom", 10.

<sup>124</sup> Secretary of State Alex Padilla, "Campaign Finance: Corrections Corporation of America", <http://cal-access.sos.ca.gov/Campaign/Committees/Detail.aspx?id=1014742&session=2015&view=general> (accessed May 12, 2016)

<sup>125</sup> National Institute on Money in State Politics, "Lobbyist Link", *Corrections Corporation of America*, <http://classic.followthemoney.org/database/lobbyistclient.phtml?lc=100552&y=0&s=CA#CA> (accessed April 15, 2016), National Institute on Money in State Politics, "Lobbyist Link", *GEO Group, Inc.*, <http://classic.followthemoney.org/database/lobbyistclient.phtml?lc=100516&y=0> (accessed April 15, 2016)

<sup>126</sup> Brigitte Sarabi and Edwin Bender, "The Prison Payoff: The Role of Politics and Private Prisons in the Incarceration Boom", 10.



prison privatization and related criminal justice policies in Congress and state legislatures. Lobbying is advantageous in the respect that it is not governed by any spending limitations and private prison companies can finance the lobbying firms directly, not through PACs or employee contributions like in the case of campaign contributions.<sup>127</sup> Private prison operators direct their lobbying efforts on bills that can strongly affect the private prisons' bottom line, e.g. incarceration and law enforcement.

For example, in 2015, CCA employed 93 active lobbyists out of whom 27 operated in California. In the fiscal year 2013, CCA spent almost \$1,350,000 on lobbying efforts. Historically, California is the CCA's most lobbied U.S. state with total spending of \$4,616,322 for the last 14 years.<sup>128</sup> This is due to the fact that California accounted for 11% of total revenue in 2015 which made it the only CCA's partner that accounted for more than 10% of its total revenue between the years 2013-2015.<sup>129</sup> The CCA lobbied CDCR on issues generally related to out-of-state prisons, which is understandable, given the fact CCA runs 3 California's out-of-state prisons.<sup>130</sup> Altogether, lobbying efforts in California have been successful, as the state began increasingly utilizing private prisons. Thanks to lobbying efforts and a federal court to relieve overcrowding in California state prisons, the private prison population rose by 233% in 2012-13.<sup>131</sup>

And lastly, the third strategy is to build personal relationships and networks between corporation employees and elected state politicians. In the prison-industrial complex, there is a phenomenon called "reviving door personnel". This notion refers to individuals who formerly worked in the public sphere and later got hired by a private prison company or vice versa. After the change of employment the employee still has personal connections to his former workplace and has vast knowledge about the former institution. In the private prison-complex this type of individuals is very valued and sought-after. Indeed, if we look at the high-ranked official employed by private prison companies, we would find out many of them were formerly state employees. One example of many cases can be Thomas W. Beasley, CCA co-founder, who formerly served as the chairman of the Tennessee Republican Party.

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<sup>127</sup> Justice Policy Institute, "Gaming the System: How the Political Strategies of Private Prison Companies Promote Ineffective Incarceration Policies", 21.

<sup>128</sup> National Institute of Money in State Politics, „Lobbying“, *Corrections Corporation of America*, <http://www.followthemoney.org/entity-details?eid=695> (accessed April 15, 2016)

<sup>129</sup> CCA, "2015 Annual Report on Form 10-K", 10.

<sup>130</sup> Secretary of State Alex Padilla, „Lobbying Activity“, *Corrections Corporation of America*, <http://cal-access.sos.ca.gov/Lobbying/Employers/Detail.aspx?id=1145409&view=activity&session=2011> (accessed April 18, 2016)

<sup>131</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2013*, (Washington D.C. : Government Printing Office, September 2014) 14, <http://www.bjs.gov/content/pub/pdf/p13.pdf> (accessed April 17, 2016)

The most powerful institution in this respect is the ALEC, comprised of corporate representatives and government officials that stand behind the creation of many harsh sentencing policies and immigrant detention laws.

Because most private prison contracts are approved by state, local or federal policymakers, the personal relationships are of vital importance to private prison providers. Their financial success is dependent on a high crime rate, law enforcement. To ensure profitability of the business, private prison companies lobby the policymakers at state and federal levels to win the support for the private prison business. They do so very quietly in order not to gain attention of ethically minded organizations.

## ***6. Cost- Efficiency of the Private Prisons***

State and federal governments turned to prison privatization to solve the prison overcrowding in their states. U.S. states could not afford to build new prisons on their own as their budgets were already strained by the operational costs in existing prisons. Thus, in addition to finding additional bed space the states were also looking to reduce their costs. Private prison companies marketed their services as cost-efficient while providing the same or higher quality of services compared to their state counterparts. Several studies on private prison cost-efficiency were conducted but three decades after the introduction of private prisons there is still no conclusive evidence that private prisons really do save money.

Comparison studies that focus on the economic performance of public and private prisons produced a wide range of conclusions. The studies often suffered from methodology deficiencies as every study used a different method to calculate the operational costs. More importantly, the cost-efficiency comparison studies tend to be affected by its funding. Private prison-sponsored studies unequivocally produce findings that support the cost-efficiency of private prisons. On the other hand, studies conducted by public interest groups or civil rights organizations like American Civil Liberties Union (ACLU) usually come to an opposite conclusion.

In this chapter I would like to address strategies that the private prisons use to cut their costs and then I will proceed to explain why the prison privatization might not be saving the states' money. Next, I will provide a short overview of the private vs. public comparison studies in California and in the US.

In the United States there is a prevalent idea that a private sector can produce products or services of higher quality and for a lower price than state firms. Private companies have to

face a competition of other private players as well as state firms that push them to look for innovative ways how to produce goods and services of higher quality than those of their competitors. Also, the free market pushes the prices of services down, which makes private companies' goods and services cheaper than that offered by state firms. Moreover, private prisons are able to raise funds and construct a new prison much cheaper and faster than the government partly because they do not have to deal with the red tape and bureaucratic approval process.

Furthermore, private prison companies developed their own strategies how to minimize operational costs and this maximizes their profit margin.

The site for a new private prison is carefully picked, usually in a rural area which allows the private company to purchase a plot at a low price. Private prison companies can reap considerable savings by being able to both design and build the new facility. They designed their prison facilities in such a manner that would allow them to maintain reduced staff while preserving the necessary security at the facility.<sup>132</sup> Firms in the prison industry claim they can cut between 10% - 40% of construction costs.<sup>133</sup> Operating costs account for 75-85% of the overall cost of a prison and about 60% of operating costs are for personnel.<sup>134</sup>

Private prison companies prefer to hire non-union workers and do not require such high work experience compared to state prisons. In case of California, avoiding hiring members of this labor union means a private company makes large savings. Prison officials who keep a membership at CCPOA enjoy highest salaries in the country and also benefit from generous pension benefits. Private prison employees receive much lower wages than their state-employed colleagues. The dark side of this is, the staff at private prisons is usually inadequately trained with low experience which results in riot, assaults on prison staff and generally low security level. There have been some high profile escapes from private prison facilities. For example, in 2010 three extremely dangerous criminals escaped from Kingman private prison in Arizona, spurring a nationwide manhunt.<sup>135</sup> Scandals such as this caused concerns that private prisons lack the quality and experience required for the successful management of a prison.

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<sup>132</sup> Adrian T. Moore , *Private Prisons: Quality Corrections at a Lower Cost* , Policy study no.240 (Los Angeles: Reason Public Policy Institute, 1998), 5, <http://reason.org/files/d14ffa18290a9aeb969d1a6c1a9ff935.pdf> (accessed April 18, 2016)

<sup>133</sup> Alex Singal and Raymond Reed, "An Overview of the Private Corrections Industry," (Legg Mason Equity Research, 1997) 16.

<sup>134</sup> Adrian T. Moore , "Private Prisons: Quality Corrections at a Lower Cost", 5.

<sup>135</sup> Casey Newton, "Arizona inmate escape put spotlight on state private prisons", *az.central*, August 22, 2010, <http://www.azcentral.com/news/articles/20100822arizona-private-prisons.html> (accessed April 29, 2016)

Private prisons also cut costs related to food, health care and education and vocational training.<sup>136</sup> This means inmates' needs are not sufficiently covered which can cause higher violence and assaults on personnel. If inmates' needs are not covered, their mental and physical health worsens, which has a negative impact on their rehabilitation process. After release from prison such individuals are likely to engage in another criminal activity. Indeed, studies have showed that private prisons have higher rates of recidivism than the state prisons.<sup>137</sup>

There is no doubt that private prisons are able to achieve considerable savings in the short-run. Since private prison companies cut costs in almost every aspect of prison management, they are bound to have high operating margins. It is estimated that the private prison companies can reap short-term savings around 19% and in long-term savings about 29%.<sup>138</sup> So it is true that private prisons manage to achieve the ultimate goal - cut costs for the government and simultaneously reaping profit margins for themselves. A quick look at the private prison companies' financial reports only confirms that their business strategy is working well. However, the bottom line is even if private prison companies achieve considerable savings. It does not mean the contracting party and government will save money in the long run. There are many hidden costs associated with private prisons that are not visible at first sight.

First, we have to acknowledge that management costs of a private prison do not refer to the *per diem* rate only. The whole process of contracting out with private prison firms costs a government authority a lot of money. The state must also maintain oversight over the privatized facility which is also very costly. The state has to finance the audits and pay wages to state officials who maintain on-site oversight or reimburse travel expenses in case monitor officials pay the private facility regular visits.

Second, private prison companies have the privilege to choose the most profitable prisoners from the prison population. Private prison providers are very disinterested in housing offenders that are very expensive to care for. Typically, this means private prisons hold only healthy, young, non-serious and non-violent offenders. The state, on the other hand, is bound by the law to take care of all its prisoners. Thus state prisons need a higher quality of healthcare to be able to look after mentally or physically ill or geriatric inmates. In many

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<sup>136</sup> Thierry Godard, "The Economics of the American Prison System"

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.* Long-term savings are associated with day to day prison operation plus costs arising from construction and maintaining a prison.

cases, states also operate correctional institutions for specialized groups of inmates like the sex-offenders, pregnant female prisoners, etc.

In accordance with the strategy of cherry-picking the most profitable offenders, private prison companies operate only low or medium-security facilities which also produce cost-saving. Maximum security facilities are usually surrounded by a security perimeter and have to invest in a more advanced monitoring system than facilities with low-level offenders.

Third, as already mentioned above, private prisons were shown to have higher recidivism rates than public prisons. Although the differential in recidivism rates is only marginal, around 3-4%<sup>139</sup>, it means that the governments will have to spend extra money on re-incarceration of these individuals. So not only the private prisons fare worse in respect to rehabilitation of offenders, they also add more burden to states' already tight corrections budgets in the future. Furthermore, California has one of the highest annual costs of incarceration per inmate in the nation which ranges between \$50 and \$60 per inmate per day.<sup>140</sup> Thus even a little increase in percentage points in the recidivism rate implies California significant costs. So the initial government's cost-saving in the early stages after leasing out the prison might develop into an opposite scenario over time. Let us look at the studies that focused on California's private prisons.

Most comparison studies between public and private prisons that were ever conducted usually focus on the economic performance and the ability to save money. Researchers have to brace themselves for obstacles arising from the lack of information available on private prisons. Conducting study of this scope is usually possible only when a research worker has the backing of either public institution or powerful interest group. Private vs public prison studies are usually drafted as case studies, focusing on a particular this or that state. Interstate comparison studies would be meaningless, given the fact each state prison system is governed by different jurisdiction. Moreover, a study should compare facilities that are similar to their size, bed capacity, security level, type of the facility or gender of inmates. Such a comparison bears many difficulties and is very time-consuming which probably explains why there are not many studies on this subject. To the best of my knowledge, as of now there are 3 California-based prison comparison studies. Interestingly, all of them were conducted before the year 2002.

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<sup>139</sup> Andrew L. Spivak and Susan F. Sharp, "Inmate Recidivism As a Measure of Private Prison Performance," *Crime & Delinquency* Vol. 54 (Washington, DC: SAGE Publications, July 2008), 483.

<sup>140</sup> Thierry Godard, "The Economics of the American Prison System"

The first prison cost comparison study, focused on California was conducted in 1993 by Dale K. Sechrest and David Shichor, California State University Professors. This study was rather exceptional because it primarily compared two types of private prisons. They examined two types of correctional facilities in their study - one facility operated by a private corporation and two operated by municipal government for profit. The three facilities were chosen on the basis of their progress in vocational programs, alcohol counseling, education, etc. The study showed that a privately-run facility costs less when considering the start-up cost but during the second year of its operation it costs the same as the government-run. However, both types of private prisons were found to cost about \$16 less per inmate compared to prisons run by the California Department of Corrections. The results of the study were turned out to be inconclusive due to the lack of data on CDC facilities and methodology inconsistencies.<sup>141</sup> The second study was completed by the U.S. General Accounting Office in 1996. The study evaluated operational costs in public vs private facilities. The study produced mixed results in comparing public and private facilities and concluded it could not say whether private prisons save money.<sup>142</sup>

The third study was framed as a case study trying to assess a prison performance between publicly and privately-run facilities. Contrary to the previous studies, the researchers chose to rely on inmate data (through a survey) rather than on the data collected from prison personnel. For their study they chose two federal prisons located in California and a privately operated prison (by WCC - nowadays the GEO Group). The private prison, located in Taft, California was at that time the only private prison contracted by the BOP that housed federal prisoners. The study reported that inmate measure was much more reliable than data collection retrieved from the staff. The report found out that the Taft prison had problematic findings in some areas like food preparation and sanitation. Public BOP prison and Taft prison experienced both problems with safety- inmates felt harassed. Researchers concluded that they cannot say the Taft prison was worse than public prisons in general but identified several areas (sanitation, food services) where the privately-run prison fared considerably worse.<sup>143</sup>

As demonstrated above, the three studies that focused on private prisons in California produced inconclusive results. This only mirrors the general trend that assessing cost-

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<sup>141</sup> Austin and Coventry, "Emerging Issues on Privatized Prisons", 26.

<sup>142</sup> Ibid.

<sup>143</sup> Federal Bureau of Prisons, "Using Inmate Survey Data in Assessing Prison Performance", *Criminal Justice Review* 27, April 17, 2002, 1-25, [https://www.bop.gov/resources/research\\_projects/published\\_reports/pub\\_vs\\_priv/oreprecamp\\_cjr.pdf](https://www.bop.gov/resources/research_projects/published_reports/pub_vs_priv/oreprecamp_cjr.pdf) (accessed May 4, 2016)

efficiency between private and public prisons is a grueling task. More studies need to be conducted in order to fully understand the implications of the prison privatization.

I recommend these studies should be government-sponsored as it is in the public interest to find out whether private prisons are helping to solve the current overcrowding crisis which is exactly the reason why states entered into agreement with private prisons in the first place.

## **Conclusion**

Private sector has a long history of involvement in providing services to state government. The beginnings of prison privatization date back to the early American colonial history. The role of the private sector in prison industry changed throughout the last centuries, sometimes exerting a huge influence and at another time being overwhelmed by the public sector. The big boom of the private prisons arrived in the 1980s as a result of a number of coinciding factors. The change in sentencing policies from rehabilitative approach to reliance on incarceration together with the implementation of a number of drug-related policies spurred a massive growth of the U.S. prison population. The private prison companies were able to capitalize on the inability of state governments to cope with the situation on their own and began acquiring their first private prison contracts.

In California, the situation with overcrowded prisons was the worst in the nation. Its criminal justice system was bigger than the federal one and cost an enormous amount of money. The California state prison system operated at the double of its capacity. Despite having the largest prison population in the nation (until very recently when it was surpassed by Texas), California utilized private prisons only sporadically. It took a deep crisis that culminated by a federal order, to relieve the overcrowding that propelled the California government to contract with private prison companies for the management of their prisons. As we have seen, private prisons in California constitute only a small share of their prison market compared to other U.S. states which use private prisons much more often. California has a huge network of public prisons and relatively few private prisons in comparison to its vast prison population. In my opinion, the reason why California utilized private prisons on a small scale is the CCPOA huge political clout that prevented the privatization efforts in California. Instead of building new privately-run prisons, California opted to send its surplus inmates to out-of-state facilities. It has to be noted that California tried to reach a long term solution in regard to its mass prison population instead of contracting with private prison firms which would only relocate their inmates without helping the situation. Following the

adoption of the California *Realignment Plan* and other legislation that eased the harsh sentencing policies, the state prison population dropped by some 40,000 inmates.

In the first part of my thesis I chose to present the issue of the prison privatization on a national level in order to see a bigger picture. From the prison privatization origins to the current situation in the nation as well as in California. In the last chapter of the first part I introduced the current political situation in California and offered a closer look on private prison activities in that state.

The second part of this thesis is focused on California 's experience with the private prisons. While looking at the concrete examples with this state, I also offered a more general view on the issue. Generally, I tried to address and assess the many concerns associated with private prisons through the lens of concrete examples with California.

In the fourth chapter I discussed the contractual relationship between the government and the private prison company. I highlighted the importance of the occupancy clauses that are present in two thirds of the signed contracts. This measure serves to promote the private prison's bottom line while simultaneously harming the room of flexibility for the government party. Occupancy clauses also hide inherent financial risks for the government should the prison population decline. Overall, as of now, the private prison contracts are drafted in a way that serves the private prison firm's business interest. In sum, all the financial risks are borne by the public while a private prison company has a lot of ways how to avoid punishment if needed.

In the fifth chapter I assessed the many ways by which private prison companies can exert their political power. Financial prosperity of the private prisons is dependent on the public policies therefore these companies spend millions of dollars on federal and state lobbying as well as campaign contributions. I also stressed the importance of interpersonal relationships that are very important in the prison-industrial complex. Private prison companies lobby legislation that supports high incarceration rate and law enforcement. They also lobbied on many ballot initiatives and bills. Private prisons are generally very opposed to the legalization of marijuana as it would decrease the number of incarcerated people. Similarly, private prison companies vehemently oppose the Private Prison Information Act which would put them at the same level with public prisons in terms of sharing internal information. As of now, an ordinary researcher is able to get access to their annual reports which only contain information on revenue, locations of corrections and policy goals. Private prison companies are not required to disclose any information regarding the performance and quality of services provided by the private prison.



In the sixth chapter I examined the cost-efficiency of the private companies. Firstly I stressed the reason why the private prisons should be saving money on the grounds where private prisons are able to cut costs in so many respects. On the other hand, I list a number of reasons why the initial saving might prove to be illusionary for the state in the long run. Private firms are known to have higher recidivism rate which will affect the state treasury at some point in the future. This is especially true for California which spends one of the highest amounts of money on incarceration of an individual in the nation. There are a lot of hidden costs as the state has to pay for the monitoring process of the private facility and also financing the whole outsourcing process. Research studies conducted on the topic of cost-efficiency of private prisons in California turned out to be inconclusive, which corresponds with the majority of other studies regarding the comparison between public and private prisons. More studies need to be made in order to fully understand the prison privatization. It is in government's interest to find out if private companies really do save money of the state government.

In my opinion, private prisons are on the rise despite the fact that the U.S. prison population declined as of late. Private prison companies are looking for other ways to expand their services. Nowadays, they are focused on increasing their share in the prison industry because there is still a vast potential for the business growth. I do not support private prisons as I find making money thanks to incarceration repulsive. Moral concerns aside, private prisons constitute a big threat to the liberal democracy because of their financial support of the policies that harm the California (and the whole American) society. I do not think abolishing private prisons is a viable option now as a lot of states developed a mutual interdependence with private prison companies. Also, private prisons are really powerful in the Congress as well as statehouses so I do not see how such legislation could survive the approval process.

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