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## Prisons for Profit in the United States: Retribution and Means vs. Ends

If the rule of law depends on how it deals with "deviant behavior," the definition of deviant behavior must be parsed very carefully. This is especially true in the United States, where the controversy over "prisons for profit" has intensified in recent years. A judge who routinely sentenced teenagers to a for-profit prison in Pennsylvania, namely former Judge Mark Ciavarella of Luzerne County, was found guilty on felony corruption charges in August of 2011. Prisons that are privately owned have been criticized for a variety of human rights violations, including the false imprisonment example from Pennsylvania, and violations of prisoner's right to religious accommodations and legal resources at private prisons in Ohio. While Historians note the importance of prison industry and prison workforces in the economic development of the United States (Conley 1980), social theorists and ethicists have prescribed ways in which the privatized prison system can be "held accountable" (Gran and Henry 2007). In response to the current literature, it remains unclear what level of "accountability" any "for profit" prison has to the public or the common good. On the one hand, there is a clear problem of treating prisoners as mere means to an end; a source of labor for profit being paid slave wages, if any wages at all. Furthermore, in many areas where privatized prisons have become a major employer of non-incarcerated citizens, there have been a host of social and financial problems that have affected these areas, including a heightened use of racist rhetoric (Bonds 2006), and a pervasive assumption that immigrants from Latin America are "outside" of the boundaries of the law, resulting in an increase in human rights violations and general crime. In these cases privatized prisons involve potential human rights violations for members of the communities where they are built, and for members of disenfranchised social classes that are affected by the economic effects that privatized prisons have on communities.

The international community has been engaged in a debate over the human rights of prisoners as workers in prison labor forces, producing goods and services that profit either the private corporation operating the prison, or the state. Privatized prisons that are operated by corporations are often arranged through specific contractual agreements with states or local communities, rules and regulations for both the operation

of the prison and the distribution of any profits gained by prisoners are spelled out carefully through these contracts. In many cases, private prison corporations engage in a variety of marketing practices to convince communities to accept them as sign of development and progress – an especially tempting arrangement for communities suffering economic hardship. Despite the legal and procedural regulations that govern such prisons, they arguably violate particular human rights for two groups: the prisoners themselves, and the local community members who are living near the prisons and working in or near the prisons (when economic benefits do not come, or reduced taxation arrangements that benefit the prison corporation prove detrimental to local services such as schools.) This article will show how the contractual agreements may address prisoners' safety, but provide little guidance, regulation, or due process for handling complaints of prisoners (especially if a prisoner's complaint does not meet a requirement for "total exhaustion" of all administrative channels, a requirement that is especially difficult for prisoners to meet.) The contracts usually say very little about rehabilitation or non-recidivism programs for prisoners. This article will also show how private prison contracts provide indemnity protection for state and local governments in the event of prison breaks, but, the local community is offered little in terms of security and physical protection from prisoners. Such contracts also describe economic benefits for local communities, but in many cases, the local community in contract with the prison corporation finds itself suffering a variety of financial losses due to tax breaks and land donated to the prison corporation, and an increase in social problems such as racism.

### 1. The History of Prisons for Profit: Using Prisoners as an Industrial Workforce

Although philosophers may argue that using prisoners for free labor violates Kant's third formulation of the Categorical Imperative (the maxim that all humanity must be treated as an end in itself, never merely as a means to an end), there is a long history of collaboration between prisons and industry in the United States. In "Prisons, Production, and Profit: Reconsidering the Importance of Prison Industries" John Conley describes the history of prisons in Oklahoma. Conley notes that the study of prisons often focuses on reform and rehabilitation of inmates, rather than studying the merits of various prison industry structures and their relationship to the broader economy (Conley 1980: 257). Prison industries were central to penal development in the United States, and production and profit were major concerns of those who

organized prison labor and contracts for goods produced in prisons (Conley 1980: 257). In 1909, construction of a major penitentiary began in Oklahoma, on the north side of the city of McAlester. The prison was not designed with attention to humanitarian goals, training of prisoners, moral reform or social reintegration of the inmates; there was no serious discussion of any rehabilitative objectives in the documentation on the planning and construction of the prison. Instead, Conley argues, the prison stood as a symbol of "a new economic order in Oklahoma" based on industrialization instead of agriculture. Thus, prisons have a major role in the industrial development of the United States: the first attempt at industrialization in Oklahoma occurred in its prison (Conley 1980: 259). Because the prison was designed to operate as a profit-making industry, adding to the state's treasury, the role of the Warden was redefined as a "chief executive officer of a private corporation rather than a public official with expertise in correction administration" and "a businessman who would efficiently use these convicts to... bring an income for the state" (Conley 1980: 260). Products would be manufactured in the prisons were often produced because of specific contract arrangements, either with other state offices (canned vegetables for state hospitals) or private companies (brickmaking) or local farmers (wine for use in harvesting their crops). In the case of wine, the Governor at the time credited the penitentiary wine factory with bringing down the price of wine in the market generally, creating a cost savings of at least \$500,000 for Oklahoma farmers (Conley 1980: 261).

However, the prison industries were problematic in terms of both human rights and economic viability. The state placed a great deal of pressure on prison administrators to show profit, resulting in shoddy accounting practices and sales being recorded at higher prices than actually sold to create the appearance of profit where there was little or none. Over time, the appearance of profits created a situation in which the state gave less and less financial support to the prisons for necessary institutional needs and capital investment – the false profit reports made it seem as if the prisons could be self-sustaining, when they never would be. In terms of the broader economic context, the prisons were not seen as a valuable asset or partner for other companies; and private firms either saw the prison industry as a threat to their share of the market, as with the wine interests, or they saw the products of the prisons as low-quality and poorly produced, as in the case of substandard bricks produced at the penitentiary (Conley 1980: 263). Prison industries were not maintained in situations where the private sector's ability to produce the same goods was better, and that turned out to be the case regarding most goods. After World War II, the only way to keep prison industries going was through "state use" programs, in which prisons could only sell products to state

and local government agencies. Whenever possible, most state agencies would source goods from private industry, bypassing the state use system (Conley 1980: 266). In the 1950s, the penal system began to shift to agricultural and farming programs, and the penitentiary in McAlester considered buying additional land even though most of the inmates were from towns and cities and had little interest in agriculture. A citizens group recommended that the prison should not buy additional farmland, but that it should instead expand vocational training programs (Conley 1980: 268). It is clear that the emphasis on profit in the Oklahoma penitentiary had clearly left the inmates with little opportunity for rehabilitation, training, or educational advancement; and the economic context of better goods produced by private industry eventually showed that prison labor was not viable as a source of profit for the state.

There is a rich literature built up around the history of the relationship between prisons and profit making, a relationship that scholars like Angela Davis call the prison industrial complex (Davis 1998: 2). Private capital becomes enmeshed in the punishment industry, and prisons become a site of profit for corporations, as well as a promise of economic development and jobs for communities that are affected by recession. Recent data indicates that the move toward for-profit prisons is a general trend: profits for the Corrections Corporation of America (CCA), the largest US private prison company, had risen 58% from \$293 million to \$462 million between 1997 and 1998 (Shaw 2009: 103). Profits continue to increase, but with potentially serious ramifications for prisoner sentences and those who work as staff and guards in the prisons. For example, in a 2010 Annual Report filed with the Securities and Exchange Commission, CCA noted that demand for their services and facilities could be adversely affected by leniency in sentencing, conviction, and parole standards. At the same time, lawsuits in states such as Arizona and Hawaii allege that CCA routinely short-staffs prisons to maximize profits, leading to unsafe working conditions for guards, prison staff, and arguably members of the community near the prisons (ACTU 2012). Such connections between the prison system and violation of human rights are well documented, but the focus on profit making in privatized prisons is a relatively new trend deserving further analysis. For example, in Eduardo Mendicia and Chad Krautzer's publications on prisons (Mendicia 2007, Mendicia and Krautzer 2004) the critique of the prison industrial complex is traced back to Alexis de Tocqueville and Democracy in America originally published in 1835-1840: the study of United States prisons made by de Tocqueville and Gustave de Beaumont in the middle of the 1800s presciently noted an inherent contradiction between the new world's promise of freedom, and the "democratic despotism" of its prisons and the use of its prisoners

(Mendiera 2007: 294). Angela Davis focuses on the issues of race, class, and gender and the perpetual state of disadvantage that prisoners face even after release. We can see from the effects of the private prison industry in communities and in the lives of their employees that the cycle of dependence on the prison industry continues and is even more pronounced in the private prison industry. In Davis's recent work, the private prison industry and the prison industrial complex is critiqued not only as a United States issue, but as a much broader global issue. In an interview with Chad Krauzer, Davis notes that "this phenomenon we call the prison industrial complex is a global phenomenon. It can't really be understood as a specifically U.S. development. What has been enabled in the U.S. – the rapid proliferation of prison facilities and prison populations; the rapid degree to which capital has moved into the punishment industry in such a way that it is a small niche – it is a major element of the U.S. economy, in the same way that the military became central to the U.S. economy" (Mendiera and Krauzer 2004: 342).

Arguably the development of the prison industry and privately owned prisons is connected to broader issues of economic conditions internationally. The forms of control and discipline, especially control and discipline as commodities to be bought and sold to communities, are now being marketed in new ways on a national and global scale. The economic benefit associated with the prison industry is what is being marketed, not rehabilitation or a goal of some sort of retributive justice.

## 2. Privatized Prison Contracts, Human Rights, and Liabilities

The state's interest in profit has also affected and shaped the history of state contracts with prison corporations – companies that design, administrate and oversee prisons by contract with the state. Researchers on the prison management industry note that "a common belief is that governments are disinterested parties from the perspective of personal benefit" (Gran and Henry 2007: 173). The case of the Oklahoma penitentiary in Conley's research provides an important counterexample; even if we would not claim governments are concerned with personal benefit, they are often concerned with economic benefit. Despite its non-economic goal in regard to prisons that being punishing the guilty (as in the state of nature theories of government in the tradition of Rousseau, Locke, and Hobbes) the government is often concerned enough with the possibility of profit that a variety of producers were contracted and produced. In many cases, the prison produced goods were considered less desirable than goods

produced outside the prisons, so the promise of economic benefit actually turned out to be an empty promise.

The concept of the prison itself as an industry that can be subcontracted from the government to a private prison corporation (such as Corrections Corporation of Australia, Corrections Corporation of America) is a relatively new development. Brian Gran and William Henry note differences in the contracts between government and private prison corporations in the United States, Canada, and Australia. In all cases, "governments contract out government responsibilities to private corporations, attempting to have private entities perform a public function while still holding these corporations publicly accountable" (Gran and Henry 2007: 173). Private firms managing prisons for governments sign on to contracts with three aspects of accountability addressed within their contracts: formation of the prison (infrastructure, staffing, physical plant), maintenance of the prison (day-to-day maintenance, operations, and interactions between prisoners and staff), and liability (legal expectations and repercussions if those expectations are not met). Specific duties of the firms vary, but in many cases the firm offers to hire, train, and oversee the day-to-day running of the prisons. This allows the state government to claim that it has "saved" a specific amount of taxpayer dollars/state revenue in that the day-to-day running of the prisons has been "outsourced" to a private firm. Because those who work in private prisons are no longer "state employees" (a status that usually connotes high benefits, health insurance, and retirement packages) the prisons are able to hire people for lower wages and fewer benefits. This reduced cost workforce, combined with the earlier point that many private prisons may actually be short-staffed, gives the prison corporation a variety of ways to generate profit. The quantitative evidence for this profit can be seen, for example in a 2008 piece by Vicky Palaez available on [globalresearch.ca](http://globalresearch.ca); it is noted that in 1998, "there were only five private prisons in the country, with a population of 2,000 inmates; now, there are 100, with 62,000 inmates. It is expected that by the coming decade, the number will hit 360,000, according to reports" (Palaez 2008). A variety of techniques for raising profits exist within the United States industry: Approximately 18 corporations guard 10,000 prisoners in 27 states. CCA and Wackenhut are the two largest corporations, running 75% of the private prisons in the United States. Private prisons receive a guaranteed amount of money for each prisoner, independent of what it costs to maintain each one. Having a high ratio of prisoners to guards is key; many large prisons have five guards on duty with 750 prisoners. Prisoners might have reductions in sentence for "good behavior," but for any infraction, they could have 30 days added – which means the prison corporation will profit even more

from that inmate's incarceration (Palace 2008). Some have argued that private prison administrators resort to adding time to a prisoner's sentence much more often than state prison administrators do – state prisons might want to reduce the number of prisoners to alleviate overcrowding, but private prisons want to maximize numbers of inmates and keep inmates as long as possible to maximize profits.

Every year, federal and state level governments in the United States effectively contract out thousands of prisoners to private companies while, at the same time, attempting to regulate and monitor the practices within the privately managed prisons. In some cases, these attempts to regulate and monitor are successful, and in some cases they are not. For example, in August 2011 a juvenile court judge in Pennsylvania, Mark Ciavarella, Jr., was sentenced to 28 years in prison and ordered to pay \$1.17 million dollars in restitution to children he sentenced to prison in a privately owned juvenile detention facility run by Pennsylvania Child Care LLC and Western Pennsylvania Child Care LLC (MSNBC.com, McCoy 2011). Ciavarella and another judge had accepted \$2.8 million in kickbacks from the Child Care corporations that built and operated two privately-run juvenile detention facilities. In exchange, the judges agreed to close down the county's own juvenile detention center, which would have competed with the new, privately-run facilities. The judges guaranteed that juvenile offenders from their court would be directed to the privately-run facilities. The corruption scandal was only uncovered after many parents and community members complained after hundreds of children were given harsh sentences in the judges' courts; not because of any regulation on the part of local or state government officials. In these cases, the children's human rights were violated, as they were falsely imprisoned to increase the profits of the private prisons run by the Child Care corporations. As above, the profit motive of privately operated prisons is directly related to the per-capita payment by prisoner and duration of sentence.

The question of accountability of the prison corporations is an important one, and it is a significant indicator of the prison-for-profit as a site of human rights problems. Gran and Henry 2007, Rozen 2003, and Freeman 2003 all cite three major groups to whom private prisons are accountable: taxpayers, residents, and inmates. The contract with state or federal governments is the root of the contract with the taxpayers, however, wishes or particular taxpayer voters may be ignored or manipulated – citizens who do not want a private prison located near them may be outnumbered, especially if the prison corporation claims it will bring jobs and economic revitalization to a suffering community. In addition, planning and decision making about the safety, development, and growth of privately operated prisons over time may be made with

or without the consent of the prison corporation or the government. For example, the case of Melbourne Women's Prison contract between Excor Investments (including Corrections Corporation of Australia) and the government of Australia gave the government the option to expand the number of prisoners at MWP incrementally by 25 up to a maximum of 200. The government had to notify Excor of any increase, but after that, there were no impediments to expansion of the prison population. Excor had, by contract, no explicit right to reject or oppose any expansion; there was merely a mention of both parties acting in "good faith" (Gran and Henry 2007: 180). In terms of liabilities in the event of building damage, prisoner misconduct, and public risk, Excor had \$20 million in public risk insurance and assumed all liability; indemnifying the government against any liability (Gran and Henry 2007: 180). In comparison, a contract between Management Training Center and the government of Ontario, Canada provided standards for intake of inmates and established a stronger monitoring standard than Australian and United States examples; establishing a team of individuals responsible for continuous monitoring of prisons under management of private corporations (Gran and Henry 2007: 182). The importance of inspection teams in defending the human rights of prisoners has been noted in a variety of international contexts, including reference in the European Convention on Human Rights (Owens 2010: 1536).

One example of a contract that does hold private corporations responsible for specific safety concerns is the contract arrangement of the Northeast Ohio Correctional Center (NEOCC), between Ohio and the Corrections Corporation of America. The contract stipulates that the government holds the contractor liable through an indemnification provision for any and all "spills" (referring to a wide range of emergencies, including inmate escapes, riots in the prison, harm to staff, or harm to inmates from faulty machinery or equipment; Gran and Henry 2007: 183). The contract further stipulates that the contractor protects, indemnifies, saves and holds harmless the United States Government, the Board of Prisons, and its employees or agent, from and against all claims (Gran and Henry 2007: 185). In terms of prison safety, the contract requires compliance with "nationally recognized codes" that emphasize the safety of the prisoners and other occupants of the building, not the interest of keeping prisoners from escaping, harming each other, or posing a danger to staff. Protection for prisoners, and for private firms, in the Australian, Canadian, and United States examples is *de minimis* (minimal) in all contracts and is described through applicable federal laws (Gran and Henry 2007: 186).

The Canadian contract was the strongest in terms of oversight and establishing

external teams to visit prisons, and the United States contract was arguably the most problematic in terms of oversight. In 1998, six prisoners escaped the NEOCC. It was only after this escape occurred and received media attention that Ohio state government officials filed formal requests with the United States Department of Justice to review the NEOCC and its contract. It was found that the facility had been designed with medium security but was housing inmates with maximum security status, and that the Corrections Corporation of America did not require sufficient training and background investigation of employees (Gran and Henry 2007: 187). The contract was criticized for being flawed, with weak requirements on the contractor and with minimal provisions for enforcement of those requirements (Gran and Henry 2007: 188).

Prisoners had also brought complaints about specific treatment in the NEOCC, following a process of complaint first within the prison and then within the state courts and judiciary, but many of the cases "remain subject to speedy dismissal on the grounds of the prisoner's/claimant's failure to state a claim, to exhaust all administrative remedies before bringing suit, or to provide enough evidence to survive summary judgment" (Gran and Henry 2007: 190). For example, one claim was dismissed by a state court because a prisoner's request that the facility accommodate his religious practices and kosher diet requirements did not meet this "total exhaustion" requirement and was dismissed summarily, without attention to any particular part of the inmate's requests. Another case in which a prisoner alleged he was denied medical treatment was also dismissed for failure to meet the requirement of "total exhaustion." (The concept of "total exhaustion" is a way of putting the onus of responsibility on the prisoner for following specific channels for complaint – in a way it is like the requirement of "due process" in judicial proceedings that is meant to guarantee the prisoner's rights, except here, it is guaranteeing a wide range of rights and privileges for the prison corporation.) Finally, a prisoner brought action alleging that the prison's law library was insufficient to allow him to bring a claim. The dismissal also included an analysis of the prisoner's constitutional rights, noting that "impairment of any other litigating capacity is simply one of the incidental, and perfectly constitutional, consequences of conviction and incarceration" (Gran and Henry 2007: 190). Gran and Henry point out that this brings serious questions about the ability of case law to handle issues in privately operated prisons, but one can certainly argue as well that the right to access to basic litigation capacity and law library materials is a necessary human right.

Standards for prisoner treatment are outlined in a variety of governmental documents. For example, the treatment of prisoners after 9/11 at Guantanamo Bay has been debated; critics asked whether or not the prisoners there have suffered infringe-

ments of civil liberties and overriding human rights, while those who argued in favor of the Guantanamo Bay methods held that these measures were justified because of national security concerns (Mappes et al. 2012: 344). The Eighth Amendment to the Constitution of the United States of America explicitly prohibits the infliction of cruel and unusual punishment (Mappes et al. 2012: 105), and the death penalty is often cited as one such example. The Geneva Convention outlines the standards for and the requirement of "humane treatment" of prisoners in time of war (Mappes et al. 2012: 345). While the prisoners of privatized prisons are not experiencing cruel and unusual punishment of that type, one must see that the prisoners are legitimately being denied their right to religious freedom and their right to participate in their own defense. Unfortunately, the reason for these violations seems to be that the privately operated prisons do not feel it is in their financial interest to provide necessary accommodations like kosher meals, alternative worship space, and an adequate collection for the prison's legal library. Furthermore, consider the wide variation between the oversight of the prisons in Canada, Australia, and the United States. Arguably, privatized prisons with little regulation and no teams of evaluators visiting the prisons on a regular basis will be less likely to provide accommodations in line with prisoner rights and civil liberties. The situation in private prisons is fundamentally less amenable to the civil liberties and rights of the prisoners than the situation in state operated prisons. In private prisons, the inmates are used for profit generating, and any concerns about their safety or their rights can only be pursued through a complex misadventure of requirements like "total exhaustion" of the system within the prison itself, before the complaint is even brought to court. When the "total exhaustion" requirement is not met, it is used as a reason to dismiss the prisoner's complaint outright. The privileges of the prison corporation, in contrast, are defended in multiple ways, through favorable court decisions and lucrative relationships with local politicians. The opportunity for corruption and influence peddling is clear. While state prisons might also involve these types of influence, the private prison adds another layer of cover and obfuscation for such influential relationships; and with complaints of prisoners being dismissed on a regular basis for not meeting the "total exhaustion" standard, one may never hear of such complaints. State prisons may actually be more answerable to the public and to "watchdog" concerned citizens – a private prison has less motivation to welcome checks and balances from the public.

### 3. Communities, Profits, Poverty: The Costs of Private Prisons

While scholars in criminology and sociology have been publishing on prison infrastructure, geographers have also been involved in studying the long-term social and economic effects of privately owned and managed prisons in communities where the prisons are located. One example is Anne Bonds, a geographer who won a Graduate Student Scholarship from the journal *Annupode* to study prisons in the northwestern United States. She notes that the Corrections Corporation of America has built a variety of prisons in rural communities in states such as Idaho and Montana, and that prisons are seen as a potential economic opportunity for many rural communities as the incarceration rates and the prison population within the United States continues to grow (Bonds 2006: 174). The irony is that the communities that choose to allow prisons to locate in their communities often do so to try to counter problems associated with poverty and a lack of job opportunities (as the prison corporation will offer new jobs to the community), but that the overall context of privatization, deregulation, and governmental disinvestment in prisons and punishment created a “downward harmony” that is actually not to the advantage of the communities. It is a parallel to the problem of outsourcing other goods, services, and jobs – the average citizen might think that a private prison will give profits and jobs to their community, but the prison may actually hire fewer people and keep inmates in conditions that are not safe for the inmates and not secure for the local community. In actuality the government’s disinvestment and outsourcing of prisons only appears to create a profit: the real cost to the community emerges slowly over time. Jobs are lost or reduced in number, and the profit motive to incarcerate more and more prisoners, for longer periods of time, slowly erodes communities.

A variety of benefits are listed as arguments in favor of bringing prisons into a local community: prisoners will be counted as residents where they are housed, so the increase in state and federal funding distributed in terms of population will help the community. The cost and benefit analysis of this added funding is very important, however, because communities can easily negate their potential financial benefit if they use expensive recruiting techniques to bring the prisons to their community like land donation, infrastructure donation, and property tax breaks (Fidling 2002, Blankenship and Yanarella 2004). Empirical studies in communities where such prisons have been built actually show very little evidence that by building a prison in a community, new development and economic benefits will result. Arguably, the economic effects of pri-

vatized prisons in communities reduce the quality of life, educational opportunities, and economic mobility of the members of these communities and have a serious effect on their civil liberties and human rights. Quality of life is decreased when a private prison moves into an area claiming to create a specific number of jobs, only to break the promise of hiring, or create low wage jobs without health insurance or other benefits. Prison corporations may promise a specific amount of property tax revenue, but then have a special arrangement with local politicians that guarantees they will not have to pay property taxes for a certain number of years. These property taxes that would have gone to support local schools are then lost. Many sources argue that private prisons create profits at the expense of inmate health; many private prisons have been accused of “cherry-picking” only the healthiest prisoners to keep their medical services costs low (Oppe 2011). Could you please expand on some of these dimensions (some are covered below, but not all) and add sources.

In addition, the gender, race and class profiles of the rural communities where such prisons have been built include disproportionate representation of groups within the prisons themselves: African-Americans, Latinos, and Native Americans. As of 2006, the fastest growing group imprisoned in both Oregon and Idaho is Latino (Bond 2006: 176). Hispanics and Latinos make up less of the general population than the prison population, where Hispanics and Latinos represent 2/5 (40%) of those currently incarcerated (Garland et al. 2008: 4). For comparison, the Latino and Hispanic population of the US in general was 12.5% in 2000 and 16.3% in January 2012 (US Census 2012). This exacerbates tension between various groups within the population in these previously predominantly white rural areas, which often include growing numbers of Latino migrant farmworkers and undocumented immigrants from Mexico, Honduras, and other Central and South American nations: “Anti-immigrant discourses are framed in relation to economic pressures on public funding for social services and in terms of alleged crime increases and drug trafficking... the unleashing of anti-immigrant political backlash corresponds paterly with the rapid expansion of the Idaho Department of Corrections, a deepening of poverty, and economic decline associated with farm consolidation and mechanization” (Bond 2006: 176).

In the context of these economic problems, it does not seem that the privatized prison is a solution; rather, it is exacerbating the problems for the members of the community and recent immigrants, given that the jobs associated with building new prisons will be few, and the local economic commitment to the prison, its infrastructure and its upkeep, will be ongoing (while the infrastructure and upkeep of a private prison may begin as the responsibility of the corporation, as hiring practices involve

hiring fewer and fewer staff and cost-cutting measures, the prison and its condition often becomes a burden for the local community). As the privatized prisons increase prejudice and hate crimes against Latino community members and documented and undocumented immigrants, not to mention the affects of racism directed at African American community members, their civil rights and human rights are threatened as well. The claim that private prisons affect quality of life in communities where they are located is also made by political action groups like Public Campaign, which recently published findings that show "private prison lobbyists regularly buy influence with state and federal officials, not only to win lucrative contracts, but also to change or preserve policies that increase the number of people behind bars. Private companies have made huge profits off the mass incarceration of non-violent drug offenders, and are now turning their attention to increasing the detention of Latino immigrants—the newest profit center for the prison industrial complex. Ultimately there is no way to reverse the costly trend toward mass incarceration without reducing the influence of these companies and their money in our democracy" (Public Campaign 2011).

To the extent that political lobbying power is used to maintain private prisons and divert funding and other community resources to the private prisons once they are established, individuals living near private prisons are affected in terms of losing voting power and public services. Furthermore, private prison industries will openly "target" poor communities to locate new prisons, on the assumption that the community will be swayed by the argument that the prisons will bring them new monetary revenue, and that if the community is unsatisfied with any aspect of their arrangement with the prison corporation then the community will be less likely to fight or seek legal recourse of any type. "Private prison companies' interests lie in promoting their business through maintaining political relationships rather than saving taxpayer dollars and effectively ensuring public safety (...) in the South and Southwest, the private prison industry has consistently targeted poor communities (...) it's important to fight, particularly in these communities, to end for-profit incarceration and reduce reliance on criminalization and detention, and ultimately build lasting movements for social justice" (Hughes and Fenster 2011).

Along with the possible manipulation and degradation of citizen's voting and legal recourse, one can argue that private prisons divert funding from preventative "front-end" programs to retributive "back-end" programs. In communities where resources are given to basic needs, early education, affordable housing, and meals programs for children instead of to prisons, the children will be less likely to end up in prison. While representatives of the prisons corporations and policy analysts like Eric Montague have

argued that prisons can serve the public good, the evidence that private prisons are doing so in a meaningful way is rather sparse. Usually arguments in favor of privatized prisons are framed in terms of arguments in favor of free market and free enterprise and competition for contracts, but in the context of lobbying, true competition is unlikely. Recall that the prison industry is primarily dominated by two major corporations, CCA and Wackenhut (Palaez 2008). The prison industry is arguably not a truly competitive "free market," and the political relationships involved in bringing a prison to a community often involve influence. Montague holds that competitive contracting is possible and a responsibility of governments: if the government cannot provide goods and services as efficiently as a private corporation, then, the government must give the duty to the cheapest and most affordable (efficient) contractor. "Many who oppose competitive contracting for prison services feel the government has a fundamental responsibility to actively manage and control prisoners who are sentenced for punishment by the courts. This view discounts the equally important responsibility of the government to perform services as efficiently and cost effectively as possible, while providing for the general welfare. By realizing the competitive advantages of private prison management, state and local governments can provide safe incarceration of convicted prisoners without raising taxes" (Montague 2001).

Montague thus maintains that privatized prisons reduce costs associated with incarceration and that the numbers of incarcerated community members are increasing, so government has a responsibility to turn to privatized prisons as a matter of using free market attention to price points and "efficiency". However, his argument gives very little attention to the social context that produces the increasing numbers of incarcerated inmates, and does not acknowledge the importance of front-end programs to prevent higher incarceration rates. The American Civil Liberties Union made a similar point in a major report published November 2, 2011. The report argues that private prison companies are lobbying for laws that result in higher incarceration rates. "These higher incarceration rates result in more government contracts, and, these lucrative government contracts are the primary source of funding for these companies (ACLU 2011). It would seem that the primary motivation of privatized prisons will never be the greater good, the common good, the human rights of prisoners or of community members – their primary motivation seems to be reaping profits and incarcerating as many individuals as possible to achieve that end. We are familiar with the arguments about "over-incarceration" from the Frankfurt-school, and the Angela Davis commentary on racism, disciplining, and punishing individuals who society deems somehow unacceptable (Davis 1998, Shaw 2009, Mandtara 2007). A recent article in *The New*



Yorker by Adam Gopnik stated it with rhetorical flourish: "There's a fairly large recent scholarly literature on the history and sociology of crime and punishment, and it tends to trace the American zeal for punishment back to the nineteenth century, apportioning blame in two directions. There's an essentially Northern explanation, focusing on the inheritance of the notorious Eastern State Penitentiary, in Philadelphia, and its "reformerist" traditions; and a Southern explanation, which sees the prison system as essentially a slave plantation continued by other means. Robert Perkins, the author of the Southern revisionist tract "Texas Tough: The Rise of America's Prison Empire," traces two ancestral lines, "from the North, the birthplace of rehabilitative penology, to the South, the fountainhead of subjugationist discipline." In other words, there's the scientific taste for reducing men to numbers and the slave owners' urge to reduce blacks to brutes" (Gopnik 2012).

Following Gopnik, we might argue that a neo-liberal interest in the reformative power of the penal system (the northern Philadelphia example) and the southern tradition's interest in control of persons of color collided, making a variety of different perspectives within the United States take comfort in the notion that prisons will take care of the problem of what to do with "them", that prisons will take care of "it". As Angela Davis noted in 2003, "This is the ideological work that the prison performs -- it relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism (...) mass imprisonment generates profits as it devours social wealth, and thus it tends to reproduce the very conditions that lead people into prison" (Davis 2003: 17). In other words, the profit motive that affects internal policies of private prison management (increasing numbers of inmates and maintaining longer sentences per inmate) has a commensurate effect on the general population outside the prison, creating a cycle of poverty and incarceration between generations.

#### 4. Conclusion

This article explored the "prisons for profit" controversies in the United States from the perspective of a variety of human rights violations connected to privatized prisons. First, in terms of human rights violations affecting prisoners who were unjustly sentenced to time in privately owned and operated prisons to maximize the prisons' profits, and in terms of prisoners who were denied access to religious practices and legal library information while in private prisons. The contractual relationships between local political leaders and private prison corporations often involve liability policies that

create a situation within the prisons in which the rights and health of the inmates are secondary to the prison corporation's need for profit, with prison corporations only picking healthy prisoners who will be low-cost and low-maintenance, and engaging in practices that extend prisoner sentences. In general there appears to be significantly less attention to human rights of prisoners within the private prison industry. Second, there are economic and socio-political repercussions when a community chooses to allow the building of a private prison, and the potential economic benefits are usually outweighed by the economic commitment to the prison, and the increase in prejudice and hate crimes in communities with shifting demographics of agricultural workers and increasing populations of disenfranchised groups. The cycle of poverty seems to be exacerbated in communities where private prisons are built; the irony being that private prisons are brought in with promises of new jobs, added tax revenue, and economic development that often do not result after the private prison is established. The point is not necessarily that publicly run correctional facilities are somehow better; the point is that privately owned and operated correctional facilities often come with a set of promises that are typically not met. In addition, the private prison industry and its drive for profit creates a situation in which incarceration becomes another commodity, and the prison industry has, as its primary motivation, to guarantee a constant supply of new prisoners to incarcerate. This was the problem in cases like that of former Judge Ciavarella in Pennsylvania – the judge was receiving money for sending children who appeared in his court to the private prison. Arguably this type of financial arrangement would be less likely to occur in a publicly run prison system that would not have the same profit motive, or ability and opportunity to divert payoff funds to elected officials without being traced. The general attitude toward punishment changes when profit and payoff enters the retributive justice enterprise in the way it does with private prison industries, too many individuals in leadership positions make decisions based on keeping prisons full and profits high, rather than looking at rehabilitation or restitution. We have come to treat prisoners and the members of communities near privately run prisons, merely as a means – a means to profit and often false promises of economic development – rather than as ends in themselves.

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