

Chapter 8

Private Prisons and the Shift in Marketplace From the War on Drugs to the War on Terror

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ABSTRACT

This paper outlines the emergence of a new marketplace in the United States, immigration detention, especially after September 11th. This phenomenon is not limited to the United States, but is also observable in other countries as the result of the globalized economy. This paper first explains how the private prison industry adapted from shaping harsh drug law sentencing during the War on Drugs to now sponsoring legislative bills that target immigrants, the new “cash crop” for the private prison industry. Because of the securitization of immigration governance, politics of fear are easily used to justify and build public support for a tough stance on immigration. The end result is that immigrant detention is a highly lucrative and record-breaking profitable enterprise for private prison corporations, with little accountability in its treatment of immigrants and with more and more power in sponsoring and shaping legislation beneficial to their bottom line. Implications now that Trump, who ran a very xenophobic presidential campaign especially hostile to Mexicans and Muslims, are discussed.

INTRODUCTION

Private prison corporations are awarded contracts by government entities to house inmates in their privately owned and financed facilities. These contracts specify a daily rate paid to the prison company by the government, run on traditional market mechanisms, and exist to generate profit for their stakeholders. However, when a steady decline in the number of people incarcerated began in 2010, the industry was met with a challenge if it wanted to continue to bring in the profit levels it had grown accustomed to. Annual reports for the two largest private prison corporations, CoreCivic (previously Corrections Corporation of America) and The GEO Group show these companies made over \$2.9 billion in revenue during 2010, even though the number of incarcerated was actually declining.

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Private Prisons

The Bureau of Justice's (BOJ) statistics show state correctional facilities experienced a decline in the state prison population in 2009, the first decline since 1977 (West, Sabol, & Greenman, 2010). The year 2009 became the third consecutive year of slower growth in the U.S. prison population and the smallest increase between 2000 and 2010 (p.1). Twenty-four states reported declines in their prison population during 2009. Despite the federal prison population growing 3.4% this year, 2009 represented growth at its slowest rate in the overall prison population and marked the beginning of a three-year trend of declining state prison populations. In 2010, BOJ statistics show the overall U.S. prison population declined for the first time since 1972 (Guerino, Harrison, & Sabol, 2012). State prison populations continued to decline, and federal prison population grew only by 0.8% (p.1). In 2010, 25 states reported declines in their prison populations (p. 14). This increased to 26 states during 2011. BOJ statistics show 2011 was the second consecutive year that state and federal prison populations both continued to decline; 2012 marked the third consecutive year of this decline. Statistics of violent crimes also consistently show a steady decline.

Like any rational private actor, the private prison industry adjusted to the change in marketplace quickly. It recognized that the tactics from the War on Drugs could be duplicated in the new context of the War on Terror. Although the data showed declines in the prison population, one trend was clear—the detainment of noncitizens had been growing steadily for decades *and* at a faster pace than the citizen population.

SHIFT IN THE MARKETPLACE: THE GROWTH OF (PRIVATE) IMMIGRANT DETENTION

According to a report issued by the National Immigration Forum, the number of immigrants imprisoned each year has increased approximately twofold since 9/11, rising from 204,459 in 2001 to 429,247 in 2011 (Moreno, 2016). After 9/11, ICE was detaining 34,000 immigrants per day in the name of national security and no longer using the previous catch and release protocol. About 73% of immigrants are funneled through immigrant detention centers as they await their immigration hearings, but with the private prison industry's powerful lobby, more and more punitive measures are ensuring immigrants continue to be opportunities for the prison industry. There is ample discretion in the amount of time an immigrant can be held in detention, there are numerous ways to curtail due process, and, with immigration court experiencing overload and severe backlogs, a longer stay in detention is easily achieved, ultimately rendering *more* profits to the private corporations that run these centers. Even more advantageous to the private prison industry is the fact that immigrants lack citizenship and the protections this guarantees, generally have lower levels of social and political capital, making their abuse in prison easier to justify and with even less demand for accountability than prisoners who are U.S. citizens (Moreno & Price, 2017).

In 1996, federal data of the BOJ showed noncitizens (defined by the BOJ as immigrants, refugees/asylees, and non-immigrants) serving federal sentences increased an average of 15% per year, as opposed to the overall federal prison population's average increase of 10%. This became the trend despite the fact that 55% of noncitizens were in the U.S. legally, and despite the fact that noncitizens charged with violent crimes represented 1.4% of the federal court as opposed to 8.5% of citizens. This means there were less violent crimes among noncitizens, yet this group was overrepresented in the incarcerated population. Most noncitizens were persons admitted to the U.S. for a temporary period, including tourists, students, foreigners working in the U.S., and Mexican and Canadian citizens with border crossing cards. It is well

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