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A SOCIOLOGICAL HISTORY OF PRISON PRIVATIZATION
IN THE CONTEMPORARY UNITED STATES

by

Donna Selman-Killingbeck

A Dissertation
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
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Department of Sociology
Dr. David Hartmann, Adviser

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A SOCIOLOGICAL HISTORY OF PRISON PRIVATIZATION IN THE CONTEMPORARY UNITED STATES

Donna Selman-Killingbeck, Ph.D.

Western Michigan University, 2005

This dissertation is framed by the radical criminological-theoretical perspective and utilizes the social constructionist method of analysis to examine the development of prison privatization in the United States. Central to this analysis is the question: How is it that, given the disastrous history of blatant attempts to blend capitalism and punishment, contemporary privatization of prisons not only emerged but continues to expand becoming a multinational incarceration industry? Three phases of privatization: emergence, maintenance and perpetuation, are illuminated in their political, economic and cultural contexts. The strategies and techniques, access to power, claims-making and managing counterclaims for example, of various stakeholders in the corrections commercial complex, politicians, prison officials and industry leaders are examined. The findings indicate that the conditions--political, economic and cultural--are ripe for even more growth in operational privatization, and further, the claims and strategies used to promote operational privatization of prisons are resurfacing to capture even more raw materials (people). This work concludes that by understanding the deep sociological and cultural roots of crime control, a posture of resistance to this existing form of domination and future expansion of formal control mechanisms in the name of reform can be pursued. Finally this research recommends that one possible way to confront social inequality, seek to liberate oppressed

people and prevent further oppression is to illuminate the strategies, techniques, discourse and entanglements of the corrections commercial complex. Through this process one can begin to construct a new politics of truth; changing and challenging the political, economic and institutional regime of the production of truth.

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CHAPTER I

INTRODUCTION

In 2000 the United States prison population exceeded the two-million mark, making it the largest in the world; ahead of even China whose population is five times greater than that of the United States. Few people are aware that nearly six percent of state prisoners and 13 percent of federal prisoners are housed in privately operated prisons. Fewer citizens realize that the use of private prisons across the United States continues to grow and private corporations have expanded their markets to include housing illegal immigrants, federal detainees, juvenile offenders and the mentally ill. In addition to the market expansion, private prison firms have become active in probation and parole. The use of privately owned and operated facilities continues to grow in several states, resulting in an increase in the overall use of private facilities across the country. In 1987 approximately 3,122 inmates out of approximately 3.5 million people under correctional supervision were confined in private corrections facilities in the United States. By 2003 the number of people under the purview of some form of the criminal justice system had swelled to a staggering 6.5 million -123,000 of whom were confined in private facilities (USDOJ Jul 26 2004). This 400 percent increase in the number of prison beds in private hands begs the question, how did this come to be in less than 20 years?

It is the goal of this dissertation project to account for the emergence, nature and maintenance of the claim that privatizing prisons is the solution to the expanding prison population problem. For any solution (program or policy) to be enacted it must first be deemed logical, acceptable and appropriate, which is directly related to how the initial problem is constructed. It is through this process, the production of knowledge, that we can understand how some solutions gain acceptance and others do not.

Statement of the Research Problem

This study is intended to determine how privatization of the prison system in the contemporary United States has become economically and politically feasible as well as socially acceptable given the past injustices suffered during blatant historical attempts to blend capitalism and punishment. How is it that, given this disastrous history, contemporary privatization of prisons not only emerged but continues to expand becoming a multinational incarceration industry? Privatizing here refers to a process whereby the state transfers the responsibility for the management or operation of corrections facilities to a *for-profit* private contractor. A study of privatization of prisons in the United States at this time is significant for three reasons. First, imprisonment since 1980 continues to grow, as American states are sending people to prison at a quicker pace today than at any other time in the last 100 years. At the end of 2002 that amounted to about 700 more imprisonments per week than the year before (Prisoners in 2002 NCJ-200248). Studying the approaches the United States takes to this phenomenon, specifically the stages of development, is one way to inform future correctional strategies.

A second reason the United States is important to examine is the sheer number of prisoners it has accumulated over the last 20 years. The number of inmates housed

increased a staggering six fold between the years 1980 and 2000 and the U.S. continues to hold the largest prison population in the world. State prisons are operating at 16 percent above capacity and the federal prison population continues to grow at a startling rate, up 61 percent since 1995, and operates at 39 percent above capacity (Prisoners in 2003).

Finally, corrections expenditures across the United States are at an all-time high. As of 2003, growth in state corrections spending (up 1.7 percent) continued to outpace growth in higher education (1.6 percent) and public assistance spending (.7 percent) (NASBO 2003: 55). In a time of fiscal constraint, it is important to examine the how past corrections policy decisions were made and at what social cost.

This investigation focuses on these questions: How did privatization arise as a solution to the expanding prison populations? How does the industry maintain and perpetuate its existence? In addition this examination provides evidence of specific strategies used by stakeholders, those with economic, political, and moral interests, and argues that our taken-for-granted ways of punishing people and thinking about penalties for transgressions have allowed the debate on private-versus-public prisons to continue without an examination of the fundamental problem of imprisonment itself which ensures that other solutions are ignored or dismissed. And, importantly, this lack of communication contributes to the production and reproduction of an 'underclass' population.

Contribution to the Literature

The research questions are relevant for two specific reasons. First, they are relevant because they approach prison privatization from a perspective that is largely absent in the existing literature. As Karyl Kicenski points out, "Nearly every available study of the

phenomenon offers disciplinary treatments which are either normative [For example: Should we privatize our prisons?] or descriptive [For example: Do private prisons save money?] (2002: 4). These current approaches to the issue attack it in ways that divorce imprisonment from the broader economic, political and social contexts in which it takes place. And, neglecting the fundamental formation of such knowledge results in policy decisions based on an incomplete understanding of the phenomenon.

Second, this project is relevant to the field of criminology. Because institutions never arise full blown, but are a result of historical processes, it is important to examine the techniques and strategies utilized (or not) in this evolution. More specifically, a study of the voices and claims, and mechanisms that resulted in the acceptance of particular criminal justice practices provides a powerful tool for analyzing and implementing future policy decisions.

Purpose of the Research

By understanding the social relations that produce a cultural process, in this case prison privatization, one can form the basis of opposition and struggle against the reproduction of social and political oppression--an oppression that disproportionately persecutes and further marginalizes already marginalized populations. In addition, through this process one can begin to construct a new politics of truth; changing and challenging the political, economic and institutional regime of the production of truth.

Scope of the Research

While privatization in general, and privatization of prisons specifically, has occurred in other countries, Great Britain, Australia, New Zealand and South Africa for example, this

project addresses the phenomena in the United States only. The process, however, is comparable to the experience in other countries.

Restrictions on the Research

The sources of data examined were limited in several ways. Several requests for interviews, comments or responses from the leaders in the industry were denied, thus commentary from industry representatives is limited to that which was publicly available via newspapers and corporate media sources. Corporate documents were also limited to those publicly available via the Securities and Exchange Commission. Citing proprietary information access to internal and unpublished corporate documents was denied by the industry leaders. Government documents are limited to those available to the public, thus the front stage of the process is revealed, but back stage processes are limited.

Organization of the Research

This research is organized into an introduction followed by seven chapters. The introduction includes a statement of the research problem, the purpose, literary contribution, scope, restrictions, and organization of the research. This is followed by a review of the prison privatization literature describing the various categories of the material found within it and concludes by identifying a gap in the literature, the theoretical framework, assumptions, data sources and methods. Chapter one begins with a discussion of the changing rationales of punishment and is followed by a brief accounting of the emergence of prisons as a social institution. Chapter two describes the collision of social forces that set the stage for the contemporary privatization of prisons. In the third chapter the three phases of development are identified: creation, maintenance and perpetuation. This is followed by an in depth examination of the phase one: stage one:

problem recognition. Chapter four examines stages two and three of the creation phase; the assumption of power and the transformation of an idea into an operational program. Chapter five investigates phase two, maintenance including strategies for strengthening the corrections commercial complex. Chapter six examines the specific techniques of phase 3, perpetuation including efforts to manage counter-claims. Chapter seven examines the various efforts of industry leaders to perpetuate the corrections commercial complex suggesting a 'back to the future approach' to contemporary problems. This chapter concludes with answers to the research questions, reasonable extrapolations from the data and recommendations for future research.

Introduction to Literature

The literature on privatization as practice is as voluminous as the activities and entities that have been privatized: from entire governments to specific services, from reforming the Latin American State (Schamis 2002) to contracting for trash pickup (Savas 2000). The treatment of privatization in the literature, however, generally falls into one of several categories: 1) descriptive works that delineate the various types of privatization and the recommended practices: contracting out, vouchers and grants, asset sales, monitoring and contract writing; 2) evaluation studies that examine the success or failures of particular privatization efforts; 3) historical studies which tell the story of specific efforts to privatize, including localized anecdotes; and, 4) the limited but growing number of studies that treat privatization as a symptom of broader social, economic and political entanglements.

The bulk of what has been written about privatization in general falls into categories 1, 2 and 3 so a brief discussion of the theoretical underpinnings of such

treatment is warranted. There are two related theoretical models that serve as the underpinnings for these treatments of privatization, each grounded in the field of economics: the standard market model and public-choice theory.

The standard market model asserts that the market is made up of a large number of unrelated buyers and sellers, each pursuing their own interests (gain) without interaction or involvement of the other. Each player makes up only a small part of the overall market, thus individual actions have no affect on the price, quantity or quality of the products offered in the market; these are ultimately shaped by the aggregate market. Because there are many sellers competing for the dollars of buyers, sellers are forced to keep production costs low and quality high enough to satisfy buyers in order to maximize gain (profits). In addition, the model assumes that there are no significant barriers for either buyers or sellers in entering or exiting the market. Therefore, no concentration of market power can be established. If these conditions hold, a competitive market emerges, one in which the countervailing forces result in a quality and quantity of products that maximize both the satisfaction of consumers and the profit of producers (Schiller 2003). Thus, remaining competitive in the market requires flexibility in responding to demands, efficiency in production, and maintaining the quality of goods/services. Sclar (2000) explains that the urge to privatize public services is derived from a 'modification' of this standard market model, "it is but a small conceptual step from a single competitive market that gives customers what they want at prices that cover legitimate costs to an economy that is an infinite aggregate of such markets" (Sclar 2000: 7). Graehm Hodge (2000) summarizes the economic driver of privatization as "the objective to increase economic efficiency as a means of increasing the well-being of citizens" (Hodge 2000: 35).

Public-choice theory enhances the “well being of citizens” argument by expanding the incentive of profit maximization in the business world (dollars) to include the interests of politicians (votes) and government officials (budgets/organization). Boston (1991) explains that absent the profit motive and competition, public services are “captured by those who provide the services of the organization...bureaucrats look after their personal interests, not the interests of the public” (Boston 1991:3). The end result of pursuing personal gain in public services results in the inability of the citizenry to express preferences efficiently in the political process; these preferences are more efficiently expressed, according to public choice theory, via market exchange. Overall, public-choice theory suggests the existence of government monopolies in public service that ultimately decrease the quality of service. There is a lack of incentive to be efficient, to produce quality services or to respond in any way to the demands of consumers (the public). Thus, as suggested by E.S. Savas (2000, 1987,1982), a pioneer in the privatization arena, the privatization of public services is not about public versus private but rather a choice between monopoly and competition. To Savas, free goods and services become expensive and subject to “rampant waste, thoughtless consumption and possible exhaustion”(Savas 2000: 59). In the end, it is only through breaking the government monopoly and the reintroduction of the marketplace into the supply of goods and services that these can be controlled.

Elliott Sclar (2000) explains the neglected issues of the standard market model that serve as the starting points of much of the growing collection of literature in category 4, those which situate privatization as a symptom of broader social, economic and political entanglements.

First, because the model assumes that barriers to entering the market are nonexistent or minimal, political legitimacy is assumed. Sclar explains that this assumption, the existence of contract competition, essentially, “sweeps away the need to address the problem of political favoritism”(Sclar 2000 :12). In practice however, political favoritism is prominent in privatization and further, privatization and competition are not inevitably linked. Second, the standard market model is a theory of *individual* behavior not organizational behavior. The power of competition when applied to an individual is a powerful incentive to working more efficiently. However, this logic falls apart when applied to organizations. Individuals within organizations are constrained by institutional arrangements, thus their ability to enhance organizational productivity is limited. Further, organizations respond to incentives in far more complex ways than do individuals because of multiple agendas from both within and outside the organization. These points, organizational behavior, multiple agendas and political realities, and how they are intertwined are addressed by the literature I have described above as category 4.

Narrowing the Focus

Given the breadth and seriousness of the services undergoing or proposed for privatization-- national parks, education, police, fire and social security--and the numerous types of privatization, vouchers, contracting out, asset sales, grants and partnerships, it is not possible to do justice to each in this. Therefore, this project focuses on one type of privatization, contracting out, of one social institution, prisons. Within the area of prisons, a variety of privatized subcategories have emerged, from financing, building and construction to providing food service, medical care and commissary supplies (nominal) to the use of inmate labor through prison industries. Where relevant,

each of these subcategories is given attention. However, because private operation and management of prison facilities plays a significant role in the daily lives of inmates and has the ability to dictate the subcategories that are privatized, this project focuses on the specific topic of private operation and management of prisons.

The prison-privatization literature is as diverse as the fields from which it is generated. Academics, journalists and activists from a variety of fields, including public administration, criminal justice, economics, social justice, criminology, legal studies and journalism, contribute to what is known about prison privatization. Moreover, the majority of the literature on privatization of prisons either explains or describes privatization of prisons on one of two levels: ideological or analytical. Whether ideological or analytical, the conclusions, explicit or implicit, tend to either support or oppose the privatization of prisons and in a few cases attempt to resolve the split in the literature. Some merely ‘test’ the points suggested by the market-based models, evaluation studies for example. Others provide anecdotal accounts of current or past privatization efforts. Still others challenge the theoretical underpinnings themselves by either stressing the importance of what is missing-- issues of morality and legitimacy-- or by situating prison privatization as a piece of a larger, more complex theoretical puzzle.

Ideological Concerns with Morality/Legitimacy/Legality

The collection of literature that emphasizes the ideological concerns absent in the economic theoretical reasoning revolves around the issues of morality and legitimacy. The jumping-off point for most of this literature is the notion suggested by Jeff Sinden that correctional services are fundamentally different from other goods that have been transferred to public hands (2003 HRI: 39). In an early study, Ryan and Ward (1989) elaborate, explaining that what is morally repugnant about private prisons is “not (or not

only) the punishment inflicted on inmates, but the rewards that accrue to penal entrepreneurs” (1989: 70). For these researchers and others the issue is about *profiting* from imprisonment and the apparent contradiction nature that pursuing profit adds to justice. John DiIulio (1988) adds to the ideological discussion by questioning the legitimacy of privatizing the administration of justice. Stressing the moral implications, DiIulio poses the question “Who *ought* to administer justice?”(1988:72). This question gets at what Weber has described as a fundamental characteristic of the modern state, the claim by the state to exercise a monopoly over the use of legitimate force. DiIulio’s main argument is two fold: first, the delegation of authority to private contractors delegitimizes both the practice and message of punishment; and second, it undermines the moral writ of the community. While DiIulio discusses the importance of the different symbolic meanings of who administers justice, he is much more concerned with the consequences of delegating the state’s primary reason for being. DiIulio explains that the criminal law is the one area where citizens have conceded to the state an almost unqualified right to act in the name of the polity, i.e., to “employ the force of the community.” Prisons, argues DiIulio, are a public trust to be administered on behalf of the community and in the name of civility and justice rather than a private enterprise to be administered in the pursuit of profit (McDonald 1990:176).

Added to concerns of morality and legitimacy, and in what seems a natural progression, are the issues surrounding the legality of delegating the responsibility and power to restrict ‘liberty.’ According to Ira Robbins (1988), because of the non-delegation clause in the constitution, turning over prison operations to private companies raises constitutionality issues. It is possible, in Robbins view, that even though federal courts have allowed delegation of broad powers to private actors, they “may apply more

stringent standards to delegations that effect *liberty* interests than they do to those that effect property interests” (1988:34). On the state level, Robbins points out that the private delegation of a state’s administrative powers, while not barred by law, may also pose legal problems. The crux of Robbins point is that private incarceration is fundamentally different. More specifically, the power to incarcerate is “intrinsically governmental in nature” (1988:43).

In contrast to the literature that opposes prison privatization on moral and legal grounds is the collection which supports privatization on the ideological level. Generally, these arguments dismiss the moral, legal and legitimacy concerns as non-issues or the result of illogical reasoning. For example, Charles Logan (1987) reasons the state has the power and legitimate authority to delegate the *delivery* of imprisonment to private operators because the issue of justice, the restriction of liberty, has already been *allocated* or decided by the appropriate entity, the state. “The power of the state to punish does not originate with the state. This power is derived from consent of the governed and with similar consent may be delegated further.” In short, Logan’s argument is grounded in the general idea of the ‘social contract’ where “the state does not own the right to punish. It merely administers it in trust, on behalf of the people and under the rule of law. There is no reason why subsidiary trustees cannot be designated, as long as they are ultimately accountable to the people and subject to the same provisions of law that direct the state” (Logan 1987: 54). Logan concludes that “Privatization raises no unique or truly new issues for prisons, but it does offer some new solutions” (1990:5). Following Logan’s logic, deciding the appropriateness or morality of prison privatization is then simply a matter of determining which agency is doing a better job. This is ultimately, then, in the best interest of justice. In addition, by separating the power to *impose* from the power to

administer imprisonment, the moral, legitimacy and legal questions of prison privatization are non-issues.

Analytical: Testing Dimensions of Efficacy

Studies testing the concepts suggested by the standard economic model, the various dimensions of 'efficiency,' make up the bulk of the analytical literature. This collection of work accepts privatization of prisons as a given and attempts to systematically examine the dimensions of cost-savings and quality and their multiple indicators in the areas of prison construction, services and operation. Most studies examine quality as it regards conditions of confinement, medical services, internal security, control, management and staffing. As they concern operation, the findings of the various studies examining cost savings and quality suggest that a definitive conclusion is not yet and may not be possible because of the many methodological, conceptual and ethical problems.

Early evaluation studies, such as those conducted by Brakel, Sellers, and Logan and McGriff, suggested some cost-savings and improved quality of services. However, each was not without problems, which cast doubt on the findings. Logan and McGriff (1989) compared the operational costs of a 350-bed, minimum-security facility operated by Corrections Corporation of America (CCA) with what it would cost under county management. This detailed comparison addressed hidden costs such as property and liability insurance, maintenance, inmate care, personnel and purchasing. The study found that the county saved three to eight percent on the facility by contracting it out to CCA (Logan & McGriff 1989). In 1988 Brakel conducted a small-scale study on the quality of services at the same institution operated by CCA and found positive attitudes toward the physical plant, staff treatment of inmates, and medical services (Brakel 1988). In 1989 Sellers conducted research at the same CCA facility and concluded "private prisons

provided more than their public counterparts and that private facilities emphasized cost savings without a loss in service quality or quantity” (Sellers 1989: 243). These studies became the most cited research supporting privatization of prisons in the early stages of the process.

Other early empirical evaluations, however, had contradictory findings. Hatry, et al. (1989) compared the quality of one private and one public facility in Kentucky and again in Massachusetts. Using a visual inspection checklist, the facilities were rated on physical plant, institutional climate, staff-inmate interaction and quality of life. Overall, the researchers concluded that there was no difference in service provision. However, in terms of cost the private facility cost 10percent more than the comparable public facility. Confusing the issue even further, when construction costs were included, the public facility was more expensive (Hatry, et al 1989: 20). Sechrest and Shichor (1993) found similar results in their study of public and private facilities in California. There were no substantial differences between the two on the quality dimensions of order, service or amenities nor were there any cost differences between the publicly and privately operated facilities.

Early studies of cost and quality, whether or not they supported or opposed privatization, had several problems. Generalizing findings was difficult; some studies were conducted on small institutions (Sellers 1989) or on juvenile rather than adult facilities (Brakel 1988). Methodological problems of early studies included questionable indicators of quality and the difficulty associated with comparing financial data among public and private organizations (Sechrest and Shichor 1993). In addition to limited generalizability, methodological problems and access to financial records are a variety of ethical concerns. Logan, for example, asserts that some researchers have appeared more

interested in supporting their ideological position and consequently have conducted “simple cost comparisons” that lack analytical and methodological rigor (Logan 1990). The ethical issues include but are not limited to one top privatization expert, Charles Thomas, receiving consulting fees, owning stock and serving as a board member of a private corrections company, CCA. (For more on this see Driscoll 1999.)

Attempting to clarify the inconsistencies in the cost-effectiveness literature, Pratt and Maahs (1999) conducted a meta-analysis of 33 cost effectiveness evaluations of private and public prisons from 24 independent studies. They concluded that the empirical evidence regarding whether private prisons are more cost effective than public institutions was inconclusive. (Pratt and Maahs 1999). In addition, according to Pratt and Perrone (2003), there are nine studies to date that attempt to compare private facilities to publicly operated facilities, and again the literature indicates that quality comparisons are inconclusive (Perrone and Pratt, 2003). As a result of inconsistencies and inconclusive findings regarding cost and quality, researchers developed a new measure to indicate a prison’s cost and quality: its ability to promote efficiency in the public system.

Early on Richard Harding (1997) suggested that privatizing some prisons, creating a two-part system, had the potential to improve the practices, standards and objectives of the public prison system. Harding makes the case for ‘cross fertilization.’ He claims the introduction of competition combined with effective accountability practices and tying funding to standards would result in an overall improvement within both the public and private prison systems. In 2002 the cost-effectiveness research picked up on Harding’s earlier work. For example, Segal and Moore (2002) suggested that the introduction of private competition may improve cost-savings in the public sector as that system is forced to respond and adjust to competition. Shortly afterward Blumstein and Cohen (2003)

concluded that between 1999-2001 states that utilized private prisons had considerably more success in keeping public-corrections spending under control than states with no private prisons. The existence of prisoners under private management in a state resulted in reduced growth in daily costs for the public corrections system by 8.9 percent, about 4.45 percent per year (1999-2000 and 2000-2001 budget cycles). However, serious doubt has been raised about methodological-rigor and conflict-of-interest concerns, as Blumstein and Cohen's study was sponsored by Corrections Corporation of America and APTCO. Overall, the most recent literature that tests the dimensions of efficiency is confounding and the findings remain 'inconclusive.'

Anecdotal

The wide-range of narratives that describe the episodes and outcomes of specific cases of prison privatization, predominately in the form of anthologies, points to either the successes or failures of specific privatization activities and pay particular attention to either the dimensions suggested by the economic model or those missing. Mobley and Geiss (2001), for example, provide a case history of Corrections Corporation of America with particular attention to staffing, healthcare and quality of treatment. The authors conclude that the company has seriously failed to achieve the goals of providing a safe and secure environment for staff, inmates and the community (Shichor 2001: 225). Judith Greene (2001) catalogs the multiple operational problems in private correctional facilities, including violence, staff turnover and escapes. Greene also demonstrates the critical role of immigration laws and the Federal Bureau of Prisons in saving the private prison industry from financial ruin (Coyle et. al 2003). Alex Friedman (1997, 1998) provides a detailed account of extensive mismanagement and misconduct practices in juvenile facilities operated by the leaders in private industry. Examining the revenues of

the companies, juxtaposed against escapes, abuse and deaths of juvenile inmates, Friedman concludes “Juvenile crime pays, but at what cost?” (Coyle, et al. 2003).

Cultural, Political and Economic Treatments

The work that challenges the assumptions and the starting points of the aforementioned privatization literature addresses prison privatization as a symptom of the entanglements of broader political, cultural *and* economic relations. In this collection of work imprisonment and privatization are posed as mechanisms to achieve both unstated economic goals (personal financial gain, for example) in addition to non-economic goals, including maintaining social stratification and controlling surplus populations. Linked to this is the literature that examines the political, economic and cultural relationships and posits imprisonment and prison privatization as part of a prison industrial complex.

Christian Parenti (1999) explains the massive growth in incarceration (for profit or not) in the broader context of society-wide class struggle. Two challenges, the political upheaval of the 1960s and the economic crises of the 1980s, according to Parenti, were both responded to with criminal justice-repression; a massive police build up to quell social unrest and a war on drugs as the tool to manage the new underclass created by economic restructuring and slashing safety net programs. The media fixation on the moral deficiencies of the poor, blaming them for their own plight, enabled the protection of class privilege by force. A war on drugs was justified as this population needed to be controlled. In describing “the role of state violence in reproducing capitalism,” Parenti explains that capitalism creates and needs surplus populations and poverty and at the same time is threatened by these very populations; “Prisons and criminal justice are about managing these irreconcilable contradictions” (1999). (For more on these contradictions

see Michalowski 1993 in Chambliss.) The prison industrial complex, in Parenti's view, is containment via segregation, fear mongering, race baiting and force.

Mass imprisonment according to Marc Mauer (1995, 1997) is the result of the collision of racial ideologies and political economic structures to form public policy, specifically the 'war on drugs.' Mauer (1997) demonstrates the interrelationships between racial disparities in the criminal justice system (policing and sentencing) and a media fascination with particular types of crimes and criminals that result in a distortion of the reality of crime and the political efforts to capitalize on citizens fears. Mauer's account of sentencing policies discusses the origins of the 'get tough' movement and the relationship between social class and criminality. Through explicit examples Mauer demonstrates the highly relevant shift to neoclassical criminological thinking; gaining support for policies resulting in mass incarceration required promotion of the philosophy that the individual and not society is to blame for his present condition. The philosophical shift about the purpose of incarceration from rehabilitation to punishment explains the shift from indeterminate sentencing to mandatory minimums and the resultant prison population made up of mostly nonviolent, minority drug offenders. For Mauer, the war on crime became a war on drugs that has essentially been a de facto war on America's minority community. (See Irwin and Austin [1997] for further discussion.)

Angela Davis (1999) adds that prisons make human beings disappear in order to convey the illusion of solving social problems, particularly the criminalized problems of the poor. The prison industrial complex, argues Davis, is dependent on human raw materials and the political economy of prisons relies on the racialized assumptions of criminality to provide the "bodies destined for profitable punishment" (1999: 2). Davis argues that mass imprisonment devours social wealth by taking away from education,

health, rehabilitation, housing and employment programs while at the same time is profitable for private companies. By stripping away the illusion that imprisonment is a solution to social problems, Davis argues that what is revealed is “racism, class bias and the parasitic seduction of capitalist profit that further impoverishes those whose impoverishment is supposedly solved by imprisonment.” The prison industrial complex thus thrives on hidden structural racism and perpetuates the existence of racism in the economic and ideological structures of society.

Jeffrey Reiman (2001) explains the growth in prison populations and the failure of the entire range of criminal justice policies from law making to law enforcing. The three major failures: 1) a failure to implement policies that have a chance at reducing crime and harm; 2) a failure to identify as crimes the harms of the rich and powerful; and 3) a failure to eliminate the economic bias in the criminal justice system such that the poor continue to have a substantially greater chance of being arrested, charged, convicted and penalized for committing the acts treated as crimes. Thus, “the offender of at the end of the road in prison is likely to be a member of the lowest social and economic groups in the country” (Reiman 2001:109). Further, argues Reiman, this system provides benefits for those in a position of power to make changes, while it imposes costs on those without such power. The wealthy benefit in two ways: attention is diverted from the harmful acts of the well off and we are confronted “in our homes and streets with a real substantial threat of crime from a visible population of poor criminals”. This image of the real threat as coming from the poor carries ideological messages: the threat is from the low economic class; they are morally defective; and their poverty is of their own doing and not a symptom of social or economic injustice, which leads to more demands for harsher sentences. Most important, Reiman adds, “is that it nudges Americans towards a conservative defense of American

Society with its large disparities of wealth, power and opportunity and nudges them away from a progressive demand for equality and an equitable distribution of wealth and power” (2001:152). (For more on failures see Donziger.)

In *The Perpetual Prisoner Machine*, Joel Dyer (2000) explains the growth in prison populations as a result of the convergence of three initially separate components: the consolidation of the media industry, the increasing use and influence of political consultants, and the emergence of the prison industrial complex. Each of these components, the media, politicians and corporations, developed methods that turned crime into a form of capital. Media corporations, in an effort to increase ratings, dramatically increased crime content. These depictions of crime and criminals through various forms of media, inundated the public and shaped a worldview based on fear of crime and criminals. At the same time, there was an increased use of poll information and political consultants. Because the media created anxiety over crime, public opinion polls indicated that ‘tough on crime’ campaign platforms would appeal to voters and win elections. Taken together, these two mechanisms resulted in tough-on-crime policies and an increased prison population. The third component, the intrusion of market forces into the justice system, via private prisons and financiers, allowed politicians and companies that were benefiting from prison expansion to continue even when voters refused to fund more prisons. Dyer concludes that the convergence of the three (the prisoner machine), results in the diversion of funds from programs that have been shown to prevent crime in the first place, thus ensuring the perpetuation of the prison population. For Dyer, the war on crime and the resultant prison populations are not rooted in rising crime rates but rather the rise in fear brought on by the media-created images of crime and criminals and the ability to turn crime into a form of capital.

Just as crime, in Dyers view, has become a form of capital, a related set of literature stresses prisoners and prisons as a form of capital. This collection situates privatization in the larger context of the prison industrial complex. Nils Christie (1993) explains the situation in economic terms; prisoners are the raw materials for the prison industry and the industry will do what is necessary to guarantee a steady supply of raw materials. Lilly and Knepper (1993) demonstrate the pursuit of raw materials by carefully identifying the major participants and the interrelationships of these entities in an emerging national corrections subgovernment. The authors conclude that the network of private companies, federal agencies and private professional organizations display the characteristics of a national policy subgovernment: a corrections commercial complex. Lilly and Knepper untangle the interlocking financial and political interests of these entities and how these interests result in the push for policies that expand the criminal justice system. Much of the literature on the prison industrial complex utilizes the framework set forth by Lilly and Knepper as its starting point. Ken Silverstein (1997), for example, catalogs the activities of private corrections companies that include political lobbying and payoffs, cost cutting in rehabilitation and staffing, courting the media and the interrelationships of government officials and corporate board members. (Also see Bates 1995.) Hallet and Lee (2001) add to this literature in the form of a case study of the 1997 effort to privatize the Tennessee prison system. Delineating insider politics and public policy agenda setting, the authors demonstrate how the public agenda is determined. Specifically, the debate about prison privatization remains preoccupied with micromanagement issues such as those suggested by the economic model, rather than macro policy issues such as ways to reduce crime (Shichor 2001).

Perhaps the most thorough treatment of the intersection between race and private capital in the imprisonment boom is provided by Michael Hallett (forthcoming). In *Private Prisons in America: A Critical Race Perspective*, Hallett ties the long standing role of private entrepreneurs in shaping punishment policy with the history of slavery, race and class relations, and the history of deals that funnel public monies to capitalists. By drawing parallels between the historical convict lease system and the contemporary war on drugs, Hallett demonstrates that both events culminated in the disproportionate imprisonment of African Americans while serving the interests of the capitalist system. Hallett, in a careful analysis, demonstrates how the pursuit of capital, be it financial or political, by political and industrial leaders was often built on the backs of convicts through specific policy decisions, and at the same time he shows how the for-profit imprisonment movement can only be understood in the context of both historical and contemporary racism.

In short, the literature that challenges the starting points of the research influenced by economic theorizing includes that which posits privatization in the broader social relationships and entanglements of economic, political and cultural ideologies and conditions suggested by Sclar. First, it explains mass imprisonment and privatization of prisons as a result of class and race-biased laws along with the image of crime and criminals and levels of fear. Second, it explains mass incarceration and privatization as attempts to control the 'surplus' populations created by capitalism. Finally is the collection of work that examines political, business and decision-making relationships and interests that form the criminal justice industrial complex.

Conclusion

The treatments of prison privatization examine the various dimensions of this trend as suggested by the assumptions of various theoretical models. At one end of the spectrum are those works that, grounded in economic theory, accept prison privatization as a given, and quickly move to testing the various dimensions of efficiency suggested by the theoretical underpinnings. At the other end of the spectrum are those works that, grounded in a variety of critical theories, discuss prison privatization in the broader context of political, cultural and economic intersections. What is missing then, and what this work attempts to address, is what links the two. That is, in light of the broader social, political and economic interests, *how* and by what process does privatization become a 'given'?

Theoretical Framework

A radical criminological-theoretical perspective frames my examination of prison privatization in the United States. My project is to examine theoretical treatments of how the institutions of law and justice intersect with the dominant framework of society. In other words, the examination of specific forms of punishment (privatization) must be examined in light of the historic conditions in which they emerge and the concrete economic, political and ideological climates in which they operate. In my study, I take theoretical treatments that connect the study of ideology to the production of social knowledge which is made possible through the process of interaction and power relationships. The study of claims and the strategies of claims-makers, are the focuses of study of this social constructionist perspective. It is from this set of studies that I take specific methods of analyzing claims-making and responding activities. In short, from the

radical perspective I gather my general purpose and a number of assumptions about the phenomena I study; from the body of knowledge that is social construction I take my particular method of analysis: sociological history and stages of development.

Theoretical Assumptions

The radical perspective contends that the favored forms of punishment in a society will reflect key features of its social system. Some types of punishment will be more appropriate to capitalism, others to socialism and still others to slave societies. For this examination, I contend that privatization of prisons not only reflects a particular form of capitalism but also serves to produce and reproduce it. This assertion is based on four propositions.

Proposition 1: "The nature and basic productive activities of a given society will shape the forms of punishment appropriate to that society" (Michalowski 1985: 225). The early Marxist analysis of punishment by Rusche and Kirchheimer ([1939] 1968) is particularly instructive on this point. "Every system of production tends to discover punishments which correspond to its productive relationships." It is necessary then to examine the history of penal systems: the origin and fate of particular forms of punishment, the use or avoidance of specific practices and the intensity of penal practices in the context social forces, including economic and fiscal forces. (Lynch 2000: 188).

Proposition 2: As the type of production carried out in society changes, so, too, will the form of punishment (Rusche and Kirchheimer [1939] 1968; Lynch 2000:190). Several Marxist assumptions stand behind this proposition. First, since the form of punishment is shaped by economic activity, each change in the method of production will produce changes in punitive practices. However, these changes do not occur simultaneously. Rather, punishments evolve slowly over time, reflecting the interplay

between historically established beliefs and the requirements of the emerging system of production. In this case, it is the movement from industrialism to a service-oriented form of capitalism and finally to technology and information.

Proposition 3: Imprisonment is “not only caught up in the economic structure of capitalism, but is unable to be understood apart from it” (Miller 1980; Lynch et al. 2000: 192). Many of the historical analyses of imprisonment in general, and a small number of the analyses of privatization specifically, support the conclusion that the “rise of imprisonment can generally be reckoned to have accompanied the emergence of modern capitalism and its economic, political and ideological forms” (Hogg, 1982:4).

Proposition 4: Prisons in modern capitalist society reinforce ideological notions about criminals that justify the repression of the lower classes, and thereby reaffirm the class structure of capitalism (Reiman 1979; Lynch et al 2000: 194). In addition to the role of production in radical scholarship, various theorists suggest exploring the relationship between ideology and imprisonment in capitalist societies (Foucault 1979; Schwendinger and Schwendinger 1981). It is necessary then to go beyond economic explanations and seek political and ideological components as well. These interpretations stress the importance of culture and human agency, a combination of macro- and micro-level explanations of forms of punishment (Melossi 1989). Crucial to this particular proposition is the consideration of the intersection of racial, cultural and historical perspectives in combination with economic forces. (For a complete discussion of radical interpretations of punishment and corrections see Lynch et al. 2000: 187-209.)

The above propositions taken together form the rationale for my specific focus within the study to privatize the United States prisons. I assume that there is a historical link between the characteristics of class societies and the existence of formal systems of

punishment. Furthermore, the administration of punishment is likely to be influenced by the same class, racial and gender biases that shape the creation and enforcement of law. The social relations that comprise privatization are formed from this same dynamic.

This analysis utilizes the methods of social construction, specifically historical stages of development as described by Hartjen (1977). Social construction is a well-known mode of analysis used prominently in the field of social problems. A number of sociology and criminology scholars have contributed to the development of social construction, including Berger and Luckman (1966), Spector and Kitsuse (1977), Ibarra (1993) and Miller and Holstein (1993). These scholars have illustrated what Donileen Loseke (2003) observes is the primary goal of a social constructionist: “to reveal how and why particular phenomena emerge and become the focus”. Ultimately, Joel Best (1995) adds, the social construction perspective helps us to better understand the world around us, not only as claims-makers but as an audience. There are three basic points of focus in a social constructionist analysis.

First, a social constructionist must identify the claims being made. Important questions are: What is being said about the phenomena? How is it being typified? What is the rhetoric of claims-making? How are claims presented so as to persuade their audiences? What are people to believe, understand, feel, or think about in accepting a certain interpretation of the trend toward making prisons private? What assumptions are present in the claims representing privatization? What arguments are important? What are the terms or limitations of these arguments? What opinions and arguments are obscured?

Second, a social constructionist must identify the claims-makers. Whom do they represent? With whom are they allied or linked? What are their interests in the issues they raise, in the policies they are promoting, and in the success of the campaign? Whose

voices are privileged in the representation of privatization as a phenomenon? Whose interests are ignored or denigrated and by what rationale? To what ends does the privilege apply?

Finally, a social constructionist must focus on the claims-making process. This requires identifying the varying responses, the strategies used to illicit responses and the phases of the process. The phases (history) are broadly formulated as emergence or *creation*, maintenance or *perpetuation* and a third phase dealing with various efforts to *solve* the problem but may also be considered a specific case of perpetuation (Hartjen, 1977: 32). It requires the analyst to identify certain rhetorical features that account for and legitimate the ideological structures in question. It also involves asking the question: How does the larger context shape claims-making?

Data

There were three principle sources of data for this study. First, documentary materials were gathered from the U.S. Government Printing Office in Washington, D.C.

Documentary materials were also gathered from the Securities and Exchange Commission web site at www.sec.gov. Second, interviews were conducted with several important contributors to the literature on prison privatization. Third, various forms of popular media reaction were also utilized.

Included among the documents gathered from the U.S. Government Printing Office were: 1) Transcripts of the Hearings before the Subcommittee on Courts, Civil Liberties and the Administration of Justice in the 99th Congress; 2) Transcripts of the Hearings before the President's Commission on Privatization; 3) Transcripts of the Hearings before the Office of Management and Budget; 4) numerous press releases

concerning privatization; 5) letters from prominent criminal justice planners commenting on privatization; and 6) numerous reports from the legislative research division.

Documentary materials from the Securities and Exchange Commission include various corporate filings from 1987-2005: DEF 14 A, 10Q, 10K, 8K , SEC 16, letters to shareholders and proxy statements.

The interviews conducted in this study attempted to analyze the perspectives of the participants in the trend toward prison privatization. These interviews allowed the interviewees to reconstruct what really happened in their own words. The techniques of purposive sampling and snowballing were used to select the individuals interviewed.

Finally, an attempt was made to gather all forms of media reaction to prison privatization. Newspaper clippings and magazine articles constitute the bulk of this research. However, television news and entertainment news were also included. The discussion that follows is also based on official evaluations, a variety of academic reactions and evaluations and historical materials on crime control in the United States.

CHAPTER II

THE CHANGING RATIONALES OF PUNISHMENT

Before a discussion on the role of privatization can take place it is imperative to develop an understanding of the explanations and accounts of the changing rationales for punishment. These rationales and their integration can help us to better understand the privatization of punishment in modern society. The explanations and rationales differ; however, they do not necessarily exclude one another. It is important to examine the range of interpretive traditions, or theoretical traditions, each as a source of specific perspectives and partial interpretations, and to identify what they have to say about the foundations, functions and effects of punishment and how this helps us to understand punishment mechanisms of today. Barak (1998) asserts that “all disciplines concerned with the study of society and human nature have valuable contributions to make to the study of crime, criminals and crime control and that the value of these contributions are enhanced when they are integrated” (1998: 12). In the same vein, many theoretical perspectives on punishment have valuable contributions to make to the understanding of contemporary punishment. To focus on one and ignore the others would produce a narrow understanding, while integrating these theories increases the understanding and knowledge of punishment and broadens the answers produced by the study of punishment. A broader understanding attempts to synthesize the reciprocal relationship between the social environment and penalty and adds several dimensions of

interpretation to this complex issue. Dimensions of specific importance to this particular subject include economic, moral, legal, political, class, race and culture.

In 1899 Emile Durkheim proposed that changing modes of penalty were connected to changes in the nature of the social structure (Garland 1990). He recognized both the positive and productive nature of legal controls. Punishment helped to define crime and constitute it, while socially punishment helped to reinforce solidarity by displaying the collective sentiments of society. In his account, punishment is motivated by emotions and irrationality grounded in the moral outrage of society's members. This display of a collective conscience both defined what was criminal and benefited from the punitive process. Collectivity and penalty are, then, strengthened and reaffirmed by the social response to crime. Although Durkheim's account of punishment was used to substantiate his more general social theory that has been acknowledged as problematic, Garland (1990) argues that, "Durkheim's work is remarkable for contributing to punishment a moral seriousness and a functional importance for society which far outweigh its contribution as a means of controlling crime" (Garland 1990: 26). So punishment served as more than a means of controlling crime, but also served to promote solidarity amongst members of society, and this solidarity in turn defined what was criminal and promoting certain modes of punishment. Garland (1990) asserts that perhaps, "ruling morality or dominant moral order" is a more apt term than "collective conscience". Given that forms of social relations and morality that come to dominate a society are the result of an ongoing struggle and negotiations between competing powers and forces the "collective conscience" is a result of successfully subduing competing social movements and social groups (Garland 1990:50). Therefore, the collective sentiment, or laws, are not necessarily the beliefs of those who have been subdued nor are

they a reflection of the beliefs of the successful group, but are a compromise. However, it is important to understand that the moral sentiments of both are shaped and molded throughout history and continue to be shaped through the struggles of competing forces and powers and each new generation is socialized into these beliefs. Garland (1990) adds that, "Laws and state actions do not simply 'express' such sentiments they also seek to transform and reshape them in accordance with a particular view of society" (1990: 56). The relationship between laws and collective values should not be viewed as a cause-and-effect relation, but a reciprocal one since the laws themselves are a powerful force in the shaping of collective values.

According to Garland (1990), Foucault's arguments add a technical and discursive dimension to the study of punishment, in that "power operates and it literally 'materialized' at the level of techniques, apparatuses and institutions, and can therefore best be understood by a detailed examination of this technology in action" (1990: 159). For Foucault punishment did not revolve entirely around the materiality of the past, but linked the concepts of power, knowledge and the body (Barak 1998). Much like the pyrrhic defeat theory, which holds that a program, institution or action, while labeled a success, may be so costly in route to that success, that it is essentially a failure, Foucault (1977) argues that, "While the prison has always been a failure in penalogical terms, it successfully achieves important political effects at a wider social level which is why it has never been abandoned" (1977: 271) For Foucault, the failure of the prison system throughout history was its failure to reduce crime or recidivism while the success was the perpetuation of its own existence through producing recidivists and rendering their families destitute. As we will see later from the criminal justice industrial complex, these

important political effects are closely tied to those who have an interest in the perpetuation of the institutions themselves, both public and private.

Although it is not explicitly stated in the work of Rusche and Kirchheimer (1939), a fact crucial to their analysis is that penal institutions and policy are but one element in the strategy to control the poor and are interrelated to the labor market and current modes of production. Rusche's remark that, "The criminal law and the work of the criminal courts are directed almost exclusively against people whose class, background, poverty, neglected education or demoralization drove them to crime" is as fitting today as it was in 1939 (1939: 11). For example, sentences for crimes of the poor are much more severe than those for crimes of the affluent, ninety eight percent of all people convicted of robbery are sentenced to an average of 111 months and eventually serve an average of 77 months in prison, while only 50 percent of those convicted of embezzlement are sentenced to prison and those who do go to prison are given an average sentence of seven months and serve five (Mcquire and Pastore 1998). In 1998 36 percent of prison inmates reported being unemployed at the time of arrest, and the income of those employed was less than \$600/month. In 1996, 41 percent of the prison population were non-high school graduates, compared to 21 percent of the U.S. adult population (Harlow 1996). For Rusche and Kirchheimer punishment cannot be viewed as a response to individual criminality but as a mechanism within the struggle between the rich and the poor. And if punishment is to be understood, its role in the class struggle must be understood. They also propose that in certain circumstances, the economic sphere of production makes it unnecessary to use punitive measures to discipline the labor force, therefore making it impossible to utilize the prison population in an economical fashion. Thus, the shaping of punishment becomes an economic issue with the goal being to reduce the financial

burden. I would argue that it is for this reason that private corporations are operating within both privately and publicly funded facilities where they utilize the prisoners as a source of cheap labor. Furthermore, this cheap labor serves to help validate the privatization of prison management and operation in that the corporations claim to cut costs and be more cost effective than publicly run facilities. Garland (1990) adds that, “an important theoretical principle is that although all systems of punishment are, to some extent, oriented towards the control of crime, specific penal methods and policies are never determined by this objective alone, but always by wider social forces and determinates” (1990: 91).

Garland contributes an understanding of class control by expanding on the work of Pashukanis. Pashukanis (1978) argues that the realities of crime and punishment are very different from those portrayed by the legal form and its ideological appearance of equality. For Pashukanis, a Russian sociologist, “criminal law, like any other law, is an instrument of class domination and occasionally class terror” (1990: 173). This leads one to the conclusion that criminal law is nothing more than a way to protect the dominant class and their social structure by punishing those who are not members of the dominant class. As conspiratorial as this sounds, Garland recognizes the value in its contribution by expanding on this. Garland argues that by framing social regulations in legal terms, everyone is afforded the same rights, which provide some degree of equality while still contributing to a system of inequality and class domination. For instance, the law provides “equality to all,” yet protects the rights of property without distinction, thereby silencing real inequalities of power, status and freedom that separate the rich from the poor. The law, therefore, according to Garland (1990), “provides a real measure of social

protection against crime and criminal assaults, but no protection whatsoever against the harms of economic domination and social injuries of class” (1990: 118).

Perhaps it is neither appropriate nor necessary to discuss prisons, whether private or public, in terms of success or failure, but in terms of prisons and punishment as a social institution that is intertwined with other social institutions. The integration of many of the classic and modern theories of punishment contributes to the understanding of punishment today and its various forms. Moreover, several determining and contributing factors should be considered, including how moral, political, legal and economic conditions shape penalty. As Garland (1990) suggests, “how in turn penal measures serve to enforce laws, regulate populations, realize political authority, express sentiments, enhance solidarities, emphasize divisions and convey cultural meanings” (1990:248). Furthermore, each of these is weighted differently at different times and under different circumstances. Although this type of theoretical reflection provides a better understanding of punishment and the factors that contribute to the shaping of penalty and policy, it does not mean that we can predict how penal developments will turn out. It does, however, allow us to examine current developments and their conflicts, compromises and outcomes from a broader perspective.

The current trend in punishment, private prisons, will be examined, guided by the insights provided by Garland. However, to understand the increasing reliance on imprisonment as a form of punishment and social control and the move toward the privatization of such in the contemporary United States, one needs first to consider the emergence of prisons as an institution. “Institutions never arise full blown; they are historical products of layer upon layer of custom emerging from the distant past into hesitant shapes” (Fogel, 1975). The modern prison and the reliance on imprisonment, and

specifically the privatization of prisons, are the products of such a process. The next section provides a brief but necessary discussion of the socio-historical process that brought us to the current state of over reliance on prisons.

Prior to the U.S. Revolutionary War methods of punishment were modified versions of English criminal law sanctions and practices. Colonial penalties, shocking by today's standards, were frequent, common and accepted: the pillory, the stocks, ducking stools, the whipping post, ear clippings, mutilation, branding, hanging, drawing and quartering, dismembering, blinding, burning, branding and maiming were some methods of degrading criminals that the colonists in America copied from the homeland. Given the colonists conception of the deviant as willful, a sinner, immoral, a captive of the devil, a pauper or defective, jail was simply a place of confinement for those awaiting summary punishment or banishment. Rothman points out that the colonial enforcements were a community's way to both ensure local order and protect tax money, thus community and self-preservation was the guiding principle of colonial punishment.

After the Revolutionary War, America was intent on ridding itself of Old World ideas and practices, including the English criminal law standards and practices. However, the change was more than a simple shift in ideology. Pragmatically, the old ways just would not work anymore; America was becoming more complex: travel, resettlement, new communication methods, the sense of community transcending parochial local boundaries, social mobility, the beginnings of the factory system, urbanization and immigration all combined to erode Puritan methods of social control (Fogel 1975: 12). Heavily influenced by the writings of Cesare Beccaria, the revolutionaries criticized those who stood to gain from the perpetuation of the barbaric and archaic penalogical institutions and the administration of criminal justice. The barbarities of English

sanguinary law gave way to the new rationalism. For example, in 1776 the provisional state constitution of Pennsylvania read in part: "The Penal Laws shall be reformed by the future legislature of the State, as soon as may be, and punishment made in some cases less sanguinary, and in general more proportionate to the crimes." The method of punishment to be "continual visual punishment of long duration in houses for punishing at hard labor those who shall be convicted of crimes not capital wherein the criminals shall be employed for the benefit of the public or for reparation of injuries." Thus, imprisonment was visualized as a substitute for capital punishment. By 1786 most crimes were punishable by imprisonment and hard labor. However, the new system (the earliest chain gangs) enacted during the Revolutionary War failed because of riots, escapes and public displeasure over degrading practices (Fogel 1977: 13).

With the old system in a cycle of failure, enthusiasm for prison reform emerged. The Philadelphia Society for Alleviating the Miseries of Public Prisons, proposed the establishment of a prison program that would: 1) Classify prisoners for housing based on the nature of the crime; 2) Provide prison labor to make the institution self supporting; and 3) Impose indeterminate periods of confinement based on the convicts' reformatory progress (Fogel 1977: 14). This persuasive and logical plan was based on the image of the criminal as rational, willful in his behavior and repetitive because of the evil British sanguinary laws and was consistent with the tenets of rationalism calling for temperance, and solitude with labor. Reformers praised the educational value of correctional labor and were echoed by politicians whose electoral successes were tied to keeping both expenses and taxes low. Citing the success of the late experiments in Europe, those punishments calculated as a means of reformation and profit to the state, the group successfully pushed for changes that marked a significant change in the official methods of dealing with

criminals in America--namely, the cell house and the use of prison labor. Between 1790 and about 1830 it was believed that just laws would cure criminality; physical facilities were necessary to confine the criminal for purposes of useful work and good-habit formation, and from his labor the prison would pay for itself.

By the 1820s Americans found themselves residing in a more open and fluid society marked by geographical as well as socioeconomic mobility, urban growth and the beginnings of modernization. It seemed that the social fabric was becoming unglued; disorder, not order, prevailed before them. In this atmosphere, Americans saw the origins of crime and deviance not in the nature of the human spirit nor as the result of irrational laws like their predecessors. Instead, the lawlessness that threatened communities was considered symptomatic of a pervasive breakdown in the social order (Cullen and Gilbert 1982: 61). Within the prison walls, housing classification gave way to overcrowding and personal attention yielded to mass care. "The state penitentiary is a prolific mother of crime and a grand demoralizer of people" (Cullen and Gilbert 1982: 59). Even the much heralded Walnut Street Jail had become a den of idleness and criminal behavior. By 1820 escapes, violence, indiscriminate housing classifications, corruption, idleness and overcrowding led many to call for the abandoning of the whole penitentiary system and a return to the former system of capital and corporal punishment. With signs of the collapse of the prison system they had advocated, the Philadelphia Society for the Alleviation of the Miseries of Public Prisons introduced a new plan for prisons.

The plan called for complete solitude and labor. Outside contact was completely eliminated, and a Bible was furnished for moral guidance. It was believed that the connection between social chaos and criminality could be severed if "a special setting for the deviant could be fashioned" where they could be furnished with the moral fiber

needed to resist the corrupting influences that were rampant in the wider community (Rothman 1971: 62-108). Since social disorder was the root cause of lawlessness, the cure was to restore social order. This was to be accomplished by altering the environment to one that was free of all criminal influences. New York introduced a congregate work program in silence by day and separation at night. While the Pennsylvania system relied on penitence and seclusion, the New York System relied upon the breaking of the convicts' spirit and utilized a program of "calculated humiliation." The keys to both systems were solitude and labor, as the criminal was now viewed as both a product and a victim of his environment. Early on, the production of crafts was lauded as a means to occupy otherwise idle, troublesome prisoners. Shoemaking, hat making and coopering were easily broken down into component parts that required little training and fit nicely with the idea of work and solitude. Contract labor, an agreement between the state and a private party for the labor of convicts to be performed within the prison walls for a specific price per day per man, became commonplace (Gildemeister 1987). Each side contributed to the capitalist transaction. The state provided suitable workshops, food, clothing, religious instruction and security. Contractors, in turn, provided raw materials, tools and instruction. In theory, the prison would then 'pay for itself.' However, even at this early date the power differential was in favor of the contractors. Prison personnel from guards to wardens were political appointees and the contractors had their own political power, through friends and business associates and their own positions as former, prospective and even present officeholders (Schicor and Gilbert 2001).

The New York system (Auburn) of congregate labor emerged as the model of choice for several reasons: it was simply cheaper to monitor prisoners who were working in assembly-line type groups rather than individually, and the production of materials at

low labor cost increased, which in turn increased the attractiveness of utilizing prison labor to private contractors. In addition, modes of production were changing; machinery and the cheap labor to operate it were needed to continue cheap production of goods such as bricks, milled lumber and machine parts. Inside the prison, a conscious effort was made to instill discipline through an institutional routine; a set work pattern, a rationalization of movement, a precise organization of time, and an overall uniformity. The prison, by demonstrating how regularity and discipline transformed even the most corrupt persons, it was believed would reawaken the public to these virtues and thus contribute to social improvement by promoting a new respect for order and authority. The prison, it was argued at the time, removed disruptive criminal elements from the working classes, who then would be more obedient, and therefore more productive workers. In the industrial prison, inmates were to learn job skills, a work ethic and a lasting discipline which were all to make them productive, law-abiding citizens upon release. Thus, this development in the prison system more than just coincided with the rise of the United States as a nineteenth century industrial power.

The two were linked on both philosophical and practical levels. On the one hand, the industrial prison was a disciplinary tool aimed at its own prisoners and the urban working classes as a whole (Rothman 1971). On the other hand, that industrial production, or prison labor, was in the hands of private citizens and the pockets of private capital (Shichor 2001). Prison administrators and contractors, subject to market demands and changes, found it difficult to walk the fine line between incentives, which could quickly turn to contraband, bribes and punishment, in the forms of whippings and torture. On a day-to-day basis, many prisons left discipline within the shops to the private contractors (Colvin 1997:97-98). Extensive punishment to exact productivity, injuries and

deaths during production along with smuggled contraband, convict bartering and arson fires made the convict-labor system vulnerable from within. However, the practice of non-communication with the outside served not only as a disciplinary tool but also sheltered the public from the brutal conditions within the penitentiary. The lack of public concern with prison activities and problems coupled with the fact that the new factory system of production began to show an excess of receipts over expenditures, the legislatures were satisfied and the penitentiary system was assured its place in public administration. Moreover, the contract labor system proved to be highly lucrative to both business and prison administrators. Thus, the much sought-after contracts gave administrators a new form of power, both politically and financially. Contract labor flourished for nearly 20 years, and it wasn't until both businesses, and emerging unions saw contract labor and its products as unfair, state subsidized competition that prison made products were driven from the competitive market. Specifically, businesses did not want to compete with contract prison industries for raw materials or markets, and unions were unhappy that the use of prison labor undercut their demands for shorter work days and weeks and for higher wages. While agitation began as early as 1801 in the northern states, primarily by mechanics and cabinet makers (by 1890 six northern, largely industrial states had abolished contract labor), the south however, continued this practice well into the 1930s (Shichor 2001: 17).

By the 1840s the issue of prison reform was low on the priority list of society's problems, receiving little attention except for brief periods following riots or scandals. The prison's future was in the hands of administrators, as reformers had found a new and more promising field in abolition. With the Civil War in full swing and market demands unstable because of war-time blockades the existing 30 prisons were now operating with

the contradictory and almost impossible tasks of providing hard labor, seclusion and moral training. The grand promise of reformers that penitentiaries will save the wayward went unfulfilled and few would claim that the great experiment in correctional reform was a success. The silence that was prescribed by the New York system was impossible to maintain in the overcrowded facilities. Moreover, the candidates selected for reform were not the young and beginning criminals, rather they were the older and habitual offenders. Further, because each was serving a flat or determinate sentence, there was no incentive to strive for their betterment while incarcerated. Their release was not contingent on showing signs of being cured. Confronted with these obstacles, officials soon abandoned therapeutic ends and turned to the micro-world of managing men against their will. The prisons' future was now in the hands of administrators and as the professional prison administrator replaced volunteers, function supplanted cause as the guide for operations. Behind bars this meant hard labor, deprivation, monotony, uniformity, mass movement, degradation, subservience, corporal punishment, non-communication, no recreation, no responsibility, no fraternization and reform by exhortation (Fogel 1971: 29-31).

Rothman points out that few objected to this transformation of goals. When the influential and affluent had the rare occasion to view the composition of the penitentiary captives, what they saw were only immigrants and the native poor, the worst elements of the dangerous classes. Where was some sentiment that these people suffered from hereditary defects that made them incurably treacherous, which left many thankful that the impenetrable walls that were built with reform in mind ensured the safety of the community by securely caging the criminals where they were unable to prey on the defenseless public (Cullen and Gilbert 1982: 66). Legislative investigating committees

uncovered numerous brutal flagellations and in the end summed up the contribution of this period (from the revolution to the civil war) to the development of correctional progress:

“In the final reckoning, the fifty years which followed the opening of Auburn Prison, though years of great activity in prison development and administration, did not produce a single lasting contribution to penology. The greatest contributions of this period which persisted for nearly one hundred years were 1) a prison industries program and 2) the interior cellblock, and both of these have proved to be liabilities” (Fogel 1977: 27).

By the 1870's, science rather than reason alone had become the dominant means of understanding the world. Criminologists and penologists took on the task of extending the assumptions and methodology of science to the problem of criminal behavior (positivism). Guided by the tenets of positivism a new wave of optimism swept through corrections. Crime, it was assumed, was determined by factors largely outside the control of the individual, whether it be psychological, biological, sociological or some combination, and since criminals did not choose their criminal behavior it was believed to be inappropriate to punish them for their crimes. Finally, since the individual could not be cured of his criminal tendencies through individual effort it was good for society as well as the offender that the state undertook the task of rehabilitating him which required variable amounts of time depending on the individuals disposition. Following the Civil War, the elite of the correctional community drafted and signed the 1870 Declaration of Principles. This new penology called for the supreme aim of prison discipline to be the reformation of criminals, not the infliction of vindictive suffering. The declaration set forth the plan that included a progressive classification of prisoners based on merit rather

than arbitrary principle, and consisted of penal, reformatory and probationary stages. The new system would be based on hope rather than fear. A system of rewards would be established; a diminution of sentence, a participation of prisoners in their earnings, a gradual withdrawal of restraints and a constant increase in privileges earned by good conduct. It was believed that “the prisoners destiny, during his incarceration should be placed, measurably, in his own hands....Preemptory sentences ought to be replaced by those of indeterminate duration—sentences limited only by satisfactory proof of reformation should be substituted for those measured by mere lapse of time”

(Transactions of the National Congress on Prison and Reformatory Discipline in Fogel 1971: 32). The plan also called for religious training, professionalization of staff, an end to political patronage and meddling, community action, aftercare programs, special care for the mentally ill, and an end to the abuses of executive clemency. Finally, it spoke of reducing overcrowding, instituting compulsory education, and the centralization of administration. American corrections, it appeared, was on the brink of reformation. However, by the turn of the century the reformatory spirit that had been destined to imbue the prison with a new moral purpose was simply absorbed by it.

Despite the intellectual excitement over the new penology, it did not spark an immediate renovation of the U.S. system of crime control. Several states including Michigan, Indiana, Iowa and Kentucky, rather than adopting the principles and strategies of the model ceremoniously changed the name from penitentiary to reformatory. Life in the state penitentiaries during the 1860s and 1870s remained much the same, with some exceptions, notably the form of labor and the indeterminate sentence.

In the aftermath of the Civil War, contract labor morphed into convict leasing. The destruction of war, particularly in the South, required repair, which demanded labor

to take place *outside* the prison walls. The Thirteenth Amendment, ratified in 1865, had freed the slaves, but penal servitude and peonage were used to keep a ready, cheap supply of black labor in the South. Reformers of the time argued that the new convict leasing was merely a replication of or an economic replacement for slavery without a capital investment in workers (Mancini 1996). However, the humanitarian cries fell on deaf ears in the South. Private contractors leased the prisoners first to rebuild and then to develop industries and roads. Responsibility for housing, feeding and disciplining convicts was turned over to contractors. All of this relieved states of a financial burden. Care and safety at these privately owned sites was to be assured by state-appointed commissioners or inspectors. In reality, inhumane conditions, deadly epidemics and excessive brutality ruled. But most damaging was evidence of nepotism, neglect of duty by prison commissioners, and conflicts of interest involving state employees (Myers 1998:20). At best, the commissioners issued critical reports that fell on deaf ears; at worst they were men who profited monetarily and politically from leasing. Fueled by ongoing racism and demand for cheap labor, convict leasing and prison populations grew.

Even though the “great experiment” that was prisons and the reformation of such was by most accounts a failure, construction of prisons continued. (See Enoch Wines and Theodore Dwight *Report on Prisons and Reformatories of the United States and Canada*.) So how did the reliance on prisons remain the method of choice for the criminal justice system? First, by the 1890s the penitentiaries were a source of national pride. So much so that other nations sent emissaries to study the American Penal Reform. Second, the development of an increasingly powerful and centralized state government with administrative structures that possessed the authority and ability to accumulate large sums of money facilitated the construction of large incarcerative institutions (Scull 1977).

Finally, there was the ability, at all stages, to point to a way to improve the current system. The use of incarceration was heralded as an improvement over the barbaric punishments of the colonial period. And determinate sentencing was surely an improvement over the inconsistent and arbitrary application of prior sentences. Labor was virtuous, idleness was not, thus the innovation of confinement at hard labor was considered an improvement. As these “improvements” failed to accomplish the corresponding goals, additional improvements were implemented: indeterminate sentences provided incentive for personal betterment and the innovative industrial prisons could pay for themselves. In this context, construction surged ahead. As the 1900s got underway, the prison was a firmly entrenched institution. However, the rehabilitative ideology had made significant inroads that constituted the starting point for a major reform movement.

Progressive Era

The early 1900s witnessed the rise of a spirit of reform that touched all facets of American society and it was believed that change could occur within the broad boundaries of the existing institutional arrangements. For the progressives, “big business” posed the greatest danger to American democratic ideals. The increasing concentration of corporate wealth and power threatened to both make a mockery of the principle of free enterprise and to enable the robber barons to exert such inordinate influence on politicians as to fundamentally corrupt the process of representative government (Cullen and Gilbert 1982: 74). This could only be stopped if the state was empowered with sufficient authority to regulate business practices. The progressives’ faith in the state to remedy the conditions that accompanied capitalist industrialism included a wide variety

of social problems: immigrant exploitation, housing, smoke-laden air, dangerous working conditions, prostitution, and the use of child labor. For progressives concerned with the correctional system, it was clear that rehabilitation, not retribution, should guide the sanctioning process (Cullen and Gilbert 1982: 75). Building on the penological principles inherited from their predecessors, progressives, guided by the Positivist school of thought and the disciplines of sociology and psychology, advocated that the best approach to crime and crime control was the investigation of factors that precipitated criminal involvement. To discover the precipitating cause, each offender needed to be studied closely because every offender had different life experiences this was the only way, progressives thought, an effective individualized treatment program could be developed. This scientific, medical model required that correctional personnel be invested with the unrestrained discretion required to fit the punishment to the criminal rather than to the crime. However, progressives did not believe, like their predecessors, that a well-ordered asylum, reformatory or penitentiary was the essential ingredient in reform. They believed that while some offenders required the control and limits of the prison and the experience of the indeterminate sentence to be rehabilitated, others could be best treated in the community. The belief in the need for individualized treatment supported the call for the innovative practice of community corrections: the increased use of parole-release from the penitentiary and the establishment of supervision programs that would facilitate reintegration (Cullen and Gilbert 1982: 79).

A critical assumption of the progressives' therapeutic agenda was an unquestioning belief that the state would carry out this agenda in good faith. Cullen and Gilbert (1982) point out that, "Just as they trusted the state to bust monopolies and crusade for greater social justice, now they were convinced that the state and its agents

could be trusted to bring about the humane and scientific cure of the criminally deviant.” They did not consider the possibility that discretion could (or would) be corrupted or that state-enforced treatment might harm those it intended to help. Court and correctional personnel were thus granted the wide discretionary powers that were required for individualized treatment of offenders. As Rothman has observed:

“The most distinguishing characteristic of Progressivism was its fundamental trust in the power of the state to do good. The state was not the enemy of liberty, but the friend of equality—and to expand its domain and increase its power was to be in harmony with the spirit of the age. In criminal justice, the issue was not how to protect the offender from the arbitrariness of the state, but how to bring the state more effectively to the aid of the offender. The state was not a behemoth to be chained and fettered, but an agent capable of fulfilling an ambitious program.” (Rothman *Conscience and Convenience*, cited in Cullen and Gilbert 1982).

By the end of the “age of reform” 37 states had adopted indeterminate sentencing, compared to only five in 1900. By 1920, 44 states provided for parole and two-thirds of the states permitted adult probation (Rothman 1979).

The progressive era also saw the end of convict leasing and the move toward the piece-price system in which a contractor paid the state for finished products rather than for each prison worker. While humanitarian efforts aimed at horrific and deadly conditions under the leasing system were a necessary factor in the demise of convict leasing, they were not sufficient. In most states the end of the leasing system was accompanied by challenges from labor unions or economic conditions. In Tennessee coal and iron mining dominated the leasing program. From 1871-1896 convicts were spread across several mining camps where flogging enforced daily quotas and conditions were

deadly and disease ridden. The end of convict leasing in Tennessee was brought about not by humanitarian concerns, but rather economic conditions. The mining industry was hit hard by the economic depression of the 1890s. Free miners who saw convict labor as a drain on their wages stormed the camps, set fire to the stockades, and shipped prisoners out. As the conflict escalated, both the mining companies and the state wanted out of the contract relationship; convict labor was no longer financially viable in the state of Tennessee (Shichor and Gilbert 2001).

In Alabama it wasn't until 1928 that the use of convict labor in the coal mines was abolished. Although incidents of mine explosions, resulting in hundreds of deaths of mostly black convicts were common, the ultimate end of convict leasing was spurred by fiscal concerns (Mancini, 1996). In Louisiana, Mississippi and Arkansas governors began granting large-scale paroles to force the end of convict leasing. Convict leasing, the problem, was replaced with prison farms, the solution. However, the state-owned and-operated farms such as Parchman, Angola and Cummins soon proved to be equally as torturous and barbaric as the coal and iron mines. When the coal mines were running dry in Georgia, the national good-roads movement was getting under way. It only seemed logical to put the out-of-work convict labor to state use in building and maintaining roads (chain gangs). Journalistic outcries and corruption scandals were not enough to bring down the leasing program. Again, leasing only ended when it was economically necessary. The bottom dropped out of the labor market and low-paid, free workers who could be fired rather than maintained at company expense became more desirable than leased convicts. In Texas, convict leasing ended only when the economic troubles hit the labor intensive sugar cane industry (Walker 1988).

The piece-price system rapidly turned into the state-account system in which prison-made products were sold on the open market. However, by 1940 private industry had managed to successfully end the sale of prison-made commodities on the open market. Outcries of unfair competition by the business sector and employee unions resulted in federal legislation that eventually confined prison industry to the state-use and public-works systems. For example, the Ashurst-Sumners Act of 1935 prohibited state transport of and required labels on prison made products and the Prohibitory Act of 1940 banned all prison products from interstate commerce. Eventually, the prison became an inefficient factory, with widespread unemployment behind the walls. However, the rhetoric now turned the factory into a vehicle for “vocational training.” When it was discovered that prison machinery was outdated and provided ex-convicts with no marketable skills in the job market, the rhetoric maintained that prisoners were still learning “habits of industry.” When it was discovered that over-assignment of prisoners to jobs produced slow-motion habits of industry, the rhetoric pointed out the “therapeutic value” of work (Fogel 1975: 48).

The progressives, in their efforts to humanize the industrial society, helped to launch the start of the welfare state and succeeded in a major renovation of the criminal justice system. They prompted legislators to pass laws that would give the injured worker compensation, provide for old-age pensions and establish boards of community hygiene. Laws increasing government regulation, including the Pure Food and Drug Act, the Meat Inspection Act, the Clayton Act (restricting corporate mergers), the Antidumping Act, the Adamson Act (limiting railroad workdays to eight hours and mandating overtime pay), and the first minimum wage were passed during the progressive era. In the criminal justice system their innovations reformulated sentencing practices in the direction of

indeterminacy, created a separate juvenile justice system, established probation and parole, introduced wide discretionary powers throughout the legal system, and reaffirmed the vitality of the rehabilitative ideals. As David Rothman has concluded, “the synthesis achieved in the 1900-1920 years dominated reform thinking and action down until yesterday” (Cullen and Gilbert 1982: 81).

The progressives’ version of a criminal justice system fully dedicated to the rehabilitation of criminal offenders was never achieved. The prison monolith was basically unshaken by the entry of professionals. It absorbed social workers, psychologists, psychiatrists, teachers, chaplains and others to help insulate itself from criticism after the demise of the industrial program (Fogel 1971: 60). Few offenders on probation or parole received intensive care. In fact, it appears that the emergence of the community corrections did not lessen the use of incarceration. It provided the state with the means to increase surveillance of offenders who previously would have been either set free after serving their time or given an unsupervised, suspended sentence (Greenberg 1975). Prison populations and prison construction continued to rise during the era of reform; from 1904 to 1935 the prison population increased by 140 percent and 11 new prisons were constructed (Fogel 1975: 37).

Prison populations also continued to become blacker: by 1930 the rate of incarceration for African Americans was three times that of whites (Welch 1999). Racism continued to play a major role in criminal law policy and sentencing. For example, the outlawing of cocaine was accompanied by fears that superhuman “Negro Cocaine Fiends” or “Cocainized Niggers” (Williams 1914) might take large amounts of cocaine that would make them go on violent sexual rampages and rape white women. At the same time, police nationwide switched from .32 caliber pistols to .38 caliber pistols because it was

believed that the superhuman “Negro Cocaine Fiend” could not be killed with the smaller gun. The Federal Marijuana Tax Act of 1937 was passed largely as a result of “an orchestrated and undocumented campaign of fear,” including the negative characterization of Mexican workers who crossed the border seeking jobs during the Depression and African Americans, specifically those in the music industry (Abadinski 2001). Drawing upon and linking the themes of racism and violence, Harry Anslinger, in testimony before Congress regarding the stated the specific reason for the outlawing of the hemp plant was its supposed violent “effect on the degenerate races.” Further Anslinger’s comments were widely carried by the national press. A short selection of Anslinger’s testimony demonstrates the racist scare tactics.

"There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz, and swing, result from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers, and any others."

"Marijuana is an addictive drug which produces in its users insanity, criminality, and death."

"Reefer makes darkies think they're as good as white men." (1943 Guither, 2003:1-5)

In Texas, a senator said on the floor of the Senate: “All Mexicans are crazy, and this stuff [marijuana] is what makes them crazy.” National papers reported horror stories of the effect of marijuana on America’s youth, including the brutal murders of family members, and its effectiveness in turning young white girls into sex slaves. Newspapers across the country carried lurid stories of the awful things that these drugs did to racial minorities, and of the horrors that people of racial minorities inflicted on innocent white

people while they were under the influence of these drugs. The link between drugs, race and ethnicity became, then, a given in the minds of the public.

National fear was high; this was the period of the Great Red Scare and the Mitchell Palmer Raids; many state banks had suspended operations; five million Americans were unemployed; prohibition (the Volstead Act) had been enacted with the full support of the business community; the Stock Market had crashed; and Ma Barker and Al Capone were in the headlines. The murder rate had leaped from one per 100,000 in 1900 to 9.7 per 100,000 in 1933. Lawlessness prevailed in the countries cities; Chicago experienced daylight robberies and hundreds of nightly holdups; automobiles were stolen by the thousands; and payroll robberies were a weekly occurrence (Asbury 1950). An increase in the severity of sentences was looked to as a solution to the jump in crime. Judicial softness and the coddling of prisoners were seen as part of the problem (Rubin 1973).

In the midst of the Great Depression, the prison industries vanished and facilities reverted to custody, punishment and internal security as the long-lost central purposes of the correctional enterprise, thereby ushering in an era of punitive custody. An out-of-sight, out-of-mind philosophy characterized American attitudes toward inmates. During the 1920's and 1930's, rehabilitation took a back seat to more punitive measures for the following reasons, as Barnes and Teeters (1959) point out. Biological theories of crime causation, which attribute the cause of crime to fundamental physical characteristics that are not easily modified, were dominating the social sciences. Media accounts of the times portrayed criminals as 'mad dogs' and rehabilitation-oriented prison administrators as 'cream puffers'. Even those who believed in rehabilitation which required experimentation and flexibility, both of which increased the risk of escapes, were

reluctant to implement progressive programs; they realized that their work would be judged by media sources, politicians and the public on the basis of how successfully they in prevented escapes (Barnes and Teeters 1959: 355). The few reform programs that were instituted in the prisons were described as ‘bird shot’ penology, consisting of “a little work, a modicum of education, a bit of religion, a good deal of recreation--rodeos, baseball and what not”(Gill, quoted in Fogel: 1975: 36). However, the philosophy of rehabilitation continued to retain, if not expand, its appeal throughout much of the century.

Treatment Era

When the United States entered World War II in 1941, American society was swept up in a wave of nationalism. Even prisoners had their part to play. President Roosevelt, by executive order, lifted the ban on prison-made products from interstate commerce. Prisoners now contributed to the war effort by cutting wood for fuel, donating blood, mailing ration books, making camouflage nets and sewing uniforms. By the end of the war, the mood of the nation became euphoric; industries were productive beyond the best hopes of most economic forecasters, and America’s position of world leadership was fundamentally unchallenged. During the post-war economic boom, politicians and the public took on a restructuring the nation’s prisons. For his part, Federal Bureau of Narcotics director Harry Anslinger was quick to remind the public of the dangers of drugs, “Marihuana [sic] leads to pacifism and communist brainwashing” (1948).

Based on the medical model, the era of treatment built around what was then the prevailing psychiatric model was ushered in. Inmates came to be seen more as ‘clients’ or ‘patients’ and terms like ‘resident’ or ‘group member’ replaced inmate. The offender was

viewed as sick, and rehabilitation was only a matter of finding the right treatment. The medical model required treating the offender as 'sick' and thus finding a 'cure.' Included in the plan were a variety of programs, education, vocational and religious training, psychiatric treatment and psychological therapy. There were many versions of each and at varying levels. The crucial part, whether at individual, group or community level of treatment, was the indeterminate sentence. Clinicians argued that indeterminate sentences were necessary for optimum therapeutic treatment to take place while custodians recognized that it was a powerful custody weapon. Within the prison walls clinicians, social workers, educators, researchers and the clergy found work to be done. As the behavioral sciences advanced and needed both subjects for study and a setting for salaried work, the experts discovered that delinquents and criminals were divisible into all sorts of subgroups. Classification schemes and treatment strategies were soon developed for each particular type of criminal. Conflicts between custodial agents and clinicians were often fierce; arguments arose regarding the inability of treatment to take place in a punitive environment, while custodians maintained that security was the first priority. Eventually, a truce was declared; treatment and custody needed each other. The phrase "you can't treat them if you can't keep them" reveals the relationship between the two (Fogel 1975: 63).

Fogel (1975) asserts that "as soon as proponents enthusiastically described their latest panacea in professional journals, it swept through the prisons" (1975: 113). Treatment programs such as behavior therapy, chemotherapy, neurosurgery, sensory deprivation and aversion therapy made their way into the prison system. A panoply of interpersonal relations techniques revolving around the individual, the small group and the large group were utilized at prisons across the country. Scores of social workers,

psychologists, psychiatrists, medical doctors, chemists, biologists, sociologists, criminologists, probation and parole officers, judges, politicians, and the public in general were convinced of the value of treatment. Society, after all, was viewed as an organism, made up of many functioning, interrelated parts, and when one is not functioning it weakens the whole. Thus, if deviant behavior or the deviant goes untreated, the society as a whole will be negatively affected and the social order will be disrupted. The problem, criminal or deviant behavior, resides within the individual, so treatment of the individual is for the good of all. By the 1960s rehabilitation remained unchallenged as the dominant correctional ideology. There seemed to be little chance that there would be a call either to revert to the punitive principles of the past or to abandon the therapeutic state.

It was not only in the prison system, but in larger U.S. society that the state took on the role as caregiver. In the prosperous and expanding economy, there was a sense of optimism that sufficient resources abounded to create the "Great Society." Lyndon Baines Johnson (President from 1963-1969), sought to build a "Great Society" by spreading benefits of America's successful economy to more citizens. Early in his administration, President Johnson stressed the need to address crime's 'root causes' and argued that programs that attacked social inequality were, in effect, anticrime programs: "There is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the war on poverty, votes against the Civil Rights Act, and votes against major educational bills that come before him" (Beckett & Sasson 2000: 52).

Under Johnson's 'war on poverty,' federal spending increased dramatically, as the government launched such new programs as Medicare (health care for the elderly), Food Stamps (food assistance for the poor), and numerous education initiatives (assistance to students as well as grants to schools and colleges). However, by the end of the decade,

even President Johnson would turn away from the long term structural solutions, 'the war against poverty,' toward more short-term punitive practices and 'the war against crime.'

CHAPTER III

THE COLLISION

Clearly, throughout the United States' brief history, punishment has always been a defining characteristic of criminal law, but it is only in the last 30 years that incarceration has become the presumptive method of punishing lawbreakers. This focus on incarceration coincided with a shift toward incapacitation and retribution and away from rehabilitation as the preferred goal of the criminal justice system. This resulted in the overcrowding of prisons and eventually the increased use of private prison operators. This shift can best be understood as the result of the collision of several factors: the elevated fear of certain types of crimes and criminals, the reemergence of neo-classical criminological thinking, and the attack on rehabilitation.

Setting the Stage

The 1960s were troubling times for Americans regardless of their political orientation. The social unrest of the era, however, was viewed as a result of differing causes. For those on the right, social unrest was best explained by the recent challenges to the existing social order and institutions. For those on the left, it was those very social institutions and the traditional social order that resulted in the social unrest. Direct confrontations with state authority, marches, riots, and acts of civil disobedience became commonplace and were interpreted differently. For those with conservative leanings, images of war protests and civil rights marches threatened the sanctity of the social order.

On the other side, the responses by government to such actions were a reminder of the repressive powers of the government and the lengths it would go to protect government and business interests. Further evidence of the erosion of traditional morals and values was equally disturbing to conservatives: the increasing acceptance of divorce, free love, teenage parenthood and drug use in addition to women's liberation were all indicators of the unraveling of the social fabric. The violence unleashed on the urban ghettos, the governments support of South Vietnam, laws aimed at controlling minority populations, and gross disparities in distributive justice demonstrated to liberals that contrary to the purported open class system of American democracy, the government tolerated and at times even perpetuated racism, sexism and inequality.

As crime rates continued to rise in the late 1960s it was clear, at least to those on the right, that it was the 'permissive society' that needed to be reigned in. A "war on crime," rather than a 'war on poverty,' was needed to end the lawlessness that was ripping apart the fabric of society, and the re-establishment of "law and order" became the logical solution (Cullen and Gilbert 1982: 91-95). For those on the left however, confidence in the state's ability and willingness to pursue and achieve a humane and equitable society was in doubt, and it was anticipated that harm rather than good would result if the well being of the sick, poor and aged came under the control of state programs or institutions.

Criticism of the rehabilitative ideal began as soon as it was proposed. Edward Lindsey(1925), John Bartlow Martin(1954), Frank Tannenbaum(1938) and Ray Simpson (1936) all instigated sustained critiques of rehabilitation. However, it wasn't until the late 1960s that the assault on the rehabilitative ideal began that would eventually result in its dismantling by the mid 1980s. The attack came from several fronts: civil rights activists,

inmates, criminologists and politicians on both the left and right. Independently, these criticisms were not enough to undo the work of decades. However, when combined and added to the economic conditions and social unrest, the shift to the warehousing era was underway.

Of critical importance to the success of the attack on the rehabilitative ideal was the growing support for the 'culture of poverty' thesis. This thesis attributed poverty to the immorality of the impoverished, crime and delinquency were evidence of deviant lifestyles. For example, Daniel Patrick Moynihan's much-discussed report on the Black family attributed Black poverty to the "subculture of the American Negro" and described crime, violence and disorder in urban ghettos as a deserved consequence of poor choices and a lack of moral and values. Moynihan specifically cited female-headed households as a problem (Wilson, 1987).

Highlighting the behavioral pathologies and especially the criminality of the poor was an important means of transforming the image of the impoverished from needy to *undeserving* of both financial assistance and rehabilitation. By emphasizing street crime and by framing that problem as the consequence of bad people making bad choices, conservatives made it much less likely that members of the public would empathize with them and support measures to assist them (Becket and Sasson 2000: 53). Historian Michael Katz (1989) points out that "when the poor seemed menacing they became the underclass." Unwanted, unworthy of help and worse yet dangerous, society needed to be protected from them.

The 'culture of poverty' thesis painted the face of the criminal as black, while at the same time politicians and law enforcement officials opposed to civil rights equated political dissent and the philosophy of civil disobedience as a leading cause of crime.

Characterizing the direct-action tactics and civil disobedience used by civil rights activists across the south as criminal and indicative of the breakdown of 'law and order,' southern governors and law enforcement officials made rhetoric about crime a key component of political discourse on race relations. Across the south officials called for a crackdown on the "hoodlums," "agitators," "street mobs," and "law breakers" who challenged segregation and black disenfranchisement (Beckett and Sasson 2000: 49). Blame for the problem of crime and violence should be placed on civil rights leaders, argued Richard Nixon, "The deterioration of respect for the rule of law can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them" (Beckett and Sasson 2000: 50).

Conservatives further argued that the criminal justice system had become so concerned with civil rights that it was benefiting the criminal rather than preventing the victimization of innocent citizens. Throughout the 1960s the Supreme Court strengthened the protections offered to criminal defendants. For example, the court ruled search warrants must be obtained before the search for or seizing of evidence (*Mapp v. Ohio* (1961); guaranteed defendants the right to legal counsel (*Gideon v. Wainwright* (1963) and required that suspects be informed of their legal rights. *Miranda v. Arizona* (1966) (Beckett and Sasson 2000: 58-59). In the eyes of conservatives, protections such as these limited the investigative abilities of police, reduced a prosecutor's capacity to win convictions, and favored the criminal rather than the victim. Barry Goldwater aptly summarizes the mood of the time, "Legal rights were instituted just to give criminals a sporting chance to go free" (Cullen and Gilbert 1982: 95). In this light, conservatives argue that the solution to the ever-increasing crime problem was to strengthen the state

control apparatus via limiting the discretionary powers associated with the rehabilitative agenda.

Inextricably linked to increased protection of criminals and the emphasis on criminality as a choice made by certain types of people was the neoclassical revival in criminological thinking. Pointing to soaring crime rates as evidence that those administering our criminal justice system had tipped the scales in crime's favor, this school of thought stressed that the failure to control crime, was largely a result of the failure to punish criminals. (Kramer 1984: 223). The vast majority of offenders break the law only after they have used their rational faculties to calculate that the benefits of committing a crime outweigh the potential costs. The benefits of crime outweighing its costs, it was argued, was a direct result of leniency, e.g., the soft sentences associated with the rehabilitative efforts. Thus the responsibility for this failure to control crime was the fault of those in charge of administering justice: the courts and corrections agencies. Aided by a plethora of news stories reporting crimes committed by people on probation/parole and government officials references to the failure of rehabilitative efforts, conservatives argued that it was time to "admit that we do not know how to rehabilitate and start thinking about the criminal's victims for a change" (Stieger, cited in Cullen and Gilbert 1982: 96).

For those on the left, rehabilitation was equally problematic. Critics pointed to a variety of faulty theoretical assumptions, the harm done under the guise of therapy, and the use of the therapeutic ideal to administer justice in a discriminatory manner. As empirical evidence mounted that demonstrated the failure of rehabilitative efforts to effect recidivism rates (Martinson 1974), the theory itself rather than the implementation of rehabilitation came under attack. First, offenders are rational and free-willed, not sick or

abnormal as the positivist medical model assumes. Thus, the behavioral choice to commit crime, in light of social circumstances, is normal not pathological. It is the unequal structural features of society that result in the utilitarian calculus being tipped in crime's favor. Second, the theory incorrectly assumes that good prison behavior (progress in institutionalized programs) is an indicator of future law abiding behavior because prison life and its regimens, restrictions and structure are dramatically different from life on the outside. Finally, by linking conformity to liberty, rehabilitation becomes the means to obtain freedom, rather than self improvement, thereby corrupting the reform process (Cullen and Gilbert 1982: 111-119). On a more pragmatic level, critics argued that the indeterminate sentence was used as a coercive tool to achieve the custodial goals of prison officials rather than treatment goals. The criterion for release became institutional conformity rather than cure. In addition to the oppressiveness of state-enforced therapy, critics pointed to the harmfulness of therapeutic techniques. Couched in the rhetoric of therapy and under the guise of benevolence, new therapeutic techniques, such as drugs, electroshock, sterilization and psychosurgery, were used often leaving inmates with irreversible physical and psychological damage. The logic of 'behavior modification' became the ultimate coercive custodial weapon used to deny inmates basic human rights. Therapy in this sense was really nothing more than a sanitized return to the barbaric and torturous techniques of an earlier time, justified by the language of science. Finally, critics pointed to what was perhaps the most disturbing result of the rehabilitative ideal and the discretionary practices it allotted: the disproportionate representation of the poor and minorities in prison. The inequality in enforcement and sentencing was another important mechanism by which social inequality (class and race) was translated into legal inequality. Rehabilitation, by explaining crime in highly individualistic terms, legitimated

the expansion of administrative powers used in practice to discriminate against disadvantaged groups; the poor and members of racial, political and cultural minorities whose infractions were frequently minor or harmless in comparison to the immensely destructive actions of corporations and the state (Greenberg and Humphries 1980).

Politicians Attack

In the mid-1960s, a dramatic shift in national attitude took place: Crime began to be viewed as a national problem that warranted a national solution. The 1964 presidential campaign battle among Republican Senator Barry Goldwater, Independent candidate George Wallace, and Democrat Lyndon B. Johnson brought crime into the national spotlight as a policy issue. In the conservative tradition both Goldwater and Wallace accused Johnson of fostering an atmosphere that perpetuated crime. It was Johnson's focus on poverty and social welfare policies that was the root cause of crime, according to Goldwater and Wallace, because this enabled the culture of poverty and welfare dependency which in turn resulted in increased crime. In contrast, Goldwater and Wallace, stressed formal social control rather than social welfare as the government's primary responsibility. They promised to repress crime with a stricter enforcement of the criminal code. In reaction to Civil Rights demonstrations and a rising crime rate, both Goldwater and Wallace included a strong law-and-order plank in their campaign platforms and linked the rising crime rates with racial subtexts by equating political dissent-- specifically the civil rights movement and civil disobedience-- with crime through phrases like 'crime in the streets' and 'law and order.' The southern strategy, employing coded, anti-Black campaign rhetoric, utilized the "law and order discourse to mobilize, shape and express racial fears and tensions" (Beckett and Sasson 2000: 58).

The end result was that race eclipsed class as the organizing principle of American Politics. By 1970, when Nixon declared a 'war on crime,' quickly followed in 1971 by his declaration that "America's Public Enemy No. 1 is drug abuse" both were firmly associated with minority populations (Ray 1972).

Inmates Attack

Reflective of the wider struggle taking place within American society, prisons saw an influx of inmates imprisoned for radical activities such as advocates of Black Power and the antiwar movement. Prison populations across the country made connections between their struggles inside prison walls and the struggles of oppressed peoples around the world. Thus, opposition to the state grew more radical and militant and was met with increasing repression. As prison populations grew, conditions inside the prison walls worsened. Blatant racism on the part of guards and inmates, overcrowding, lack of access to healthcare, inadequate food, increased levels of violence, and a lack of communication between administrators and inmates were among the list of inmate complaints. As conditions inside reached unmanageable levels, and with the mood of the civil rights movement still fresh, violent conflicts in prisons across the country increased. The widespread media coverage and the images of the uprising at Attica and the brutal and bloody suppression of it, perhaps for the first time, offered the general public a chance to view not only the horrific conditions inside prisons, but also the class and race make-up of the prison population which was overwhelmingly racial minorities and the poor. The violent conflict between the state and its captives at Attica came to represent the complete failure of the entire corrections apparatus (Fogel 1975: 6). American's were thus faced with the troubling increase in crime rates and the reality--symbolized by the events at

Attica-- that their prisons were both inhumane and ineffective. Again, rehabilitation and discretionary powers were identified as the source of the immediate problem (Cullen and Gilbert 1982: 6).

Set in the context of a governmental legitimacy crises and social turmoil, the problems in the criminal justice system were ultimately constructed as a result of discretionary practices. The pervasive discretion inherent in the 'therapeutic state' allowed for the coddling of criminals, lenient sentences, and further victimization of the public or provided legal justification for unequal, coercive treatment, and often brutalization of society's most disadvantaged populations. The solution, given the construction of the problem, was logically to limit discretion. Those on the left argued that determinate sentences would accomplish the task of achieving more equitable sentences and reigning in the power of the state. Bolstering the certainty and severity of sentencing through determinate sentencing, thus making our streets safe, was supported by those on the right. The left and the right, clearly had different reasoning, yet both supported the new reform strategy of deserts and determinacy.

Nationalization of the Crime Problem

As the 1970s came to an end, the American Public came to define crime as the number one domestic problem facing the nation (Finkenauer, 1978) and the fear of crime among the public increased dramatically. This fear was initially aroused by a substantial increase in the major index crimes reported to the police in the late 1960s and early 1970s.

However, even as the violent crime rate declined in the early 1980s the public continued to believe that crime was increasing and the level of fear remained high. In

fact, the fear of crime and concern with doing something about it, while very real, was again manipulated by national, state and local political figures.

“ We have heard a great deal of overblown rhetoric during the sixties in which the word “war” has perhaps too often been used--the war on poverty, the war on misery, the war on disease, the war on hunger. But if there is one area where the word "war" is appropriate it is in the fight against crime. We must declare and win the war against the criminal elements which increasingly threaten our cities, our homes, and our lives. We have a tragic example of this problem in the Nation's Capital, for whose safety the Congress and the Executive have the primary responsibility. I doubt if many Members of this Congress who live more than a few blocks from here would dare leave their cars in the Capitol garage and walk home alone tonight.... And we should make Washington, D.C., where we have the primary responsibility, an example to the Nation and the world of respect for law rather than lawlessness” (Nixon 1970 State of the Union Address).

The nationalization of the crime problem, which began in 1964, coupled with the rise of the ‘new’ penology in the early 1970’s influenced the formulation of crime control policies throughout the 1980’s and played an important role in subsequent privatization of prisons because it led to the ‘get tough on crime’ policies and legislation, which in turn resulted in the reliance on prisons as a form of punishment. The philosophical assumptions and ideological beliefs of the neo-classical thinking about crime are unmistakably present in the national political platforms of the 1980, 1984 and 1988 elections.

In 1980 the Democratic national party included a crime plank denouncing excessive police brutality, and increased federal funding for jobs and education, while the Republicans emphasized swift, certain and strong punishments, including mandatory

minimum sentences for drug offenders. For example, “We must remember that the principle reason for locking up criminals are punishment and isolation—to keep them from hurting law abiding citizens and to serve as a deterrent to others” (Reagan 1976). In 1984 the Republican Party announced its anti-crime agenda made up of largely repressive measures including preventative detention, the re-establishment of the death penalty, and the targeting of drug dealers. The Democratic Party, in contrast, focused on more preventative reform policies, “the elimination of poverty and unemployment that foster the criminal atmosphere.” In 1988 the Democratic Party platform continued the education-and-prevention theme, stating that sentencing reform should include “diversion programs for first and non-violent offenders.” On the issue of drugs, the platform called for “comprehensive programs to educate our children at the earliest ages on the dangers of alcohol and drug abuse and readily available counseling for those who seek to address their dependency.” The 1988 Republican Party platform demanded “an end to crime” and what it called a “historic reform of toughened sentencing procedures for federal courts to make the punishment fit the crime.” In addition, the party stated, “the best way to deter crime is to increase the probability of detection and to make punishment certain and swift. Republicans advocate sentencing reform and secure adequate prison construction.” These national political platforms inevitably colored state level politics.

The success of the law and order platform in winning elections at the national level was not lost on those officials directly involved in the operation of state prisons, namely the state Governors. Joseph Davey (1998) explains the rapid expansion of prisons between 1972 and 1992, which averaged over 250 percent, as related to the elected official’s support of punitive policies concerning crime. In fact, those states with officials that ran on get tough political campaigns experienced a rapid increase in the

imprisonment without regard to changes in the crime rate. Davey goes on to demonstrate the connection between winning elections by waging a war on crime, the formal and informal messages relayed by 'get tough' politics and the expansion of prisons.

Until the mid 1970s, it was unclear which type of reform would prevail, the liberal vision of 'doing justice' or the conservative version 'getting tough'. By 1974 most states had begun to build at least a few new prisons and put into place sentencing guidelines in response to the increase in crime. Of particular relevance to the growth of the prison population were the state statutes relating to drug offences. For example, the 1973 "Rockefeller drug laws" of New York consist of a mandatory sentencing scheme that requires judges to impose prison terms of no less than 15 years to life on anyone convicted of selling two ounces or more or possessing four ounces or more of any illegal narcotic substance. The penalties apply without regard to the circumstances of the offense, the offender's criminal history, or the individual's character or background. (Schmallegger 2003: 497) Later, Michigan enacted the "650 lifer law" that required mandatory life for the possession, sales or conspiracy to sell or possess 650 grams of cocaine or heroin. By 1983, 40 states had passed such provisions (Tonry 1987). In 1984, the Sentencing Reform Act mandated the formation of the United States Sentencing Commission and charged it with the task of establishing binding sentencing guidelines to dramatically narrow judges' sentencing discretion. It was clear that the type of reform that was favored by conservatives, longer and more certain stays in prison, rather than those envisioned by liberal reformers, more lenient and fairly administered sanctions, had won out.

The Social Image of Crime and Criminals

Critical to the success of the shift from rehabilitation to incarceration were the messages relayed and reproduced by the “get tough” stance: the images of which specific behaviors are criminal and dangerous, what kinds of people are likely to engage in these acts, and what types of punishments are appropriate. Of particular importance to the history of the imprisonment binge is the media’s portrayal of crime and criminals in the late 1970s and early 1980s. Whether through entertainment programs or news reports, the image of a typical criminal emerged that was overwhelmingly poor, black and male and increasingly drug crazed. This ‘street criminal,’ as regularly portrayed by the media, was violent and without a conscience. Furthermore, this person, it was relayed, had been given plenty of opportunities to live an honest life yet persisted in criminal behavior even after being arrested several times. Not only did a type of criminal emerge but so did the image of the type of crimes they committed. During the 1980s the media covered violent crimes of murder, rape, robbery and assault four times more than they did the property crimes even though property crimes made up 90 percent of street crimes in any given year (Marsh, 1991). Many Americans came to believe that thousands of these criminals were stalking our streets and were prepared to raid our homes, rape, assault and murder innocent citizens. According to Barak (1994) the focus on these types of street crimes and criminals resulted in the depiction of three classes of people, the upper class, the middle class and the ‘criminal class.’ Thus, in order to protect law-abiding citizens (‘us’), this threatening and dangerous population (‘them’) needed to be banished from our midst (incarcerated).

Conclusion

Set in this socio-historical context, the upsurge in prison populations from just under 200,000 in 1970 to 503,000 in 1980 is not surprising (Ziedenberg and Schiraldi 2000). The attack on rehabilitation from political figures at the state and national levels, supported by the utilitarian calculus of neoclassical criminological thinking, and coupled with the ever-increasing media focus on crime and criminals, elevated the level of fear of certain types of crime and certain types of people. As more and more political victories were won on 'tough on crime platforms' that utilized thinly veiled racist language sentences across the country became more punitive. This upsurge in prison populations across the country would, by 1990, double yet again to an astounding 1,148,000. However, prior to the mid 1980s not much new prison building had taken place in the United States. The last major prison-building boom took place in during the Great Depression and the flood of new prisoners that began in the late 1960s overwhelmed these aging facilities. Thus, in framing the problem of crime as a result of leniency, the solution, longer sentences and stricter laws, created yet another problem: the prison problem. The next chapter addresses that problem and its formation.

CHAPTER IV

IMPORTANCE OF THE RESEARCH

“Today’s problems are a result of yesterday’s solutions.”

- John F Kennedy

In the late 1970s and early 1980s the United States was experiencing high inflation rates and a depression; an economic condition known as ‘stagflation.’ Unemployment rates were at their highest since the Great Depression (11 percent); interest rates hovered at 20 percent; the misery index was peaked at 20 percent; the population of homeless people was estimated at between 350,000 and 2 million; energy prices were at record levels; and the American public’s confidence in its government hit record lows. Although they disagreed on the particular type of reform and the cause, politicians, Republican and Democrat alike, agreed that the economic situation called for reform. The culprit, according to economists and conservative politicians, was ‘big government’ and everything that stems from that: generous social welfare programs, excessive government spending and bureaucracy, lack of incentives for investors and weak foreign policy which if named, in a phrase, was “the Welfare State”.

As early as 1976, politicians and the mass media began to promote the images and language that shifted debate away from the policies of the New Deal (1960) to that which ushered in the policies of the Contract with America (1994). The narratives and images associated with each of the purported causes of the economic crises of the late 70s and early 80s profoundly shaped the remedies that were pursued and supported by the

American public. The attack on the generous social programs and the recipients, specifically welfare, is perhaps best captured by the anecdote told repeatedly by then-Presidential candidate Ronald Reagan. He spoke of an alcohol swilling, Cadillac driving, inner-city black woman who ripped off \$150,000 from the government, using 80 aliases, 30 addresses, a dozen social security cards, and four fictional, dead husbands. The picture of the 'welfare queen' driving her 'welfare Cadillac' infuriated the public, and became forever associated with the typical welfare recipient; unwilling to work and getting rich off the tax dollars of hard working Americans. Even after the story was proven to be fictitious, Reagan continued to tell the story and, according to Patricia Hill Collins (1990), further fueled the class, race and gender divide of the country. Further, Reagan continued to link public-assistance programs and lenient crime policies to the rising crime rates. He continuously argued that the government would more effectively help the poor by scaling back on assistance programs which perpetuated crime via dependency, and expanding the criminal justice system and law enforcement that protect society from the criminal.

"Government is not the solution to our problem. Government is the problem"(Reagan). This was not hard for the American public to believe as stories of excessive government spending and horror stories of bureaucratic snafus proliferated in the early 1980s. ABC's 20/20 exposed the now-infamous \$435 hammer, \$640 toilet seat and the \$7,600 coffee makers as examples of what was wrong with government. Ronald Reagan cited figures that put the cost of government waste and inefficiency at \$50 billion in 1980 and made reducing this a cornerstone of his campaign (NYT March 22, 1981). The extreme cases of overspending became the source of material for late night talk show hosts and cartoonists alike. A caricature of the Secretary of Defense, Casper Weinberger,

with a toilet seat around his neck appeared in the Washington Post and Johnny Carson joked about the two cent replacement part that the military paid \$1,118.72 for (Thompson and Hays 2000). By 1983 the American public had experienced two recessions in less than three years. Goods-producing industries, such as manufacturing and mining, were laying off laborers or shutting their doors. In 1980 alone goods-producing industries lost 1.4 million jobs and an additional 2.8 million goods-producing jobs were lost between 1981 and 1982. (Plunkett 1990). However, service-providing industries such as health care and retail were adding jobs. With labor abundant and jobs scarce, the jobs that were opening were generally of low pay as compared to those in the goods-producing sector. The shift from a goods-based economy to a service economy was underway.

Another source of the shifting ideology was provided by economists. Based on supply-side economics, later known as 'Reagonomics,' the failing state of the economy, according to leading economists, could be jumpstarted by across-the-board tax cuts and widespread cuts in social welfare spending. Included in this package were large-scale tax cuts for corporations and decreased regulation. The logic supporting this said the money saved by companies via these incentives would be reinvested boost the economy. Belt-tightening by the government included federally funded lunch programs, social security spending and cuts in alternative criminal justice practices, largely rehabilitative programs. The overall theme that developed was that government should not be in the business of business. Looking to successful practices of the Thatcher administration--large scale sale of government owned industries (gas, electric, airlines and oil)-- downsizing of the federal government was seen as a necessary move in economic recovery.

The 'get tough' messages and practices taking place on the domestic front in regards to crime and criminals were echoed in the plans for ensuring national security.

The military was one area of government spending that was not the target of cuts. In fact, a massive military build up was proposed as the only way to secure America's future. "Peace through Strength" was the mantra of the plan to end the cold war. Planned economies (like that of the Soviet Union and other socialist/communist countries), according to the Reagan plan, could not compete with market economies. Thus, market economies and market-driven policies would secure the nation's future and restore economic and military strength internationally. At the national level, reducing the size of government coupled with the deregulation of industries and military build up based on supply side economic rationale (market driven) ushered in the trend toward the privatization of a multitude of once government provided services as a remedy for the economic woes of the United States in the early 1980s. The manufacturing market clearly was in a freefall and service provision was the emerging market.

The Grace Commission: Whole-scale Privatization

During his first year in office, Reagan created and commissioned the President's Private Sector Survey on Cost Control (PPSSCC) in June 1982. The establishment of the "Grace Commission" was a critical stage in the assumption of power by industry/business in the provision of public services. The push to privatize at the federal level and the sell of privatization as a solution gained legitimacy through official recognition of the President.

The goal of the "Grace Commission," which consisted of 161 executives from the private sector and headed by industrialist Peter Grace, was to determine which government services could be better and more efficiently produced by the private sector and to determine the feasibility of the privatization of a host of services. The Grace Commission's recommendations were a vehicle used by the Reagan administration to

reach the objective of increased private sector involvement in the production or provision of government services. These recommendations, according to Goodsell (1984), represent one of the strongest initiatives ever taken by an administration toward reaching the goals of privatization. The Grace recommendations are important because the arguments used to persuade Congress to initiate privatization legislation have been used to support the privatization-of-prisons argument. When the Federal Government takes the lead by implementing federal initiatives, states tend to follow the lead.

Report of the President's Privatization Task Force (1983)

As previously noted, the Commission, made up of 161 corporate executives, was charged with, among other things, identifying specific opportunities for cost control and improved efficiency. In the end, the task force released a 23,000-page report on government waste and inefficiency and made 2,478 recommendations that could save \$424 billion over three years (Kennedy Jr. 1984). At the time of the reports release the privatization movement was gaining steam across the country. CAGW, a spin-off of the Grace Commission, publicly promoted the recommendations of the Grace Commission, taking out a full-page newspaper ad, spots on television, and providing 800-numbers for citizens who were concerned with government operations and waste in their area. Privatization commissions were established at the state and local levels. By 1985, the year that CCA made its bid to take over the Tennessee prison system, the privatization idea had transcended its right wing foundations and had gained acceptance by many liberal democrats. New York Governor Mario Cuomo stated, "It is not government's obligation to provide services, but to see that they are provided." Senator Daniel Patrick Moynihan (NY-D) urged the government to "privatize our \$280 billion loan portfolio and get some real money." And

the former Social Security Administrator under Jimmy Carter, Stanford G Ross, advised that, "Ideological concerns regarding private versus public sector approaches are less important than results." "Most liberals," continued Mr. Ross, "have become centrists on the issue of privatization." He added that most would willingly support an expansion of private-sector programs if it would help to efficiently meet greater social needs. "Each proposal should be examined on its merits. We should be dealing with matters of substance, not form, and real-world impacts on individuals and not ideological models of worlds that do not exist" (Tolchin 1985: B12).

The recommendations of the Task Force and the activities that followed helped elevate the idea of privatization within the consciousness of the nation. These recommendations were the springboard for many other privatization efforts adopted by cities and states, which has since included prison privatization.

Stages of Development in Prison Privatization

Although these socio-historical factors were necessary conditions for the development of the privatization of prisons, they were not sufficient ones. To understand the actual development of the trend, a more specific set of conditions must be considered. These conditions can be described as occurring in three general phases: Phase 1: Creation, which includes the recognition of a problem, assumption of power and the transformation of an idea into an operational program. Phase 2: Perpetuation, which consists of the maintenance strategies and techniques. And Phase 3, which are the various efforts to solve problems, ultimately a special case of perpetuation.

Phase One-Stage One: Problem Recognition

The first stage in the development of prison privatization consisted of the recognition of a 'problem' by several groups, including prisoners, guards, administrators and politicians. Each of these groups perceived a threat to their interests and goals. Prisoners perceived overcrowding as a threat to their lives as well as to their civil rights. Guards perceived overcrowding as a threat to their physical and mental health, and administrators viewed overcrowding as career threatening and an impediment to accomplishing the goal of providing a secure facility. Politicians saw overcrowding as having the potential to call into question their crime policies (1980s court orders).

As prison populations began to grow in the early 1970s prisoners sought relief from the conditions produced by overcrowding, both by legal and illegal means, violent and non-violent. In 1970, some 2,200 civil rights cases were filed in federal courts from a population of 360,000 inmates (Vogel 2004). In Florida, inmate Michael V. Costello filed a lawsuit challenging the constitutionality of the overcrowded conditions. (This case was not settled for 21 years.) In Alabama (Pugh v Locke 1976) inmates challenged the conditions of confinement, in particular those of overcrowding. In Texas, the state prison system was so overcrowded that some units were operating at 200 percent of capacity with as many as five inmates to a two-person cell and others sleeping on the hallway floors and outside in tents.

One case of particular importance to the privatization of prisons is Ruiz v. Estelle (1981). In 1972 David Ruiz and other inmates filed a lawsuit against the Texas Department of Corrections to seek relief from the conditions described above. The case was finally ruled on in 1981. Citing brutality by guards, overcrowding, understaffing and uncontrolled physical abuse among inmates, Federal District Judge William Wayne

Justice ruled that conditions were so dismal in Texas prisons as to violate the Eighth Amendment's protection against cruel and unusual punishment. The state of Texas was ordered to reduce overcrowding and the entire Texas system was placed under court supervision (Vogel 2004).

Mass incarceration and overcrowding led to widespread and devastating prison riots and insurrections. Between 1968 and 1971, there were 40 major disturbances including the historic revolt at Attica Prison, which resulted in 43 deaths. In June 1968 prisoners took over the Ohio State Penitentiary in Columbus. Among the list of prisoner demands were the alleviation of overcrowding. In 1971, inmates of the state penitentiary of New York at Attica took over the maximum security facility. In what was quickly described as "the bloodiest one-day encounter between Americans since the Civil War" (Attica: The Official Report 1972: 130), 39 were killed and 80 others were wounded in a single day. In addition to demands that rights already afforded them by the federal courts be adhered to, inmates wanted relief from the harsh conditions resulting from overcrowding, including more space. In 1973, inmates took over the Oklahoma State Penitentiary at McAlester. Their list of grievances and demands addressed conditions that resulted from overcrowding. (See the aftermath legislation History of Oklahoma Corrections.) Less than a decade later in Sante Fe, New Mexico 40 inmates died and countless guards were injured in a prison riot fueled by "overcrowding, understaffing, poorly serviced, unsanitary and insecure facilities." (WP 2/7/1980) From the claim-makers, prisoners and the ACLU, the problem of prisons was constructed in a civil rights diagnostic frame; the conditions inside the prisons violated basic civil rights. In turn, blame and responsibility for the problem was viewed as belonging to administrators and lawmakers.

Corrections Officers

For prison guards, the problems associated with overcrowding were voiced in the form of complaints regarding 'understaffing.' Understaffing was a problem in the 1970s. However, the understaffing problem was dealt with through the use of building tenders (BTs), convict guards and trustees to control and manage the inmate population. (see for example Welch, *The Brutal Truth in Punishment in America*) The BT system was abolished through a court order in 1981 (*Ruiz v Estelle* 1981). However, it was years before the practice was discontinued (Marquart and Crouch 1985). Pointing to the frequency and viciousness of inmate attacks on correctional personnel, and the violent deaths of guards at the hands of inmates, AFSCME, the largest labor union in the corrections field, issued several resolutions at its 1980 international convention:

Resolution No.33 cited the violent confrontation at the New Mexico State Correctional Facility as the "logical outcome of a backward, inadequate approach to institutional rehabilitation," whereas a lack of funding has led to severe understaffing and a lack of adequate equipment. AFSCME called for adequate staffing levels, improved training, and appropriate safety equipment for workers. In resolution No. 159 of the same year, AFSCME called attention to the reduced staff-inmate ratios in facilities across the country, resulting in the increased possibility of violent physical attacks on correctional personnel and the pressure under which they perform their duties. These conditions, exacerbated by a lack of communication between personnel, management and inmates, argued AFSCME, produced high levels of stress, threatening both the physical and psychological well being of guards and inmates and the security of the surrounding communities. According to state corrections officials, overcrowding and understaffing were responsible for the 1981 riots in the Southern Michigan Prison at Jackson, the

worlds' largest walled prison at the time, and two smaller state prisons (Det News Jan 6 1982 A 1).

At the AFSCME international meeting in 1982, the corrections personnel union addressed the overcrowding issue once again. In addition to the problems of mental stress and physical danger experienced by guards, AFSCME added the concern over antiquated facilities. "Forty-three percent of prisoners nationwide are in facilities built before 1925" (AFSCME resolution No. 69 1982). Pointing to the violence at Michigan and New York, Bernard Demczuk, a lobbyist for AFSCME told the Washington Post, "Anytime you have makeshift detention areas due to lack of space the potential for violence, inmate on inmate and on the staff, increases" (Bonner, 1981). In the final analysis, AFSCME called for 6.5 billion dollars in federal aid to build new prisons.

Administrators

As lawsuits aimed overcrowding and conditions in the state facilities were filed and won by inmates, administrators came to view the problem as a serious threat to their jobs and the autonomy of the profession. By 1980, Washington, D.C., inmates at Lorton's maximum security prison won a 600,000 dollar jury award for violation of constitutional protections against cruel and unusual punishment (Kiernan 1981). Shortly after this award, the district government agreed to spend three million dollars on new cells at Lorton's medium security facility as part of a settlement to a class-action lawsuit filed by inmates who complained of the unchecked violence, which resulted of a shortage of guards and overcrowding (Kiernan 1981). These inmate victories, coupled with the precedent set in Ruiz (1981), demonstrated to prison administrators across the country the pressing need to relieve the overcrowded conditions or risk the fate of the Texas system; the selection of a court appointed 'special master' (Martin and Ekland-Olson 1987). At

the same time, measures that were being taken to relieve crowding--community correctional programs, work release and parole--were taking a beating in the press.

In Maryland, for example, Gordon Kamka, the Secretary of Public Safety and Corrections under a 1979 Federal court order to reduce overcrowding of the state's prisons, declared a moratorium on new prison construction in favor of work-release programs. After two years of Kamka's program the Baltimore police staged a raid with guns drawn and sirens blasting on two work release vans in the middle of rush-hour traffic. The 27 convicts were arrested for committing crimes ranging from murder to prison escape while on the work-release program. Shortly after the arrests all the charges were dropped. But in the interim, citizens were outraged and afraid, the Governor was embarrassed, and Kamka resigned. Police Commissioner Pomerleau, who organized the raid, admitted to "serious disagreements" with Kamka on corrections philosophy. He denied arranging to have the media on the scene to film the whole thing, but was happy with the end result, "tougher corrections management standards" (NYT Nov 25 1982). Work-release was not the only alternative to incarceration that citizens became fearful of and sought to eliminate. Residents across the country organized and fought the opening of halfway houses in their communities. In Washington, D.C., long-time residents of the neighborhood and former halfway house employees cited the increased drug traffic and the decrease in property values as the reasons they were fighting the opening of the half-way facility. But, perhaps the most effective method of fighting the opening of the half-way house was highlighting the supposed threat the half-way house residents would pose to children and the elderly. "Are we going to be able to walk our streets freely? What are you going to do about the school children?" shouted protesters. The perceived threat to children by these 'outsiders' and their supposed drug use was high on the list of fears

stated by opponents “These people come back to the house drunk, handling drugs and their doing drugs in the place. I have a daughter!” (Stevens 1978)

Further evidence of the failure of programs to alleviate overcrowding emphasized the repeat, violent, and predatory nature of former prison inmates. In New York a resident of Pyramid House rehabilitation center who was serving out a 27-year sentence for armed bank robbery, shot and killed one police officer and wounded another after robbing a bank (NYT Aug 1979: 1). Victims of the crimes committed by those on parole also made the front pages. George Martinez, the father of a 14-year-old girl murdered in 1975 by a man paroled just five months earlier, sued parole authorities for damages, contending that they negligently released the murderer, Richard June Jordan Thomas (Barbash 1980). U.S. Senate candidate Lawrence Hogan (R) showed up at a press conference where Prince George County police chief had just announced the arrest of a cop killer on parole and a current resident of a D.C. halfway house (McQueen 1982). Coupled with the ongoing portrayal of the nature of crime as violent, predatory and in the street, the campaign of fear surrounding incarceration alternatives was successfully constructed; upholding the status quo policy of “lock ‘em up.” One important result of this crusade was the belief that there were only 2 choices: either build more prisons or allow dangerous criminals back out on the streets. By showcasing extreme incidents, claims-makers were able to convince the public that everything in between had been tried and failed. Not only had it failed, but it is dangerous.

Politicians

As crowding grew, largely because of stricter sentencing guidelines and drug laws, politicians searched for a way to maintain ‘tough on crime and criminals’ stances while at the same time protecting the state-and local-run facilities from lawsuits and federal court

interventions. Politicians needed to appease corrections unions and address their constituents' fear of crime and criminals. State and local officials found themselves in a conundrum: political livelihood and reelections were won on 'get tough' campaign promises while there was no space to house criminal offenders.

The answer for most was increased funding for prison building and facility rehabilitation. Thus, the first important result of this crusade to manage the overcrowding problem was the development of widespread state prison expansion plans. Virginia Governor John N. Dalton proposed a two-year budget request for 45 million dollars for new construction and renovations (WP Jan 11 1980 B6). In New York, Governor Carey submitted a bond issue that included 332 million dollars for the construction and rehabilitation of prisons (Dionne 1981). In Michigan, an income tax surcharge was proposed to finance four new prisons. In response to a series of lawsuits, including *Small v Martin* (1985), filed by inmates in North Carolina, the General Assembly launched a 185 million dollars major prison building program.

At this point, the early 1980s, the prison problem was framed as a lack of space and lack of staffing. In other words, problems of lack of financial investment in the prison system would be solved via mass prison construction and an influx of dollars. Corrections expenditures quadrupled from approximately 6.8 billion dollars in 1980 to 26.1 billion dollars in 1990, and by 1995 expenditures had reached 40 billion dollars. (USDOJ 2001) In 10 years, approximately 600 new prisons were built in the U.S. (Donziger 1996). As state after state built countless new prisons they were quickly filled with prisoners affected by hard on crime policies and legislation.

By 1985, prisons in two-thirds of the nation's states were under court order to correct conditions that violated the Constitution's prohibition against cruel and unusual

punishment (BJS 1985). Corrections officials and local politicians who failed to comply with court-established deadlines faced contempt charges. For example, a U.S. District Court Judge threatened to hold D.C. Mayor Marion Barry and other city officials in contempt if the overcrowded conditions at the Lorton facility were not alleviated (Kamen 1983). And the Corrections Commissioner of the State of Tennessee was fined and nearly jailed for contempt of court (Humphrey 1985). The State of Texas was also threatened with an 800,000-dollar-a-day fine until prison overcrowding was alleviated (Business Week 20 April 1987). Across the country, corrections officials and politicians alike announced they would begin the mass release of prisoners. In Michigan, state corrections authorities released 700 inmates. In Texas, corrections officials announced the impending release of thousands of convicts unless a new prison was built (LaFranchi 1986). In 1984, a Tennessee court threatened to order the immediate release of 300 inmates from the state prison system. In 1985, over 18,000 prisoners were released on an emergency basis to alleviate overcrowding (MacDonald 1990:6).

Overcrowding in state prisons also affected county and city jails. State corrections officials began refusing the transfer of state prisoners from local and county jails, essentially warehousing state inmates at no cost to the State Departments of Corrections budgets while draining the budgets of local communities. In New York the situation had gotten so bad that jails in counties across the state filed claims against the state totaling more than 2.2 million dollars for expenses related to operating at 50 percent above capacity. A Nassau County executive summed up the situation, "We're under a federal court order to keep the population below 900. If the sheriff had accepted the 901st prisoner he would have been in contempt of Federal Court, if he hadn't accepted number 901 he would have been in contempt of state court. We are in a bind." Sheriff John Dillon

of the Onondaga County Jail added that “Overcrowding has made obeying the state law that requires the segregation of the normal inmate from those awaiting transfer to state facilities impossible. We have murderers sharing cells with misdemeanors. As a result we are experiencing disciplinary problems” (NYT Sept 16 1984). Rep. Merrvyn M. Dymally (D-Calif) commented at a hearing to review overcrowding in the corrections system that, “For security reasons, such accommodations have become an unmanageable nightmare...creating the haunting possibility of a local Attica or New Mexico-like prison outbreak” (Kamen 1983).

City and county corrections departments quickly turned to their own form of early release: the cut-rate bail program and ROR (release on their own recognizance) (WP Nov. 13, 1983). Like state-level attempts at reducing the populations, early release and parole, and the officials who supported them, were repeatedly criticized, and so were the county and city officials who implemented ROR and cut-rate bail programs. Again, news outlets across the country carried the stories of those released via these ‘soft’ programs and the havoc they wreaked. The Associated Press reported, “A man released from jail last week under a court ordered low-bail plan to ease jail overcrowding has been arrested and charged with strangling his wife” (NYT Nov 9 1983). The New York Times reported, “One of the first prisoners released early from Rikers Island Jail to comply with a court order to reduce its overcrowding was charged with rape only days after his release” (May 3 1984 NYT). Politicians were quick to criticize the new programs as well. New York Mayor Koch commented shortly after the arrest for rape, “There is lunacy loose in this land that safeguards the rights of people who commit crimes and turns them loose on society, while sacrificing the rights of ordinary law abiding New Yorkers.” Following the

strangulation arrest just one year earlier Mayor Koch criticized the cut-rate bail plan as “idiocy” (WP Nov 13 1983).

Having heard the President’s invitation for private-sector involvement in all things government owned and operated, private companies quietly built inroads into the prison system, however they remained at the federal level and in the less-visible parts of the correctional system. But, it was not until President Reagan, following up on President Carter’s revenue restrictions, made several deep cuts to the federal government’s revenue-sharing program, expenditure controls and federal tax laws, that the use of private prison operators became an option to state and localities to alleviate the prison problem. Federal aid to state and local governments was slashed and by 1986 the general revenue sharing program was dead and many local governments were left for the first time without any direct federal assistance (Herbers 1987). Additionally, personal income taxes and sales taxes were reduced, leaving states and local governments scrambling to manage budgets. State and local governments began cutting budgets, incurring general fund deficits and laying off workers. Ironically, this was happening at the same time that demand for local social assistance was increasing because so many people were losing jobs. The higher levels of spending for corrections were met by funneling money from other types of services and by raising local taxes. The trend toward reducing taxes was reversed, and a scramble for revenue ensued at both state and local levels (Herbers 1987).

As economic difficulties arose in the 1980s, citizens repeatedly voted down bond issues that funded state prison expansion while at the same time demanding that more criminals be imprisoned in the hopes of making their communities safer. For example, Michigan voters turned down a proposed tax increase for prisons in 1981. New Yorkers organized a statewide coalition to combat a proposed 475-million dollar bond issue for

expanding and improving state and local prisons (Kihss 1981). In 1982, Texas Governor Clements vetoed 30 million dollars in state appropriated funds for a new prison under pressure from voters (CSM June 24 1986). With taxpayers no longer willing to support the necessary expenditures for prison expansion, state and local officials yet again found themselves in a quandary. In state after state entire prison systems were found in violation of the Constitution because of inadequate conditions for confinement.

The prison problem, originally constructed as a problem of overcrowding, understaffing and lack of space with the solution being to build more, took on a new dimension: money. The same strategies and criticisms that were used to promote the build more solution were still being used--attacking alternatives (ROR and early release), public safety and the ongoing construction of crime and criminals. However, the financial burden of the accepted solution, more prisons, was proving to be a fiscal nightmare for politicians while the mere discussion of alternatives was the kiss of death.

Multiple Problem Recognition and Promoting the Operational Privatization Solution

Founded by Thomas W. Beasley and Doctor R. Crants, two Nashville businessmen and lawyers, CCA saw an opportunity where others saw disaster. At a presidential fundraiser Crants and Beasley came upon the idea of privatized prisons during a conversation with an executive of the Magic Stove Company. "He said he thought it would be a heck of a venture for a young man: To solve the prison problem and make a lot of money at the same time" (Hurst 1983). The company was launched with help of venture capitalist Jack Massey, who helped build Kentucky Fried Chicken and Hospital Corporation of America. "We knew the era of big government was over. We could sell privatization as a solution, you sell it just like you were selling cars, or real estate, or hamburgers," Beasley said

(Schlosser 1998:10). Crants and Beasley later contacted a friend, the commissioner of corrections for the state of Tennessee. Beasley remembers, "I didn't think he would receive the idea very well, but he did. He picked up the phone and connected us to Don Hutto, who was the highest state corrections director in Virginia and had just been elected president of American Correctional Association. Don said he would be happy to be involved." Relying heavily on the history, albeit short, of the successful privatization of hospitals, political connections and financial backing from Massey (of Hospital Corp. of America), CCA promoted privatization as a solution to the prison problems of overcrowding, the increasing financial burden of building prisons and the cost of housing inmates. (See Mobley and Geiss in Schichor and Gilbert and Hallett and Lee "Public Money Private Interests").

To the INS, CCA offered to house illegal aliens at a cost of \$23.84 per inmate, per day, more than 10 dollars per inmate, per day less than their cost of \$34.85. In addition, CCA offered to provide the 5 million dollars in capital expenditures for the land and construction, saving the Government from having to borrow the money (Serial 40: 29). The claim of cost savings was the primary technique used in the sell of privatization from the very beginning. Before the House of Representatives Committee on the Judiciary, Richard Crane, CCA vice-president, stated "We can do it less expensively, our construction costs are about 80 percent of what the government pays for construction." Intricately woven into the claims of cost effectiveness were the criticisms of the public prison system, tapping into a major goal of the political administration: identifying and eliminating waste and inefficiency in government. Crane continued, "Contractors, it appears, will generally bid higher on government work because of the red-tape and the

delays and so forth, and our experience thus far is to say we can do it for 80 percent” (Serial 40: 29).

The criticism of the public system was also an integral part of the claim of superior service provision. “Across the country the turnover rate of correctional officers is 30 percent; ours is about 15 percent. The cost of training is very, very high. We are able to, by retaining employees, avoid those additional training costs” (Serial 40: 29). In addition, privatization promoters’ claim of service superiority addressed the problems arising from the mounting court orders surrounding constitutional violations while at the same time alluding to the inferiority of public service provision. “We will meet the American Correctional Associations standards in our facility. The Supreme Court has said on at least two occasions that those standards by the ACA go beyond those that would be required by the Constitution. These standards go beyond the Federal Standards, INS standards. We are not just going to be on the cutting edge of constitutional rights of inmates, we are going much further” (Serial 40: 29). By this time Don Hutto was the president of ACA *and* a senior vice president of the Corrections Corporation of America. Representatives of other private companies bidding for federal contracts were also critical of the abilities of the government to provide services. In selling themselves, contractors were often openly contemptuous of the government’s prison record: “The work done in the public sector in the last 30 years has been a dismal failure,” asserted Ted Nissen, president of Behavioral Systems Southwest, in 1984 (Tolchin, 1985). Having obtained the authority to not only build and own but also operate a federal detention facility, CCA and the promoters of privatization increased the legitimacy (assigned as a result of recognition by the Federal Government) of privately owned and operated prisons

and also buttressed the strength of their claims by pointing to historical precedent upon which further claims were based.

Promoters of prison privatization constructed the idea as both as 'nothing new' and as 'something new.' On the one hand, privatization claims-makers argued, "The concept of contracting with private companies to provide government services is not new. For the first 100 years or so of this country's existence, most public services were provided or performed by private companies, fire protection and transportation for example". (Crane Serial 40: 27) The promoters demonstrated this ongoing practice by pointing to the fact that governments in more recent times are, "Now turning to private professional engineering firms to manage water and waste treatment services, airports and public transit systems... There has been a history of involvement of the private sector in owning and managing halfway houses, pre-release residential programs and the like... Private providers of healthcare, food service, education, rehabilitation programs and transportation have been welcomed into public jails and prisons" (Serial 40: 32). On the other hand, claims-makers were quick to stress that this form of privatization was different from the old privatization. "The concept of ownership and management of a primarily adult correctional facility is relatively new," stated Richard Crane (CCA) in testimony before the subcommittee. Further, Crane testified, "there are a number of precedents for private operation in the corrections system. But, the leasing of convict labor is not one of them. Today it is clearly different and recognized that prisoners have constitutional rights." Continuing the theme of history and adding the appeal of professionalism, Crane stated, "We have over 160 years of management experience in the operation of every type of facility" (Serial 40: 48). It was later pointed out that CCA had

not been in the business for 160 years, rather this indicated the number of years their various employees spent working in the public system added together.

The first stage, recognition of the multiple prison problems, by three enterprising men with social and economic status that afforded them access to decision makers, was crucial to the subsequent assumption of power and growth of private industry in the corrections field. However, perhaps more importantly was that their solution, privatization, to the problem took place when the discourse regarding the government's handling of public service was under attack, and the dominant discourse on crime suggested that more incarceration was the only answer to the crime problem. By appealing to societal concern over big government waste, and by framing the prison problem as a further example of such, the conditions were ripe for private entry into the operation of prisons, which would concurrently allow the 'get tough' policies to remain intact. A close examination of the industry's early claims reveals a 'script' that over the forthcoming years would be repeated and manipulated to fit political, economic and societal concerns about imprisonment. To be certain, the main theme of the early script was economics; cost savings and efficiency. However, the industry also aligned itself with the positive aspects of privatization-- volunteerism and professionalism--and separated itself from the negative aspects--prison labor and convict leasing. Private corrections was thus redefined in such a way that appealed to many of the dominate cultural values such as entrepreneurialism, innovation, and altruism, which at the same time appealed to the current 'get tough on crime' mentality. The specific use of this script and the ongoing adjustments to it utilized to gain power in the field, is the subject of the next chapter.

CHAPTER V

THE ASSUMPTION OF POWER: STAGE TWO

Stage two of phase one, the assumption of power by private companies in the corrections arena was a process that extended over nearly two decades. Private industry had made some minor inroads into the prison business through providing services at the federal level during the late 70s and early 80s. For example, 70 percent of all federal contracts to place inmates sentenced to community treatment centers were with private providers (Logan 1990: 16). The private imprisonment industry also established early sites with various low-security facilities and in the less visible regions of the adult and juvenile penal systems. For example, by June, 1986, 61 percent of all adult state correctional inmates in community homes were in contracted facilities. According to the 1982-83 census, there were 808 juvenile institutional facilities nationwide of which 123 (23 percent) were private (Logan 1990: 17). Federal government officials in the INS utilized private contractors to build new detention facilities chiefly because they were able to accomplish the task much more quickly than could the federal government. (McDonald 1990a). For example, Wackenhut, Inc., an established security firm, was able to construct and open a 150-bed facility a mere 90 days from the contract's signing. In 1979, the INS began contracting with private firms to detain illegal immigrants pending hearing or deportation and in 1980 awarded the first facility-management contract via competitive bidding to Behavioral Systems Southwest (BSS). While these developments went relatively unnoticed and provoked little controversy, this emerging federal market

was critically important to the private prison companies of today. It provided a foundation upon which the later claims of privatizeers could be piggybacked and was the principle financial seedbed for the wave of private companies involved in the imprisonment of the core of the adult inmate population of the 1980s (MacDonald 1990), including Corrections Corporation of America (CCA).

At this point private operation of prisons appeared destined to remain at the federal and less-visible parts of the correctional system and relegated to nominal forms of privatization: build and lease. Then a crucial event occurred. The Corrections Corporation of America placed a bid to take over the entire prison system for the State of Tennessee. This started the second phase in the development of operational prison privatization: the assumption of power.

In 1985, Tennessee Governor Lamar Alexander was forced to call the Legislature back into a special session to deal with a Federal Court Order that placed a cap on the State's prison system. Tennessee, like other states across the country in the late 1970s began its own crusade to lower crime rates through the 'get tough' sentencing policies such as minimum/mandatory sentencing. Predictably, this created overcrowding and all the problems associated with it, including riots and federal court intervention. When the State's oldest prison was declared unconstitutional, Tennessee found itself immediately in need of at least 7,000 additional prison beds and called for an additional 380 million dollars to build six new prisons (Select Oversight Committee on Corrections, 1995). The assumption of power in the corrections field began with Corrections Corporation of America's bid, during the legislative special session, to take over the entire Tennessee prison system. It was at precisely this moment that privatization of prisons in the operational sense gained national attention and became viable.

CCA offered to buy the Tennessee prison system for 50 million dollars down and 50 million dollars over the next 20 years and would spend 150 million dollars on improvements and new buildings. For its operation of the prisons, CCA was to be paid from the State Treasury a sum not to exceed the 175 million-dollar annual operating budget of the State's corrections system with a 99 year lease (Cody and Bennett, 1987). Tom Beasley, CCA's CEO, said

“Our proposal is simple—we will pay the State for the right to manage the system under the state's supervision; we will spend private capital to improve the system and draw our profit out of more efficient use of the State's regular operating budget. That's a \$250 million—one quarter of a billion dollar turn around in the state budget—without a tax increase! We believe this is absolutely a win/win situation and an unprecedented opportunity to make Tennessee a leader in this most difficult area” (Corrections Corp of America, 1985:2 cited in Hallett 2004: 8).

Whether it was strategically planned or just luck, the timing of the offer could not have been better. The offer was made September 12, 1985, during the same time the National Association of Criminal Justice Planners, representing prosecutors, judges, corrections officers, sheriffs and criminal justice planners in 75 large urban areas, was holding its annual conference. The offer quickly became the chief topic of conversation at the conference after Governor Alexander's press secretary stated, “Governor Alexander plans to recommend that the Legislature consider privatization.” Tom Ingram, a company (CCA) spokesperson who was present at the meeting explained, “We believe that the private sector can achieve economic efficiencies impossible to achieve working through government bureaucracies. They were very interested and indicated they would take a long hard look at it” (Tolchin 1985: A12). The New York Times headline, “Company

Offers to Run Tennessee's Prisons" further pushed the idea of private operation of prisons into the national spotlight. CCA co-founder Don Hutto later commented, "One of the things that happened as a result of the bid was that it forced everyone to take us seriously. The offer ran on a full front page of the afternoon paper. We were a national story" (CCA Source 2003).

Push and Sell

Two months after the national meeting, the fourth National Assembly on the Jail Crisis was held by the National Association of Counties. Promoters of prison and jail privatization addressed the audience filled with over 800 county commissioners who are responsible under law for the operation of jails. Among the chief promoters was Bay County, Fla., Commissioner John B. Hutt. "The sheriff's proposed budget for operating the jail was \$3.2 million, but after soliciting bids we signed with Corrections Corporation of America for \$2.5 million. That's a \$700,000 savings. The prisoners are happy; we have not had a riot or a single stuffed commode." Hutt also made note of the fact that the County was facing two lawsuits involving a death and a coma, but now he stressed, "We are buffered by the corporation in case of future injuries" (Clendinen 1985). Again, timing was critically important. At this meeting in Atlanta, Georgia, the push and sell of privatization to local-level correctional decision makers was taking place at the exact same time in Washington, D.C., privatization promoters were selling the idea at the federal level, which, as stated above, played an important role as states generally followed the lead of the federal government (Hallett and Lee, 2001).

The Tennessee bid and the media attention it received was critical to the push and sell of the privatization of prisons in another but equally important way. The Committee

on the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice was scheduled to meet on November 13, 1985 with the expressed goals of 1.) reviewing recent developments in corrections (privatization); 2.) examining the advantages and disadvantages; 3.) exploring what action the Federal Government should take; and 4.) raising further questions, if appropriate (Serial 40 :1). According to Blane Merritt counsel for the Committee on the Judiciary (House of Representatives), there are two ways in which one comes to testify at a subcommittee hearing, by invitation or by submitting a request. Either way, Mr. Blane added, "Committee members come to know who the players are through various media sources, business, industry and professional journals, word of mouth etc. and base their selections on that. The idea is to cull as much information so that appropriate policy recommendations can be made" (per phone interview Nov. 1 2004). Given the recent media coverage in the New York Times and Washington Post, advertisements, and articles in industry and professional journals, regarding CCA and what was described as their "ambitious, audacious, shocking, incredible" (NYT Sept17 1985 A17) bid, it was not surprising that Corrections Corporation of America Vice President Richard Crane was one of the three invited "distinguished witnesses" to testify before the subcommittee. This opportunity to testify as a member of the 'expert' panel nationalized and elevated the legitimacy of not only CCA but operational privatization in general. On this stage, operational prison privatization became a permanent part of the national agenda about corrections.

Opposition to the private operation of prisons further thrust the idea into the national spotlight. In rural Pennsylvania, a small, privately operated facility arranged with the District of Columbia to transfer 55 inmates from the District's jails to relieve overcrowding. Local residents, fearing escapes, organized themselves and patrolled the

streets with shotguns. Public officials, at the behest of AFSCME, challenged the action and argued that the private facility was not State certified which prompted a judge to order the inmates returned to Washington, D.C. (Bivens 1986). Within a month of this event the subcommittee met again. This time, however, the push and sell of operational privatization of prisons was not conducted by an official representative of the industry, but by Norman Carlson, the Director of the Federal Bureau of Prisons. In his opening statement to the subcommittee regarding the experience of the Bureau of Prisons with operational privatization, Mr. Carlson said, "In both cases our experience has been essentially positive." (Serial 40: 133) Mr. Kastenmeier, the subcommittee chairman, referenced the event in rural Pennsylvania, "We have this case in the Washington press in the last few days...a real legal quagmire took place." When asked if there was the potential for the same problems to arise at the federal level, Mr. Carlson responded, "The district situation is not our responsibility...We use private control for halfway houses exclusively and our experience has been generally positive." Further, Mr. Carlson added, "In the face of the extreme overcrowding we are confronting today I personally would like to have the flexibility to use privatization or private sector operations for lower security inmates." Included in Mr. Carlson's testimony and the later memos sent to the subcommittee were references to 'success' with contracting and the commitment to expanding the use of private contracts where they best meet the government's needs. Finally, Mr. Carlson put to rest the question regarding the authority to contract with private institutions for placement of federal prisoners by submitting the statement of the general counsel. "We conclude that there is authority to contract with private facilities based both on the legislative history to Section 4082 and on the need to read Section 4002

so as to make meaningful the language of Section 4082 which allows designation to non-federal facilities, including private facilities” (Serial 40: 150-162).

The claims made by Carlson appealed to cultural themes similar to those addressed by Crane. Both relied on the claim of success and cited the history of contracted services while at the same time effectively separating their case from the more troublesome events. The claims of Mr. Crane, in the first hearing, expressed the rationality of the plan. Mr. Carlson, on the other hand raised the issue of rationality by expressing the ‘cautiousness’ with which the federal government was proceeding with privatization and the ‘flexibility’ it offered. Mr. Carlson expressed reservations about a total moratorium on privatization of institutions as recommended by the American Bar Association (Serial 40:151). Essentially; Mr. Carlson was able to preserve the BOP authority to opt for privatization while at the same time protecting the interests of the BOP. Mr. Carlson concluded that “while there is no question the private sector has a place in the future of corrections in this country, I believe more experience needs to be gained.” (Serial 40: 145). Later, Mr. Carlson became a member of the Board of Directors of Wackenhut Industries, the second largest private prison company in the country.

Several critical conclusions were made regarding the future of operational privatization by the subcommittee based on these testimonies. According to Mr. Carlson, the federal bureau was moving cautiously and only had two contracts. It was concluded by the subcommittee that there was “no need to write additional statutory language in terms of authorization or anything else given the sort of minimum interest the Federal Bureau of Prisons has at the moment” (Serial 40 :158). This left the door open to operational privatization, at the federal level, in the future. Individual states, on the other hand chose to pass enabling legislation to quell any questions regarding the legality of

operational privatization. Tennessee, for example, eventually turned down CCA's offer, but passed the Private Prison Act of 1986 that ensured at least two state facilities in the future would be privately owned and operated. An interesting observation made by Mr. Carlson during his testimony foreshadowed the future events in operational privatization. "Perhaps in 10 or 20 years we will be in that position to turn over a complex facility such as Marion to the private sector. (Serial 40:156) Michael Quinlan, Mr. Carlson's replacement as the Deputy Director of the BOP attended this meeting. Later, Mr. Quinlan, like Mr. Carlson left the federal government to become a major player in the private corrections industry as the Vice President of CCA.

In the aftermath of these events, prison privatization emerged as one of the most discussed issues in correctional circles. Most organized bodies in the criminal justice field took a stand on the issue. In 1986, the American Correctional Association had taken a wait-and-see attitude toward operational privatization and gave it guarded support. The American Civil Liberties Union argued that "privatization must be examined more closely before permitting public monies to be committed, contracts awarded and prisoners confined" (Serial 40:14). AFSCME opposed privatization of federal prisons on philosophical, ethical, legal, practical and economic grounds, and urged the subcommittee to do the same (Serial 40:16). The American Bar Association proposed a moratorium on privatization until further research was done. "The American Bar Association urges that jurisdictions that are considering the privatization of prisons and jails not proceed to so contract until the complex constitutional, statutory and contractual issues are developed and resolved" (Serial 40:113). The National Sheriffs Association reiterated its 1984 resolution placing the organization on record as "being opposed to the private operation of adult local detention facilities" (Serial 40: 58).

Stage Three: Transformation from Idea to Operational Program Growth

While debate continued through the late 1980s private firms slowly but consistently gained operational contracts at the local, state and federal levels. Traditionally, counties are the poorest level of government and under the greatest pressure to find solutions. As mentioned above, already overcrowded local jails often served as a catch-all for the spill-over from both federal and state level institutions. Overcrowding of those federally sentenced, then, aggravates the already serious overcrowding in local lock ups. Despite opposition from the National Sheriffs Association, counties across the country began experimenting with private contracting. At the local level, CCA assumed full management of the Bay County Jail and agreed to build a new jail annex with a total of 404 beds. The year before, CCA assumed management of the Silverdale Detention Center, located in Hamilton County Tennessee with 500+ beds. In 1986, CCA began running the Santa Fe Detention Facility's 200 beds. In September 1984, Volunteers of America assumed total operation of a 40 bed jail located in Roseville, Minnesota. Pricor Incorporated (a spin-off of CCA) obtained contracts to operate two adult jails, the Tuscaloosa Metropolitan Detention Facility (Alabama) and the Greene County Jail (Greeneville, Tenn.) in addition to already-existing contracts to operate juvenile facilities. In late 1985, Buckingham Security Limited (BSL) secured a two-year contract to manage the Butler County, Pennsylvania Jail, a 100-bed facility at the start of the contract. BSL increased the bed space to 200 by the end of the contract.

State level contracts for private operation of facilities dramatically increased the number of beds controlled by these companies. In January 1986, the United States Corrections Corporation (USCC) opened the Marion Adjustment Center in St. Mary's, Kentucky. By 1988 at the revamped St. Mary's College, an old seminary, USCC housed

450 inmates. The State of New Mexico contracted with CCA in 1988 to design, finance, construct and operate a 200-bed women's prison. The facility opened in July 1989. By far the most dramatic moves in operational privatization of prisons during this time were taken by the states of Texas and California whose representatives, Jack Brooks and Carlos Moorhead, respectively were both members of the subcommittee on Courts Civil Liberties and the Administration of Justice discussed above. In 1989, the Texas Department of Corrections contracted with three different companies--CCA, Wackenhut, and Prisor-- to operate seven different facilities across the state for a total of 3252 beds. By the summer of 1989 the California Department of Corrections contracted with four different companies--Wackenhut, Gary White and Assoc., Management and Training Corp., and Eclectic Communications Inc.--to operate six different facilities with a total of 1000 beds.

By the end of 1989, the California Department of Corrections had six facilities under contract with private companies, with plans to add more later.

Private firms continued to expand the number of contracts at the federal level during this same time. BSS gained contracts to manage several holding facilities for the INS (San Diego, Calif. and Aurora, Colo.), community treatment centers for the Bureau of Prisons, and reentry programs for the corrections departments of Arizona and California. CCA added the Laredo Processing Center to its list of federal contracts, which included the Houston Processing Center utilized by both the INS and BOP. Wackenhut Corrections Corporation (WCC) gained two new contracts with the INS and the BOP. In addition, the BOP renewed several existing contracts with BSS and Eclectic Communications Inc. In early 1988, private companies were running confinement institutions totaling more than 3000 beds in nine states (Report of the PCP 1988: 148). By mid 1989, about a dozen

private companies were running about 24 adult-confinement institutions in 32 states totaling some 9000 beds (Logan 1990 17-37). This is a relatively small number of the total U.S. prison population but is still a 200% increase in the number of beds in a single year.

The growth of operational privatization at the local, state, and to a lesser degree federal, level can also be understood as resulting from the collision of economic, cultural and political conditions and interests. Promoters of prison expansion sold the idea as economically beneficial to areas experiencing a severe economic depression. For example, residents of Plainfield, Connecticut, a largely rural town, courted corrections officials and suggested that the state consider a 90-acre town-owned site for use as one of the state's three new medium-security prisons. "We're in an area that recently lost close to 400 jobs due to cutbacks and plant closings, and we've got one of the highest unemployment rates in the state," said Plainfield's First Selectman. "We could use the jobs, there's no doubt about it" (Hamilton 1987: 1). In Fairfield Township, a rural, economically struggling section of southern New Jersey, officials mounted an 18-month battle to attract a federal prison. Representative William J. Hughes told an audience of township and county officials and residents that the prison would provide "300 construction jobs and 250 permanent positions" (Janson 1986: 30). The Deputy Mayor of the township commented, "The prison would be an economic boon to the area." County Administrator David Whittington of Greensville, Virginia, invited the prison in. "We are economically drained, our unemployment rate is 50% higher than anywhere else in the state, the median income is \$3,514, and one out of every five houses in the county is substandard." According to the administrator, "It's a real opportunity, the prison will sell itself. The state has promised 750 new jobs and an annual payroll of \$16 million" (Melton

1987: B7). When the county 'won' the prison, unemployed coal mining employees celebrated. "It's Christmas in July" shouted a county resident.

When rural districts noticed that the majority of jobs were not going to local residents, and local businesses were not benefiting, promoters of operational privatization stepped in and seized the opportunity. Building on the claims of the promoters of prison expansion, operational privatizers stressed yet again the inefficiency of government. "We are not bound by the 'union limitations' that they are, so jobs in our facilities are open to local residents." Virginia developer Bahman Batmanghelidj proposed to the district officials that were dealing with the problems at the Lorton facility a 'simple solution': "I'll build two new facilities in West Virginia, providing jobs to the areas with high unemployment and you can close Lorton." When questions were raised about moving inmates so far from loved ones Mr. Batmanghelidji stated, "We'll build an airstrip to make it easier to visit them" (WP June 2 1989). Promoters of operational privatization continued the earlier claims of innovation, "I think the value of privatization is that we can be innovative, said Ted Nissen of BSS. "When you take over an old-time facility with old-time staff, I am thoroughly convinced there will be old-time problems." Clearly, Nissen was able to link the appeal of innovative techniques, the availability of local jobs, and the ongoing criticism of government run facilities. Further appealing to local economic and environmental concerns promoters claimed, "This is a clean industry, no pollution" and "prisons are recession-proof" (Gragg 1996: 50).

Even though the National Sheriff's Association took an official position against operational privatization, individually many Sheriffs found the private option economically and politically attractive. Sheriff Tom Mylander, of Hernando County, Florida, suggested turning over the keys to the new county jail to Corrections Corporation

of America, "I do not want to run the jail any longer. I'd prefer to devote our energies to law enforcement." Mylander also mentioned that the expense of opening the new jail would adversely affect his law enforcement budget (Sutton 1987). While the decision to privatize jails ultimately lay in the hands of county commissioners, many Sheriffs commended the decisions. Guy Tunnel, Sheriff of Panama City, Florida commented, "Law enforcement is my primary calling. We put people in jail, but if we're the proprietors of the jail, we have to take care of them. In my mind it's always been a conflict of interest and a difficult balancing act. A fellow sheriff told me he spends 70 percent of his time dealing with jail issues, which doesn't leave much time for law enforcement. It was a good call" (CCA Web site). Daron Hall, sheriff of Davidson County, Tennessee, further stated, "CCA provides healthy competition for us. We watch one another and subsequently, we both raise the quality of our operations. When CCA took the Metro-Davidson County Detention Facility contract, the Sheriff's Office had no idea what it cost to run this facility. The company has demonstrated an efficient way to run a facility. Metro is now one of the best managed facilities in the county" (CCA Web site). In this very real way privatization at the local level allowed officials to remain tough on crime, appear fiscally conservative, and bring much-needed jobs to economically depressed areas.

Another important strategy used in the push and sell of privatization of prisons was the establishment of a link between companies interested in cheap labor and operational privatization. The Prison Industries Act of 1984 (passed in 1986) revised regulations that made interstate markets more accessible. This, in turn, encouraged contracting out of prison labor. By authorizing 20 states to trade goods across state lines,

the Prison Industries Enhancement Program (PIE), under the Justice Assistance Act of 1984, expanded and diversified the market of products manufactured by prison industries. For example, in Lockhart Texas, Wackenhut took over a prison and invited corporations to set up a factory to employ inmates. Leonard Hill, owner of a company in Austin that assembled circuit boards, closed his factory, terminated 150 workers, and moved his plant to the Wackenhut prison. Texas taxpayers paid for the construction of a new factory, built to Hill's specifications, for which he pays one dollar per year in rent. Hill's company, Lockhart Technologies Inc, employs 100 inmates who assemble circuit boards for IBM, Dell and Texas Instruments, all of which are non-union labor. The inmates are paid the minimum wage with 80 per cent of their wages deducted to pay "room and board" and "victim restitution." Texas taxpayers cover the inmates' health care and workers' compensation. Wackenhut's prison warden, Scott Comstock: "I think that Texas, in particular, has proven that privatization is a viable alternative." Joe Gunn, president of the Texas AFL-CIO, accused Wackenhut of profiting from "indentured slave labour" in its private Texas prisons (Wheeler 2000). By 1995 the Wackenhut-owned facility housed two more companies: United Vision Group and Chatleff Controls. According to the Prison Industries Act of 1984, Wackenhut needed to consult with unions to ensure that no jobs were being taken. However, each state is responsible for its own interpretation of the federal law. In Texas and other southern states without a strong union presence, private companies only need to consult with unions located in the *county* in which they intend to utilize prison labor. Given that the growth of private operational prisons was taking place in largely rural areas without unions, the use of prison labor was legal.

The same claims used by proponents of the earlier version of convict leasing that were eventually outlawed were repeated by promoters of operational privatization. James

K. Stewart of the National Institute of Justice said this to the New York Times about the advantages of operational privatization, "The private sector seeks to have the people who are imprisoned actively employed so they gain skills they can use later on." Stewart continued touting both the value of restitution and cost effectiveness, "They can work for money so they can provide restitution for victims. Some pay the institution for the cost of their incarceration." Stewart concluded by citing Chief Justice Warren E. Burger, "(he) is very supportive of the idea that instead of having warehouses we ought to have factories with fences" (NYT March 3 1985 4:22). The attachment of such a respected figure to the claims of operational privatization promoters added legitimacy to these claims and pointed out the rationality of the program. Again the claim that prisons should pay for themselves was also made by proponents of earlier inmate labor practices that resulted in disastrous consequences. However, Prison Industries, operated in either public or privately operated facilities, continued to gain support on the political front. Oregon State Representative Kevin Mannix recommended that corporations should cut deals with prison systems just as Nike does with Indonesian government. "We propose that Nike take a look at their transportation and labor costs, we could offer competitive prison inmate labor." Workers in Indonesia were paid \$1.20 a day at the time of this statement (Erllich 1995).

The reemergence of the prison industries program and the growth of operational privatization of prisons reflect the ideological climate of the times and the policies driven by 'market rationale.' For example, both the Prison Industries Act and the growth of operational privatization are related to federal policy, the OMB Circular A-76.

"In the process of governing, the Government should not compete with its citizens. The competitive enterprise system, characterized by individual freedom and initiative, is the

primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on commercial sources to supply the products and services the Government needs”(Circular A-76 8/4/83).

Framing the use of prison labor as nothing new and appealing to the cultural values of capitalism and nationalism, convict leasing was redefined as a benefit of operational privatization. This circular establishes Federal policy regarding the performance of commercial activities and sets forth the procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house by using government facilities and personnel. The importance of the OMB A-76 to privatization of prisons cannot be understated. First, it calls for a comparison of the cost of contracting to the cost of in-house performance. Second, it defines inherently governmental functions. Finally, it states that “the government shall not start or carry on any activity to provide a commercial product or service if the product or service can be procured more economically from a commercial source.” (OMB A-76)

Prior to 1988, there was very little research in the area of operational privatization of prisons. Thus far, promoters and detractors of operational privatization relied on studies based on juvenile facilities, product provision, and success or failure of other privatized public services, such as garbage collection, transit systems and fire protection to support their claims. (See for example, Levinson, Robert [1985]; Camp and Camp [1984]) Inferring the cost savings from the privatization of other public services to the cost savings of operational prison privatization based on OMB A-76 reports was an effective sales tool for privatization promoters. The OMB had 1,700 cost studies that showed an average savings of 20 percent over previous costs, about 1.7 billion dollars a year (Samuel, 1984). Arguing that imprisonment does not differ from other public

services in ways that relate to efficiency and cost, Charles Logan(1990) and other promoters of privatization reasoned, “Evidence of successful private delivery of other services is cause enough to anticipate that it also would be feasible for corrections.”

Using the language of the OMB Circular as a starting point, the National Institute of Justice (NIJ) *contracted* with Abt. Associates to “identify the major trends in the privatization movement to supply policy officials and corrections professionals with timely information and to lay the foundation for future experimentation and evaluation.” This report addressed four areas: the private sector’s participation in prison work programs (prison industries), the available financing alternatives in the private sector, the extent to which states were planning to contract with vendors for operation of state facilities, and the issues that needed to be considered as privatization gained momentum. This report did not contain a cost-benefit analysis, it did, however, contribute to the legitimization of the practice of operational privatization insofar as it became ‘evidence’ to which promoters of operational privatization pointed in support of their claims. (See for Example Crane Testimony, Carlson Testimony; Mullen 1985; Logan and Rausch 1985) In addition, this report intricately linked prison industries with operational privatization in a positive way: The rationale and practice of each was used to support the rationale and practice of the other.

The President’s Commission on Privatization

The next important event separate from but important to CCA’s bid was the 1987 establishment of the President’s Commission on Privatization and the release of the report in 1988. The goal of the Commission was “to review the appropriate division of responsibilities between the federal government and the private sector, and to identify

those government programs that are not properly the responsibility of the federal government or that can be performed more efficiently by the private sector” (Executive Order No. 12607). Included in the Commission’s review of government activities were: Low-Income Housing, Housing Finance, Air Traffic Control, Educational Choice, Postal Service, Federal Asset Sales (Amtrak, Naval Petroleum Reserves), Medicare, Urban Mass Transit, and Contracting out of both Military Commissaries and Prisons. The establishment of this agency to deal with the problem accomplished several important goals for the private-prison industry. First, the mere establishment of such a commission illustrated the severity of the problem and the inadequacy of the way the prison problem was being dealt with. Thus, it facilitated the life of the prison problem as one of government inefficiency. Second, through the recommendations of the Commission, the industry was able to overcome many of the challenges to its legitimacy. A close examination of the recommendations reveals the specific techniques employed.

Challenge 1: Legality of Prison Contracting: “Inherently Governmental Function”

The Commission, citing statutes (18 USC Section 4082 {a,b}), recognized the authority to enter contracts for the operation of federal prisons. Citing the earlier testimony of the general counsel for the Federal Bureau of Prisons during the subcommittee hearings (discussed above) the Commission concluded that the legislative history of Public Law 89-176 was “clearly meant to extend to adult inmates the kind of authority the Attorney General already has in contracting with private agencies.” This historical precedent, in combination with the reality that, “no state has enacted legislation specifically prohibiting privately operated correctional facilities, most state statutes are silent on the subject and a few states have passed specific legislation authorizing contractual prison operations” the

Commission effectively countered the illegality claim and firmly dismissed challenges to further privatization of prisons at all levels. (RPCP 1988:149)

While not specifically cited, a broad interpretation of the OMB A-76 language that refers to inherently governmental functions was used to overcome the claims that incarceration was an ‘inherently governmental function’ and to turn it over to private industry was illegal. The Commission stated that by contracting for operation and management of prisons and jails at any level of government, the “government does not relinquish its authority or abdicate its ultimate responsibility” (RPCP 1988:149). Because prisons remain subject to the supervision and regulation of the government and are subject to the rule of law, the privatization promoters argued, operational privatization of prisons is a *service in support* of an inherently governmental function, rather than the function itself. Thus, the commission made the following recommendations:

“Contracting should be regarded as an effective and appropriate form for the administration of prisons and jails at the federal, state and local levels”... “Proposals to contract for the administration of entire facilities at the federal, state or local level ought to be seriously considered” (RPCP 1988: 149-150).

Challenge 2: Accountability and Liability

The Commission acknowledged the charge that contractors are insulated from the public and not subject to the same political controls as government officials. However, citing the testimony of CCA’s Tom Beasley, the Commission concluded that this was not necessarily the case. “Some operators are contractually bound to the standards of the American Correctional Association, the field’s primary professional association” (RPCP 1988:159). The Commission continued the themes stressed in the earlier subcommittee hearings by Richard Crane, noting the professionalism and volunteerism of the industry

while criticizing the publicly run facilities. “Several facilities have been accredited by the Commission on Accreditation for Corrections, a private organization that applies ACA standards in a voluntary program of accreditation. Most government correctional facilities are not accredited” (RPCP 1988:150).

To address the claim of privatization detractors that contracting may cost the government more by increasing its liability exposure, the Commission drew upon the claims making technique of typifying stories. By stating that “liability issues have not proved to be an insurmountable obstacle in jurisdictions where contractual operations have been established,” the Commission implied that liability in general was a non-issue. (RPCP 1988:151) Once again the Commission drew upon the theme established earlier to counter the liability claims of critics of private prisons: criticize the public system by citing current and past litigation. The Commission pointed out that the public system had encountered liability litigation in the past and went on to suggest that privatization could reduce the amount of litigation and liability by the development of ‘model prison contract provisions.’ Thus, the commission recommended: Recommendation (12)

“Problems of liability and accountability should not be seen as posing obstaclea to contracting for the operation of confinement facilities. Constitutional and legal requirements apply, and contracted facilities may also be required to meet American Correctional Association standards.” (RPCP 1988:161)

Challenge 3: Quality and Cost Control

At the time of the Commission’s hearings and final report there was no literature that compared the quality of operational private prisons to government-managed facilities. However, charges that quality suffered as a result of privatization had been made by various groups including AFSCME. The Commission relied upon data provided from a

1984 NIC study, which came before move to operational privatization in the core adult prison population. This study's primary concern and findings, however, were related to private sector involvement in prison *services* rather than operation. Nonetheless, the Commission used a creative interpretation of the findings to counter the claim of low quality pointing out that "Responding administrators cited more benefits than liabilities (31- to 21)." Further, the Commission effectively countered cost-control concerns with quality issues. Citing the same 1984 study, the Commission reported that "three-quarters of the agencies reported some savings, even agencies not reporting savings concluded that the operational benefits more than outweighed the cost factor" (RPCP 1988: 151).

The cost-control claims of the opposition were dismissed by the Committee: "Most available figures on costs of government prison operations are incomplete" (RPCP 1988: 152). The implied message: the government was not doing a good job keeping track of its expenditures and there was a strong likelihood of fraud, waste and abuse. Further appealing to the general theme of the administration of tracking down and doing away with fraud, waste and abuse, the Commission recognized that "a contractor's fee tends to capture more of the costs of running a prison and to clarify which costs remain with the government" (RPCP 1988:151). Therefore, the Commission recommended:

Recommendation (13)

The Bureau of Prisons should be asked to prepare an analysis of total government costs for an existing federal correctional institution. The General Accounting Office, the Office of Management and Budget, and the National Institute of Justice should be asked to cooperate with the Immigration and Naturalization Service (INS) in preparing cost studies that compare currently contracted detention facilities with those run directly by the INS (RPCP 1988: 152).

Recommendations 14 and 15 and 16 all urge the increased use of private operation. Recommendation 14, using the history of private operation of facilities that house the less-visible prison populations as support, urged the BOP to contract “even one (facility that houses ‘mainstream’ population) to serve as a valuable test for prison contracting.” (RPCP 1988:153) Further, the Commission recommended a study of the feasibility of contracting for the private operation of a Federal Correctional Institution or U.S. Penitentiary. The Commission recommended “the Bureau, as an experiment, should contract for the private operation of one new facility comparable to at least one government run facility, and cooperate with outside researchers in an evaluation of the results” (RPCP 1988: 153). The language supporting these recommendations perhaps best demonstrate the techniques used in the dismissal of the claims of privatization opponents. Although the Commission earlier recognized that there were no cost comparisons that were complete, the Commission emphatically reasons “that private companies are more likely to design for efficient operation, build faster, at better prices and can usually pay off debt faster than governments can.” Therefore, the Commission urged pursuit of lease-purchase agreements (RPCP 1988: 154). Further, the commission continues the aforementioned technique of criticism of the government-operated system by referring to the red-tape factor, “The Bureau of Prisons has expressed interest in lease-purchasing for new facilities, but its authority to do so is still under discussion in the executive branch” (RPCP 1988 :154). Recommendation 17 ties the prior recommendations together. The reasoning here is circular: because state and local governments need more information to help them identify what administrative reforms and conditions are best for the

administration of prisons, continued research is needed. Because research is needed, experimentation is needed.

The Commission's recommendations are problematic in several ways. First, it reasons that because it is already being done and there is no law against it, it must be legal. There is a complete disregard for the consideration that the law has simply not caught up with changes in society as is so often the case. Second, the new definition of 'inherently governmental function' put forth by the Commission neglected the importance of turning the restriction of liberty into a service. Third, it encourages states to continue the practice as policy, while at the same time points out that it is not under the purview of the federal government. Fourth, it carries a contradiction by recommending that the federal government continue the practice based on the developments in state and local facilities while it notes that federal facilities are different from those state and local facilities. On the one hand, the Commission assumed that local and state decisions regarding operational privatization were under its purview and encouraged states and localities to continue their practice for jails and prisons, while on the other hand it addressed the objections of privatization as state and local issues and not relevant to the considerations of the commission (RPCP 1988: 154).

The affect of the establishment, hearings and final report of the President's Commission on Privatization can be viewed from two different perspectives: The formal charge of the Commission was to recommend alternative approaches for administering government programs and services. Given that operational privatization was already moving forward at the local and state levels, the formal impact of the Commission was relatively small. As Charles Logan put it, "The President's Commission did not have much impact, it received little media attention and most of the research on privatization

that NIJ supported was initiated by James Stewart, the director of NIJ who already believed in privatization before the commission was formed or issued its report” (Interview 12/01/04). However, and perhaps more importantly, the Commission’s activities and final report played a significant symbolic role in operational privatization. The mere fact that the federal government was discussing the issue and recommending it, local and state correctional decision makers now had support for their privatization decisions. Further, the Commission legitimated the promoters of operational privatization as the authority on the subject.

Charles Logan, a known supporter of operational privatization was invited to write the section on prisons, “They asked me to write a draft, then they reworded it some and added their recommendations after some discussion. I was nominated for that purpose, I think, by James Stewart, Director of NIJ at the time” (Interview 11/30/04). In addition, of the four people who testified at the hearings on prisons, three were supporters of operational privatization. Norman Carlson’s replacement at the BOP, Michael Quinlan, expanded his predecessor’s view that privatization was a needed and successful option for the Federal Bureau of Prisons, to include support for further research in the area. Indeed, according to Charles Logan, “Michael Quinlan was open-minded enough to provide logistical support for one research study of mine” (Interview 12/01/04). James Stewart, director of NIJ, not only testified himself about the positives of privatization but also nominated Logan as the writer of the Commission’s justifications for their recommendations. Tom Beasley of Corrections Corporation of America, testified to the successes of operational privatization. This testimony relied heavily on the anecdotal evidence as there were no cost-benefit analyses available.

The lone voice in opposition to operational privatization was Ira Robbins representing the American Bar Association. Dr. Robbins' testimony focused on potential legal issues surrounding operational privatization. As noted above, the Commission dismissed these claims as not 'insurmountable' and acknowledged that the American Bar Association "is currently working to develop model contract provisions to guide resolution of issues related to future prison contracts" (RPCP 1988: 151). Noticeably absent from these hearings were representatives from AFSCME, the leading opponents to operational privatization. The recommendations of the Commission for operational privatization can thus be viewed as predetermined. The selection of Commission members and experts and which ideas would be forefronted were heavily skewed in favor of operational privatization. Either way the end result was the same, the Reagan Administration's fiscal 1989 budget proposed two pilot projects. One would focus on federal prison industries, the other on private operation of federal minimum security prisons (Joel, 1989).

Conclusion

Corrections Corporation of America's bid to take over the Tennessee prison system was a crucial event in the emergence of operational prison privatization and was an important part of the subsequent assumption of power as it set in motion a chain of developments. Even though the company ultimately lost the bid for the entire state system, this event had lasting effects. As then-Senator of Tennessee Robert Rochelle (D) put it, "I think the CCA proposal was made for bargaining purposes, giving CCA the opportunity to alter its proposal and still end up managing at least part of the Tennessee system. Offer to take it all, settle for what you can get." (Vise 198)That is exactly what happened. First,

operational privatization transformed from an idea into a practice. CCA ended up with several facilities and gained valuable exposure for the future developments. The exposure and timeliness of the bid pushed not only CCA but other private companies into the legitimate public market for criminal justice decision makers at every level across the country. Second, CCA and operational privatization gained legitimacy through recognition as 'experts' in the field by local, state and federal officials, as seen by its participation in subcommittee hearings and the affect they had on the recommendations set forth by the President's Commission on Privatization. Finally, as the debate over private prisons occupied policy makers, corrections professionals and their unions, prison activists, prisoner rights activists and scholars, the discussion of alternatives to incarceration was lost. Nowhere in the bid, the subsequent subcommittee hearings, or the Commission's final report did the words 'rehabilitation' or 'recidivism' appear.

CHAPTER VI

PHASE TWO: MAINTENANCE

“We have said this was a good idea and that there was a need and that the investors were there. But the fact is that a good idea has to be sold, enthusiastically and untiringly. Without Tom Beasley’s ability to talk to governors, legislators and commissioners, to persuade them to listen, this company would have never succeeded. Consequently, if this company had not succeeded there would not be any private corrections industry. There simply would not be.” (Interview with Don Hutto, CCA Source).

This statement, spoken by the former president of the American Correctional Association and current vice president of CCA illustrates the importance of the developing business, political and institutional entanglements and those networks entrenchment in the broader social, political and cultural processes of punishment. By 1993, less than 10 years after CCA placed it’s bid to take over the Tennessee prison system, spending on corrections across the country increased from about 10 billion dollars to over 30 billion dollars per year (BJS 1992-2001). The number of prison beds operated by private companies increased to over 20,000. A crucial part of this increase and the ongoing accumulation of power by and maintenance of the industry can be understood, in part, as resulting from the corrections industrial complex. This sub-government, best described as a collection of people and groups whose financial and political well being rises and falls with the size of the prison population, includes

politicians, business leaders and criminal justice officials. The shape of the corrections industrial complex and the interrelationships among policy makers, private industry and agency heads is critical to understanding *how* specific ideas and people in the operational privatization process discussed up to this point gained and continue to gain access to platforms, shape corrections policy and spending, and perpetuate their own existence.

The Corrections Commercial Complex

A sub-government exists when the “decision making within a given policy arena rests within a closed circle or the elite of government bureaucrats, agency heads, interest groups or private interests that gain from the allocation of public resources” (Lilly and Knepper 1993: 151). Like the military industrial complex, the corrections commercial complex is an interweaving of private business and government interests. This arrangement is also referred to as an iron triangle. It is a triangle because of the three sides--federal bureaucracy, key members of congress and private industrial interests-- and it is iron because the strength of each of the sides protects itself as well as the others from external influence, regulation and public accountability. When combined, this sub-government has the power to determine public policy free from scrutiny with far-reaching economic, political and social consequences (Adams 1984).

According to Lilly and Knepper (1993), one characteristic of a sub-government is each of the participants shares a close working relationship supported by the flow of money, information and influence. The relationship between politicians, industry and agency heads started at the inception of the idea of operational privatization. Tom Beasley was the head of the Republican Party in Tennessee; Doctor R. Crantz was the respected, successful businessman with connections; and Don Hutto was the president of the

American Correctional Association and the Director of Corrections in Virginia. Separately, these individuals had access to and relationships with particular audiences. Beasley, was well known in the Republican party and associated with politicians regularly. Crantz, was a partner in several large corporate ventures and had connections to Sodexo–Marriott Services, the largest supplier of food services to correctional facilities. Hutto, according to Beasley, gave them the federal connections the company needed. “Don’s (Hutto) national reputation gave us an advantage with the federal government. He was involved in a tier of all of the top management on the federal side” (CCA Source: 2). The positions of power and access each individual had, when combined to form CCA, provided the platforms and network needed to propel operational privatization from an idea to a viable option and eventually into an accepted practice.

More Prisoners=Higher Profits

Nils Christie, a Norwegian criminologist claims that companies that service the criminal justice system need sufficient quantities of raw materials to guarantee long-term growth. “In the criminal justice field, the raw material is prisoners and the industry will do what is necessary to guarantee a steady supply” (Christie 2000: 87). Logically, for the supply of prisoners to grow, policies must ensure a sufficient number are incarcerated regardless of whether crime is rising or incarceration necessary. Jerome G. Miller of the National Center on Institutions and Alternatives expressed serious concern about the driving motive behind private prisons, “Within the corrections industry, the incentives are in the wrong direction--to keep prisoners as long as possible.” Miller adds that the annual meeting of the American Correctional Association now seems like a gathering of major defense contractors, complete with lobbyists, financiers and hospitality suites--rather than an organization looking to manage society’s ills. “There are ominous implications. In the

long term, I believe we will have a prison industrial complex, so that criminal justice policies will be virtually dictated by these companies' lobbyists" (Smalley 1999). Joel Dyer echoes Miller in his book *The Perpetual Prison Machine*. He believes that the annual corrections budget has increased 700 percent to 50 billion dollars in 18 years because of the 'Vegas style' atmosphere in the corrections industry. This means "thousands of corporations are benefiting from crime by eating at the criminal justice trough" (Dyer 2000: 11). The prison industry is already enormous and includes not only builders, managers and financiers of private prisons, but everyone from the phone companies that vie for lucrative prison contracts to the publishers of the Corrections Yellow Pages to the manufacturers who rely on cheap inmate labor to assemble their products and the privately managed health care providers (Smalley 1999). As the list of companies that benefit directly and indirectly from the corrections industry continues to grow, this side of the triangle (private industry) becomes stronger and increases its ability to affect policy. One way to ensure their continued existence is to push for laws and policies, through the use of political connections and lobbyists, that allow them to operate.

The second characteristic of a corrections commercial complex, or sub-government is a distinct overlap between the societal interest and government personnel. The close ties between the private-prison industry and government policy makers is evidenced in the relationship between CCA and the government officials in its home state of Tennessee.

Lobbyists and Political Connections

According to its annual report, “the company, from time to time, retains registered lobbyists”(SEC 1997 def 14a). These lobbyists assist the company with promoting legislation to allow the privatization of correctional facilities. In 1997, CCA had seven registered lobbyists in the state of Tennessee alone. Tennessee’s Speaker of the House in the General Assembly is married to CCA political lobbyist Betty Anderson and Governor Sundquist’s former Chief of Staff owned CCA stock while she was advising the governor on prison privatization. From 1994-96, Doctor Crantz, CCA’s CEO, and Thomas Beasley CCA’s chairman emeritus, donated \$60,491 to Tennessee lawmakers—including \$38,500 to Governor Sundquist’s reelection campaign. Shortly after the donation Governor Sundquist endorsed a controversial arrangement whereby CCA could contract to build and operate a 1,540-bed jail, funded with 47 million dollars in municipal bonds. The arrangement circumvented a Tennessee statute that allows only one privately managed state prison to operate in the state at a time. In addition, Beasley is the former chairman of the Tennessee Republican Party. Senator Robert Rochelle received at least \$1000 in campaign contributions from CCA board members and later sponsored a bill to permit privatization of any newly built state prisons. (See Sen. Rochelle’s transportation legislation in transportation section). Beasley and Crantz also donated to Senator Jim Kyle, the chairman of the Select Oversight Committee on Corrections (Friedman 1997). Because of the overlap in government agencies and private-industry administrators, and their shared values and interests, the line between the public good and private interest becomes blurred.

According to Kara Gotsch of the National Prison Project of the American Civil Liberties Union, “Their goal isn’t necessarily to rehabilitate, but instead to keep as many

people as possible in prison. It's how they make their money" (Smalley 1999). And make no mistakes about it; the goal is to make money. In a letter to CCA shareholders, Doctor Crantz said, "Revenues, after restatement to reflect acquisitions, grew 36% to \$207 million. Greater economies of scale pushed profitability up and resulted in net income growth of 81% to \$14 million, even while occupancy remained at 94%. Cash flow is up significantly" (CCA Annual Report 1996). Joel Dyer, while researching his book, also noticed the focus that the company has on making money. A sign outside of the CCA facility in Northeast Ohio read "Yesterday's closing stock price..." followed by a dollar amount (Dyer 2000).

The third characteristic of the corrections commercial complex is the ability to operate without scrutiny and exercise enormous influence over corrections policy. From the point of view of those within this sub-government, they are operating with a high degree of effectiveness (Lilly and Knepper 1993). Evidence of their actual operation can be found in the problems that private prisons face and the lack of attention given to those problems and by the passing of new legislation that fails to address the issues. Dyer (2000), along with others wonders, "How many lives are being adversely affected because we have turned the administration of justice into a free market experiment." An economy of scale, as mentioned in CCA's shareholder report, is the number of inmates within the prison facility and the level of security provided. The larger the economy of scale and the lower the level of security, the less the cost per inmate (Schicor 1995). The hotel logic of filling every available bed, every night increases the profit of the private-prison management company. Conversely, empty beds in a publicly run facility decrease the cost to taxpayers.

The pressure on private prisons to fill beds has resulted in problems for the private-prison industry. First, all beds need to be filled, so private prisons contract with other jurisdictions to move inmates to their facilities. For instance, the Northeast Ohio Correctional Center, a medium security facility, began receiving inmates from Lorton Correctional (Washington, D.C.) facility in 1997. Within 10 months, 20 stabbings had occurred. Two of the inmates charged in the stabbing were maximum-security prisoners. The company was accused of mixing medium-security prisoners with maximum-security prisoners and housing them in a medium-security facility. At the time of the stabbings (1998), 300 of the 2000 prisoners at the CCA facility were maximum-security prisoners. Two months later six prisoners escaped the facility. The local community's fear and concern pertaining to CCA's ability to operate the facility safely seemed warranted. In fact, relations were so bad between local officials and CCA's prison officials that Mayor George McKelvey said about CCA "(they are) as deceitful and dishonest as any company I've ever dealt with" (Thompson 1998). It is less expensive for private prisons to house maximum-security prisoners at minimum-security facilities; however, the long-term cost to the state is immeasurable and often deadly. For example, in 1996 CCA decided to fill beds at its minimum-security facility in Houston with 240 sex offenders, some rapists, from Oregon. In August 1996 two of the offenders beat up a CCA guard, stole his car, and escaped. Understandably, Texas officials were outraged because they had no idea that violent criminals from out of state were in their minimum-security prison, the escapees could not be prosecuted because Texas had no law in place regarding private-prison breakouts, and, finally, the manhunt was at the expense of the state (Smalley 1999).

According to Ripley and Franklin, in a sub-government decision-making is normally invisible and non controversial and operates without control from outside forces

(Lilly and Knepper 1993). Not only has the pressure to fill beds caused problems within the facilities, but the need to transport prisoners from one facility to another to ensure maximum capacity has caused problems for employees, prisoners, local governments, law enforcement officials and local citizens. Ironically, there were more regulatory guidelines for shipping cattle or other commodities across state lines than for transporting prisoners. This lack of safety standards and government oversight of the prisoner transport industry has had deadly consequences. Although there are no reporting requirements for private companies that haul convicted prisoners across this country, media reports indicate that in three years alone, 21 violent convicted prisoners escaped during transport by private companies (Friedman 1997).

Despite this information the Tennessee state legislature passed a bill sponsored by senator Robert Rochelle that would exempt private-prisoner transport guards employed by the Corrections Corporation of America (CCA) from state training requirements. CCA operates a subsidiary, TransCor America, that transports prisoners nationwide with a fleet of more than 100 vehicles. In 1996, TransCor earned \$10.6 million in gross revenue. (Friedman 1997). In 2003, Transcor reported that it had transported over 30,000 prisoners for over 1000 local, state and federal agencies (Transcor 2004).

According to Lilly and Knepper (1993), although these sub-governments have no official power to make policy decisions, they influence many of the decisions that affect the lives of lawbreakers in this country. The American Correctional Association (ACA) can best be described as being to correctional officers and prisons what the American Medical Association is to doctors and hospitals. This is a private, professional organization that exerts considerable influence over correctional policy in that it accredits agencies and programs and has recently expanded its role to uniting public government

and private business. For example, accreditation of a program from the ACA paves the way for additional funding. This reliance of the government on ACA standards promotes a close working relationship between the ACA, government agencies and private companies. Co-founder of CCA, Don Hutto was president of the ACA in 1983. One area of ACA accreditation and standard setting is the arena of prison healthcare.

In a further attempt to cut costs and boost the bottom line, managed-care companies have been contracted by many publicly and privately operated prisons. The managed-care arrangement, according to industry and government officials, saves the public money and improves healthcare for prisoners. But there is reason to question the motives and quality behind much of the correctional healthcare. According to William Allen of the St. Louis Dispatch, an investigative team spent five months researching the prison health care system and discovered some unsettling facts: "At best it found an industry trying to find its way through complex problems and at worst it was an industry that takes advantage of the public's ill will toward inmates to give poor care while making a profit" (Allen & Bell 2000).

Correctional Medical Services Inc. (CMS) of St. Louis provides healthcare to more than 268,000 inmates at 341 sites in 30 states, including CCA's Santa Fe Detention Center in New Mexico (Notch 2000). The investigative team found more than 20 cases in which inmates died as a result of negligence, indifference, understaffing, inadequate training, or overzealous cost cutting. Some of the industry's leaders are putting inmate health care in the hands of doctors who have been disciplined by state medical licensing boards, some of the doctors cannot write prescriptions, and administrators are second-guessing doctor's diagnoses based on economic grounds. Often times a conflict between the patient's best interest and the self-interest of the physician are at odds. For instance,

one doctor was offered a 250 dollar bonus each time he eliminated an emergency room visit for a patient. According to facility nurses, the medical staff cuts costs wherever they can, including using water instead of peroxide and administering expired medication: “We save money because we skip the ambulance and take them straight to the morgue,” said nurse Dianne Jackson, after being implicated in the death of a Florida inmate (Allen & Bell 2000). Associate editor of *Justice Quarterly*, criminologist Michael Vaughn said recently, “Appalling things are going on in some of these facilities in the name of efficiency, managed care and saving money. For every death there are hundreds of cases of inmates in these correctional facilities who are receiving substandard care” (Allen & Bell 2000). An estimated 3.75 billion is spent on correctional health care, and the industry’s drive for profit should raise caution flags After all diseases, don’t respect bars and each year 12 million inmates return to society. Edward Harrison, president of the National Commission on Correctional Healthcare points out that “without effective medical treatment in jails and prisons, released inmates pose a threat to the public health of the community” (Allen and Bell 2000). For the private prison management company, every dollar not spent on healthcare is profit and the patient behind bars is literally a captive audience.

The corrections commercial complex has become a permanent fixture within the policy arena of punishing law breakers. In addition, participants in this sub-government define their activities in the public interest, which is the fourth characteristic identified by Lilly and Knepper (1993). Private companies and professional organizations are quick to tout their claim to be operating in the public interest. Private-prison officials do not claim to be operating in their own interest while interfering with the public good. In fact, they claim to provide a public good. Tom Beasley, founder of CCA, expressed this unity of

interests by stating that, “There are rare times when you get involved in something productive and profitable and humanistic. We’re on the verge of a brand new industry” (SEC DEF 14 1997). Yet, when looking at the corrections commercial complex, and the profits and practices within CCA in particular, we have to question just how much emphasis is on the public interest and how much is on profit. Why does a company that reports so much profit operate a facility at only a few percent savings, at best, to taxpayers? Private- prison management companies incur costs that publicly run facilities do not. Attorney fees for contract preparation and negotiations, marketing and advertising costs, monies paid to lobbyists who look out for CCA’s interests in the political arena and lawsuit settlements are only the beginning of the company’s overhead, add in retainer fees to board members, political donations, and bonuses to the few at the top, and the picture becomes clear. The motive behind this business is to make as much money as possible and share it with those only in the small inner circle, and do not pass it on in the form of savings to the taxpayer. For example, in CCA’s 1998 DEF14a statement to the Securities and Exchange Commission, the company makes every reasonable effort to ensure that compensation to the executive officers of the company is tax deductible. The company does this by paying the officers less than one million dollars each per year. Anything over that is awarded using the performance based compensation, which under section 162 of the Internal Revenue Code of 1986, does not limit deductibility to one million dollars (SEC def 14a 1998). In the same year, Doctor R. Crantz, founder and CEO of CCA, was named one of Ernst & Young’s Entrepreneurs of the Year for 1998. CCA’s stock increased 10 fold from 1994 to 1998 (Smalley 1999). Between 1986 when the company went public and 1997 the value of CCA’s stock soared from 50 million dollars to 3.5 billion dollars (Greene 2003: 100).

The Inner Circle

In 1997, CCA reported that it paid the law firm of Stokes & Bartholomew 1,109,000 dollars. Mr. Bartholomew is also a director of CCA for which he receives 24,000 dollars/year and 1,000 dollars per board meeting he attends. Also in 1997, Mr. Joseph Johnson, Jr. was paid 382,000 dollars for consulting services in connection with the company's successful consummation of contracts with Washington, D.C., for the housing of inmates in the Northeast Ohio facility and the Community Treatment Facility. In addition to being a board member of CCA, for which he is paid a 24,000 dollar retainer fee and 1000.00 dollars per meeting attended, Mr. Johnson is an owner of National Corrections and Rehabilitation Corporation, which was paid 911,000 dollars by CCA in 1997. Mr. Johnson was also awarded 80,000 shares of stock valued at 2,600,000 dollars for his "efforts in building and facilitating the company business relationship with certain governmental agencies, departments and entities" (SEC DEF 14a 1997). In 1997, Doctor R. Crantz, CEO and Chairman of the board of CCA, was paid a salary of 359,000 dollars. When stock options and bonuses are added in, the total for 1997 was 13,976,209 dollars. Mr. Crantz was also on the board of Sodexho-Marriott Services, the provider of facilities and food services to CCA. At this time (1997) Sodexho owned 15.5 percent of CCA's stock. In addition, Mr. Crantz was also chairman of the board of directors of Prison Realty Trust, which develops and owns corrections and detention facilities, thirteen of which are operated by CCA (SEC DEF14a 1997).

In contrast to the high pay and bonuses received by CCA's upper echelon, CCA's prison guards' starting pay ranges from \$8 per hour to \$11.82 per hour, for yearly pay ranging from \$16,640 to \$24,600 (1997 CCA Annual Report). The yearly salary of a guard is less than the retainer fee paid to a member of CCA's board. Incidentally, the

board only meets six times a year, all expenses are paid and each member receives an additional 1,000 dollars for attending, an additional 500 dollars for attending a committee meeting, and an additional 250 dollars for chairing a meeting (SEC def 14a 1997). CCA guards receive a certificate for maintaining perfect attendance 365 days in a row. One employee is awarded 500 dollars and 100 shares of company stock if he/she is named employee of the year (CCA 1999). Mr. Joseph Johnson, Jr., a board member, was awarded 80,000 shares of stock in appreciation in 1997 alone (SEC def14a 1997). CCA prison guards receive three weeks of company paid training (Notch 2000). In contrast, Michigan Department of Corrections guards receive 16 weeks of training and have a starting pay of 13.62 per hour (Ballard, 1999 MDOC).

CCA has engaged in extensive marketing in order to increase the size of the private corrections industry and to strengthen its position as an industry leader, including television commercials and magazine ads. Middle Tennessee residents were used as guinea pigs for CCA commercials and their Norman Rockwell-type characters (Smalley 1999). These ads demonstrate to those with a public duty to punish that those devoted to the private pursuit of profit actually share the same goals. This is characteristic of the operation within a sub government.

In April 1999 CCA agreed to pay 1.65 million dollars to settle a class-action lawsuit brought by inmates at the Northeast Ohio Correctional Center. The lawsuit claimed that the prison provided inadequate medical care and the guards were abusive (Hanson 1998). In November 1998, CCA was cited by D.C. Department of Corrections inspectors for seven contractual deficiencies totaling 1.7 million dollars in fines. Ironically, that is close to what CCA bills the state each month, \$1,745,000. While CCA asked for forgiveness of the fines, and received it (all except \$400,000) the company's

fortunes continued to soar. In October, CCA reported 1998 revenue of 179 million dollars and net income of 61 million dollars, up 63 percent from the year before (Hanson 1998). This is further evidence of one side of the triangle having the ability to protect and strengthen the other sides.

Financial Troubles

In 1998, CCA had a bed capacity of 72,000 and its stock was trading at 45 dollars per share. In 2003, CCA had a bed capacity of 59,000 in 21 states, operated 60 facilities, including 37 the company owned, had 40 juvenile facilities leased to other operators, and its stock traded at \$27.99 per share (CCA 2003). In the five intervening years, the private prison industry has experienced what analysts refer to as a 'wild ride that would make dot-comers blush.' In 1999, CCA spun off and then merged into Prison Realty Trust (PZN), a real estate investment trust (REIT) that is exempt from corporate taxes if it meets certain conditions. A primary condition of an REIT is that it distributes 95 percent of its income to shareholders, making it extremely attractive to investors. PZN failed to meet these conditions due to cash-flow problems, lost its REIT status and reported a 62 million dollar loss. Angry shareholders filed class-action lawsuits citing false claims on Securities and Exchange Commission filings; they were particularly concerned with undisclosed payments from PZN to CCA (Leighton, 2001). In 2000, PZN and CCA reported a combined loss of 265 million dollars and stock plummeted to a 52 week low of \$2.12. Localities and governments dependent on CCA services were sent scrambling. There was concern over the potential of bankruptcy. According to Joel Dyer (2000) if this were to happen it would be disastrous. State officials agree pointing out that they are not equipped with the personnel or the funds to take over the facility if CCA decides to close

up shop. There are security issues, not to mention financial ones. At one time stock prices dropped as low as \$.18. However, Pacific Life Insurance Co., one of CCA's shareholders, offered a 200 million-dollar restructuring plan and Lehman Brothers refinanced PZN's one billion-dollar credit line on the heels of PZN being awarded a 780 million dollar federal contract (Leighton 2001). A major player in acquiring the contract, which guarantees 95% occupancy rate, was Michael Quinlan, the former head of the Federal Bureau of Prisons. He is a top executive at PZN and the Chief Operating Officer and Executive Vice President of CCA (CCA Company Profile).

Strengthening the Triangle: Political Contributions & Influencing Policy

As a result of these financial difficulties there has been a change in CCA's executive offices. However, the relationship between government and CCA's interests has grown stronger and the political contributions continue to grow, particularly in those states that have seen a growth in privatization. An examination of the political contributions and corrections-related legislation in 2000 revealed that private-prison companies either were able to maintain their positions as service providers for state corrections systems despite adverse budget pressures or were able to repel efforts to reduce state reliance on private-prison companies (Bender, 2002). In the 2000 election cycle, private prison companies contributed more than \$1,125,598 to 830 candidates in 14 southern states overall. CCA alone made 600 contributions, totaling more than \$443,300 to candidates and \$36,568 to state political-party committees (Bender 2002). In several states, lawmakers considering corrections policy received campaign contributions from the companies that stood to profit from the decisions. North Carolina lawmakers, for example, amidst reports of poor staffing and management practices, escapes and violence in private correctional facilities,

imposed limits on the construction of new private prisons and banned the importation of out-of-state prisoners to private facilities. Additionally, state corrections officials took over operations at the two existing CCA facilities in 2000 and leased the facilities back for 5million dollars a year. However, by 2001, the state's move away from private correctional services was reversed, and once again private companies benefited. Faced with the corrections department's estimated need for an additional 10,000, beds lawmakers authorized the state to contract out with private prison-building firms for up to three new 1,000-bed prisons, which the state would then buy back using a complicated purchase-and-lease process. This agreement, Senate Bill 25, signed by Governor Michael Easley in 2001 committed the state to a 20-year contract with the estimated total cost of 246.6 million dollars, about 100,000 million dollars more than the facilities would have cost in a straight-purchase agreement. Supporters of the build-and-lease proposal contributed more than \$226,519 during the 2000 election cycle to candidates that would later vote on SB25. CCA, its lobby representatives, and executive Tom Beasley gave generously to 44 different candidates, and, in the end SB 25 passed both the house and senate. Notably, 40 percent of House representatives and 55 percent of Senators who voted in favor had received campaign contributions from the interests that stood to benefit financially from its passage (Bender 2002).

In addition to influencing legislation that makes an end run around previous legislation the private prison industry has also effectively shot down legislation that would limit or impose penalties on the industry. For example, Georgia House Bill 456 would have banned future private facilities without the express permission of the state and local authorities. The measure also would have banned importation of sex offenders or other violent criminals and required private facilities to repay any costs associated with

the capture of escapees. House Representatives approved the measure 116- 54. However, by the time it reached the Senate Corrections Committee, corrections industry lobbyists had made 149 donations totaling 56,650 dollars to the Committee chairman and other members. CCA's lobbyists funneled 25,950 dollars and contributed more than 12,500 dollars to the Democratic Party of Georgia (Bender 2002). HB 456 and the limits it would set on the industry, promptly died in committee.

The private-prison industry also uses its role in providing a public service and providing jobs to influence legislation. For example in 2001, when corrections officials began transferring inmates out of private facilities and into public facilities, and Mississippi Governor Ronnie Musgrave vetoed a budget that would pay for empty private-prison beds, CCA announced that it would be closing its 1,000-bed Tallahatchie County facility, putting more than 460 people out of work. The announcement made the prospect of job losses very real, increasing public pressure on lawmakers (Wagster 2001). Private-corrections executives and lobbyists, in addition to threatening to shut the doors, flexed their muscles and met with two of the three lawmakers who had to approve the crucial change in the final budget bill. Both of the influential lawmakers, Sens. Jack Gordon and Bunky Huggins, had received campaign contributions from accounts controlled by Wackenhut and CCA lobby firm Buddy Medlin & Associates, Inc. Despite previous efforts to reduce corrections spending and the corrections department's insistence that additional beds were not needed, taxpayers in Mississippi saw legislators, many of them recipients of campaign donations from private corrections executives and lobbyists, side with their campaign contributors and powerful industry lobbyists and overrule a gubernatorial veto resulting in the diversion of 6 million dollars to pay for empty prison-bed space for non-existent "ghost inmates" (Wagster 2001). No longer were

advocates in Mississippi arguing over how much money privatization could save taxpayers. Instead, they argued that taxpayer subsidies were necessary in hard economic times to keep existing prison jobs. The Mississippi lawmakers' decision to side with their campaign contributors and fund empty prison beds at the expense of other state programs demonstrates how private interests can outweigh the public interest where privatization of public services is concerned. (For a complete description of these and other campaign contributions and legislation see Bender, 2002.)

Shaping Criminal Justice Policy

In addition to strengthening their relationship with policy makers via campaign contributions and scare tactics, CCA has continued to secure its involvement with professional organizations that play a major role in criminal justice policy making. The American Legislative Exchange Council (ALEC), founded in the early 1970s, describes itself as "A bipartisan membership association for conservative state lawmakers who share belief in limited government, free markets, federalism and individual liberty" (ALEC 2005). Others, however, charge that it is "one of the nation's most powerful and least known corporate lobbies" (Ollson, 2002). At best, the group is a place where members gather to swap ideas and form model legislation, and at worst, it is a place where industry leaders pay dues for the privilege of ghost writing legislation to the benefit of business. Tommy Thompson, former Wisconsin Governor and Bush administration health and human services secretary, was an early member of ALEC and explains that, "Myself, I always loved going to these meetings because I always found new ideas. Then I'd take them back to Wisconsin, disguise them a little bit, and declare that 'It's mine'" (Biewen 2002).

ALEC's corporate members include at least a dozen companies that do prison business: the drug companies, Merck and Glaxo Smith-Klein, the telephone companies that compete for lucrative prison contracts, and Corrections Corporation of America (CCA). The payoff for membership, according to CCA Vice President Green, is that it gives the corrections corporation a chance to explain the benefits of privately-run prisons to state lawmakers. Critics however, point out that this is where the problem lies; business executives who stand to gain from stricter sentencing policies advise state lawmakers, behind closed doors. This then becomes the basis on which criminal justice decisions are made.

On top of its membership dues and contributions to help pay the bills for ALEC meetings, CCA pays 2000 dollars a year for a seat on ALEC's Criminal Justice Task Force. That panel, until recently co-chaired by a CCA official, writes the group's "model" bills on crime and punishment. This is but a small price to pay when compared to the impact. For years, ALEC's criminal justice committee has promoted state laws letting private prison companies operate and has pushed a tough-on-crime agenda. The lawmakers on the task force, according to ALEC Criminal Justice Task Force director Andrew LeFevre, led the drive for increased incarceration by going back to their home states and "talking to their colleagues and getting their colleagues to understand that if, you know, we want to reduce crime we have to get these guys off the streets" (Biewen 2002).

Among ALEC's model bills: mandatory minimum sentences, three strikes laws and "truth-in-sentencing," legislation. By 1995 the Truth-in-Sentencing Act had become law in 25 states and four short years later about 40 states had passed versions of truth-in-sentencing similar to ALEC's model bill. The power to shape criminal justice policy

through membership in ALEC is perhaps best illustrated by the 1998 passage of truth-in-sentencing in Wisconsin. According to the bill's author, Republican state representative Scott Walker, "Many of us, myself included, were part of ALEC. Clearly ALEC had proposed model legislation, and probably more important than just the model legislation, ALEC had actually put together reports and such that showed the benefits of truth-in-sentencing and showed the successes in other states. And those sorts of statistics were very helpful to us when we pushed it through, when we passed the final legislation" (Biewen 2002). Wisconsin is a CCA customer and in the end the final legislation resulted in overcrowded facilities in Wisconsin, the increased use of private prisons, and a cost of more than 50 million dollars a year.

Industry executives and ALEC members claim that they don't push for longer sentencing policies, "You don't see CCA advocating for longer sentences; that's not true. If government, through its elected representatives, identified that, well, we are going to need to provide for public safety by incarcerating individuals-- that is not a vendor-driven issue," says CCA's vice president of customer relations, James Ball (Beiwen, 2002). Ball also claims that CCA does not take an active role in writing or promoting ALEC's model sentencing bills and that ALEC is just a research group and doesn't drive public policy. However, exactly the opposite is true; ALEC's stated mission is to drive public policy. Most of the model legislation generated by the criminal justice task force of which CCA is a member promotes stricter sentencing and the group does indeed drive public policy. Successful model legislation pushed by ALEC extends beyond the sentencing recommendations that benefit private prisons. As Appendix A indicates, ALEC supports a multitude of legislative activities that enhance the viability and success of the private-prison industry. Through CCA's membership and participation in ALEC it shares

information and influences criminal justice policy, which further strengthens the triangle/sub-government of private industry, professional organizations and government bureaucrats.

Conclusion

The corrections industrial complex is critical to the growth in the industry and has amassed enormous power to not only shape criminal justice policy but to also influence spending. The promoters of prison privatization, through membership in ALEC and the ACA and political giving, have gained an incredible amount of influence in state-policy making and setting corrections standards, which ensures that there is a place for private industry in the corrections field. The interrelationship of business, politics and criminal justice professionals continues to strengthen across the country and private interests continue to gain financially from the allocation of public resources. The script of claims used by supporters of operational privatization, however, is also an important part of the continued growth, as it must remain politically attractive. It otherwise risks losing the appeal it has to local, state and federal politicians and weakens the sides of the triangle. The adjustments made to the claims and the management of counterclaims is the topic of the next chapter.

CHAPTER VII

MANAGING COUNTER-CLAIMS

As the industry grew and more prison beds were turned over to private operators, problems, such as some of those referred to above arose. In the face of mounting financial overruns, escapes, escalating inmate violence, guard violence and a multitude of human rights violations promoters of operational privatization nonetheless were able to maintain their existence and growth. Obviously, the corrections commercial complex played a critical role in the maintenance of the practice. What follows are a selection of some of the more serious developments in operational privatization and an examination of the specific claims and strategies that were used to counter the negative aspects of operational privatization which ultimately contributed to maintenance of the practice.

Northeast Ohio Correctional Center (NOCC) Youngstown, Ohio: The most egregious trouble spot.

Perhaps the most famous incident in operational privatization of prisons is what Mobley and Geiss (2001) describe as the 'Youngstown Debacle.' The prison had been built on an abandoned industrial site sold to CCA for one dollar. The city also offered the additional incentive of 100-percent tax abatement for three years to attract the company to the economically depressed area. Court and financial pressures bearing upon the District of Columbia led to the decision to transfer 1,700 medium-security inmates to the CCA prison operated in Youngstown. Within 14 months of the facilities opening there were two fatal stabbings, 47 assaults, 20 of them involving knives, and six escapes. (For more

see Mobley and Geiss in Schicor). The various responses of CCA employees to these incidents are revealing and contradictory to the initial claims made by promoters of operational privatization. First, a CCA board member commented, "The idea was to move folks to a much safer environment than Lorton. That's all we had to do" (Schicor 2001: 214). CCA spokesman Peggy Lawrence added, "The company does not believe the Youngstown prison is less safe than other facilities. Prisons are violent places and this facility is being run the way it needs to be run" (Eyre 1998). Yet information from the Corrections and Criminal Justice Coalition of Virginia (CCJC) reveals a different story: Ohio State Prisons: 48,000 inmates, 22 stabbings in the past year, no murders, Ohio Private Prison: 1,700 inmates, 20 stabbing and two murders. In other words, the early claim that private prisons are of better quality turned into the claim of equal quality. Furthermore, as CCA board member Thompson commented, "...we had some problems early on that we have addressed and will continue to address, but we will never be a problem-free facility." Promoters of operational privatization again pointed to the nature of prisons as violent, drawing upon the accepted stereotypical image of prisons and thus deferring fault and cause from the company itself. In addition, the company further deflected charges of mismanagement by scapegoating individual employees. For instance, CCA Warden Jimmy Turner told lawmakers in a later investigation that "What happened that Saturday afternoon (the day of the escapes) was human error. The decisions that people made that day were wrong" (Morse 1998). Mr. Turner told the lawmakers a female employee helped the inmates get the wire cutters used to cut through the fences, one guard was in the restroom, and other guards were out of position. The promoter's initial claims of professionalism and experience were under attack, but again the company was able to maintain those claims in an inventive twist. CCA board member Thompson told

the Washington Post in regards to the events at Youngstown, “Glitches were to be expected, this is relatively new” and referred to the incidents as normal ‘growing pains’ of an institution in the start-up phase (Montgomery 2001). CCA representatives CCA officials reported that they had replaced the warden with Mr. Turner, who had 10 years’ experience. Mr. Turner pointed to the innovative practices implemented by CCA following the escapes: “additional razor wire and more sensors are being installed, along with a watch tower. The number of perimeter guards is being doubled and disciplinary action is pending against the guards who weren’t at their assigned posts” (Morse 1998). Adding the needed expert opinion to boost this rationale Charles Logan (1990) pointed out that “In no area have I found any potential problem with private prisons that is not at least matched by an identical or a closely corresponding problem among prisons that are run by the government. It is primarily because they are prisons, not because they are contractual, that private operations face challenges” (1990: 5). Finally, a besieged CCA put out a press release denouncing its critics and insisting that the safety risk posed is no greater at privately managed prisons than at publicly run prison (Trevison 1998).

When it was later suggested that the violence at Youngstown was in part a result of moving prisoners so far from their families, CCA officials denied this was the case. However, the company went on to use that charge to gain support for a proposal with the BOP to house D.C. inmates after Lorton’s court-ordered closing. The D.C. Mayor Marion Barry supported CCA’s proposal to build on the 42-acre site formerly owned by the National Park Service. “It’s not close to anybody’s house. It’s not close to anybody’s neighborhood,” commented Barry (Thompson 1998). Barry pointed out that there were several prisons in the surrounding area that had no successful escapes. “In fact,” added Barry, “There’s been nothing happening...so we ought to offer it in our own community”

(Thompson 1998). Ward 8 resident Wanda Lockridge, leading the group supporting the new prison, pointed out the logic, "I have family members in the system, and I certainly don't want to travel across country to see them. I support it and I support it in Ward 8" (Thompson 1998). For its part, CCA officials invited Mayor Barry to conduct motivational speeches in its facilities and promised the residents of Prince George County Ward 8 a one-million-dollar fund for minority business loans, a vocational training institute, and a satellite campus for the University of the District of Columbia (WP June 13, 1999). CCA's new marketing strategy begins to emerge: private corrections as a public-private partnership. "I think what a community like Ward 8 needs is a partner like we want to be to help them with jobs," Joseph Johnson a CCA board member said regarding the proposed prison in D.C.'s Ward 8. "It's good for us and the system" (Thompson 1998).

Despite the claim of partnership, federal decision makers, the Bureau of Prisons, would ultimately decide on CCA's proposal for Ward 8. The only city-level decision makers that had any say in CCA's plan for the new prison was the D.C. Zoning Commission. Concurrently, the D.C. corrections investigation of the events at Youngstown were being revealed. The four-month review found an array of problems. The District's contract with the facility was flawed from the outset; it imposed weak requirements on the corporation and it contained minimal provisions for enforcement. Both the District and the company improperly classified inmates, mixing medium and maximum-level prisoners and "almost all staff of the jail, especially supervisors, lack correctional experience. In spite of the commitment and enthusiasm of line staff as a group, they are not yet sufficiently experienced and trained for their duties." Finally, the report addressed the lack of responsibility shown by D.C. corrections officials and until

D.C. corrections got under the political spotlight and was hauled into federal court “the department took little responsibility for its role of monitoring the operations at the NOCC” (King 1998). Midway through the investigation, CCA officials announced that it would no longer comment on its operations, saying that it would focus instead on the “safety and security” of its operations. (Plain Dealer August 27 1998p 10B).

In a further attempt to manage the claims-making activities of opponents CCA sought a federal court gag order. CCA’s lawyers asked a U.S. District court to bar public comment by inmates or their attorney. The judge denied the order. However, it is likely that CCA was able to informally control inmate comments. Testimony of Alex Friedman, a former inmate in a CCA facility, before the Ohio House State Government Committee reveals the techniques of inmate comment control, “When I tried to voice complaints I was subjected to cell searches, a retaliatory transfer and a guard tried to recruit other inmates to beat me down because I refused to withdraw a grievance”(Schroeder 1999). Friedman, after appearing in a cover story in *The Nation* that criticized CCA operations was abruptly transferred to another facility after being accused of “a deliberate effort to disseminate material which is negatively oriented to the prison operating company” (Bates 1999).

Silencing the voices of detractors became corporate policy: Most of the prison companies either drafted their own access policies or claimed to follow state or federal law. CCA has a written policy controlling access to inmates. A journalist must send a written request for an interview to the government agency of jurisdiction, usually a state department of corrections, along with a copy to the facility warden or administrator. Approval to conduct an interview is subject to the prisons jurisdiction, corporate policy and inmate consent. Wackenhut Corrections Corp. requires a written request for an

interview with an inmate. The request must be made to the corporate office, the state and the inmate. The inmate and the client must sign a waiver or give written consent to allow the interview to take place (Palmer 2001).

When it was revealed that the official reports in of the number of violent attacks in the prison (Youngstown) were extremely underreported by the company, Cincinnati civil rights attorney Alphonse A. Gerhardstein and Jonathan Smith, executive director of the D.C. Prisoners' Legal Services Project, pointed out that "We've been screaming for months for someone to do something about this. We've been ignored. And because we've been ignored, people died." Furthermore, the complaints about operational privatization were ignored from the very beginning. Despite detailed testimony about the horrific conditions in the CCA prison presented by prisoners' rights advocates and by prisoners' family members prior to the D.C. council's approval of the contract with CCA to house the district prisoners in Youngstown, the council approved the contract without a single dissenting voice (WP Sept. 21, 1997).

CCA wasn't the only private prison company to have problems. Within a year of opening two prisons in New Mexico, the Wackenhut operated facilities were the site of riots, nine stabbings, and five murders which included one guard. A Wackenhut spokesperson explained the reason for the troubles: "New Mexico has a rough prison population" (Palast 1999). Pointing out that prisons across the country are violent places whether private or public, Wackenhut was able to obtain two additional contracts following the murder of the guard. State Senate President Manny Aragon had once fiercely opposed proposals that sought to privatize the states prison system. However, in 1998, he signed a consulting deal with Wackenhut Corrections Corporation and

simultaneously reversed his opposition, leading the way for the two additional contracts (Center For Public Integrity February 15, 1999).

At this point operational privatization of prisons could have met its demise. But it did not. Despite the Youngstown debacle, Wall Street analysts continued to praise CCA. "It's revenues are expected to grow at a 40 to 50 percent pace through 1999. CCA is the Mercedes Benz of Private prison companies"(Tatge 1998). By 1999 there were roughly 90,000 prisoners confined in private facilities, up considerably from the 1997 count of 64,000 (BJS Prisoners in 1999).

A Better Way: Public-Private Partnerships

CCA spokesperson Susan Hart demonstrates another of the industries techniques for managing the claims of its opponents, "The Company supports legislative changes to fix any problems. We're accustomed to scrutiny and that's O.K.," she said. "Let's all be working together to come up with the best solution." (Thompson 1996) The industry successfully maintained its existence by pointing to 'a better way to privatize.'

What the company was suggesting was that if the contracts were written better or legislation were in place, these problems wouldn't happen. The public-private partnership rhetoric accomplished two very important tasks for operational privatization. First, the problems encountered or created by operational privatization, including those at Youngstown, were framed as a result of a lack of communication or cooperation between government and the company. Thus, the cause was not company mismanagement and the company was not at fault. Rather, the problems were of a shared nature that could be fixed if the government would do its part. Second, because the problem was of a shared nature, the cost for fixing it, either through contract monitoring or passing legislation, was

the responsibility of government. In other words, operational privatization was only in need of tweaking. Consequently, on-site contract monitors, minimum legislative savings requirements of five percent, and the cost of catching escapees or quelling riots could be laid at the feet of government.

This redefining of the problem promoted by industry executives prompted some state-level activity, yet in the end perpetuated the use of private prisons. Ohio passed a state law requiring that contracts contain a provision specifying that criminal offenses in the facilities be reported to authorities. Similarly, following the escapes in Houston (1996) discussed above, State Senator John Whitmire proposed legislation that included provisions for billing private prisons for law enforcement help received during escapes or uprisings. Wisconsin established the Contract Monitoring Unit of the DOC two years after it began contracting with CCA to house its prisoners out of state. The unit, according to Senator Gwendolyn Moore, was established to ensure that the company complied with the tenets of the contract. In 1998, two years after they started doing business with the company, the state hired six inspectors and two medical monitors in response to the multitude of complaints from inmates and their relatives. According to the senator, the company was in violation of numerous contractual agreements including safety and health requirements. By 2000, Senator Moore was calling for an independent compliance audit of the 45-million-dollar/year contracts. Although the monitors found a multitude of serious contract violations and had spoken to the company about them, the company continually failed to make any necessary changes. "Contract monitors do not appear to *require* that private prisons change their behavior. Instead, monitors merely encourage changes in the way in which the prison is managed," Moore commented. Furthermore, added Moore, "Despite the numerous violations, the DOC has never fined

or threatened to cancel contracts with any of these facilities over their failure to fulfill their contracts. Failing to respond to these violations only encourages the private facilities to further disregard their contractual obligations.” Finally, Moore pointed out that indeed the early concerns of Joel Dyer regarding state dependence on the private-prison industry were true. “Currently, it would be impossible to place the 5,000+ inmates housed in private prisons into Wisconsin facilities since Wisconsin’s prisons are already overcrowded” (Wisconsin’s Prisoner’s, August 3, 2000).

In 1997 the release of a videotape of guards abusing Oklahoma and Missouri inmates housed in Brazoria County Jail (Texas), operated in part by Capital Correctional Resources, Inc., prompted Oklahoma and Missouri to cancel their contracts with the company, but not to end contracting with private prisons all together. In fact, Oklahoma moved their inmates from the Texas facility to a privately operated (CCA) prison in Oklahoma. Legislators in Oklahoma reasoned that through monitoring and keeping their inmates in their own state any problems in the prison could be effectively dealt with or prevented through carefully written contracts. Oklahoma HB 1053 (1998) specified facility location restrictions (not near schools) and eligibility criteria for inmates. Evidence of the effectiveness of the public-private partnership idea taking hold is also found in HB 1053 in so far as it allowed for the DOC to train the private guards, “The DOC shall charge a reasonable fee for such training, not to exceed the cost of the training” (Beutler 1999). Again, what should appear on the cost side of the private companies balance sheet can be absorbed by the state. Further, Oklahoma, Louisiana and Missouri have added an additional contract requirement that is a result of framing the cause of violence in prisons as the mixing of prisoners from different states. These states now require that companies separate inmates from different states.

In August 2000, two inmates escaped from a CCA facility in Bartlett, Texas. According to investigators, doors had been left unlocked and no one was watching the closed circuit monitor. When the alarm sounded, staff turned it off and did nothing. Following that, Texas began including language in their contracts pertaining to staff training. After more than 10 years of doing business with CCA, the state of Tennessee passed legislation requiring all vendors to create contract bids that are five percent less than the cost for the government to incarcerate its own (Herron 2004). Ohio added the five percent savings requirement statute in 1999 following the events at Youngstown (Hallett and Hanauer 2001). Texas has required at least a 10-percent savings since it began using private prisons. However, as mentioned in the introductory chapter, calculating cost savings has proven difficult, if not impossible (Fox, 1998).

By late 2000 private firms were experiencing a loss of customers. California cancelled plans for four new 500-bed prisons. New York failed to enter into contracts with CCA. Roughly 2000 privately owned beds sat empty in Colorado. CCA built two facilities in Georgia in hopes that prisoners would come, but the state of Georgia was not interested. North Carolina cancelled contracts with two CCA prisons because of frustration with staffing levels. Overall, CCA had about 9000 beds sitting empty. Adding to these problems, fines and lawsuits were mounting. In March 1999, the company agreed to pay 1.6 million dollars to prisoners and 756,000 dollars in legal fees to settle the class-action lawsuit brought on behalf of the prisoners at Youngstown (Mattera et al 2004). A South Carolina jury ordered CCA to pay three million dollars in punitive damages because CCA guards had abused the youth in their juvenile prison with use of force “repugnant to the conscience of mankind” (Mauer 2002: 101). North Carolina fined CCA over one million dollars for chronic failure to meet contract requirements and followed

with the terminating two contracts with the company. Finally, the company settled a 120-million-dollar lawsuit with investors angry about the restructuring. (See above.) A judge in Louisiana ordered the Wackenhut-operated Jena juvenile facility be shut down after it was determined that the youths in the facility were treated no better than animals. The justice department charged that conditions there were 'life threatening,' and Wackenhut eventually lost its contract. Texas officials fined Wackenhut 624,000 dollars for chronic staff shortages and eventually terminated the contract with the company to run the Travis County jail amidst indictments of guards for sexual abuse of prisoners. Arkansas took over two Wackenhut facilities after the company was criticized for sanitary conditions and prisoner idleness (Mauer 2001).

At the same time that the industry's claims of superior service were attacked, research on the cost savings as a result of operational privatization claims was revealing the claim to be, at best, questionable. The results of an Abt study commissioned by the NIC brought the industries claim of 10 to 15 percent savings under question. According to the Abt report, "Some proponents [of privatization] argue that evidence exists of substantial savings as a result of privatization. Indeed, one asserts that a typical American jurisdiction can obtain economies in the range of 10-20 per cent. Our analysis of the existing data does not support such an optimistic view" (McDonald et. al 1998). In a 2001 report for the U.S. Department of Justice's Bureau of Justice Assistance, James Austin and Garry Coventry continued with the theme of unsubstantiated claims for the private sector's superiority. Regarding previous studies, they concluded that "there are no data to support the contention that privately operated facilities offer costs savings; similarly no definitive research evidence would lead to the conclusion that inmate services and the quality of confinement are significantly improved in privately operated facilities" (Austin

and Coventry 2001). In August 2000, state officials in Utah abandoned a plan for that state's first fully privatized prison after concluding that it would be cheaper to rent space in county lockups (Gehrke, 2000). The studies contradicted the most compelling rationale for prison privatization: the promise of big savings. But the industry leader dismissed the importance of these studies by insisting, that it hadn't tried very hard to save tax dollars. "When you're in a race and you can win by a few steps, that's what you do," said Doctor R. Crantz of CCA. "We weren't trying to win by a great deal" (Bates 1998). Susan Hart, CCA's spokeswoman added private prisons like those owned by CCA "compare very favorably" with public prisons. "We're not perfect," continued Hart. "No corrections provider is. But if all the criticism were founded, we would not have the growth and contract renewal rate we have" (Zahn and Jones 2000).

The industry that had sold itself on the claim of 'we can do it cheaper and better' than government, transformed that claim into 'we can do it just as good as' government. No longer were the proponents of operational privatization touting the claim of innovation of its management. In fact, the innovation claim had become a claim of similarity. "Virtually everything in our institutions is run exactly as they are in our governmental customer institutions" (Land, 2000). Again stressing the similarities in private and public prisons, Edwin Meese III, a former U.S. Attorney General and a distinguished fellow at the conservative Heritage Foundation told the National Journal, "There have been problems, but these incidents are similar to things that go on in public prisons" (Smalley 1999). Wackenhut director of corporate relations Patrick Cannan described the national attention directed toward poor conditions and abusive officers as overblown and distorted. Further, Morgan Reynolds the director of the conservative, pro-privatization National Center for Policy Analysis added, "Abuse of inmates can come

from anyone in authority” (Smalley 1999). When critics of the industry raised complaints about prisoner idleness, failure to achieve the industries early claim of employing inmates, the industry countered with the suggestion that it was the government’s fault. “We follow the directives of the states, but ultimately it is the states that decide, when setting contracts, how much is offered” (Smalley 1999). In other words, the failure to meet early claims of innovative practices was not the company’s fault; rather they were victims of the state’s constricting contracts.

Negative media coverage toward the litany of troubles in private prisons, including escapes, riots, human rights violations and poor management, combined with the declining crime rate, slower growth in state prison populations and the budget squeeze brought on by a stagnant national economy, contributed to the stalled growth in operational privatization. Some states around the country overcame their capital shortage and started building their own prisons and filling those first. Other states revisited costly sentencing and parole practices. Georgia prison official Scott Stallings put it this way, “We don’t have pressure on us now. We’re not in crisis.” In Oklahoma, corrections official Scott Hauck explains, “Incarceration rates are way down. We fill our own beds first and we’ve got quite a bit of space” (Slevin 2001). Between 2000 and 2001 ten states reduced prison populations (Prisoners in 2001 BJS). From 2000 to 2001 not a single state solicited private contracts (Greene 2001).

Feeding on Fear, Racism, and Political Connections

Clearly, operational privatization of prisons was at a pivotal moment in its history. CCA and Wackenhut, the industry leaders, were having severe economic difficulties. CCA was near bankruptcy and Wackenhut was losing contracts both nationally and internationally.

State officials were turning away from private operators, and several states were retooling strict sentencing practices. As a result the aggregate state prison population increase was only 1.3 percent compared to the 16 percent growth during the industrys heyday from 1995 to 1999. The federal prison population, however, sustained a 7.5 percent growth in 2000. (Prisoners in 2001) The industry, thanks to its relationship with and access to federal agency heads (see triangle) found its savior in the Federal Bureau of Prisons and another marginalized population: “the criminal alien”. Nearly three quarters, 72 percent, of the growth in prisoners being held in private prisons in 2000 occurred in the federal system (Ziedenberg and Schiraldi 2001).

Between 1985 and 2000, the percentage of non-citizens in federal prisons increased from 15 percent to 29 percent, making immigrants the fastest-growing sector of the federal prison population (Scalia and Litras 2002). And, as of 2000, 54% of non-citizen inmates had been convicted of a drug charge; 35 percent of an immigration offense; and 11 percent of other offenses. At the same time, the incarceration rate of those convicted of immigration offenses increased from 57 percent to 91 percent between 1985 and 2000, and the average time spent in jail increased from 3.6 months to 20.6 months. (The 1996 Immigration Act requires the foreigners facing deportation be jailed while awaited a trial and verdict.) Once again, race and drugs were linked together.

This rapid growth in the number of non-citizens in U.S. jails, prisons and detention centers for immigration and drug offenses contributed to the health of the prison economy in the United States, both for government and privately operated prisons. For example, in 1995 when Wicmico County Maryland needed to raise 65,000 dollars in three days, the county jail warden, “picked up the phone and called the INS and said, ‘send me 70 inmates.’ And it was done.” And when jails run short on inmates, wardens

can often depend upon the INS to fill empty beds, ensuring the fiscal solvency of the growing prison system. In 2000, the INS spent just over one-third of its 800 million-dollar detention budget renting beds in 225 jails throughout the country (Montgomery 2000). The private-prison industry describes the Federal Bureau of Prisons as its favorite client. As John Ferguson, CEO of CCA, put it, “We treasure the Bureau” (Hallinan 2001). It should.

In what has been described as ‘a private prison bailout’ CCA was selected in 2000 for two new BOP contracts, worth about 760 million-dollars over the next 10, years and the U.S. government was calling for more (Green 2001). By the end of 2001 there were 4.6 billion dollars in pending government projects with private-prison companies. Private prison company executives were claiming that these federal contracts could result in billions of dollars. Wall Street analysts agreed, “My fundamental belief is that this is a growth industry,” said McDonald, who works for First Analysis in Chicago (Zahn and Jones 2000). In 2002, CCA was rewarded again with a 103 million-dollar BOP criminal-alien contract to fill its struggling McRae Correctional Facility in Georgia (CCA Source).

Perhaps the most shocking of all recent contracts was awarded on December 24, 2004. The Federal Bureau of Prisons awarded CCA 129 million-dollars to house 1200 criminal- alien prisoners at its facility in Youngstown, Ohio. (The same one that was shut down in 2001.) The deal, which guarantees a 90 percent occupancy rate for the next four years, was described by U.S. Senator Mike DeWine (R) as “a great Christmas present for the Mahoning Valley.” Youngstown Mayor George McKelvey (the same mayor that earlier called CCA deceitful just three years before) explained his year-long effort to reopen the facility as the only way the region was going to get back the jobs it lost when the facility closed. Another clear example of the corrections commercial complex and the

access to decision makers is Senator DeWine's membership on the Senate Appropriations and Judiciary Committee. He led the fight to secure the federal contract for CCA by speaking about the need for the federal government to consider using current prison facilities rather than build new ones to high-ranking Bureau of Prisons Officials. According to Mayor McKelvey, the contract could not have happened without the support of DeWine, U.S. Senator George Voinovich (whose brother owns the VGroup, CCA's design and construction partner) and President Bush "who gave a big thumbs up to Youngstown" (vindy.com 2004).

The panic over criminal aliens exploded after the September 11 attacks and added to the list of marginalized populations that the private-prison industry feeds on: those of Middle Eastern descent. The countries focus on the 'war on terror' did for private-prison companies in the 2000s what the 'war on drugs' did for them in the 1990s, provided a commodity. Furthermore, the industry was able to link the two, fear of drugs and drug dealers and fear of terrorism and terrorists (read middle-easterners). Immediately following the events of September 11, politicians were trying to use the national tragedy to get some 'lift' for the war on drugs. (NWOM) For example, in October 2001, New Jersey Senator John Corzine told residents, "With the nation now focusing on a war on terrorism, it should also step up its war on drugs" (Robert 2001). Ohio Congressman Rob Portman demonstrated the link between drugs and terrorists, telling The Cincinnati Post, "By stopping these drug traffickers, we are stopping the flow of cash used to fuel these terrorist cells." Further, the congressman added, "By American's spending money on their drug habits, we are helping to support the Taliban government, which protects terrorism" (Collins, 2001). Federal agencies, feeding the fear, issued warnings about "narco-terror" a term used in the '80's to justify American intervention in Latin America. The Office of

National Drug Control Policy ran an advertisement during the Superbowl that essentially blamed drug users for funding terrorism and President George W. Bush issued a statement that clearly linked the two issues: "It's so important for Americans to know that the traffic in drugs finances the work of terror, sustaining terrorists, that terrorists use drug profits to fund their cells to commit acts of murder." (www.antidrug.com) Thus, the proposed increase in law enforcement along the Mexican border in the name of "homeland security" (fighting terrorism) and the additional resources that would be added to the existing drug and immigration enforcement infrastructure, themselves closely intertwined, made sense.

More Commodities: Middle Easterners. More Customers: ICE

The "war on terrorism" created a buzz in the private-prison industry. Less than three weeks after September 11, a New York Post story on the for-profit private-prison industry stated, "America's new wall of homeland security is creating a big demand for cells to hold suspects and illegal aliens who might be rounded up" (Tharp 2001). Cornell Corrections CEO Steve Logan welcomed this new 'business opportunity' in a 2001 conference call with analysts:

"I think it's clear that since September 11 there's a heightened focus on detention... more people are gonna get caught. So I would say that's positive... The other thing ... is with the focus on people that are illegal and also from Middle Eastern descent in the United States. There are over 900,000 undocumented individuals from Middle Eastern descent... That's, keep in mind, half our entire prison population. That's a huge number, and that is a population, for lots of reasons that is being targeted. So I would say the events of 9/11 let me back up the federal business is the best business for us. It's the

most consistent business for us and the events of September 11 is increasing that level of business” (Choudry, 2003). As CCA noted in a 2002 10-K filing: “We believe that recently proposed initiatives by the federal government in connection with homeland security should cause the demand for prison beds, including privately managed beds, to increase. The proposed funding [for homeland security] is intended to support the agencies efforts to prevent illegal entry into the United States and target persons that are a threat to homeland security. We believe that these efforts will likely result in more incarceration and detention, particularly of illegal immigrants, and increased supervision of persons on probation and parole” (CCA 10-K 2002: 13).

The growth in the number of immigrants behind bars is a result of the 1996 Immigration Reform Act, the failed War on Drugs, the Patriot Act and fear of ‘criminal aliens’ which have subjected documented and undocumented immigrants convicted of minor offenses to long sentences followed by deportation. The numbers are likely to grow further as the result of new enforcement policies and laws like the USA Patriot Act implemented in the wake of 9/11. And that is as good as money in the bank for the private- prison industry.

Pointing out that far from being the panacea to prison overcrowding, financial analysts and industry leaders no longer talk in terms of CCA’s providing better or more cost-effective services than the public sector, there is no need to. Simply put prison overcrowding persists and government agencies will have no choice but to use the services of firms such as CCA. For example, a recent report by an analyst at Jefferies & Company, stated:

“Although the growth rate in incarcerations has slowed in recent years, the absolute number of inmates continues to swell. Unfortunately, facilities at both the state

and federal level are overextended, making placement of new prisoners much more difficult. With state budgets lacking sufficient resources to fund the development of new prisons and jails and the federal government ramping up drastic homeland security efforts, something needs to be done. While lighter or alternative sentencing can alleviate short-term budget constraints, it does not address the outstanding overcrowding issue. Instead, increased utilization of private prison capacity and services appears to be a logical choice” (Jefferies & Company 2002: 3).

Overall, the events of September 11 provided a new growth era in operational privatization, if stock prices are used as an indicator. Corrections Corporation of America’s stock catapulted 307 percent to \$13.98 by the end of 2001. (See graph.) Wackenhut Corporation’s stock increased 70 percent.

By the summer of 2002, after the publication of “Bailing out Private Jails” (Greene 01) and a front page story in the Wall Street Journal, the BOP cancelled four contract solicitations that were to be awarded in late 2002 and stopped awarding CAR (criminal alien) contracts. Cornell’s stock price plummeted from \$17.75 to \$7.75 following the elimination of CAR’s. However, industry leaders expected growth. Cornell Corrections’ Steve Logan stated they had been asked by the federal government to retain existing sites, especially around the border area. Also, industry representatives have implied that new Requests for Proposal will be issued through the Immigration and Naturalization Services, Office of Detention Trustee and Department of Homeland Security as soon as the dust settles from the current restructuring proposals (Carrillo, 2002). By the time the dust settled in September 2003, Cornell was back in the money, with new contracts in hand stock prices rose to \$16.25 (Cornell Companies Inc.). During Wackenhut Corrections’ 2002 second quarter conference call for analysts, George Zoley

explained how the restructuring of INS, and the creation of the Department of Homeland Security and Office of Detention Trustee would speed the pace of contracting for detention beds. "The Homeland Security Bill provides these agencies with greater flexibility in their efforts to procure detention beds and services, signaling that an easier, faster procurement process should soon be in place to replace the current [Department of Justice] 12 to 18 month process" (NWOM).

The reorganization of the U.S. Department of Immigration (INS) into the U.S. Immigration and Customs Enforcement Division (ICE) housed in the Department of Homeland Security has been a boon for the private-prison industry. The Office of Detention and Removal, a division of ICE, headed by former BOP Procurement Executive Craig H. Unger, has a yearly budget of 615 million dollars for contracting out immigrant- detention beds. ICE, the largest investigative arm of the Department of Homeland Security, is responsible for the enforcement of border, economic, infrastructure and transportation security laws. ICE "seeks to prevent acts of terrorism by targeting the people, money and materials that support terrorist and criminal activities" (www.ice.gov). According to the Office of Detention and Removal, in addition to the eight 'service processing centers,' (SPC's) the secure detention facilities designated to house aliens that are operated by ICE, there are seven contracts with privately operated facilities and one privately owned and operated facility. These facilities are located in Aurora, Colorado (Wackenhut); Houston, Texas(CCA); Laredo, Texas(CCA); Seattle, Washington (Correctional Services Corporation); Elizabeth, New Jersey(CCA); Queens, New York (Wackenhut); San Diego, California (CCA) and the contractor owned and operated (with the Bureau of Prisons) criminal alien facility in Eloy, Arizona.(CCA) In addition, major expansion initiatives are underway at several Special Processing Centers (SPC's).

At the end of 2003 privately operated facilities housed 95,552 inmates: 5.7 percent of state inmates and 12.6 percent of federal inmates (BJS Prisoners in 2003). CCA Cornell, and Wackenhut stock prices were steady but the companies were looking for new commodities. As CCA so aptly recognized in 2003, "Our growth is generally dependent upon our ability to obtain new contracts to develop and manage new correctional and detention facilities. This depends on a number of factors we cannot control, including crime rates and sentencing patterns in various jurisdictions and acceptance of privatization. The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction and sentencing practices or through the legal decriminalization of certain activities that are currently proscribed by our 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. Similarly, reductions in crime rates could lead to reductions in arrests, convictions and sentences requiring incarceration at correctional facilities" (CCA 10K 2003).

Conclusion

The specific strategies of the industry to maintain and perpetuate its existence from the mid 1990's to 2003 have evolved with the changing political, economic and societal conditions. The privatization script, in the beginning, claimed superior quality that changed to equal quality. When the claims of a high level of professionalism and experience came under attack, the industry saved face by scapegoating individuals and pointing out that problems should be expected in such a 'new' area. At the same time

privatizers pointed out their own flexibility to utilize innovative practices to deal with problems after the fact. They were not, however, innovative at all in fact these practices were the same as the responses to troubles in publicly run facilities. This contradiction was dealt with by stressing that prisons by their very nature are violent, whether private or public and that private industry was doing just as good a job. Additionally, the industry pointed out that many of their problems were similar to public facilities because of the constrictive nature of doing business with inefficient governments. The solution to this was a better way to privatize, the public-private partnership. This maintenance strategy of shifting rhetoric aided the perpetuation of privatization of prisons. On the local level, the industry continued to align itself with criminal-justice decision makers through the use of campaign donations. However, the courting of decision makers became more aggressive in the form of consulting and lecture fees. In the face of financial difficulties, the industry relied on its connections, the political side of the corrections industrial complex, its ability to influence federal legislation through access to agency heads, and the high levels of racialized fear in American society for its much-needed raw materials. The ongoing search for raw materials, marginalized populations, and the strategies to secure them are examined in the following chapter.

CHAPTER VIII

BACK TO THE FUTURE

In this concluding chapter I will provide first, a summary of findings, including a brief overview of the history and development of privatization, past and recent. Second, I will highlight economic problems in general and how they relate to the United State's responses to corrections and punishment that suggest a 'back to the future' approach of more privatization to come, specifically recognizing and identifying the social problem and solution as more of the same. Then I will turn to a discussion of what is likely to come. Third, I will end with a brief consideration of research for the future which should be grounded in what we already know and what is reasonable to expect.

This accounting of prison privatization in socio-historical context reveals several important points. In general, patterns are revealed and regimes of power are excavated. First, by examining the emergence of a purported solution to a social problem the theories values and biases are revealed. Second, the examination of the perpetuation of the solution uncovers a pattern of maintenance strategies and techniques. Understanding of this provides the opportunity to approach with caution calls for reform. Calls for reform and proposed solutions require the consideration of the wide range of possible outcomes. In considering possible outcomes, the patterns of history should not be ignored.

In the 19th century, reformers of prisons called for more humane treatment and cost effectiveness. Sound familiar? Today the rhetoric of prison reform is the same. Early

prison reformers called for better conditions and ended up with the penitentiary. Late 20th century calls for reform resulted in the massive build-up of prisons. Early prison reformers called for meaningful skills and ended up with the equivalent of slave labor. Similar activities are taking place today. Early prison reformers called for spirituality and prisoners got beatings in the name of God. Today, accusations of religious indoctrinization and programming in correctional facilities are mounting. Early reformers called for rehabilitation and prisoners received shock therapy, lobotomies and indeterminate sentences. Today, the use of technology in the correctional system is on the rise, and it is possible that the length of time that agents of criminal justice will control people will be extended because of this. In the past, well-intended reforms often resulted in human suffering and an expansion of formal control mechanisms. The contemporary versions of reform encompassed by the restorative justice movement are at risk of the same fate. Importantly, each of these reforms, past and present, was perceived as an improvement to the contemporary form of imprisonment.

This research also shows that the economic, political and cultural elements of the country cannot be separated from the study of crime and criminal justice, as they help to create, shape and recreate each other. At each point in history, the reliance on imprisonment and its various forms was tied up in the economic, political and cultural conditions of the era. As the forms of capitalism, and the political and cultural conditions, changed over time, so too did the shape of imprisonment. When society was manual-labor based and dependent on the production of goods and cheap labor, imprisonment included prison labor. It was not until the use of prison labor was no longer economically viable, and politically advantageous that reforms were instituted. These reforms were in line with the new form of capitalism. With the advent of new technologies that reduced the demand

for manual labor, imprisonment served to warehouse the surplus labor supply. As capitalism became more service oriented, imprisonment became a *service* to be provided. As capitalism becomes a combination of technology, service and information, so too does punishment, in the forms of electronic monitoring and GPS tracking. Each of these incarnations, however, was and is dependent on a supply of bodies culturally constructed as either dangerous or undeserving, or some combination of the two, whichever is politically advantageous at that time.

Earlier in this text I stressed the need to be clear about the definition of “private”; to be specific when speaking about private as a for profit company versus private as a not for profit organization. Now, those lines have been blurred. For-profit organizations have established non-profit arms and for-profit companies have created partnerships with non profit organizations, so it is no longer easy to distinguish business interests from humanitarian interests. The two have met and melded to the benefit of each participant in the complex of politicians, business leaders and agency heads alike.

Strengthening the Triangle

Faith-based organizations’ involvement in and connections to corrections and policy makers further serves to strengthen the sides of the corrections commercial complex. However, the leading faith-based organizations have controversial reputations. The Institute in Basic Life Principles (IBLP) is headed by Bill Gothard, who is at the forefront of the character-education movement called Character First! The movement has been described by some as true fundamental Christianity and by others as “a cult that teaches Jesus Christ is at the top of a chain of command in which authority figures, teachers, employers, elected officials and of course preachers are ordained as leaders by Christ and

should be obeyed without question” (Berkowicz, 2004). IBLP, CCA’s partner, is the same program accused of abusing and neglecting a 10 year old girl in their juvenile facility (see below.) CCA’s other partner CFL and GEO Inc.’s faith-based partner the Kairos Institute are both linked to a “broad network of Christian right groups supporting the Bush administration and shares its theological-political world view” (Berkowitz, 2004).

CCA continues political handouts and helps shape criminal justice policy strategies at the federal level and state level with the added rhetoric of public-private partnerships and the claim of charity. In December 2004, CEO John Ferguson donated 100,000 dollars to U.S. House Majority Leader Tom DeLay’s (R, TX) charity ‘DeLay for Kids.’ According to CCA spokeswoman Louise Chickering, the company chose the charity because of “the company’s presence in Texas.” “Our giving mission,” she continued, “is underprivileged or troubled youth” (Cheves, 2004). Texas, under the leadership of DeLay, recently signed a lucrative contract with CCA for the management of 8300 beds in 7 state prisons. The fundraiser where the donation was presented took place at the home of Kelly Knight, finance chairwoman of the Kentucky Republican Party. The fundraiser, which also yielded 113,000 dollars for DeLay’s defense fund (to defend against charges of money laundering and illegally using corporate money to influence Texas elections) took place shortly *after* CCA bid for the contract, but *before* it was awarded, to run Kentucky’s newest prison. According to the Rick Cohen of the National Committee for Responsive Philanthropy, “These political foundations have become methods for well-heeled corporate executives, lobbyists and others to purchase influence and face-time with top politicians and without the limits or disclosure required of campaign donations or lobbying” (Cheves, 2004).

Louisiana Governor Kathleen Blanco collected more than one million dollars from

private corporations and individuals to spend on her inauguration activities and in her transition to the governors' office. Amongst them, Corrections Corporation of America, which runs the Winn Correctional Center for the Louisiana Department of Corrections, donated 5,000 dollars. Wackenhut Corrections, which runs the Allen Correctional Center, donated 10,000 dollars and LCS Corrections Services, which owns a private prison in Basile, contributed 4,000 dollars. (Maggi, 2004) California Governor Arnold Schwarzenegger, who rejects donations from the state prison guards union, accepted 53,000 dollars from Wackenhut in 2003. The money came as the state prepared to close a 224-bed Wackenhut Corrections Corp. facility (Morain, 2003). By July 2004, Governor Swartzenegger (R) put private prisons back on the table, stating "It is a priority of my administration to reform the California prison system. Reform options will include the use of privatization" (Segal, 2004).

In addition to political giving, the industry continues the strategy of hiring former government officials. In 2003, CCA hired Donna Alvarado. She has held numerous senior-management positions in government, including serving as deputy assistant secretary of defense, U.S. Department of Defense, counsel for the U.S. Senate Committee on the Judiciary subcommittee on Immigration and Refugee Policy; and staff member of the U.S. House of Representatives Select Committee on Narcotics Abuse and Control. Ms. Alvarado was appointed by President Reagan and confirmed by the U.S. Senate as director of ACTION, the federal domestic volunteer agency, where she directed the activities of nearly 500,000 Americans serving as volunteers, and lead 500 employees and managed a 170 million-dollar budget. Ms. Alvarado currently serves as a Regent on the Ohio Board of Regents, serves as a member of the Governor's Commission on Higher Education and the Economy, and is Vice Chair of the Governor's Workforce Policy

Board in Ohio. Clearly, Ms Alvarado offers the company the benefit of her political connections in the state of Ohio and the federal government, including access to and knowledge of organizing and funding regarding “faith-based and community-based” programs (CCA Web site).

In that same year the company also hired John Tighe and Tony Grande. Mr. Tighe, former Deputy to the Governor of Tennessee for Health Policy, is now CCA’s Vice President of Health Services. Mr. Grand, the company’s vice president of customer relations is the former deputy commissioner of economic and commercial development for the state of Tennessee.

In a further attempt to ‘expand the company’s network of resources,’ Michael Quinlan established the advisory committee. It too consists of former leaders in the government side of the triangle: Bob Brown, the former director of corrections for the State of Michigan, Rick Seiter, former director of corrections for the state of Ohio and former BOP Assistant Director. Added to that, the company has also hired Mike Grotefend, the former national president of the Council of Prison Locals, one of the industry’s leading adversaries, and Hardy Rauch, the former Director of Accreditation for the American Correctional Association (ACA) (CCA Web site).

Future attempts to strengthen the triangle through the co-opting of former government officials and donations to privatization-friendly politicians and decision makers can be expected to continue. However, and perhaps more important, expect to see former industry executives and managers appear in state and federal-decision making positions. Two instances of this power grab are already in place. In 2004, John D. Rees became the commissioner of the Kentucky Department of Corrections. Rees, a former vice-president of CCA (1986-1998), also owned stock in CCA until his 2004

appointment in Kentucky. After a riot in the CCA-operated Lee County facility, Rees recommended the company pay a miniscule 10,000 dollar fine. A state investigation revealed that the facility had been violating a host of contract requirements: The staffing levels were inadequate, there was a lack of educational programs, and substance abuse programs were cancelled. The company responded by firing (scapegoating) the warden. Meanwhile, Rees continued his support of awarding a contract for the new 941 bed Elliott facility to a private operator (Cheves 2004). In January 2005, Rees's deputy commissioner of support services in Kentucky, J. David Donahue was appointed as Indiana's commissioner of the Department of Corrections. Donahue also has private-industry ties. He was a senior vice president and chief operating officer for U.S. Corrections Corporation until 1998, when he took the job in Kentucky.

At the end of 2004, private prison beds totaled 127,667. Two companies CCA and GEO (formerly Wackenhut) control over 75 percent of the market, a market that can be expected to grow in the coming years. (See table). In December 2004, President Bush signed the Intelligence Reform and Terrorism Prevention Act which steps up border patrols. Lawmakers predict that as a result ICE will need another 40,000 beds in the next five years (Brush, 2005). The 2005 federal budget cuts funding for prison construction by 48 percent. Government-run facilities are already operating at 30% over capacity, and with little funds to build more private facilities become a more likely option for the BOP which expects to need an additional 36,000 beds over the next 5 years. That is an additional 76,000 beds, more than CCA *alone* currently controls. It does not matter whether the inmates never materialize because contracts with the federal government contain a guaranteed 95% occupancy rate clause, known in the industry as 'take-or-pay.' Simply meaning just the contracts ensure revenue.

The federal market is not the only expected growth area. With budget shortfalls hitting states across the country, state governors and legislators continue to pursue private prisons. In 2004, Mississippi governor Haley Barbour signed a bill relaxing state regulations against private prisons in the state that house out-of-state inmates. According to Senator David Jordon (D), the bill saves “230 jobs that people would not otherwise have” (Kanengiser 2004). Later that year, the state entered into an additional contract for the company to house some of the state’s maximum-security prisoners. (CCA release 2004) In late 2004, Minnesota and North Dakota signed agreements with CCA. Also in 2004, Colorado opened four new private prisons and Michigan legislators began discussing lifting the ban on private operation of prisons and jails (Segal 2004). Oklahoma representative Wayne Pettigrew proposed a 5 percent increase in the rate the state pays private prison operators, arguing the need because “private prisons had a hard time competing with the public sector.” Pettigrew continued by explaining that “consequently the private companies had lost some employees to the state department of corrections” (Oklahoma House of Reps, Media Division 2004). The State of Illinois extended two contracts with Cornell Corrections to operate substance abuse and treatment centers. Cornell Corrections also signed a BOP contract worth 1.3 million dollars in annual revenue to operate a community- corrections center in Las Vegas. Thomas R. Jenkins, president and COO, drew upon all of the previously discussed claims to explain, “Community Corrections is a growing *need* for federal, state and local agencies due to increasing pressure on prison capacities and the call to find more *economical* alternatives to incarceration for first- and second-time offenders. These agencies also must contend with the fact that 600,000 offenders are released from prison every year and these adults need services that help them *successfully transition* from an institutional setting to living

in the community” (Businesswire 12-02-04). Cornell expects a 100,000 million dollar increase in revenue in the next year, in large part due to these types of services (Cornell Press Letter to Shareholders 2002).

The construction of newest undeserving populations; the criminal and not so criminal alien, the mentally ill, parolees and probationers as a political, economic and moral threats, the movement toward more rehabilitative rather than punitive practices in the name of compassion, public safety and cost savings, the continued melding and strengthening of moral, business and government interests leads to the conclusion that the debate over privatization is dangerously close to being no longer about public-versus-private prisons but rather a mix of the two. Moreover, there is no room in this situation, nor has there been for quite some time, for questioning or discussion about the fundamentally flawed concept of punishment. Our taken-for-granted ways of punishing and thinking about punishing allowed the debate on private-versus-public prisons to go on without questioning the fundamental problem of imprisonment itself, ensuring that other solutions were ignored or dismissed. This contributes to the production and reproduction of an ‘underclass’ population.

New Crisis: More Business

The latest moves by industry leaders, supported by the familiar claims of the past, indicate one of the newest targeted populations. In Mississippi, Wackenhut runs the nation’s only privatized mental-health prison, and it operates a 520-bed drug-treatment facility in Kyle, Texas. “We expect our government clients will seek more specialized services for more targeted populations. We have begun to see it less and less as a monolithic population. It is a diverse population with various needs,” said Wackenhut

executive Wayne Calabrese, citing the “evolution” of the industry. “I think the best is ahead of us” (Slevin 2001). In addition, Wackenhut operates the nation’s first privately run state mental-health hospital located in south Florida.

In each of these new markets, problems are beginning to surface, but the industry manages the claims of critics in a way remarkably similar to the early claims against operational privatization. For example, in August 2004 a West Palm Beach grand jury issued a scathing report of the Florida Institute for Girls, a privately run prison (Premier Behavioral Solutions, Inc.) for maximum-risk and mentally ill teens. Among the findings were several incidents of sexual abuse by staff members. Predictably, the company claimed that the charges of abuse and the incidents were the result of the inappropriate behavior on the part of a few staff members and not the company’s fault. It was a unique situation, and “one the company has rectified and is moving beyond” (Businessweek August 2 2004).

Continuing the earlier theme of state responsibility via setting the guidelines, the Bridge Institute, an Athens, Georgia, privately operated facility for juvenile offenders with serious mental-health problems, was ordered by the state to start providing “proper care for our youth.” The department of Juvenile Justice Commission expressed five areas of concern, the primary problem being a delay in the time between when a child reports an illness and when he/she receives treatment. The company responded, “We fully expect to meet the state’s guidelines” (Carter 2002).

Keeping quiet, one of the early strategies used to silence critics continues. In February 2002 the *Indianapolis Star* reported that Child Protective Services was reviewing the treatment a 10-year-old girl received during a court-ordered stay at Indianapolis Training Center, a private counseling facility for troubled youth. The girl’s

mother contends her daughter was hit with a wooden paddle 14 times, restrained by teenage “leaders” who sat on the girl and confined in near-isolation for periods of up to five days. The center is managed by the Institute in Basic Life Principles (see section on Faith Based initiatives) (February 5, 2002). The company representative, principle Roger Gergeni, responded to the growing list of allegations in the predictable manner by refusing to answer questions, “I’d rather not say a thing” (Reeve 2002). At the East Mississippi Correctional Facility operated by Wackenhut Corrections and designed to house inmates with special needs, including those with psychiatric illnesses, deaths and violence are mounting. Between May and August of 2002, there were three inmate-on-inmate attacks involving knives in addition to one death as the result of a stabbing. In February 2003, after a two-hour standoff, prison emergency personnel used chemical agents to get 29 prisoners to return to their cells. The company’s response? Refused to comment.

Recognition of the Problems

After sharp reductions in funding to mental health facilities, prisons became the warehouse for those suffering from mental-health issues. However, it is only recently that it emerged as a ‘crisis’ of importance to the private-prison industry. In 2002, President George W. Bush’s New Freedom Commission on Mental Health described the system as “broken and in shambles.” According to Human Rights Watch, at least one in six prisoners in the United States is mentally ill, well over 300,000 men and women. (HRW 2003) Prison guards in Wisconsin chillingly describe the conditions within the prison walls. “We are equipped to handle 317 mentally ill patients, but we have 4,610. These seriously mental ill inmates have been recklessly integrated into the general population and their presence presents a very dangerous dichotomy to the corrections setting”

(Milam 2004). The Michigan Bar Association describes the number of severely mentally ill who end up in prison in Michigan as “an out of control crisis” (Weeks 2004). In 2004, the Department of Corrections of the State of Florida found that the expenditures on mental health services for inmates have increased 35 percent since 2001 (Produm 2005).

Just as the corrections officers, prison officials, prisoner rights activists, judges and politicians found themselves on the same page in their response to overcrowding that played a crucial role in the build up of prisons and their eventual privatization, they now find themselves in agreement that something else is terribly wrong with the criminal justice system. The nation’s prisons and jails have become mental-health facilities, a role for which they are ill-equipped. Governors across the country have established Mental Health Commissions to fix the broken mental-health system. For example, Michigan Governor Jennifer Granholm stated, “There is one goal for this commission, that no one enters the juvenile or criminal justice system because of inadequate mental health care” (Weeks 2004). This ‘crisis’ has not gone unnoticed by the private prison industry.

The Push and Sell, Again

The seeds for the industry’s planned expansion into this area became most visible with the 2001 formation of the Association of Private Correctional and Treatment Organizations (APCTO). This is a non-profit trade association made up of private prison firms--CCA, Wackenhut, Cornell, Management Training Corporation-- and prison service groups: Community Education Centers, Correct Rx Pharmacy Services, MHM (mental health provider) Corrections Services Corporation (rehabilitation provider) and Physicians Network Association (healthcare provider). APCTO is headed by Andrew LeFevre, former private prison industry executive and director of ALEC’s Criminal Justice Task Force that shapes criminal justice policy. The group’s self-description and

mission statement uses a remarkably similar script: linking humanitarianism, public duty, cost savings, professionalism, and innovation to promote the further privatization of rehabilitation and treatment. The group states that members are, “committed to new correctional solutions that rehabilitate inmates and reduce recidivism and offer a variety of adult programs designed to help inmates become productive members of society. APCTO member companies provide high quality service and generate cost savings as part of public agencies comprehensive correctional efforts at the federal, state and local level. Member companies also specialize in the provision of residential and outpatient programs to help offenders transition from the institutional setting into society. Because many inmates enter the corrections system with substance abuse and behavioral problems, our programs include comprehensive counseling and specialized behavioral health services that focus on helping clients overcome substance abuse and/or behavioral health issues. All these programs have been developed from years of experience interacting with and treating individuals entrusted to our care” (APCTO).

In 2002, Wackenhut expected that 20 to 30 percent of the company’s future revenues would be derived from mental-health and drug-treatment correctional facilities (Greene 2002). In 1997, CCA’s corporate self description read, “The Company specializes in owning, operating and managing prisons and other correctional facilities and providing inmate residential and prisoner transportation services for governmental agencies” (CCA 10K 1997). In 2003, CCA’s self description included the above statement but added, “In addition to providing the fundamental residential services relating to inmates, the Company’s facilities offer a variety of rehabilitation and educational programs, including basic education, religious services, life skills and employment training and substance-abuse treatment. These services are intended to

reduce recidivism and to prepare inmates for their successful re-entry into society upon their release. The Company also provides health care (including medical, dental and psychiatric services), food services and work and recreational programs (CCA 10Q 2004: 3).

In the same year, The Mentally Ill Offender Treatment and Crime Reduction Act of 2003, supported by ALEC (see “shaping criminal justice policy”), and sponsored by none other than CCA supporters Ohio Sen. Mike DeWine and Rep. Ted Strickland passed into law. The law is intended to ensure access to mental health and other treatment services for mentally ill adults or juveniles. The law requires these programs to target nonviolent adults or juveniles who (1) have been diagnosed as having a mental illness or co-occurring mental-illness and substance-abuse disorders or who manifest obvious signs of such an illness or disorder during arrest or confinement or before any court; and (2) face criminal charges and are deemed eligible on the grounds that the commission of the offense is the product of the person’s mental illness. The law directs that fifty million dollars in grants should be used to create or expand--among other efforts--programs that offer specialized training to criminal or juvenile-justice agency officers and employees in identifying symptoms in order to respond appropriately to individuals with mental illnesses (Bossolo, 2004).

Relying on the same set of claims used to promote operational privatization: high quality and cost savings, increasing public safety, innovation, experience and historical success combined with the appeal of public-private partnerships the industry has broadened its market to include more marginalized (the industry refers to these as ‘specialized’) populations: the mentally ill, drug addicted, youth offenders, those on probation, and those recently or soon to be released from prison. Interestingly, similar

problems are arising in each of the new markets and, as expected the industry manages the claims of critics using the same strategies.

Community Corrections

Ever on the lookout for new markets, private-prison firms have expanded into the 'alternatives to incarceration' field. Cornell and GEO, Inc. have established electronic monitoring services. Recently, Delaware's Division of Youth and Rehabilitative Services contracted with Big Brother Inc. to monitor the state's youth offenders with global positioning devices (Sanginiti, 2004). In July of the same year, seven contractors bid on Tennessee's 2.5 million-dollar pilot project to use a global positioning system to keep track of violent sex offenders on parole. Tennessee Representative Rob Briley (D) described the program as a "massive cost saving tool for the state." The chairman of the state's Corrections Oversight Committee is excited, "Taken statewide the program could include other types of offenders, those behind in child support and those convicted of domestic violence. This could reduce our demand for prison beds and allow us to stiffen penalties for felons that pose a risk to society" (Associated Press 2004).

Cornell Corrections has also encountered problems with their attempts to broaden the market to include community corrections. In 2000, Allvest, Inc. a subsidiary of Cornell Corrections that operates a state-funded halfway house, settled a lawsuit over poor living conditions at the Cordova Center. Plaintiffs received more than 100,000 dollars in the settlement (*Anchorage Daily News*, May 1, 2000). In a separate case a jury ordered Allvest, Inc. to pay more than 80,000 dollars in actual damages plus one million dollars in punitive damages to five women who were sexually harassed or assaulted by a guard at the halfway house operated by the company (Clark, 2001). Just weeks after one

lawsuit was settled, another was filed against Cornell Corrections, Inc. for its operation of another halfway house. The new lawsuit claimed negligence led to the rape of a woman by a former boyfriend who walked away from Tundra Center. The Alaska Department of Corrections was named as a co-defendant because Cornell operates Tundra Center under a state contract. (*Anchorage Daily News*, May 1, 2000.) So much for the claim that privatization protects the state from costly lawsuits.

An investigative report revealed that escapes were commonplace at two private detention centers near Horizon City, Texas. Avalon Incorporated, a member of APCTO, operates the minimum-security halfway houses for parole violators. During their incarceration, inmates said, escaping was easy. Residents took advantage of guard staffing shortages and the center's reliance on security cameras to slip away undetected. By cutting back on staff pay rates or replacing positions with surveillance equipment, Avalon's private prisons were able to cut the costs of housing residents. Avalon responded that "We are increasing staffing levels to ensure that these isolated events do not reoccur"(*El Paso Times*, August 29, 2001).

In early 2002, two administrators who ran a youth corrections facility in Colorado that had its license revoked by the state in 1998 won a multi-million dollar state contract to run a similar facility. In 1998, the Colorado Department of Human Services shut down the High Plains Youth Center operated by a company called Rebound. The facility often was cited for violating state regulations. Eventually the suicide of a 13-year-old boy led to its downfall. It's new incarnation, a company called Cornerstone Programs, received the contract to run a new 7 million dollar facility for 40 female delinquents in Jefferson County (Kreck 2002).

A year after it opened, the Promontory Community Correctional Center in Draper, Utah was under fire. The program, managed under a private contract with APCTO member Management and Training, was designed to ease parolees back into their communities, but the problems began immediately. Not only did some parolees not return to prison, but they were disappearing completely. In less than nine months 102 parolees enrolled in the program walked away. By contrast, only 41 parolees had walked away from halfway houses operated by the Utah Department of Corrections outside of prison. Prison administrators referred to the program as “a cutting-edge halfway-back program, some problems should be expected, but they are not insurmountable” (Burton, 1999).

The private industry’s foray into the expanded market of community corrections, like operational prison privatization, has also been characterized by conflicts of interest. For example, in 2001 Georgia’s attorney general began looking into consulting contracts two state pardons and parole Board members had with private security companies to determine if there was a conflict of interest or ethics laws were broken. Parole board chairman Walter Ray and board member Bobby Whitworth acknowledged that they had been paid consultants for the probation company Detention Management Services (DMS), a firm with state contracts. Ray, who was paid 11,000 dollars over two years, and Whitworth who was paid 75,000 dollars over three years, said their job was to “introduce DMS owner Lanson Newsome to local government officials in hopes they would hire the company to supervise misdemeanor offenders sentenced to probation in city and county court systems.” Whitworth also admitted to accepting over 120,000 dollars in consulting fees from the Bobby Ross Group, another firm with state contracts, during his tenure as a parole board member. Both parole board members argued that there was no conflict of interest because the companies work with probationers, not parolees. However, during the

same time that Ray and Whitworth were receiving checks from the companies to introduce the company to local city and county court officials, lobbyists for the parole board were pushing legislation that would shift the responsibility of monitoring probationers to the same city and county courts (*Atlanta Journal-Constitution* June 14, 2002).

Building on earlier work of President Clinton via the PRWORA of 1996 (which opened the door for states to contract with faith-based organizations for the provision of welfare services), President Bush, set up the White House Office of Faith-Based and Community- Based Activity. The goal of the office was to identify and remove federal regulations that barred faith-based organizations in federally funded programs. In 2002, President Bush signed an executive order making it easier for faith based groups to win government funds for providing social services, including substance abuse treatment. This order relaxed restrictions requiring that service providers keep religious training separate from services funded by the government. Six federal agencies, including justice, housing and urban development and the department of health and human services granted about 1.17 billion dollars to faith-based agencies by 2003 (Office of the President, 2004).

In his 2004 state of the Union address, George W. Bush put prisoner reentry in the national spot light. "Tonight I ask you to consider another group of Americans in need of help. This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work or a home or help, they are much more likely to commit crime and return to prison. So tonight, I propose a four-year, 300 million dollar Prisoner Re-Entry Initiative to expand job training and placement services, to provide transitional housing and to help newly released prisoners get mentoring, including from faith-based groups" (Bush 2004). Currently, it appears that the private-

prison industry is capitalizing on both the economic and emotional appeal of the President's 'compassionate conservative' agenda. Both GEO Inc. (formerly Wackenhut) and CCA have instituted faith-based programs.

GEO, Inc. claims that "When an offender changes his values system, he changes his behavior. Religious programming is an important element in offender rehabilitation." Nearly all GEO facilities have full-time chaplains who supervise and coordinate the religious program to ensure that all faiths have adequate opportunity and representation. By developing a close relationship with the community, GEO is able to recruit and train a large number of religious volunteers to provide for the offenders' religious needs. Cutting costs for the company in two ways. Free labor from volunteers and qualifying them for grants under the faith based initiative. Additionally, GEO claims that it "has expanded the religious program in two facilities to include a voluntary, faith-based, residential Bible college where offenders can earn a Bible degree through correspondence courses." GEO, by attaching itself to the compassionate agenda and religious groups has effectively promoted itself as serving the greater good and possessing the virtues of volunteerism by providing not only religious training but education as well. GEO also works closely with the Kairos Ministry and other religious groups to provide expanded faith-based programs in other facilities (GEO, Inc. Web site).

CCA announced in 2003 that it was partnering with Bill Glass Champions for Life, the operator of the nation's largest evangelical prison ministries program. The initiative, according to Jim Seaton CCA's chief operating officer, aims to "improve inmate and staff safety, lower prison costs and re-incarceration rates and return a better individual to society" (CCA newsroom April 16, 2003). The following year CCA entered into an agreement with Institute in Basic Life Principles (IBLP). The two, CCA and

IBLP, developed a faith-based program of inmate rehabilitation: the Life Principle Community Program. CCA director of Inmate Programs John Lanz reports that due to the initial success of the program, it has become the prototype for faith-based programs in CCA facilities across the country, “CCA is elevating its emphasis on faith-based and religious counseling at all of its 60-plus facilities across the country” (CCA newsroom Oct 19 2004). Dennis Bradby, CCA vice president, explains the move toward faith-based initiatives, “Nearly two-thirds of the 600,000 inmates released this year in the United States will return to jail. Our experience makes it clear that faith-based programs are a proven tool in changing inmate behavior and attaining a higher quality of life.” The most recent move by CCA indicates one area of future growth in the industry and the strength of the political, religious and industry relationship in addition to the ongoing republican rhetoric of shrinking government. On the heels of President Bush’s state of the union call to “help the more than 1.4 million American children with a parent or parents in prison”, and the 60 million faith-based dollars to support it, CCA developed a partnership with Child Evangelism Fellowship (CEF) and School of Christ International to extend it’s faith-based programs to the children of inmates (CCA Newsroom 2005).

The seeds for future growth and new commodities in the private-prison industry have already been planted and have begun growing. This examination of the history of operational prison privatization indicates the that conditions--political, economic and cultural--are ripe for even more growth in operational privatization, and further, the claims and strategies used to promote operational privatization of prisons are surfacing to capture even more raw materials (people). The nation has hit extreme economic troubles and entered into a budget killing war. Levels of fear are high, unemployment rates are growing, and the nation is politically polarized. Unions are pointed to as partly to blame

for economic problems and the breakdown of traditional Christian morals and values and an overall lack of individual responsibility are pointed to as the causes of poverty and crime. Concurrently, localities, states and federal governments are once again struggling to fund all aspects of the still overcrowded correctional system, both private and public. At the time private corrections companies have acknowledged that any change in drug or immigration laws or an overall shift from incarceration as the preferred method of control will be devastating the companies' financial status. Thus, they have turned to the list of conditions selected as the 'new crisis' in corrections for their 'raw materials' carefully couching their claims in the conservative rhetoric of the day: mental health, probation, shrinking government, parole and reentry. Co-opting the language of modern-day corrections reformers, criminologists and corrections professionals dedicated to the ideals of restorative justice, the private sector has been quick to offer 'solutions' using the already familiar script.

Probation and Parole

Put into perspective, probation and parole are perhaps the largest potential market for growth of the industry. At the end of 2003, there were 4.8 million people on probation or parole in the United States. The growth rate of parole population (1.7) between 1995 and 2002 had been last, behind jails (4.0), prisons (3.4) and probation (2.1). (See chart.) At the end of 2002, however, the growth rate of parole (3.1) passed probation and was nearing the rate of prison growth, nearly doubling its rate from since 1995 (Glaze and Palla 2004). By 2003, 29 states reported increases in parole populations and four had double-digit increases. The use of probation has also continued to grow, but at a slower pace. From 2000 to 2001 the number of people on probation increased 2.5 percent, slowed to an increase of 1.6 percent in 2002 and declined more in 2003 to an increase 1.2

percent. In total numbers, the growth of the number of people on probation was 23,654 in 2003. However, these numbers are somewhat misleading. There are about 2.2 million new entries each year into probation and while the nations number of people on parole increased by approximately 24,000 between 2002 and 2003 the number of *new* parole entries totaled nearly a half a million (492, 737) (Glaze and Palla 2004). These new cases present an opportunity for the increased use of new social-control mechanisms, such as GPS tracking of people on probation and parole, and the continued marginalization of a population already facing incredible obstacles to successful reintegration.

Recently, Doctor R. Crantz (co-founder of CCA), Steven W. Logan (co-founder Cornell Corrections and founder and President of APCTO), Joseph F. Johnson (former director of CCA and Board of Directors National Democratic Governors' Association), Brian Moran (former director of General Dynamics Corporation), and Greg Utterback (former Director of Business Development of Cornell Companies) came together to form Satellite Tracking of People, LLC (STOP). The system now being marketed across the country, Veritracks, goes beyond simple monitoring of offenders with tethers. It brings together offender monitoring and crime-mapping technology. According to Crantz, the system can plot an individual's movements against crime incidents. This provides public safety officials information about whether the person was in an area at the time of a crime. In addition, a public safety official can set up inclusion and exclusion zones (school zones or high drug traffic areas, for example) and notifies supervisors in real time, often with photos, when a zone violation occurs (PR Newswire 2005). Cornell and GEO, Inc. have already established electronic monitoring services. Recently, Delaware's Division of Youth and Rehabilitative Services contracted with Big Brother, Inc. to monitor the states youth offenders with global positioning devices (Sanginiti 2004). In

July of the same year seven contractors bid on Tennessee's 2.5 million pilot project to use a global positioning system to keep track of parolees. (AP July 13, 2004). Promoting the program as a "massive cost saving tool for the state" and having the potential to "include other types of offenders, those behind in child support and those convicted of domestic violence, that could reduce our demand for prison beds and allow us to stiffen penalties for felons that pose a risk to society" STOP, LLC is the favored contender for the contract (AP 2004).

The entanglements of the many participants, the expansion of the areas of interest, and the increased number of populations affected calls for rethinking of the 'prison industrial complex' for the phrase fails to capture the idea in its totality. Just like the industry has broadened its markets so too must criminologists broaden the understanding and view of the complexities of the arrangement. By developing an understanding of the deep sociological and cultural roots of crime control, a posture of resistance to this existing form of domination and future expansion of formal control mechanisms in the name of reform can be pursued in order to confront social inequality, seek to liberate oppressed people and prevent further oppression. Hopefully this dissertation provides the groundwork for future action.

On a more practical level, future research should examine the affects of the private-prison interest's latest activities in probation and parole in addition to the development of prison industries. Of interest is whether probation and parole violations that ultimately send people to prison increase or decrease when monitored or detected by private companies. Also worthy of investigation is whether the use of inmate labor (by private companies) to produce technology (owned and used by private companies) used to detect crime and reincarcerate offenders develops.

“Institutions never arise full blown; they are historical products of layer upon layer of custom emerging from the distant past into hesitant shapes. The modern prison and the reliance on imprisonment are the products of such a process” (Fogel, 1975). In a process there are contingencies; one important contingency is the work of criminologists, the avenues of interest they pursue and their activities. Adopting the tactics of the members of the corrections commercial complex are not out of the question; we have seen them work.

APPENDIX A

ALEC MODEL LEGISLATION BENEFITING THE PRIVATE PRISON INDUSTRY

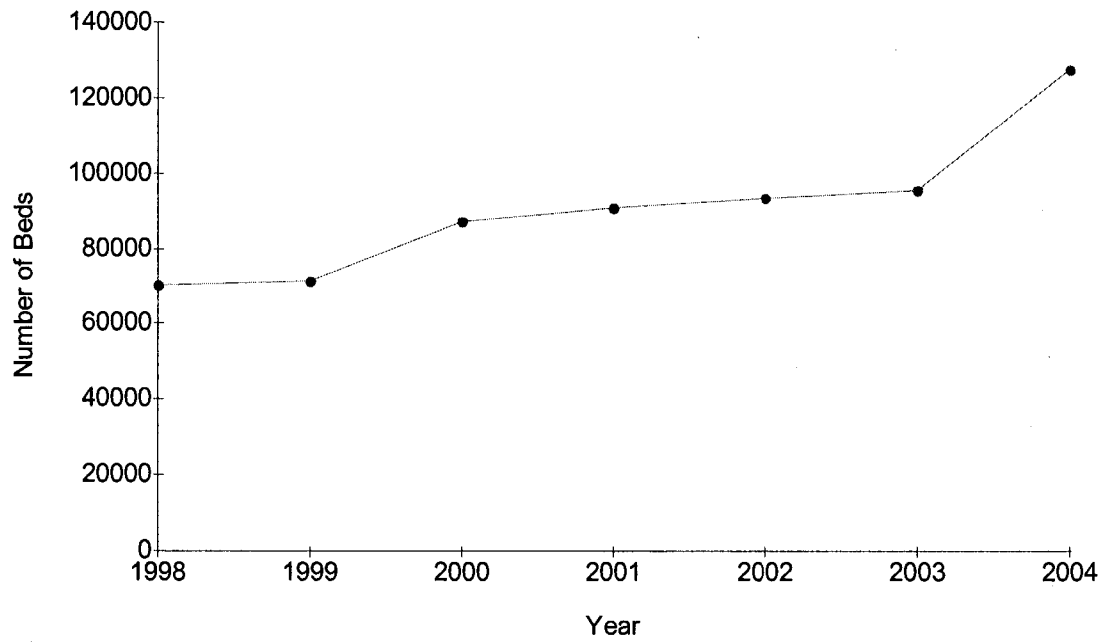
Legislation/Resolutions
Habitual Juvenile Offender Act
Habitual Violent Offender Act
Shock Incarceration Act
Prisoner Litigation Reform Act
Truth In Sentencing
Publication of Drug Offender Photographs Act
Prison Industries Act
Minimum Mandatory Sentencing Act
Litigation Accountability Act
Resolution in Opposition to Disruptive Organizing Act
Resolution on Prison Expenditures
Resolution Opposing Increase in Starting Wage
Resolution Opposing Racial and Ethnic Gerrymandering
Housing Out of State Prisoners in a Private Prison
Jury Patriotism Act

Source: ALEC Model Legislation www.alec.org.

APPENDIX B

PRIVATELY OWNED/OPERATED PRISON BEDS 1998-2004

Privately Owned/Operated Prison Beds 1998-2004



APPENDIX C
STATES WITH HIGHEST PRISON POPULATION GROWTH AND
PRIVATIZATION STATUS

State	Prisoner Population Percentage Change 02-03	Total Number of Inmates	Inmates in PP in 2003	Actions in 2004-2005
North Dakota	11.4	Less than 2000	0	Recent contracts with CCA
Minnesota	10.3	7,865	0	Recent contracts with CCA
Montana	8.9	3,620	1,059 (29.3)	Recent Contract with CCA, expansion
Wyoming	7.8	Less than 2000	493 (26%)	Contract extensions CCA Plans to build in state
Hawaii	7.5	5826	1478 (25.4)	Signed 2 contracts
Indiana	6.7	23,069	662 (2.8) *lots of room for growth 7.5 in local jails	Contract with CCA 2005: J. David Donahue becomes DOC Commissioner
Arizona	6.2	31,170	2323 (7.5)	Contracts with CCA and CSC Plans for 1000 new private beds
Maine	5.9	Less than 2,000	30 (1.5)	
Florida	5.8	79,594	4330 (5.4)	Increased Use of Contractors: Prisons, Mental Health and Substance Abuse
Oregon	5.2	12,715	0	Strong Union Resistance: No action
Kentucky	5.1	16,661	1640 (9.9) *room for growth houses 23.9% in local jails(good market)	Contracts with CCA John D. Rees becomes DOC Commissioner

APPENDIX D

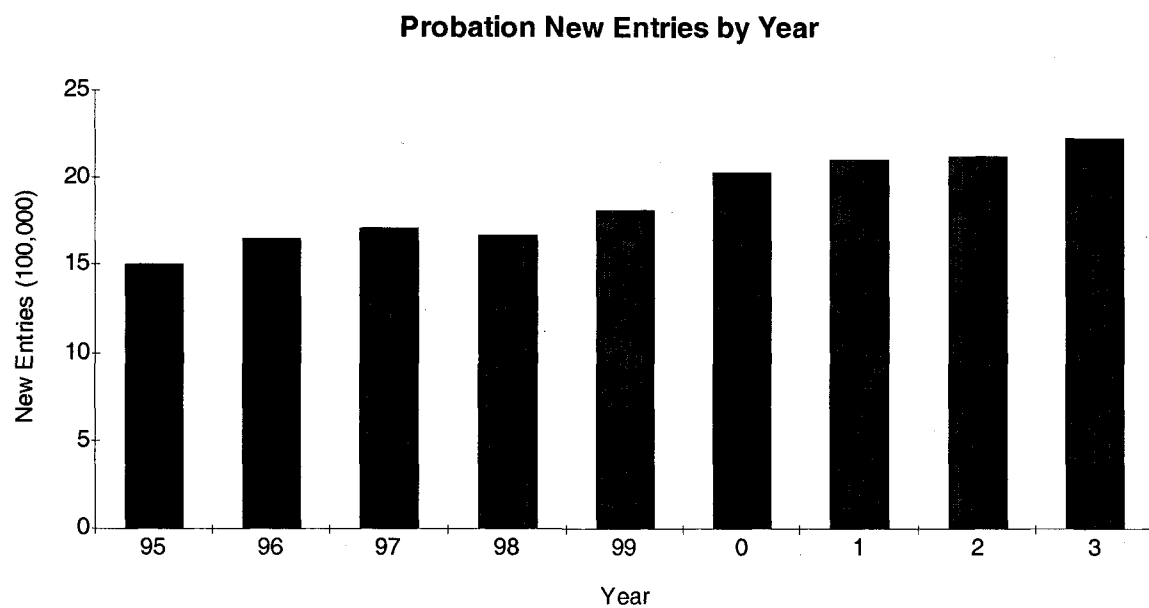
PROBATION AND PAROLE NEW ENTRIES 1995-2003

Year	Parole	Probation
1995	411,36 9	1,501,589
1996	421,05 5	1,651,544
1997	420,61 5	1,711,078
1998	434,20 9	1,672,910
1999	429,17 2	1,819,403
2000	470,41 2	2,032,089
2001	473,68 8	2,110,550
2002	468,50 6	2,129,084
2003	492,72 7	2,229,668

Source: Probation and Parole in the United States, 2003.

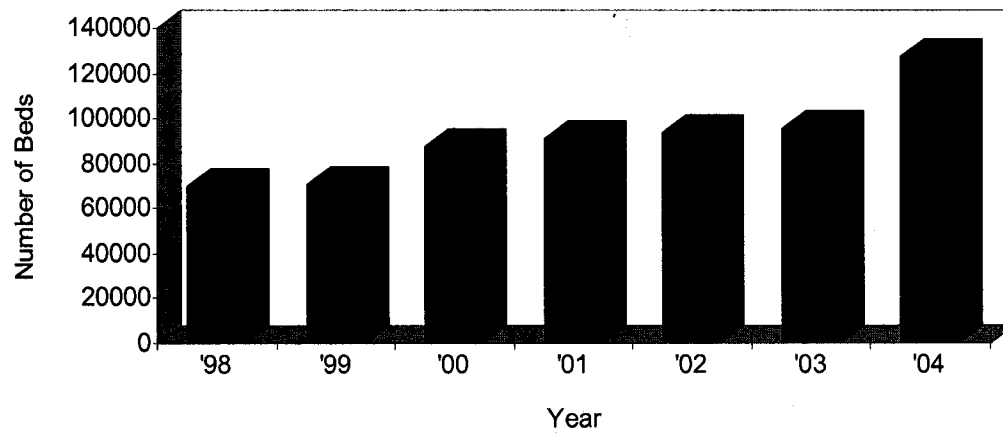
APPENDIX E

PROBATION NEW ENTRIES BY YEAR



APPENDIX F
PRIVATE PRISON BEDS BY YEAR

Private Prison Beds by Year: 1998-2004

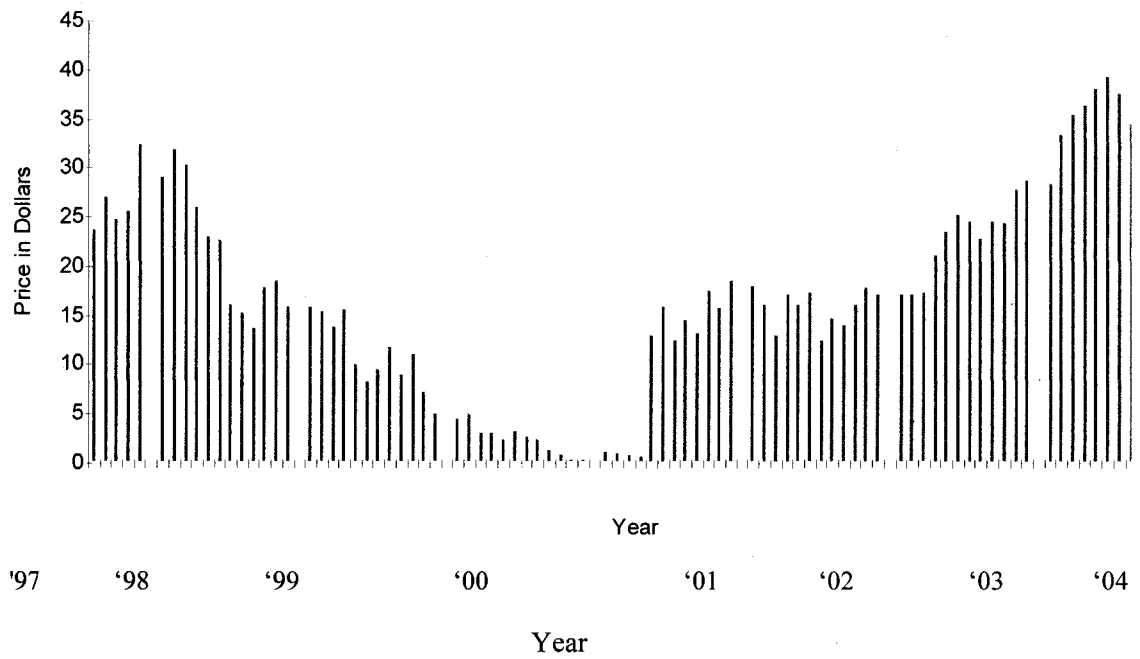


Data Sources: Prisoners in 2002. NCJ 200248. Bureau of Justice Statistics. U.S. Department of Justice. APCTO.org facilities database.

APPENDIX G
CCA STOCK PRICE HISTORY

CCA Stock Price History

1997-2004

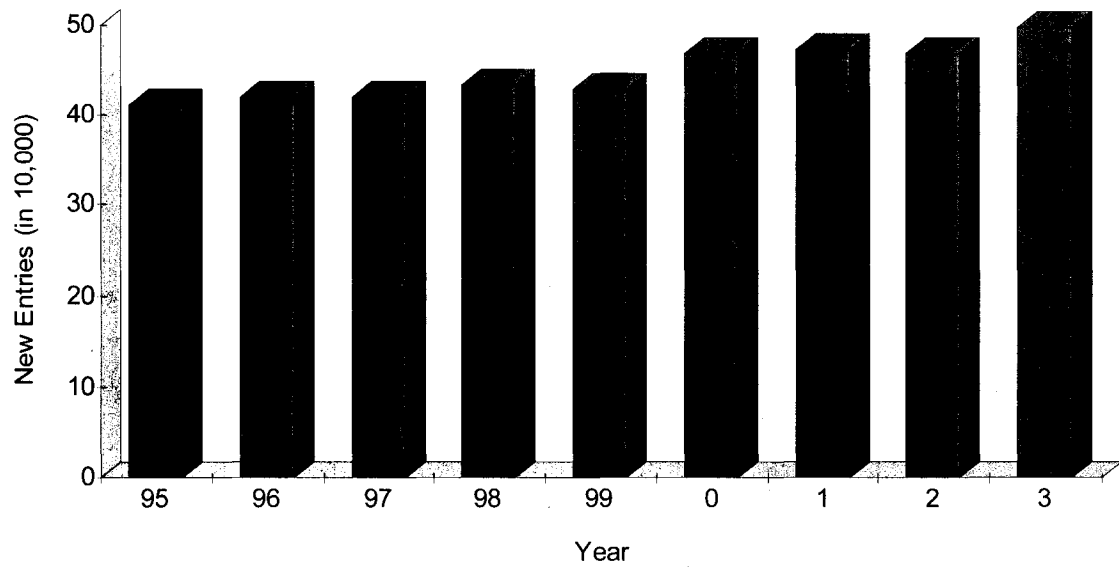


Source: New York Stock Exchange. Historical Price.

* The dramatic stock price increase in May of 2001 was the result of a 1 for 10 Reverse Stock Split.

APPENDIX H
PAROLE NEW ENTRIES BY YEAR

Parole New Entries by Year



Source: Probation and Parole in the United States, 2003, 2002, 2001, 2000, 1999, 1998, 1997, 1996, 1995; Bureau of Justice Statistics. U.S. Department of Justice.

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