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Abstract

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Keywords

private prison, prison reform

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United States conservatism and neoliberalism have created a market for prison privatization. The business of making money from incarcerated bodies is in direct conflict with the goals of the justice system. Driving economic and political forces are examined and used to explain the rising prison-industrial complex. Private prison performance is measured by recidivism, cost, inmate rights, and quality of confinement. This paper suggests that prison privatization must be reformed or abolished to improve the corrections system in the United States.

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Introduction

On April 2nd, 2014, the *Los Angeles Times* reported another private prison would be opening in California. Located just north of Bakersfield, the McFarland Community Reentry Facility will house an estimated 260 female inmates. The private prison will receive \$9 million per year for four years to house these inmates, making the total lease \$36 million (St. John, 2014).

The privatization of prisons is not a new phenomenon. Historically, there have been three types of prison industries – convict leasing, piece pricing, and privatization. Convict leasing was used largely in the South, following the emancipation of slaves. In the late 1800s, Southern landowners would pay prisons to lease inmates for work on plantations and railroads. Piece pricing was used in early American penitentiaries; states had complete physical control of inmates, but private companies would contract with prisons to provide all the materials and equipment needed for the production of a particular product. Currently, the prison industry has evolved to complete privatization. Private prisons are contracted by the state or by the federal government, and are fully responsible for inmate housing, supervision, and management (Lukemeyer & McCorkle, 2006; Miller, 1998). In 1986, the first adult private prison opened in the United States (Miller, 1998).

Since the 1980s, the prison population in the United States has been growing exponentially. Currently, there are roughly two million Americans housed in correctional facilities (Spivak & Sharp, 2008). By 2000, the cost of running prisons at the state level reached an unimaginable \$43 billion per year (Perrone & Pratt, 2003). The rapid expansion and financial drain of the prison boom led to a search for more cost-effective ways

to house inmates. Therefore, a shift in the 1980s toward prison privatization as a way to deal with overcrowded prisons began while supposedly saving taxpayer dollars (Camp, 2005). Privatization has since turned correctional institutions into million dollar moneymakers.

Private prisons were initially introduced as a way to save taxpayer dollars while improving service quality (Gaes, 2005). More specifically, the Bureau of Justice Assistance stated that private prisons would build faster and cheaper facilities, operate on smaller budgets, and improve the quality of confinement and services (Bales, Bedard, Quinn, Ensley, & Holley, 2005). However, it is clear that private corporations are interested in the profit-making aspect of prison privatization. To quote Pranis, “Recognizing an opportunity to make fortunes off the backs of prisoners and their families, Corporate America – including architects, bankers, building contractors, and telephone companies – lined up at the prison trough” (as cited in Welch & Turner, 2008). Critics of the movement toward privatization fear that private prisons will cut corners in quality to ensure profits.

Since its initiation, prison privatization has been increasing steadily. Between 1995 and 2003, the number of inmates in private prisons grew by an estimated 500% (Taylor & Cooper, 2008). The number of facilities also grew rapidly, with the construction of 415 privately operated prisons by 2005 (Duwe & Clark, 2013). The U.S. Bureau of Prisons has revealed that nearly 10% of federal inmates and 12% of state inmates are being housed in private facilities (Bales et al., 2005; Gran & Henry, 2008). These numbers have likely risen since the reports were published. Internationally, private prisons have received contracts in countries such as Australia, Scotland, Canada, and England (Lanza-Kaduce, Parker, & Thomas, 1999). Yet the

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United States holds the highest number of private beds worldwide, about 85% in 2001 (Schwartz & Nurge, 2004).

Prison privatization is a widely debated topic. Criminologists, economists, and social scientists have set out to determine whether or not the corrections industry should be privatized and, if so, the consequences of such privatization. Section one of this paper will investigate the political and economic push toward privatization. This will include a discussion on conservatism, neoliberalism, and the ethics of making money from incarcerated individuals. The second section will examine the effectiveness of privatization by looking at recidivism, cost, inmate rights, and quality of confinement. The last section will be devoted to policy implications and a road map of where the justice system should go from here. Overall, it will be argued that privatization is not the answer to the U.S. prison crisis.

Causes and Issues of Privatization

Political and Economic Influences

The economic crisis of the 1970s caused the Keynesian economic model – which encouraged government intervention during economic struggle and promoted welfare policies – to lose popularity among voters and policy makers. This gave rise to conservative policies as well as neoliberalism (Jing, 2010). Neoliberalism is an economic philosophy that promotes minimal government involvement, deregulation, and privatization (Wacquant, 2010). Essentially, policy makers shifted the cost of social service institutions onto individuals rather than the state, causing poverty, homelessness, and incarceration to soar (LeBaron, 2008). These economic changes highlighted the existing problems within the prison system. Shortly after, Reagan’s presidency fostered the “get tough on crime”

movement and also pushed the “get government off our backs, out of our pockets” slogan. Both platforms reshaped the corrections system and reestablished the market for private prisons (Jing, 2010).

Beginning in the 1980s, government officials were encouraged to contract public services out to the private sector. This included “sanitation, health care, security, fire protection, and education” (Welch & Turner, 2008, 58). The assumption was that privatization would encourage competition, improve quality, and reduce cost (Welch & Turner, 2008). The move to privatize prison required collaboration among government officials as well as political party elites, businessmen, and experts in the field of corrections (Chang & Thompkins, 2002). This trend of prison privatization has been seen most in countries that have adopted the neoliberal philosophy (Taylor & Cooper, 2008). However, the ascent into neoliberalism, privatization, and the now penal state was especially rapid in the United States due to pre-existing, advanced marginalization (Wacquant, 2011).

Neoliberalism and privatization have culminated into what is identified as the prison-industrial complex. The “military-industrial complex,” coined by President Eisenhower, influenced the term prison-industrial complex. The military-industrial complex referred to the conjunction of the state’s military and the private weapons industry (Sudbury, 2004). According to Schlosser (1998), the prison-industrial complex is “a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need” (p. 54). Despite declining crime rates and the proven ineffectiveness of prisons, legislative figures continue to pump billions of dollars into the prison system every year. They continue to do so not to increase public safety, but to generate

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revenue for private corporations and other stakeholders (Sudbury, 2004). Two of the biggest profiteers of prison privatization are the Corrections Corporation of America (CCA) and Wackenhut Corrections, both of which have recently gone public (Chang & Thompkins, 2002; Perrone & Pratt, 2003). Service workers also have a stake in the prison-industry as it provides a more steady and lucrative line of work (Ward, 2004). The prison-industrial complex cements failed prison policies in place by making money from the incarcerated. As quoted by Welch and Turner (2008), “The tremendous profits accruing to the prison-industrial complex demonstrate that the free market works best when people aren't free” (p. 64).

Ethical Issues

There are obvious ethical issues in contracting criminal punishment out to private corporations. Unfortunately, because of the lucrative nature of the prison industry, ethical issues get overlooked and ignored. Dorfman and Harel (2013) make two compelling arguments regarding the ethics of prison privatization. The first argument states that private companies cannot adequately execute government services because “inherently public goods” can only be recognized when performed by state officials (Dorfman & Harel, 2013, p. 68). Individuals are incarcerated for committing crimes against the state. Therefore, only the state should be responsible for housing and supervising these individuals. By putting prisoners in private facilities, the state is relinquishing its responsibility to process offenders. Dorfman and Harel’s (2013) second argument is more straightforward – only public officials can perform state executions. It is required that only state officials conduct executions; therefore, this cannot be contracted to private prisons.

Inmates have essentially become commodities in today's market. As profit-making entities, inmates are fought over and sought after by private prisons. Private prisons even bid to accept inmates from overcrowded prisons in other parts of the country. Overcrowded, state-run prisons transfer overflow inmates to private prisons without proper monitoring. Private prisons are operating without proper provisions in place and without proper accountability. For instance, private prisons often fail to classify inmates correctly or simply ignore the inmate classification process all together. This results in combining inmates of all risk levels. It can also mean accepting high-risk inmates into low or medium-risk facilities (Schwartz & Nurge, 2004). Private prisons often put their profit-making interests before ensuring the quality of their facilities.

For private prisons to function, they must have a continuous supply of prisoners. To ensure all empty beds are filled, private corporations, such as the CCA and Wackenhut, push ethical boundaries in the political arena. Private prisons lobby for harsher and longer sentences to guarantee they stay in business; they want more inmates and they want them for a longer period of time (Schwartz & Nurge, 2004). This means lobbying for mandatory minimum sentences, three strikes laws, and a more strict parole board. The Criminal Justice Task Force (CJTF) is a widely known committee that pushes for more punitive measures and harsh sentencing. Few people realize that two CCA officials have actually presided as co-chairs of the CJTF committee (Schwartz & Nurge, 2004). This is a direct conflict of interest which raises many questions regarding the ethics of having a CCA official on a committee designed to push for longer sentences. Overall, prison privatization poses many ethical issues, the main being whether or not the state has the

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right to turn over its power and responsibility to the private sector.

Performance

Recidivism

The biggest measure of any prison performance is its recidivism rate. To evaluate private prison performance, a small group of researchers have compared the recidivism rates of inmates in privately operated prisons to their state-run counterparts. This type of research has been limited to a handful of studies mostly conducted in Florida.

Lanza-Kaduce, Parker, and Thomas (1999) conducted the first study comparing recidivism rates of private and public prisons. Lanza-Kaduce et al. (1999) examined the recidivism patterns of nearly 400 inmates; half had been released from a Florida Department of Corrections facility and the other half from either a CCA or Wakenhut Corrections facility. They evaluated inmates over a 12-month period and recorded post-release rearrest, resentencing, and reincarceration rates. The study yielded a 20% reincarceration rate for inmates released from private prisons and a 28% reincarceration rate for inmates released from public prisons. The researchers claimed that inmates released from private prisons were significantly less likely to be rearrested, resentenced, or reincarcerated. They also found that inmates released from public prisons were significantly more likely to commit serious crimes, such as weapon possession or property offenses, within their first year after release than inmates released from private prisons (Lanza-Kaduce et al., 1999). Despite their seemingly significant findings, other researchers found many methodological issues and limitations of the 1999 study. The limitations included a small and homogenous sample size with limited efficiency in

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matching private and public prison inmates (Spivak & Sharp, 2008).

A few years later, Bales et al. (2005) conducted a study in Florida to measure the recidivism rates of private prison inmates as compared to public prison inmates. However, they decided to analyze the differences in recidivism among private prison adult male, adult female, and male juvenile offenders compared to their public prison counterparts. Recidivism was measured on two levels: re-offense and reimprisonment. Both levels required a conviction to be considered recidivism. This study improved the limitations of the Lanza-Kaduce (1999) study, by following recidivism rates for up to 36 months post-release. For each group, the study found no statistically significant difference of re-offense or reincarceration between publicly and privately housed inmates (Bales et al., 2005). The findings of Bales et al. (2005) are important because they suggest that private prisons have no effect on recidivism compared to state-run institutions. This study directly conflicts with the argument that private prisons provide better quality services than public prisons.

In 2008, Spivak and Sharp conducted a study outside of Florida. They decided to use a larger sample of inmates from Oklahoma, approximately 23,000. The large sample size greatly improved the methodology of previous studies and increased the reliability of their results. Spivak and Sharp (2008) compared recidivism rates of offenders released from private and public prison, while taking into account the time spent at any particular facility. Their findings revealed that male inmates who spent more time in private facilities had significantly higher recidivism rates than male inmates who spent more time in public facilities. When taking all inmates into account, the results found that

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inmates released from medium-security public prisons had significantly lower recidivism rates than inmates released from medium-security private prisons (Spivak & Sharp, 2008). Spivak and Sharp (2008) concluded that incarceration in private prisons does not improve an offender's likelihood of recidivating. However, it is important to recognize that these findings do not necessarily indicate that private prisons *increase* an offender's likelihood of recidivating either; a causal relationship was not explored.

Duwe and Clark (2013) conducted the most recent study comparing private and public prison recidivism. They employed a sample size of nearly 10,000 inmates from Minnesota (Duwe & Clark, 2013). Duwe and Clark (2013) were more interested in establishing a causal relationship between private imprisonment and likelihood of rearrest or reconviction. The study found that private imprisonment significantly increased an inmate's overall probability of re-arrest (13%) and re-incarceration (22%). Private imprisonment did not increase the probability of reincarceration by new offense or technical violation. A total of five private prison measures were found to significantly increase the risk of reconviction (Duwe & Clark, 2013).

Although each subsequent study improved methodologically, the results are still somewhat mixed. Recidivism is a difficult measure to assess as it is often measured differently from study to study. Recidivism is also heavily influenced by social and structural factors that exist outside of prison, such as employment opportunities, neighborhood organization, and educational attainment (Gaes, 2005). At this time, there is no indication that private prisons produce different recidivism rates than public prisons.

Financial Costs

Another way to measure the performance of private prisons is to analyze their cost-effectiveness. One of the founding principles of prison privatization was its potential to reduce costs and save taxpayer dollars.

The CCA recently reported that “their existence helps control the cost of public prisons” (Spivak & Sharp, 2008, p. 484). It is often assumed that private prisons can be built cheaper and faster, since neither voter approval nor state budget approval are not required. However, taxpayers still pay for private prisons in less noticeable ways. Private companies, like the CCA, may take over the operating costs of the prison, but the state must still pay to monitor the facility (Spivak & Sharp, 2008). Private prisons are also given depreciation benefits, tax breaks, and subsidies, all of which come out of the taxpayers’ pockets. When taking all expenses into consideration, private prisons may actually cost slightly more than state-operated prisons (Wacquant, 2011). Therefore, economists estimate that the long-term costs of private prisons “may meet or exceed the short-term savings” (Spivak & Sharp, 2008, p. 484). Rather than the expected savings of 20%, actual cost reductions have been around 1% (Spivak & Sharp, 2008).

Private prisons often manipulate labor costs to operate on a smaller budget. In 2001, labor costs, such as salaries and benefits, accounted for 65% of the public prison budget. Around the same time, employees of private prisons received a maximum salary that was 41% lower than their public prison counterparts. Public prisons were found to have an average turnover rate of 16% annually, while private prisons reported a turnover rate more than three times higher at 52%. Even with a higher turnover rate, private prisons provided 39% fewer training

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hours for their correctional officers than public prisons (Jing, 2010). It is evident that private prisons cut employee salaries, benefits, and training to manipulate operating costs.

Economists are skeptical that private prisons save money. Some government officials have also begun to question whether costs are truly being reduced. To evaluate the cost-effectiveness of private prisons in the state of Arizona, the governor recently commissioned a three-year assessment of public savings. The results were published in 2009 and reported that private prisons in Arizona cost the state roughly \$500,000 each year (Wacquant, 2011). Similarly, a separate evaluation estimated that “California taxpayers will eventually pay \$800 million extra in debt-service costs for lease-payment bonds” that paid for the construction of several private prisons (Schwartz & Nurge, 2004).

Private prisons take advantage of public funds to make a profit. In 2000, Wackenhut Corrections Corporation grossed \$135 million in profits from their involvement in the prison industry. The CCA reported over \$238 million in revenues for the same year (Perrone & Pratt, 2003). For private prisons to produce growing profits, they must also have a growing inmate population. It is not likely that prison privatization will reduce prison costs.

Inmate Rights

The rights afforded to private prison inmates can also measure performance. There are two constitutional amendments that were created to protect defendants’ rights, and by extension, inmates’ rights. The Fifth and Fourteenth Amendments work to ensure due process rights of the accused; the Eighth Amendment protects inmates from cruel and unusual punishment (U.S. Const.). The protection against cruel and unusual punishment,

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for example, includes an inmate's right to access medical care (Bondurant, 2013). In some aspects, inmates' rights have disintegrated in private prisons.

Chang and Thompkins (2002) evaluated the labor rights of inmates incarcerated in private prisons. Working inmates in general are denied minimum wage, worker's compensation, unemployment benefits, and a safe workplace. Inmates in private prisons are often used for industrial maintenance and prison farm work. On average, inmates in private prisons work longer hours and are paid significantly less than their public prison counterparts (Chang & Thompkins, 2002). Inmates in private prisons experience labor rights violations at a higher rate than inmates in public prisons.

Miller (1998) conducted a separate study examining inmate rights in private prisons. Miller (1998) investigated the accessibility of courts to inmates in public and private institutions. Inmates face many barriers when it comes to gaining access to courts. These barriers were divided into two groups – organizational and structural – and looked specifically at barriers to filing grievances. Organizational barriers to filing grievances were defined as threats made by prison personnel to transfer inmates. Structural barriers to filing grievances were defined as lack of access to libraries and legal aid. The study included roughly 80 interviews from publicly and privately held inmates. The results concluded that both public and private prison inmates experience organizational barriers. However, private prison inmates experience many more structural barriers. Prisoners also noted a lack of legal aid assistance available to them and a law library that was severely outdated and essentially useless (Miller, 1998). Access to the courts is one of the most valued of inmate

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rights. It is a sign of poor performance for private prisons to diminish prisoner rights as a means of ensuring profits.

Quality of Confinement

The last measure of private prison performance is the quality of the confinement. It is important to evaluate quality of confinement to determine whether private prisons do indeed provide superior quality of services compared to public prisons.

Logan (1992) quotes the mission statement of a prison is “to keep prisoners...to keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy...and to do it with fairness, without undue suffering and as efficiently as possible” (p. 580). This mission statement recognizes eight measurements of quality of confinement: “Security, Safety, Order, Care, Activity, Justice, Conditions and Management” (Logan, 1992, p. 580). Each of these dimensions has been evaluated on some level by researchers in the field of criminal justice.

Security, safety, and order go hand in hand. Security refers to both external and internal security, while safety refers to the protection of prisoners and staff members. Order refers to a prison’s ability to maintain order by preventing misconduct (Logan, 1992). Several studies have evaluated the safety, security, and order of private and public prisons. A multi-dimensional study by Spivak & Sharp (2008) found internal security levels and gang activity to be relatively similar between public and private prisons. However, higher rates of drug use in private prisons indicated a weaker level of external security. The study also found higher levels of inmate misconduct in private prisons (Spivak & Sharp, 2008). A closer examination of violent incidents in prisons suggested that private prisons have the most reports of inmate-on-inmate assault among all state and federal

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institutions experiencing such violence. Conversely, private prisons were found to have the lowest levels of inmate-on-staff assaults (Lukemeyer & McCorkle, 2006). Overall, most studies have indicated lower levels of safety, security, and order among private prisons as compared to public prisons.

Care and conditions also complement each other as dimensions of quality of confinement. Care involves adequate healthcare and a proper diet. Conditions refer to the level of crowding, food, light, noise, and sanitation (Logan, 1992). An inmate survey published in 2008 stated that inmates at private facilities reported poorer sanitation conditions and food services than inmates at public facilities (Spivak & Sharp, 2008). A separate inmate survey reported similar findings. Inmates at Taft private prison were asked questions about general prison conditions. Results showed sanitation at Taft's dining hall and housing unit was among the lowest when compared to public prisons. Taft also had the lowest ranking for food quality, variety, amount, and appearance. However, Taft did outperform public prisons with the highest ranking in quietness during evening and sleeping hours (Camp et al., 2002). In general, private prisons tend to score lower in levels of care and conditions when compared to public prisons.

Activity as a measurement of quality of confinement pertains to an inmate's access to education, rehabilitation, treatment, and other programs (Logan, 1992). Transfers between public and private prisons often disrupt an inmate's treatment plan or education track. Once moved to a private facility, certain programs may no longer be available to inmates (Spivak & Sharp, 2008). This poses a serious disruption to an inmate's course of rehabilitation. A comparison of public and private prisons in 2006 claimed that private prisons have higher

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proportions of prisoners enrolled in programs (Lukemeyer & McCorkle, 2006). A follow-up study then compared program availability across state, federal, and private institutions. This closer examination suggested that private institutions were less likely to provide programs such as adult education and vocational training. More specifically, over 12% of private prisons did not offer an educational program compared to 8% of state institutions, and 0% of federal institutions (Wright, 2010). Private prisons do not perform well when using activity as a measurement.

Management as a measurement of quality of confinement employs variables such as employee morale, stress, and turnover (Logan, 1992). As previously mentioned, private prisons have a much higher turnover rate compared to public prisons. Nevertheless, a study of private prison employees in New Mexico yielded different results. The study examined private prison employee stress compared to public prison employee stress. Private prison employees scored lower on all five measures of job stress – strain, overwork, physical fatigue, emotional fatigue, and tension with inmates. It was also found that private prison employees possessed higher levels of education compared to public prison employees (Logan, 1996). Studies of management between private and public prisons have yielded mixed results.

Lastly, the justice dimension of quality of confinement applies to rights of due process and fair sanctions (Logan, 1992), which was previously discussed in the section labeled *Inmate Rights*. Recall that private prison inmates were generally afforded fewer rights than inmates in public prisons. Quality of confinement between private and public prisons is a multi-dimensional measurement of performance. Overall, private

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prisons seem to perform lower than public prisons. Even with such empirical data available, it is still difficult to hold private corporations publicly accountable for their actions or lack thereof (Gran & Henry, 2008).

Policy Implications & Conclusion

There are two avenues of policy implications that follow from the current state of prison privatization: reform it or abolish it. Wright (2010) chose to investigate what prison privatization reform would look like. He claimed that scholars and corrections experts should decide how the prison system could benefit from privatization. Rather than asking for cheaper and better quality private institutions, he argued, one should instead ask how they can operate differently and what type of care should be offered. He claims private institutions should be more rehabilitative and treatment oriented. The benefits of a more rehabilitative model within prison privatization include: stronger focus on treatment, private companies held accountable for failed programs, encouragement of new therapeutic methods, legitimize treatment in public prisons, and the reform of capitalist and neoliberalist thinking that currently guides the corrections system (Wright, 2010). Prior research is cited to conceptualize what makes a treatment program successful. Wright (2010) claims that offender risk must be matched with treatment intensity, programs must target known indicators of crime (i.e. personality disorders), and programs must be made available in a variety of learning styles (i.e. behavioral, social). Such program designs have been successful in reducing offender recidivism rates (Wright, 2010). Reforming prison privatization, according to Wright's (2010) standards, would create a system of rehabilitation and treatment that would not only benefit the offender, but also his loved ones and community members.

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The alternative to privatization reform is abolishment. A movement to abolish private prisons would have to start from the bottom up with grassroots organizations. Organizations pushing for private prison abolishment would likely be the same organizations pushing for prison abolishment all together. In fact, many organizations have already emerged showing resistance to the prison boom. One of the most prominent organizations on the anti-prison forefront is Critical Resistance. Critical Resistance is a social movement that protests prison industry and the “tough on crime” philosophy. Chapters of Critical Resistance have formed across the nation and have been joined by several other groups fighting for similar causes such as Families Against Mandatory Minimums, Schools Not Jails, and the Prison Moratorium Project. Such organizations find common ground as they all stand to eliminate the prison-industrial complex (Sudbury, 2004).

Angela Davis writes, “our focus must not rest only on the prison system as an isolated institution but must also be directed at all the social relations that support the permanence of the prison” (Davis, 2003, p.112). Davis (2003) argues that problem of the prison – including privatization – cannot be addressed solely from a perspective of the correctional system. Rather, prison abolition must involve the reform of multiple social, economic, and ideological institutions. The current system of mass incarceration was not built overnight. It was influenced by several factors, such as misguided politics, social turmoil, and the narrowing of the welfare state. Therefore, the deconstruction of the prison system must be addressed through a multitude of avenues, movements, and institutions.

Prison privatization is multi-faceted and therefore, difficult to address from all angles. Influenced by conservative

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policies and the doctrine of neoliberalism, private prisons have created their own niche in today's market. The profit-making business has grown into what is now known as the "prison-industrial complex." However, there exists ethical dilemmas regarding for-profit incarceration and indicators of poor prison performance within the private sector. Privatization has not fulfilled its promises to reduce costs, alleviate overcrowding, or improve quality (Ryan & Ward, 1989). To reform or abolish are the only options left in dealing with the current state of the penal system.

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