

The Controversy of the Prison Industrial Complex in the United States

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by

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On my honor as a University student, I have neither given nor received  
unauthorized aid on this assignment as defined by the Honor Guidelines for  
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## **Preface**

In the U.S., how can crime be equitably managed without compromising human and civil rights?

How can the accessibility of Virginia Court Data be improved for the public? The state of Virginia understands the importance of the accessibility of online court data. However, their current implementation lacks a friendly user interface and is therefore unintuitive to use. A small team and I worked with UVA Law's Legal Data Lab to optimize their system for public use. Now the public can easily search the new database for online court data within the state of Virginia.

How do correctional communities, law enforcement, and local and state legislators benefit from the Prison Industrial Complex at the expense of their inmates? Racial disparity is exacerbated through the neglect of the United States' neoliberal political economy. As a result, the colorblind racism of neoliberalism invokes disproportionate racial implications. The United States is far from uprooting its history of capitalizing on the disadvantaged. However, New Zealand's reformed Private Prison Model can provide the United States a blueprint.

## **The Private Prison Controversy in the United States**

To critics of mass incarceration in the U.S., the relationships among corporations, government, and correctional communities constitute a “Prison Industrial Complex” (Davis, 2003). Superficially, this complex consists of a set of institutions and interest groups. Schlosser (1998) defines it as a confluence of special interests that has given prisons seemingly unstoppable momentum. Due to this complex, private prisons are benefiting at the expense of their inmates. The flaw of the Prison Industrial Complex stems from the punishment process. A process which “takes into account economic and political structures and ideologies, rather than focusing on individual criminal conduct and efforts to curb crime” (Davis, 2001). The groups that are at risk of such economic and political structures and ideologies are those who face racial disparity. This issue of racial disparity results in unfair mass incarcerations, making these groups especially susceptible to legislators and correctional communities working in tandem to further their special interests. However, models of prison systems in New Zealand have shown that private prisons have the potential to be utilized for greater purpose.

### **Review of Research**

The Prison Industrial Complex is an ongoing and deeply rooted issue in the United States. Mauer (2001) argued that over the past four decades, the government has steadily increased get-tough policies in response to crime. And as a result, incarceration rates have seen an unprecedented increase. The response of many jurisdictions to this increase was to allow private prisons to supplement, and in other cases completely take over, public prisons (Feeley, 2002). One example of governments’ get-tough practices is the truth-in-sentencing laws (Ditton et al., 1999). These laws intended for incarcerated individuals to serve longer sentences. The

three-strike laws also served a similar goal where lengthy sentences were mandated after a “third strike” offense (Travis et al., 2014).

The Sentencing Project, lead by Executive Director Marc Mauer, delivered a statement to the Senate Judiciary Committee, and the Subcommittee on the Constitution, Civil Rights, and Human rights. Mauer wrote to “highlight the unsustainable rise in mass incarceration, the policies and practices that contribute to excessive imprisonment, associated racial disparities throughout the criminal justice system, and the deeply problematic policy of felony disenfranchisement” (The Sentencing Project, 2014). He and the Sentencing Project contend that with the increase in mass incarceration comes greater racial disparity. Therefore, people of color are more likely to be arrested than whites; Once arrested, people of color are more likely to be convicted and once convicted, they are more likely to be punished with longer sentences. Their studies show that if this trend continues, one of every three Black Americans can be expected to go to prison in their lifetime. This rate pales in comparison with respect to white males, where they estimate an incarceration rate of one in every seventeen. With this alarming difference, Mauer and the Sentencing Project argue the root of racial disparity lies a deeper, systemic issue that goes beyond just explicit racial discrimination. Mauer (2014) continues to argue that the U.S. judicial system effectively operates two distinct criminal justice systems. One system that supports the wealthy and another that affects the poor and minorities. “The former provides a vigorous adversarial system replete with constitutional protections for defendants. Yet the experiences of poor minority defendants within the criminal justice system often differ substantially from that model due to the influence of policy and practice decision making, allocation of resources, implicit bias, and other factors” (The Sentencing Project, 2014). Mauer and The Sentencing Project highlight a number of issues as well as drawing connections to the

roots of the issues. The excess of police encounters in communities of color lead to an erosion of trust and cooperation, resulting in a disproportionate number of fatal encounters between people of color and the police. It is of utmost importance for the United States' criminal justice system to examine the policies and practices that contribute toward racial disparities.

Davis et al (2001) contends that there exists a substantial number of corporations with large markets that depend on private prisons as a significant source of profit. Therefore, their interests align with the continued expansion of the private prison system. However, Sampson and Lauritsen (1997) claim the underlying issue is not a result of systematic, overt bias but rather an issue of "cumulative disadvantage." The caveat being discrimination appears to be indirect and results from an amplification of initial disadvantages over time. These disadvantages begin at adolescent delinquency and tumble into a "snowball" effect of negative consequences that arise from it. Sampson and Lauritsen (1997) assert that developmental issues in adolescence contribute more towards crime in later stages of life. This does not, however, disprove whether the U.S. has a systemic problem with racial disparity.

With regards to Private-Public Partnerships among prison systems in the European Union, Bovis (2015) argues that the work between public and private actors raises risk in critical infrastructure. Such risks must be mitigated through a thorough third party vetting. This approach is consistent with how New Zealand executes their reformed private-public prison partnership.

### **Racial Disparity and Mass Incarceration**

It is no coincidence that the U.S. prison population is mainly composed of Black and Hispanic men. Two thirds of state prison inmates are Black or Hispanic when these demographics only account for about a quarter of the nation's population (Loury, 2019). This

disproportion of race and ethnicity in prison population is an issue of racial disparity. It is defined as, within the criminal justice system, when “the proportion of racial/ethnic groups within the control of the system is greater than the proportion of such groups in the general population” (Schrantz et al., 2000). Sociologist David Garland states, “the prison is used today as a kind of reservation, a quarantine zone in which purportedly dangerous individuals are segregated in the name of public safety.”

Private prisons take advantage of classes and racial groups that are economically and politically problematic (Loury, 2019). Mears et al (2020) and Spohn (2014) highlight that sentencing laws gave harder punishments for the possession of crack cocaine as opposed to powdered cocaine. The former being more frequently used by Black and Hispanic individuals and the latter used more frequently by Whites. However, Cox et al (2020) contend an underlying factor in play: racial disparities in mass incarceration have been linked directly to changes in policing, arrests, and prosecution. Upon the approval of the Anti- Drug Abuse Act of 1986 and 1998, an estimated \$500 million had been allocated to reduce drug-related crime. In order to meet the requirements of these anti-drug grants, State and local governments deployed new policing tactics and changes in prosecution that disproportionately impacted Blacks (GAO, 1993; Cox et al 2020).

One such change is the Truth-in-Sentencing (TIS) Incentive Grants Program. It provided grants to states that adopted policies requiring sentenced offenders to serve large portions of their sentences (Ditton and Wilson, 1999). Rehavi and Starr (2014) found that Black males in federal criminal cases receive much longer prison sentences than White males. Some of the factors in determining sentence time include charging, sentence fact-finding and plea bargaining. Rehavi et al. conclude the disparity between sentencing for Whites and Blacks emerge in the judicial

process. One that accounts for Blacks to face 1.75 times the mandatory minimum charging decisions versus Whites for the same crime. These local government institutions, such as courts and police, engage in neoliberalism which produce and reinforce class and race inequalities (Jones, 2018).

Loury (2019) believed that racial disparity is an issue that directly results from the legacy of the United States' history of enslavement, disenfranchisement, segregation, and discrimination. Dating back to 1918, the state of Texas purchased 13 plantations and turned them into prisons to exploit cheap convict labor (Bauer, 2018). The 13<sup>th</sup> Amendment provided this loophole of sorts when slavery was abolished. It states that "neither slavery nor involuntary servitude" shall exist in the United States "except as punishment for a crime" (U.S. Const. amend. XIII).

### **The United States' Neoliberal Political Economy**

A modern adaptation of an exploit like the Texas plantations of 1918 is evident within corporations such as the Corrections Corporation of America (CCA; now CoreCivic), the GEO Group and Wackenhut. CoreCivic and Wackenhut control 76.4% of the global private prison market (Davis, 2001). Both the GEO Group and CoreCivic have contributed \$10 million to state lawmakers (Goodkind, 2013). These same lawmakers allow for corporations like CoreCivic to form contracts with organizations like the Immigration and Customs Enforcement (ICE). Their partnership accounts for roughly a quarter of CoreCivic's revenue (Bauer, 2018). Upon President Trump's authorization to separate immigrant children from their families, CoreCivic's stock rose by an astonishing 14% in two weeks. The company's CEO, Damon Hininger, said "this is probably the most robust kind of sales environment we've seen in a long time." As David Garland says, "we have given up on the ideal of rehabilitating criminals and have settled for simply warehousing them."

Although CoreCivic is headquartered in Nashville, Tennessee, their largest shareholder is the multinational corporation, Sodexo Marriott. A company headquartered in Paris that provides catering services to many U.S. colleges and universities. Together, CoreCivic and Wackenhut generate \$1.5 to 2 billion a year (Dyer, 2000). Such a market has influenced the momentum of the privatization model of prisons. Dyer (2000) emphasizes the number and variety of corporations that profit from private prisons as “dizzying.” In 1995, Dial Soap netted \$100,000 worth of product from just the New York City jail system. VitaPro Foods, located in Montreal, was contracted \$34 million a year to supply inmates in just the state of Texas with soy-based meat products.

Davis (2001) contends that state budgets are increasingly consumed by the cost of running and maintaining prisons. This is taxpayer money that effectively transforms public funds into profit and should otherwise be allocated towards community enriching programs. In 2010, the Department of Homeland Security Appropriations Act imposed a “bed quota” on private prisons. At any time, at least 90 percent of beds must be filled. The rule is an incentive to keep prison populations high. U.S. Senator Robert Byrd introduced the act and Byrd received contributions from both CCA and GEO Group (Figueroa, 2014).

A common theme amongst local governments throughout the U.S. is punishment for those who incur low-level offences, thus resulting in a slew of fines and fees (Jones, 2017). Non-payment of fees results in court dates, further exacerbating to cases of incarceration. This small scale example is known as colorblind neoliberalism. It rationalizes a way to invoke racial disparity and legitimizes “policies and practices that reproduce and enhance sociospatial inequality” (Mele, 2013). The neoliberal political economy allows local governments at the city and municipal level to impose fines and fees at will that disproportionately affect people of color.



Vega (2019) found that Black drivers in California are more likely to have their license suspended for failing to pay a fine or not appearing in court than Whites. Additionally, Blacks had a higher incarceration rate than Whites for driving with a suspended license. Bonilla-silva (2010) calls colorblind racism “the ideological armor for a covert and institutionalized system in the post-Civil rights era.” It would be considered the modern adaptation of Jim Crowism.

In Ferguson, Missouri, the City Finance Director sent an email to the Chief of Police saying, “unless ticket writing ramps up significantly before the end of the year, it will be hard to significantly raise collections next year” (Jones, 2017). This issue of exploiting low-level offenses grew so problematic throughout the U.S. that in March of 2016, the DOJ issued a letter to help mitigate penalties for small violations. They realized the consequences of such penalties include escalating debt, repeated and unnecessary incarceration, loss of jobs, and entrapment in a cycle of poverty (Appuzo, 2014). However, municipalities have grown a dependency on revenues from misdemeanor fees. Wagner et al. (2009) found in their North Carolina study that a decline in government revenue correlated directly with an increase in ticket writing. Attorney General Eric Holder stated best, “once the system is primed for maximizing revenue – starting with fines and fees enforcement – the city relies on the police force to serve, essentially, as a collection agency for the municipal court rather than a law enforcement entity” (Jones, 2017). The tandem of corruption and easy monetization of the Prison Industrial Complex allows for a system of perpetual exploitation.

### **New Zealand’s Private Prison Model**

However, as Bauer (2018) pleads, we must add a greater share of social responsibility towards criminal justice policy. If the United States were to view private prisons within the Prison Industrial Complex as a tool -- like all tools, you can use them well or use them poorly

(Armstrong, 2019). Private prisons can serve a purpose and provide rehabilitation, but proper management and accountability are required. The United States can look to draw inspiration from the progressive model of private prisons in New Zealand. A model that revolves around incentivizing the lowering of recidivism rates rather than incarceration rates (Stuart, 2017).

In New Zealand, the Department of Treasury teamed up with private prisons to form a public-private partnership program with the goal of preparing the incarcerated for a better future. The contract between the Department of Corrections and the Auckland South Corrections Facility reveals that facilities will receive large cash payments if they can reduce recidivism rates by a certain percentage (D.O.C. 2012). One such implementation of a progressive private prison is Ravenhall. Its architecture was designed to humanize the facility as much as possible. Some of these features include thick glass windows instead of bars on cell windows, as well as providing inmates opportunities to cook their own meals, air-conditioned cells, and access to televisions and computers (Eisen, 2019). These physical accommodations are just one aspect of the overall evaluation framework.

Corrections Victoria (2014) implements a thorough plan for their inmates; beginning from the first day of their sentence to release, and through post incarceration, inmates are given help. The framework begins with an evaluation of an inmate's risk conducted by an independent specialist. Unlike systems in the U.S., which often lack the staff required to provide proper counseling, evaluations, and educational programs (Kaiser et al., 2020), Corrections Victoria emphasizes the importance of a fully resourceful staff. Upon completion of evaluation, an inmate is placed into programs seen best fit. Meaningful data are collected and mechanisms are put into place to ensure the best performance. This data collection is a key caveat in the New Zealand's private-public prison partnership program. It gets passed on to the government for future

investment in correctional programs. Likewise, each program is executed with the goal of successfully transitioning inmates back into the community. In order to ensure the achievement of this process, “short term, medium term and long term outcomes are monitored and the extent of the program’s impact is analyzed.” However, Corrections Victoria realizes that not all inmates will successfully turn a new leaf. A thorough evaluation is also conducted on programs that result in cases of reoffending. Some factors in this evaluation include frequency and seriousness of reoffending. Their Program Logic Model revolves around 7 key delivery principles: sustainable, efficient and effective service delivery; performance monitoring and evaluation; targeted cohorts; targeted, holistic and flexible program intervention; quality case management; equitable and accessible services; outcome focused. Because imprisonment inherently comes with the risk of inmates escalating, rather than de-escalating offending behaviors, effective and appropriate interventions must be applied (Corrections Victoria, 2014). These methods will yield the highest return on investment with no expense on inmates.

## **Conclusion**

The actors of the prison industrial complex include correctional communities, law enforcement, and local and state legislators that work as a conglomerate to further their special interests. Their underlying driving force can be attributed to the United States’ neoliberal political economy. While the evidence points to clear discriminatory behavior by federal prosecutors in cases before the sentencing stage, there are additional factors in play. Racial disproportion is both produced and legitimized through inherent “colorblind racism” in neoliberalism. The issue of racial disparity in conjunction with mass incarceration has been used as a tool to drive neoliberalism. Although the U.S. is trending towards reform, the Prison Industrial Complex remains at large. New Zealand’s latest private prison model provides an

excellent blueprint that the United States should look to adopt. Their model shows that an emphasis on the infrastructure and design of a prison has a direct impact on lowering recidivism. The traditional approach of isolated cells leads to embitterment and hardening of inmates and are thus more likely to reoffend. New Zealand has proven that supporting mental and physical health of inmates gives them a sense of identity and are more equipped for reintegration into society upon release. The focus should not be to lower incarceration rates, but rather, to lower recidivism.

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