

JUSTICE FOR SALE- PART 2: FROM ACQUIESCENCE TO PROFIT

A series by Nolan Higdon

This is the second article ([Part 1](#)) in a five part series examining the US legal system. The series collectively argues that corporate media and political rhetoric have made Americans acquiescent toward corruption in the US legal system. This piece examines how public ambivalence toward an expansion of the legal system has been capitalized upon by the prison industrial complex.

In the 1970s, philosopher Michel Foucault argued that civilizations of the past and present have had an insatiable appetite for justice. The modes of justice experienced cosmetic changes overtime from violently punishing criminals as part of a public spectacle, to a chain gang of workers, to a more soft – but not necessarily humanitarian- version of punishment. Foucault’s discussion mostly focused on how punishments, especially prisons, served the needs of those in power. Foucault’s work also illuminated that historically, people have been obsessed with the idea of justice. However, the ambiguity surrounding the term “justice” allows for it to be invoked as a justification for various degrees of behavior.¹

The demand for “justice” by the American people has created a profit making opportunity in the capitalist United States. An irrational fear over crime (discussed in [Part 1](#)) has allowed for an expansion of the US prison system. In fact the US now has more prisons than colleges.² Big profits for the few in the prison industry have resulted in little justice and increased costs and suffering for US citizens. The prison industry increased their revenue by investing in neo-liberal politicians, lobbying for stricter sentencing laws, and hoodwinking tax payers with iron-clad prison contracts. The result is that the US has 5 percent of the world’s population and 25% of its prisoners.³ One percent of the US population is currently incarcerated, a larger percent than any other western industrialized nation.⁴ Incarceration is on the rise in 36 states.⁵ If one adds in the citizens on probation or parole; about 2.9% of the adult population are under some form of correctional supervision.⁶ Another 70,792 children are in juvenile detention.⁷ In 2012, the Supreme Court ruled that the US needed to stop sending minors to jail for life.⁸

This mass incarceration is made worse by the high recidivism rate in the US. Recidivism is the rate at which those incarcerated are re-incarcerated for crimes committed upon release. In the US, two-thirds of inmates are incarcerated after being released. Thus, the prisons system does not provide rehabilitation, it provides a stop for offenders in between crimes.⁹ In fact, in Wisconsin, over half of the inmates are incarcerated for parole violations.¹⁰

Neo-Liberal Industry

Neo-liberalism is a philosophy that calls for reform, particularly when it meets the economic needs of the nation. Neo-liberals support privatization, free trade, open markets, deregulation, and reductions in government spending with the goal of extending private sector control over public life. Neo-liberals conclude that the private sector performs better economically than the public sector.¹¹ Thus, they support a close relationship between business

leaders and politicians to privatize public institutions.¹² In the 1980s, neo-liberals created a political force that coalesced in the candidacy of Ronald Reagan for President.¹³ President Reagan instituted an economic experiment of lowering taxes while instituting privatization.¹⁴ As tax revenue decreased, states began having private corporations provide what were historically seen as public services, including inmate dentation.¹⁵

Prison corporations recognized that citizens' fear over crime and calls for justice in a time of wide-spread privatization allowed for vast profits to be made. Thus, they would financially support political candidates who would privatize and expand the prison industry.¹⁶ The largest private prison corporations gave a combined \$45 million to politicians over the last decade.¹⁷ This resulted in expensive changes to the legal system paid for by taxpayers. The Corrections Corporation of America (CCA) is the largest private prison company in the US worth \$3.8 billion.¹⁸ It is followed by the GEO Group worth \$1.52 billion.¹⁹

The High Cost of Private Industry

Many of the cost-cutting measures neo-liberals applied to prisons have hidden costs for the public. Prison corporations cut costs by firing staff and removing pensions.²⁰ Thus, the loss in wages and benefits to the regions' working class is a gain for the private industry. Those same working and poor classes are the ones going to jail, not the rich who profit from the prison industry.²¹ Other private prison cost-cutting measures cause expensive health crises such as the cuts to meals that cause inmates to lose 10-60 pounds more than their public prison counterparts.²² Some cuts also produce costly violence. For example, in Mississippi, assault rates are three times higher in private than public facilities.²³ The ACLU provided a video demonstrating how CCA employees sat by idle and watched an inmate get beat unconscious.²⁴ Similar episodes have happened in Mississippi, Oklahoma, New Mexico, Florida, and California.²⁵ New research has found that the private prison industry is not more cost effective than public prisons.²⁶

By the time the claims of cost-cutting measures are proven false, states often cannot afford to legally end their contract with the private prison corporation. The contracts obligate states to fill prison beds with inmates or reimburse the company for unused materials.²⁷ Private prison contracts became national news in 2010 after a three violent criminals escaped from an Arizona private prison for two weeks. If Arizona closed the facility, they would have owed \$10 million for breaching their contract, which required the state to keep the prison 97 percent full. Arizona renegotiated a settlement of \$3 million for not filling beds with prisoners.²⁸ Arizona is not alone. A random sampling of 60 contracts between private prison companies and state and local governments found that two-thirds had bed quotas. Most contracts guarantee a 90 percent occupancy rate.²⁹

Lobbying for Prison Profits

To keep the prisons full, prison corporations lobby legislatures for harsher laws in hopes of boosting arrest rates. In 2011, the Justice Policy Institute (JPI) argued that private prison corporations have not responded to, but rather created the conditions for a massive increase in incarceration.³⁰ Senators John McCain, Marco Rubio, and John Cornyn along with Representatives Lamar Smith and Jim Sensenbrenner were the largest recipients of prison campaign funds in 2013.³¹ These funds continue private prison corporation's access to lawmakers.³²

The lobbying efforts and campaign contributions by the private prison industry often press lawmakers to draft legal changes that will help increase profits for the prison industrial complex. Some of biggest victories for the industry include the passage of LWOP (life sentence without parole) laws. These laws guarantee an influx of prison inmates to corporate, for-profit facilities. They are strengthened by the so-called "Three Strikes Laws" which mandate a LWOP sentence for a third offense.³³ In the 1970s, before the private prison lobbying boom, there were next to no LWOP laws, but by 2014, 40 states in the US had them.³⁴ The LWOP laws keep citizens locked up at an estimated cost of \$1.7 billion dollars more than if LWOP were non-existent.³⁵ The crimes covered by LWOP can even involve non-violent crimes such as those committed by Jeff Mizanskey, who has served over 20 years of a life sentence in Missouri for non-violent marijuana charges; Nathan Pettus and Damon Caliste, who stole from stores; Alexander Surry who possessed a single crack rock; 74-year old Leopoldo Hernandez-Miranda, who has spent 20 years in jail for marijuana possession; Timothy Tyler, who mailed LSD to an undercover agent; and Clarence Aaron, arrested for introducing a friend to a drug dealer.³⁶ The increased incarceration rate has resulted in having overcrowded facilities, such as in Ohio, where some of the facilities are at a 130% capacity.³⁷

Lobbying by the private prison industry is so effective that in places like California it is becoming unsustainable to maintain current inmate levels and provide a proper healthy environment.³⁸ In response, California Governor Jerry Brown signed a new contract with the CCA in October 2013 to meet a federal order to reduce overcrowded prisons. The deal cost \$28.5 million annually for a federal detention facility in California City is incarcerating 2,304 inmates. It came just one month after California signed a \$30-million, three-year contract with Geo Group to create two new facilities.³⁹ However, the facilities have not been enough to ease tensions. Federal judges in November 2014 ordered California to expand its prison release system to decrease its population.⁴⁰

The CCA acts as an extra-legislative branch to state and federal government bodies using its access to help create laws (and excuses) to lock up individuals. The CCA lobbied against a legal path to citizenship for immigrants in order to keep profiting from its ownership of half of the federal government's Immigration Detention Centers.⁴¹ The prison industry spent \$45 million to gain a \$5.1 billion contract for Immigrant Detention Centers.⁴² In 2014, less than a year after the CCA lost its prison contract with the state of Kentucky, they created a bill to lock up "the old

and infirm” in the bluegrass state; something voters and politicians rejected.⁴³ As of today, the bill has been discussed in the state capitol, but not approved.

Prison lobbying has resulted in increased costs for taxpayers. Government spending on corrections increased 72% from 1997 to 2007,⁴⁴ despite a massive drop in crime.⁴⁵ The average state pays about 6.8 percent of their general fund on corrections. Sadly, four states spend more on corrections than higher education: Vermont, Michigan, Oregon and Connecticut.⁴⁶ In 2008, California faced a \$16 billion budget shortfall, but still spent \$8.8 billion on corrections.⁴⁷

Conclusion

Neo-liberals created a market for expanded mass incarceration by preying on citizens’ fears of crime which politicians in turn use to win elections. Private prison lobbyists and the politicians they influence manufactured a false perception of crime and justice. This has resulted in a dramatic and costly expansion of the private prison industry, which transforms citizens into profitable objects. The next article will address how public ambivalence toward a justice system which operates for profit, not the public good, has led to corruption in many US communities.⁴⁸

¹ For more on Foucault’s writings, see

Foucault, Michel. *The Order Of Things: An Archaeology Of The Human Sciences*. Psychology Press, 2002.

Foucault, Michel. *Discipline And Punish: The Birth Of The Prison*. Vintage, 1977.

² “The U.S. Has More Jails than Colleges.” *The Washington Post*. Accessed February 4, 2015. http://www.washingtonpost.com/blogs/wonkblog/wp/2015/01/06/the-u-s-has-more-jails-than-colleges-heres-a-map-of-where-those-prisoners-live/?tid=sm_fb.

³ Joshua Holland. “Land of the Free? US Has 25 Percent of the World’s Prisoners.” *BillMoyers.com*. Accessed February 4, 2015. <http://billmoyers.com/2013/12/16/land-of-the-free-us-has-5-of-the-worlds-population-and-25-of-its-prisoners/>.

⁴ “1 in 100 Adults Now in Prison.” *Common Dreams*. Accessed February 4, 2015. <http://www.commondreams.org/news/2008/02/29/1-100-adults-now-prison>.

⁵ Ibid.

⁶ Lauren E. Glaze, Erika Parks. "Correctional Populations in the United States, 2011." *United States Bureau of Justice Statistics*. November 29, 2012. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4537>

⁷ "Easy Access to the Census of Juveniles in Residential Placement". Office of Juvenile Justice and Delinquency Prevention.

⁸ Saki Knafo. “Why The U.S. Is Still The Only Country Where Youth Are Sentenced To Die In Prison.” *Huffington Post*. Accessed February 4, 2015. http://www.huffingtonpost.com/2014/06/24/juvenile-life-sentences-the-sentencing-project_n_5523758.html.

⁹ “Recidivism.” *National Institute of Justice*. Accessed February 4, 2015. <http://www.nij.gov/topics/corrections/recidivism/Pages/welcome.aspx>.

¹⁰ Nicole Flatow. “Half Of Wisconsin Inmates Are In Prison Because They Violated Parole.” *ThinkProgress*. Accessed February 4, 2015. <http://thinkprogress.org/justice/2015/01/19/3612985/half-of-wisconsin-prisoners-are-there-because-they-violated-parole/>.

¹¹ Berman, Edward, Simon Marginson, Rosemary Preston, B. McClellan, and Robert Arnove. "The political economy of educational reform in Australia, England and Wales, and the United States." (2003): 252-291.

McChesney, Robert W. "Noam Chomsky and the struggle against neoliberalism." *MONTHLY REVIEW-NEW YORK*- 50 (1999): 40-47.

¹² Alice O'Connor. “Financing The Counter-Revolution.” *Rightward Bound: Making America Conservative in The 1970s*. edited by Bruce Schulman and Julian Zelizer. (Cambridge, Massachusetts: Harvard University press, 2008.), 148-169

Jefferson Cowie. *Stayin' Alive: The 1970s and The Last Days of The Working Class*. (New York: The New Press, 2010.)

¹³ Kim Phillips-Fein. *Invisible Hands: The Making of The Conservative Movement From The New Deal to Reagan*. (New York, New York: W.W.Norton, 2009.)

¹⁴ Jones, Campbell, Martin Parker, and René Ten Bos. *For business ethics*. Routledge, 2005.
David Dagan and Steven M. Teles. “The Conservative War on Prisons.” *The Washington Monthly*. Accessed February 4, 2015. http://www.washingtonmonthly.com/magazine/novemberdecember_2012/features/the_conservative_war_on_prison041104.php?page=all.

¹⁵ Julie Roin. "Privatization and the Sale of Tax Revenues." *Minnesota Law Review* 85 (2011): 1965.

¹⁶ “US: A Nation Behind Bars.” *Human Rights Watch*. Accessed February 4, 2015. <http://www.hrw.org/news/2014/05/06/us-nation-behind-bars>.

Eric Schlosser. "The Prison-Industrial Complex." *The Atlantic Monthly* 282, no. 6 (1998): 51-77.

Ray Downs. “Who’s Getting Rich off the Prison-Industrial Complex?” *VICE*. Accessed February 4, 2015. <http://www.vice.com/read/whos-getting-rich-off-the-prison-industrial-complex>.

¹⁷ Kevin Mathews. “For-Profit Prisons: Eight Statistics That Show the Problems.” Accessed February 4, 2015. <http://truth-out.org/news/item/20880-for-profit-prisons-eight-statistics-that-show-the-problems>.

¹⁸ Andy Kroll. “This Is How Private Prison Companies Make Millions Even When Crime Rates Fall.” *Mother Jones*. Accessed February 4, 2015. <http://www.motherjones.com/mojo/2013/09/private-prisons-occupancy-quota-cca-crime>.

¹⁹ Matt Stroud. "The Private Prison Racket." *POLITICO Magazine*. Accessed February 4, 2015. <http://www.politico.com/magazine/story/2014/02/private-prison-racket-103893.html#ixzz39Z0ScLQe>.

²⁰ "The Private Prisons of America." *The Progressive Cynic*. Accessed February 4, 2015. <http://theprogressivecynic.com/2013/03/02/the-private-prisons-of-america/>.
"GEO Group Rap Sheet." Accessed February 4, 2015. http://www.privateci.org/rap_geo.html.

²¹ Matt Tiabbi. *The Divide: American Injustice in the Age of The Wealth Gap* (Spiegel and Grau, 2014).

²² Holbrook Mohr. "Mississippi Prison Run By Utah Company Called 'Barbaric' *The Salt Lake Tribune*. Accessed February 4, 2015. <http://www.sltrib.com/sltrib/news/56385710-78/lawsuit-prison-mississippi-prisoners.html.csp>.

²³ Margaret Newkirk & William Selway. "Gangs Ruled Prison as For-Profit Model Put Blood on Floor." Bloomberg. July 2013. Accessed February 4, 2015. <http://www.bloomberg.com/news/articles/2013-07-12/gangs-ruled-prison-as-for-profit-model-put-blood-on-floor>

²⁴ Stroud.

²⁵ Ibid.

²⁶ Newkirk & William Michael Barajas. "Do Private Prisons Save Money?" *San Antonio Current*. Accessed February 4, 2015. <http://www.sacurrent.com/sanantonio/do-private-prisons-save-money/Content?oid=2242631>.

²⁷ Chris Kirkham. Prison Quotas Push Lawmakers To Fill Beds, Derail Reform. *The Huffington Post*. Accessed February 5, 2015. http://www.huffingtonpost.com/2013/09/19/private-prison-quotas_n_3953483.html

²⁸ Kirkham.

Amanda Lee Meyers. "Arizona Prison Break: MURDERERS Escape From Kingman Prison." Accessed February 4, 2015. http://www.huffingtonpost.com/2010/07/31/arizona-prison-break-murd_n_666311.html.

²⁹ Kirkham.

"Criminal: How Lockup Quotas and 'Low-Crime Taxes' Guarantee Profits for Private Prison Corporations." *In the Public Interest*. Accessed February 4, 2015. <http://www.inthepublicinterest.org/article/criminal-how-lockup-quotas-and-low-crime-taxes-guarantee-profits-private-prison-corporations>.

³⁰ Andrea Nill Sanchez. "Private Prisons Spend Millions On Lobbying To Put More People In Jail." *ThinkProgress*. Accessed February 4, 2015. <http://thinkprogress.org/justice/2011/06/23/251363/cca-geogroup-prison-industry/>.

³¹ Lee Fang and Francis Reynolds. "What Does Millions in Lobbying Money Buy? Five Congress people in the Pocket of the Private Prison Industry | The Nation." Accessed February 4, 2015. <http://www.thenation.com/article/173122/what-does-millions-lobbying-money-buy-five-congresspeople-pocket-private-prison-indus#>.

³² Christopher Petrella. "CCA Continues to Cite Misleading Study It Funded." *American Civil Liberties Union*. Accessed February 4, 2015. <https://www.aclu.org/blog/prisoners-rights/cca-continues-cite-misleading-study-it-funded>.

³³ Franklin E. Zimring, Gordon Hawkins, and Sam Kamin. *Punishment and democracy: Three strikes and you're out in California*. (Oxford University Press, 2003.)

³⁴ Troy Thomas. "Death by Incarceration: Life Without the Possibility of Parole (LWOP) | Global Research." Accessed February 4, 2015. <http://www.globalresearch.ca/death-by-incarceration-life-without-the-possibility-of-parole-lwop/5395175>.

Marie Gottschalk. "Days Without End: Life Sentences and Penal Reform." *Prison Legal News*. Accessed February 4, 2015. <https://www.prisonlegalnews.org/news/2012/jan/15/days-without-end-life-sentences-and-penal-reform/>.

³⁵ Jill Filipovic. "The Incalculable Cost of Mass Incarceration." *Al Jazeera America*. Accessed February 4, 2015. <http://america.aljazeera.com/opinions/2013/11/the-incalculablecostofmassincarceration.html>

³⁶ Ibid.

³⁷ Jason Weber. "SHOCKING: CCA's Prison Lobby Is Destroying America." *Occupy HLN*. Accessed February 4, 2015. <http://www.occupyhlh.org/american-judicial-system/shocking-ccas-prison-lobby-destroying-america/>

³⁸ Taibbi.

Richard Natham and Fred Doolittle. *Reagan and The States*. (New Jersey: Princeton University, 1987.)

Ariana Huffington. *Third World America: How Our Politicians Are Abandoning The Middle Class And Betraying The American Dream*. (New York: Crown Publishers, 2010.)

Joseph Stiglitz. *The Price of Inequality: How Today's Divided Society Endangers Our Future*. (New York: W. W. Norton, 2012.)

Robert Scheer. *The Great American Stickup: How Reagan Republicans and Clinton Democrats Enriched Wall Street While Mugging Main Street*. (New York: Nation Books, 2010.)

"New Report: Shrinking Corporate Tax Base Is Wreaking Havoc on State Budgets." *Center for Effective Government*. Accessed February 4, 2015. <http://www.foreffectivegov.org/disappearing-corp-tax-base-pr>.

³⁹ Paige St. John. "Gov. Jerry Brown Moves Ahead with Second Private-Prison Deal." *Los Angeles Times*. Accessed February 4, 2015. <http://articles.latimes.com/2013/oct/15/local/la-me-ff-brown-moves-ahead-with-second-private-prison-deal-20131015>.

⁴⁰ Paige St. John. "Federal Judges Order California to Expand Prison Releases." *LA Times*. Accessed February 4, 2015. <http://www.latimes.com/local/political/la-me-ff-federal-judges-order-state-to-release-more-prisoners-20141114-story.html>

⁴¹ Mathews.

Lauren Carlsen. "With Immigration Reform Looming, Private Prisons Lobby to Keep Migrants Behind Bars." *America's Program*. Accessed February 4, 2015. <http://www.cipamericas.org/archives/9022>.

Lee Fang. "How Private Prisons Game the Immigration System." *The Nation*. Accessed February 4, 2015. <http://www.thenation.com/article/173120/how-private-prisons-game-immigration-system#>.

⁴² Aviva Shen. "Private Prisons Spend \$45 Million On Lobbying, Rake In \$5.1 Billion For Immigrant Detention Alone." *ThinkProgress*. Accessed February 4, 2015. <http://thinkprogress.org/justice/2012/08/03/627471/private-prisons-spend-45-million-on-lobbying-rake-in-51-billion-for-immigrant-detention-alone/>.

⁴³ Carl Takei. "Today in Disgusting: Getting Rich By Locking Up Grandpa." *American Civil Liberties Union*. Accessed February 4, 2015. <https://www.aclu.org/blog/prisoners-rights/today-disgusting-getting-rich-locking-grandpa>

⁴⁴ Sanchez.

⁴⁵ Nolan Higdon. "Justice For Sale – Part 1." *Project Censored*. 2015. <http://www.projectcensored.org/justice-sale-part-1-declining-faith-rising-police-violence/>

⁴⁶ "1 in 100 Adults Now in Prison."

⁴⁷ Adam Liptak. "1 in 100 U.S. Adults Behind Bars, New Study Says - New York Times." Accessed February 4, 2015. http://www.nytimes.com/2008/02/28/us/28cnd-prison.html?_r=1&.

⁴⁸ Barry Glassner. *The Culture of Fear: Why Americans Are Afraid of the Wrong Things: Crime, Drugs, Minorities, Teen Moms, Killer Kids, Mutant Microbes, Plane Crashes, Road Rage, & So Much More*. (New York, NY: Basic Books, 1999.)