

A prisoner's dilemma

political, economic, and social implications of the U.S. prison industrial complex

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Introduction

The United States of America have the highest incarceration rate of the Western World. The latest *World Prison Population* list found that a total number of 2,217,000 Americans were incarcerated at the end of 2013. With an estimated national population of around 318 million, the population count estimates the prison population rate of the United States to be 698 prisoners per 100,000 inhabitants. Compared to other Western countries like Canada (106), the United Kingdom (278), France (95), and Germany (78), the prison population rate of the United States skyrockets above all others.¹ These numbers include citizens who are on probation or parole, who are serving time in a county jail, and those awaiting trial.² When looking at the actual number of people in federal or state custody, the Bureau of Justice Statistics reported on an estimated 1,561,500 people at the end of 2014. Of these inmates, around 131,300 were housed in private prison facilities equaling to roughly 12% of all people in custody.³

The large prison population of the United States came into existence primarily due to the mass incarceration which followed the ‘War on Drugs’. From the 1980’s onwards, several tough policies on drug crimes have been ratified to combat the epidemic of drug abuse. The implications of these policies for the United States prison system are vast. Not only did these policies play a major role in the approximate 350% growth of the United States prison population, they also started crises of prison space and the funding for more prison space.⁴ The crises in correctional space and spending led to the privatization of prisons. The outsourcing of parts of the correctional branch of the government to the free market was done to cut and manage the costs imposed by the War on Drugs on the penal system.

Thirty years of active business has enabled private prison contractors to grow tremendously. During these years, these companies have not only gained economic significance through the stock market, but also political significance through lobbying. This gain in influence has not gone by unnoticed. Angela Davis, a political activist tied with the Civil Rights Movement,

¹ Roy Walmsley, ‘World prison population list: eleventh edition’, *World Prison Brief* (2016), 1 – 15, there 1 – 11.

² Probation applies to offenders who are sentenced to serve their time under supervision outside of prison walls, whereas parole is the provisional release of a prisoner prior to serving a full sentence. Sentences consisting of less than a year of incarceration are usually fulfilled in county jails.

³ Elizabeth A. Carson, ‘Prisoners in 2014’, *U.S. Department of Justice: Bureau of Justice Statistics* (2015) 1 – 33, there 1 – 3.

⁴ ‘Trends in U.S. corrections’, *The Sentencing Project* (2015), 1-8, there 1.

coined the term ‘prison industrial complex’ in 1997. She used it to ascribe the size and growth of the United States prison population to the political influence of these private contractors. Nowadays, the term has been adopted by wide array of writers and academics, serving as a theoretical framework for addressing the issue of mass incarceration.

The prison industrial complex does not limit itself to the size of the prison population, but also considers the composition of this population. Private prisons and judicial laws regarding incarceration are said to be racist and exploitative towards the ethnic minorities of the United States, especially blacks. This is exemplified by the overrepresentation of black minorities within the prison population. Because of this, racism is one of the prevalent issues within the prison industrial complex. For example, Rose Brewer’s and Nancy Heitzig’s work *The racialization of crime and punishment* focusses on disparities in American social justice due to racism. They argue that communities of color are both directly and collaterally affected by injustices in both the penal system and the societal treatment of blacks. These injustices include political disenfranchisement, economic marginalization, and police scrutiny.⁵ A similar argument on the ‘collateral damage’ of imprisonment is made in Marc Mauer’s and Meda Chesney-Lind’s book *Invisible Punishment*, in which the socioeconomic implications of incarceration are scrutinized.⁶ Where the former authors stress the influence of racism on social justice, the latter authors provide a more general and less race-specific analysis of the problem.

The idea that something needs to be done about the sizeable incarceration numbers is virtually uncontested. How and why something should be done, however, is a different question altogether. Besides the debate surrounding racism, the economic performance of private prisons (and the prison industrial complex) is also a subject of debate. On a micro-economic level for example, Tracey Huling’s *Building a prison economy in rural America* argues that, contrary to popular belief, the establishment of privatized prisons in rural communities actually damages local economies instead of helping them.⁷ In *People matter more than numbers*, Doris Schartmueller

⁵ Rose M. Brewer and Nancy A. Heitzig, ‘The racialization of crime and punishment: criminal justice, color-blind racism, and the political economy of the prison industrial complex’, *American Behavioral Scientist* 51 (2008) 5, 625 – 644.

⁶ Marc Mauer and Meda Chesney-Lind (eds), *Invisible Punishment* (New York 2002).

⁷ Tracy Huling, ‘Building a prison economy in rural America’, *Invisible Punishment: The collateral consequences of mass imprisonment* (2002), 197 – 213.

finds an increased importance of the side effects of privatization in debates on privatizing policies, signifying a divergence from traditional neoclassical economic thought.⁸

Patrice Fulcher's *Hustle and Flow* follows a similar two-fold structure to this paper as it names both prison privatization and racist allegations in one breath. She recognizes that there is a need for a reform in drug sentencing, not only to combat racism, but also to shrink the prison population. The need for private prisons will decline along with these reforms. Fulcher sees privatization as the only facet of the prison industrial complex. Bringing down this facet would mean the beginning of the end for the 'monopoly and manipulation' of the system.⁹

The authors mentioned above all write about the same topic, but they all cover different parts of the same concept. These are just small pieces of the puzzle that is the prison industrial complex. Fulcher's work is one of the few academic contributions that offers advice on how to combat the prison industrial complex. Although solutions are needed for the problem and Fulcher's proposals are not wrong or incorrect, they might be perceived as being incomplete. That is where this paper tries to fill the gap. Although Fulcher argues for a much needed extraction of the monopoly and manipulation of the prison industrial complex from society, it is exactly this influence which is problematic in the light of her solution. The prison industrial complex has become such a large part of American society that its removal from the society is easier said than done. There are various factors which need to be taken into account, most prominently the interests of private prison contractors themselves. These interests exist on the flipside of the same coin. To illustrate that there are two separate fields of debate to be found around the prison industrial complex, this paper will analyze two recent cases related to the prison industrial complex. One of which concerns the interests of private prison contractors, while the other case concerns the inmates within the (partially) privatized United States penal system. The former debate will be classified as taking place *on the outside of the prison walls*, the latter as taking place *on the inside of the prison walls*. In order to substantiate these separate fields of debate, the cases will be analyzed by looking at the surrounding debates, policies, media coverage, and academic interests. To study the significance of these cases as close as possible, this paper will resort to reconstructing a chronology via primary sources. Besides the bill and act mentioned below, these include The

⁸ Doris Schartmueller, 'People matter more than numbers: organized efforts against prison privatization in Florida', *Contemporary Justice Review* 17 (2014) 2, 233-249.

⁹ Patrice A. Fulcher, 'Hustle and flow: prison privatization fueling the prison industrial complex.' *Washburn Law Journal* 51 (2012) 3, 589 – 617, there 616 – 617.

Drug Abuse Acts of 1986 and 1988, which formed the foundations of the War on Drugs, media coverage (primarily online newspapers) of the cases as they were happening, and specific academic contributions which were published on the processes and accomplishments of these cases.

Before analyzing the cases, a concise historic background of the United States' mass incarceration (1.1) and the introduction and growth of prison privatization (1.2) will be provided. This gives a brief overview of the inherent motivations and causes that drastically influenced the incarceration rate from the 1980's onwards. The second chapter will study the 2011 Floridian Senate Bill (numbered '2038') which considered a drastic increase in prison privatization on a state level (2.1). The rest of the chapter will analyze academic coverage surrounding the bill and prison privatization itself (2.2), where after a conclusion on the shape of the debate will be drawn (2.3). The third chapter will address the Fair Sentencing Act of 2010, an act that aimed to eradicate disproportionate drug sentencing. This act is quintessential in the narrative of racism and minorities within the United States prison system. The chapter will present a small overview of the foundations of racist bias within the United States penal system in relation to the War on Drugs and the economic and political significance of these incarcerations (3.1). Hereafter, the 100:1 crack/cocaine disparity will be analyzed, which is seen as one of the largest contributors to the overrepresentation of minorities in prison. This analysis will be pared with a study of the advocates of The Fair Sentencing Act as well as its reception (3.2). In line with the preceding chapter, an overview of academic and media coverage will be given in regard to the studied case (3.3). Based on the findings of the analysis, this chapter will also end with a conclusion on the shape of the debate (3.4).

The final conclusion of the paper will use the results of the case studies to exemplify the current difficulties in finding a viable solution for the prison industrial complex. These results will then be used to argue for a more nuanced and encompassing approach in future debates regarding the prison industrial complex.

1 - The foundations of the Prison Industrial Complex

When analyzing cases surrounding the mass incarceration and the prison industrial complex, it is good to know how such high incarceration numbers – which are nowadays recognized as problematic – came to be. As mentioned in the introduction, the largest contributing factor seems to be the ongoing battle against substance abuse, which is an aspect of the so-called ‘War on Drugs’, and the subsequent creation of mandatory minimum sentences for these drugs. This chapter will analyze the history behind the mass incarceration, the challenges that these high incarceration numbers posed, and the (alleged) solution for the problem which came in the form of prison privatization.

1.1 – The War on Drugs and mandatory minimums resulting in mass incarceration

The ‘War on Drugs’ is the overarching term applied to the efforts of the United States government to reduce the consumption and trade of psychoactive drugs. The term, which was popularized during the early seventies, derived from a 1971 press-conference president Nixon gave on the aims of the ‘war’. Although the term was coined in the seventies, substantial results were not obtained until the Reagan administration in the early eighties. During the Reagan administration, Ronald and Nancy Reagan held a speech in support of their Campaign Against Drug Abuse. In their speech, they claim that “[indifference] is not an option” and that they need the American people to help create an “outspoken intolerance for drugs”. Nancy Reagan “implores [the American people] to be unyielding and inflexible in [their] opposition to drugs”. The most important message in the speech is: “Say yes to your life. And when it comes to drugs and alcohol just say no.”¹⁰ This speech marks the beginning of a rigid criminalization of drug abuse which would form the foundations for governmental anti-drug policies for decades to come.

Along with the announcement of the new anti-drug campaign came the introduction of the *Anti-Drug Abuse Acts of 1986 and 1988*, which created the definitive link between the War on Drugs and mass incarceration. The act of 1986 was the first step in creating a punitive legal system against drug abuse as opposed to a rehabilitative system. From here on out, the combatting of drug

¹⁰ Ronald Reagan and Nancy Reagan, ‘Address to the Nation on the Campaign Against Drug Abuse’, (September 14 1986).

abuse shifted in focus from the treatment of a public health issue to the prosecution of drug criminals. Subtitle B of the 1986 Act, named the *Drug Possession Penalty act of 1986*, defines the minimum sentences for the possession of a controlled substance. These minimal sentences, more commonly known as mandatory minimums, constitute of imprisonment and a fine. Moreover, penalties get exponentially severe as the offense is being repeated. The mandatory minimums are uncontested, because the article explicitly states that “[t]he imposition or execution of a minimum sentence [...] shall not be suspended or deferred.”¹¹ The most important of all mandatory minimums is the sentencing on crack, which is the smokable variant of cocaine. The mandatory minimum for five grams of crack was set at a five year prison sentence without the possibility for parole. Furthermore, it is notable that the same prison sentence applies to 500 grams of cocaine, creating a 100:1 disparity between two variants of the same drug.

In 1988, the second Anti-Drug Abuse Act was enacted into law. This new act, serving as an amendment to the first anti-drug act, again primarily targeted the possession of crack. The act amended that the mandatory minimum sentence of five years also applied to first time offenders with no prior convictions. It also lowered the amount of grams necessary for a conviction when a defendant had been convicted of crack possession before.¹²

After the implementation of these acts, drug possession and abuse became an inexcusable criminal offense which inevitably led to conviction and incarceration. Although not the sole contributor to prison overcrowding, drug offenses amount for nearly half of the federal prison population with 46.6% of the total number of inmates being convicted for drug related crimes. The second largest offenses consider weapons, explosives and arson with 16.9%.¹³ This huge gap signifies the toughness on drug offenses above other crimes. This toughness especially came from the sentencing based on these mandatory minimums, which could eventually add up to life imprisonment for a possession offense.

¹¹ United States Senate and House of Representatives, ‘Anti-Drug Abuse Act of 1986’, (Washington, DC, 1986), subtitle B.

¹² United States Senate and House of Representatives, ‘Anti-Drug Abuse Act of 1988’, (Washington, DC, 1988).

¹³ Federal Bureau of Prisons, ‘Offenses’ (version 30 January 2016), https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (14 March 2016).

1.2 – Prison privatization as the solution to prison overcrowding

With increased toughness on drug crimes came higher conviction rates. These convictions resulted in the United States prison population outgrowing the capacity of the federal prison system. In order to accommodate this rapidly growing prison population, state correctional expenditure had to grow along with it. This growth in correctional expenses was both unwanted and hard to achieve financially because the correctional budget did not grow proportionally to the prison population. Raising taxes to compensate the lacking budget was a rather unpopular option, thus an easier solution was found in the form of prison privatization.

Prison privatization entails the commercialization of prison facilities. This commercialization happens via outsourcing (parts of) correctional expenditure to for-profit organizations such as *The Geo Group, Inc.* and the *Corrections Corporation of America (CCA)*. The magnitude and relevance of these companies is illustrated by their success on the stock market. *The Geo Group Inc.* made an annual profit of 143.9 million dollars in 2015 and its stocks have a dividend yield of 9.29%.¹⁴ For the *CCA* these numbers are 221.9 million dollars and 7.48% respectively.¹⁵ These financial successes show that the private incarceration business is a market which is not only profitable, but also expanding. Companies like these are contracted by a government to facilitate correctional services. Its business model consists in offering these correctional services at a lower cost than the state can. Thus, in theory, a privatized prison system would save the government money and at the same time facilitate a viable business for these correctional contractors.

However, this is just the general theory of a privatized prison system. There lie several notable problems and contradictions within the business of these organizations. One of the most noticeable problems is the contradiction of rehabilitation: prisons are generally meant to punish and rehabilitate convicts in order to release them back into public life. Considering the business model of these correctional contractors, rehabilitation directly endangers this business' profits because it decreases the amount of prisoners in the penal system. These prisoners are essentially the raw materials private contractors require for doing business. The current recidivism rates in the

¹⁴ CNN Money, 'Geo Group Inc' (version 22 February 2016), <http://money.cnn.com/quote/quote.html?symb=GEO> (22 February 2016).

¹⁵ CNN Money, 'Correction Corp of America' (version 22 February 2016), <http://money.cnn.com/quote/quote.html?symb=CXW> (22 February 2016); Dividend yields are correct by the time of writing.

United States average around 70 or 80 per cent while the remainder has to be filled by strict law enforcement, for which these companies tend to lobby.¹⁶

Another important concern is the quality of these private facilities. Being able to offer imprisonment at lower rates than the government can raise suspicion about the quality of incarceration. This is because the lower incarceration costs that these companies offer have to be achieved in cutbacks on inmate expenses. It is not always clear whether or not these private facilities live up to government standards.¹⁷

The economic success of private prison contractors also increased their political influence (e.g. funding political campaigns and lobbying) and thus their political significance. This influence, fueled by the massive inmate population of the United States, is often critiqued for prolonging and holding on to the problem of mass incarceration. As mentioned in the introduction, the idea that the growth of the prison population can be attributed to the influence of private prison corporations came to be known as the ‘prison industrial complex’. The prison industrial complex has become a well-established entity within both the economic as well as the political realms of the United States, of which the following chapters will be an example.

¹⁶ National Institute of Justice, ‘Recidivism’ (version 17 June 2014), <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx#statistics> (22 February 2016).

¹⁷ Sean Bryant, ‘The business model of private prisons’ (version June 22 2015), <http://www.investopedia.com/articles/investing/062215/business-model-private-prisons.asp> (22 February 2016).

2 – Outside the Prison Walls: Prison Privatization in Florida

As mentioned before, mass incarceration led to an increase in correctional expenditure. In order to cope with these costs, privatization of state-run correctional facilities has occurred and still occurs. One of the most recent and notable movements regarding prison privatization has been the 2012 Floridian Senate Bill numbered ‘2038’. The main motivator behind the consideration of this bill was the prospect of decreased correctional spending by the government of Florida. The Senate had to decide whether or not to implement these privatizing measures, because it is the upper house in the legislative branch of government in Florida and therefore plays a decisive role in whether a bill is enacted or not. This chapter will analyze the debate surrounding the implications of the proposal and situate this debate *on the outside of the prison walls*.

2.1 – Case study - Florida Senate Bill 2038

Florida Senate Bill 2038 considered privatizing 27 state-run prisons and work camps in Florida. The bill fell just short of passing the Florida State Senate, failing with a 21 to 19 vote.¹⁸ Voting results this close suggest some kind of polarization within Florida’s legislative system. This subchapter deals with the positions and arguments which were held in favor or in disagreement with this proposal.

In examining media coverage of the privatization proposal, one particular name stands out: Rick Scott. In 2012, Scott was – and currently still is – the Governor of Florida. This Republican politician is the main instigator of this bill. According to Scott, the bill would help his prison plan to save 82.4 million dollars in correctional expenses. Roughly one-eighth of these savings would be put to use in educational and substance-abuse prevention programs. The savings would be realized through the aforementioned outsourcing to private contractors as well as through the closing of two state-run correctional facilities and eradicating the 612 jobs that went alongside with these facilities. Roughly a thousand other state-prison affiliated jobs would also disappear in the long run. Several other facilities such as work-camps and mental hospitals would also suffer consequences in employment if this bill was to be enacted. Within the Senate itself, the bill has

¹⁸ Schartmueller, ‘People matter more than numbers’, 233-234;
The Florida Senate, ‘CS/CS/SB 2038: Privatization of Correctional Facilities’, (14 February 2012).

been criticized and opposed most vigorously by fellow Republican Mike Fasano, who mainly criticized putting over 600 families out of a sustainable income.¹⁹

Companies dealing with contracted incarceration, such as the *The Geo Group Inc.*, are among some of the largest funders of the Republican Party. Other serious critique of the bill was based on this fact and has been voiced most prominently by *The Police Benevolent Association*, a representative organ for state correctional officers. Their criticism consisted of considering this move towards privatization as a way for Scott to pay back the private prison lobby for their financial support in the Republican elections. According to them, a reimbursing like this would come at a large cost because of the unemployment of the current correctional officers that would follow these privatizing measures. This would be most visible in small communities like Jackson County, where around 40% of its inhabitants are employed at federal prison facilities.²⁰

Another interesting observation on the bill is the division between the Republicans in the Senate. Not only did Senator Fasano oppose Scott, but several other Republicans had to as well. This is because the Floridian Senate consisted of 28 Republicans and 12 Democrats at the time of voting while the vote ended 21 to 9.²¹

There has not been a large public debate in regard to this bill. This might be because there was not much at stake for the general public, either with an enactment or with a failure of the bill. Other media coverage on the topic was therefore mainly published after the bill failed to pass. *The Huffington Post* reported that “[w]ithout definitive proof of the savings, critics of the plan didn’t believe it was worthwhile to disrupt the jobs of thousands of state corrections officers”.²² The *Tampa Bay Times* reported that the more moderate Republicans who voted against the bill seem to have been convinced mostly by the implications for the employment of correctional officers. “Rather than talk about numbers, they talked about people, such as the treatment of correctional officers” the report states. Republican Senator Steve Oelrich even said: “[I]’m not a big

¹⁹ Tonya Alanez, ‘Scott pushes for state prison privatization’ (version February 2014), http://articles.orlandosentinel.com/2011-02-14/news/os-scott-budget-privatization-20110214_1_private-prisons-state-prisons-geo-group (22 February 2016);

Michael Bender, ‘Florida vote halts largest private-jail plan in Geo setback’ (version 15 February 2016), <http://www.bloomberg.com/news/articles/2012-02-14/florida-senate-defeats-largest-u-s-private-prison-contract-in-21-19-vote> (22 February 2016).

²⁰ Alanez, ‘Scott pushes for state prison privatization’.

²¹ Schartmueller, ‘People matter more than numbers’, 238.

²² Chris Kirkham, ‘Private prison bill voted down in Florida Senate, thwarting massive expansion’ (version 15 February 2012), http://www.huffingtonpost.com/2012/02/15/private-prisons-florida-senate_n_1279822.html (22 February 2016).

government guy. But government should be in charge of the custody, care and control of inmates”. He noted that he is “scared about the whole idea of private companies being responsible for taking away someone’s freedom and keeping them there”.²³ It seems that the Republicans are divided on the social-disciplinary role of the minimal state as well as the economic role of the state as an employer, which led to the divisive Republican voting in the Senate.

Although the bill failed to pass the Florida Senate, it did not inhibit Rick Scott’s executive powers to outsource Floridian corrections. As the Governor of Florida he was able to implement the ideas outlined in the bill despite the opinion of the Senate.²⁴ Although Scott did not specifically mention his course of action after the bill failed the Senate, the Florida prison system has been subjected to privatizing measures. In 2013, 19 prisons and works camps were either closed or reorganized in favor of privatizing measures.²⁵ Besides this, the governor also authorized 21 privately-run work-release centers. On top of this, two contracts have been signed that further privatized the segment that deals with prison healthcare. *The Miami Herald* calls this “gradually [privatizing] pieces of the prison system without calling attention to it”.²⁶ Besides new privatizing measures, almost 80% of the already privatized facilities were handed over to *The Geo Group Inc.*²⁷ These measures show that the voice of the Senate had no substantial effect on the privatization goals of Governor Rick Scott other than stalling them. Giving the new contracts to *The Geo Group Inc.* might be a sign of the aforementioned prison lobby payback by the Republicans.

²³ Steve Bousquet, ‘Prison privatization dies in Senate 21-19’ (version 14 February 2012), <http://www.tampabay.com/news/publicsafety/crime/prison-privatization-dies-in-senate-21-19/1215438> (22 February 2016).

²⁴ Bender, ‘Florida vote halts largest private-jail plan in Geo setback’.

²⁵ Mary E. Klas, ‘Private prison vendors could face new scrutiny in Florida’ (version 19 April 2015), <http://www.tampabay.com/news/politics/stateroundup/private-prison-vendors-could-face-new-scrutiny-in-florida/2226087> (22 February 2016).

²⁶ Mary E. Klas, ‘The “cannibalizing” of Florida’s prison system’ (version 28 February 2015), <http://www.miamiherald.com/news/special-reports/florida-prisons/article11533064.html> (23 February 2016).

²⁷ Matt Dixon, ‘New contracts give private prison giant nearly 80% of Florida’s private prison market’ (version 16 December 2013), <http://jacksonville.com/news/2013-12-16/story/new-contracts-give-private-prison-giant-nearly-80-percent-floridas-private> (23 February 2016).

2.2 - Academic contributions within the sphere of prison privatization

There exist various contributions to the economic implications of prison privatization. One of the leading motivations behind these kinds of prison development is economic gain, especially within small communities. Undoubtedly, the economic impact of the prison system in small rural areas – like Jackson County – is vast. The creation of a new prison in a rural town can facilitate the opening of several hundred jobs. Although the creation of new jobs seems beneficial for these small communities, it is argued that there are also several drawbacks. For instance, Tracy Huling, a public policy analyst, argues that when these prisons are built and maintained by private contractors, there is a turnover rate of around 40% due to poor training and low wages. This creates an environment of frequent understaffing. Therefore, the employment environment can prove to be an unstable one.²⁸

Gerald Gaes, a researcher in social psychology at the Florida State University, frequently writes about prison privatization. One of his works specifically targets the quality of private incarceration. Gaes argues that in order to measure the quality of prison institutions, it is useful to look at the recidivism rates of released prisoners per prison. This is because he believes that recidivism is a central concept in the general ideas behind incarceration, which are deterrence and rehabilitation.²⁹ According to Gaes, accurate measurements of the performance of prison institutions lag behind the implementation of new privatization contracts. In order to hold prison service providers accountable, there needs to be an accurate way of measuring the quality of their services.³⁰

One of the most recent and notable contributions is an article by Doris Schartmueller, a researcher in the field of political science, who reviews the current state of the privatization debate as well as evaluates the Florida privatization bill within this debate. In reviewing the debates and research surrounding private prisons she concludes that “the main arguments for prison privatization [...] are deeply rooted in neoclassical economic thought”.³¹ This economic train of thought believes in the positive effects of free market capitalism. Schartmueller claims it was this way of economical thinking that instigated prison privatization: the initial prison overcrowding

²⁸ Huling, ‘Building a prison economy in rural America’, 198-201.

²⁹ Gerald Gaes, ‘Prison privatization in Florida: promise, premise, and performance’, *Criminology & Pub. Pol’y* 4 (2005), 83-88, there 84.

³⁰ Gaes, ‘Prison privatization in Florida’, 85-87.

³¹ Schartmueller, ‘People matter more than numbers’, 238-241.

(which started in the 1980's) led to a deterioration in quality. Privatization would supply the best possible quality at the lowest cost due to free-market competition.³²

If this neoclassical argument was the main aim of the Senate Bill, why did the debate and outcome shift towards preservation of the correctional officers jobs? According to Schartmueller, this had to do with the economic well-being of these officers. Besides the eradication of several job positions in the Florida correctional system, the privatizing measures would also result in a drop (or, at the very least, stalling) of the officers wages. This is because studies indicate that cutbacks on employee expenses is one of the few ways private contractors can realize lower costs per inmate per day.³³

Schartmueller notes that the occupation of correctional officer has evolved into a professional and increasingly well-represented one. According to Schartmueller, the Florida case goes to show that the privatization debate can no longer be viewed as a merely neoclassical economic one. Future debates regarding the prison privatizations should not only consider possible savings, but the value of the labor within the prison system as well.³⁴

2.3 – Conclusion

Taking the above facts into consideration, it becomes clear that prison privatization is invested in more than just profits. Looking closer into the Floridian case of prison privatization it can be seen that the private contractors play a huge part in state elections, funding for these state elections, state labor, and labor welfare. Prison privatization can be seen as both an essential part and as a crucial flaw of the American prison system, both feeding on the problems mass incarceration. On the one hand, these contractors create means to cut back on state correctional spending. On the other hand, these companies are involved in state politics which might create a bias in favor of the privatization business, lending heavily on the idea of a prison industrial complex.

The debate surrounding prison privatization is exemplified by the Floridian Senate Bill. It is a discussion which primarily focusses on the economic implications of the privatization on the location where it has to take place. In this case, the debate was on correctional expenditure as well as sustainable employment rates within the state. It is noticeable that there seems to be little

³² Ibidem, 239-240.

³³ Ibidem, 241 – 246.

³⁴ Ibidem, 246.

consideration for the actual wellbeing of the prisoners themselves. While the debate had a broader scope than mere neoclassical arguments, it remains predominately one-sided. Although Senator Oelrich did mention his dislike for private companies dealing with incarceration, the overarching debate surrounding this Senate bill seems to be focused wholly on the economic performance and socioeconomic implications (for prison laborers) of private incarceration.

The academic contributions on the topic of privatization also shows little to no interest in the consequences for inmates. These contributions are also dominated by analysis of the economic benefits, economic implications, and the economic output (quality as measured in recidivism) of the private prison system.

All in all, the media coverage, the debate within the Senate, and the academic contributions all looked in the same direction of economic significance. While there is a wide array of arguments to be found within the spheres of this economic significance, there is a missing aspect to construe a complete picture: the large influx of prisoners making this debate necessary in the first place. Their numbers seem to be regarded as a given variable, while the well-being of these inmates exists as a side note rather than a main concern. Because of this, it might be said that the privatization debate takes place *on the outside of the prison walls*.

3 – Inside the prison walls: Judicial Racism

Although the Civil Rights Act of 1964 officially outlawed the discrimination of people based on their race and color, discrimination has never disappeared in its entirety. More paradoxically, the United States Justice System, which is the forbearer of this Civil Rights Act, tends to get mixed up in accusations regarding its alleged discriminatory nature as the result of policies from the War on Drugs. For example, the 2012 documentary ‘The House I live in’ devotes a segment to address this very issue. According to the documentary, there is a pattern to be found behind the criminalization of drugs: it was not the drugs itself that motivated criminalization, but the people associated with using these drugs. The documentary exemplifies this by showing that the anti-opium laws were first adopted on the Pacific Coast, where the largest sum of Chinese immigrants lived. In the 1930’s, it went the same for marihuana and the Mexicans in the south. These laws were set up to facilitate ‘racial control’ for immigrants who threatened the established economic order (e.g. providing cheap labor). The current largest represented race in United States prisons is blacks. Following the same reasoning as with the Chinese and Mexicans, there is a specific drug linked to the African-American population: crack-cocaine. According to ‘The House I live in’, African-Americans have been the primary target for crack-cocaine related drug busts. Although the user percentages of crack-cocaine roughly equal the racial composition of the nation, almost all defendants in crack related violations are black. Thus, around 13% of crack users amount for 90% of the defendants in court.³⁵ This chapter will analyze the debates surrounding the alleged racist nature of the judicial system and prison industrial complex, and will argue that the debate concerns *the inside of the prison walls*.

3.1 – Incarcerating minorities: racist accusations and economic significance

Rose Brewer and Nancy Heitzeg, both active in the field of racial sociology, argue that a shift in racism has occurred after the ratification of the Civil Rights Act: judicial racism shifted to “de facto racism where people of color, especially African Americans, are subject to unequal protection of the law”.³⁶ According to Brewer and Heitzeg, the prison industrial complex may very

³⁵ *The House I live In*, DVD, directed by Eugene Jarecki, New York: Virgil Films, (2013), 53”58’ – 1”15’5.

³⁶ Brewer and Heitzig, ‘The racialization of crime and punishment’, 626.

well be seen as “the new plantation”, because inmates are used as a cheap labor force by private prison contractors.³⁷ Therefore, the prison industrial complex has an inhibiting role in the natural supply and demand for labor in the United States economy by forcefully reallocating labor force. Patrice Fulcher, scholarly expert on the prison industrial complex, also comments on the exploitation of blacks. She states that ‘blacks are arbitrarily arrested and quantified as property for the private prison companies’.³⁸ Fulcher also draws the analogy between slavery and the incarceration of blacks, stating that they are bought and sold for profit, making them an economical commodity.³⁹

Aside from these observable and more well-known implications, there are also consequences which are not directly apparent. These consequences are described as form of “invisible punishment” by Marc Mauer and Meda Chesney-Lind (both active within the field of incarceration and sentencing). In their book, also called *Invisible Punishment*, the authors argue that this invisible punishment leads to social exclusion and deny an (ex-)offender the benefits of the welfare state.⁴⁰ The most prominent of these punishments is felony disenfranchisement, which prohibits a convicted felon to vote. This can have serious ramifications for the democratic society, because some states issue a lifetime ban on felon voting. This means that, in those states, one out of every four African Americans are not eligible to vote anymore.⁴¹ Other notable consequences include prohibitions on welfare receipts, prohibiting gun ownership (driving it into illegal spheres), ineligibility for living in public housing and a reduction in the probability of employment.⁴²

These kinds of invisible punishments have economic implications in a two-fold way. Firstly, it fuels the prison industrial complex by making recidivism more likely.⁴³ This is because felons often have an inability to get a job, receive no welfare receipts in support of their financial position, and often cannot live with their families without trespassing in their public housings. These measures marginalize blacks and will make them unable to sustain themselves or their families, thus instigating recidivism.⁴⁴ This makes it increasingly difficult for felons to extricate themselves from the poor social conditions in which they are living. Moreover, felon

³⁷ Ibidem.

³⁸ Fulcher, ‘Hustle and flow’, 611.

³⁹ Ibidem, 612.

⁴⁰ Mauer and Chesney-Lind, *Invisible Punishment*, 17 – 20.

⁴¹ Ibidem, 29 – 33.

⁴² Brewer and Heitzig, ‘The racialization of crime and punishment criminal justice’, 637.

⁴³ Ibidem.

⁴⁴ Fulcher, ‘Hustle and Flow’, 613.

disenfranchisement and other repercussions for political participation lead to an underrepresentation of these minorities in the legislative branches of the government.⁴⁵ This creates an increased gap between the creation of legislature surrounding inmates and the actual socioeconomic ramifications of this legislature itself.

3.2 - The 100:1 crack-cocaine ratio and the ratification of the Fair Sentencing Act

Not only is the conviction rate of crack-cocaine disproportionate, but the sentencing itself has also been subjected to disproportionality. Selling crack has been a hundred times more punishable than selling powder cocaine, as solidified in the mandatory minimums of *The Drug Abuse Act of 1986*. The disproportionality of sentencing as well as the false notion that blacks used more crack due to its cheapness resulted in black neighborhoods becoming the prime target for crack-related arrests.⁴⁶ The debate on the disproportionality concerns mostly the prison population itself, and can therefore be seen as taking place *inside of the prison walls*.

These unfair proportions and conviction rates have been subject of debate and scrutiny. In order to rectify these issues, the so-called Fair Sentencing Act was constructed. The act considered the huge difference in severity of punishment for crack-cocaine or powder-cocaine. Ratified on the third of August of 2010, the act changed the sentencing ratio from 100:1 to a more reasonable (but still uneven) 18:1. It also eliminated the five year mandatory minimum sentence for the simple possession of crack as implemented in 1986. The mandatory minimum now applies to the possession of 28 grams or more, which is more representative of actual drug-dealer quantities.⁴⁷

Although the initial 100:1 sentencing guideline disparity existed for almost 30 years, it has been contested on several occasions. Most notably in the Supreme Court's decisions in the cases *Blakely v. Washington* (2004) and the *United States v. Booker* (2005). The decisions concluded that lower courts could derive from the ratio and were lawful to use the guideline as an advisory tool rather than an unchangeable rule.⁴⁸ Notwithstanding these Supreme Court decisions, the tough

⁴⁵Mauer and Chesney-Lind, *Invisible Punishment*, 27 – 33.

⁴⁶Fulcher, *Hustle and Flow*, 595-597.

⁴⁷ United States Senate and House of Representatives, 'Fair Sentencing Act of 2010', (2010). Available at: <https://www.gpo.gov/fdsys/pkg/BILLS-111s1789enr/pdf/BILLS-111s1789enr.pdf>

⁴⁸ Larry F. Taylor. 'The how to guide for prosecutors: defending the sentencing guidelines on crack', *Thurgood Marshall Law Review* 33 (2007), 329 – 349, there 329 – 333.

drug laws on crack have had their effect on the prison population. The Fair Sentencing Act was the first real legal recognition that the ratio was unfair to the law.

When the Fair Sentencing Act was initially passed, most media coverage on the subject praised the fact that this disparity was finally eradicated. An editorial in the *Los Angeles Times* reported that, despite being weakened by several compromises, the act “is still an important step in the right direction”. Moreover, the Congressional Budget Office estimated 42 million dollars in savings on the federal prison system.⁴⁹ *The Washington Post* provided a report rooted in the ramifications for the incarceration of minorities, citing incarceration percentages and president Obama’s take on the sentencing disparity (which was in favor of eradicating the disparity).⁵⁰ *The New York Times* took a similar approach in stating that the general assumption exists that the Drug Abuse Act of 1986 has “subjected tens of thousands of blacks to lengthy prison terms while offering more lenient punishment to users and sellers of powder cocaine, who are more often white”.⁵¹ Other news articles follow a similar structure in their reports on the ratification of the act.

These initial reports on the enactment are generally positive in tone and judgment. However, as early as the fourth of August, one day after Obama signed the act, questions about the retroactive application of the bill came into play. On this day, Julie Stewart (president of Families Against Mandatory Minimums) wrote on her *Huffington Post* blog that retroactive sentencing was necessary for defendants awaiting trial. Otherwise the fairness of the act would be “as arbitrary as the date the crime was committed”.⁵² *The Washington Post* published an editorial containing a similar plea for retroactive sentencing in early 2011, also criticizing the arbitrary nature of the act.⁵³ Further media coverage only erupted however after Eric H. Holder Jr., Attorney General of the United States from 2009 to 2015, made a statement in favor of the retroactive

⁴⁹ ‘The Fair Sentencing Act of 2010: it’s about time (version 31 July 2010),

<http://articles.latimes.com/2010/jul/31/opinion/la-ed-sentencing-20100731> (7 March 2016).

⁵⁰ Jim Abrams, ‘Congress passes bill to reduce disparity in crack, powder cocaine sentencing’ (version 29 July 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/28/AR2010072802969.html> (7 march 2016).

⁵¹ Erik Eckholm, ‘Congress moves to narrow cocaine sentencing disparities’ (version 28 July 2010),

http://www.nytimes.com/2010/07/29/us/politics/29crack.html?_r=0 (7 March 2016).

⁵² Julie Stewart, ‘Well done congress, now make fair sentencing retroactive’ (version 4 August 2010), http://www.huffingtonpost.com/julie-stewart/well-done-congress-now-ma_b_671008.html (8 March 2016).

⁵³ ‘New law on crack cocaine penalties should be made retroactive’ (version 18 February 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/18/AR2011021806422.html> (8 march 2016).

application of the Fair Sentencing Act on June 1st, 2011.⁵⁴ In his statement, Holder said that although president Obama, the leaders across the Obama Administration and he understood the negative effects of illegal drugs, there was no scientific basis for holding on to dramatically more severe punishments for crack as opposed to cocaine. Because of this lack of scientific truth, Holder argued that non-violent offenders should be alleviated in accordance with the new ratio.⁵⁵ Further media reports on retroactive sentencing followed the appeal of Holder.⁵⁶

Following this statement from the presidential administration, an amendment was soon enacted in order to make the Fair Sentencing Act more retroactive. The ‘2011 Retroactive Crack Cocaine Guideline Amendment’ went into effect on the first of November of that year. Notwithstanding the several exceptions and conditions the amendment contains, the amendment made a sentence reduction possible for defendants convicted under the old laws alleviating the act (partly) of its arbitrary nature.⁵⁷

3.3 – Academic coverage on the incarceration of ethnic minorities

In academic spheres, there is a large amount of literature released specifically on the Fair Sentencing Act. Kyle Graham, assistant professor at the Santa Clara University School of Law, wrote an essay about the similarities between the sentencing of crack and the newly popular illicit drug methamphetamine. Graham argues that the harsh sentencing on methamphetamine will cause revolts similar to those of the crack cocaine disparity in the future of the United States. According to Graham, methamphetamine does however lack an equivalent drug with lower sentencing guidelines that can pull down the harsh sentencing on methamphetamine itself (in the way cocaine did this for crack). Furthermore, the sentencing of methamphetamine does not have its roots in racism and discrimination toward ethnic minorities. Therefore, Graham does not expect an apology

⁵⁴ The United States Attorney General is the head of the United States department of Justice.

⁵⁵ ‘Testimony of U.S. Attorney General Eric Holder before the U.S. Sentencing Commission’, 1 June 2011.

⁵⁶ Charlie Savage, ‘Retroactive reductions sought in crack penalties’ (version 1 June 2010), <http://www.nytimes.com/2011/06/02/us/02cocaine.html>, (8 March 2016).

⁵⁷ United States Sentencing Commission, ‘Most frequently asked questions the 2011 retroactive crack cocaine guideline amendment’, <http://www.ussc.gov/amendment-process/materials-federal-cocaine-offenses/most-frequently-asked-questions-2011-retroactive-crack-cocaine-guideline-amendment> (20 March 2016).

in the form of a new act or amendment by Congress. He believes that such a form of saying ‘sorry’ was an exception rather than a rule.⁵⁸

Academic writing on the accomplishments of the act itself are generally critical in nature. For example, Kara Grottsch, director of advocacy at ‘The Sentencing Project’, is rather skeptical on the accomplishments of the Fair Sentencing Act.⁵⁹ Grottsch says that the act failed to live up to the changes civil rights and community activists had been looking for.⁶⁰ Grottsch sees the accomplishments of the act as a bittersweet victory because estimates point toward a reduction of the prison population of only 3.800 people in ten years. Although the retroactive sentencing amendment can reduce the sentence of about 12.000 people, this still does not alleviate them from a prisons sentence in and of itself.⁶¹ These number are, when taking the federal prison population into account, barely scratching the surface of the mass incarceration problem due to drug sentencing. Grottsch therefore argues that the War on Drugs is far from over and there is still a lot to be done. She argues that most effective option would be to treat the people who use drugs instead of punishing their behavior. Policymakers should re-invest in communities that have been hit the hardest by the War on Drugs, provide more prevention and treatment programs, and find effective alternatives to incarceration.⁶²

Other authors go even further by criticizing the fairness of the act itself rather than its effectiveness. This fairness is, just like the pleas of civil right activists, embedded in the retroactive aspect of the Fair Sentencing Act. Sarah Hyser and Tyler Parks, in applying for their Juris Doctor degree, both wrote on the role of Federal Courts in retroactive sentencing. According to Hyser, Federal Courts were often reluctant to apply sentences retroactively because the Fair Sentencing Act itself does not mention anything in regard to retroactive sentencing. The Supreme Court ruling against this reluctance with the Retroactive Guideline Amendment solved this. This amendment is however only solving a small part of the problem of mandatory minimum sentencing. That is why Hyser argues that there is a demand for more reforms of mandatory minimums than just this one. The problems on the Federal Sentencing Act’s retroactivity show

⁵⁸ Kyle Graham, ‘Sorry seems to be the hardest word: The Fair Sentencing Act of 2010, crack, and methamphetamine’, *University of Richmond Law Review* (2011), 765 – 799, there 795-799.

⁵⁹ ‘The Sentencing Project’ is a non-profit organization advocating for fairer sentencing in the U.S. justice system.

⁶⁰ Kara Grottsch, ‘“After” the War on Drugs: the Fair Sentencing Act and the unfinished drug policy reform agenda’, *American Constitution Society for Law and Policy* (2011), 1 – 11, there: 1.

⁶¹ Grottsch, ‘“After” the War on Drugs’, 6-7.

⁶² *Ibidem*, 9-11.

that one's sentencing date can literally make the difference between twelve months versus ten years of imprisonment.⁶³

Parks' contribution comes to the same conclusion as Hyser, arguing that the retroactive sentencing is mandatory in order for the Fair Sentencing Act to be truly fair. However, his arguments building up to this conclusion differ slightly. His biggest argument draws a comparison with the Civil Rights Act in that it was more about eradicating racism than anything else. The fairness in the Civil Right Act came not only from condemning racism, but also from releasing minorities convicted under the previous racist laws. Parks argues that although the crack cocaine disparity might not have been intended as a racist law, it did end up being one. Retroactive sentencing would therefore be the only way to really make the Fair Sentencing Act worthy of its title and better the United States drug policy's stance in the light of racism.⁶⁴

3.4 – Conclusion

Whether intentional or not, it seems undeniable that racism is a problem within the United States judicial system and the prison industrial complex. The original crack cocaine disparity and the following Fair Sentencing Act have undoubtedly had the largest impact on African American communities in the United States. Along with the obvious implications of incarceration came the 'invisible' social consequences for black communities which further instigated recidivism and exclusion from society.

The Fair Sentencing Act is both praised and condemned in the racist narrative of the prison industrial complex. While being praised for tackling the original 100:1 disparity (mostly by news outlets), academic analysis show that there is still a long road ahead to remove racism and general unfairness from United States drug policies. The large number of people that already have been affected by the laws of the Drug Abuse Acts still remain largely uncompensated, even though several cases have been made in favor of a retroactive application of the act. Furthermore, other drugs like methamphetamine might undergo a similar sentencing future as crack had, which would lead to the similar problems and concerns.

⁶³ Sarah Hyser, 'Two steps forward, one step back: how federal courts took the "fair" out of the Fair Sentencing Act of 2010', *Penn State Law Review* 117 (2012) 2, 503 – 535, there: 525 – 535.

⁶⁴ Tyler Parks, 'The Unfairness of the Fair Sentencing Act of 2010', *The University of Memphis Law Review* 42 (2012), 1105-1137, there: 1119-1136.

Although The Fair Sentencing Act might have made drug sentencing more equal, real fairness – as in equality – has yet to be reached. The term ‘fairness’ in this context applied to defendants and convicts of drug crimes within the United States prison system. Although the prison industrial complex does come forward in debates surrounding judicial racism, the primary focus lies at the injustices imposed on the subjects of the prison industrial complex themselves. Because this debate mainly concerns the life of inmates within the prison industrial complex, irrespective of their incarceration stage (defendant, convict, or ex-convict), it may be concluded that this debate takes place *on the inside of the prison walls*.

Conclusion

The analyzed cases show that mass incarceration is still a large problem and an active topic of debate. The large imprisonment rate of the United States proves to be primarily fueled by the anti-drug policies devised in the War on Drugs, which started almost thirty years ago. These policies led to tough laws criminalizing the possession and usage of drugs, creating mandatory minimum sentences in the process. These mandatory minimums are the largest contributor to the growth of the prison population of the last three decades.

This increase in convictions entailed a shortage in prison space and an increase in governmental correctional expenditure. These two problems were combatted with the privatization of prisons, which meant outsourcing parts of the federal correctional system to private contractors. In doing so, a new viable business was created which grew immensely. Nowadays, the private prison sector exerts economic, political and socioeconomic dominance. This dominance was criticized as being a ‘prison industrial complex’. From 1997 onwards, this term has served as a theoretical framework for academics and media alike.

The Floridian Senate Bill made clear that housing the large prison population is still an issue to this day. Moreover, it is an issue in which the eventual solution is ostensibly influenced by the economic and political influence of the prison industrial complex. The gradual implementation of privatizing measures by Senator Rick Scott look suspiciously like a political favor towards the privatization business. Whether that is the case or not cannot be proven. What can be concluded about the case is the fact that the Senate Bill opened up a discussion on the implications *outside of the prison walls*: the debate largely considered the implications these privatizing measures would have on the local economy. The debate was never dominated by the implications these measures would have on the inmates of the prison themselves. Here, the focus lay on the economic implications of the privatization itself.

With the debate on the Fair Sentencing Act of 2010, this is the other way around. The propagators of the act were concerned with who got incarcerated and why, but often not where the actual incarceration would be fulfilled. When the prison industrial complex is mentioned, it primarily used to illustrate the victimization of affected convicts. Because of this, the debate regarding racism in the prison industrial complex takes place on the *inside the prison walls*. While the debate does concern the largest and most destructive roots of the incarceration problem, which

is tough drug-sentencing, it fails to offer a good solution for the prison industrial complex itself. This is mainly because, much like Fulcher's argument, these other debates surrounding racism fail to acknowledge the economic interests of the private prison contractors.

The debates seem to be divided by the very prison walls which they concern. It is in this regard that I would opt for a new debate taking place *astride the prison walls*. Debaters should sit firmly on this wall, with their feet dangling at both sides of prison industrial complex. In doing so, an argument would neither be quaffed by nor be blinded to the other side of the debate. This could perhaps provide a more nuanced overview of the problem at hand. This is necessary because despite the fact these private contractors are loved by few and scorned by many, they are an established part of American economic, political and sociological life. Therefore, their eventual extraction or reform needs to happen at a slow and steady pace. That is why it might prove useful to construct a big picture (or: a new debate) from these separated previous debates and see what can and should be done about the prison industrial complex.

References

Primary sources

Abrams, Jim, 'Congress passes bill to reduce disparity in crack, powder cocaine sentencing' (29 July, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/28/AR2010072802969.html> (7 march 2016).

Alanez, Tonya, 'Scott pushes for state prison privatization' (version February 2014), http://articles.orlandosentinel.com/2011-02-14/news/os-scott-budget-privatization-20110214_1_private-prisons-state-prisons-geo-group (22 February 2016).

Bender, Michael, 'Florida vote halts largest private-jail plan in Geo setback' (version 15 February 2016), <http://www.bloomberg.com/news/articles/2012-02-14/florida-senate-defeats-largest-u-s-private-prison-contract-in-21-19-vote> (22 February 2016).

Bousquet, Steve, 'Prison privatization dies in Senate 21-19' (version 14 February 2012), <http://www.tampabay.com/news/publicsafety/crime/prison-privatization-dies-in-senate-21-19/1215438> (22 February 2016).

Bryant, Sean, 'The business model of private prisons' (June 22 2015), <http://www.investopedia.com/articles/investing/062215/business-model-private-prisons.asp> (22 February 2016).

Carson, Elizabeth E., 'Prisoners in 2014', *U.S. Department of Justice: Bureau of Justice Statistics* (2015) 1 – 33. Available at: <http://www.bjs.gov/content/pub/pdf/p14.pdf>

CNN Money, 'Correction Corp of America' (version 22 February 2016), <http://money.cnn.com/quote/quote.html?symb=CXW> (22 February 2016).

CNN Money, 'Geo Group Inc' (version 22 February 2016), <http://money.cnn.com/quote/quote.html?symb=GEO> (22 February 2016).

Dixon, Matt, 'New contracts give private prison giant nearly 80% of Florida's private prison market' (version 16 December 2013), <http://jacksonville.com/news/2013-12-16/story/new-contracts-give-private-prison-giant-nearly-80-percent-floridas-private> (23 February 2016).

Eckholm, Erik, 'Congress moves to narrow cocaine sentencing disparities' (version 28 July 2010), http://www.nytimes.com/2010/07/29/us/politics/29crack.html?_r=0 (7 March 2016).

Federal Bureau of Prisons, 'Offenses' (version 30 January 2016), https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (14 March 2016).

Kirkham, Chris, 'Private prison bill voted down in Florida Senate, thwarting massive expansion' (version 15 February 2012), http://www.huffingtonpost.com/2012/02/15/private-prisons-florida-senate_n_1279822.html (22 February 2016).

Klas, Mary E., 'Private prison vendors could face new scrutiny in Florida' (version 19 April 2015), <http://www.tampabay.com/news/politics/stateroundup/private-prison-vendors-could-face-new-scrutiny-in-florida/2226087> (22 February 2016).

Klas, Mary E., 'The "cannibalizing" of Florida's prison system' (version 28 February 2015), <http://www.miamiherald.com/news/special-reports/florida-prisons/article11533064.html> (23 February 2016).

National Institute of Justice, 'Recidivism' (version 17 June 2014), <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx#statistics> (22 February 2016).

'New law on crack cocaine penalties should be made retroactive' (version 18 February 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/18/AR2011021806422.html> (8 March 2016).

Reagan, Ronald and Nancy Reagan, 'Address to the Nation on the Campaign Against Drug Abuse', (September 14 1986). Available at: <http://millercenter.org/president/reagan/speeches/speech-5465>

Savage, Charlie, 'Retroactive reductions sought in crack penalties' (version 1 June 2010), <http://www.nytimes.com/2011/06/02/us/02cocaine.html>, (8 March 2016).

Stewart, Julie, 'Well done congress, now make fair sentencing retroactive' (version 4 August 2010), http://www.huffingtonpost.com/julie-stewart/well-done-congress-now-ma_b_671008.html (8 March 2016).

‘Testimony of U.S. Attorney General Eric Holder before the U.S. Sentencing Commission’, (1 June 2011). Available at: http://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20110601/Testimony_AG_Eric_Holder.pdf.

‘The Fair Sentencing Act of 2010: it’s about time (version 31 July 2010), <http://articles.latimes.com/2010/jul/31/opinion/la-ed-sentencing-20100731> (7 March 2016).

The Florida Senate, ‘CS/CS/SB 2038: Privatization of Correctional Facilities’, (14 February 2012). Available at: <https://www.flsenate.gov/Session/Bill/2012/2038/BillText/e1/PDF>

‘Trends in U.S. corrections’, *The Sentencing Project* (2015), 1-8. Available at: http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf

United States Senate and House of Representatives, ‘Anti-Drug Abuse Act of 1986’, (Washington, DC, 1986). Available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf>, February 15th 2016.

United States Senate and House of Representatives, ‘Anti-Drug Abuse Act of 1988’, (Washington, DC, 1988). Available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-102/pdf/STATUTE-102-Pg4181.pdf>.

United States Senate and House of Representatives, ‘Fair Sentencing Act of 2010’, (2010). Available at: <https://www.gpo.gov/fdsys/pkg/BILLS-111s1789enr/pdf/BILLS-111s1789enr.pdf>

United States Sentencing Commission, ‘Most frequently asked questions the 2011 retroactive crack cocaine guideline amendment’, <http://www.ussc.gov/amendment-process/materials-federal-cocaine-offenses/most-frequently-asked-questions-2011-retroactive-crack-cocaine-guideline-amendment> (20 March 2016).

Walmsley, Roy, ‘World prison population list: eleventh edition’, *World Prison Brief* (2016), 1 – 15. Available at: http://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition.pdf

Secondary sources

Brewer, Rose M. and Nancy A. Heitzig, 'The racialization of crime and punishment: criminal justice, color-blind racism, and the political economy of the prison industrial complex', *American Behavioral Scientist* 51 (2008) 5, 625 – 644

Fulcher, Patrice A., 'Hustle and flow: prison privatization fueling the prison industrial complex.' *Washburn Law Journal* 51 (2012) 3, 589 – 617.

Gaes, Gerald, 'Prison privatization in Florida: promise, premise, and performance', *Criminology & Pub. Pol'y* 4 (2005), 83-88.

Graham, Graham, 'Sorry seems to be the hardest word: The Fair Sentencing Act of 2010, crack, and methamphetamine', *University of Richmond Law Review* (2011), 765 – 799.

Grotsch, Kara, '“After” the War on Drugs: the Fair Sentencing Act and the unfinished drug policy reform agenda', *American Constitution Society for Law and Policy* (2011), 1 – 11.

Huling, Tracy, 'Building a prison economy in rural America', *Invisible Punishment: The collateral consequences of mass imprisonment* (2002), 197 – 213.

Hyser, Sarah, 'Two steps forward, one step back: how federal courts took the “fair” out of the Fair Sentencing Act of 2010', *Penn State Law Review* 117 (2012) 2, 503 – 535.

Mauer, Marc and Meda Chesney-Lind (eds), *Invisible Punishment* (New York 2002).

Schartmueller, Doris, 'People matter more than numbers: organized efforts against prison privatization in Florida', *Contemporary Justice Review* 17 (2014) 2, 233-249.

Parks, Tyler, 'The Unfairness of the Fair Sentencing Act of 2010', *The University of Memphis Law Review* 42 (2012), 1105-1137.

Taylor, Larry F., 'The how to guide for prosecutors: defending the sentencing guidelines on crack', *Thurgood Marshall Law Review* 33 (2007), 329 – 349.

The House I live In, DVD, directed by Eugene Jarecki, New York: Virgil Films, (2013).