

Private Contracts in “Public” Prisons

How Corporate Power Allows for The
Exploitation of Incarcerated People and
Their Loved Ones

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About the Critical Corporate Theory Collection

The Critical Corporate Theory Collection is part of the *Systemic Justice Journal*, published by the Systemic Justice Project at Harvard Law School. The Collection is comprised of papers that analyze the role of corporate law in systemic injustices. The authors are Harvard Law students who were enrolled in Professor Jon Hanson's Corporations course in the spring of 2021.

The Collection addresses the premise that corporate law is a core underlying cause of most systemic injustices and social problems we face today. Each article explores how corporate law facilitates the creation and maintenance of institutions with tremendous wealth and power and provides those institutions a shared, single interest in capturing institutions, policies, lawmakers, and norms, which in turn further enhance that power and legitimates its unjust effects in producing systems of oppression and exploitation.

For more information about the *Systemic Justice Journal* or to read other articles in the Critical Corporate Theory Collection, please visit the website at www.systemicjustice.org.

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ABSTRACT

Over the past several years, increasing public scrutiny has led to the closure of private prisons across the country. Faced with out-group status, corrections corporations have responded by diversifying their services in government-run prisons, which has allowed them to benefit from the legitimacy provided by the "public" label while continuing their exploitative practices. This paper discusses how corporate contracts for communication, food, and commissary services in "public" prisons and jails exploit incarcerated people and their loved ones. Corporate law facilitates this exploitation by giving corporations a shared profit interest, which helps them to collectively perpetuate narratives of crime and punishment that keep prisons full and allow for the abuse of the people inside of them. A desire to protect vulnerable shareholders allegedly justifies the profit maximization mandate, but flawed markets fail to provide any protection for one of the most defenseless groups in society. Tearing down this system of exploitation requires questioning the narratives that underlie our beliefs about crime and punishment.

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THE PROBLEM

“[M]y Securus bill is the first one I pay every month, and it often means that I can’t afford our gas or light bills. Yet, I know the cost of not keeping in touch with my son would be even higher.” – Diane Lewis, Connecticut.¹

Over the past decade, private prison facilities have come under increased public scrutiny, and yet corporations continue to exploit incarcerated people and their loved ones through contracts in government-run prisons and jails. In these “public” facilities, corporations provide a wide range of services – including phone calls, video conferencing, messaging, programming, food services, in-prison stores selling food and other items (the “commissary”), and security.² Although incarcerated people often

¹ WORTH RISES, THE PRISON INDUSTRY: HOW IT STARTED. HOW IT WORKS. HOW IT HARMS. 54 (2020), <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5ff2bbe318d44937a922e754/1609743335995/The+Prison+Industry++How+It+Started%2C+How+It+Works%2C+and+How+It+Harms+%28December+2020%29.pdf> [hereinafter “WORTH RISES”].

² See Shania Bunbury’s paper.

make less than \$1 for an hour of work, they are forced to spend exorbitant amounts of money just to talk with their family or meet other basic needs. The guilt that comes with asking family members for financial support is an additional cost.

“It instantly destroyed my family because of the distance and the cost associated with visiting and phone calls. I suddenly became a dead person to them.” – Formerly incarcerated person, New Orleans.³

Criticism of private prison facilities, while fully warranted, fails to even come close to addressing the extent of corporate exploitation of incarcerated people. Private prisons only hold about 8.5% of the total U.S. prison population;⁴ in public prisons, however, private profiteering is omnipresent. For example, nearly every corrections department contracts with a private telecom corporation, and 91% of people incarcerated in the United States must communicate using one of just three corporate providers.⁵ This paper will focus on corporate contracts in public prisons for communication, food, and commissary services.

Communication

Private corporations have monopolized the communications industry in prisons and jails, from calling to electronic messaging to video visitation. For the past 15 years, two companies—Securus and Global Tel*Link (GTL)—have dominated the corrections telecom industry, with backing

³ *Who Pays? The True Cost of Incarceration on Families*, ELLA BAKER CTR. FOR HUM. RTS., FORWARD TOGETHER, AND RES. ACTION DESIGN 32 (Sept. 2015), <http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

⁴ Kara Gotsch and Vinay Basti, *Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons*, SENTENCING PROJECT 8 (2018), <https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>.

⁵ WORTH RISES, *supra* note 1, at 53.

from private equity firms.⁶ These corporations charge as much as \$1 per minute for in-state calls.⁷ The Federal Communications Commission (FCC) caps inter-state phone calls at 21 cents per minute for prepaid calls and 25 cents per minute for collect calls, but these calls only account for approximately one fifth of all calls made from prisons and jails; the remainder are *intra*-state calls, to which FCC caps do not apply.⁸ In addition to these per-minute rates, corporations charge fees for “services” such as opening an account, depositing money, and receiving a paper bill.⁹

Family members—overwhelmingly women of color—often bear the burden of these exorbitant expenses. The cost of calls and visits alone causes one in three families with an incarcerated member to go into debt, and the financial repercussions can reverberate long after the release of their loved one.¹⁰ These costs also force painful choices.

“The week my sister fell ill and ultimately passed away, I spoke to my son on the phone every day, four or five times, just to keep him posted on what was happening, so that he could still feel like he was with us. My sister was his favorite aunt; I had to help him mourn. I encouraged him to place as many calls as he wanted and had to shoulder the added financial burden alongside the emotional burden of my own grief.” – Diane Lewis,

⁶ *Id.* at 48, 50.

⁷ *Id.* at 49.

⁸ *Id.* at 49.

⁹ Peter Wagner and Alexi Jones, *State of Phone Justice: Local Jails, State Prisons and Private Phone Providers*, PRISON POL’Y INITIATIVE (Feb. 2019), https://www.prisonpolicy.org/phones/state_of_phone_justice.html.

¹⁰ *Who Pays? The True Cost of Incarceration on Families*, *supra* note 3, at 9.

*Connecticut.*¹¹

Public scrutiny of the corrections telecom industry has caused corporations to diversify. Some corporations now offer bundled contracts that include phone services, electronic messaging, and video calling.¹² Each of these services comes with additional fees. Nowadays, people outside of prison can email or video chat for free, and yet incarcerated people are forced to pay for these same services in prison. Sending one electronic message can cost as much as \$1.25, and contracts often impose limits on message lengths ranging from 1,500 to 6,000 characters.¹³ Want to send this report to your friend who is incarcerated? Under a 1,500-character limit, it could cost you as much as \$33.75. Video communication services charge similar rates as phone calls (up to \$1.50 per minute), but with the added cost of replacing in-person visitation.¹⁴ Some jails even require family and friends to travel to the facility in order to sit in a separate room from their loved one and speak through video chat.¹⁵

Image 1: Family Video Conference

¹¹ WORTH RISES, *supra* note 1, at 54.

¹² *Id.* at 50.

¹³ Stephen Raher, *You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation*, PRISON POL'Y INITIATIVE (Jan. 21, 2016), <https://www.prisonpolicy.org/messaging/report.html>.

¹⁴ Bernadette Rabuy and Peter Wagner, *Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails*, PRISON POL'Y INITIATIVE 13 (Jan. 2015), https://static.prisonpolicy.org/visitation/ScreeningOutFamilyTime_January2015.pdf.

¹⁵ *Id.* at 5.



Source: AP / David J. Phillip

Food and Commissary

Prisons and jails also contract with corporations to provide cheap and often inedible cafeteria food, which leads incarcerated people to search for other food sources. A recent survey of 35 state correctional agencies found that one in three contracted with a private company for food services in at least some of their facilities.¹⁶ Food service corporations have notoriously served incarcerated people moldy pancakes,¹⁷ maggot-infested entrees,¹⁸

¹⁶ Leslie Soble et al., *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison*, IMPACT JUST. 89 (2020), <https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars.pdf>.

¹⁷ Paul Egan, *More Problems for State's Prison Food Contractor: Maggots Found in Chow Served to Inmates*, DETROIT FREE PRESS (Nov. 6, 2017), <https://www.freep.com/story/news/local/michigan/2017/11/06/maggots-food-cotton-prison-jackson-michigan-trinity-services/825834001/>.

¹⁸ *Id.*

and cake that had been "eaten or pawed at by a rodent."¹⁹ It is no wonder incarcerated people are 6.4 times more likely to contract food poisoning than the free-world population.²⁰

*"Being served inedible food in a chow hall full of insects, being told you have five minutes to eat it with your sweat dripping into the food... That was truly horrific." – Rosa, formerly incarcerated for 33 years.*²¹

Faced with these options in the cafeteria, people in prison often turn to another privatized source for nutrition: the commissary. The commissary is a store located inside the prison facility where incarcerated people can buy provisions such as food and hygiene products. Seventeen states currently have privatized commissary services,²² which means the same companies saving money by serving rancid meals in the cafeteria are rewarded with increases in revenue through commissary sales.²³ Furthermore, the provision of inadequate or even harmful hygiene products in prison forces incarcerated people to turn to the commissary for basic necessities like

¹⁹ Kyle Feldscher, *Aramark Worker Ordered Prisoner to Feed Inmates at Michigan Prison Cake Partially Eaten by Rodents*, MLIVE (Apr. 3, 2019), https://www.mlive.com/lansing-news/2015/03/inmates_at_mid-michigan_prison.html#incart_story_package

²⁰ WORTH RISES, *supra* note 1, at 66.

²¹ Soble, *supra* note 16, at 59.

²² WORTH RISES, *supra* note 1, at 67.

²³ For example, TKC Holdings serves as the parent company for both the Keefe Group (supplier of commissary services) and Trinity Services Group (correctional food service provider). See *Our Companies*, TKC HOLDINGS (2015), <https://www.tkcholdings.com/companies-103>.

soap.²⁴ Despite the poor quality of commissary items, their high prices make them inaccessible to many: In a recent survey, three-fifths of formerly incarcerated participants reported that they could not afford to buy items from the commissary.²⁵

"I spent my first period in solitary. I was given just two cheap sanitary napkins a day. The result was humiliating. I bled through my clothes and had no option but to sit in the blood for hours. Back in general population, we did not get sanitary napkins or tampons at all. We had to buy them from commissary, which we could only do once every two weeks, or suffer the humiliation of bloodied bottoms.... I would work 50 hours just to afford decency during my period." – Jasma Credle, New York.²⁶

The Wide Web of Exploitation

Despite this paper's relatively narrow scope, it is important to acknowledge that corporate exploitation of incarcerated people and their loved ones has deep roots in often unassuming places. Institutions in our lives—from law schools to state governments—provide the capital that fuels corrections corporations through private equity funds. These institutions then reap the benefits of private profiteering in prisons and jails.²⁷ We, in turn, benefit through growth in our educational opportunities or our pension plans, but

²⁴ WORTH RISES, *supra* note 1, at 35.

²⁵ Soble, *supra* note 16, at 11.

²⁶ WORTH RISES, *supra* note 1, at 72.

²⁷ See Tim Requarth, *How Private Equity Is Turning Public Prisons into Big Profits*, NATION (Apr. 30, 2019), <https://www.thenation.com/article/archive/prison-privatization-private-equity-hig/>.

the culture of secrecy built around the carceral system allows us to ignore our own culpability.

The wide web of exploitation also has a considerable horizontal sprawl, encapsulating both government and corporate actors and thus blurring the distinction between “public” and “private.” Government agencies solicit bids for jail and prison services, define the contract’s terms, and generally accept the bid that offers the highest commission to the agency, which puts them in partnership with corporations at the expense of incarcerated people. In a society of voters loath to spend money on “criminals,” local jurisdictions depend on corporate contracts as a source of much-needed funding. But the immorality of profiting off people in cages does not stop at an artificial line between “public” and “private.” Although this paper focuses on corporate culpability, government-run prisons have their own profit motives and profiteering players—including correctional officers unions—that also deserve condemnation.

THE NARRATIVE

“Bad People Commit Crimes”

In 1964, during his speech accepting the Republican nomination for President of the United States, Barry Goldwater stated that “nothing prepares the way for tyranny more than the failure of public officials to keep the streets safe from bullies and marauders.”²⁸ This statement marked the first time crime became a national issue in American politics.²⁹ Goldwater’s remarks were prescient of the narrative of crime that would be crafted over the next several decades – specifically, the portrayal of crime as the product of bad people with aberrant dispositions who choose to take anti-social actions.

The current prison system in the United States relies on departments of

²⁸ Maggie Koerth and Amelia Thomson-DeVeaux, *Trump Doesn't Know Why Crime Rises or Falls. Neither Does Biden. Or Any Other Politician.*, FIVE THIRTY EIGHT (Oct. 8, 2020), <https://fivethirtyeight.com/features/trump-doesnt-know-why-crime-rises-or-falls-neither-do-es-biden-or-any-other-politician/>.

²⁹ *Id.*

correction working to *rehabilitate* people so that they may be *redeemed* in the eyes of the law and society. These foundational concepts—corrections, rehabilitation, and redemption—hinge on the assumption that a person's criminal behavior "reflects freely willed... choices, which in turn reflect a stable set of preferences."³⁰ Scholars sometimes refer to this type of attribution as "dispositionist," in contrast with a "situationist" narrative that attributes human behavior to external stimuli.³¹ In other words, our current approach makes *people* the target of blame and reform, and ignores situational factors such as poverty and neighborhood that have been proven to influence criminal behavior.³² The result is a "corrections" system in which one in two people released from incarceration are subsequently rearrested³³ – thus maintaining the demand for prison services and keeping the profits flowing.

For politicians, this system-affirming approach is even more appealing because it justifies their inaction in addressing systemic poverty and racism, a change to which might harm them or their wealthy donors. For example, when expressing support for the First Step Act, Senator Mike Lee said: "I know from experience that dangerous criminals exist – individuals who are incapable of or uninterested in rehabilitation and change... But my time as a prosecutor also tells me that not every criminal is dangerous or incapable of living a productive life. My faith as a Christian teaches me that

³⁰ Jon Hanson and David Yosifon, *The Situational Character: A Critical Realist Perspective on the Human Animal*, 93 *Geo L. J.* 1, 8 (2004) (internal quotations omitted).

³¹ Christopher Birkbeck and Gary LaFree, *The Situational Analysis of Crime and Deviance*, 19 *ANN. REV. OF SOC.* 113, 116 (1993).

³² See, e.g., Lauren J. Krivo and Ruth D. Peterson, *Extremely Disadvantaged Neighborhoods and Urban Crime*, 75 *SOC. FORCES* 619 (Dec. 1996).

³³ Kim Steven Hunt and Robert Dumville, *Recidivism Among Federal Offenders: A Comprehensive Overview*, UNITED STATES SENTENCING COMMISSION 5 (Mar. 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publication-s/2016/recidivism_overview.pdf (52.5% of people released from federal incarceration in 2005 were rearrested within eight years).

many people are capable of redemption.”³⁴ Senator Lee’s placement of blame and potential for change on the individual takes pressure off the government to address systemic injustices.

Corporations perpetuate the narratives that allow them to maximize profits. On the one hand, corporations promote a dispositionist narrative of crime through prison programming by producing or endorsing courses that “[a]void[] any discussion about the systemic causes of criminal behavior” and “teach people that they are incarcerated because they lack self-control or social skills.”³⁵ These educational programs are powerful tools that attempt to ingrain society’s dispositionist narrative of crime into the minds of individuals who arguably have best access to its falsehoods. And yet, in many cases, their chance at release hinges on buying into this narrative.

On the other hand, some corrections corporations embrace a situationist narrative when talking about people currently incarcerated in order to promote their in-prison services. Trinity Services Group, which provides food services for facilities in 43 states, states on its website: “Good food service goes a long way to make your facility secure. If the inmates are unhappy with their meals, they are more likely to cause problems. At Trinity we’ve been working on producing better tasting and more satisfying foods at lower costs to you.”³⁶ Despite these promises, incarcerated people have spoken out about Trinity Service Group’s abuses, such as serving meat labeled “not for human consumption.”³⁷ Thus, this situationist narrative appears to be motivated only by a desire to increase profits and

³⁴ Press Release, Mike Lee, The Truth about The FIRST STEP Act (Nov. 27, 2018), <https://www.lee.senate.gov/public/index.cfm/2018/11/the-truth-about-the-first-step-act>.

³⁵ WORTH RISES, *supra* note 1, at 26.

³⁶ *Innovation*, TRINITY SERVICES GROUP, <https://www.trinityservicesgroup.com/food-service-2/innovations/> (last visited Apr. 3, 2021).

³⁷ Elizabeth Whitman, *Arizona Prison Food Was Labeled ‘Not for Human Consumption,’ Ex-Inmates Say*, PHOENIX NEWS TIMES (Sept. 25, 2019), <https://www.phoenixnewtimes.com/news/ex-inmates-arizona-prison-food-was-not-for-human-consumption-11362468>.

does not genuinely promote the view of incarcerated people as humans influenced by their situation.

“Corporations Help Prevent Crime”

Prison service corporations have also strategically promoted a narrative of punishment that features themselves as a legitimate part of incarceration and crime prevention. During the past decade, public divestment campaigns, legislation, and executive orders have created legitimate financial consequences for private prison corporations.³⁸ Facing out-group status, corporations providing communication and food services have responded by expanding their contracts in government-owned prisons.³⁹ This diversification allows them to benefit from the veil of legitimacy that the label of “public prison” provides.

In fact, however, the binary labeling of “public” and “private” is an example of capture. It assumes “public” institutions have an underlying altruistic nature when they are really situational characters subject to control by behind-the-scenes private interests. One example of this capture is the “kickbacks”—or set portion of revenue—that telecom and commissary contracts provide for corrections agencies (the cost of which is then transferred to incarcerated people). Corrections corporations have thus harnessed the narrative such that, even while the corporate footprint in the form of private prisons is shrinking, they are still expanding their profit opportunities.

Corporations have also responded by presenting themselves as part of the solution to preventing future crime. For example, food service provider Sodexo states on its website that it “offer[s] prison and community rehabilitation services to reduce reoffending, protect the public, and drive

³⁸ Morgan Simon, *Is This The Beginning of the End for Private Prisons? The Market Seems to Think So*, FORBES (Aug. 20, 2020), <https://www.forbes.com/sites/morgansimon/2020/08/20/is-this-the-beginning-of-the-end-for-private-prisons-the-market-seems-to-think-so/?sh=3d1b778d5b91>.

³⁹ Corrections corporations have also diversified into alternatives to incarceration. See Adira Levine’s paper.

outcomes in the criminal justice system...."⁴⁰ Corporate law provides the protection that allows corporations to profess these values while simultaneously pursuing profit at the expense of all else.

CORPORATE LAW, CORPORATE POWER

Shareholder Profit Maximization as a Shield

Corporate law ostensibly mandates that corporations prioritize profit maximization for shareholders to the exclusion of other stakeholders. Although the policy justification is to protect vulnerable shareholders, courts have failed to enforce the mandate as a sword in shareholder lawsuits.⁴¹ Nevertheless, this dangerous mandate provides a shield for corporations by ensuring they will not be held accountable to their purported values. Under that protection, corrections corporations can freely use their power to keep prisons full and abuse the people inside of them.

While nominally embracing an orientation towards rehabilitation, corrections corporations promote activities that increase recidivism in order to pursue their true objective of profit maximization. For example, Securus' website states that, "We exist to improve the lives of returning citizens and their families."⁴² And yet, the company has required provisions in its video conferencing contracts that eliminate in-person visitation.⁴³ Not only is that an inhumane requirement, it also works against public safety: Research has shown just one in-person visit can reduce a person's chance

⁴⁰ *Justice*, SODEXO (2020), <https://www.sodexo.com/home/your-industry/justice-services-management.html> (last visited May 6, 2021).

⁴¹ See, e.g., *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. 1968); *AP Smith Mfg. Co. v. Barlow*, 98 A.2d 581 (N.J. 1953).

⁴² SECURUS TECHNOLOGIES, <https://securustech.net/> (last visited May 5, 2021).

⁴³ Rabuy, *supra* note 14, at 11.

of committing a new crime by 13%.⁴⁴

The shareholder profit maximization mandate also gives corporations license to exploit and abuse incarcerated people with impunity. For example, the Bob Barker company purports to have a “vision” of “Transforming criminal justice while honoring God in all we do,”⁴⁵ yet corporate law provides no recourse when prisons provide Bob Barker soap that includes cheap preservatives causing skin irritations and potentially even birth defects.⁴⁶ Corporate law is similarly silent when Aramark serves incarcerated people food taken out of the trash,⁴⁷ even while its website states that the company “believe[s] in... Considering the best interests of all stakeholders to create positive, healthy change.”⁴⁸ Thus, in the name of protecting vulnerable shareholders, corporate law facilitates human rights abuses of one of the most defenseless groups in society.

Lastly, the profit maximization mandate gives corrections corporations a strong, cohesive interest. Whether a corporation provides communication, food, commissary, or any of the other contracted services in public prisons, it must keep the cages full in order to maximize profits. This shared interest gives corrections corporations collective power to lobby against regulation, as well as to perpetuate narratives—such as those outlined previously—that ensure the revolving door of incarceration keeps turning.

⁴⁴ *How Private Prison Companies Increase Recidivism*, IN PUB. INT. 6 (June 2016), <https://www.inthepublicinterest.org/wp-content/uploads/ITPI-Recidivism-ResearchBrief-June2016.pdf>.

⁴⁵ *Mission & Values*, BOB BARKER, <https://www.bobbarker.com/vision-mission-values> (last visited May 5, 2021).

⁴⁶ WORTH RISES, *supra* note 1, at 35.

⁴⁷ Bob Johnson, *Food in Trash Served to State Prisoners in Saginaw County; Aramark Worker Fired*, MLIVE (Mar. 30, 2015), https://www.mlive.com/news/saginaw/2015/03/aramark_employee_served_sagina.html.

⁴⁸ *Correctional Facilities: Overview*, ARAMARK, <https://www.aramark.com/industries/business-government/correctional-facilities> (last visited May 5, 2021).

Flawed Markets Fail to Provide Protection

What about the protection of the “magic of the market”?⁴⁹ Law and economics scholars argue that competition in a free market incentivizes corporations to offer the best services at the lowest prices. This proposition serves as a foundation for the corporate law meta script that “markets [are] good, regulation [is] bad.”⁵⁰

Unfortunately, the market of contracts for communication and food services in public prisons operates as a monopoly, which eradicates any protection provided by forces like competition. In many cases, correctional agencies structure their contracts such that one corporation supplies all the communication or food services in the state. Even with smaller-scale contracts, there are only a few players competing; for example, GTL and Securus collectively control 82% of the correctional telecom market.⁵¹

The market is even more flawed because the “customers” (corrections agencies) are different from the consumers (incarcerated people and their loved ones). Thus, instead of an incentive to minimize costs for consumers, corporations compete over who can provide the largest kickbacks to corrections agencies. The result is a steadily increasing stream of commissions paid to states and localities, the costs of which are passed on to incarcerated people through escalating user rates and fees.⁵²

The Illusion of Prisons as a Solution to Crime

As demonstrated by the more than 7,000 taxpayer-funded prisons and jails

⁴⁹ See Leonard Silk, *Reagan's High Risk Growth Game*, N.Y. TIMES (Feb. 10, 1985), <https://www.nytimes.com/1985/02/10/business/reagan-s-high-risk-growth-game.html>.

⁵⁰ Ronald Chen and Jon Hanson, *The Illusion of Law: The Legitimizing Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 11 (Nov. 30, 2004).

⁵¹ WORTH RISES, *supra* note 1, at 50.

⁵² See, e.g., Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 CRITICAL STUD. IN MEDIA COMM. 263, 263 (Oct. 2005).

in the United States,⁵³ the public and our government have generally embraced the belief that “prisons address crime.” The existence of corrections corporations depends upon that belief. Thus, it is worth investigating whether corporate power might have played a role in our reliance on prisons as the solution to crime.

Proving this hypothesis is difficult because it “includes a prediction that, although its underlying structure will reflect the interests of corporations, the [narrative] will purport to serve the public interest generally, and its pro-commercial bias will be well-hidden by illusion.”⁵⁴ However, evidence of “misdirection,” “smoke,” and “the audience’s motives” all suggest an illusion is at play here.⁵⁵ To start with, the narrative is false: There is not a linear relationship between prisons and crime, and several states have seen a simultaneous reduction in both imprisonment and crime.⁵⁶ Recent research has called into question the rehabilitative and deterrent effects of imprisonment⁵⁷ and demonstrated that private involvement in corrections *increases* recidivism.⁵⁸ Corporations have also spent millions of dollars in favor of mandatory minimums, sentencing enhancements, and three strikes

⁵³ Wendy Sawyer and Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POL’Y INITIATIVE (Mar. 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

⁵⁴ Chen, *supra* note 50, at 70

⁵⁵ *Id.*

⁵⁶ *Prison and Crime: A Complex Link*, PEW CHARITABLE TR. (Sept. 11, 2014), <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2014/prison-and-crime>.

⁵⁷ David J. Harding et al., *A Natural Experiment Study of the Effects of Imprisonment on Violence in the Community*, 3 NATURE HUM. BEHAV. 671, 671 (July 2019).

⁵⁸ *How Private Prison Companies Increase Recidivism*, *supra* note 45.

laws⁵⁹ – all of which keep prisons full but have no clear public safety benefits.⁶⁰

The data is clear that prisons do not address crime, and also that corporations have expressed a vested interest in the continued success of the carceral system. So why do we not see the illusion? The answer likely lies in our own motivations. We want to believe prisons address crime. This desire is partly system-affirming: The United States spends \$80 billion per year on a corrections system that incarcerates more than 2.3 million people.⁶¹ A suggestion that this colossal investment has gone to waste is unthinkable. Furthermore, this massive system represents an overwhelming problem that we possess limited resources to comprehend, much less address. As Mother Teresa said, "If I look at the mass I will never act. If I look at one, I will." Compassion is a limited resource, and humans tend to want to do less as the problems become worse. The attribution of crime to aberrant dispositions combined with the belief that prisons address crime creates the narrative needed to take the burden of compassion off our shoulders. The problem? It is all an illusion.

SOLUTIONS

Solving the problem of exploitative communication and food service contracts in public prisons is not as easy as simply expanding strategies used to close private prisons. Recently, some cities have mandated free phone calls in local jails,⁶² and other legislative and regulatory efforts are

⁵⁹ WORTH RISES, *supra* note 1, at 2, 9; Michael Cohen, *How For-Profit Prisons Have Become The Biggest Lobby No One Is Talking About*, WASH. POST (Apr. 28, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/04/28/how-for-profit-prisons-have-become-the-biggest-lobby-no-one-is-talking-about/>.

⁶⁰ See *Long Prison Terms*, JUSTICE POL'Y INST., <http://www.justicepolicy.org/Long-Prison-Terms.html> (last visited May 5, 2021) ("Research has found that longer prison sentences do not deter future criminal offending. At least one study has documented that longer sentences promote criminality.").

⁶¹ Sawyer, *supra* note 53.

⁶² See, e.g., *San Francisco Announces All Phone Calls from County Jails Are Now Free*,

on the horizon.⁶³ Public support is growing, but the nature of the third-party contract market means divestment efforts have seen less success. Specifically, most prison service companies are privately held, and institutions invest in them through massive funds run by private equity firms.⁶⁴ This attenuated system means that, even if the institution knows where its money is invested, withdrawing its funding is not as simple as selling a stock.⁶⁵ Thus, more creative solutions are necessary.

In recent years, some new companies have entered the market and presented themselves as ethical alternatives to older companies like Securus and GTL. Education and technology service provider American Prison Data Systems became the first Delaware Public Benefits Corporation in 2013,⁶⁶ which allows it to escape the profit maximization mandate and consider the interests of other stakeholders like incarcerated people. Edovo, a similar company, does not have any special filing status but includes the benefit corporation language in its governing documents.⁶⁷ Its founder and CEO Brian Hill says that the company's leadership and investors often collectively agree to forego additional profits in favor of more ethical alternatives. Because there is no lawsuit, corporate law has no mechanism for intervention.

Nevertheless, Edovo's experience also suggests the stark limitations of

CITY AND COUNTY OF SAN FRANCISCO (Aug. 10, 2020),
<https://sfmayor.org/article/san-francisco-announces-all-phone-calls-county-jails-are-now-free>.

⁶³ Interview with Bianca Tylek, Executive Director of Worth Rises (Apr. 12, 2021).

⁶⁴ Requarth, *supra* note 27.

⁶⁵ Interview with Tim Requarth, Freelance Science Journalist (Mar. 26, 2021).

⁶⁶ *APDS Celebrates Three Years as a Public Benefit Corporation*, APDS (Sept. 2, 2016), <https://apdscorporate.com/2016/09/02/apds-celebrates-three-years-as-a-public-benefit-corporation/>.

⁶⁷ Unless otherwise noted, the information about Edovo comes from: Interview with Brian Hill, CEO of Edovo (Mar. 31, 2021).

changing the system from the inside. Several years ago, Edovo bought the fourth-largest corrections telecom company at the time, with the goal of shifting the industry towards more affordable calling. Ultimately, however, the company's efforts proved unsuccessful in most instances because of its inability to convince municipalities to forego commissions to allow for lower rates. Edovo's lack of economies of scale also often made its rates less competitive. Indeed, at one point, Edovo's minimum 15-minute jail call rate was higher than that of both GTL and Securus.⁶⁸ Edovo eventually sold the company to refocus exclusively on its core educational services. The lesson, Hill says, was that the greater power to change the system lay in the hands of counties and states. Many individuals who are outspoken about this topic similarly suggest that the most direct solution to the problem of private exploitation of incarcerated people comes through government.⁶⁹

Still, arguing that correctional agencies could simply revoke contracts tomorrow oversimplifies the problem and allows corporations to escape their own culpability. It is important to remember corporations are the original masterminds behind the kickback system, which has built correctional agencies' dependency on lucrative contracts over time.⁷⁰ Corporations like Securus now point to government kickbacks as a shield from blame⁷¹ even while making ten times more per minute in contracts that contain kickbacks than in those without.⁷²

Additionally, although public pressure can move governments away from

⁶⁸ WORTH RISES, *supra* note 1, at 53.

⁶⁹ See, e.g., John Pfaff (@JohnFPfaff), TWITTER (May 3, 2019), <https://twitter.com/JohnFPfaff/status/1124299422400172037>.

⁷⁰ WORTH RISES, *supra* note 1, at 53.

⁷¹ Breanna Edwards, *Dawn Freeman's Mission to Help Returning Citizens Restart Their Lives*, ESSENCE (Jan. 17, 2020), <https://www.essence.com/feature/dawn-freeman-securus-foundation-criminal-justice-reform/>.

⁷² WORTH RISES, *supra* note 1, at 53.

these problematic contracts, budgetary demands counteract those forces by perpetually pushing towards maintaining the private role in corrections. When public voices quiet and protestors move on, the government faces a predicament of how to continue its system of caging and warehousing individuals in a way that is manageable with limited budgets and taxpayers who do not want to spend money on criminals. Corporations originally exploited this financial constraint to justify their entry into the market, and there is no reason to think the cycle will not continue.

The cyclical push and pull between moral outrage and practical budgetary restraints demonstrates the systemic nature of this problem – and thus calls for a consideration of systemic solutions. Closing prisons and reinvesting in communities takes the opportunity to profit off people in cages away from both the government and corporations. Moving away from society's dependence on prisons is easier to imagine if we allow the evidence to break down delusional narratives like "bad people commit crimes" and "prisons address crime." As Angela Davis wrote, we must move away from thinking about "imprisonment as a fate reserved for others... for the 'evildoers.'"⁷³ Prison abolitionist Ruth Gilmore adds that we must "change conditions under which violence prevailed" instead of "solv[ing] problems by repeating the kind of behavior that brought us the problem in the first place."⁷⁴ Letting go of the illusions allows us to construct a new system that prioritizes human dignity, racial justice, and public safety as defined by the community.

CONCLUSION

On May 25, 2020, Minneapolis police officer Derek Chauvin murdered

⁷³ ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 16 (2003).

⁷⁴ Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.

George Floyd by kneeling on his neck for nine minutes and 29 seconds.⁷⁵ At Chauvin's trial, Judge Cahill told the jury that "our brains are hardwired to make unconscious decisions."⁷⁶ Thus, he advised, "[t]ake the time you need to reflect carefully and thoughtfully about the evidence" and "resist any urge to reach a verdict influenced by bias."⁷⁷

As members of a democratic society, you and I serve as jurors assessing the system of criminal punishment that our government administers in our name. Corporate actors, politicians, journalists, and scholars compete to present you with ideas that they promote, often unconsciously, out of self-interest, dissonance, or a natural desire to believe the system is just. This paper suggests that the shared profit maximization interest of corporations gives them extraordinary power to unify in presenting a compelling narrative of crime and punishment. As Judge Cahill advised his jury, the challenge is to carefully evaluate and question the narratives presented to you in order to ensure your verdict is your own. Rather than "marvel[ing] at the converging approaches to policymaking and corporate law,"⁷⁸ let's be suspicious of them. Let's question why we let corporations profit off people in cages and then subsequently spend that money to lobby policymakers to cage more people. Let's question corporations providing programming to "rehabilitate" incarcerated people even while they have a vested financial interest in those same people returning to prison. We have to demand answers to those questions, and if there are no answers—if all we find is an illusion—then we have to demand change.

⁷⁵ Nicholas Bogel-Burroughs, *Prosecutors Say Derek Chauvin Knelt on George Floyd for 9 Minutes 29 Seconds, Longer Than Initially Reported*, N.Y. TIMES (Mar. 30, 2021), <https://www.nytimes.com/2021/03/30/us/derek-chauvin-george-floyd-kneel-9-minutes-29-seconds.html>.

⁷⁶ Transcript of Jury Instructions, *State v. Chauvin*, 27-CR-20-12646 (2021).

⁷⁷ *Id.*

⁷⁸ Chen, *supra* note 50, at 149.

FURTHER READING

Worth Rises, *The Prison Industry: How It Started. How It Works. How It Harms.*, (2020).

Privatization, PRISON POLICY INITIATIVE,
<https://www.prisonpolicy.org/research/privatization/>.

ENDNOTES