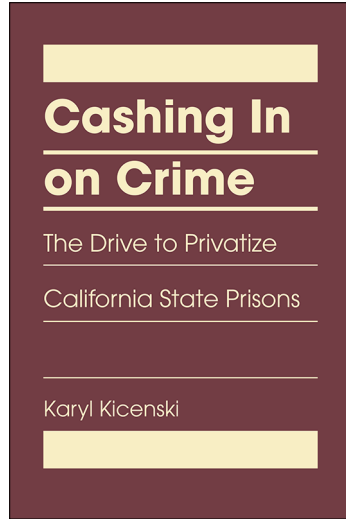


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Cashing In on Crime:  
The Drive to Privatize  
California State Prisons

Karyl Kicenski

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# 1

## The Emergence of Private Prisons

A few years ago in a small county in Pennsylvania, fourteen-year-old Phillip Swartley attended a slumber party where he was getting into mischief, engaging in a bit of petty crime. Caught by the police rifling through unlocked cars for change and incidentals, he was arrested and eventually appeared before Judge Mark Ciavarella. Swartley was charged with a misdemeanor that his mother guessed would be punished with a modest fine or perhaps some type of community service. She could then discipline him later on her own terms. But what Swartley and his mother could not have known then was that Judge Ciavarella was receiving kick-backs from a private prison facility of approximately \$2.6 million in exchange for rulings that favored detention for juveniles at that facility. In all, the boy stole some change and a prepaid cell phone that night, but in the end he was led out of the courtroom in shackles and deposited into a youth detention center and later a boarding school for at-risk youth for almost a year. After the crimes of Ciavarella were uncovered, it was discovered Swartley was one of at least 5,000 juveniles who appeared before the judge in a five-year period.

The story of Judge Ciavarella and Phillip Swartley goes to the heart of questions surrounding the privatization of public prisons, the growth and entrenchment of markets that center around incarceration, and the manner in which these markets become profitable.<sup>1</sup>

Since the 1980s, private corporations have increasingly assumed the responsibility for housing exploding numbers of state and federal inmates across the United States. Part of the reason for this phenomenon is the expansion of the country's prison institutions, which have experienced the most rapid and sustained increase in prisoners ever recorded since their birth in the nineteenth century. Between 1973 and 1997, the number of people behind bars rose more than 500 percent and today, state and federal prisons along with local jails house more than 2.2 million inmates—approximately one in every 131 U.S. residents.<sup>2</sup>

As a result of this increase, one of the most significant current trends in American criminology is the continuing growth and expansion of what has been called the “prison market,” “the corrections commercial complex,”<sup>3</sup> or the “prison industrial-complex” (PIC).

The PIC has been defined as the diverse set of interest groups who do business with correctional facilities. But it has also referred to the larger confluence of government interests and private companies that have a vested interest in the capital produced by the punishment “industry,” over and above the rehabilitation for inmates or the reduction of crime.<sup>4</sup> In simple terms, the prison market consists of a burgeoning set of businesses that profit not only on contracts to provide for the provision of goods and services needed by penal institutions (e.g. food, education, healthcare), but also on building new prison facilities, managing prison operations and selling inmate labor. Making large-scale profits from incarcerated inmates, however, is a relatively new enterprise.

Historically, most state and federal prisons were self-sufficient until the mid-1930s when prison inmates produced the food and goods they needed to survive for themselves.<sup>5</sup> While they did sell off a portion of what they produced and were often put to work to produce industrial goods that generated a profit, the notion of imprisonment as a purely “for-profit” industry in itself simply has no modern precedence. Today, the profits made by employing inmate labor are often touted as a prudent side-effect of offering the prisoner vocational training or even rehabilitation; however, there is little, if any, compelling evidence supporting this claim. When one examines the types of jobs inmates take—typically low-skill, labor intensive, repetitive tasks—the closest comparison to actual work available in the American job market might be positions being exported overseas to our global neighbors.

But profits for this prison industrial complex are not just made on inmate labor. Selling products and services to corrections departments that cater to prison populations is also a lucrative investment. Today, businesses offer everything from biometric identification systems, suicide resistant toilets, prison management teams to even the simple pay phone—which can generate up to \$15,000 per year.<sup>6</sup> Many times these products or services are chosen on the basis of the company “kick-backs” made available to corrections departments, as opposed to what is economically prudent or most appropriate for inmates. In other words, contracts are awarded to certain companies depending upon the volume of “benefits” allotted back to the department itself. Phone service companies, for example, have often agreed to give a portion of profits back to corrections facilities for exclusive rights to provide lines for

inmates. Here then corrections departments, not just private, for-profit companies, become implicated in the commodification of prisoners. When state corrections departments are allotted in excess of 10 billion dollars a year, corporate interests, small-time entrepreneurs, union officials and others take notice. Evidently, not since the convict-leasing program of the post-slavery era has there been such a developed system of mining wealth from those legally sentenced to prison.<sup>7</sup>

But as we saw above, the profitability of the prison market becomes not only complicated but also particularly disturbing when viewed as a symbiotic relationship between government officials and/or their appointees and private enterprise.

### **Public Versus Private?**

Whether profits are produced by selling products that cater to inmate populations or privatizing whole prisons, we are pressed to ask whether partnerships between private firms and government bodies undermine the capacity for the state to fairly and adequately protect the general welfare—particularly in the face of seductive opportunities to gain financially from the miscarriage of such a duty. There are plenty of situations where such a question might be relevant. For instance, how do decisions about who should care for inmates (unionized guards or simple unregulated wage labor), what legal sentences inmates should serve (indeterminate sentences or fixed time for particular crimes), or what should count as a prior infraction for determining penalty alter the population of offenders or the cost to care for those offenders? Analyzing the relations within and between the public and private spheres is in many ways examining the modes through which the “prison market” becomes lucrative—in other words, how it becomes a market at all. It urges us to consider for whom it becomes lucrative when it succeeds in making profits, and upon whose backs that wealth is produced.

Such questions are not just limited to private businesses within the prison market either. Privatization of public provisions beyond the prison institution is becoming a larger trend in American culture. For instance, in 2009 California began to consider allowing 51 new schools in Los Angeles as well as 200 existing schools across the state to be open to bids by privately-controlled “charters,” private organizations that deliver the “product” of education. As this process has unfolded, questions about the effects of transferring public institutions to private control emerge. How, for example, might this transfer alter labor contracts and the longtime predominance of the California Teachers

unions in the state given that private schools are not required to be unionized? Or, how does the nature of the K-12 curriculum change if charters are overseen by individuals whose salaries are paid by particular special interests?<sup>8</sup> As we see the private sector enter into previously restricted “publicly sponsored” territory, old equations between state and citizen are being recast.<sup>9</sup>

These tensions are not just found at the city or state level, however: they can be traced in federal business dealings as well. Burgeoning relationships between private military firms and government officials have developed during the Iraq and Afghanistan wars. Reports of former CIA personnel taking high-level positions in military contracting companies like Blackwater (now known as Xe Services LLC) fuel suspicion and distrust in the context of these firms being awarded lucrative contracts by the U.S. government. And perhaps more disturbing are Blackwater’s own contract disclosures suggesting that the CIA has out-sourced work as sensitive as interrogating prisoners. In the case of private prison companies, it is no secret that many seem to be a virtual turnstile for former government employees.

A look at one of the largest private prison companies, Corrections Corporation of America (CCA), and its “management team” reveals that over a dozen of those on its Executive Management staff, its senior officers list and Board of Directors have held top-level positions for the federal government. Donna M. Alvarado, a member of the Board of Directors for CCA, for example, has served as deputy assistant secretary of defense for the U.S. Department of Defense; counsel for the U.S. Senate Committee on the Judiciary subcommittee on Immigration and Refugee Policy, and staff member of the U.S. House of Representatives Select Committee on Narcotics Abuse and Control. Another Board member is Thurgood Marshall, (the son of the historic Supreme Court Justice, Thurgood Marshall). He has held appointments in each branch of the federal government, including Cabinet Secretary to President Clinton, Director of Legislative Affairs, and Deputy Counsel to Vice President Al Gore.

One more example of the revolving door that seems to exchange government officials with private corporate leaders is Stacia Hylton. Hylton was appointed as the director of the United States Marshals Service by President Obama in his first term. Hylton first worked for the U.S. Marshals Service 30 years ago. She went on to manage the detention of prisoners slated for deportation as a federal detention trustee. During this time the private prison contracting firm, the GEO Group secured several lucrative contracts with the federal government to run its detention centers, amounting to about \$85 million annually.

Later, Hylton opened the consulting firm Hylton Kirk & Associates LLC, a firm whose only reported client was the same GEO Group. The work for GEO was referred to as “federal relations” and paid a salary over \$100,000 a year. Coming full-circle, Hylton returned to the federal government as the head of the Marshals Service, a position for which she is charged with overseeing federal contracts that in recent years have increased for private prison operators—particularly those that provide care for undocumented immigrants.

While there might be countless differences between school systems, military operations and prisons, it’s fair to ask how educating, defending, and indeed, punishing Americans (or foreigners for that matter) might be affected by their transfer into private hands—and how private hands are so easily remade into public hands, especially when the amount tax-payers are paying into state budgets for corrections continues to grow—in fact 660 percent since 1982—and the volatility of economic markets since at least 2008 have been so unstable.

Within this consideration, the lucrative private contracting for goods and services—or whole state prisons in some cases—unfolds and marks the tensions alive in questions about what roles are inherently governmental and which may be appropriately auctioned off to the highest bidder. Are there some jobs that are simply too critical to outsource? How do capitalist social relations aid or compliment certain roles, and, is it even feasible to draw a line between the two spheres (public/private) in some cases? These questions are particularly interesting as they emerge in the rise and fall of prison privatization within the prison system in California—a network that competes with a handful of other states for the title of largest corrections system in the nation. In many ways, the state of California has been a harbinger of nationwide trends, not only within incarceration but also within the crime control field generally.<sup>10</sup> Its historical entry into privatization offers an interesting portrait of socio-political tensions existing in state governments nation-wide since so many of the same structural dynamics exist across multiple states such as large budget deficits, high prison populations and demand for efficient inmate care. To address these questions it’s useful to trace the start of private contracting of prisons both nationally and within the state of California.

### **The Start of Privatization**

The roots of prison privatization can be traced to Kentucky, in 1825, but its contemporary start seems to be in 1979. According to criminologist Douglas McDonald, the renewed interest in contracting prison service

started principally with the network of detention centers controlled by the U.S. Immigration and Naturalization Service (INS). Private contractors were desirable primarily because they could construct new centers more rapidly than the federal government, notes McDonald, due to the lengthily lead times required for approval of new sites. By 1988, private companies held approximately 30 percent of all aliens under INS authority.<sup>11</sup> Once firms were successfully contracted by federal agencies to hold illegal immigrants waiting for either hearings or deportation, their use at the state level became more feasible. Accordingly, these detention centers served as seedbeds for the current drive to privatize across the nation. This development enabled two of today's largest private firms, Nashville-based Corrections Corporation of America (CCA) and the GEO Group (formerly Wackenhut Inc.), a foothold into the market. The real growth of the movement, however, lay in the birth of CCA in 1983. The firm was distinct in that "It had been able. . . to obtain substantial working capital, to persuade a number of experienced and highly regarded correctional administrators to move from the public to the private sector [and] to establish a division of labor within its corporate structure which called for senior business and senior corrections executives to exercise decision-making powers in their respective areas of expertise."<sup>12</sup> Using local jails as building blocks to gain experience and credibility, CCA and the GEO Group became positioned to benefit from the 1988 decision of the Texas Department of Criminal Justice to contract out four facilities to the private sector. It was at this point, criminological researcher Charles Thomas writes, that private prisons moved from being an "interesting experiment" to a mature project.<sup>13</sup> In eight years, the initial four Texas prisons grew to 118 either operational or commissioned facilities across the US. The rated capacity for these facilities was approximately 78,000 or 5 percent of the total prison and jail population in the nation.<sup>14</sup> Today, the numbers of privately-owned beds has grown to over 99,000 located in approximately 264 facilities, mostly located in Florida, Tennessee, Kentucky, New Mexico, Arizona, Virginia, District of Columbia, and Louisiana.

In California, private contracting did not become popular until the 1980s, when the California Department of Corrections (or the CDC until it added the term "rehabilitation" in 2006 to become the CDCR) needed additional space to house those who had short-term sentences and an increasing number of parole violators. Harsher sentencing mandates meant incarcerated folks were returning to prison at a faster rate due to technical violations of their parole. As in many jurisdictions across the country, the *golden state* began to consider the possibility of using



private contractors to manage a small number of prison beds to meet these outstanding needs. Cornell Corrections (formerly Eclectic Communications) became one of the first companies to contract with the state to operate what were termed community correctional facilities (CCFs), bridging the gap between community treatment centers and something similar to a halfway house. Many of these developed as a function of the passage of Proposition 13 in 1978 that mandated fifty new expenditure controls and revenue restrictions which put a damper on easy funding sources for new prison projects. The Cornell facility, called Hidden Valley Ranch, was located in La Honda in the northern part of the state. The deal allowed the CDC to focus on those inmates deemed to be the greatest threat to public safety and leave the lower risk inmates to the contractor. Private contracts expanded over the next decade but remained at modest numbers into the late 1990s. Between 1992 and 2007, sixteen community correctional Facilities (CCF) opened housing over 4,000 inmates, but these facilities ran with little public attention.

In the late 1990s, a bill was introduced to the state legislature, SB 2156, the “California Correctional Facilities Privatization Commission Act of 1996.” The law proposed to create a panel of nine officials who would be charged with contracting with private prison companies and overseeing those agreements. The idea was attractive. Other states, such as Florida, had created such panels successfully and the number of inmates within the California hadn’t dipped significantly in decades—making over-crowding a growing issue. In addition, the cost to house these increasing numbers had expanded faster than public expenditures. This was true particularly after 1980 when federal aid began to shrink and the state was without direct assistance for the first time since the early 1970s.<sup>15</sup>

The bill was narrowly defeated—by just two votes in the Senate in fact— but it caught the attention of one of the largest private contractors of prison beds around the globe CCA, which had a solid reputation by then, owning half of all private beds worldwide. Its expanding share of the world market sent its stock shares soaring in 1998, placing the company’s performance among the top five on the New York Stock exchange that year. Taking note of the possibilities in the state given its skyrocketing prison growth (and the initiation of a debate for a greater presence of private contracting in California), the firm appointed a West Coast Regional President to cultivate opportunities within the southwest. One of the first projects that needed overseeing came in mid-1998 when CCA broke ground on California’s first major maximum-security commercial penal institution in the desert location of California City—

just two hours from Los Angeles. The \$100 million facility was built on speculation—that is, constructed before there was a contract to house prisoners. Subsequently, Chairman and CEO of CCA, Doctor R. Crantz, declared California to be one of his firm’s most promising markets, and he made it abundantly clear that he looked forward to a long and successful partnership with leaders of the “golden state.”<sup>16</sup> At the time, it appeared that the practice of privately contracting prisons was poised to expand—as CCA official David Myers put it, “If we build it, they will come.”<sup>17</sup> But in fact, this expansion never occurred. The potential partnership between CCA and the department of corrections failed even though legally, economically, and logistically it seemed like a fitting solution to an enduring problem. According to the *Sacramento Bee*, the 500-bed prison was dismissed because the state had a “lower than expected inmate population.”<sup>18</sup> And therefore CCA, unable to secure a contract with the state, turned to another more cooperative client, the Federal Bureau of Prisons.

### **Privatization Stalls in California**

Oddly, the original private facilities built in California (the CCFs) for low-level offenders ultimately marked the end of the state’s increased use of private contracting within state borders. Three of the facilities were closed in June of 2010<sup>19</sup> as others seem to be barely hanging on to stable and consistent state contracts. Today, there are eight CCFs operated by private companies and seven of these are slated for closure. Each time the state closed a private facility or rejected a new contract, the “decreased prison population” was cited as the cause.<sup>20</sup>

Upon review of the records over the past nine years, far from becoming less crowded, the California system has become more and more populated. According to the CDCR’s own records, the inmate population has only increased over the last decade, with the exception of a dip between 2001 and 2003 of approximately .044 percent of the average total number of state inmates over the last ten years.<sup>21</sup> Even during the years the prison population did not increase, the state facilities continued to operate at an average of 188 percent of their original design capacity. These overcrowded conditions caused the CDCR to declare a “state of emergency” in May 2004.<sup>22</sup> By January 2006, the department reported it needed seven new prisons (housing a population of at least five-thousand each) for the projected inmate increase over the next ten years. In addition, by the time this report was published, lawsuits brought by inmates caused the state’s prison healthcare network to go into receivership. Judges decried the

overcrowding at prison reception centers in California—which had approached three times their original design capacity—arguing that such increased numbers in inmates made it virtually impossible to identify incoming prisoners with medical or mental health problems.<sup>23</sup> Because of this overcrowding, federal courts finally ruled in August, 2009, that the state had no choice but to reduce the inmate population by nearly 43,000. This decrease would mean the CDCR would house no more than 137 percent of the system’s original design capacity.<sup>24</sup> Claiming that its prison system was its own business, California appealed the case to the Supreme Court. However, in May, 2011, the appeal lost: the court argued that conditions were so substandard inside the facilities, they violated the U.S. Constitution’s ban on cruel and unusual punishment.

In light of such serious overcrowding, it makes little sense to claim that a decrease in inmate population was the cause for the closures of the CCFs or the rejection of a contract with the CCA California City facility. There has not been a fall-off in the numbers of incoming inmates into the system, and in fact, as the years have passed, the CDCR has become more severely plagued with problems due to overcrowding. It is perplexing, then, that California officials did not take advantage of the CCA facility at that time and have almost completely abandoned privatization as a means to solve the state’s expanding penal problems.

Or have they?

Upon closer inspection, the state has not only *not* abandoned the option, but rather embraced the practice with a bounding, if quiet, enthusiasm. The single most important detail, however, is that these private prisons now being used by the CDCR are all located across state lines. The large-scale transfer of inmates to private prisons began as a legislative decree in October of 2006 to relieve overcrowding in the form of “The Public Safety and Offender Rehabilitation Services Act of 2007.” And since the decree was made to relieve a “state of emergency” declared by then Governor Schwarzenegger, it circumvented any deliberation within the legislature and certainly a prolonged political debate which might have forestalled the transfer. In fact, it allowed corrections officials to immediately contract with out-of-state correctional facilities to “temporarily” house California inmates. Within a month of the mandate, the state was transferring 2,260 inmates to Arizona, and Oklahoma to facilities owned by The GEO Group as well Corrections Corporation of America. As of June 2010, approximately 10,000 California inmates had been shipped off to private hands to be housed in facilities in Arizona, Mississippi, Oklahoma and Michigan. Contracts with CCA as of December 2010 were worth over \$600 million.<sup>25</sup>

It makes sense to ask what has justified the fluctuating adoption of private contracting by California officials. How can we understand the contradictory rationales for closures of functioning private prison facilities or outright rejection of new contracts, particularly given the potential to fix some penological and economic issues faced by the state's corrections department? How did the CDC originally open the small privately run facilities early on and what has driven the state to begin the process shipping inmates into private care today?

This book offers some answers to these questions by presenting the history of the embrace, rejection, and now renewed adoption of the private contracting for California state prisoners. It's an account that is noteworthy not only for revealing a series of curious events—penological, sociological, and cultural—but also to understand and predict other similar developments in states across the nation that continue to adopt private contracting of prisons and other various traditionally publicly owned and managed services.

### **Theoretical Approaches**

In the course of detailing this history, I want to argue that forces giving rise to the prison market illustrate the more deeply-rooted and complex relations between three dimensions of the state. The first dimension is the economic structures and practices within California. Second, state politics and public policy, including political discourse and actions in state government and public campaigns. And, thirdly the ideological representations of fear, crime and delinquency circulated in both state and popular rhetoric. I make the claim that the drive to privatize prisons is the story of the formation of social relationships that function to produce and reproduce the very structure and nature of the state itself. From this perspective, both the adoption of privatization and its demise is far from some dead practice of containment or punishment, or even of simply turning a profit. It becomes a rich and generative project that defines political platforms and candidacy, gives impulse to public policy, promotes particular union interests, and builds in no small way our very understanding of race and class in this country. Approaching the phenomenon of privatization from this angle gives us tools to conceptualize it as a *social phenomenon* that integrates state structures of economy and politics with ideological predilections of popular opinion and the media. We see its appearance on the penological stage not in isolation, as some autonomous object of correctional history, but as a sociological event, a set of relations containing contradictions

shaped by a wider historical juncture that has certain conditions of existence.<sup>26</sup>

Losing sight of this notion is a common error in some analyses of criminal justice trends. Many treatments of criminal justice issues often ignore the fact that practices in the crime control field stand at an intersection of institutional processes, sociological structures and historical conditions. I would argue that part of what disables our ability to understand these trends is ignoring the tenuous links between these contradictory forces—links between economics, political and legal pressures within a given jurisdiction and rhetorical discourse that induces social actors to behave in particular ways. In reality, the phenomenon of privatization—and the prison industrial complex within which it exists—occurs at the center of a complicated nexus of these relations and is best framed as an active social practice linking together culture and politics.

Given this perspective, a guiding ethos for the questions I ask within this analysis is a claim made by Michel Foucault in his classic text, *Discipline and Punish*, written over thirty-five years ago. It was here that he suggested we look not at the “failure” of the prison to understand it fully—given that the prison as an institution has faltered as it purports to decrease crime and/or rehabilitate inmates—but rather at what that failure *allows for productively*. His work argued that the history of discipline and social control in sixteenth century France was in fact a look inside a functioning power to distribute both people and illegalities into a general economy. That is, by confining, policing, and separating criminals, a very particular system of power was initiated and carried out. But rather than stop delinquency, or significantly decrease crime, prisons—at the very least—have only continued to expand and accumulate more people in them. Incarceration has not been able to eradicate crime and still constitutes a rather failing enterprise on a number of levels as Foucault made plain. Today, illegality is simply an expected feature of society and laws merely distribute and order this condition in meaningful and manageable ways. As Foucault put it, “Punishment in general is not intended to eliminate offenses, but rather to distinguish them, to distribute them, to use them. . .”<sup>27</sup>

Critiques of Foucault have suggested that power or social control cannot be the only aims of everything that occurs inside a prison institution. David Garland, for example, claims that not all elements of penal sanctions operate effectively as forms of control or social regulation and some aspects of the prison are simply not constructed as “control measures” to begin with.<sup>28</sup> He is correct. My argument certainly does not assume that penal policy or corrections more specifically is by

any means solely motivated by the central aims of social control or the failure of any penal mechanism—any system of punishment is not that facile. Indeed, my reading underlines the argument that I articulate above: we cannot look at the prison or private prisons in isolation from a myriad of other socio-political factors such as the economy, political forces or popular criminal justice rhetoric. Foucault's value to this analysis is not in the absolute calculation of whether or not California's prison system is or is not failing, or whether or not its sole purpose is caught up in wielding power. His value is rather in his insistence that we consider the ways that forms of punishment and institutional structures which deliver that punishment produce unintended consequences. And further if privatizing prisons capitalizes upon the flaws—purposeful or unintended—of the prison institution in California more generally.

The contemporary context of the prison in the twenty-first century both within California and beyond adds one more dimension to Foucault's observations. Among the effects of crime control is the production of a systematic power, it's true. But today, the punishment of offenders also produces profits that increase as that punishment fails to decrease crime. For example, a cursory glance at California's ever-increasing rates of incarceration and recidivism suggest that imprisonment is a substantial miscarriage of public funds. As of this writing, the state prison population is at a record high of 171,000. Indeed, between 1980 and 2000—a period roughly coinciding with the emergence of the prison market—the inmate population increased six-fold, a singular event in American correctional history. Within two years of releasing any one inmate, there has consistently been a seven in ten chance that he or she will return back into the hands of the California criminal justice system once again. What has been “productively” accomplished in maintaining such an ailing system is an expanding budget for the CDCR, exponential growth of businesses selling products and services to maintain high rates of imprisonment, and entire corporations—whose stock is publicly traded—devoted to building and managing prison facilities. An important question to be raised is how the prison market is poised to complement—or perhaps exacerbate—this productivity. If successful, an examination of this dynamic offers insight into the ways private contracting is a force in shaping the crime control field and a significant influence on social and political policy more generally. It may in fact reveal how a culture of crime is produced by way of the very mechanisms put in place to stop its expansion. And it certainly prompts us to examine how private enterprise and public responsibility for punishing “criminality,” as I suggest above, coexist within the boundaries of the state.

The links that form the necessary conditions for both the rise and fall of private contracting—not as some linear history per se, but as a series of dynamic forces exerting pressure on one another—distinguishes my reading. It is not meant to be a comprehensive historical narrative of the development of private contracting, but a history of the conditions that allowed it to emerge, be productive and eventually fail *within the state lines* of California. Accounting for this history leads to a focus on particular shifts in corrections in particular, as well as changes in the American crime control field more generally.

My analysis is organized into three different sets of questions that address the dimensions of the state I identify above: the economic, socio-political, and rhetorical conditions within California. Before I address those questions, I lay a foundation for each to be effectively examined in Chapter 2. This second chapter focuses on a history of the present state of economic, political and cultural conditions influencing transformations in the penological landscape of the U.S. more generally. I argue that one cannot possibly hope to understand how we arrived at a shift in current crime control sensibilities, including the trend to privatize prisons, without recognizing the tumultuous changes the country went through over the course of the end of the twentieth century. In describing these historical shifts, I underscore the point that they are best understood as new pressures upon the previous culture of penal-welfarism, a penological framework preceding our current crime control philosophies and practices. Reactions to the shifts during this time set the stage for a number of new obstacles to appear for the social and political actors in the criminal justice field. I use the 1966 California gubernatorial campaign as a means to parse out particular public concerns over lawlessness and crime as well as responses to these issues by government officials. The chapter ends by suggesting the altered terrain established by way of this uncertain time in American history.

Chapter 3 begins my examination of the first component of the tripart system of the state of California: the economic system and its relation to the rise of the privatization of prison goods, services and management. The series of questions posed to understand the economic field of California examines social, demographic, and historical developments that offer insight into relationships between capital and labor as well as state budgets and public expenditures. Central to this analysis are the questions: what forces within the state economy enabled the conditions of existence for public contracting of public prisons to take hold? And, how has the prison market generally become viable given these contexts?

Chapter 4 focuses upon questions that help analyze the social and political field of California and investigate how historical developments of penology are deeply connected to institutional shifts in the processes of passing public policy, running for and holding public office, the trends toward penal populism and a relatively new focus on victims' rights. My prime interest is to establish the ways in which privatization has worked—and continues to work—in tandem with new political and legal conventions developed by Californians over the last forty years.

Chapter 5 contains inquiry into rhetorical discourses that have animated public images of crime and criminality. I focus upon what has been named the *culture of fear*, how it developed in California, and ways it exacerbated inflammatory perspectives of crime within the state. I also examine the rhetoric of capitalism as a market solution to a problem of dashed faith in “big government.” It becomes clear that private contracting took hold in part simply because it was not controlled and executed by government hands. I explore a network of tropes and socially-constructed narratives that have become normalized through criminological scholarship, media representations, and the discourses of crime control workers themselves. My purpose is to reveal how these influence perceptions of and practices toward prisoners (or those who might be potential prisoners) and suggest the ways that race and class have become marked anew by the processes of incarceration.

Chapter 6 explains exactly why privatization has seemingly failed inside the state given the opportunities it had to flourish. I describe how the economic, political and discursive features have worked to allow for the present state of contracting in California in light of the monolithic resistance of the California prison guards' union. I recount the story of union efforts to end private contracts in California for good and the means by which these efforts were (in part) thwarted. I bring the history of private contracting within California up to date and suggest what the future might hold given its current correctional predicaments.

Chapter 7 presents what I term the *mythology of privatization*. This mythology represents a logic, a sensibility, or an economy that organizes the arguments for private contracting of California's state prisons. In the course of detailing the mythology of privatization, I explain how the mystification of current socio-political and rhetorical conditions in California enable private contracting to appear both logical and prudent. I argue that that the state's penal systems do not just dispose of offenders as they imprison them—whether they end up in a private prison or a state managed facility. The incarcerated are used and useful even as we assign to them the status of reject—both literally and metaphorically. “The carceral network,” as Foucault notes, “does not



cast the unassimilable into a confused hell; there is no outside. It takes back with one hand, what it seems to exclude with the other. . . It is unwilling to waste even what it has decided to disqualify.”<sup>29</sup> Foucault’s point is perhaps even more insightful as applied to the trend of the PIC in California. For, as I conclude, the state has not only simply refused to pay close attention to what its penal institutions disqualify, but also who profits from that process.

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<sup>1</sup> See: Stephanie Chen, “Pennsylvania Rocked by ‘Jailing Kids for Cash’ Scandal,” CNN Justice Page. 23 Feb. 2009 Web. 2 Aug. 2011; Terrie Morgan-Besecker, “Crime of Punishment?” *The Times Leader* 1 March 2009 Web. 2 August 2011.

<sup>2</sup> Isis N. Walton, “The Prison Industrial Complex: Contributing Mechanisms and Collateral Consequences of Disproportionality on African American Communities,” ed. Nicolle Parsons-Pollard *Disproportionate Minority Contact: Current Issues and Policies* (Durham, NC: Carolina Academic Press, 2011) 223.

<sup>3</sup> J. R. Lilly & P. Knepper, “The Corrections-Commercial Complex,” *Crime and Delinquency* 39 (1993): 150-66.

<sup>4</sup> Walton “The Prison Industrial Complex,” 216.

<sup>5</sup> Paul Wright, “Slaves of the State,” eds. Daniel Burton-Rose, Dan Pens & Paul Wright *The Celling of America: An Inside look at the U.S. Prison Industry*. Monroe, Maine: Common Courage Press, 1998) 102.

<sup>6</sup> Eric Schlosser, “The Prison Industrial Complex,” *The Atlantic Monthly* Dec. 1998.

<sup>7</sup> According to Angela Davis “[I]n the immediate aftermath of slavery, the southern states hastened to develop a criminal justice system that could legally restrict the possibilities of freedom for newly released slaves. Black people became the prime targets of a developing convict lease system, referred to by many names as a reincarnation of slavery. Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003) 29.

<sup>8</sup> Howard, Blume, “Charters Get a Chance to Grow, But How Big,” *Los Angeles Times* 2 Sept. 2009 A1/A10.

<sup>9</sup> In 2010, for example, the Los Angeles Unified School district floated an idea to sell naming rights to school auditoriums or athletic fields. One estimate of potential revenues to the city was \$18 million, quite an attractive sum. Something so minor couldn’t possibly impact the process of education. Or could it? It is unclear how grade school experience would be different if classrooms were named: Sony Hall or Sit-n-Sleep learning annex. But naming is important in this culture if only in the sheer ubiquity of corporate messaging that inspires us to experience advertising and marketing as if it were normative or “natural.”

<sup>10</sup> I borrow the term *crime control field* from David Garland. I am using it here to refer to the myriad of agencies employed to police, sentence, judge, research, legislate, and of course, oversee the population we send to prison. This field also contains laws that define illegality, proper treatments for offenders, and official rationales for delinquent behavior. David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*. (Chicago: University of Chicago Press, 2001).

<sup>11</sup> Douglas C. McDonald, "Public Imprisonment By Private Means: The Re-emergence of Private Prisons and Jails in the United States, The United Kingdom, and Australia," *British Journal of Criminology* 34 (1994): 30. See also: Douglas C. McDonald, "The Costs of Operating Public and Private Correctional Facilities," ed. D. C. McDonald *Private Prisons and the Public Interest* (New Brunswick, NJ: Rutgers University Press, 1990) 92.

<sup>12</sup> Charles Thomas & Charles Logan, "The Development, Present Status and Future Potential of Correctional Privatization in America," ed. Gary Bowman, Simon Hakim, and Paul Seidenstat *Privatizing Correctional Institutions* (N.J.: Transaction, 1993) 219-21.

<sup>13</sup> Charles Thomas "Correctional Privatization: The Issues and the Evidence," Paper presented at the Privatization of Correctional Services Conference, Toronto Canada, July 1996.

<sup>14</sup> Richard Harding, "Private Prisons," ed. Michael Tonry *The Handbook of Crime and Punishment* (New York: Oxford University Press, 1998) 632.

<sup>15</sup> Douglas, McDonald, "Private Penal Institutions," *Crime & Justice* 16 (1992): 393.

<sup>16</sup> Marc Lifsher, "Busting Into the Prison Business—Corrections Corp. of America Casts Longing Eyes on California," *The Wall Street Journal* 27 May 1998: 1.

<sup>17</sup> Robert Gunnison, "Privately Run Prison Planned for Mojave," *San Francisco Chronicle* 1 August 1997: A22.

<sup>18</sup> Andy Furillo, "Prison Budget Shifts Strategy; Governor Looks to Rely on County Jails, Private Prisons to Ease Overcrowding," *Sacramento Bee* 15 Jan. 2006: A-3.

<sup>19</sup> California Department of Corrections and Rehabilitation. "CDCR to Close Three Community Correctional Facilities Due to Downward Trend in Low-Security Inmates." CDCR Homepage. 2009 Web. 11 Nov. 2011.

<sup>20</sup> Governor Gray Davis, for example, claimed that the decreased numbers of inmates made a need for private contracting obsolete. Staff, "Davis Proposes to Cut Five Prisons in State Budget," *The Associated Press State & Local Wire* 15 March 2002. The California Department of Corrections and Rehabilitation, as well, asserted the inmate population was becoming ever smaller, terminating a need for private beds. Dan Morain, "Private Prison Deal Voided," *Los Angeles Times* 4 Feb. 2005: B-3.

<sup>21</sup> California Department of Corrections & Rehabilitation Office of Public and Employee Communications. "Corrections: Moving Forward." Fall 2009. Web. 14 April 2010. "Spring 2006 Adult Population Projections"; "Total Population" *The California Department of Corrections & Rehabilitation Homepage*. 27 February 2006. State of California. Web. 6 May 2006.

<sup>22</sup> Staff, "Pound Foolish: Prison System in State of Emergency," *The San Diego Union Tribune* 3 May 2004, B-6.

<sup>23</sup> Carol J. Williams, "State Gets Two Years to Cut 43,000 From Prisons," *Los Angeles Times* 5 Aug. 2009 A-1, A-19.

<sup>24</sup> Williams, State Gets Two Years.

<sup>25</sup> Dan Morain, "Private Prisons? A Sweet Deal For Some," *The Sacramento Bee* 7 Jan. 2010 Web. 26 Jan. 2010.

<sup>26</sup> I am indebted to the work of Stuart Hall and his colleagues for this insight made so poignantly in *Policing the Crisis*. Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke, and Brian Roberts, *Policing the Crisis: Mugging,*

*the State, and Law & Order*, (New York: Holmes & Meier Publishers, Inc. 1978) viii-ix.

<sup>27</sup> Foucault, *Discipline* 272.

<sup>28</sup> David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Clarendon Press) 162-6.

<sup>29</sup> Foucault, *Discipline* 301.