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PERSPECTIVE

# Private prisons in America: punishment for profit

By K. Chike Odiwe

A public prison is a prison that is entirely owned by the government. This means that they must provide the prison building, staff the guards, administration, and oversee all the incarcerated individuals and everything that happens inside the prison. The objective of public prisons is to house incarcerated people to rehabilitate them or to simply remove them from the streets

However, incarceration has now become a profit center for corporations that operate as private prisons. A private prison, or for-profit prison, is a place where people are imprisoned by a third party. To make money as a private prison, the corporation enters a contract with the government. This contract typically states the basis for payment to the corporation. Private prison companies typically enter into contractual agreements with governments that commit prisoners and then pay a per diem or monthly rate, either for each prisoner in the facility, or for each place available, whether occupied or not.

The profit motive in corporate America became so widespread that it was often used to justify questionable business practices, specifically through the embracement of the *caveat emptor doctrine*. Hamilton, Walton H, "The Ancient Maxim Caveat Emptor," Yale Law Review, 1931 (40): 1133- 1187. Some question the profit seeking nature of corporations, it appears that their principal objectives remain maxi-



Inmates at Red Rock Correctional Facility, a private prison, in Eloy, Arizona | The New York Times

mum profit and financial success. Clinard, Marshall B, Corporate Corruption: The Abuse of Power (New York, NY: Praeger, 1990).

Within the enterprise of the management of private prisons, the competition issue is even more critical, because only a few leading corporations can have a strong influence in setting standards for the changing marketplace, a fact which can have far-reaching consequences.

The pursuit of profit has other con-

sequences as well. Corporations, by setting performance standards tied to income goals, can indirectly initiate unethical actions by establishing norms, rewards, and punishments for people who have lower-level positions. Ermann, M. David and Richard J. Lundman, Corporate Deviance (New York: Holt, Rinehart and Winston, 1982). Some executives realize that the violation of laws, regulations, or norms are the shortest way for higher profits, and such violations

can be mandated through policy directives to lower-level workers and mid-level managers. Meyer, Jr., John C., "An Action-Oriented Approach to the Study of Occupational Crime," Australian and New Zealand Journal of Criminology, 1972 (5): 35-48. The corporate culture can often create an atmosphere in private prisons that may influence lower-level employees and guards who are usually underpaid, have less opportunities to advance,

and do not have job security. Those who want to keep their positions and advance in the corporation may feel a pressure to follow unethical practices to further organizational goals or not to report violations of procedures or inmates' rights. Clinard, Marshall B, *Corporate Ethics and Crime* (Beverly Hills, CA: Sage, 1983). Top executives with a financial orientation are primarily concerned with short-term profits, and in some instances, may be more predisposed to resort to unethical practices. Because most corporations have shareholders seeking short-term profits and there is a tendency in American business to place financial experts in top management positions, it is understandable that there could be an organizational climate in the private prison industry that may be more inclined to place profits over people.

A main question of privatization is to what degree will a balance be maintained between the corporate economic concerns on the one hand, and accountability for the correctional services rendered and for the maintenance of human rights of the prisoners on the other. Bozeman, Barry, "Exploring the Limits of Public and Private Sectors: Sector Boundaries as Maginot Line," Pub-

lic Administration Review (March-April), 1988 (March-April): 672-674. The issues of privatization have raised these issues, pointing out, among other things, that: the public and private sectors have distinctive characters and that these distinctions are premised on legal principles, not economic or social science theories. The public sector is being profoundly altered, and ultimately harmed by the deliberate distorting of these public and private characteristics. Moe, Ronald C, " 'Law' versus 'Performance' as Objective Standard," *Public Administration Review*, 1988 (March-April): 674-675. One of the major problems with the diminishing public and private distinction is that the government delegates some of its powers and functions to a party whose legitimacy is not always clear. Another important issue having legal ramifications is involved in economic strategies for revamping corporations to make them more profitable. During the 1980s there was an unprecedented trend for corporate takeovers, reorganizations resulting in the spinning off of companies and divisions from a corporation which was losing money or making less profit than anticipated.

Further, it has been demonstrated that privatization will not reduce government liability for the handling of prisoners. For example, under 42 U.S.C. Section 1983, the government will be liable for any civil rights violations against inmates in a private prison. Thomas, Charles W. and Linda S. Calvert Hanson, "The Implications of 42 U.S.C. w 1983 for the Privatization of Prisons," *Florida State University Law Review*, 1989 (16): 933-962. A major problem will be the inability to use the sovereign-immunity defense in a civil rights violation lawsuit. Robbins, Ira P., "The Legal Dimensions of Private Incarceration," *The American University Law Review*, 1989 (3): 531-854. In third party lawsuits against the government, when privately operated correctional institutions are sued for civil rights violations, government agencies will have less control to avoid such cases than they had before when the prisons were run by public agencies.

Because of the way contracts are constructed between private prisons and the government, private prisons depend on being at full capacity to be economically viable. A pivotal step to fight against privately-run prisons was started in the year 2019 by the State of

California. The passage of Assembly Bill 32 phases out contracts with privately-run jails until 2028. As such, California is ahead of the federal government and demonstrates how state laws can work with federal government decisions, with the possibility of paving the way towards a future version of the criminal justice system that is under public management. The new goal for these contracts is to incentivize human decency over profits.

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**K. Chike Odiwe** is a civil rights attorney at *Burriss Nisenbaum Curry & Lacy*.

