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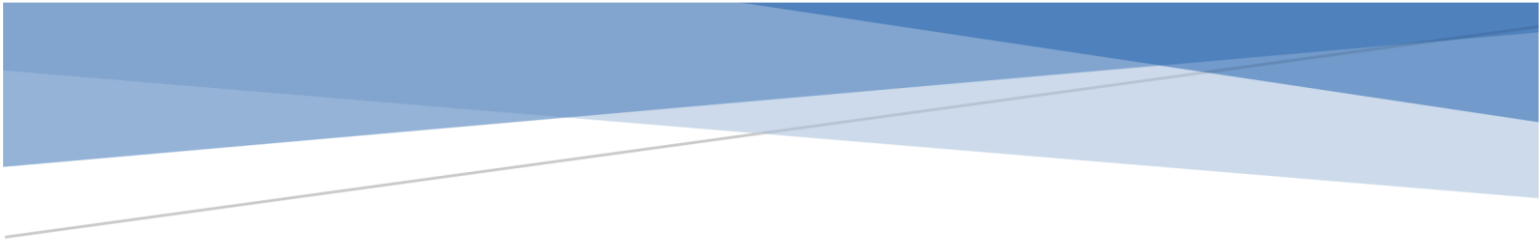
Outdated Laws: Their Contributions to Mass Incarceration and Police Practices

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OUTDATED LAWS: THEIR CONTRIBUTIONS TO MASS INCARCERATION AND POLICE PRACTICES.

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Outdated Laws: Their Contributions to Mass Incarceration and Police Practices

Abstract

This paper examines two major federal laws in order to show how they contributed to the problem of mass incarceration faced by this country today, the Anti-Drug Act of 1989, and the 1994 Crime Bill. It will provide context to our current problems, mass incarceration and controversial police practices. By analyzing these laws, we will be able to see a direct correlation between outdated laws, and the way policing has been impacted. The laws are not current with modern societal views, such as treating addiction as a disease instead of a crime, leading to a push for massive criminal justice reform.

Introduction

This paper demonstrates the contribution of the 1986 Anti-Drug Abuse Act and the 1994 Crime Bill to the mass incarceration and the rise of prison privatization. It includes two interviews with the Wilkes-Barre Township Police Chief, Chief Will Clark, and Patrolman Bailey Conforti of Larksville Police Department, and reports the debate the author had on how outdated laws and their enforcement has changed the way people look and view the police. The last section of the paper talks about what we can do to fight for criminal justice reform without solely focusing on the police force, but instead all aspects of the criminal justice system.

Literature Review

The literature presented in this paper shows a timeline from the Anti-Drug Act of 1989 to the present day to show the evolution in drug laws, the development of mass incarceration, and the effect prison privatization has had on our nations people, specifically those from minority communities. It demonstrates why the Anti-Drug Act and the 1994 Crime Bill were passed, how they were implemented and the link to modern issues like mass incarceration and

prison privatization. What is missing from the research in the paper is why prisons were outsourced. By outsourcing prisons the country is not able to hold people accountable to the poor conditions found inside of prisons, since they are independent contractors and not employed by the government.

The literature shows significant links of the two laws to current drug enforcement disparities and the large number of those who are incarcerated. There is a big focus on the statistics of those who are incarcerated, especially since the United States makes up 25% of the world's prison population, with only have 5% of the world's total population. This is an important area to focus on because of the link between the Crime Bill and the Anti-Drug Abuse Act and the start of mass incarceration. There are also criminal cases resulting from privatization that have brought the dangers of privatized prison into the forefront.

Lobbying groups, like the GEO Group and the Corporation Corrections of America, CCA, have major influences over prison privatization. Not only do they own most of the private prisons in the country, they also donate a significant amount to political, specifically Republican, campaigns and individual candidates in order to make sure they agenda stays intact and they don't lose their for-profit industries.

The research is lackluster with a gap when examining the direct link between these outdated laws and how they are in contrast of today's societal views regarding addiction as a mental health crisis instead of it being a crime. There is no discussion about what would happen if the country were to change or abolish the laws that intentionally contribute to mass incarceration and targeted enforcement to lower income areas and minority populations.

Legal Background

The “War on Drugs” reaches as far back as Ronald Regan’s presidency. However, the laws we know and abide by most when it comes to the war on drugs are the laws passed by President Bill Clinton. During his administration, his passage of criminal justice laws required minimum sentencing, three strikes, the expansion of the death penalty, funding for youth boot camps, a ban on assault weapons, and protection for women in abusive relationships. The 1994 Crime Bill changed the criminal justice system as we know it.

Before the infamous 1994 Crime Bill, “The Violent Crime Control and Law Enforcement Act” was passed in September of 1994. However, conservatives were unhappy with the new bill and vowed to write a stronger one that would address the reason for the uptick in violent crimes, which they contributed to a broken criminal justice system incapable of holding criminals accountable with certain and swift punishments.¹ In 1992, President Bill Clinton laid out his five priorities for criminal justice reform. They were federal grants for more community police officers, gun control, habeus corpus reform, boot camps and drug treatments for those addicted to drugs, and death penalty legislation.² The country was yearning for any kind of criminal justice reform. In California, a woman was kidnapped and murdered by a repeat violent offender who got out of prison early on parole. In New York, a gunman shot and killed several people on a commuter train. Because of these repeat violent offences happening country wide, Washington took action. In Washington State, they took to the ballots to implement the three-strikes-you’re-out policy, requiring life in prison for a repeat offender who is convicted of three felonies. This initiative, not only passed overwhelmingly, but found its way into the federal government, located within the 1994 Crime Bill.³

¹ McCollum, Bill. The Struggle for Effective Anti-Crime Legislation - An Analysis of the Violent Crime Control and Law Enforcement Act of 1994 Symposium: Violent Crime Control and Law Enforcement Act of 1994. 561.

² McCollum, Bill. 562

³ McCollum, Bill. 563

The Crime Bill was passed in direct response to the booming rate of violent crime. From 1960 to 1980, violent crime rose 270%, peaking at 758 violent offenses per 100,000 people in 1991.⁴ In response to these crimes, many states had enacted their own laws to try to combat crime, such as mandatory minimums. In Alabama and Arizona, chain gangs were reinstated in hopes to humiliate people sufficiently enough to deter them from a life of crime.⁵ Transitions like these changed the goal of the criminal justice system from rehabilitation to punishment. As with everything else in this country, federal funding has played a critical role in this shift that has taken place in the criminal justice system.⁶ The federal government had started with allotting 3.4 billion dollars to instate 50,000 new police officers, working up to Clinton's promise of 100,000 new police officers for community policing.⁷

The 1994 Crime Bill had changed almost every aspect of the United States criminal justice system. It was the most far-reaching bill passed by Congress as it relates to crime. The bill effectively increased funding to the departments who ensured the bill was carried out in full, while also banning assault weapons and protecting women who are stuck in abusive relationships.⁸

The 1994 Crime Bill had a wide-reaching effect on the criminal justice system. The bill authorized the death penalty as punishment for dozens of existing and new federal crimes and mandated life sentences after a person commits their third felony.⁹ But what was the cause of all

⁴ Eisen.

⁵ Kramer, Ronald, and Raymond Michalowski. "The Iron Fist and the Velvet Tongue: Crime Control Policies in the Clinton Administration." *Social Justice* 22, no. 2 (June 1995): 87. <http://search.ebscohost.com.proxy-etown.klnpa.org/login.aspx?direct=true&db=poh&AN=9510070580&site=ehost-live>.

⁶ Eisen.

⁷ Kramer.

⁸ Eisen, Lauren-Brooke. "The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System." *Brennan Center For Justice*, Accessed 1 November 2020. <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

⁹ Eisen.

the violence? Many cited the crack cocaine epidemic as it was believed to have contributed to massive amounts of gang violence and people turning to crime in order to obtain more money to support their addiction. Clinton had believed the lack of employment and purpose in life was the driving force behind drugs and violent crime but had repeatedly failed to consider just how detrimental addiction can be and failed to view addiction as a mental health crisis and was viewed, and continues to be, as a choice.

Due to the overarching span of this bill, the effects are still being felt today. Arguably, the most significant effect of the bill was the authorization of incentive-based grants in order to build and or expand the correctional buildings in order to house all of these ‘violent’ criminals. 12.5 billion dollars were given through these grants to fund incarceration with 50 percent of it going to states who opted into truth-in sentencing which scaled back parole in large amounts.¹⁰

This paper will analyze the connection between the prison boom, the 1994 Crime Bill, and the 1986 Anti-Drug Abuse Act, which will be discussed later. Prison construction boosted the number of adult correction facilities in both state and federal prison by forty-five percent by 2005.¹¹ The funding from the 1994 Crime Bill had provided encouraged states to increase arrests, prosecutions, and incarcerations. This is discussed at further length later on during the mass incarceration section of this paper.

The bill passed the House with the following funding breakdown: 3.5 billion for 50,000 new police officers, 13.5 billion to build new state prisons, and 9 billion for prevention programs from education and drug prevention to job training.¹² The House passed the three strikes rule as well as authorizing sixty federal crimes that could carry the death penalty as punishment.¹³ The

¹⁰ Eisen.

¹¹ Eisen.

¹² Kramer.

¹³ Ibid.

House bill was favorable in terms of crime prevention. A small comparison to show the emphasis on punishment rather than prevention is found in the funding of the final bill, which was a compromise from both the House and the Senate. For every two dollars spent on police or prisons, only one was spent on prevention, which was not enough of an investment, but bigger than what the bill that passed both houses had to offer. The final bill granted Clinton his 100,000 new police officers, the money for the construction of new prisons, and kept the prevention programs, but reduced their budget.¹⁴ Chief Will Clark of the Wilkes-Barre Township Police Department discusses the effect of the 1994 Crime Bill and the community policing policy had on police departments from someone who lived through the bill's execution. These details can be found in the Appendix.

The nation was, and continues to be in, turmoil. The deindustrialization of America has contributed to a loss in job growth, racial animosity continues to rage through the country, educational systems cannot be funded properly, and political differences are straining relationships within communities and families. The communities' fear that was spurred on by these strained relationships were exploited by lawmakers and President Clinton. Political elites turned these fears and used crime and criminals as the scapegoats for much bigger problems that were, and continue to be, present across the country. The fear of crime and drugs invading the streets was how the crime bill was able to garnish so much support.

Mass Incarceration

Societies characterized by structural inequality will experience higher rates of crime and violence.¹⁵ The policies enacted to try and maintain a small amount of social peace will include capital punishment, excessive amounts of exclusion, and long periods of imprisonment. These

¹⁴ Ibid.

¹⁵ Ibid.

theories were proven to be true after our country passed abrasive and harsh drug laws. Not only were states incentivized to arrest more people to ‘crack down on crime’ they were also pushed to institute longer prison sentences while cutting back on the possibility of parole in order to maintain a large prison population. The policies set forth in the crime bill were not only failures showing no drastic change in the crime rates, but also a strain on taxpayers and a disproportionate amount of African-American males finding themselves behind bars in the name of public safety.¹⁶ The crime bill’s legacy has imprinted itself in the states mindset as they are still funneling money into new prisons while Congress actively encourages new criminal statutes and higher criminal penalties, instead of moving towards more crime preventative measures, even though crime rates are at near historic lows.¹⁷ The crime bill is what is undermining reform efforts across the country.

According to Chung, the problem is the synonymous language of crime and punishment. When one hears public safety, they think policing, prosecutors, prisons, and jails.¹⁸ Polling has shown that even though crime has been steadily decreasing, the majority of the American public still believes crime has gotten worse.¹⁹ In the first image, the decline in violent crime in the US is

¹⁶Chung, Ed. Pearl, Hunter. “The 1994 Crime Bill Continues to Undercut Justice Reform-Here’s How to Stop It.” Center for American Progress. Accessed 1 November 2020. <https://www.americanprogress.org/issues/criminal-justice/reports/2019/03/26/467486/1994-crime-bill-continues-undercut-justice-reform-heres-stop/>.

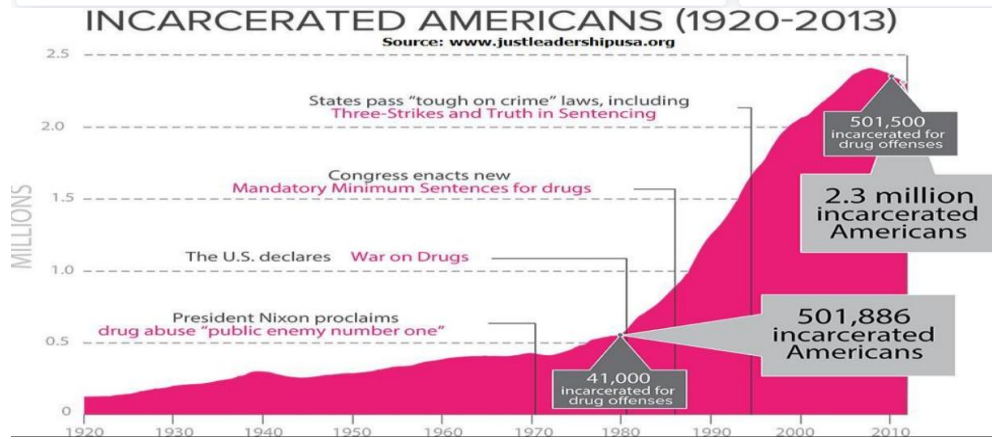
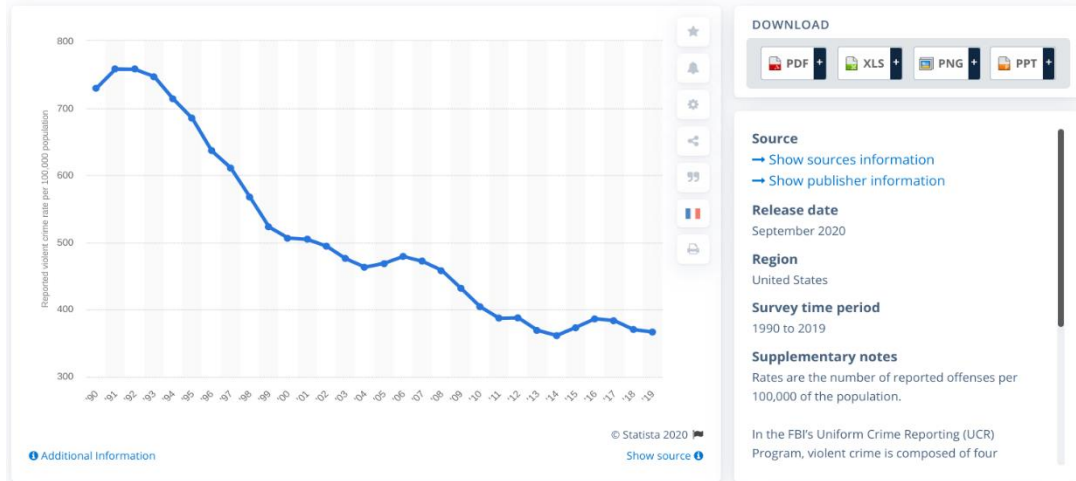
¹⁷ Chung, Ed. Pearl, Hunter. “The 1994 Crime Bill Continues to Undercut Justice Reform-Here’s How to Stop It.” *Center for American Progress*. Accessed 1 November 2020. <https://www.americanprogress.org/issues/criminal-justice/reports/2019/03/26/467486/1994-crime-bill-continues-undercut-justice-reform-heres-stop/>.

¹⁸ Ibid.

¹⁹ Ibid.

evident.²⁰ In the next image, a sharp contrast can be seen. Compared to the decrease in violent crime, the incarceration rate is extremely elevated. The increase begins around 1980, the first decade of anti-drug legislation.

Reported violent crime rate in the United States from 1990 to 2019



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²⁰ "Reported violent crime rate in the United States from 1990-2020." Statista. Accessed 20 November 2020. <https://www.statista.com/statistics/191219/reported-violent-crime-rate-in-the-usa-since-1990/>.

²¹ "Incarcerated Americans (1920-2013)" Just Leadership USA. Accessed 4 April 2021. <https://www.returnofkings.com/wp-content/uploads/2015/12/incarceration.jpg>.

States can apply for the Edward Byrne Memorial Justice Assistance Grant (JAG). The JAG can be used for large amounts of public safety funding, such as law enforcement, jails, crime prevention, etc. A quarter of these JAGs have been used to fund drug task forces.²²

Drug task forces are influential in enforcing the Anti-Drug Abuse Act of 1986. This Act is responsible for the 100:1 ratio powder v. crack cocaine sentencing disparity that has contributed greatly to mass incarceration.²³ The Act was instituted after the emergence of a new form of cocaine, known as ‘crack’ which had Americans panicked.²⁴ The fear hit a peak when star basketball player, Len Bias, tragically overdosed only two days after he had been drafted to the Boston Celtics to begin his career as a NBA player.²⁵ The concerns raised about crack cocaine after his death created bipartisan support in Congress to address the public health and safety concerns crack had caused. This prompted the passage of the Anti-Drug Abuse Act of 1986.²⁶ The Act mandated extreme minimum sentences for those who are dealing crack. The importance of this law as it deals with mass incarceration is the sentencing difference between crack and powdered cocaine. Small time crack dealers were facing the same sentences as large, powdered cocaine dealers.²⁷

The passage of the Anti-Drug Abuse Act came at a pivotal time for politicians. The bill was adopted only two weeks before the 1986 elections, making politicians look better to their constituents for being “tough on crime” and for providing funds for the enforcement of the bill.²⁸

²² Chung.

²³ Chung.

²⁴ Fabens-Lassen, B. (2014). A cracked remedy: The Anti-Drug Abuse Act of 1986 and retroactive application of the Fair Sentencing Act of 2010. *Temp. L. Rev.*, 87, 645.

²⁵ Fabens-Lassen, B.

²⁶ Fabens-Lassen, B.

²⁷ Larkin Jr., Paul J. 2014. “Crack Cocaine, Congressional Inaction, and Equal Protection.” *Harvard Journal of Law & Public Policy* 37 (1): 242. <http://search.ebscohost.com.proxy-etown.klnpa.org/login.aspx?direct=true&db=poh&AN=93609922&site=ehost-live>.

²⁸ Beaver, Alyssa L. "Getting a fix on cocaine sentencing policy: reforming the sentencing scheme of the anti-drug abuse act of 1986." *Fordham L. Rev.* 78 (2009): 2545.

Congress used five reasons to attempt to justify the 100:1 ratio used for sentencing. The first reason was the idea of crack cocaine being more addictive than powdered. The next was the perceived association of crack with violent crime. The third reason was the misconception of an increased number of pregnant women using it and posed a threat to the children in development. Another reason was a younger population was using crack, so the act would act as a deterrent. The final reason Congress used to attempt justification of the ratio was the low cost of crack allowed it to be abused in larger quantities.²⁹ None of these reasons were ever proven to be true and a number of Senators opposed the bill strictly because of the sentencing disparity.

The racial disparity comes when the users and the location of each different cocaine product is analyzed. Crack was typically more popular in the urban, African-American communities as opposed to its powdered counterpart, more likely to be found in suburbia. The Act passed by Congress imposed mandatory and lengthy sentences for any violation of a national drug law.³⁰ The problem is, there will always be another dealer to take the place of the one who was caught and imprisoned. The threat of imprisonment is not as scary when there is no other choice for supporting yourself and your family besides participating in the drug trade. This is where the importance of job training, education, and prevention measures are very important. When people have nowhere else to turn, selling and drugs is the quickest way to make money to survive, and the threat of prison is not as terrifying as not making any money.

The enforcement of this Act was primarily focused on the urban communities, primarily occupied by blacks. This is a major contributor to mass incarceration, specifically of the black community because the punishment was one hundred times more severe for crack dealers. In 2010, this issue was addressed by former President Obama who signed the Fair Sentencing Act

²⁹ Beaver, Alyssa.

³⁰ Ibid, 246-247.

of 2010.³¹ This provided a slight remedy to the problem the Anti-Drug Abuse Act has contributed to. Congress refused to make the sentences for powder and crack cocaine the same, but dropped the disparity to an 18:1 ratio. This change in law, however, would not apply to those who were already sentenced but only to those who were arrested on the date it was passed or after.³² This issue was addressed by the Supreme Court and can be researched more if interested. In order for complete criminal justice reform, is to also focus on sentencing laws like these, creating a disparity in sentencing that is dependent on enforcement in low income communities. The laws need to be made equal before the enforcement, sentencing, and prosecution can be made equal.

Mass Incarceration and Prison Privatization

This paper makes the argument that a major issue in this country is that mass incarceration is invisible to a decent amount of people in this country. Mass incarceration being invisible to people works in their favor. It is much harder to identify a problem if one cannot see the problem. Prisons are located in rural America, where land and labor are cheaper. Employing people in rural America and maintaining a large building is much easier and less expense away from the general population and larger cities. The prison complex is the third largest employer in the United States, as they need to employ healthcare providers, food service staff, correctional officers, maintenance staff, and many others.³³

³¹ Ibid, 248.

³²Ibid.

³³Abu-Jamal, Mumia, and Johanna Fernández. “Locking Up Black Dissidents and Punishing the Poor: The Roots of Mass Incarceration in the US.” *Socialism & Democracy* 28, no. 3 (November 2014): 10. doi:10.1080/08854300.2014.974983.

The incarceration rate in America has surpassed every developed nation in the world, including Russia.³⁴ The United States is responsible for 25% of the worldwide prison population, while only accounting for 5% of the world's population.³⁵ The problem is, crime has been decreasing since the 1990s, but incarceration has, and continues to, increase. Incarceration could be a potential cause to rising crime rates in certain communities where incarceration is high. This is because incarceration reduces human and social capital in neighborhoods. When communities are targeted and mass incarceration begins to affect entire neighborhoods, labor markets thin, families are separated, and social support is weakened. All of these promote delinquency in young offenders.³⁶

Privatization is a direct response to Clinton's 1994 crime bill and fueled the prison industrial complex.³⁷ The minimum sentencing laws and the War of Drugs fueled privatization as the prison population began to boom. There is a belief that many politicians hold that say prison privatization saves the taxpayers money. While this is true, they fail to take into account the effect privatization has on prisoners and prison employees. For profit prisons are run by subcontractors who can implement suboptimal services to their prisons. Those who are incarcerated in private prisons are more likely to receive subpar healthcare, meals, and an overall unsafe environment, since funding is managed to maximize profit, repairs fall low on the list of priorities.³⁸ The staff and guards are also not well taken care of by these companies. The guards

³⁴ Temin, Peter. "The Political Economy of Mass Incarceration and Crime: An Analytic Model." *International Journal of Political Economy* 47, no. 3/4 (September 2018): 317. doi:10.1080/08911916.2018.1517464.

³⁵ Fuller, Ellie. "Prison Privatization: A Politics of Sight." *Hinckley Journal of Politics* 18 (January 2017): 23. <http://search.ebscohost.com.proxy-etown.klnpa.org/login.aspx?direct=true&db=poh&AN=129925742&site=ehost-live>.

³⁶ Termin, 319.

³⁷ Fuller.

³⁸ Fuller, Ellie. "Prison Privatization: A Politics of Sight." *Hinckley Journal of Politics* 18 (January 2017): 23. <http://search.ebscohost.com.proxy-etown.klnpa.org/login.aspx?direct=true&db=poh&AN=129925742&site=ehost-live>.

are often untrained, and the prisons are well understaffed, which can cause those who are employed by these companies to be overworked.³⁹

Fuller writes of two types of privatization. The first being the contracting of services to private companies while the government still runs the prison. This is the preferable method of privatization, if that is the route required, because there is someone to hold responsible when things go wrong. The second type of privatization is complete outsourcing to the private sector, void of government control. The government has begun to rely on privatization due to the changing political climate. Those who are in favor of a limited government, are more likely to agree with the privatization.⁴⁰ This is method used that resulted in the Youngstown, Ohio and Kids For Cash scandals to be investigated later in this paper. One of the major problems of this method is accountability. When a prison is completely outsourced to a corporation, there is no accountability to the general public. The citizens of the United States have no way of holding these for-profit corporations accountable for anything they do, whereas a government run prison has a level of accountability.⁴¹ Along with accountability, it is also much easier for corporations to hide corruption, than a government with a concerned public who has the power to take action.

The rise in the United States prison population since the 1980 is the increase in harsh drug sentencing laws and racial profiling.⁴² Because of the rise in prison population, and a need to house the people placed in jail. Because of this need, coupled with budget constraints and a need to staff all the prisons and have them run in an effective manner, both federal and state governments turned to private prison corporations.⁴³ The government funding private prisons

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid, 24.

⁴² Fulcher, Patrice. "Hustle and Flow: Prison Privatization Fueling the Prison Industrial Complex" *Washburn Law Journal* 51 (2011-2012): 589.

⁴³ Fulcher 589.

enabled two companies, Correction Corporation of America (CCA) and The GEO Group (GEO), to create a monopoly over the private prison market. Under this monopoly, an incentive to continue the uptick in prison populations stretched beyond the corporations and into the government itself.⁴⁴ These private prison corporations have altered the lives of children and adults, both in and out of the criminal justice systems and those cases will be investigated later in this paper.

Political candidates have become dependent on the money they receive from the private prison lobbying groups and corporations. The industry invests millions of dollars into Washington every year. In the first quarter of 2019 alone, CoreCivic had spent 370,000 into Washington.⁴⁵ The GEO Group donated 250,000 dollars to Donald Trump's inaugural committee, held their annual leadership conference at the Trump National Doral Golf Club, and spent 370,000 in the first quarter in Washington.⁴⁶

Private prison organizations starting to expand their reach into immigrant detention centers during President Trump's presidency during his crackdown on immigration. The presidency supported an uptick in The GEO Group lobbying efforts in the GOP. 73% of immigration detention centers are run by private, for-profit, prison companies, like GEO Group. With the demand President Trump had for more restrictions on immigration, the demand for more detention centers were rising along with it.⁴⁷ In 2017, GEO Group received 184 million dollars and CoreCivic received 135 million dollars from the government for the purpose of

⁴⁴ Fulcher, 589.

⁴⁵ Meyer, Theodor. "Who lobbies for private prisons" *Politico*. 21 June 2019. <https://www.politico.com/newsletters/politico-influence/2019/06/21/who-lobbies-for-private-prisons-449574>.

⁴⁶ Meyer.

⁴⁷ Kim, Sunny. "Private prison firm quietly ramps up GOP lobbying efforts as Trump expands immigrant detention centers." *CNBC*. 4 October 2019. <https://www.cnbc.com/2019/10/04/private-prison-firm-ramps-up-lobbying-amid-trump-immigration-crackdown.html>.

immigration related services.⁴⁸ This was not the first time the prison industry got into immigration. After 2001, the Bush administration cracked down on immigration, and CCA took over the market of immigration detention centers. But, with the exposure of poor conditions of these detention centers and the public outcry demanding change, how do these groups run their prisons? It is not much different than these detention centers.

The GEO Group has had, and continues to have, a long list of problems within its facilities as they face litigation in many states for their poor conditions and lack of humane treatment of their detainees. CCA and other corporations have also had their fair share of security issues and shortcomings when it comes to conditions and humane treatment. In 1997, CCA opened a prison in Youngstown Ohio. They were to house only non-violent, overflow inmates from the Washington D.C area.⁴⁹ Inside of this prison after only a year, there were thirteen stabbings, two of which being fatal, whereas the entire state prison system only had twelve stabbings with no fatalities.⁵⁰ Because of this, there was a growing suspicion that CCA was accepting violent inmates in violations of their agreement with the state.

In July of 1998, six inmates had cut through a gate and escaped the CCA prison. Upon hearing about this incident, the U.S Marshalls investigated and found that five of the six inmates were convicted murders.⁵¹ This prison was supposed to be a medium level facility, not intended to house violent felons. After a federal lawsuit was brought against CCA to attempt to remove all the high security inmates from the facility, it was discovered that 113 inmates were supposed to be a maximum-security prison and 201 should have been housed in closed security, the level

⁴⁸ Ibid.

⁴⁹ Brandenburg, Molly and Carter Roy. "Conspiracy Theories: Prison Industrial Complex." 9 May 2018. <https://www.parcast.com/conspiracy>. Accessed 4 April 2021.

⁵⁰ Ibid.

⁵¹ Ibid.

between medium and high.⁵² These inmates are violent but not considered to be an immediate threat to other inmates. The CCA Head of Security had never been given a file on the inmates to properly screen them before their relocation to Youngstown Ohio. CCA had also never rejected any inmate that the D.C centers recommended for transfer, even when they were known to be violent. Luckily, CCA had lost the court battle and was ordered to remove all the violent inmates from the Youngstown prison.⁵³

Simultaneously to this incident, CCA was in communication with the state of Tennessee to privatize the entire state prison system. A bill was in progress in the Tennessee House to achieve this. The House members were up for reelection when the CCA scandal out of Ohio occurred, and the politicians acknowledged the gamble they would be taking if they continued to back this bill.⁵⁴ The bill died in the House. If the scandal did not occur, CCA would have controlled an entire state's prison system, showing the country just how large of an impact the prison privatization lobby has on public policy, lawmaking, and lawmakers.

With for-profit prisons, also comes corruption. In Wilkes-Barre Pennsylvania, located in Luzern County, irregularities were found in their juvenile court records. From 2003-2008, Judge Mark Ciavarella had appeared frequently in a report of judges who had sentenced children to detention facilities, most of whom were only guilty of minor incidents, typically not including violence. There were two judges who reportedly received 2.6 million dollars from two for-profit prisons as a way to ensure their facilities would remain full.⁵⁵

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ "Luzerne 'Kids For Cash' Scandal." *Juvenile Law Center*. Accessed 21 March 21, 2021. <https://jlc.org/luzerne-kids-cash-scandal>.

These judges had deeply impacted the lives of more than 2,500 families with 6,000 cases. Over half of the children who stood in front of Ciavarella had no legal counsel present. Of these children, 60% of the children were then removed from their homes and sent to one, or both, of the for-profit prisons involved in the scandal.⁵⁶ Both judges and a co-owner of the facilities' all pleaded guilty to federal criminal charges in 2011. In 2009, the Pennsylvania Supreme Court dismissed all the adjudications that took place in Ciavarella's court rule between 2003-2008 and ordered and the children's' records to be expunged. A federal class action lawsuit was also filed on behalf of all the families who suffered from emotional trauma and financial loss at the hands of this scandal.⁵⁷

What can be taken from this information presented? The 1994 crime bill had good intentions with unintended consequences. To reduce crime and make the country safer, mandatory minimums and the three strikes laws were implemented. More police were put on the street and they were provided with incentives to fully enforce these laws. Unfortunately, there was very little focus on rehabilitation or other programs besides incarceration. This led to a massive prison boom where African American men were disproportionately put behind bars for a longer period than their white counterparts who committed the same crime, thanks to the Anti-Drug Abuse Act of 1986.⁵⁸

With the prison boom, the country needed to get more prisons established. The government outsourced some of these prisons to be privatized by corporations. The companies provide inadequate care to the inmates and the staff of the prisons they run. For-profit prisons require the prisons to be full or almost full in order to turn a profit, and the mandatory minimum

⁵⁶ Ibid.

⁵⁷ Juvenile Law Center.

⁵⁸ Fuller.

laws with scale backs on parole have made that possible. These laws are outdated, but our country is still dependent on them. Since 1994, many resources have been established and improved upon. These resources include drug courts, mental health courts, rehab facilities, rehab programs, and community centers, which police try to get people involved in instead of sending everyone to jail.

But the country has started moving in the right direction under the Biden administration. In early March, President Biden signed an executive order to end the Department of Justice new contracts with private prisons. This does not halt contracts already in use and does not have an impact on state contracts, since they do not operate under the Department of Justice.⁵⁹ The states need to take more steps within their legislatures in order to combat the problem of mass incarceration and prison privatization. This was Biden's first step on his criminal justice reform plan which includes cutting down incarceration rates, increasing government oversight of police and prosecutors, and increased right, protections, and resources for formerly incarcerated people.⁶⁰

This paper will show there has been little legislation to pull back on these policies, and the police are still required to enforce these laws, regardless of how the departments feel about said laws. With the enforcement of these policies, racial disparities have been increasing in current years because of the injustice of the laws. But police forces are attempting to push back on these laws in order to better serve their communities as best as they can while still staying within the bounds of the laws.

⁵⁹ Singh, Kritika. "Biden's New Executive Order Addressing Private Prisons and Immigration Detention Centers Evokes Concern from Prison Reform Leaders." *Vanguard*. 5 March 21, 2021. <https://www.davisvanguard.org/2021/03/bidens-new-executive-order-addressing-private-prisons-and-immigration-detention-centers-evokes-concern-from-prison-reform-leaders/>.

⁶⁰ Singh.

Police Practices in the Modern Day

According to the Center for American Progress (2019), the default solution for law enforcement is always to arrest and incarcerate.⁶¹ While under the crime bill, this was the driving force behind police practices, resources for addiction and mental health have been increasing and police are using discretion when responding to cases like this. To illustrate how policing is done using outdated laws, I spoke with Chief Will Clark of the Wilkes-Barre Township police department.

He gave me the historical background of the laws effect on police departments and how the idea of policing has changed since the sixties, the Black Lives Matter movement and how it affects their department, community policing, criminal justice reform, and ideas on how to change the criminal justice system.

Throughout the interview, he discussed how community policing as stated in the 1994 Crime Bill, failed as a result from 9/11 when police were transitioned from community policing to anti-terror watch dogs. Funding for community policing was cut and police began to be viewed as domestic military forces.

When discussing how a bridge can be built between civilians and officials who advocate for criminal justice reform and law enforcement, education was the best tool Chief Clark believed was at the disposal of the country. Instead of implementing laws and policies that are not proven to work or have positive effects, college student, political action committees, and lawmakers alike should come together and do research within departments all over the country to determine what has worked and what hasn't. Only then, can lawmakers make the best informed

⁶¹ Chung Ed, Pearl, B. "The 1994 Crime Bill Continues to Undercut Justice Reform- Here's How to Stop It." *Center for American Progress*, 2019, [The 1994 Crime Bill Continues to Undercut Justice Reform—Here's How to Stop It - Center for American Progress](#).

decision based on real world experiences. The full interview can be found in the Appendix at the end of this paper.

We also discussed how the Black Lives Matter movement has affected their police department. The movement is present in Wilkes-Barre, but it is not targeted towards their police force. Police arrests typically mirror the population they patrol, but in Wilkes-Barre Township, it is the opposite. They arrest more white, middle aged men than any other population, even though white people are the minority population in the jurisdiction. There are minimal reports of excessive use of force by their department. In the interview, found in the Appendix, Chief Clark discusses the procedures to ensure officers are fit for duty and free of bias. They live off of the motto, treat other how you expect to be treated and ensure no one is treated differently for their race, ethnicity, religion, or any other factor. This is generally seen by the community so they have not targeted the Wilkes-Barre Township Police Department.

Also found in the Appendix, is an interview with a patrolman, Bailey Conforti, who has only been on the job for two years and has a slightly different perspective than the Chief that was interviewed. Because of his lack of experience, we did not talk about the history of policing, but instead focused on the modern police practices and the Black Lives Matter movement.

What's Next?

The country needs to continue to advocate for criminal justice reform. We need to remember that to enact change, we need to change the entire system, from law enforcement all the way up to the federal laws that govern the country. We also need to open up a dialogue between law enforcement and civil justice leaders. The country needs to be able to communicate what is needed from each side in order to keep everyone safe.

Criminal justice reform is focused on police because they are the visible arm of the government. They are the group representing the government that is seen on a daily basis. They do not act on their own accord, rather on laws set forth by the legislatures and recommendations of judges or prosecutors. Police are bound by the laws on the books, most of which, such as the ones mentioned in this paper, are outdated, discriminatory, and contributing to the larger problem of mass incarceration. In order to reform police practices, policies, and perception, laws involving drugs, incarceration, and sentencing need to be restructured in order to more accurately reflect society's current views and the evidence that mass incarceration does not reduce crime. Judges and prosecutors also need to be better trained and evaluated in order to ensure that biases do not interfere with charging or sentencing procedures. Finally, police need to be better trained, better funded, and to be able to enforce laws that do not contribute to systematic racism or mass incarceration.

Future Research

People should take this research into account and begin digging deeper into how many laws, both at state and federal level, contribute to systematic racism and mass incarceration. This research is a good starting point into two major pieces of legislation that have thrust our country into turmoil. Future research could enlighten legislatures, civil rights groups, and the general public to the very real truth that our country has outdated and oppressive laws that have a daily impact on millions of lives. With this knowledge and continuation of research, there is hope that system wide reform can take place and better the lives of everyone living in the United States.

Appendix

Interview with Chief Will Clark- Wilkes Barre Township Police Department

1. Can you provide a brief historical context to the way policing has changed throughout the decades?

Starting from the 1960s, as the country became more liberal, crime went up. This is the era where the most Supreme Court case law has been decided that regulated the police, most of which were not bad regulations. The War on Drugs picks up in the Regan term where laws were passed to counter what was done in the civil rights movement.

Community policing began to pick up and was funded partially by the federal government. Community policing was an attempt to problem solve and go into the streets as opposed to just responding to calls. Fast forwarding, the crime rate in the 90s plummeted. The investment in community policing was a success and this success was seen in the Wilkes Barre Township Police Department who got 5 officers subsidized by the federal government to help the policy succeed. While five new officers may not seem like a lot, for a small department like Wilkes-Barre Township, this was a huge help. The idea of community policing completely changed in the Bush administration after 2001, who wanted to refocus attention to the war on terror. Funding for community policing is eliminated for the war of terror and local police departments were no longer a priority. Departments began to be turned into counter terrorism agency, which is where the image of the police force started to become more military like. This is where over militarization began and the disconnect between the community and their police departments came back. We are left with enforcing out of date laws. Racially disparity of enforcement, prosecution, and sentencing are all found under these laws. Case law will never stop updating, so neither will our job. Case law updates are conducted often since that becomes what and how they enforce state and federal laws. After 2014 and the

emergence of Black Lives Matter, the department sat down and reviewed their policies, outlawing choke holds and other excessive measures before they became an issue.

- 2. Since the emergence of Black Lives Matter and the problem of mass incarceration rising to the forefront of criminal justice reform conversation, has your department changed the way you approach a suspect of color or how they are treated during your interactions?**

Chief Clark said, “To assume a police department needs to change its practices is operating under the belief they are doing something wrong.” In the department, every effort is made to make sure no one is treated differently regardless of race, ethnicity, gender, religion, etc. The department works under the motto of treat others who you would want to be treated and the Chief always makes sure this is instilled in the officers. No person is handled any different than anyone else by this department and no one has ever been singled out due to being a minority.

- 3. Why do you think the police are the primary target of the push for criminal justice reform?**

Police are the most visible arm of the government. People don't see district attorney's, prosecutors, or judges. In Wilkes-Barre Township, 99.9% of the people charged are white, the people you deal with are the demographics. So, the large cities have more calls for minorities and low income neighborhoods, since those are the communities they are in charge of responding to. Police are reactive for the most part. Responding is more of the job than being proactive, since the downscaling of community policing. People forget the prosecutors are in charge of the recommended sentences and the judges make that call, not the police. Fortunately, police have become more professional, educated, trained,

vested in community, community service orientated then they have ever been, but others think police haven't advanced since the civil rights movement, which is simply not true. The politicians have pushed the police into all areas, drug counseling, mental health, etc. They have crisis training, but they are not crisis intervention specialists and when it is handled wrong, it's the police false. They are scapegoats. Their job has expanded but their resources have not. This lack of resources and expansion of job tasks has contributed to public dissatisfaction to the police.

4. In your opinion, how do we change what is happening?

He doesn't know what the right answer is, but a continued evolution of law enforcement as a profession needs to be present instead of trying to remove the profession as a whole. It needs to evolve, but reform isn't just law enforcement reform needed, it needs to be complete criminal justice reform, since law enforcement have to follow the decisions made by the courts, prosecutors, and lawmakers. There is a wealth of education resources that they should be researching police projects that work and fail so lawmakers can make a decision based on real life trial and error to guide the principles and policies that will advance the country forward. Schools for criminology should be going into departments and doing analysis to find out what will work the most and what fails. To find the gaps in the system and to find out how to improve upon what already exists. "A police department that succeeds, creates a community that succeeds."

5. I know your department has continued aspects of the community policing initiatives that were passed in the previous decades. Do you believe these methods have improved the relationship between your department and your community members?

Community presence details in the Township started in 1994 and still exist and they do seem to be working. Our officers know managers of stores, asset protection employees, team members, frequent customers who will stop and talk to them while inside the store and outside on the streets, and can recognize most of the people they see throughout the community while driving around. The officers need to get out of the police cars and start to engage with the people to humanize the badge. People are attempting to marginalize police as well as they have with other groups of people but 99.9% of officers are those who really want to make a difference in their community. Law enforcement are getting a bad rap because of the .1% of the officers who do not want to do their jobs correctly or have taken the job for the wrong reasons. But, until these officers are weeded out and taken care of, law enforcement will continue to have a bad rap nationwide.

Interview with Patrolman Bailey Conforti- Larksville Police Department, Luzern County Drug Task Force, Special Investigations Unit.

- 1. Since the emergence of Black Lives Matter and the problem of mass incarceration rising to the forefront of criminal justice reform conversation, has your department changed the way you approach a suspect of color or how they are treated during your interactions?**

I have never approached a suspect differently because of their skin tone. It has been taught in the academy that, regardless of personal bias, one should not treat anybody differently. Of course, some officers across the country do not abide by this sentiment, but everybody that I work with now and have worked with previously have treated everyone the same regardless of their appearance. Since the emergence of the BLM movement, I have been more attentive to my word choice and make sure I explain things as plainly as possible to everyone so that people are aware

of their rights and they understand when they are or are not free to leave. I have also been more aware of the presence of video cameras and those who are recording on their phone. This is within their right and at no time do I ask them to turn it off, but usually when these interactions are being recorded, the suspects become more hostile because they feel more empowered knowing the encounter will be sufficiently documented. The only real difference I have seen in the community I patrol is more people recording our interactions, which could be beneficial for both parties in case anything goes wrong. Even if everything goes right, there is evidence that good police officers are out there.

2. Why do you think the police are the primary target of the push for criminal justice reform?

I believe police are the main target behind criminal justice reform because they operate more publicly than anyone else. The county prosecutor could be right next to you in the grocery store and you wouldn't know the difference. But, if a police officer is next to you in a store in their uniform, you are instantly taken to a place in your mind where you are worrying about your actions and what you say. That is the problem with the police force. The public holds the mentality that we are out to get them, and that is simply not the truth.

3. In your opinion, how do we change what is happening?

I believe the police have to do more to make sure the community knows why they are out there. We are not out to get people for speeding or any other minor violation. While that is part of what we do, we like to focus on safety. When we pull people over for traffic violations, it is because they pose a safety threat to the other drivers. We do our jobs to try to get as many public safety threats off the streets so you and your families are safer.

4. Do you feel like you are being held more accountable for your actions now that the BLM Movement has exploded?

I have not committed any actions that I need to be more accountable for. I do not target people, I do not stop people for no reason, and I do not treat anyone unfairly. I do believe I am being watched more, but I do not feel like I am more accountable, since I have never done anything to be held accountable for.