

The Politics of Prison Privatization: Political Strategies of Business and Labor

By

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Abstract

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What is the political impact of prison privatization? Does prison privatization introduce a new political interest group into the criminal justice sphere? Do private prison firms have an incentive to push for increased incarceration and do they have the power to succeed? How similar, or different, are the political goals and strategies of private prison firms from other groups interested in the operation of prisons, such as corrections officer unions?

I argue that the structure of firms sets them apart from other interest groups. The benefits of growth flow to all shareholders in a firm, and all shareholders have a stake in the increasing profitability of the firm they own. This aligns the concerns of shareholders and reduces conflict. In contrast, other groups often have constituents and stakeholders with conflicting interests. Labor unions, another politically influential type of interest group, have a fraught relationship with growth. If a labor union grows in size, many of the benefits flow not to the incumbent union members, but rather to new union members. I argue that this distinction between firms and labor unions should manifest in different political strategies where firms are more likely to adopt proactive political strategies aimed at increasing market share and profit, whereas labor unions will adopt defensive political strategies aimed at safeguarding the position of their current members. This implies that private prison firms have much more to gain from increased incarceration than do corrections officer unions. I compare the political activities of private prison firms and corrections officer unions and show that private prison firms do appear to value increased incarceration more than corrections officer unions. Drawing on a time series cross-sectional model, I show that privatization appears to drive increased incarceration in states within the United States. These results are robust to a variety of model specifications. These results are not driven by political shifts, crime rates, or cost savings.

This dissertation also describes the results of a series of interviews with state legislators and lobbyists. Across states, these subject matter experts believe private prison firms are more politically proactive, more politically sophisticated, and more supportive of increased incarceration than are corrections officer unions.

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Chapter 1: The Politics of Prison Privatization

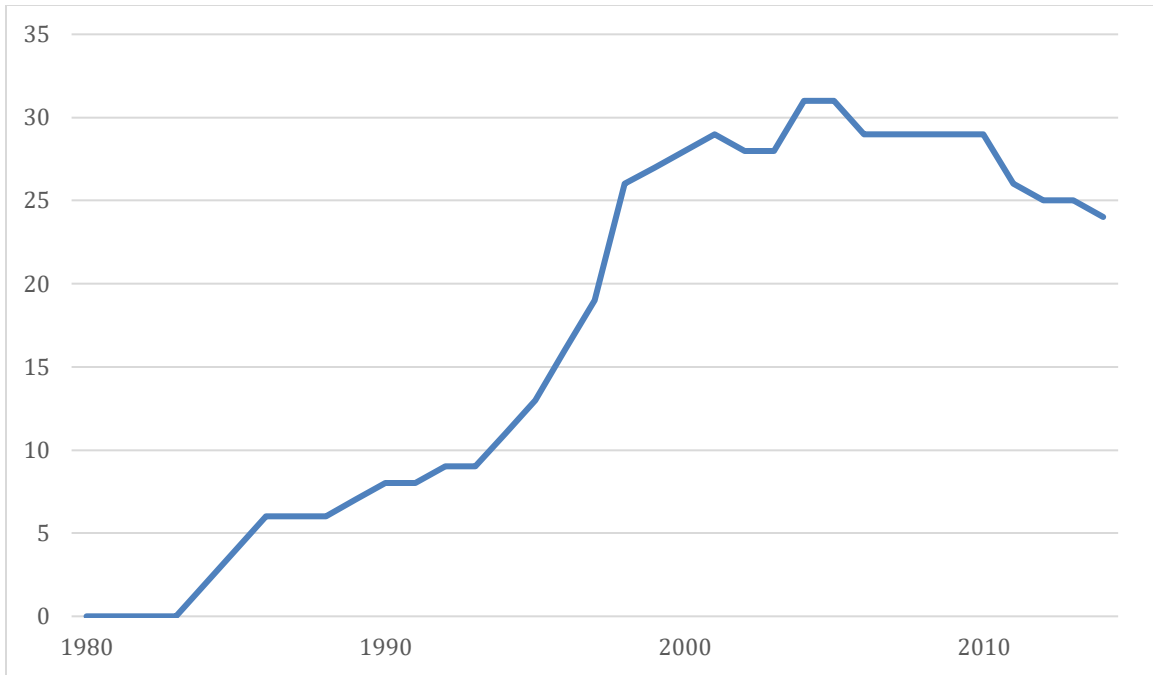
Since the early 1980s, use of private prisons in the United States has gone from a historical relic to a mainstream practice. By 2016, almost 1.5 million prisoners were held in private prisons. These prisoners comprised 18% of federal prisoners and 7% of state prisoners. Private prison firms also staked out territory in immigrant detention centers. By 2017, private prison firms held a majority of immigrants detained by the U.S government (Cullen, 2018).

The spread of private prisons has been controversial, and critics have attacked prison privatization on a variety of grounds. Critics have accused private prison firms of not investing in reducing recidivism (Anderson, 2010). Dolovich (2005) argued that resorting to privatization to cut operational costs precluded the broader examination of the legitimacy of incarceration. Mukherjee (2014) claimed that private prisons are more likely to issue citations to prisoners, thus increasing the average length of sentence served by denying time off for good behavior.

One of the common claims, and the one of particular interest to political scientists, is that the spread of private prisons has introduced a new and powerful pro-incarceration political interest into the policy sphere. This charge has been leveled by both scholars and activists (Anderson, 2010; Ashton & Petteruti, 2011; Gottschalk, 2008; Hartney & Glesmann 2012; Mattera, Khan & Nathan, 2003; Sarabi & Bender, 2000). If this charge is true, then it may be important to understand the political activities of private prison operators when studying criminal justice policies, across the United States.

The use of private prisons is not restricted to a particular region, nor to states of a certain partisan orientation. By 1998 the majority of states held at least some prisoners in for-profit private prisons.

Figure 1.1
Number of States Utilizing For-Profit Private Prisons Over Time
1983-2014



Source: Author's Calculation.

Political Activity of Private Prisons

In order to support these accusations, observers have tended to focus on either political expenditures by private prison firms or actions of their officers and founders. For instance, Sarabi and Bender (2000) described the participation of several Corrections Corporation of America (now CoreCivic) executives on the Criminal Justice Task Force of the American Legislative Exchange Council (ALEC), as well as ALEC's past support of prison privatization, and suggested that private prisons used ALEC to push criminal justice policies that increase incarceration. Other critics such as Hartney and Glesmann (2012), and Ashton and Petteruti (2011) focused on the political expenditures on lobbying and campaigns that they argued are translated into political influence, that can be used to push pro-incarceration policies.

Private prison firms, and others, challenge this characterization of private prison political activity. The largest private prison company in the United States, CoreCivic, unequivocally states that they do not "lobby for or against policies or legislation that

would determine the basis for, or duration of, an individual's incarceration or detention” (CoreCivic, 2015).

Others who have rejected the claim that private prison firms are a source of pro-incarceration political pressure, emphasize that the most important pro-incarceration interest groups are corrections officer unions. Former New Mexico Governor, Gary Johnson, argues that:

Never in that process did I experience any pressure to “fill beds” in the private prisons we built. And if I had, it wouldn’t have worked. It might happen elsewhere, but it absolutely did not happen in New Mexico when I was Governor. Anyone who has actually overseen a prison system and dealt with the politics thereof knows that the real pressure to fill cells comes from the public employees’ unions intent on keeping their jobs. They consistently lobby against sentencing reform and go to war to prevent common sense privatization of inefficient, incompetently managed government services (2016, p. 1).

Pfaff (2017, Preface, para. 6) argued that “reformers’ attention should aim at individuals who play a much bigger role in supporting punitive policies and driving incarceration trends, including state and county politicians with prisons in their districts, and at prison guard unions.”

The most elaborate argument comes from Volokh (2006, 2008, 2010) who provided a theoretical framework regarding why private prison firms should be expected to spend less on promoting incarceration than corrections officer unions. Volokh argued that in no state are a majority of prisoners held in private prisons. This means that in states where corrections officers are unionized and represented by a single union, the union has a larger market share, than private prison firms. If pro-incarceration advocacy benefits corrections officer unions and private prison firms in proportion to their market share, then private prison firms have less incentive to promote incarceration because most of the additional incarceration they achieve, would redound to the benefit of unions. Volokh argued that privatization in states with corrections officer unions creates a collective action problem, where firms can free-ride and unions may also reduce their pro-incarceration efforts because some of the increased incarceration will flow to private prisons. This implies that privatization of prisons may actually reduce pro –incarceration advocacy in states with unionized corrections officers.

What should we believe? Are private prison firms or corrections officer unions pressuring governments to increase incarceration? Do they differ in their support for incarceration or in the strategies they choose? I argue that the debate around private prisons and incarceration is both understudied and under-theorized, with insufficient attention to differences between private prisons and correction officer unions, and to incarceration trends following privatization. In order to understand the differences between corrections officer unions and private prison firms, it is helpful to first look at pre-existing theories regarding labor unions and firms. These theories yield a clear prediction about the different approaches that corrections officer unions and private prison firms should take towards political engagement. I argue that firms should value

growth much more highly than labor unions, and consequently private prison firms should be expected to be more supportive of increased incarceration than are corrections officer unions.

My dissertation, like the work of other interest group scholars, explores how various traits of interest groups affects their political engagement. Schattsneider (1960) discussed which groups are able to mobilize to pursue political goals. Baumgartner et al (2009) asked how certain organized interests are able to prevail in policy disputes. Grossman (2012) explored how certain advocacy organizations are able to succeed by becoming institutionalized representatives of major political constituencies. I ask not how some interest groups are stronger than others, but rather how are the strategies and goals of interest groups shaped by their institutional features. Both labor unions and firms clearly engage in the political process. But how similar is their approach to politics and how does the difference between labor unions and firms shape their political strategies?

Goals of Labor Unions and Firms

Firms are often viewed as profit-maximizers. Accordingly, a firm will attempt to expand to the point where it maximizes profit. When multiple investors or shareholders own a firm, each individual owner's well-being is maximized when the firm maximizes profit, with each investor receiving a share of profits proportional to their ownership.

The situation of labor unions is very different. What benefits one member of a labor union may not benefit another member. For instance, more senior members of labor unions, with less to fear from layoffs, may aggressively demand wage increases while less senior members may be more concerned about job security (Farber, 1978).

Labor unions also face a trade-off between the interests of their current members and the interests of their potential, future members. Labor unions are often described as labor monopolists (Atherton, 1973; Dunlop, 1944; Reynolds, 1981) which means that as the sole provider of labor to an employer, unions are able to set the price of labor, or the wage. In response, employers hire the number of workers that maximize profit at that wage level. The higher the wage set by the union, the fewer workers that are hired by the firms. As such there is a natural trade-off for the union between the wage level and the level of employment. If labor unions care only about their current members, who elect union leadership, they will not care about increasing the number of jobs provided once all union members are employed (Carruth & Oswald, 1987; Lindbeck & Snower, 2002). This means that labor unions may face internal objections to growth because they may fail to serve the interests of incumbent union members.

Firms do not face this trade-off between the interests of incumbent and potential shareholders. The pursuit of growth, when profit-maximizing, threatens no corporate shareholder and perfectly aligns with their goals. Shareholders benefit when outsiders desire to become shareholders as well, because incumbent shareholders can sell their share of a company at a higher rate. Incumbent union members do not own their job and

they do not have a claim on the income of future members. Raising employment to accommodate demand for union jobs may lower their wages.

What does this difference mean for the political strategies of corrections officer unions and private prison firms? Private prison firms should be much more eager than corrections officer unions to push for increased incarceration. Incumbent shareholders do not have to worry that the growth of a firm dilutes their shareholdings, unlike union members who may fear that employment growth is a distraction from pursuing wage growth, or that it may even harm wages. This means that private prison firms should value growth more highly than corrections officer unions. While there are many ways a private prison firm could seek to grow, one of them is to increase the total size of the market for prisons by increasing incarceration. Consequently, we should expect private prison firms to lobby more intensively for incarceration than corrections officer unions, all else being equal.

Why Focus on Prisons?

These differences between for-profit firms and labor unions are not specific to any industry. Why then focus on the difference between corrections officer unions and private prison firms? I focus on prisons because the power to imprison is one of the most consequential and fundamental powers of the state. Understanding how policy choices, such as the choice to privatize prisons, may shape the politics of incarceration is naturally of great interest to political scientists and the broader public.

Prisons are also distinct from many other types of government services that have been partially privatized in that governments are the only customer of incarceration services. Schools may be funded and operated by state and local governments, funded by the government and operated by charter organizations, or funded and operated completely separate from the government. Completely private prisons, operated apart from the government, would be illegal. As such, all private prison firms are completely dependent on favorable government policies, and not on satisfying individual consumer preference. Prisoners, after all, do not shop around for prisons. Corrections officer unions also share this total dependence on the government for the existence of prisons and their jobs.

This means the structure of the industry is shaped by politics to a greater extent than other industries. The government can choose to incarcerate through public or private entities. The singular role of the government means that it should be easier to see the results of shifts in political activity by the introduction of private actors.

The corrections industry is thus an ideal case for examining the effect of privatization on public policy, as well as comparing the political strategies of labor unions and private firms.

Approaches and Data Sources

In this dissertation, I make use of several methodological approaches. I ground my dissertation with a formal model of the incentives that labor unions and private firms

face when engaging in political activity. Empirically, I explore political activity by private prison firms and corrections officer union by drawing upon state and federal lobbying disclosure reports, as well as a series of nearly one hundred interviews across five states. I conducted these interviews with state legislators, lobbyists, and representatives of interest groups which work on criminal justice issues, between fall 2016 and spring 2018.

I also study the effect of prison privatization on incarceration rates empirically. I make use of an original data set documenting the entry of private prisons into the United States in order to estimate the effect of prison privatization on incarceration through a time-series cross-sectional model. This model also allows me to estimate the effect of privatization on prison admissions per capita, as well as on correctional spending.

Plan of Dissertation

In Chapter 2, I review the literature on labor union organizations, discuss the differences between theories of union behavior, and describe how they apply to private and public sector labor unions. I respond to the argument presented by Volokh that prison privatization should reduce pro-incarceration advocacy and argue that under a variety of plausible assumptions, private prison firms will expend more resources on increasing the size of their industry, i.e., incarceration. Further, I argue under any plausible assumption, we should expect private prison firms to lobby more for increased incarceration than would a corrections officer union with the same market share.

In Chapter 3, I discuss the differences in political spending by private prison firms and corrections officer unions. It shows that measured by lobbying expenditures, private prison firms vastly outspend corrections officer unions on the federal level as well as in a random sample of states.

Chapter 4 explores whether prison privatization leads to increased incarceration. It demonstrates that privatizing states had almost identical incarceration rates as the national average before privatization, and that privatizing states experience a rapid increase in incarceration rates following privatization. I use a time-series cross-sectional model to estimate the effect of privatization on incarceration rates and find that the estimated effect of privatization on incarceration is roughly forty prisoners per one hundred thousand residents. This estimate is robust to a variety of specifications. I also show that this effect cannot be attributed to pre-existing state trends, crime rates, or political shifts. I find that the association between privatization and increased incarceration cannot be explained by relaxing constraints on prison capacity or by reducing the cost per prisoner. Chapter 4 also shows that privatization is strongly associated with increased correctional spending by states.

Chapter 5 provides evidence on the different political approaches of private prison firms and corrections officer unions through a series of roughly one hundred interviews with state legislators, lobbyists, and interest group representatives. These interviews demonstrate that, as predicted, private prison firms have a much more proactive political

strategy than do corrections officer unions. They also show that the belief that private prison firms support increased incarceration is widely held, while the same does not hold for corrections officer unions.

Chapter 6 discusses the implications of these findings for the study of criminal justice politics, as well as the study of interest group politics more broadly. First, private prison firms are powerful and proactive political actors, whose entrance into a state is strongly, and I argue causally, associated with increases in incarceration. More generally, claims that privatization of government services can yield substantial savings should be viewed more skeptically, as firms may more effectively lobby for increased expenditures on government services.

The driving hypothesis of this dissertation is that labor unions and firms are not mirror images of each other, nor are their political strategies. At the same time, business interests and the labor movements are two of the most consequential political forces in U.S. politics. Chapter 5 concludes by looking at how differences in the political strategies of firms and labor unions play out in politics at large.

Chapter Two: Different Goals of Unions and Firms

Volokh's argument (2006, 2008, 2010) is simple. Incarceration is a public good that benefits both corrections officer unions and private prison firms. Both corrections officer unions and private prison firms benefit from increases in incarceration. Any efforts by private prison firms to increase incarceration will also benefit corrections officer unions and any efforts by corrections officer unions to increase incarceration will also benefit private prison firms. In the absence of privatization, corrections officer unions would receive all the benefits of increased incarceration. As private prison firms take market share, corrections officer unions receive less benefit from increased incarceration, so they reduce efforts to promote incarceration.

Volokh points out that there is no state in the country where a majority of prisoners are held privately. If private and public prisons receive future prisoners in proportion to their current market share, this means that private prison firms will receive a minority of the benefit of increased incarceration. Consequently, he believes that corrections officer unions will reduce pro-incarceration lobbying, and in many cases private prison firms will not engage in pro-incarceration lobbying, preferring instead to free-ride off the political activity of the corrections officer unions.

Volokh allows that there may be some cases where privatization increases pro-incarceration advocacy, such as in states where corrections officer unions do not exist or are politically weak. But in general, privatization should reduce the incentive of private prison firms or corrections officer unions to lobby for increased incarceration.

Volokh is right that if firms and unions had the same goals and the same utility functions, they would approach politics the same way. In the case of prisons, it would mean that the privatization of prisons would reduce pro-incarceration advocacy by corrections officer unions. However, the goals of unions are distinct from the profit-maximization of firms. While there is disagreement about the best way to describe union goals, the literature makes clear that unions have less reason to pursue growth than do private firms.

What Do Unions Want?

The earliest, and still influential, approaches to modeling labor unions portrayed labor unions as having a monopoly on labor. First described by Dunlop (1944), unions were treated identically to monopolists of any other good or service. As the sole provider of labor to a firm, unions are able to set the price of labor, or the wage. In response, firms hire the number of workers that maximize profit at that wage level. The higher the wage set by the union, the fewer workers are hired by the firms. Accordingly, there is a natural trade-off for the union between the wage level and the level of employment. Since Dunlop (1944) described labor as a monopoly, the basic framework of unions as labor

monopolist has been expanded upon and defended (Atherton, 1973; Reynolds, 1981). This still leaves open the question of what unions want and how to model their utility.

It has been common to model union utility as increasing in both wage and employment level (Calmfors, 1982; Cartter, 1959; Dreze & Modigliani, 1981; Farber, 1978; Fellner, 1947; MaCurdy & Pencavel, 1986; McDonald & Solow, 1978; Oswald, 1982; Sampson, 1983). In this model, the union decides what wage to demand, implicitly choosing the employment level. The actual wage demanded by the union depends upon how heavily the union weighs wages versus employment. Ross (1948) criticized this model, claiming that unions lacked the information necessary to project employment levels from wages. He claimed unions would simply try to maximize wages. However, he did not dispute the inverse relationship between wages and employment.

The basic trade-off between wages and employment has also been used to model unions that are controlled by a representative member. Dertouzos and Pencavel (1981) argued that the expected utility of a union member is the weighted average of their utility where union-employed workers get utility from union-set pay and others get the utility of non-union jobs or unemployment. The union member could increase the wage the union demands. If the member remained employed at a higher wage, the member would benefit but the non-member would be increasing his probability of being unemployed or working a lower-paid non-union job. McDonald and Solow (1981) presented a nearly identical model, with the caveat that employed workers suffer disutility from spending time at work. Approaches such as this assume that union members are homogenous.

Farber (1978) emphasized the importance of heterogeneity among union members, particularly in terms of seniority. He argued that when unions conduct layoffs by first in, first out rules, the member of median seniority will act as a swing vote and prevent wages from rising to the level where his or her own job may be endangered. Farber further argued that the entire union can be viewed as trying to maximize the utility of the median seniority voter because he or she holds all the power as the median voter. Farber (1986) also criticized other models that viewed union members as homogenous, particularly with respect to the size of the union, arguing that “[w]hile the level of employment implied by the agreement may be indistinguishable from the ex post membership, the ex ante membership (at the time of negotiation) is likely to be very different.” Thus, models of labor unions that claim that unions gain utility from employment levels beyond that which would lead to full-employment among current union members may be very flawed. Blair and Crawford (1984, p. 557) objected to the extreme form of Farber’s (1986, p. 44) view where median seniority members would sacrifice the jobs of all junior members to boost their own wages because “workers at intermediate seniority levels presumably realize that voting for higher wage rates hastens the arrival of the moment when their elders vote them out of a job.” Consequently, swing voters in a union will not simply try to maximize their wage in a single contract period. Instead, union members will prefer lower wages and a higher level of employment to create a buffer of workers between them and lay-offs. The more risk-averse the workers are, the lower the wages will be.

In step with Farber’s (1986) emphasis on incumbent union members, more recent scholars have shifted away from the view that unions gain utility from increased

employment. Instead they have emphasized that there is no reason for unions to value increasing employment once they succeed in providing jobs for all their members. Carruth and Oswald (1987, p. 441) argued that as “long as one is willing to make the usual assumption that individual workers are rational and selfish, and to hold the assumptions that union leaders represent their members and that future union members have no voting rights”, there will presumably be an employment level (equal to voting membership)” where utility curves are ‘kinked’ representing the fact that further increases in employment provide no benefit to the union. While they allow that actual union members might display some form of altruism to outsider workers, they argued that “few economists would want to take an axiom of unselfishness as the foundation stone upon which to construct a theory of trade union actions.” Lindbeck and Snower (2002, p. 28) showed that this kinked utility curve implies that in cases of economic upturns unions will push for increased demand to be met by wage increases not employment increases, “but in a downturn (when employment often falls short of membership), the union will accept a combination of wage and employment cuts.”

Similar reasoning was used to argue that unions will only accept lower wages in exchange for increased employment, when the median voter feels at risk of layoffs (Kaufman and Martinez-Vazquez, 1987). The same authors (1988) examined the UAW vote on ratifying a 1982 contract with General Motors. Consistent with their theory, this contract that included concessions from workers won the greatest support in bargaining units where workers believed high wages posed a layoff threat to their unit.

The level of employment is sometimes equal to the level of union membership such as when unemployed workers are not union members and the workplace is a closed shop, so all workers have to maintain membership in order to work. However, most of the time the level of employment is not equal to the level of union membership. If all new employees join the union they would put downward pressure on wages and change the preferences of the union or median union voters in the direction of lower wages and more employment because the new hires will want to protect their own jobs. Chaison (1986) argued that there were economies of scale in operating a union such as funding a strike fund or hiring full-time staffers. If so, this would imply that unions should gain value from increased membership even if they do not value it for its own sake. Whatever the advantages of increased union density or increased membership size, they do not erase the fundamental trade-off between pay and employment.

Are Public Sector Unions Different?

Differences between public sector and private sector unions have not drawn substantial attention in the literature. Freeman (1984) did discuss the differences between private and public sector unions, arguing that in the public sector, unions could pressure government to increase their consumption of a good or service, whereas private sector unions could not lobby manufacturers beyond what they thought was profitable. He described public sector unions as increasing the overall demand or shifting the demand curve to the right, which would allow public sector unions to simultaneously increase

employment and wages. Even if this is true, once public sector unions have increased demand as far as they can (or want), any negotiation over wages should still display the same trade-off between employment and pay.

While Freeman stands out by directly discussing how to adapt standard views of union activities for the public sector, others have discussed how the strategies of public sector unions differ from private ones, generally by emphasizing the greater role politics play. Dalton (1982) argued that the key difference between public and private sector unions is that governments can choose to not engage in collective bargaining so public sector unions have to pursue a greater density of unionization to make up for its legal weakness. Summers (1974) argued that unlike in the private sector where wages were set between union and employer, in the public sector, setting wages and employment also involves other political actors. For instance, teacher pay depends not only on the actions of the labor union and their own leverage, but also on the actions of teachers as a whole. Summers argued that this is often advantageous for public sector unions as they can gain allies. Looking at education, he argued that parents are happy to support higher pay for teachers because parents will only pay a portion of the increased taxes that will fund a service, they believe benefits them. Other scholars have also explored the role that political leverage plays in determining pay for public employees. Anzia (2011) showed that higher teacher pay resulted from school board election timing that led to low voter turnout and favored organized interests. Moe (2011) argued that teacher unions face the same trade-off as other unions-- the conflict between higher numbers of teachers employed and higher teacher compensation.

These differences between public and private sector unions, while important, do not free public sector unions from the trade-off between employment and wages. This trade-off may be less acute because public sector unions can engage in advocacy to increase demand for the services they provide. However, public sector unions still face disincentives to growth in ways that firms do not. Therefore, it follows that corrections officer unions have less reason to seek increased incarceration than do private prison firms.

CEOS and Union Leaders

So far, I have argued that the divergent interests of shareholders and incumbent union members should lead to differences in political behavior between corrections officer unions and private prison firms. Yet what if the typical union member or the typical shareholder is not the one to determine the political behavior of their organizations? What if it is the motives of business executives and union leaders that determine the political behavior of their organizations? In this case, we should still expect to see firms value growth more as union leaders benefit less from growth than do corporate executives, and face constraints to pursuing growth through democratic control of the union by union members.

Hallock and Klein (2011) showed that the compensation of labor union executives is correlated with both the pay of their union members and the size of the labor union.

This means that union leaders do gain financial rewards from increasing the size of their union, and that the salary of union leaders is roughly as elastic as the salary of CEOs when their organization grows in terms of members and employees, respectively. But, given the higher average salary of corporate leaders, the gain in dollars is much higher for CEOs who manage to grow the size of their firms than for union leaders. In addition, union leaders have to maintain the support of union membership in order to preserve their positions, which constrains their ability to pursue membership growth.

Dertouzos and Pencavel (1981) argued that union leaders would want to grow union membership to a level that was greater than optimal for union members. They argued that union leaders gain political power and prestige by running a large union. Union members in contrast, face increasing competition because a static number of unionized jobs or wages must be cut to induce employers to increase overall levels of employment. However, even union leaders appear to put more emphasis on compensation than on employment levels. This model provides a reason why union members may not only oppose growth in employment levels but might oppose growth in union membership as well.

A survey of union leaders in the United Kingdom (Clark and Oswald, 1993) found that 90% tried to bargain over compensation; only a quarter tried to negotiate with employers over total employment level. This could be a function of union leaders' own interests or could be a reflection of democratic constraint by union members.

Ashenfelter and Johnson (1969) proposed a model where union leaders had the twin goals of preserving the existence of their union and maintaining their own position as union leaders. Although this meant that union leaders had interests relatively aligned with the members who elected them, Ashenfelter and Johnson argued that in some cases union leaders would take unnecessarily antagonistic strike actions towards employers to demonstrate solidarity with the union members who feared overly accommodationist leaders. Atherton (1973) also viewed union leaders as relatively constrained by union members who are able to evaluate union leader performance by the quality of their contract and can thus effectively monitor leaders.

Regardless of what union leaders might prefer, the actual behavior of unions suggests that unions are motivated to prioritize the interests of their current members. Freeman and Kleiner (1990) found that the unionization of new firms led to large changes in seniority protections and grievance procedures, and smaller changes to pay. Studies that looked at worker motivation to join unions also shows that prospective union members are focused on their own pay and workplace protections, not a general support for the union movement or support for a high employment level. Access to union grievance procedures (Seidman, London, & Karsh, 1951), job security (Farber & Saks, 1980) and bread-and butter issues like compensation and benefits (Strauss & Gallagher, 1991) are among the most important motives to join labor unions, with political goals ranking low among reasons given as to why workers join unions (Strauss & Gallagher, 1991).

Institutional Differences and Pro-Incarceration Advocacy

If corrections officer unions do not value growth at all, corrections officer unions would be unlikely to engage in pro-incarceration advocacy. This means that private prison firms cannot free-ride off of unions' non-existent pro-incarceration advocacy. Because private prison firms almost certainly benefit from increased incarceration, prison privatization would increase pro-incarceration advocacy. Though it may seem extreme to suggest that corrections officer unions do not engage in pro-incarceration advocacy, I present evidence that this may generally be the case in Chapter Five.

What if differences between corrections officer unions and private prison firms are more modest? This could be the case where private prison firms value growth more than corrections officer unions, but unions still benefit from increased incarceration. Would privatization reduce or increase pro-incarceration advocacy? Here, the answer depends upon how much more private prison firms value increases in incarceration as well as the relative market share of the public and private sector prisons.

To simplify, I assume, as Volokh did, that future prisoners are divided in proportion to current market share. If three quarters of prisoners are held in unionized public prisons, and one quarter in a prison operated by a single private prison firm, then that is the proportion of market share, respectively. This means for a private prison firm to benefit more from increased incarceration than does the corrections officer union, it would have to value receiving an additional prisoner more than three times as much as the corrections officer union does.

More generally, for private prison firms to benefit more than corrections officer unions from an increase in incarceration, the ratio of the marginal value of prisoners for private prisons compared to the marginal value of prisoners for corrections officer unions must be higher than the ratio of public sector market share to private sector market share. The value per prisoner received by private prisons must be great enough to offset its smaller market share. When this occurs, private prison firms have a stronger incentive to engage in pro-incarceration advocacy than do corrections officer unions and it is possible that the new advocacy by private prisons will outweigh any decline in advocacy by corrections officer unions. If private prison firms do not value marginal prisoners highly enough to offset their smaller market share, the collective action problem caused by the division of prisoners between public and private prisons should reduce pro-incarceration advocacy as predicted by Volokh.

At any level of market share, private prison firms should be more likely to engage in pro-incarceration advocacy than would a corrections officer union with that same market share. In practice, corrections officer unions always have greater market share than do private prison firms, except in the minority of states where corrections officers are not unionized.

Behavior During Retrenchment

Corrections officer unions have weaker incentives to support increased incarceration than do private prison firms. But what happens if increases in incarceration are off the table? What if a wave of criminal justice reformers is elected and threaten to shut down or dramatically reduce incarceration? Who has a stronger incentive to fight against a reduction of the incarceration rate? The answer depends on the size of the decline in incarceration.

If a proposed reform would only slightly cut the incarceration rate, it is possible that it would not harm current union members. There is a natural attrition of current union members due to retirement of corrections officer unions. If reductions in employment of corrections officers is slight enough to be met only through attrition, corrections officer unions may have little reason to fight against reductions in incarceration. This is not true for private prison firms, or their shareholders, who would be harmed by even small cuts to the number of prisoners they hold.

For larger cuts in incarceration, both interest groups would have reason to oppose such reforms. It is true that both corrections officer unions and private prison firms could seek to maintain the benefits they retain from incarceration even as the incarceration rate falls. If prisons are under-staffed, perhaps reductions in incarceration could result in more appropriate levels of staffing per prisoner rather than layoffs. Or unions might be able to featherbed and use their influence to persuade governments to hire an excessive number of workers. Private prison firms could seek to renegotiate contracts to either receive higher pay per prisoner housed or get contracts with guarantees that their prisons will hold (or be paid to hold) a set number of prisoners. Yet if reductions in incarceration are substantial enough, such concessions by governments to corrections officer unions or private prison firms may not be sustainable in the long run.

Therefore, both corrections officer unions and private prison firms are likely to oppose substantial reductions in incarceration. This means that in the future, the political effect of privatization on incarceration may be muted because the United States incarceration rate peaked in 2007.

Conclusion

Unions and firms are different. They have different structures and different goals. This means that private prison firms benefit more from growth than do corrections officer unions. At the same time, in no state do private prisoners hold a majority of prisoners. Given the minority market share that private prison firms hold, do they find it worthwhile to engage in pro-incarceration advocacy? Do they support increases in incarceration more than corrections officer unions? In the next three chapters, I address this issue.

Chapter 3: Political Expenditures

Who cares more about shaping criminal justice policy and increasing incarceration-private prison firms or corrections officer unions? Or at the very least which type of interest group spends more on influencing politics? In this chapter, I show that private prisons firms invest more in political spending than do corrections officer unions, at both the state and federal level.

Should overall spending on politics by private prison firms be higher than overall political spending by corrections officer unions? Here it is less clear. If two groups were identical, except the second group had more political issues it cared about, the second group would likely spend more on politics. Unions and firms are not identical as I have argued. They have separate goals, different political allies, and have access to different political resources. While I expect private prison firms to spend more on influencing incarceration, I do not believe my theory on the difference between the political strategies of firms and unions makes clear predictions about aggregate political expenditures. In this chapter I demonstrate that private prison firms make substantially higher incarceration-related political expenditures than do corrections officer unions.\

Political Expenditures of Private Prison Firms and Corrections Officer Unions

I begin my comparison of private prisons firms and corrections officer unions at the federal level. Groups and individuals that lobby the federal government are required by the Lobbying Disclosure Act of 1995 and the Honest Leadership and Open Government Act of 2007 to disclose sources of lobbying incomes and the federal agencies they lobby. Importantly, lobbyists are also required to disclose the issues on which they are lobbying. Issues are reported in broad government-provided categories such as law enforcement/crime/criminal justice, immigration, and railroads. Lobbyists also must provide more detailed descriptions regarding the focus of their activities such as specific statutes or regulatory decisions when they complete their lobbying disclosure forms.

The Council of Prisons Locals C-33 represents employees of the Bureau of Prisons. It is part of the American Federation of Government Employees, and through the AFGE part of the AFL-CIO, so I also include spending by the AFGE or the AFL-CIO. The firms that operate correctional facilities include the Corrections Corporation of America, GEO Group, the Management and Training Corporation, Avalon Correctional Services, Correctional Services, LCS Correction Services, Community Education Centers, Amazon Correctional Services, Emerald Correctional, and LaSalle Corrections. There are other private companies that operate in prisons such as those that provide food or medical services. Because they do not operate entire prisons, I excluded them. These excluded firms include Wexford, Aramark, and Corizon.

I rely on these lobbying disclosure forms to measure aggregate expenditures of private prison firms and corrections officer unions, and also what share of their lobbying expenditures is related to incarceration. Determining to what extent lobbying expenditures should be attributed to incarceration-related lobbying is a difficult challenge. Private prison firms could lobby on issues that are not directly or indirectly related to incarceration. The GEO Group, one of the nation's largest private prison operators, is structured as a real estate investment trust (REIT) for instance. Some of its lobbying may be on tax treatment of REITS. The AFL-CIO lobbies on behalf of millions of workers; it would be absurd to claim every dollar spent by the AFL-CIO is related to incarceration, even with very broad definitions of "related to incarceration."

To address this challenge, I excluded every lobbying report that did not report a connection to incarceration. I took a broad view of what counted as related. A report was included as related if it described lobbying on the general issue area of law enforcement, crime, criminal justice; listed lobbying agencies such as the Bureau of Prisons, the Office of Juvenile Justice and Delinquency Prevention, or the Parole Commission; or if it listed an issue related to prisons, incarceration or criminal justice. I examined reports between 2000 and 2014.

Most lobbying disclosure reports contain evidence of lobbying on multiple issue areas. Therefore, I divided the total amount of expenditures reported by the number of general issue areas on which respondents reported lobbying to find the measure of expenditures on prisons/incarceration. The assumption of uniform distribution of reported lobbying expenditures has been previously used to measure expenditures per lobbyist (Bertrand, Bombardini and Trebbi, 2011). I make a similar assumption, that each issue area takes an equal share of lobbying expenditures. By this measure, in every year from 2001 to 2014, corporate expenditures have exceeded labor expenditures on lobbying. I report this data below. Figure 3.1 shows the lobbying expenditures by corrections officer unions (including parent unions) and private prisons firms attributed to incarceration-related lobbying. Figure 3.2 shows the same expenditures divided by the number of federal prisoners held in public or private prisons, respectively.

Figure 3.1

Estimated Incarceration-Related Lobbying Expenditures (in thousands)

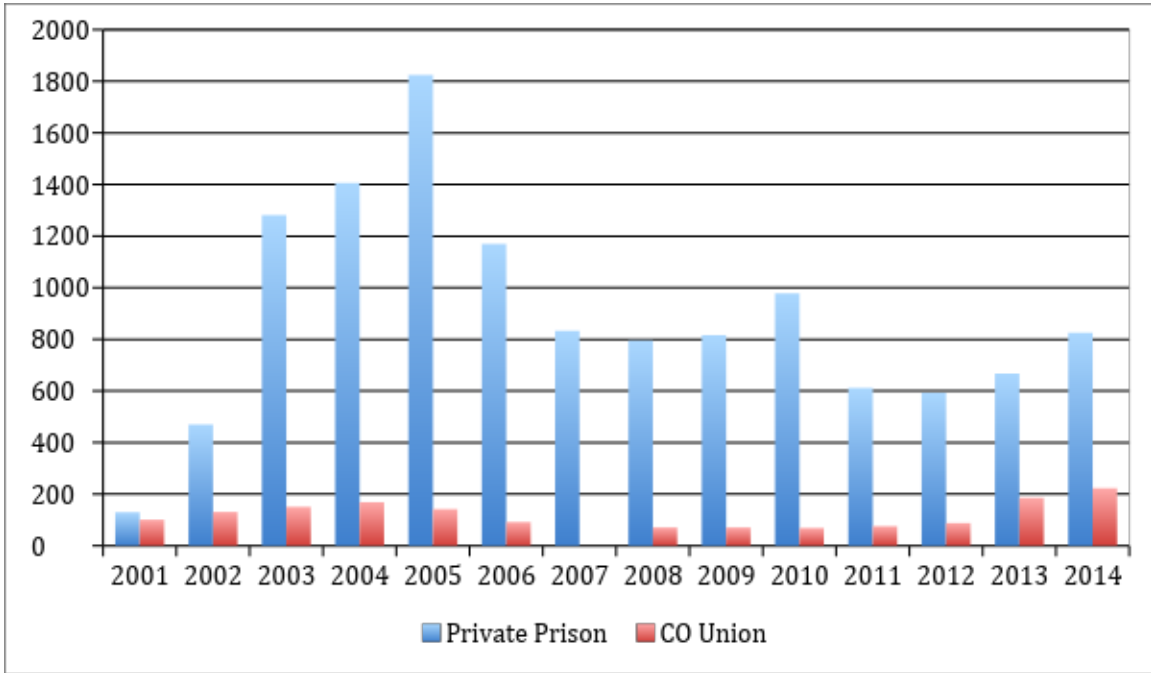
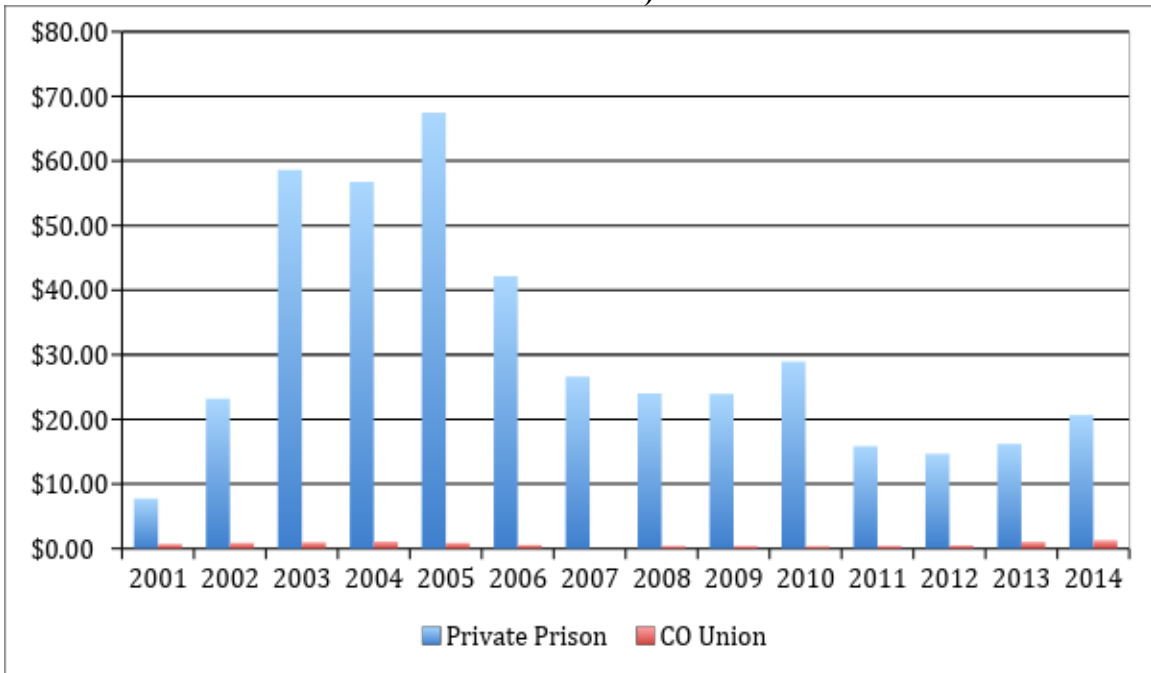


Figure 3.2

Estimated Incarceration-Related Lobbying Expenditures Per Prisoner (in thousands)



The differences are enormous in both absolute terms and per prisoner terms. On a per prisoner basis, private prison firms outspent corrections officer unions by an order of magnitude every year. It is possible that some of the federal lobbying expenditures from private prison firms were related to their facilities that hold state prisoners. For example, the Department of Justice grant programs may affect states' corrections departments and indirectly affect private prison firms' state-level operations. Roughly a quarter of privately held prisoners are under the jurisdiction of the federal government, thus assuming only a quarter of federal lobbying expenditures are related to the federal criminal justice system, private firms would still vastly outspend unions by this per prisoner measure.

Additional evidence that private prison firms lobby more on incarceration than do corrections officer unions comes not from total expenditures but from the agencies that each type of interest group chooses to lobby. I reviewed the same lobbying reports which I used to calculate incarceration-attributed lobbying expenditures, to compare how often federal agencies that are connected to incarceration were lobbied by private prison firms or corrections officer unions. These agencies are the Department of Justice, the Bureau of Prisons, the DEA, the FBI, the National Institute of Corrections, the National Institute of Justice, the Office of the National Drug Control Policy, and the Parole Commission. Of these agencies, lobbying disclosure reports for 2001 to 2014 listed only the DOJ and the Bureau of Prisons.

The Honest Leadership and Open Government Act of 2007 (effective in 2008) amended the reporting requirement from biannual to quarterly reports, which explains the sudden increase in the number of reported contacts with the named agencies.

Table 3.1

Number of Reports with Contact with Named Agency

	Corporate Contacts DOJ	Labor Contacts DOJ	Corporate Contacts BOP	Labor Contacts BOP
2001	1	2	0	0
2002	2	3	0	0
2003	3	1	1	0
2004	4	1	2	0
2005	7	2	3	0
2006	7	0	5	0
2007	4	0	3	0
2008	13	0	5	0
2009	9	0	3	0
2010	8	0	3	0
2011	5	0	1	0
2012	4	0	0	0
2013	3	2	0	0
2014	1	3	0	0

Private firms contacted the Department of Justice in every year from 2001 to 2013, and only lagged behind Labor in the number of contacts in three years. In over half the years, labor unions did not contact the Department of Justice at all. Only private firms contacted the Bureau of Prisons. To see if this is simply the result of firms spreading their lobbying between more federal agencies, I calculated the average number of agencies or other government institutions contacted per report. I tabulated this by summing the number of federal institutions listed as being contacted under every lobbying issue area. There are 239 private prison firm reports with attributed spending, with an average of 8.77 contacts per report. There are 60 labor union reports with an average of 67.75 contacts per report. Labor unions were very active in lobbying federal agencies; however, unions did not lobby those agencies most directly involved with incarceration.

Lobbying Expenditures on Immigration

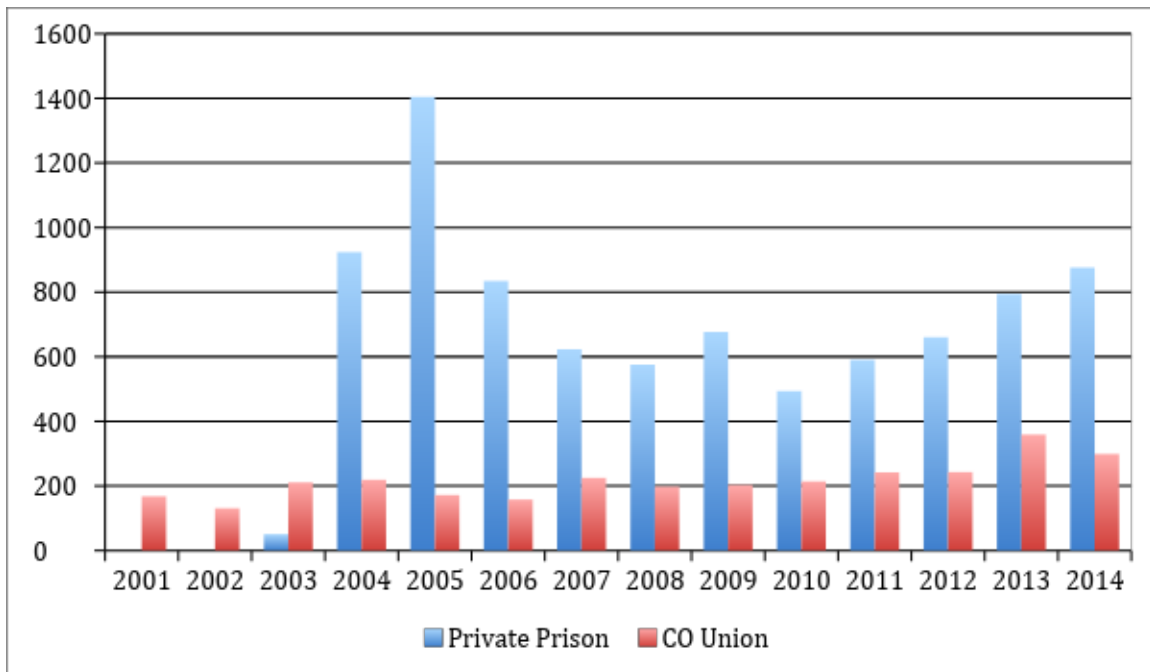
A similar dynamic between unions and private prison firms can arguably be seen when it comes to immigration. In the United States, immigrants are detained in federally operated detention centers, privately operated detention centers, and state and local jails

and prisons. Many of the firms that provide private prison services also run immigrant detention centers. In November of 2017, 71% of all detained immigrants were in the custody of private prison firms. (Cullen, 2018).

I compare lobbying expenditures between private prisons and two unions, the National ICE Council and the National Border Patrol Council. They are part of the American Federation of Government Employees, and through AFGE part of the AFL-CIO. Drawing on the same source of lobbying records as before, I calculated the share of lobbying expenditures that are attributed to immigration-related lobbying by assuming uniform distribution of lobbying expenditures across issue areas.

Figure 3.3

Estimated Immigration-Related Lobbying Expenditures (in thousands)



Despite not lobbying on immigration until 2003, the private firms outspent the labor unions every year thereafter. This is remarkable. The AFL-CIO has many reasons to lobby on immigration, such as guest worker programs, that are not connected to immigrant detention. Despite this, labor unions spend relatively little on immigration related lobbying.

The differences between the immigrant detention system and the prison system are substantial in themselves. Further, private prisons have a larger market share within immigrant detention than they do they in federal prisons. Still, the pattern of greater political spending by private prisons is consistent with my theory that private prison firms are more inclined to support increased incarceration.

Federal Campaign Contributions

Beyond lobbying, political expenditures can come in the form of campaign contributions. I collected data on campaign contributions from private prisons and corrections officer unions from followthemoney.org. These contributions represent contributions from firms, unions, affiliated PACS, and employees of private prison firms and corrections officer unions. Attributing campaign contributions to incarceration-related concerns is even more challenging than it is with lobbying expenditures because donors do not report which issues motivate their giving. I assume that donations are motivated by the same issues as lobbying and that the share of lobbying expenditures related to incarceration is equal to the share of federal campaign contributions related to incarceration.

Figure 3.4

Estimated Incarceration-Related Federal Campaign Contributions

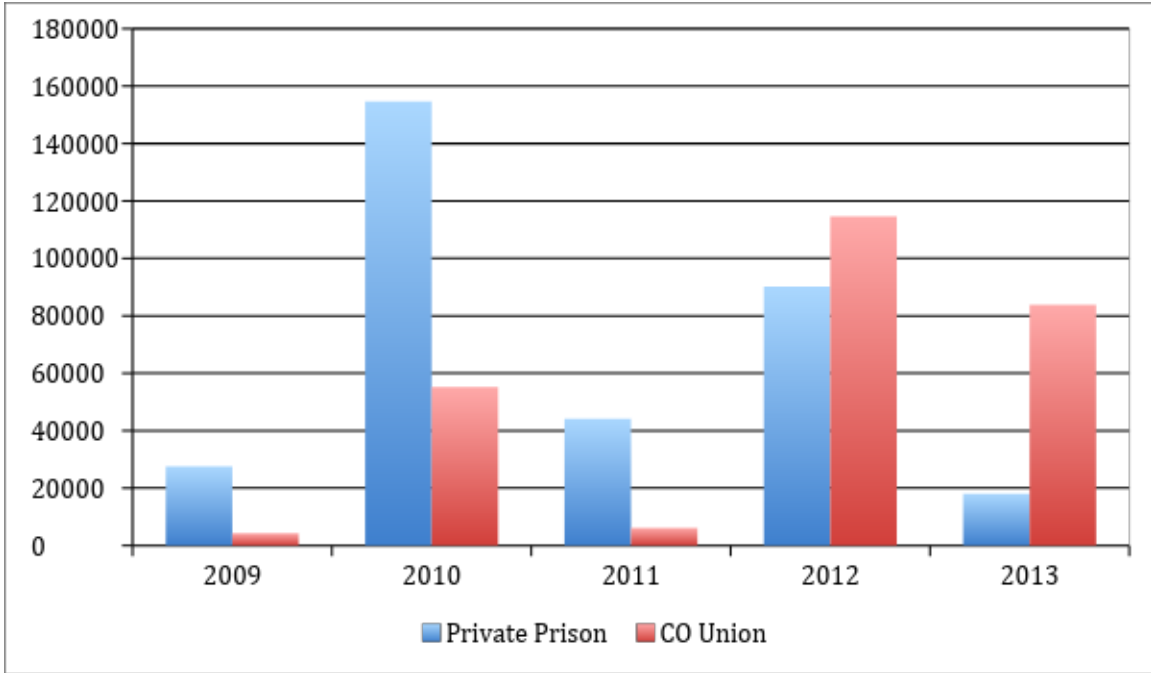
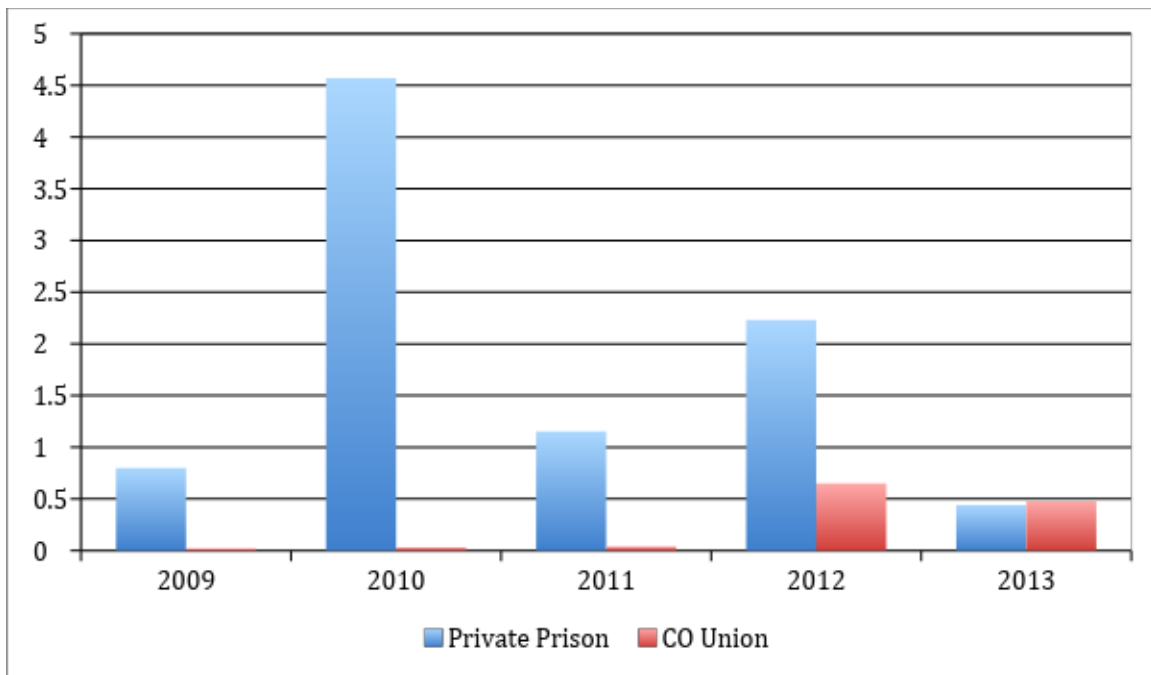


Figure 3.5

Estimated Incarceration-Related Federal Campaign Contributions Per Prisoner



In most of these years, private prison firms spent dramatically more per prisoner than corrections officer unions. In 2013, the year in which private prison firms spent the least, labor unions edge them out by four cents per prisoner. While private prison firms generally outspent the unions in absolute and per prisoner terms in the majority of years, by this measure, the differences are not as stark as they are in terms of lobbying expenditures

State-Level Political Expenditures

Private prison firms also spent more heavily on lobbying at the state level. I randomly selected ten states that reported any privately held prisoners between 2000 and 2014. This data was taken from the Bureau of Justice Statistics's National Prisoner Series. I then obtained lobbying expenditure records for labor unions and prison firms from their

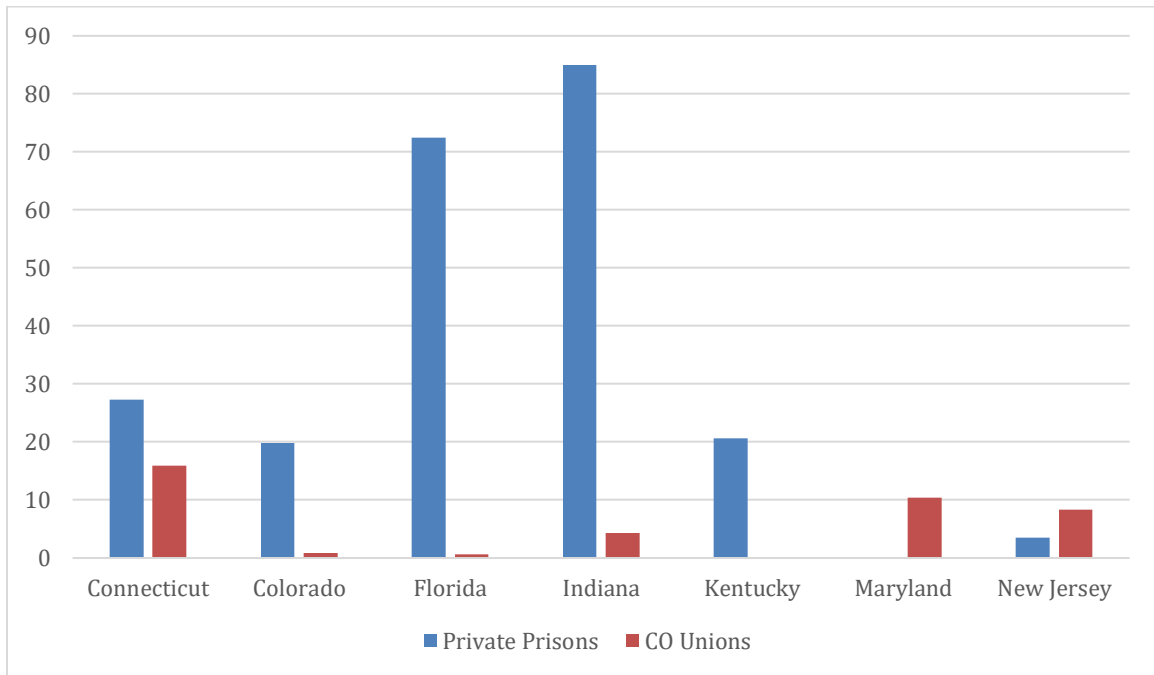
electronically available lobbying records. I recorded data for both labor unions that directly represented corrections officers and the larger unions that are affiliated with corrections officers. Where no records were directly available (three states), I wrote to the state agencies responsible for maintaining lobbying records and requested data on lobbying expenditures.

States recorded lobbying expenditures differently. When expenditures were reported as a range, as happened in Florida, I use the midpoint of the reported range. North Dakota maintains records of lobbyists and their clients, but expenditure amounts are not available. Not all states had lobbying expenditure records available for all years. For Indiana, which ended collective bargaining by public employees partway through the period, I calculated the per prisoner-year spending by unions only during the period in which its corrections officer union was active.

Unlike federal lobbying disclosures, not all states require lobbyists to disclose the issues that are the subject of their lobbying. Therefore, the following comparisons are between all lobbying expenditures by unions that represent corrections officers and by private prisons. I make no attempt to attribute lobbying to specific issue areas. This means that states where corrections officer unions are represented by multiple unions will have higher total lobbying expenditures, despite not necessarily indicating that these states have unions which lobby more on incarceration, specifically. Nonetheless, private prisons still generally spent far more on lobbying.

Figure 3.6

Lobbying Expenditures Per Prisoner-Year



In the majority of states, private prison firms spent more per prisoner-year than did corrections officer unions. In Colorado, Florida, Indiana, and Kentucky, private

prisons spent an order of magnitude more per prisoner-year. In Connecticut, private prisons spent roughly 50% more per prisoner-year.

The exceptions to this general pattern are worth examining in detail. In New Jersey, labor outspent the private firms per prisoner. However, in New Jersey corrections officers were represented by several unions, such as the New Jersey Superior Officers Association, the New Jersey State Policemen's Benevolent Association, and AFSCME Council 71. Since each of these unions has some lobbying that almost certainly is not related to incarceration, the division between multiple unions boosts the reported spending beyond what it would be if all corrections officers were represented by a single union.

In Maryland private prison firms spent no money lobbying. All private prisons were operated by nonprofits in both years in which correctional facility censuses were conducted. The incentives that drive private firms to grow are much weaker for nonprofits. Nonprofit executives do not get stock options nor do the board members of nonprofits have the right to retain earnings for their own benefit. Thus, the absence of private prison lobbying in Maryland is not inconsistent with my theory.

In South Dakota and Alabama, there were no reported lobbying expenditures by either interest group. State lobbying disclosure laws in some states have much narrower requirements for what type of spending must be disclosed and narrower definitions of lobbying which may explain the absence of reported expenditures.

Overall, private prison firms spent far more on lobbying that is plausibly related to incarceration than would be expected by their market share alone. The same pattern repeats at the state-level regarding lobbying related to immigration, and albeit to a lesser extent, federal campaign contributions. Private prison firms spent far more on politics than corrections officer unions. These stark differences in spending also suggest that if corrections officer unions wished to increase incarceration, they might be less capable than private firms.

However, much political activity is not captured by these quantitative measures. Labor unions can mobilize their members to vote or engage in other forms of political activity. Firms can donate to think tanks that advance their ideological goals. Financial expenditures also do not capture possible differences in political sophistication between corrections officer unions and private prison firms. Perhaps most importantly, measures of financial expenditures cannot show the full extent to which either interest group lobbies on criminal justice policies or supports pro-incarceration public policy. In Chapter Five, I address these limitations, by turning to a series of interviews with those who have direct knowledge of criminal justice politics: state legislators serving on committees related to criminal justice and representatives of interest groups which lobby on criminal justice issues at the state level.

That said, the sheer magnitude of the differences in political spending by these two interest groups reveals that these groups approach politics in different ways and suggests the possibility that private prison firms seek to increase incarceration in ways that corrections officer unions do not.

Chapter 4: Privatization and Incarceration

Does prison privatization increase incarceration? This claim has plagued private prison firms since the beginning of their operations. Despite their repeated protestations, this belief is still widely held. Given the incentives of firms to expand their business and maximize profit, it seems reasonable that private prison firms would seek to increase incarceration. In this chapter I examine the core claim of this dissertation, that prison privatization increases incarceration.

There are many ways private prison firms could work to increase incarceration. They could support tough-on-crime policies such as truth-in-sentencing laws or three strikes laws. They could support friendly candidates in judicial, legislative, gubernatorial, and prosecutorial elections. They could try to block alternatives to incarceration such as increased reliance on probation and parole. My theory is agnostic to the particular form of pro-incarceration tactics that private prison firms may pursue. It is likely that which tactic they pursue would likely vary across time and across states.

I look at the question directly. Do states that adopt the use of for-profit private prisons experience higher rates of incarceration than would otherwise be expected? And if so, are there explanations other than political advocacy by private prison firms that can plausibly explain higher incarceration rates?

In this chapter I argue that prison privatization is strongly associated with increased incarceration, and that this relationship is causal. I first show that states that use private prisons have incarceration trends that diverge from the national average incarceration rate following privatization. I then exploit the staggered introduction of private prisons to estimate the effect of privatization on incarceration rates using a time-series cross-sectional model. I find that the effect of privatization on incarceration is large and statistically significant. I show that this finding is robust to a variety of model specifications and that the timing of these effects is consistent with advocacy-driven increases in incarceration. I also show that other explanations for the relationship between privatization and higher rates of incarceration do not match the observed data. The estimated effect of prison privatization depends on model specification, ranging from 30 to 53 prisoners per 100,000 residents. This suggests that states with private prisons, using the most conservative estimates, had incarceration rates in 2014 that were 7% to 13.5% higher than they would have had without private prisons. I also explore the fiscal impact of prison privatization and show that privatizing states do not achieve any savings per prisoner, and given the increase in incarceration following privatization, privatizing states end up spending more per resident on corrections.

Timeline of Prison Privatization

A challenge to estimating the effect of prison privatization was the absence of a comprehensive timeline of the year of adoption of for-profit private prisons. Beginning in 1999, the Bureau of Justice Statistics provides the numbers of prisoners by state held in private prisons per state. However, the Bureau of Justice Statistics does not differentiate

between for-profit and non-profit private facilities. Likewise, Blumstein, Cohen and Seth (2007) provided a record of which states used private prisons beginning in 1996, based on the Corrections Yearbook. Like the Bureau of Justice Statistics, Blumstein et al. did not distinguish between for-profit and non-profit prisons.

In order to create a data set that included whether states used for-profit private prison and the year of their adoption, I drew on a variety of sources, including articles, court proceedings, correctional department websites, private prison websites, and newspaper accounts. Sources for each date of privatization is available in the appendix.

I treated a state as having adopted private prisons if adult prisoners under state jurisdiction were placed into a correctional facility operated by a for-profit private firm. These facilities could include private prisons of any security level, or halfway houses. In most cases, privatizing states used privately operated prisons that held the general adult population. Michigan's use of private prisons came in the form of a "punk prison" that primarily housed juvenile offenders, but also 19-year old adults. In New Jersey, the state contracted with a nonprofit to operate halfway houses, and the nonprofit contracted with a for-profit operator. When states had only county or local jails that were privately operated, I coded them as un-treated, unless these jails also housed convicted state prisoners as was the case in Tennessee.

Adoption of private prisons began in the 1980s and grew slowly through the rest of the decade. In 1990, eight states made use of for-profit prisons but by 1999, over half of all states used for-profit prisons. In the 2000s, several states abandoned the use of for-profit prisons, but they remained in use for about half the states through 2014. Table 4.1 presents the use of for-profit private prisons by state through 2014.

Table 4.1**Use of For-Profit Private Prisons by State**

State	Year Adopted
Alabama	2003
Alaska	1985
Arizona	1994
Arkansas	1998-2002
California	1986
Colorado	1995
Connecticut	Did not Privatize
Delaware	Did not Privatize
Florida	1985
Georgia	1998
Hawaii	1995
Idaho	1997
Illinois	Did not Privatize
Indiana	1998
Iowa	Did not Privatize
Kansas	Did not Privatize
Kentucky	1986-2013
Louisiana	1990
Maine	Did not Privatize
Maryland	Did not Privatize
Massachusetts	Did not Privatize
Michigan	1998-2005
Minnesota	2004-2010
Mississippi	1996
Missouri	Did not Privatize
Montana	1999
Nebraska	Did not Privatize
Nevada	1997-2003
New Hampshire	Did not Privatize
New Jersey	1996
New Mexico	1989
New York	Did not Privatize
North Carolina	1998-2001
North Dakota	2004-2010
Ohio	2000
Oklahoma	1996
Oregon	Did not Privatize
Pennsylvania	2001
Rhode Island	Did not Privatize
South Carolina	Did not Privatize
South Dakota	1992
Tennessee	1984
Texas	1984
Utah	1994-2001
Vermont	2004
Virginia	1998
Washington	2004-2010
West Virginia	Did not Privatize
Wisconsin	1998-2005
Wyoming	1997

Incarceration Rates Before and After Privatization

States were not forced to adopt the use of for-profit private prisons. That some did, and others did not, suggests that there are likely differences between the two types of states. It would not be surprising if the two sets of states had very different average incarceration rates. States that privatized had slightly higher incarceration rate as all states. Yet, a few years after states adopted the use of private prisons, trends diverged, with incarceration rates in privatized states growing more rapidly. For instance, Mississippi's incarceration rate before and after privatization is shown in Figure 4.1, as is the 50-state average incarceration rate over that time. The incarceration rate refers to the number of prisoners under state jurisdiction per one hundred thousand residents. In Figure 4.2, I present the average incarceration rate for states that privatized in the decade immediately prior to privatization, and the decade that begins upon privatization. To compare states that privatized to the nation as whole, I compare each state that privatized to the average incarceration rate across the same time period for all 50 states.

Figure 4.1

Incarceration Rate in Mississippi Before and After Privatization

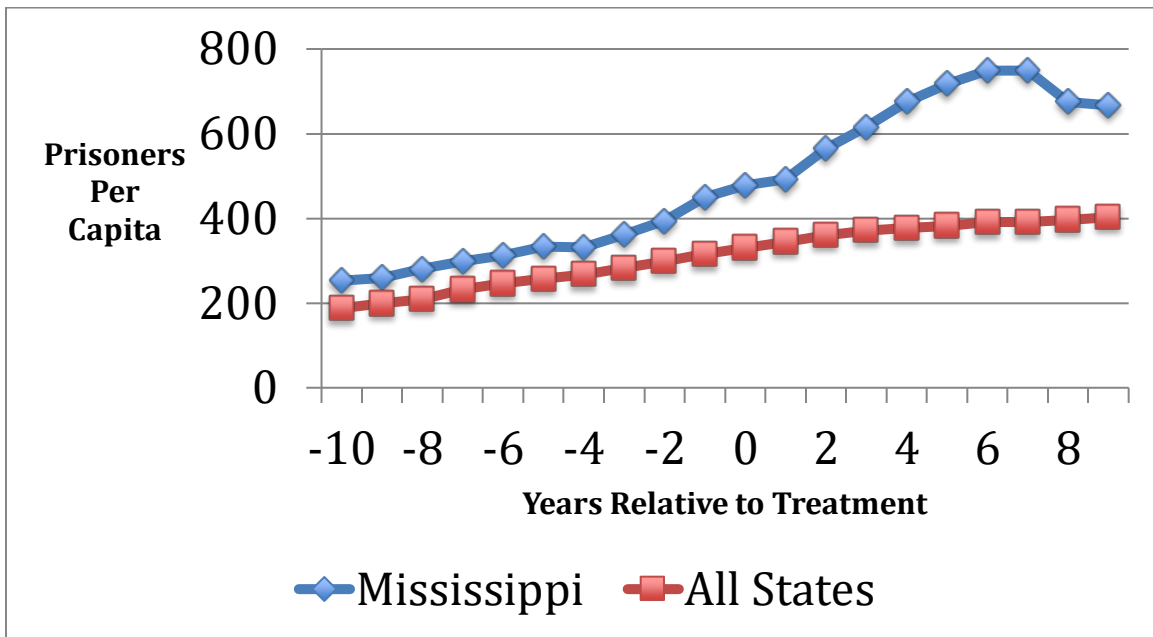


Figure 4.2

Incarceration Rates, Before and After Privatization

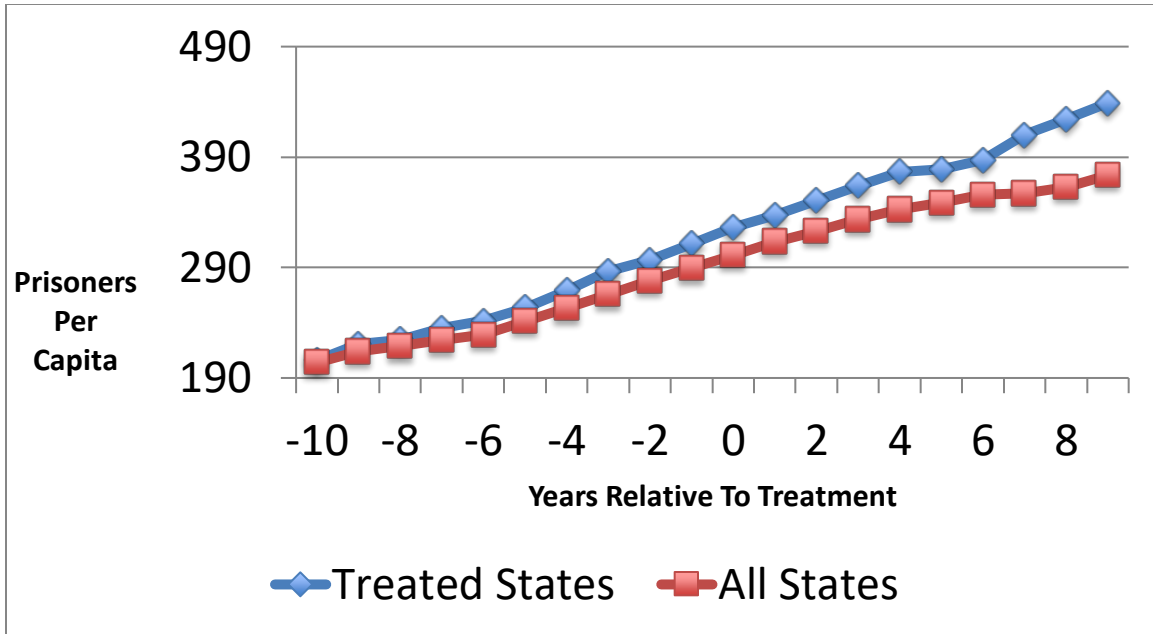
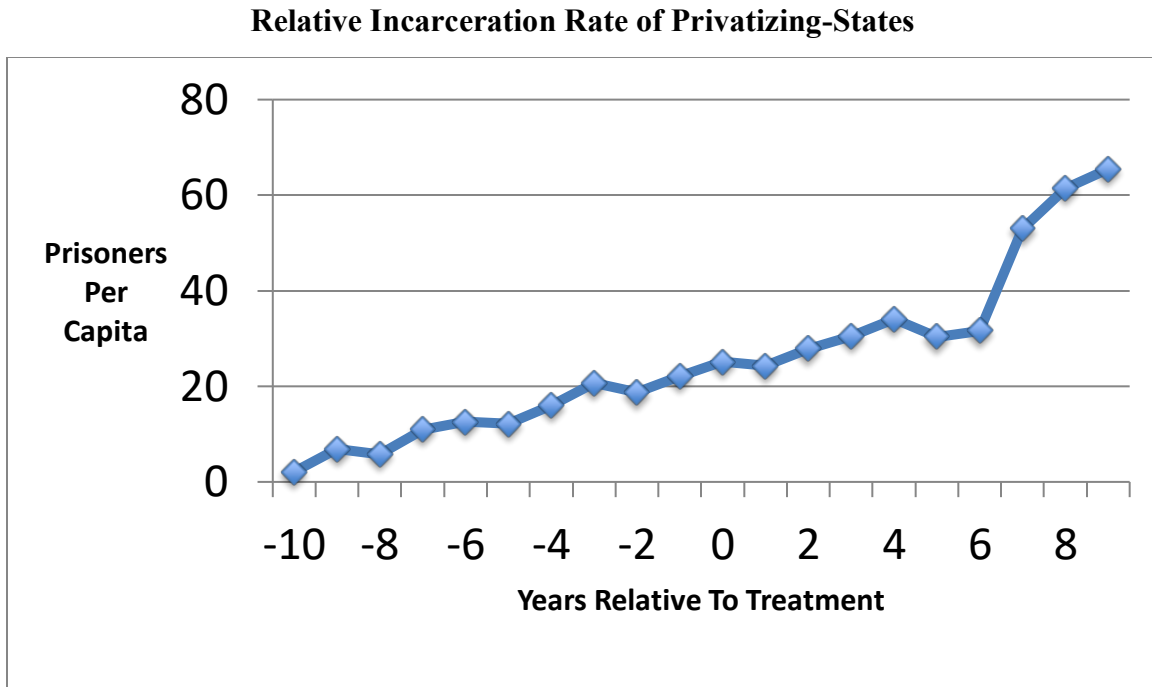


Figure 4.2 demonstrates that in the years prior to privatization, states that privatized had incarceration rates that were rising at roughly the same rate as the nation as a whole. Yet in the period following privatization, states that privatized experienced faster growth in their incarceration while states as a whole experienced slower growth in incarceration rates. This difference can be seen by comparing the difference in incarceration rates between privatizing states and all states, as shown in Figure 4.3. The slope of the relative incarceration rate doubles in the decade after privatization.

Figure 4.3



States diverged from national trends in incarceration rates following privatization. This is consistent with my hypothesis that privatization causes increased incarceration. Alternatively, increased incarceration could cause privatization. Perhaps states adopted the use of private prisons to address swelling prison populations. Or private prison firms might prefer to enter states where incarceration is growing the most rapidly. Yet, looking at the data, these possibilities of reverse causality seem extremely unlikely. These trends are consistent with my hypothesis that privatization is driving increased incarceration.

Time-series Cross-sectional Model

To estimate the effect of privatization, I use a time-series cross-sectional model. My data set includes all 50 states and all years between 1978 and 2014, inclusive. I use state fixed effects to control for time-invariant features of states. Because contemporary use of for-profit private prisons began in the 1980s, the use of private prisons is not time-invariant for any state.

I use two different approaches to control for the effects of time on incarceration. In some specifications, I use year fixed effects. Year fixed effects allow me to control for year-to-year shocks to incarceration rates. I implement year fixed effects through the use of a dummy variable for each year in my panel. The limitation to the use of year fixed effects is that individual state incarceration rates may follow their own path over time.

Failing to control for this could lead to a spurious relationship between prison privatization and incarceration rates. If states privatized their prisons in response to a growing prison population, then states would experience faster growth in incarceration before they privatized. Thus, there could be a positive and significant relationship between prison privatization and incarceration rates despite the causal relationship being reversed. While this appears to be untrue based on the figures that show relative incarceration rates, I can also explicitly control for this through the use of state-specific time trends.

To control for different trends in incarceration rates between states, I created a linear variable for a national time trend. In my equation, I incorporate both the national time trend and an interaction between it and each state. This allows me to estimate the effect of prison privatization on incarceration rates by controlling for state-specific time trends, as well as the national time trend.

I use a dummy variable for prison privatization. A state is coded as treated in years in which a for-profit private correctional facility housed prisoners under state jurisdiction, and as un-treated otherwise. Initially, I was concerned that private prison firms might have begun to lobby on incarceration before they actually housed any prisoners. A firm could have begun pro-incarceration advocacy upon signing a contract with a state or when a state passed legislation or implemented an administrative decision that allowed for the use of private prisons. If this were the case, there might be an apparent treatment effect in the years immediately before prison privatization. This is not the case as I will discuss in more detail later.

I also use a dummy variable to indicate when a state has discontinued the use of for-profit private prisons. This is because the effect of no longer having private prisons may be different than the effect of never having had private prisons. For instance, incarceration might fall rapidly without the support of private prison firms.

A risk of using panel data for time-series cross-section models is that serially correlated errors may cause an underestimation of the standard error. Consequently, the certainty of findings may be overstated, because p-values may be inappropriately small. I adjust for this by using the `coeftest` package in R which allows me to adjust for heteroskedasticity and serial correlation (Croissant and Milo, 2008). Standard errors are clustered by state.

I compiled the dates of prison privatization by state. Data on prisoners and incarceration rates by state were obtained from the Bureau of Justice Statistics.

Table 4.2 shows the results of the linear regression of prisoners per capita on state fixed effects, prison privatization, and either year fixed effects or national and state-specific time trends.

Table 4.2

Effect of Privatization on Incarceration Per Capita

	Year Fixed Effects	Time Trends
Privatization	53.71*** (15.05)	38.51*** (11.17)
Adjusted R ²	0.79	0.87
Observations	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Both specifications show a large and highly significant effect of privatization on incarceration rates. I believe modeling the effects of time as state-specific trends is more sensible than assuming national shocks.

Incorporating Controls

To test the robustness of my model, I introduce a set of controls to my time-series cross-sectional model. These controls consist of state policy liberalism, crime rates, partisan control of government, and state demographics.

A possible explanation for the apparent effects of prison privatization on incarceration rates is that states may have undergone a political shift to the right that caused states to be more sympathetic to the use of private firms to deliver government services as well as to increased incarceration. I use the measures of state policy liberalism calculated by Warshaw and Caughey (2015). The authors calculated a measure of state policy liberalism for every state that extends across the length of my panel data. I include covariates from Warshaw and Caughey (2015) for their estimated upper and lower bounds for state policy liberalism, as well as the median of their estimates for each state.

Political control of state government is controlled using dummy variables which indicate whether a state has a Democratic governor, a Republican governor, a Republican or Democratic lower chamber majority, and a Republican or Democratic upper chamber majority. Partisan control data was taken from Klarner (2013) in years before 2012, and from the National Conference of State Legislatures for 2012-2014 (2019).

I also control for violent crimes and property crimes reported per capita. Reported crimes are taken from the FBI's Uniform Crime Reporting. Changes in crime rates could influence state incarceration rates so including covariates for crime rates could improve

the statistical model. There is a risk of including covariates for crime rates if the mechanism by which private firms increased incarceration also increased measured crime rates, perhaps by increasing the number of activities which are criminal or enforcement of laws; then covariates for crime rates could soak up the effect that privatization had on incarceration rates. This would lead to an under-estimation of the effect of prison privatization. However, it's also possible that shifts in the crime rate could affect both the propensity to privatize and the incarceration rate. A crime surge could perhaps convince policymakers that they needed to adopt a new set of criminal justice policies that included both prison reform in the form of privatization, and increased incarceration.

I also include controls for white and black residents per capita. As my dependent variables are per capita, they account for changes in state population. The inclusion of controls produces lower estimates of the effect of privatization on incarceration, although it remains highly significant. State populations and racial characteristics were taken from the U.S. Census Bureau. For years before 2010, this data was compiled by Jordan and Grossman (2017).

In Table 4.3, I present the results of these models. Most controls are omitted from table 4.3 for brevity. Estimated effects of partisan control are presented for comparison.

Table 4.3**Effect of Privatization on Incarceration Per Capita**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	53.71*** (15.05)	38.51*** (11.17)	44.04** (13.81)	30.27** (10.24)
Democratic House	NA	NA	-31.74* (15.74)	-9.94 (6.82)
Democratic Senate	NA	NA	-17.06 (9.06)	-14.05 (9.51)
Democratic Governor	NA	NA	15.95 (13.58)	-4.06 (8.80)
Adjusted R ²	0.79	0.91	0.90	0.94
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Prison privatization has a highly significant effect on incarceration per capita regardless of specification. The smallest estimated effect of prison privatization is roughly 30 prisoners per 100,000 residents. To put this in perspective, the average state incarceration rate in 2014 was 390 prisoners per 100,000 residents and the average state incarceration rate for states with private prisons was 447 prisoners per 100,000 residents. This suggests that if privatizing states had never privatized, they would have at least 7% fewer prisoners.

Lag and Lead Effects

If privatization has a causal effect on incarceration through pro-incarceration advocacy by private prison firms, then privatization should not have an effect on

incarceration before private prison firms began lobbying. There is some risk that private prison firms began their advocacy before private prisons began to operate such as when a firm signed a contract with a state. Thus, it is possible that the appearance of a retroactive effect of privatization on incarceration may be consistent with my theory, if it only occurred in the years immediately before privatization. On the other hand, if privatization appears to have a retroactive effect several years before the operation of private prisons began, then it is likely that the supposed causal relationship between incarceration and prison privatization is spurious.

I can estimate the effects of privatization on incarceration immediately before and after privatization. To do this, I exclude all observations following the first decade of treatment. I then use year dummies for each year in the decade leading up to the implementation of privatization, as well as each year in the decade beginning with the implementation of privatization. My data set begins in 1978 so for each state I have data for the years immediately before the implementation for privatization. Some states discontinued the use of private prisons before a decade of their use elapsed. In these cases, I excluded all years in which they no longer used for-profit private prisons.

This means that each model has twenty independent variables of interest, with a variable corresponding to each year in the decade before and after privatization. With four specifications of the model and with the standard level of statistical significance ($p=0.05$), the expected number of false positives is two. In a single specification, the year immediately prior to privatization, had a statistically significant effect on incarceration at the .05 level. In contrast, across all specifications, half the years following privatization had a statistically significant effect on privatization. All specifications show the estimated effect of privatization rose at the time of privatization. These results are consistent with prison privatization having a causal effect on incarceration.

Prison Crowding and Privatization

Political advocacy is not the only way that the entrance of private prison firms into a state could increase incarceration. Private prisons could have solved problems, such as overcrowded prison facilities, which kept states from incarcerating as many prisoners as they would have liked.

States could have wished to increase incarceration but lacked the prison capacity to do so. In some cases, private prisons have built correctional facilities “on spec” hoping that they would eventually be filled through government contracts (Price, 2006). In others, private prisons located in one state have housed prisoners from other states. In such situations, states could quickly increase the number of available prison beds to hold prisoners. If this is true, we should see states that were the most capacity-constrained experience the highest increase in incarceration following prison privatization.

The Bureau of Justice Statistics collects data regarding the capacity of state prison systems and the number of prisoners as a percentage of system capacity. States report multiple types of prison capacity, such as operational, rated, or designed capacity.

Therefore, I rely on the number of prisoners as a percentage of the highest and lowest reported prison capacity. If states were incarcerating fewer prisoners than they would like due to crowded prisons, states with relatively more crowded prisons would experience greater increases in their incarceration rates.

Below is the relative incarceration rate of privatizing-states based on how crowded their prisons were at the time of privatization. Prison capacity for Alaska and Florida were not available for the year in which they privatized, so I used the reported capacity on the last day of the previous year for those states. Figures 4.4 and 4.5 depict the difference in incarceration between privatizing states and all states by level of prison crowding at time of privatization.

Figure 4.4

Relative Incarceration Rate of Privatizing States by Level of Prison Crowding as Percent of Highest Reported Capacity

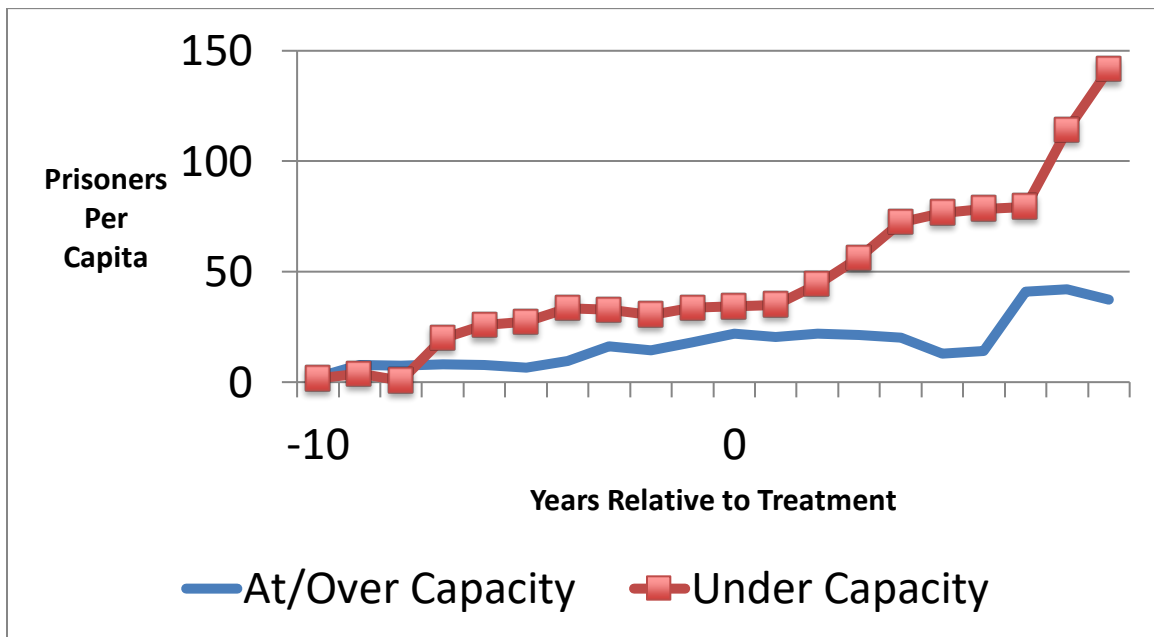
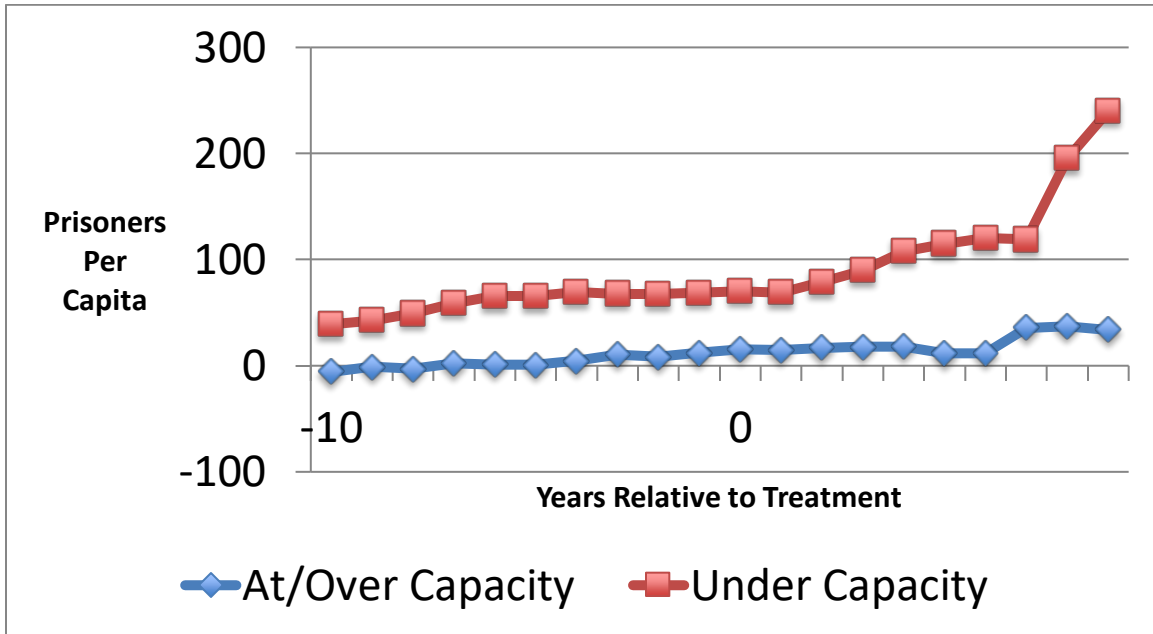


Figure 4.5

Relative Incarceration Rate of Privatizing States by Level of Prison Crowding as Percent of Lowest Reported Capacity



The least crowded prison systems, those with spare capacity, were the states that experienced the greatest growth. If prison privatization encouraged increased incarceration because prison capacity had previously been insufficient, I would expect to see the opposite trend.

Another way to test the possibility that prison privatization drives incarceration would be to include measures of crowding within my time series model. Unfortunately, when states report capacity to the Bureau of Justice Statistics, some states include private prison capacity. Thus, a state that appears to have plenty of capacity may have extremely crowded state prisons and is dependent on private prisons to deal with overcrowding. Further, not all states report capacity to Bureau of Justice Statistics.

To test whether privatization may drive increased incarceration by solving capacity constraints, I exploit the fact that most prison facilities are only used to house one sex of prisoners and that many privatizing states only held one sex of prisoners in private for-profit prisons, or introduced the use of private prisons at different times for each sex.

Most correctional facilities house only female or male prisoners. The most recent Census of State and Federal Adult Correctional Facilities listed 1821 correctional facilities in the United States. Of these only 276 (15%) were authorized to house both

sexes. These coed facilities contained 6% of the total correctional facility population. Not all of these facilities were coed in practice, however. Twenty of these facilities reported an average daily female population of zero, while for these facilities as a whole, female prisoners comprised 17% of the inmate population.

If a state were to begin housing some of its male prisoners in private prisons, it would free up room for additional male prisoners. This is true whether or not the male prisoners came from male-only or coed correctional facilities. If male prisoners were relocated from coed public facilities to private facilities, it could free up room for additional female prisoners. But because not all male prisoners are coming from coed public facilities, the use of private prisons to house male prisoners should have a greater effect on crowding of male prisons than of female prisons.

This is complicated by the vastly greater size of the male prison population. Placing male prisoners into private prisons would free up more prison cells for male prisoners in absolute numbers than it would for female prisoners. But since there are so many more male prisoners, if these newly open prison cells were used to house female prisoners, it could free up more additional prison cells for female prisoners in percentage terms. Thus, if privatization increases incarceration by overcoming capacity constraints, it is not clear what we should expect the effect of male prison privatization to be.

In contrast, it is clear what we should expect the effect of female prison privatization to be. Since there are so few female prisoners, placing female prisoners into private prisons would increase female incarceration, if overcoming capacity constraints is the mechanism by which privatization increases incarceration. However, it would not meaningfully increase male incarceration because the absolute number of female prisoners in private prisons is so small.

To model the effect of privatization by sex on incarceration, I make the following changes to my model. While in other specifications of my time series model, the independent variable of interest was whether or not a state used for-profit private prisons in a given year, in the following model I have three independent variables of interest corresponding to whether a state used for-profit prisons in a given year for male prisoners, female prisoners, or both, which is represented by an interaction term. I also include dummy variables for state-years in which privatization of male prisons and female prisons has ended, as well as an interaction term for those two dummy variables. Tables 4.4, 4.5, and 4.6 present the effect of privatization by sex on prisoners per capita, male prisoners per capita, and female prisoners per capita, respectively.

Table 4.4**Effect of Privatization on Incarceration Per Capita**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization (Male)	57.53** (19.53)	35.95** (11.74)	47.96** (17.31)	26.63* (11.83)
Privatization (Female)	54.39 (30.71)	44.15* (19.42)	33.45 (31.56)	18.53 (16.51)
Interaction	-60.19 (31.69)	-30.15 (17.48)	-37.16 (32.51)	-1.97 (16.59)
Adjusted R ²	0.89	0.93	0.90	0.94
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Table 4.5**Effect of Privatization on Male Incarceration Per Capita (Per Male Residents)**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization (Male)	101.92** (36.12)	62.89** (21.89)	86.65** (32.15)	44.70* (22.11)
Privatization (Female)	78.99 (52.24)	77.81* (30.68)	45.10 (47.39)	25.67 (25.69)
Interaction	-93.78 (48.75)	-50.36* (25.19)	-55.76 (49.37)	7.00 (25.14)
Adjusted R ²	0.89	0.93	0.90	0.94
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Table 4.6

Effect of Privatization on Female Incarceration Per Capita (Per Female Residents)

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization (Male)	13.02** (4.45)	7.99* (3.24)	8.70* (3.65)	6.73* (3.04)
Privatization (Female)	23.66 (15.61)	7.23 (8.77)	15.36 (15.56)	5.20 (8.19)
Interaction	-23.67 (9.68)	-6.51 (9.30)	-13.58 (15.94)	-4.16 (8.73)
Adjusted R ²	0.82	0.91	0.85	0.92
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Privatizing male correctional facilities has a highly significant effect on overall incarceration, incarceration of male prisoners, and incarceration of female prisoners. The effect is robust to use of year fixed effects or state specific time trends, as well as incorporation of controls. The effect size is large and consistent with the effect size of privatization in general. Privatizing only female correctional facilities has a significant effect on male and overall incarceration rates, under a single specification. The effect of privatization on incarceration then is primarily, if not entirely, driven by the privatization of male facilities.

Privatization of female facilities has no effect on female incarceration. This is completely inconsistent with the theory that privatization drives incarceration by solving prison overcrowding. Instead, only the privatization of male facilities affects the female incarceration rate.

That the effects of prison privatization are really the effects of privatizing men's prisons fits well with the politics-based explanation for the link between privatization and incarceration because states that use private prisons hold substantially more male than female prisoners in private prisons. If private prison firms have more incentives to lobby

for increased incarceration in states in which they have larger market share, private prison firms should be more likely to lobby in states that have privatized male correctional facilities than they are in states that have privatized female correctional facilities. Privatization's effect on state politics explains the relationship much better than does privatization's effect on overcrowding.

Price Sensitivity and Incarceration

Private prisons could increase incarceration rates by lowering the price of incarceration. If states are sensitive to the price of incarceration, private prisons could induce higher incarceration if they are able to provide more cost-effective prisons or to constrain the costs of the public prison system through competition.

There is not clear evidence that private prisons cost governments less than comparable public prisons. The General Accounting Office (2007) in a review of the federal government's use of private prisons said that it was too difficult to determine whether private prisons delivered savings with available data. A meta-analysis by Pratt and Maahs (1999) found no difference between the cost of private and public prisons. A few scholars have argued that private prisons do yield meaningful savings, such as McDonald and Carlson (2005) and Hakim and Blackstone (2014).

Even if private prisons charged states the same amount per prisoner as the public prison system, it is possible that private prisons still saved states money by constraining the growth of public prison costs. Blumstein, Cohen and Seth (2007) found that states that had any prisoners in private prisons in 1996, whether for-profit or profit, experienced lower growth in corrections expenditures per prisoner. The authors suggested this could happen through either competition or the public prison system learning from private prisons.

That the privatization of male correctional facilities drives increased female incarceration argues against this. If a state successfully reduced the cost of housing male prisoners by privatizing male prisons, there would be no reason to expect the number of female prisoners to increase. There might even be reason to expect the opposite. If the price of imprisoning men falls, states might choose to incarcerate more men. The fall in the price of imprisoning men would not directly affect the price of imprisoning women. If correctional budgets are fixed, it is even possible that fewer women would be imprisoned as imprisoning men becomes more attractive due to cost savings and, more of the correctional budget might be allocated to male incarceration. Therefore, it is unlikely that privatization drives incarceration increases through cost savings.

I further test the possibility that price sensitivity can explain the relationship between incarceration and privatization by estimating the effect of prison privatization on corrections spending per prisoner. With my data set, I am able to both exploit the staggered introduction of prison privatization as well as estimate the cost of prison privatization on correctional spending across the entire period of contemporary private

prison use, which Blumstein, Cohen, and Seth could not. This also allows me to control for state-specific trends in corrections expenditures,

I use the Annual Surveys of State and Local Government Finance to obtain corrections expenditures between 1978 and 2014. State-level corrections expenditures were available for all these years. Total local corrections expenditures by state were available for these years, with the exception of 2001 and 2003. Expenditures are reported in thousands. The number of prisoners under state jurisdiction is taken, as before, from the Bureau of Justice Statistics.

Using the natural log of the sum of state corrections expenditures and local corrections expenditures within a state allows me to estimate the effect of privatization on all corrections expenditures within a state. It also allows for comparable expenditure measures between the majority of states that separate out state and local corrections expenditures and states like Hawaii that do not. The downside of this is that we might expect the effects of prison privatization to affect state expenditures but not local expenditures on jails. In Table 4.7 and 4.8, using my time-series cross-sectional model, I present the effects of privatization on logged state expenditures and then on logged combined state and local expenditures. I find no evidence that prison privatization reduces corrections expenditures per prisoner.

Table 4.7

Effect of Privatization on State Corrections Expenditures Per Prisoner (Logged)

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	0.01 (0.04)	0.07 (0.05)	0.02 (0.04)	0.06 (0.04)
Adjusted R ²	0.86	0.89	0.87	0.93
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Table 4.8

Effect of Privatization on State and Local Corrections Expenditures, Combined, Per Prisoner (Logged)

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	0.02 (0.05)	0.04 (0.05)	0.01 (0.04)	0.02 (0.05)
Adjusted R ²	0.90	0.92	0.90	0.93
Observations	1750	1750	1750	1750

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Whether estimating the effect of prison privatization on state correctional spending per prisoner or on the combined state and local correctional spending per prisoner, I find no significant results regardless of the use of year fixed effects or state-specific time trends. The estimated effect of privatization on correctional spending per prisoner is not only insignificant but the estimated effect is that privatization causes an increase in logged correctional spending per prisoner. This suggests that any increase in incarceration rates following prison privatization is not driven by states choosing to incarcerate more prisoners in response to a lower cost of incarceration

Given that prison privatization predicts higher levels of incarceration but no effect on expenditures per prisoner, it is not surprising that prison privatization also predicts higher levels of corrections expenditures per state resident.

Table 4.9**Effect of Privatization on State Corrections Expenditures Per Capita**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	0.09 (0.05)	0.15* (0.07)	0.06 (0.05)	0.10* (0.04)
Adjusted R ²	0.94	0.91	0.95	0.94
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Table 4.10**Effect of Privatization on State and Local Corrections Expenditures Per Capita**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	0.09* (0.04)	0.12 (0.07)	0.05 (0.04)	0.05 (0.04)
Adjusted R ²	0.96	0.92	0.96	0.95
Observations	1750	1750	1750	1750

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

The estimated effect varies with specification from roughly a four percent to fifteen percent increase in correctional expenditures. The average estimated effect of privatization on states correctional expenditures is about 10%, implying that almost a tenth of state correctional expenditures are attributable to the effect of privatization.

Incarceration and Internal Private Prison Operations

Mukherjee (2014) argued that private prisons increase incarceration by making inmates held in private prisons serve a longer share of their sentences through greater usage of conduct violations, making fewer prisoners eligible for early release. Based on the introduction of private prisons to Mississippi, she estimates that this results in privately held prisoners serving sentences that are 7% longer. This clearly illustrates a non-political mechanism through which privatization may increase incarceration. Yet the magnitude of the effect found by Mukherjee is far too small to account for the impact of privatization on incarceration found by my model. My finding suggest that incarceration is at least 7% higher in states which privatize. The median share of privately held prisoners across all states with any private prisoners is 12% (BJS, 2019), which would imply these states would experience a roughly 0.8% increase in incarceration due to conduct violations. Mukherjee's findings would be insufficient to explain away the total increase in incarceration found by my model.

Second, there does not appear to be a general effect of privatization on prison sentences. To estimate the average prison sentence per state, I use a method taken from Raphael and Stoll (2013) where the average served prison sentence is calculated by the ratio of sentenced prisoners in a given jurisdiction to the number of sentenced prisoners released in a given year.

Table 4.11**Effect of Privatization on Length of Served Prison Sentences in Years**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization (Male)	-0.145 (0.17)	-0.24 (0.16)	-0.12 (0.15)	-0.22 (0.13)
Privatization (Female)	-0.16 (0.18)	-0.08 (0.17)	-0.15 (0.17)	-0.10 (0.22)
Interaction	0.29 (0.21)	0.24 (0.18)	0.23 (0.18)	0.20 (0.22)
Adjusted R ²	0.38	0.50	0.40	0.51
Observations	1849	1849	1849	1849

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

Privatization and Prison Admissions

In theory, privatization could increase incarceration by either increasing sentence length or the number of individuals sentenced to prison. As privatization has no effect on sentence length, this implies that privatization increases the rate of admission to prison. I was able to examine this question by applying the same time-series cross-sectional analysis I used earlier in this chapter, to estimate the effect of prison privatization on admissions to state prison systems per capita. Data on prison admissions were taken from the Bureau of Justice Statistics' Prisoner Series. Data begins in 1978. The results are presented in Table 4.12.

Table 4.12**Effect of Privatization on Prison Admissions Per Capita**

	Year Fixed Effects	Time Trends	Year Fixed Effects with Controls	Time Trends with Controls
Privatization	37.36*	35.54*	28.20	27.30*
(Male)	(16.81)	(13.98)	(15.04)	(11.13)
Privatization	58.95	38.19	49.44	17.81
(Female)	(48.49)	(26.79)	(44.25)	(26.23)
Interaction	-80.69	-48.47	-66.45	-24.31
	37.04	(24.15)	(43.66)	(24.01)
Adjusted R ²	0.68	0.76	0.70	0.80
Observations	1850	1850	1850	1850

* $p < .05$, ** $p < .01$, *** $p < .001$. Standard errors are in parentheses.

The effect of privatization on prison admissions per capita is lower than the estimated effect of privatization on incarceration per capita. For specifications that include year fixed effects, the effect of privatization of male facilities on admissions per capita is roughly one quarter to one third less than the effect of privatization of male facilities on prisoners per capita. For specifications that include state specific time trends, the difference between the estimated effects on prison admissions per capita and prisoners per capita is quite small. This suggests that the increase in incarceration associated with prison privatization is driven entirely by more individuals entering prisons.

Conclusion

Incarceration rates increased in states that adopted prison privatization. The effect is robust to model specification. The increase in incarceration rates cannot be explained by a pre-existing trend where private prisons enter states where incarceration rates are

already trending upwards, because my models include controls for state-specific trends. This can also be seen by estimating the effect of privatization on years before privatization occurred which shows that there is no retroactive effect of privatization. Further, by just looking at incarceration rates in states that privatized relative to the national average, it is clear that states that privatized did not have unusually high incarceration rates prior to the adoption of private prisons.

There are potential mechanisms by which prison privatization could lead to increased incarceration that do not involve political advocacy such as alleviating capacity constraints or by lowering the costs of incarceration. This is not consistent with my findings, because the states with the least crowded prisons increased incarceration the most following privatization, and I find no evidence that prison privatization makes incarceration more affordable for states.

Political advocacy by private prison firms explains the changes in incarceration rates over time. Incarceration rates increase following privatization, not before states are treated. Prison admissions also appear to increase following privatization, although the evidence is not quite as clear as with incarceration.

Overall, the evidence suggests what my theory predicts. Prison privatization increases incarceration in a manner consistent with advocacy-driven incarceration.

Chapter 5: Political Strategies of Private Prison Firms and Corrections Officer Unions

If private prison firms prefer higher incarceration, what political strategy would we expect them to adopt? If corrections officer unions want higher incarceration, how would we expect it to shape their behavior? For typical interest groups with popular goals, it is an easy question. The annual reports of the Sierra Club and the National Rifle Association reveal how they work to advance environmental protection and defend the Second Amendment, respectively. Yet despite public suspicion of private prison firms and corrections officer unions, both reject the claim that they seek to increase incarceration.

Despite the disclaimers of private prison firms and corrections officer unions, it is possible to make predictions about how relative prioritization of increasing incarceration should shape political strategies. First, if *ceteris paribus*, private prison firms benefit more from growth in incarceration than would corrections officer unions, then private prison firms should be more likely to promote increased incarceration. Private prison firms should lobby agencies responsible for criminal justice policies more intensely, lobby the legislature more on criminal justice issues, and this lobbying should be visible to other interest groups that work on criminal justice policy.

More generally, if private prison firms are interested in growth, we should expect them to take a proactive political strategy; firms should try to expand upon their status quo. This could come in the form of supporting increased incarceration, but it could also consist of seeking a larger market share, better fees for their services, or more favorable regulation.

Corrections officer unions should take a more defensive political stance. This is because labor unions face a trade-off between employment and wages. The greater the level of wages they demand, the more they constrict the supply of employment. Much of the benefit of increased employment within a unionized workforce would go to future members of the union who would be hired as employment expands, rather than the incumbent union members who might prefer to restrict employment to boost wages. That is not to say that unions should be wholly defensive. Unions can still seek to improve upon the status quo to benefit their current members. They might lobby for increased compensation or improved working conditions. They might also value growth as more members likely increases their political influence over their employer, the state. Still, I expect there should be a clear distinction in the overall political orientation of firms and unions, with firms adopting a more proactive political strategy.

In this chapter, I look at whether private prison firms and corrections officer unions behave differently in the ways predicted by my theory. Does it look like private prisons lobby more on incarceration? Do private prison firms adopt more proactive political strategies? To examine this, I draw on a series of roughly one hundred interviews conducted with lobbyists, legislators, and interest group representatives. These interviews show that private prison firms make substantially higher incarceration-related political expenditures and private prison firms take a more proactive and more pro-incarceration political stance than do corrections officer unions.

Selection of States

I conducted interviews across five states: California, Arizona, Montana, Ohio, and Pennsylvania. I chose these states to provide a variety of regions, partisan orientation, and population sizes. They also differ in terms of corrections officer unions and private prisons.

Page (2011) argued that independent corrections officer unions were more politically powerful than were corrections officer unions that were affiliated with larger umbrella unions. While all five states have labor unions that represent corrections officers, the type of union varies. In California, an independent union called the California Correctional Peace Officer Association represents corrections officers and is generally regarded as one of the most powerful unions of its kind. In Arizona, multiple labor unions represent corrections officers including the Arizona Correctional Peace Officer Association, the Fraternal Order of Police, and the Arizona Corrections Association. In Pennsylvania, the Pennsylvania State Corrections Officer Association represents corrections officers. In Ohio and Montana, general public employee unions represent corrections officers. This selection of states will allow me to compare union strength between independent and affiliated union types and see whether the Pennsylvania State Corrections Officer Association and the California Correctional Peace Officer Association are unusually influential, and in the case of the latter, live up to its reputation.

Arizona, California, Montana, and Ohio all incarcerated some adult prisoners in private prisons in 2016. Pennsylvania did not have traditional private prisons, but it did have privately operated correctional facilities in the form of adult halfway houses, that were operated by private prison firms, as well as by nonprofits. In my interviews with Pennsylvania respondents, they made clear that they did not consider this to constitute prison privatization. When I asked about the political activities of private prisons in Pennsylvania, Pennsylvania respondents were insistent that private prison firms were not politically active, as Pennsylvania did not have private prisons.

Because private prison firms were not politically active, the Pennsylvania State Corrections Officers Association could not free-ride off private prisons even if it wanted to. If corrections officer unions are an important political force for increased incarceration, we should see this clearly in Pennsylvania. Arizona, Ohio, and Montana are useful cases as all three states have substantial market share held by private prisons. This is especially true in Montana, where a single private prison facility holds a large share of the entire state's prison population.

Table 5.1

Comparison of States, 2016

State	Corrections Officer Union	% Prisoners in Private Prisons	Prisoners Per Capita
Arizona	Multiple Unions, including independent	19.6	585
California	Independent Union	5.4	331
Montana	Affiliated with AFL-CIO	38.8	364
Ohio	Affiliated with AFL-CIO	12	449
Pennsylvania	Independent Union	1.4	383

Selection of Interview Subjects

I identified legislators of interest by their service on public safety, corrections, law enforcement, or judiciary committees. I first requested interviews with legislators. In a minority of cases, I was referred to a legislative staffer who was familiar with criminal justice politics. Legislators were selected from the current legislative sessions, except in California where the interview period spanned two legislative sessions. Accordingly, I contacted legislators who served in the relevant committee in either legislative session.

I identified Interest groups which are involved in criminal justice by examining public lobbying records of all years between 2013 and the year in which interviews were conducted in the chosen states. Additional interest groups were added to the sample when other respondents named them as being politically active on criminal justice issues and they were registered as lobbyists. I contacted interest groups directly seeking an interview. When no contact information was available, I contacted the lobbying firm that represented the interest group. Not all interest groups employed lobbyists outside of their organization. In a few cases, multiple interest groups referred my request for an interview to the same outside lobbyist. In that case, I interviewed the lobbyist on behalf of the first interest group to refer me to him or her.

My focus on interest groups which engaged in substantial enough advocacy that they registered as lobbyists appeared to capture the relevant interest groups across states. In only a few cases were interest groups mentioned that did not register as lobbyists. Examples of non-registered interest groups included Black Lives Matter and individual victims of crimes and their families.

Interviews were semi-structured. I asked interest groups to describe a recent criminal justice issue they worked on, who their allies and opponents were, and whether they pursued a primarily proactive or defensive political strategy. I told respondents that a proactive political strategy consists of trying to improve upon the status quo, and a defensive political strategy consists of trying to preserve the status quo. I then asked them to evaluate the political orientation (whether proactive or defensive) of private prison firms, corrections officer unions, and law enforcement unions. I asked them to evaluate law enforcement unions because law enforcement unions are another type of union inherently connected to criminal justice policies. If unions tend to be defensive in general, this should hold true for both law enforcement and corrections officer unions. When interviewing corrections officer unions or private prison firms, I also asked whether they lobbied on criminal justice issues in general and sentencing in particular.

Legislators were asked the same questions. However, instead of asking them a recent issue they worked on related to criminal justice, I asked about recent criminal justice issues on which they were lobbied. Interviews were conducted between December 2016 and March 2018 both in person and by phone.

Table 5.2

Interviews by State

State	Number Interest Groups Interviewed	Number Legislative Offices Interviewed
Arizona	13	3
California	24	9
Ohio	10	4
Montana	9	7
Pennsylvania	8	10
Total	64	33

Response rates were similar across states. Slightly less than half of all interest groups agreed to interviews¹ and slightly less than a sixth of all legislative offices agreed to interviews.

Table 5.3

Response Rate by State

State	Percent Interest Groups Interviewed	Percent Legislative Offices Interviewed
Arizona	50%	13%
California	55%	19%
Ohio	43%	12%
Montana	41%	17%
Pennsylvania	36%	21%
Total	47%	17%

Private prison firms declined to speak with me, although I was able to interview representatives of nonprofit prison operators and private juvenile detention centers. This validated my interview strategy of not only seeking to interview corrections officer union and private prison firms, but also those interest groups and legislators who were best in a position to observe their political activity. I was able to speak with multiple representatives of corrections officer unions. Table 5.4 depicts the response rate by respondent type across all five states. In a few cases, responses were clearly differentiated by type of interest group. I describe these distinctions later in the chapter

¹ In a few cases, interest groups that were identified as being active in criminal justice politics denied this. For instance, several attorney associations said they only engaged in advocacy on civil law not criminal law, or groups said that they currently only engaged in federal advocacy. In these cases, they were not included in the response rate.

Table 5.4

Response Rate by Respondent Type Across All States

Respondent Type	Response Rate
Corrections/Law Enforcement Groups	52%
Private Prison Firms	0%
Left-wing Groups	48%
Right-wing Groups	36%
All Other Interest Groups	39%
Democratic Party Legislators	22%
Republican Party Legislators	13%

Political Strategies by Sector

One of the major predictions of my theory was that private prison firms would adopt a more proactive political strategy than would corrections officer unions. This prediction was confirmed by the interviews. Respondents viewed private prison firms as taking a more proactive political strategy than corrections officer unions. Representatives of corrections officer unions agreed that they did not have a primarily proactive political strategy, although they viewed themselves as having a balanced political strategy rather than being primarily defensive. Respondents were also much more likely to claim that private prison firms sought to increase incarceration.

Private Prisons

In Ohio, Pennsylvania, and Montana, private prison firms were viewed as formidable political actors, with substantial political sophistication and financial resources. In Pennsylvania, respondents were insistent that their state did not have private prisons, despite some halfway houses being operated by the GEO Group, one of the major private prison firms in the nation. In California, private prisons were viewed as no longer politically relevant, the same description that California respondents offered regarding the California Correctional Peace Officer Association.

Table 5.5²

How Respondents Viewed Orientation of Private Prisons Political Activity

	Proactive	Defensive	Inactive	Unsure	Equal Split	No Answer
Arizona	9	0	1	6	0	0
California	4	0	15	13	1	0
Montana	7	3	2	4	0	0
Ohio	3	1	1	8	0	1
All States	23	4	19	31	1	1

In both Montana and Arizona, a plurality of respondents described the political strategy of private prisons as proactive. California stands out for the relative political inactivity of private prison firms. The relative inactivity of private prisons in California appears to be a recent phenomenon. One respondent attributed the decline in political activity of California private prisons to California’s decision to realign its prison population by shifting prisoners to county jails while another suggested that they had given up due to unified opposition to prison privatization from the law enforcement and criminal justice community. This recent political inactivity was also exhibited by California’s famous corrections officer union, the California Correctional Peace Officer Association.

In conversation, respondents repeatedly returned to a few themes concerning the political activity of private prison firms. Across states private prisons were seen as politically sophisticated, and influential, partly due to heavy political spending, and having close ties to the governor and the executive branch.

² Pennsylvania omitted due to respondents’ claims that PA lacked private prisons.

- The administration has ideas that bear upon the private prisons. But as a general proposition, the administration in developing those ideas works with the private prisons. And by the time they come [to the floor], they're on the same page.
 - Republican Ohio legislator
- I think that happens at a higher level. I image it happens more at the governor's office and cabinet and not at the level I'm at. . . . I would guess that's very influential in the way that money is influential, but it doesn't happen in public meetings in front of media.
 - Representative of a public defenders association
- The lobbyist is quite well heeled, and he doesn't get involved where we can see him.
 - Representative of a liberal advocacy group
- I assume there is more going on than I'm aware of.
 - Representative of a domestic violence group
- A quietly proactive political strategy, they have a really good lobbyist who is connected very deep with Republicans in the legislature.
 - Representative of a law enforcement group
- They work with the governor's office and then directly with certain legislators, and since we've been here, we've never met with them.
 - Ohio Democratic legislator

Money and sophistication were repeatedly cited as the source of political influence of private prison firms. The clearest example of this came from Montana. Montana has a single private prison in Shelby County, operated by CoreCivic (formerly Corrections Corporation of America). As part of its contract with the state of Montana, Montana pays into an escrow fund that would allow the state to purchase the prison facility when the contract expires. With the state, facing a fiscal crunch, CoreCivic offered to turn over the approximately \$30 million in the escrow fund to the state of Montana's general budget in exchange for an extension of the contract between CoreCivic and Montana.

This was a major political issue in Montana; It was brought up by multiple Montana respondents in interviews and caused a special legislative session to address the issue during which CoreCivic lobbied extremely hard according to respondents. They were "lobbying for renewal of [the] state contract, almost to the point of it being uncomfortable" said a state legislator. "They publicly bribed the state of Montana" said a representative of an interest group. Another legislator described CoreCivic as having a "hostage-taking approach with their proposal in a time of great budget duress." Even so some of the respondents who viewed the political strategy as too aggressive or manipulative did express some grudging respect for CoreCivic's political acumen and

their lobbyist who was described as being proactive at safeguarding their contract and rates.

In no state did corrections officer unions exert the same influence or receive the same grudging respect. Instead, they were viewed as minor, defensive political players--when they were viewed as active at all.

Corrections Officer Unions

Corrections officer unions were viewed as much less politically active and influential than private prison firms were. Respondents were more likely to describe corrections officer unions as pursuing a defensive political agenda, and corrections officer unions I interviewed also agreed with this statement

Table 5.6

How Respondents Viewed Orientation of Corrections Officer Unions Political Activity

	Proactive	Defensive	Inactive	Unsure	Equal Split	No Answer
Arizona	1	4	0	8	3	0
California	4	5	6	18	0	0
Montana	0	4	7	4	1	0
Ohio	0	7	2	5	0	0
Pennsylvania	1	9	2	5	1	0
All States	6	29	17	40	5	0

The hypothesis that corrections officer unions would be much less proactive than private prison companies is confirmed by the interviews. In no state did legislators and representatives of interest groups view corrections officer unions as more proactive than defensive. Respondents were four times more likely to describe corrections officer unions as defensive than proactive. They were also more than twice as likely to describe unions as inactive than proactive. In contrast, respondents were more likely to describe private prisons as proactive than either inactive or defensive.

Self-Evaluation of Corrections Officer Unions

Over the course of my interviews, I spoke with representatives of several unions, which represented corrections officers. These representatives differed from other respondents because the corrections officer representatives did not view corrections officer unions as politically inactive. Further, every corrections officer union described themselves as having an equal split between proactive and defensive political activity. This could be due to a general reluctance for an organization to admit lacking a proactive agenda, or due to the unions having greater knowledge about their own activities.

None of the corrections officer unions I spoke to describe their political agenda as supporting higher levels of incarceration. In fact, I received some complaints that the current level of incarceration was too high given the available prison staffing, leading to dangerous working conditions.

- We are usually focused more on representing our members. Our main focus is on working with the legislature to try to get better benefits and better pay. We also represent our members in the case that any get disciplined. . . . We don't participate if there is something that would affect sentencing-- we don't take positions.

They described themselves as focused on the economic well-being and working conditions of their members, rather than on sentencing laws or broader criminal justice issues. When asked to describe recent issues they worked on they listed lobbying for better training for dealing with mentally ill inmates, pay and staffing, and improving the grievance process. Union representatives differed on whether they felt they were subject to a trade-off between compensation and employment level.

- We don't have any way to make the department change the staffing level, we can't prioritize it.
- I don't think that trade-off is real, have we seen worker population drop some? Yeah, but I think that's more due to budgets than the trade-off between negotiation process.
- There does become that issue where they'll say we'll increase entrance pay but you can only recruit two thirds of the number [of new hires] you want.

Independent Unions and the Decline of the CCPOA

In no state were corrections officer unions viewed as politically proactive. This is true despite including California, whose corrections officer union is famous for political strength, and Pennsylvania, where private prison firms house a tiny share of prisoners and whose correction officer union is independent.

Pennsylvania was the median state in terms of how proactive respondents perceived its corrections officer union. Pennsylvania respondents were slightly less likely to view their corrections officer unions as politically inactive but were much more likely to view their unions as politically defensive.

Pennsylvania's unremarkable corrections officer unions suggest that even in the absence of private prisons, unions favor defensive lobbying and focus on typical labor issues such as compensation and conditions, not pro-incarceration advocacy. Even in California, home of the California Correctional Peace Officer Association, respondents were more likely to describe corrections officer unions as defensive or inactive than proactive. California was the state that had the most respondents who did believe that corrections officer unions were politically proactive. Further, many of the respondents who said that the CCPOA was politically inactive said that this had been a recent change and that the CCPOA had been extremely influential in the past. Respondents described an organization in retreat, both in terms of overall political engagement as well as a shift from a proactive to defensive orientation.

- In years past they've been very proactive, but recently in the last three or four years they haven't been very proactive. Primarily reactive these days.

- Representative of a trade association

- Large and influential union. Don't have as much power as a few years ago. Was a time even when budgets were being cut, formerly prisons would still get a 1 percent increase. Pendulum is swinging the other way.

- Representative of an intergovernmental organization

- People talked in the 90s how the CCPOA sponsored sentence-enhancement and were viewed as self-serving. Doesn't happen, now they only happen to talk to people during contract time.

- Chief of staff, Republican legislator

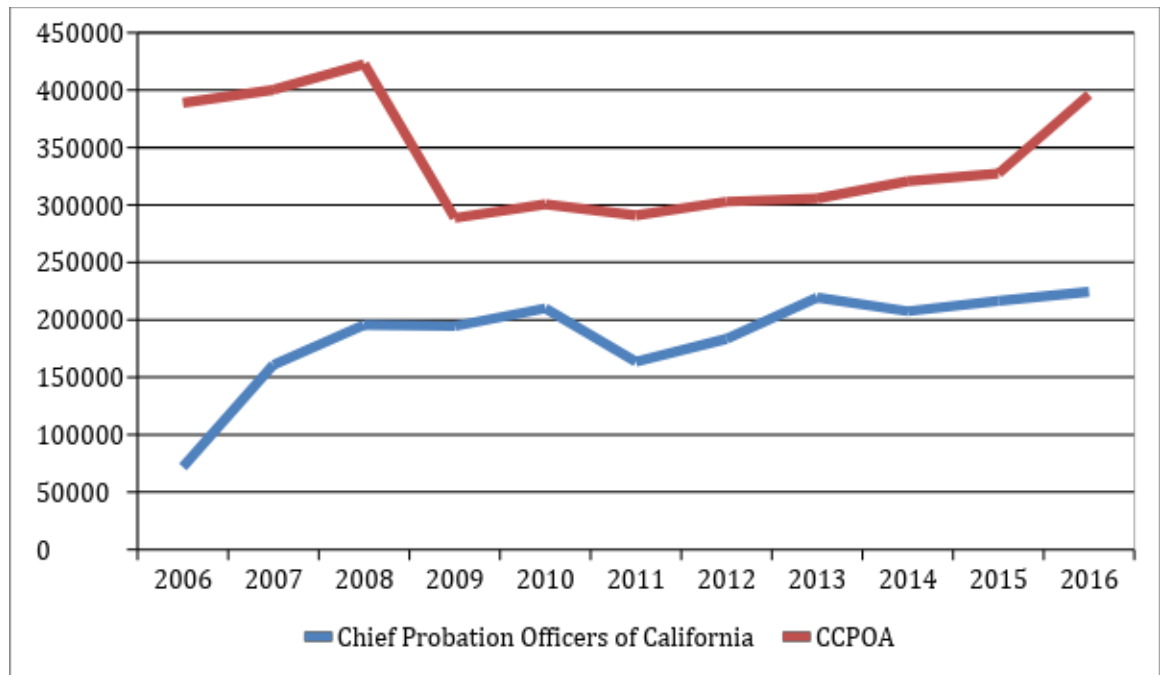
The decline of the CCPOA happened over the same period of time as the political retreat of private prisons. This makes sense if both are a response to a political move in California to meaningfully reduce incarceration. At the same time, the free-riding argument suggests that if private prison firms withdrew from pro-incarceration lobbying then corrections officer unions would increase theirs. This did not happen despite CCPOA having a long history of political support of tough-on-crime policies.

A California chief of staff suggested that the shift from criminal justice policies being decided by the state legislature to voters by ballot initiatives had weakened the

CCPOA. She also argued that the success of Proposition 47, an initiative which reduced California’s prison population, had made corrections officers less politically relevant and probation and parole officers more.

This appears borne out by California lobbying disclosure data provided by the California Secretary of State. Lobbying expenditures by the CCPOA has stagnated over the past decade. In contrast, the Chief Probation Officers of California has increased lobbying expenditures as shown in Figure 5.1.

Figure 5.1
California Lobbying Expenditures



That the California Correctional Peace Officer Association could decline so dramatically over a decade suggests that the ability of an independent corrections officer unions to play a major role in criminal justice is highly contingent on a favorable political environment.

Unions that represented a wide variety of public employees, including corrections officers, did appear to experience some conflict between the generally right-leaning corrections officer population and the generally left-leaning orientation of labor unions. This supports the claim of Page (2008), that the California Correctional Peace Officer Association’s unusual level of political power came in part from its independence, whereas unions affiliated with an umbrella labor union like the AFL-CIO, sacrificed the specific interests of corrections officers.

- We have a thousand law enforcement members and others who aren't law enforcement members and there is that balancing act. Those guys are generally conservative, and we have this guy . . . who said I think you're too liberal but [you] have to understand that we support those who support

us. And I said the far right is always going to attack us and vote against our issues.

- The easy answer is yes- two and a half years ago the Black Lives Matter [movement] started and our correctional officers and police officers were very vocal, and they wanted us to take a position on the issue. Because of the sheer amount of different employees and employee classifications we represent and the ethnic makeup of our union, it was very difficult to take a position that pleased anyone.

Law Enforcement Unions Across the States

Law enforcement unions which represent police officers and sheriffs' deputies, share some features with corrections officer unions. Like corrections officers, law enforcement officers work in the criminal justice field. Both sets of unions are also closer to, or viewed as closer to, the Republican Party than are most unions which represent public employees. My theory claims that unions qua unions will tend to be more defensive than will private firms. In all my interviews with interest groups, I was interested in how respondents viewed private prison firms and corrections officer unions.

The interviews with law enforcement unions, as well as asking other respondents about law enforcement unions, offered a window into union dynamics in general. Like corrections officer unions, law enforcement unions are viewed by respondents as a whole as more defensive than proactive and preoccupied by the economic interests of their members more so than by broader criminal justice issues. Overall, respondents were more than two and a half times more likely to describe law enforcement unions as defensive than proactive. Further, respondents from both inside and outside the law enforcement community agreed that law enforcement unions placed substantially greater weight on labor issues than criminal justice issues.

- On balance, they are in a defensive posture. Every so often they'll bring something forward but it's not about a law enforcement matter, it's a benefits or pensions matter.

- Republican Arizona legislator

- They normally don't lobby on criminal justice issues, they lobby on workplace conditions, the sort of things that labor unions lobby on. In my experience they don't lobby on things like death penalty or bail reform.

- Democratic Pennsylvania legislator

- I don't see them being proactive for criminal justice as a whole, proactive on things that protects their membership, very focused on their membership and not on what can be achieved on the larger topic.

- Democratic Pennsylvania legislator

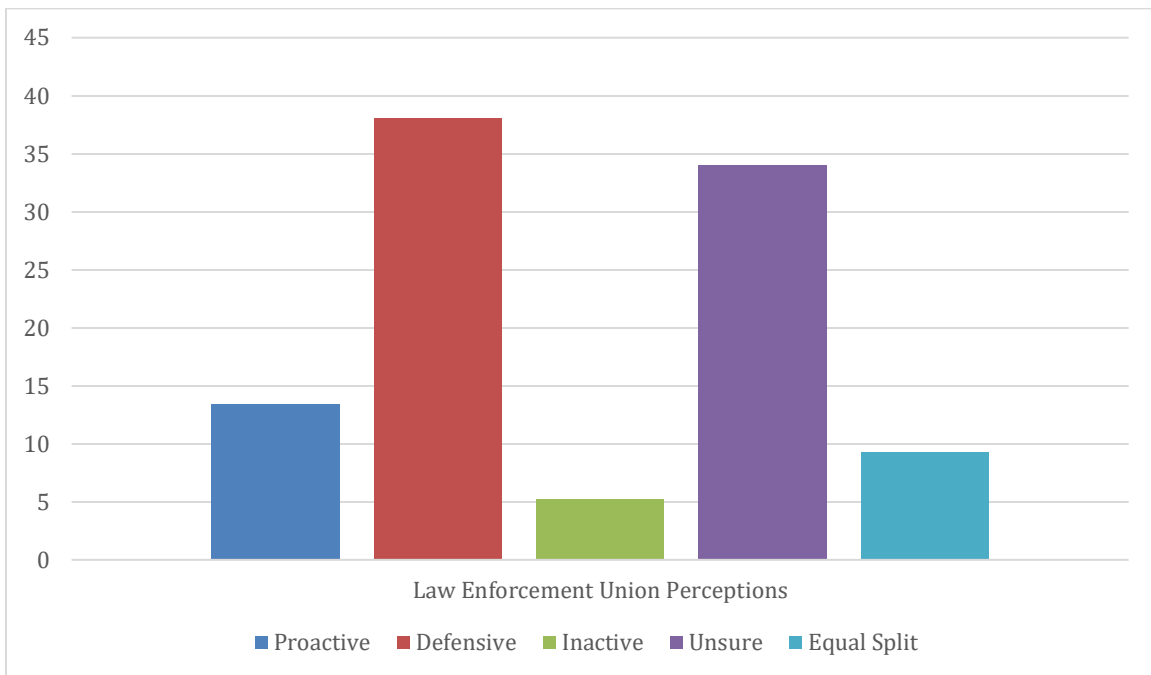
- Not really, there's not a whole lot of issues that involve them.

- Republican Ohio legislator

Occasionally, respondents would mention law enforcement unions supporting tougher criminal justice laws but generally in a secondary role, supporting a policy being championed by a legislator or other interest group. A law enforcement union representative explained its relationship with legislators on these bills as it is “more likely for them to come to us and ask if [the criminal justice bill is] practical, does it work, will this bill achieve the goal they have in mind.” The exception to this was some respondents describing law enforcement unions working to increase penalties for assaults or other crimes against law enforcement officers. Respondents’ views of law enforcement unions’ political activity are presented in Figure 5.2.

Figure 5.2

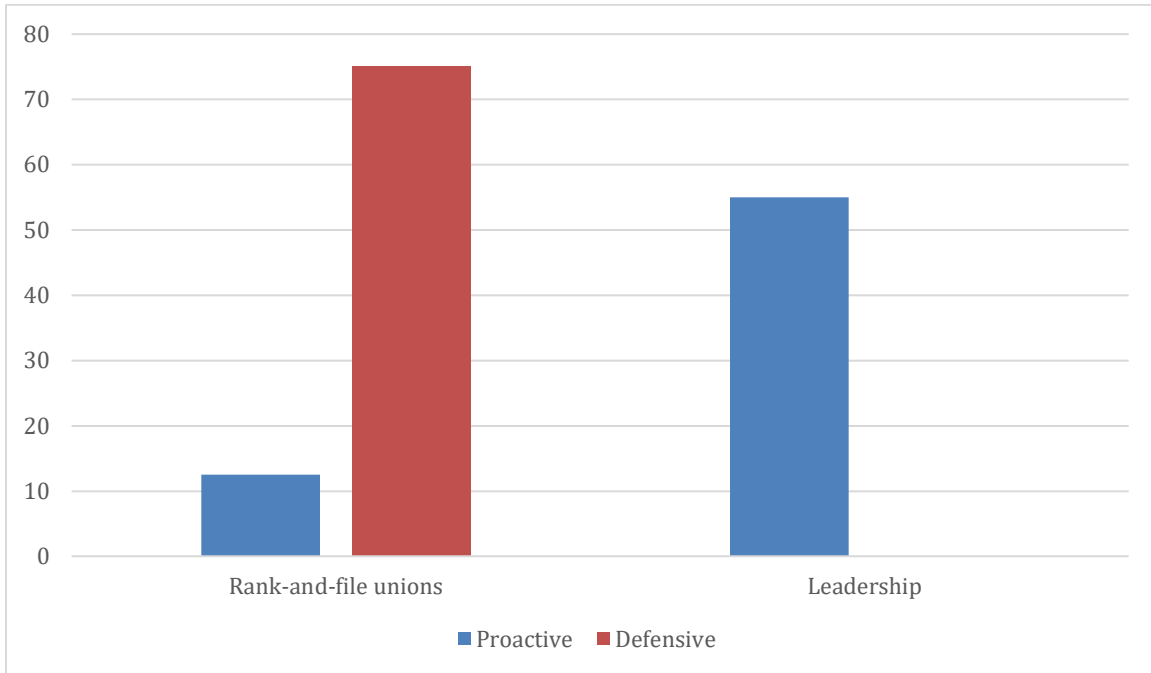
How Respondents Viewed Orientation of Law Enforcement Union Political Activity



One interpretation of this data, and the one I favor, is that unions are defensive and primarily concerned with the interests of their current members. Another possible interpretation is that these interviews were conducted in a time period where policy trends are moving away from lengthy sentences and tough-on-crime policies, and that accounts for both sets of unions taking a defensive role. Although this trend is occurring, I do not think it explains the defensiveness of law enforcement unions. First, unlike the corrections officer union in California, respondents did not generally describe law enforcement unions as going through a period of decline. Second, law enforcement interest groups that represent law enforcement leadership such as sheriffs, police chiefs, and chief probation and parole officers did not show the same evidence of defensiveness. The self-evaluations of law enforcement unions and law enforcement leadership organizations are presented in Figure 5.3.

Figure 5.3

Self-Description of Political Activity by Law Enforcement Unions and Law Enforcement Leadership Organizations (As Percentage of Responses)



When asked whether their own organizations tended to be more proactive or defensive, the differences between labor unions and organizations that represented law enforcement leadership were stark. This shows that the defensiveness of law enforcement labor unions cannot be explained away as some cultural norm of law enforcement diffidence. Nor can the defensiveness of law enforcement unions be explained as evidence of an unfavorable political environment directed toward all law enforcement organizations. The defensiveness of law enforcement unions is entirely consistent with accounts of labor unions being naturally defensive.

While law enforcement leaders and unions frequently listed groups from the other category as some of their most important allies, respondents from law enforcement leadership organizations were often critical of what they viewed as unions' narrow and parochial interests.

- Very insular perspective-- gets us in trouble as a profession. I don't want to disparage labor unions, but they can be myopic towards nationwide trends.
- Very focused on--don't care much about traditional criminal justice issues. Their issues are slotted into typical labor union. Better wages, better benefits, better place to work. I don't think they care about the increase in recidivism rate. . . . How can we get our folks better paid and more safe. . . .

Labor-management division. Management can work at a higher level as compared to more tangible paycheck issues.

Like corrections officer unions, law enforcement unions experience tensions between their more right-leaning criminal justice priorities and their more left-leaning concerns about compensation and job security. One strategy taken was to cultivate relationships with both parties but emphasizing different goals. A law enforcement union representative in California explained their strategy as:

Membership is overwhelmingly Republican. Have two lobbyists--one that works on criminal justice, one that works on labor issues. Democrats are good on meat-and-potatoes issues like benefits, but GOP is good on guns and bullets issues.

Do Private Prison Firms or Corrections Officer Unions Lobby on Incarceration?

Does any of the political activity of private prison firms or corrections officer unions focus on supporting higher levels of incarceration? Private prison firms reject this claim. Likewise, multiple representatives of labor unions that serve corrections officers denied this claim in interviews with me. “We don’t participate if there is something that would affect sentencing. We don’t take positions,” one such representative told me.

Despite these denials, there is widespread belief among both activists and politicians that both private prison companies and corrections officer unions support higher incarceration, although not all critics believe it is true of both interest groups.

There is also clear evidence of cases in which both private prison companies and corrections officer unions did work to increase incarceration. In the “kids for cash” scandal in Pennsylvania, an operator of a private juvenile detention facility was accused of bribing judges to sentence juveniles, many of whom were accused of minor crimes, to serve sentences in the private facility, and two judges were convicted of racketeering (Swift, 2009). When it comes to corrections officer unions, the California Correctional Peace Officer Association is well-known for its past support of tough-on-crime policies such as California’s three-strikes law (Page, 2011) as well as funding victims’ rights groups that supported longer sentences for violent crimes (Carrasco and Petersilia, 2006; Page, 2011).

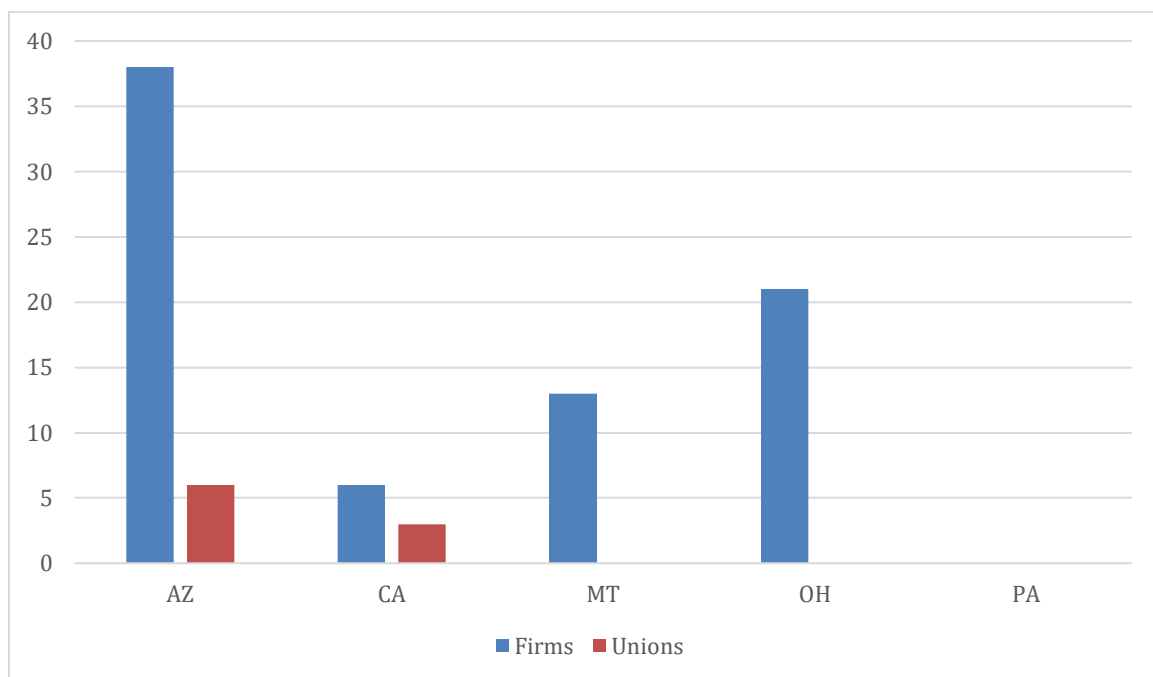
Volokh (2008) described his own hunt for evidence that private prison firms support increased incarceration as turning up only a single piece of clear evidence: the chairman of the GEO Group (then Wackenhut) testified in favor of the Violent Crime Control and Law Enforcement Act of 1994. Accordingly, Volokh argues that the currently available evidence that private prison firms increase incarceration is weak.

A substantial share of respondents, who have direct knowledge and experience of criminal justice politics, brought up their own suspicions with me, unprompted. While both private prison firms and corrections officer unions were described as supporting

increased incarceration by at least some respondents, this belief was much more common regarding private prison firms. This does not prove that private prison firms try to increase incarceration, but it does show that it is not a fringe suspicion or conspiracy theory. Many people who work every day on criminal justice policies view private prison firms as working to increase incarceration.

Figure 5.4 refers only to respondents who brought up this belief without being prompted in interviews. Interviews were structured such that I asked respondents whether private prison firms had a primarily proactive or defensive strategy. Then I would ask what issues or goals private prison firms pursued. I did the same when asking respondents about corrections officer unions. The fact that so many respondents told me that private prison firms worked to increase incarceration shows that this belief is widespread among criminal justice politics experts.

Figure 5.4
Percentage of respondents that believe that interest groups support higher incarceration³



This belief was held across the states. In every state except Pennsylvania, multiple respondents believed that prison firms supported higher incarceration. In the majority of states not even a single respondent brought up the same concern about corrections officer unions. The prevalence of this belief in regard to private prison firms did differ by

³ In addition, six percent of respondents in Montana claimed that private prison firms opposed *reducing* the prison population and eleven percent of respondents in Pennsylvania believed that corrections officer unions opposed *reducing* the prison population.

respondent type. Corrections officer unions were unanimous in holding this belief while, it was rejected by the rest of the law enforcement community.

Table 5.7

Belief that Private Prisons Support Higher Incarceration, By Respondent Type

Respondent Type	%
Corrections Officer Unions	100%
Law Enforcement Organizations	0%
Left-wing Organizations	24%
Right-Wing Organizations	25%
All Other Interest Groups	21%
Democratic Legislators	13%
Republican Legislators	0%

Why were corrections officer unions so consistent in expressing this belief about private prison companies? It could be since they are competitors, corrections officers pay more attention to private prison firms or are more likely to bring up potential criticisms of private prison firms. It could also come from the structure of the interview. I directly asked corrections officer unions whether they lobbied on sentencing laws. Perhaps that primed them to think about private prison firms engaging in that activity.

The unprompted opinions about private prison firms were also expressed more by interest groups than by legislative offices. While right leaning or libertarian groups were as likely to express this belief as left wing groups, no Republican legislator brought up this belief in conversation with me.

Respondents described private firms as:

- Much more proactive. [We've been] told by their lobbyists for political reasons they don't take positions on sentencing reform because they don't want to be seen as artificially controlling prison population, but don't believe that. Plenty of conversations behind the scenes that address the idea that it's a good thing to keep the criminal code as it is to increase incarceration.

- Representative of a prison reform group

- In a state like Arizona, you can't just look at sentencing reform or prison reform . . . because you have this very powerful lobby of private prisons. If you're not facing this head down, all your efforts to change sentencing law will come to nothing because those companies will always be lobbying for more prisons for longer sentencing.
 - Representative of a religious advocacy group
- Always at the front of proposed legislation.
 - Representative of a criminal justice reform group
- Epitome of criminal justice industrial complex, like a business.
 - Representative of a law enforcement group
- Their objective is to keep every bed filled, they're not interested in sentencing reform and who we should be incarcerating and who we shouldn't, because if you . . . don't keep the public prison overflowing how will you keep the [private] prisons full.
 - Representative of a corrections officer union
- They generally tend to favor bills that increase criminal penalties because it's good for business.
 - Representative of a trade association

Some respondents had similar views of corrections officer unions or even viewed corrections officer unions and private prison firms as pursuing the same political goals.

- When people hand out favors to private interests, they're going to come asking for more. It also applies to public prison guards. A nexus of special interests driving the expansion of criminalization.
 - Representative of a conservative advocacy group
- They want to make sure that prison environments are maintained and not closed and talked about how jobs would be lost. They advocate for tough on crime on crime policies. It's job security.
 - Democratic Pennsylvania legislator

The only specific examples of corrections officer unions supporting higher sentences came from Ohio where a legislator said that the union wanted higher penalties for inmates that assaulted corrections officers I think it is more appropriate to interpret such policies as a desire to improve working conditions or seek parity of status with law

enforcement officers rather than an effort to increase the prison population. One legislator in Arizona described a corrections officer union as being against reducing prison population, but still emphasizing its economic interests.

- Not really active, if it deals with pensions, benefits, they'll speak up. I think they did speak in favor of a bill that we ran to drain off some of the population from the prison system. They opposed it but they didn't have an ask.

Many more respondents described corrections officer unions as avoiding criminal justice issues while emphasizing the economic interests of their members.

- They lobby on their immediate conditions not sentencing laws. They are defensive.
 - Republican Ohio legislator
- Their main mission is protecting the economic well-being of members and their contract and their working condition. They want to be able to have their way inside [prisons].
 - Representative of a religious advocacy group
- What you tend to see, groups that are union-based are at least 50 [percent] reactive..
 - Representative of a law enforcement group
- I think they lobby on labor issues, protective bargaining collection, grievance protections, union protections, dues, health care issues.
 - Representative of a law enforcement organization
- Never heard from them.
 - Republican Montana legislator
- Just not organized and don't have the ability to leave [their] jobs and lobby for themselves,
 - Democratic Montana legislator

Legislators and interest group representatives who believed that private prisons supported higher incarceration, did not provide specific examples of private prisons working in favor of policies that would lead to higher rates of incarceration, or even lobbying directly on sentencing. A representative of a nonprofit organization which operates halfway houses and community corrections facilities, and thus is in some sense a competitor of private prisons within the state, said:

- I've heard through the grapevine that private prisons would want the tough on crime and the old way of hammering more people in prison, and I think that could be a concern. But it would be unfair of me to say without really

researching it. [I] would like to think that people always have human beings' interests in mind, but that isn't always true.

-Representative of a nonprofit correctional facility operator

Similarly, an organization that represented municipal governments claimed that “their business model requires them to have felonies. I can imagine they support sentencing enhancement.” But when asked for a specific example he went on to say “[I have] never seen them on the sentencing portion of it.... I don't see it, I don't know.”

When interviewees did provide examples of private prisons working on legislation that did affect sentencing, such legislation also contained other provisions of interest to private prisons. For instance, a left-wing group in Ohio described private prison support for House Bill 185 that would expand the definition of arson and allow more prosecutors, and that would also increase the ability of the state to place more prisoners in a prison owned by CoreCivic that at the time housed federal prisoners:

- It's lobbyists having conversations in the back room, you can definitely see the lobbyists and how much money is being spent on them. For example, some of these bills don't go through the whole process with opportunities for testimony. It happens in the dead of night, happens the most in lame duck. . . . There was an arson bill that came up in general assembly, but that bill actually included private prison provisions that had nothing to do with arson. It basically gave the state the opportunity to send prisoners to the private federal prison. Within 24 hours it was passed, and the governor signed it into law, so I would think there were lots of conversation to get that provision added in and pushed through.

- Representative of a liberal advocacy group

This demonstrates political sophistication and influence on the part of private prisons in Ohio, which in theory could be used to lobby for higher rates of incarceration and longer sentences. Perhaps some additional arsonists will now find their way into private prisons. Yet, this law also has a clear gain to private prison firms besides increasing incarceration because it also expanded the ability of the state to house prisoners in private prisons.

Not all interest groups and legislators believed private prison firms lobbied on sentencing laws. While most private prison firms rejected my request for an interview, a representative of the private juvenile detention industry did speak with me. The representative dismissed the concern that some have of private detention facilities and said that public and private detention facilities have the same incentives, and it's up to the state to monitor them:

- I think there's a perspective that organizations with for-profit motives aren't doing what is best for kids, and from our perspective it's a matter of

contract management, making sure they're holding up their end of the bargain just as you would with a public institution

The representative did confirm that they spent more time engaging the executive branch than lobbying legislators but described his organization as spending most of their time on defensive lobbying.

Beyond the private sector, there were others who did not believe or had never seen private prisons engage on sentencing laws. No law enforcement organization, prosecutor association, victims' rights group or any other organization associated with tough-on-crime laws described private prison firms as a political ally. Many respondents said private prisons were active on issues related to maintaining the existence of private prisons and rate per bed but not sentencing issues.

- They are silent on all of the reforms; they push to further their position with regard to compensation. They're worried about their facilities and not overall systemic issues.
 - Democratic Montana legislator
- They're concerned about their money and whether they're going to get paid.
 - Representative of a law enforcement organization
- They haven't lobbied for harsher sentences.
 - Representative of a prosecutors' organization
- They only lobby on their contract and are more defensive.
 - Democratic Montana legislator

There were cases of politicians supporting both private prisons and tougher sentencing laws, but that is not proof of private prisons pushing for increased incarceration. Support for tough-on-crime laws and support for private provision of services are both common political positions, especially within the right. These positions co-existed well before the modern introduction of private prisons. A Montana legislator who disliked private prisons and supported sentencing reform that would reduce prison population, described this challenge when discussing the introduction of a bill supporting private prisons by Republican legislators:

- Legislators who brought the bill in were from Shelby and wanted to preserve the jobs that were there. And they were also the people who were against the sentencing [reform] bills but more than that they're against the [Democratic] governor.

This discrepancy, between the common belief that private prisons support incarceration and the lack of concrete examples in support is remarkable. One explanation is that private prisons do not behave in this way, and these beliefs are simply unfounded. Another explanation would be to emphasize the incentives for private prison firms to avoid being blamed for increasing incarceration and to obscure their close

relationships with the executive branch that both interest groups and legislators described private prison firms as utilizing. It is also possible that private prisons may achieve goals by providing “legislative subsidies” to friendly policy-makers, helping their allies be more successful in all their policy goals, only some of which are related to incarceration.

Skeptics of the link between privatization and increased incarceration might also point to another result of these interviews. While respondents described private prison firms as politically sophisticated, they were not viewed as the most important actors on criminal justice issues. At the start of each interview, before asking respondents about the political agenda of private prison firms and corrections officer unions, I asked them about their political allies, opponents, and other interest groups that they viewed as the most active on criminal justice issues. Without being prompted to think about private prisons or corrections officer unions, many interest groups and legislators did not discuss them. So, despite many respondents describing private prisons as active and powerful, when asked specifically about them, private prisons were rarely top of mind. In contrast, prosecutors, the ACLU, and various law enforcement organizations were named frequently across all five states.

Table 5.8
Five Most Referenced Interest Groups by State

Rank	Arizona	California	Montana	Ohio	Pennsylvania
#1	ACLU	ACLU	ACLU	Prosecutors	Prosecutors
#2	(Tie) Prosecutors; Goldwater Institute; Institute of Justice	(Tie) Sheriffs, Law enforcement (unspecified)	(Tie) Prosecutors, Sheriffs	Judges	(Tie) ACLU, Fraternal Order of Police
#3				Public Defenders	
#4		Prosecutors		(Tie) ACLU, Defense Attorneys	Corrections Officers
#5	(Tie) Chiefs of Police, Defense Attorneys, Right on Crime	Police Chiefs	(Tie) Private prisons, community corrections, Disability Rights Montana		Trial Lawyers

Correctional interests rank among the five most mentioned interest groups in only a few states. Only in Montana were private prisons mentioned by enough respondents to land in fifth place. Corrections officer unions reached the top five of interest groups only in Pennsylvania where they ranked fourth. In California, home of the well-known CCPOA, corrections officer unions were the sixth most mentioned interest group.

By sheer frequency of mentions, the ACLU and prosecutor associations dominate, ranking in the top five in every state. Other interest groups frequently mentioned across states are other legal groups, judges, defense and trial lawyers, as well as various law enforcement organizations. From my interviews, prosecutors stand out as the preeminent interest group. While the ACLU is comparable in how frequently it was mentioned, the content of the interviews painted a picture of prosecutors as an independent and

formidable interest group that both legislators and other interest groups sought to win over to their side on criminal justice issues.

Multiple respondents explicitly said that prosecutor organizations were the most important organization in their state. Further, legislators in discussing prosecutors displayed a surprising amount of deference to the views of prosecutors, reaching out to solicit prosecutors' opinions or even revising legislation to win their approval.

- We text back and forth with the district attorneys of the communities [I represent]. We would ask the association if we didn't hear from them.

- Republican Pennsylvania legislator

- We are in negotiations with the prosecutors in an effort to allay their concerns. I think if we . . . get to some modus vivendi the bill will pass. In the world of criminal justice in the legislature, I find, that because so many members aren't lawyers, they're inclined to show great deference to the views of prosecuting attorneys around the state. You should understand that prosecutors are elected on a county basis, so each member of the assembly has at least one and sometimes more than one prosecutor who is a constituent and is locally elected, and oftentimes has great influence among voters. If you're doing something at the capital and the local prosecutor thinks it's a dumb idea, the local county prosecutors can advocate. We have to work with the prosecutors.

- Republican Ohio legislator

Interest group respondents also recognized the influence and power of prosecutors, often in terms of describing negotiations with prosecutors in order to craft an acceptable bill or describing their recent political activity such as engaging in prosecuting attorney elections within Pennsylvania.

Strong enough to matter?

Is it reasonable to believe that private prison firms are able to increase incarceration? On one hand, they're politically active, sophisticated, adopt proactive strategies, and spend substantial sums on politics. On the other hand, private prison firms are overshadowed by other actors. I believe it is, for two reasons.

The first is that it is not necessary to be the most powerful organized interest group in one's domain to win policy victories. Baumgartner et al. (2009) found only a weak relationship between policy victories and resources relative to political opponents. Further, in many states with private prisons, private prisons may have faced little political opposition to pro-incarceration advocacy for many of the years during which they operated. My interviews and examination of recent lobbying records show that currently there are many organized interest groups that prioritize reducing incarceration, yet these groups were not all active during the 1980s, 1990s or 2000s.

Second, private prison firms have a unique relationship to incarceration in that they benefit from its expansion much more than other interest groups. Pfaff (2017) described prosecutors as playing a central role in the massive expansion of US incarceration over the past several decades. Pfaff argued that prosecutors have multiple reasons to support policies that increase incarceration. Prosecutors are elected at the local level, win credit for successfully convicting criminals in their local communities, but the costs of incarceration are borne by the state. Prosecutors may also harbor individual ambitions for higher office and see a tough-on-crime approach as beneficial to their political futures. Prosecutors may believe that the political risk of failing to prosecute a suspect who goes on to commit another crime is much higher than the risk of prosecuting too aggressively. Be this as it may, incarceration is only an instrumental value to prosecutors. Incarceration is a terminal value for private prison firms.

Elected politicians, other than prosecutors, sometimes supported tougher sentencing laws as well. However, this support did not appear particularly deep-rooted. It appeared that legislators felt compelled to respond to high-profile criminal cases, although it did not always lead to substantive policy change if it was an unpromising political environment. One faith-based criminal justice reformer in California said they spent their time swatting down what he called “tombstone bills” or bills named after the victims of violent crime. A former state senator in California who had a left-wing criminal justice agenda agreed that many tough-on-crime bills were prompted by heinous crimes, or by the failure of a prosecutor to achieve conviction. However, she doubted that most of these bills meaningfully changed laws, saying that “the reason that the penal code is so thick” is that those bills were watered down with caveats and exemptions and that the “the only time we would kill [one of these bills] is when the author wouldn’t compromise.”

A current example of this is the Reagan Tokes Act in Ohio, which was being considered by the Ohio legislature while I conducted interviews. Named after the murdered college student allegedly killed by a man on parole who was insufficiently supervised and allegedly committed multiple robberies before the murder, the bill would increase resources for parole supervision and allow longer sentences for convicts who receive conduct sanctions while imprisoned. Among the Ohio interest groups, I spoke to, the bill had broad support. Yet none of these groups nor the legislators supportive of these bills described it as a long-running political ambition to improve the parole or sentencing system, it appears to be very much a response to the murder.

Over the course of these interviews it became clear that there are very few interest groups that support tough-on-crime policies. Groups which supported tougher sentencing laws were conspicuous in their almost total absence outside of the law enforcement and prosecutor organizations. The exceptions were a few crime victim groups or sexual or domestic assault groups, which supported increased penalties in very specific cases. In part this may have reflected the preponderance of left-leaning groups among ideological or civil society groups. However, even among groups that were conservative or libertarian, the issues they were concerned with would generally reduce incarceration or limit law enforcement powers. Reducing the use of civil asset forfeiture was of major concern to conservative and libertarian groups. There was also interest in reducing corrections spending among right-leaning groups.

In this climate, where political support for increased incarceration is shallow among politicians, and rare among interest groups, the entrance of a focused interest group that cared about increased incarceration could make a large impact. With few political actors working to boost incarceration, there may be substantial low-hanging fruit in policy terms, that can increase incarceration. Private prison firms expend substantial amounts on politics, are viewed as influential by other actors in the criminal justice arena and would uniquely benefit from increased incarceration. If private prison firms wanted to increase incarceration, they would be in a position to do so. Many respondents believe that is what private prison firms seek, but they did not provide clear proof.

Chapter 6: Conclusion

In this concluding chapter, I discuss what the political influence of private prisons means for the criminal justice system and what it implies about the likely future of criminal justice reform. I also discuss what the distinct political strategies of business and labor unions implies about the shaping of public policy more broadly from colleges and universities to K-12 education to defense spending.

The Scope of Private Prison Political Influence

Private prison firms are important political actors. They spend large sums on state and federal politics. They cultivate close relationships with state executive branches. They are politically sophisticated and have a proactive political agenda. States that adopt private prisons see their prison populations grow substantially, and consequently spending on incarceration grows. Privatization does not drive incarceration growth by making incarceration cheaper because per prisoner cost of incarceration appears unaffected by privatization. Private prisons do not solve prison crowding because less crowded prison systems experience larger increases in incarceration per capita when prisons are privatized.

The number of additional prisoners that prison privatization generates is substantial. In 2014, states that used for-profit private prisons had a population of approximately 194 million. Depending on model specification, this suggests that prison privatization caused an aggregate additional 58 thousand to 105 thousand prisoners in 2014 in the states that privatized prisons.

Although private prisons contribute to the high rate of incarceration in the United States, they do not explain the exceptionally high incarceration rate. The United States currently has the world's highest incarceration rate, approximately 655 prisoners per 100,000 people (ICPR, 2019). Even if the United States were to eliminate private prisons causing an expected decrease in incarceration by 30-50 prisoners per 100,000 people in states with private prisons, the United States would still rank first among countries by incarceration rate.

Private Prisons and Criminal Justice Reform

If the difference between private prison firms and corrections officer unions is driven by their different attitudes about growth, then these differences should become less salient when mass incarceration is facing increased political resistance from both parties as it is in 2019. Private prisons which were a potent and distinctive force for increased incarceration may not be so unique when it comes to resisting efforts to shrink the prison population, because closing prisons directly threatens the jobs of current corrections officers. Therefore, we might expect that in states with weak or non-existent

corrections officer unions, private prisons might be an important actor fighting against reduced incarceration; in states with corrections officer unions private prisons may not be as uniquely impactful.

Private prison firms are becoming major providers of alternatives to incarceration such as electronic monitoring and residential-reentry programs (Holland, 2016). As private for-profit firms gain market share in providing alternatives to incarceration, these firms should be expected to lobby for expanding alternatives to incarceration, just as private prison firms lobbied for increased incarceration. Corrections officer unions that cannot guarantee the placement of their current members in different fields or different careers may be even more compelled to oppose shrinking the prison population than private firms are. Prison privatization contributed to the increase in incarceration, but that does not mean that private prison firms will be an important obstacle to reducing incarceration. Further, given that they are not viewed as the most powerful political actor in criminal justice policy, broadening interest in decreasing mass incarceration among other political actors is likely to dilute their future political influence of private prison firms.

Parochial Labor Unions

Compared to private prison firms, corrections officer unions are deeply outmaneuvered. From smaller lobbying budgets to less political sophistication and presence at state capitols, corrections officer unions are not a major influence on criminal justice policy. The once feared California Correctional Peace Officers Association is a shadow of its former political influence. Legislators and lobbyists viewed corrections officer unions as insular and focused on narrow bread-and-butter issues. The natural logic of labor unions appears to prevail when it comes to corrections officer unions. Union leadership serves the interests of the current members who care about wages, benefits, retirement, and personal safety in a high-stress job. Corrections officer unions do not prioritize growing their membership by seeking increased incarceration.

How can this be reconciled with other accounts of the California Correctional Peace Officers Association past activities? How can it be reconciled with my own interviews where many respondents indicated that the CCPOA was more proactive in the past? The nature of labor unions has not changed in the last twenty years, yet the behavior of the CCPOA has changed dramatically.

I believe the answer lies with the ability of committed union leaders or activists to press against the default tendency of labor unions. Page (2011) described in detail the individual entrepreneurial leaders who shaped the CCPOA. When Page discussed a possible change in CCPOA's political direction, he discussed how the change from one union president to another might shift CCPOA's approach to public policy.

The same shifting dynamic can be seen in labor unions in general. Individual committed leaders or cadres of political activists can cause labor unions to (at least temporarily) embrace broader goals than the immediate material interests of their

members. Consider the disproportionate role that Communists played in 20th century union organizing. Lichtenstein (2013) wrote:

Such radicals were and are essential to the organization of a trade union movement, in the United States even more so than in countries with an established socialist tradition. Indeed, if it were left to those whose aspirations were shaped merely by the trade union idea, most labor drives would have died at birth. This is because the founding of a trade union is a personally risky business whose costs and dangers are disproportionately born by those who take the early initiative. (p. 45)

Because much of the benefit of labor union growth (or creation!) goes to future members rather than current members (or founders), labor union growth is likely to be heavily driven by outliers who are motivated by altruism or ideology. Just as some individual labor organizations might be motivated by left-wing ideology, there likely are individual leaders among corrections officer unions that prize growth due to a commitment to public safety, law-and-order policies, or the desire to lead a larger union.

Because union growth depends on redirecting union resources to efforts that are not in the immediate interests of current union members, such proactive union leadership risks backlash. The policies of Andy Stern, former president of the Service Employees International Union (SEIU) met with such backlash.

In 2008, SEIU had announced an ambitious plan to organize an additional 500,000 workers within five years. This hugely ambitious plan was pushed by the SEIU's president, Andy Stern, who argued:

Do we use our bargaining power, political strength, and financial and human resources to try to raise or maintain standards . . . only for our current members? Or do we focus the strength we still have on building a broader movement that also improves living standards and working conditions for all those who now have no union?" (Fraser, 2009, p.49).

The plan aimed to draw additional members from government workers, health care employees, and those in the building industry (Early, 2011). Such an ambitious and outward focused plan fit SEIU's reputation as a progressive "social justice union" (Early, 2011).

However, tensions were immediately apparent between the goal of massive membership and democratic control of the labor union by its members. In fact, this tension had a long history within SEIU. A report commissioned by SEIU described the mid-1990's replacement of John Sweeney with Dick Cordtz as head of SEIU as returning to a "traditional union" and thus having "greater local autonomy and a weaker commitment to organizing." (Eaton, Fine, Porter, and Rubinstein, 2009, p. 7). And now Stern was pushing for greater centralized control of the constituent unions of SEIU and for unions to commit 20% of their resources to organizing new members (Eaton, Fine, Porter, and Rubinstein, 2009).

Even worse, according to his critics was Stern's willingness to grow SEIU by "subordinating the interests of the existing membership to the demands of organizing the potential membership" (Meyerson, 2009, para. 13). For instance, Stern would exchange promises of only pursuing moderate wages and benefits or worse conditions if employers would stay neutral in unionization drives (Fraser, 2010). When SEIU was bargaining with the hospital chain, Tenet, SEIU negotiated an agreement with Tenet that would make organizing easier at non-union Tenet hospitals. But SEIU sacrificed the right to strike in California, allowed Tenet to subcontract part of its workforce, failed to improve healthcare or pensions, and other job security provisions (Early, 2011).

Stern also pursued growth in membership by absorbing smaller unions to grow SEIU's numbers and political influence, which opponents have said has led to worse representation of current members (Fraser, 2010; Meyerson, 2009). Stern's methods led to a major fight with United Health Workers which said SEIU was negotiating inferior contracts for the existing membership (Meyerson, 2009). This cost SEIU not only support among union members but also among "labor-oriented academics" (Early, 2009), such as those that teach at labor studies centers. SEIU even faced allegations that it was dispatching union thugs to threaten rival union organizers in Detroit (Shaw, 2010). Stern may have antagonized union members through specific tactics and strategic choices. But the SEIU was not the first labor union to stumble after its leadership decided it should focus more on organizing new member.

Periodically, other unions had tried to refocus on union organizing. A pro-organizing slate won leadership elections for the AFL-CIO in 1995, but the commitment faded without meaningful change (Aleks, 2015). In 2005, several large unions including SEIU withdrew from the AFL-CIO to create the Change to Win Federation. However, the unions that left the AFL-CIO did not improve at organizing new workers after leaving the AFL-CIO (Aleks, 2015).

Unions can be proactive and pursue broad political goals. They have in the past, and some unions continue to do so. However, it is not typical. This is not to say that unions, particularly public employee unions, do not influence the political process or public policy.

Public employee unions can increase government spending on employee salaries and pensions, sometimes to a substantial amount. Unions can increase voter turnout among their members and influence voter choice. But we should not expect labor unions to lobby proactively for the expansion of their industry, whether corrections or any other industry.

Beyond Corrections

What can the case of the corrections industry tell us about the politics of privatization more generally? What can it tell us about the behavior of private firms and labor unions more generally? We should see the same pattern of proactive firms and defensive labor unions across other industries. When governments, state, local or federal,

privatize a service by turning to private contractors we should see an increase in lobbying aimed at getting governments to expand provision of that service. However, even though the same dynamics should prevail in other industries, private prisons are an exceptional case because private prisons hold meaningful market share in many states, the private prison industry is relatively concentrated, and governments are the only consumer of their primary services. For these reason, private prison firms had much greater incentives to seek the expansion of their industry than is typical, and the political effects of privatization is likely less dramatic when it comes to other government services, such as K-12 education.

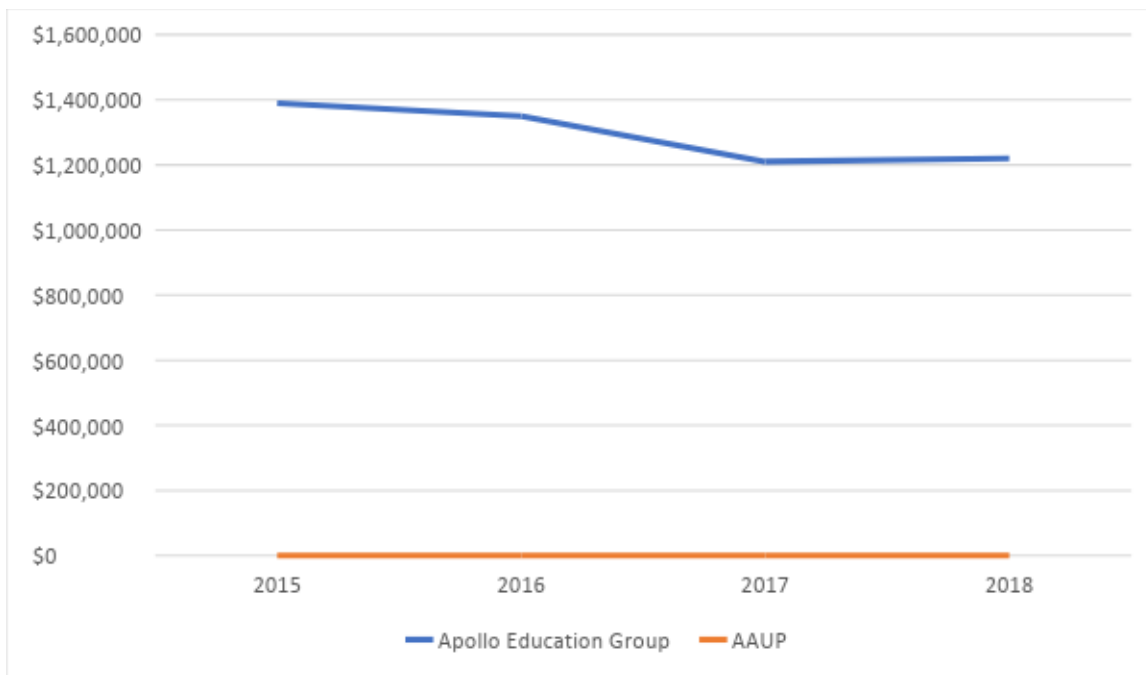
2018 and 2019 have seen major teacher strikes across the country, in West Virginia, Oklahoma, Kentucky, Arizona, Colorado, North Carolina, and California (Atkinson, 2019)). In some of these strikes such as those in Los Angeles and Oakland, demands have not only included higher compensation for teachers but also a moratorium on future charter schools (Freedberg, 2019). The teacher strikes in Oakland and Los Angeles both resulted in the district agreeing to support a charter school moratorium (Harrington, 2019; Swaak, 2019). Because the expansion of charter schools poses a threat to current union members, it makes sense for teacher unions to seek a moratorium on charter school expansion. However, they have less reason to try to close charter schools that already exist because gaining market share back from charter schools might be primarily to the benefit of future teacher union members who might be hired to teach the additional students. Both the Los Angeles and Oakland teachers' strikes also demanded smaller classes. While smaller class sizes likely necessitate the hiring of more teachers, it also directly improves the working conditions of current union members. Here we see the familiar dynamic of unions primarily working to benefit their current members, but not trying to grow their industry by, for example, shutting down existing charter schools or attacking private schools.

Publicly funded privately operated educational providers have yet to play a major role in expanding the educational system, unlike the corrections system. Part of this may be due to the difficulty of expanding the student population relative to the prison population. While there may be some opportunities to expand the number of students, such as publicly funded preschools or raising the school dropout age, there is probably less room for increasing the number of primary and secondary school students than there is for increasing the number of prisoners. Another major difference is that many private providers are nonprofit and that even the largest private providers of education have a relatively small market share. This fragmentation of publicly funded private schools and charter school operators creates a vast free-riding challenge to those considering investing in advocacy for the sake of expanding government provision of education. Charter schools totaled only 5% of schools by 2014 (NCES, 2017). Among charter schools, the largest operator, KIPP, has only 88,000 students (Barth, 2017) or roughly 3% of all charter school students. Further, KIPP, is a nonprofit and thus lacks the structural incentives for growth that private for-profit firms have. The role of for-profit firms in charter schools is small in general. Roughly 20% of students in charter schools attended schools managed by for-profit firms, with the rest split between nonprofit chains and free-standing nonprofits that operate a single school or district (National Alliance for Public Charter Schools, 2019). For-profit schools also lack a major presence in providing

education to those using school vouchers as most students who use vouchers attend religious schools (Hanauer, 2002; Ultican, 2018).

Post-secondary education has a much different dynamic. For-profit colleges or universities account for 915,00 undergraduates or 5.4% of undergraduate college students. (NCES, 2018). A handful of for-profit college providers dominate this sector. The University of Phoenix had an enrollment of 165,743, almost a fifth of all undergraduate students enrolled in for-profit colleges (NCES, 2018). Other large for-profit providers were Walden University and the ironically named American Public University System, which together had about 11% of for-profit undergraduate students. Given their meaningful share of the total higher education market and the relative concentration of the for-profit section, these firms have strong incentives to lobby the government on behalf of expanding the higher education industry, in terms of both total spending and student enrollment. In contrast, faculty unions, such as the American Association of University Professors, have less reason to lobby on behalf of expanding the higher education industry. Figure 5.1 shows the recent lobbying expenditures of the parent company of the University of Phoenix, Apollo Education Group, and The American Association of University Professors.

Figure 5.1
Higher Education Lobbying Expenditures



The American Association of University Professors (AAUP) does not lobby. Not on education funding or student loan eligibility or any other issue. Perhaps they are active on higher education policy in other ways, but in one of the major areas of political

engagement they are completely absent. Further, none of the unions that AAUP listed as affiliated with their association (AAUP, n.d.) reported any lobbying in the last four years.

. The relationship between for-profit colleges and faculty unions is similar to the relationship between private prisons and corrections officer unions. Both for-profit colleges and private prisons provide services that are often delivered directly by state governments, are in some sense in competition for market share with public providers and are heavily funded by the government. There are some differences. There are non-government consumers for higher education for instance. Still, this shows another industry where the relevant labor union lacks political presence while the for-profit counterpart is heavily politically engaged.

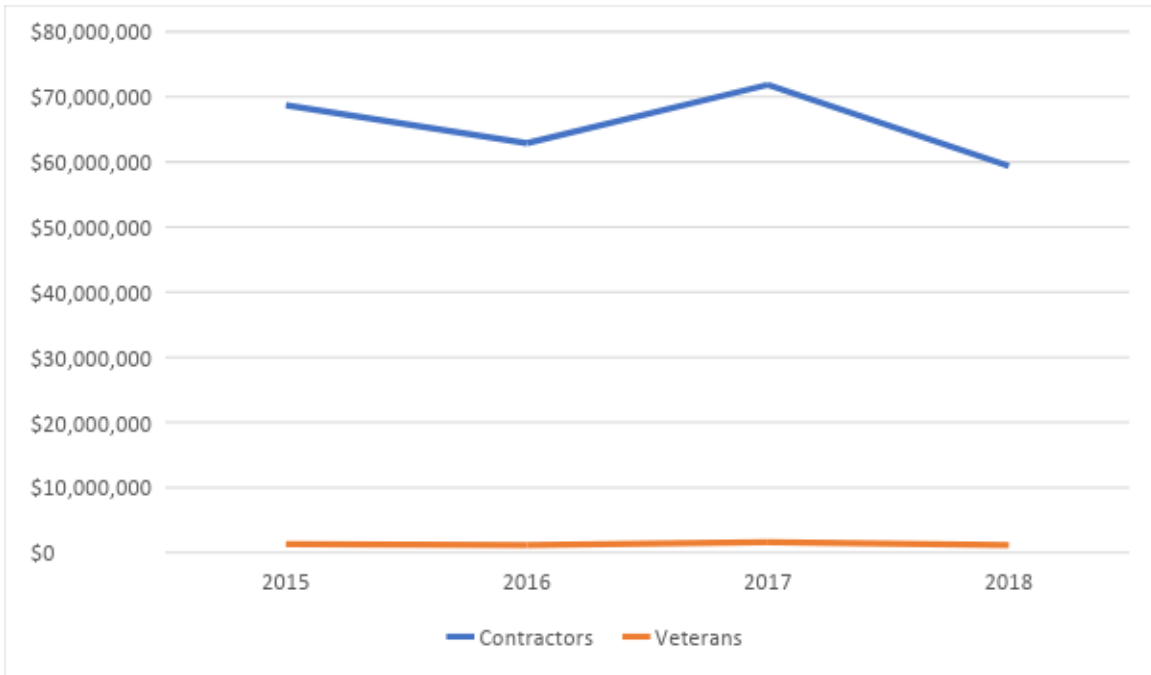
The Defense Industry

Corrections is different than education because the only consumers of correctional services are governments. The same is largely true of the defense industry. Defense contractors have strong incentives to pursue increased military spending. Unlike the corrections industry, defense contractors do not compete with a unionized public workforce for market share. In theory, defense contractors should be even more strongly motivated to pursue increases in military spending than are private prison firms as they possess much higher market share.

Private military contractors, that is, firms that provide security or combat services, do compete with a public workforce, the military. However, soldiers, sailors, airmen, and other members of the U.S. military are prohibited from unionizing. If members of the military were permitted to organize, they presumably would work to improve working conditions and compensation for themselves. Private military contractors, in contrast, would be more likely to seek to increase their share of the military services market, either by supplanting the military or even by seeking to expand military activity by supporting increased interventionism. A theoretical military labor union would have little incentive to increase military activity.

Because the military is not unionized, it is not possible to compare how politically active military labor unions are relative to defense contractors or private military contractors. The closest existing analogue to military labor unions is veterans service organizations which represent the interests of U.S. veterans. Veterans service organizations have an incentive to care about the welfare of current military members as current military members will eventually become veterans. Veterans service organizations engage in political advocacy. Some veterans service organizations also represent veterans making claims for benefits to the Department of Veteran Affairs (VA, 2017) which is analogous to labor unions representing employees and retirees. How active are these veterans service organizations compared to defense contractors and private military contractors? Not very. Figure 5.2 compares lobbying expenditures of the major veterans service organizations, dubbed the “Big Six,” to the lobbying expenditures of the six largest domestic defense contractors (Aitoro, 2018; Shane, 2018).

Figure 5.2
Lobbying Expenditures of Largest Veterans Organizations and Defense Contractors
2015-2018



The lobbying expenditures of the major veterans service organizations are almost nonexistent relative to the lobbying expenditures of the largest defense contractors. The groups that represent the interests of retired workers, at least by this measure, engage minimally in politics relative to the firms that are active in the same issue areas.

Conclusion

Despite the perception of business interests as being aligned with the political right, business interests may very well be among the least small-c conservative actors in the United States. The incentives for growth are much stronger for corporations than they are for labor unions and nonprofits. Further, money is fungible which allows firms to be indifferent to how growth in profits is achieved. Jobs are not fungible so the political priorities of public employee unions will center around protecting the jobs and compensation of current union members. Consequently, the political consequences of privatizing a particular government function is likely to be less predictable and more

consequential than would be union organization within the government. No matter the public union, teachers, firefighters, or police, the basic consequence is likely the same: demands for higher compensation and the resulting fiscal consequences when that is achieved. Private providers of government services may focus on supplanting public providers of government services, seeking to expand provision of that service, or both.

Since privatization of a government service can generate political pressure to expand a government service, privatization motivated by cost-saving may backfire. This is especially likely where private provision of these services is heavily concentrated, so firms are less affected by free-riding among firms. It is also likely to be more common where private firms already have substantial market share and so have greater incentive to lobby the government on behalf of expanding the government service instead of simply trying to increase their market share.

That business is a powerful political actor is not a new idea. Nor is it new to point out that business dominates politically lobbying by many measures, as Drutman (2015) demonstrates. What is new is that businesses and labor unions that fulfill similar roles in providing government services, behave in radically different ways, with business being more politically engaged and more proactive than similarly situated labor unions. Even if labor union density were as high as it was at its mid-20th century peak, business would likely dominate labor in terms of political activity. The differences between labor unions and business in political strategy and engagement is inherent to their structures. Business has great incentives for growth; labor unions do not. Business is a strong and ambitious political actor, and always will be.

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Appendix A: Dates of Privatization

To determine if a state did not use private prisons at any point from 1980 to 2014, I checked media sources, the scholarly literature, National Prisoner Statistics, and the Census of State and Adult Correctional Facilities. Sixteen states never used for-profit private prisons.

Alabama

Alabama began shipping men and women to out-of-state private prisons in 2003 (Green & Pranis, 2005). In 2008, Alabama Therapeutic Education Facility opened (Davis, 2017).

Alaska

Men were held in private prisons out-of-state beginning in 1995 (ACLU, 2010). AllVest was founded in 1985 to run halfway houses for both sexes (Demer, 2016; Munger, 2011).

Arizona

First began to house men in private prisons in 1994 (MTC, 2012). Arizona did not house women in private prisons (AFSC, 2010; Tucson Local Media, 2003).

Arkansas

The state used private prisons from 1998 to 2002 for both sexes (Arkansas Department of Corrections, 2019).

California

California began using private prisons for men in 1986 and women in 1988 (GAO, 1991).

Colorado

Began using private prisons in 1995 for both sexes (Thomas, 1994). Tooley House for women continues to operate, as do multiple male prisons.

Florida

Women were held in private prisons beginning in 1995 (Florida Department of Corrections, 2019). Men were held in for-profit community corrections beginning in 1985 (Dubail, 1990; Florida Department of Corrections, 1986).

Georgia

Georgia began use in 1998 (Georgia Department of Corrections, 2019).

Hawaii

Women were sent to private prisons beginning in 1997 (Talvi, 2006). Men were sent beginning in 1995 (Advertiser Staff, 2005).

Idaho

Began use of private prisons in 1997 for male prisoners (Associated Press, 2014).

Indiana

The state began housing men in private prisons in 1998 (Prison Legal News, 1999).

Kentucky

The state began housing men in private prisons in 1986 (GAO, 1991), and stopped in 2013 (Correctional News, 2013).

The state began housing women in private prisons in 2002 (National Prisoner Statistics). Otter Creek Facility switched from housing male to female prisoners (Census of State and Federal Correctional Facilities), and stopped in 2010 (Prison Legal News, 2011).

Louisiana

The state began holding men in 1990 (GAO, 1991).

Michigan

The state had a prison for young male offenders, including young adults, from 1998-2005 (Egan, 2019). It included nineteen-year-old men (Boals, 1998).

Minnesota

Male prisoners were privately held from 2004 to 2010 (CCA, 2005; Mannix, 2017).

Mississippi

The state began use of private prisons in 1996 (Mukherjee, 2017).

Montana

The state began holding male prisoners in 1999 (Curless, 1999).

Nevada

Women were held in for-profit prisons from 1997 to 2003 (Botkin, 2017).

New Jersey

Community Education Centers, a for-profit firm, began to operate centers in New Jersey in 1996 on behalf of EHCA (John Paff v. Community Education Centers, 2013).

New Mexico

Private prisons were first used for women in 1989 (GAO, 1991). They were first used for men in 1998 (New Mexico Department of Corrections, 2013).

North Carolina

North Carolina had private prisons for men and women from 1998 to 2000 (NCDPS, 2019), but kept smaller ones for drug treatment for men and women until 2011 (NCDC, 2011).

North Dakota

Sent prisoners out-of-state until 2010 (Associated Press, 2015). Started sending male prisoners out-of-state in 2004 (Groenevald, 2004).

Ohio

Began use of private prisons for men in 2000 (Hallett & Hanauer, 2001).

Oklahoma

The state began use of private prisons in 1996 for men and 1997 for women (Oklahoma Department of Corrections, 2019).

Pennsylvania

Pennsylvania has held male and female prisoners in private prisons since 2001 (National Prisoner Statistics). ADDAPT is owned by the GEO Group (Turner, 2017; Census of State and Federal Correctional Facilities). Penn Pavilion also holds male and female inmates referred by the state (GEO Group, 2017).

South Dakota

Began housing men and women in 1992 and discontinued housing men in 2004 (Daly, 2006).

Tennessee

Prison privatization began in 1984 for both sections (Tolchin, 1984).

Texas

Men were first held in private prisons in 1984 (GAO, 1991). Women were first held in private prisons in 1987 (GAO, 1991; National Institute of Justice, 1990).

Utah

Utah held men in for-profit private “Promontory Unit” Management & Training Corp. from 1994 to 2001 (Adams, 2001; Christian, 2001).

Vermont

Vermont held prisoners in for-profit prisons from 2004 to at least 2017 (Hewitt, 2017; Stephenson, 2004).

Virginia

Began use for men in 1998 (Finn, 1998).

Washington

Held male prisoners in out-of-state private prisons, but discontinued use in 2010 (Jenkins, 2015). Started being held in 2004 (AFSC, 2010).

Wisconsin

Sent male prisoners out-of-state from 1998 to 2005 (Walters, 2017).

Wyoming

Began sending prisoners, male and female, out-of-state to for-profit prisons in 1997 (Barron, 2009).

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Appendix B: Formal Model

In Chapter 2, I conclude that if private prison firms benefit more from increased incarceration than do corrections officer unions, private prison firms may lobby more intensely for increased incarceration than do corrections officer unions, even if private prison firms have relatively low market share. In this appendix I expand upon this argument with a simple formal model. I introduce a basic model of lobbying where both for-profit prison firms and public sector unions representing correctional workers are able to lobby for increased levels of incarceration, or to lobby against reductions in the number of prisoners.

Labor Union Preferences

For this model, I assume that union members are self-interested, and do not, for altruistic reasons, care about future union members. I assume that a single labor union represents only corrections officers and represents all publicly employed corrections officers within a single jurisdiction. I assume that all corrections officers are identical, and that corrections officers' utility is a function of their total compensation.

As the result of union representation, each corrections officer receives higher wages than he or she would if he or she were not employed as a unionized corrections officer. I denote this wage premium as w . Each union member receives this wage premium only when he or she is employed in a public corrections system and is represented by the labor union. Therefore, the utility of a union member is a function of the size of the wage premium and the probability that they remain employed as a public corrections officer. Let e be the number of workers who are employed as corrections officer in both the public and private section, and let e_L be the number of union members that are employed as public correction corrections officers during any period. Let m be the number of union members. The expected compensation of any union member is the probability that they receive a wage premium and the amount of the wage premium. The expected utility of any union member can be written:

$$E(U_L) = \frac{e_L}{m} * w \quad (1).$$

I assume that the number of corrections officers employed, in both the public and private sector, is a function of the number of prisoners, p , and a constant staffing ratio, r , such that $p*r$ is the number of total corrections officers employed.

Either the labor union or any number of n identical private prison firms can expend money on pro-incarceration advocacy. Total dollars spent on pro-incarceration advocacy is the sum of any such advocacy by the labor union, a_L , and that of each of the n firms, na_F .

$$a = a_L + na_F \quad (2).$$

The total number of prisoners in a jurisdiction can be increased by spending on political advocacy from some baseline number of prisoners, with advocacy dollars having diminishing marginal returns. Let the number of prisoners in a given period be a function of both some baseline level of prisoners, p_0 , and advocacy spending. The total number of prisoners is given by:

$$p = \sqrt{a + p_0} \quad (3).$$

Let any change in the number of prisoners affect the public and private sector proportionally to their current market share, with s_L and s_F , denoting the market share of the unionized public sector and the private sector respectively.

Because the labor union represents all public corrections officers and only public corrections officers at the start of any period, all its members are employed such that:

$$e_L = m \quad (4).$$

and that consequently each union members' utility is equal to

$$U_L = w - \frac{a_L}{m} \quad (5).$$

The labor union could choose to spend on pro-incarceration advocacy. This would increase the employment in the public sector as both a function of the public sector's market share and the staffing ratio. However, it would not increase the wage premium even though it would increase the dues paid by union members. Pro-incarceration advocacy does not provide any benefit to the union members. Therefore, the optimal level of pro-incarceration advocacy to increase incarceration by the labor union is:

$$a_L^* = 0 \quad (6).$$

Private Prison Firm Preferences

Where the labor union maximizes the utility of its members, I model the firms as trying to maximize the utility of their shareholders. I assume all private prison firms are able to avoid unionization. Consequently, the wage premium does not exist within the private sector. Instead, the savings on wages are paid out to shareholders as dividends. Consequently, as the number of

prisoners held by each private prison firm increases the wage savings increase and are shared by a static number of shareholders. Because the labor union has no incentive to lobby for increased incarceration, total advocacy spending is the sum of the (identical) spending by n identical firms. Let the utility function of the shareholders of each of the n private prison firms be written as:

$$U_F = p * r * w * S_F * \frac{1}{n} - a_F \quad (7).$$

Ceteris paribus, each firm prefers there to be more prisoners, a higher staffing ratio, a higher wage premium, and a larger market share for the private sector. Recalling that the level of prisoners is determined by the level of advocacy spending, we can calculate that each firm should spend on pro-incarceration advocacy in order to increase incarceration with the optimal level of advocacy spending being:

$$a_F^* = \frac{r^2 w^2 S_F^2}{4n^3} \quad (8).$$

As long as there is a positive wage premium, a positive staffing ratio, and private market share above zero, private firms should be willing to spend some amount of money on advocacy in order to increase incarceration. However, as the number of private firms increases, each firm is willing to spend less on advocacy.

Behavior During Retrenchment

My model predicts that labor unions would have no incentive to invest in political advocacy because current labor union members would see no benefit from growth, but private for-profit corporations would invest in advocacy to increase the profits flowing to their shareholders. What happens if increases in incarceration are off the table? What if a wave of criminal justice reformers is elected and threaten to shut down or dramatically reduce incarceration, but corporations and labor unions have the ability to lobby against reducing the number of prisoners?

To simplify, we can assume that the threatened reforms are so large that each additional dollar of advocacy is valuable. That is, no amount of spending will be wasted or reverse the downward trend in incarceration. Consequently, union members are spending on advocacy purely to preserve employment of current members, and firms are spending on advocacy purely to preserve current profits. In this case, reducing prisoners would cost some current union members their jobs, as well as reducing corporate profits. This would give each labor union member a utility function of:

$$U_L = \frac{1}{m} * p * r * w * s_L * -\frac{a_L}{m} \quad (9).$$

Unlike the earlier scenario, the labor union and its members benefit from advocacy spending. When the union expects the firms to free-ride off the union's advocacy spending, the optimal level on advocacy spending from the union's perspective is:

$$a^* = \frac{r^2 w^2 s_L^2}{4} \quad (10).$$

Union members are more willing to spend on advocacy when the union wage premium, public sector market share, and staffing ratio are high. When the optimal advocacy level for the labor union is higher than it is for any private firm, each private firm knows that the labor union will spend up to the firm's optimal point, and the firm will be able to free-ride off of the labor union. This would result in the labor union providing all advocacy spending up to the labor union's optimal level. In this scenario, privatization of prisons would reduce the labor union's advocacy against retrenchment because the utility of advocacy depends on the market share of the public sector. However, if each firm has sufficient market share that it is not able to fully free-ride off the labor union, the labor union will be able to free-ride off the advocacy spending of the firms.

What if Unions Value Growth?

What if unions get some benefit from growth? Current union members might get psychological benefits, such as class solidarity, for providing union jobs for other workers. Or labor unions might gain political leverage as they grow and might be able to increase wages for their current members. There may be principal-agent problems, where union leadership does not perfectly serve the interests of union members, and instead union leaders might seek growth for their own reasons. If this is true, then the effect of privatization on advocacy aimed at increasing incarceration is more ambiguous, and the results will depend on the relative valuation of increased incarceration between labor unions and firms, as well as the relative market of the two sectors.

If the labor union and its members value an additional prisoner held in the public sector as some fraction, f , of the value a private prison firm places on an additional prisoner held in its prison, then the effect of privatization on advocacy that aims to increase incarceration, depends on the values of f and the market share of the labor union and firms. Each labor union member would then have a utility function of:

$$U_L = f * p * r * w * s_L + w - \frac{a_L}{m} \quad (11).$$

If the product of f and s_L is greater than $\frac{s_F}{n}$ then the labor union will spend on advocacy in order to increase incarceration, and private prison firms will be able to free-ride. If the product of f and s_L is less than $\frac{s_F}{n}$, the labor union will free-ride off of the pro-incarceration advocacy of the private prison firms. In this scenario, the effect of privatization on total pro-incarceration advocacy spending is ambiguous. If the labor union spends on pro-incarceration advocacy, it will spend less when it has to share the market with private prison firms. If instead private prison firms spend on advocacy, they may spend more or less than would the labor union in the absence of privatization. In any case, the private prison firms are more likely to spend money on advocacy than would a labor union with the same market share.

Appendix C: Interview Questions

Interest Group Questions

1. Can you tell me about a recent political issue your group worked on related to criminal justice?
2. How did your group learn about that issue?
3. How did your group decide to get involved on that issue?
4. Who are the other key actors on this issue? How do you relate to them?
 - a. Who was on your side?
 - b. Who was on the other side?
5. What are the main barriers you faced in achieving your goals?
6. What were the tactics you used to achieve your goal?
7. What was the result of the campaign?
8. On issues related to criminal justice, what percent of your effort is spent on proactive campaigns?
9. On issues related to criminal justice, what percent of your effort is spent on defensive campaigns or campaigns trying to prevent negative changes?
10. What groups are most active on criminal justice related issues?
11. When it comes to political campaigns related to criminal justice, what percent of the effort of law enforcement labor unions go into proactive campaigns? Defensive campaigns?
12. How does that compare to the work of corrections officer unions?
13. How does that compare to private prison operators?
14. How does that compare to civil society or ideological groups?