

# **The Overcrowding of Prisons in the United States of America**



## **Group 2**

### **2<sup>nd</sup> Semester of International Social Science studies**

Caroline Olsen

Filip Štancel

Hervé Butoyi

Teagan Francisca Ana Sofia Riebe-Ehlert

Jakob Kirkegaard Thomsen

Robin Dickheiwer

Supervisor: Thorkil Casse

Character Count: 144.930

## **Abstract**

Over the last decades, prison overcrowding has become a complicated and worrying problem for the U.S. Government. One in four of the worlds prisons lays in the home of America. in 2010, seven states were currently at 25 percent over their designed capacity. This paper displays the challenges of overcrowded prisons and how private prison systems emerged during the 1980s – The increase of crowded correctional facilities has put pressure on the federal government to seek solutions through policies and new ways of scaling down the incarceration. There has been a parallel increase in literature, both pro, and con, comparing the efficiency and effectiveness of private and public prisons. Merging political theory and comparative analysis, we present the correlation between the solutions for overcrowding and privatization. It showcases the government's attempt to reduce the overcrowding problem.

**Keywords:** overcrowding crisis, the United States of America, American prison system, privatisation, solutions, prison capacity, public prisons, the federal government, state governments.

# Table of Content

<b>Introduction</b>	3
<b>Project Design</b>	4
<b>Methods</b>	5
<b>Conceptual framework and theory</b>	7
<b>Literature Review</b>	10
<b>How did the overcrowding of prisons come to be in the United States?</b>	14
<b>What did the U.S. government do to solve the overcrowding problem of the prisons?</b>	18
State responses to overcrowding	20
Policies as a solution	23
Increasing prison capacity as a solution of overcrowding	26
Privatization of prisons as a solution	28
Overcrowding and privatization since 1980s	30
Analysis of Efficient short-termism	35
Comparative analysis - Prison capacity	38
Comparative analysis - Operational cost	40
<b>How has this/these solution/solutions affected the U.S. government's main objective of reducing the overcrowding?</b>	42
<b>How does the overcrowding problem stimulate more overcrowding?</b>	46
Healthcare (Physical healthcare and Mental healthcare)	48
Social aspects (e.g. Relationships)	49
Education	51
<b>Discussion</b>	52
How has Trump changed the notion of overcrowding reduction since he overtook the office of president after Obama's successful overcrowding reduction years?	52
Will the problem of overcrowding of the prisons in the United States of America ever disappear?	54
Would it be possible to reduce the overcrowding problem of prisons through the capital punishment?	54
<b>Conclusion</b>	56
<b>Bibliography</b>	58

## Introduction

Hillary Clinton the democratic nominee for the 2016 presidential election spoke to the University of Columbia about crime. She said:

*“It’s a stark fact that the United States has less than five percent of the world’s population, yet we have almost 25 percent of the world’s total prison population. The numbers today are much higher than they were 30, 40 years ago despite the fact that crime is at historic lows.”* (Clinton, 2015)

The real numbers are not far off. That’s why we collectively were wondering about how this came to be and how the American prison system is functioning. We pondered about the fact that this country is leading the world in so many ways but on the other hand has big problems in other fields such as the justice system.

During the last years cases like the supreme court ruling to reduce the overcrowding of prisons down became a bigger problem. In 2011, the supreme court ruled that the state of California had to reduce down its prisoner numbers, because the state had nearly twice the amount it had the capacity for. Such a overcrowding in prison facilities could not guarantee safety and reliable care of the prisoners.

The goal of this report is to clarify how the overcrowding problem came to be during the last century and how the American government handled this problem since. We furthermore continue by reflecting on these different solutions and go into depth with one of the controversial solutions, which is the privatization of such facilities.

The Problem formulation therefore focuses at a reflectionous view of the problem and investigates the solution the American government and the state governments have applied.

It fast becomes evident, that the problem of overcrowded prisons in the United states is a old problem. Thus, it is important to shine a light on the past of the problem and therefore state the roots of this bad situation, which lay within the policy-making of the American legislation, which is enforced by the justice system.

## Research Question

*How do the United States of America fight prison overcrowding with the privatization of prisons? (A reflection on the overcrowding problem)*

## Project Design

The Project revolves around the topic of the American prison system combined with the controversial topic of Privatization of public institutions. We discussed several problems in society we have read about and concluded that this particular complication of overcrowding of prisons and the solutions the states and the government find are of growing concern, since some of these solutions may not fight the care of the problem and are mainly a drop of water on a hot stone. Moreover, this topic is not one of the big discussed ‘popular’ topics for campaign politics, which often attracts more attention to politics. Since it was only mentioned imperceptibly during the 2016 presidential campaign. Therefore, we decided to take this opportunity to explore and understand the American prison system and its complications with the solutions the states and the federal governments have found. Since one of the main solution of several states was to open the prison sector up to private involvement, it is essential to explore this controversial solution.

In the first supporting question: *‘How did the overcrowding of prisons come to be in the United States?’* we state and explore the views of scholars and other experts in this area. We try to define a common ground for readers, so the following questions are based on the basic knowledge this area requires.

In the second supporting question: *‘What did the U.S. and state governments do to solve the overcrowding problem of the prisons?’* the paper states different solutions that have been found to reduce the overcrowding problem. These solutions have mainly been taken on the state governmental level, but the federal levels suggestions or general input is also stated. In the second part of this question the controversial solution of private involvement and established private prisons is analyzed in relationship to the reduction of the overcrowding problem.

As the third supporting question: *‘How has this/these solution/solutions affected the U.S. government's main objective of reducing the overcrowding?’* is a reflection of the given solutions of the second supporting question. These are compared and the impact each of these had is analyzed. This part will allow for a greater sight on the topic and the correlated solutions.

The fourth supporting question: '*How does the overcrowding problem stimulate more overcrowding?*' explores, which factors contribute majorly to the bad recidivism rate that many U.S. states have and how these factors influence the overcrowding problem.

1. How did the overcrowding of prisons come to be in the United States?
2. What did the U.S. and state governments do to solve the overcrowding problem of the prisons?
3. How has this/these solution/solutions affected the U.S. government's main objective of reducing the overcrowding?
4. How does the overcrowding problem stimulate more overcrowding?

## **Methods**

In our project, we used various types of secondary data. The first type of secondary data and the majority of data that we used are articles and books written by academic scholars.

Furthermore, we used news articles as supplementary readings to give us a clearer picture.

However, these sources need to be taken with a grain of salt due to the non-vetted publishing process that other articles such as academic articles go through. Therefore, these articles are solely used for understanding purposes rather than actual referenced facts within the paper.

We also used primary sources to certain kind of extent as we took advantage of data, which is accessible for us, like statistics of the incarceration rate, recidivism rate, overcrowding crisis, etc.

To design the research question, we have researched the topic of prisons in a broader perspective. We have researched academic literature but also newspaper articles about prisons in general in more countries. What captured our attention most was the overcrowding crisis in prison systems all over the United States of America.

Therefore, we have researched this topic more thoroughly and as we saw the reason why the overcrowding problem of U.S. prisons come to be, we wanted to see whether governments took the necessary steps to solve this enormous problem and if they had been successful in doing so.

After finding academic literature, articles and also statistics about the problem of overcrowded prisons in the United States of America, we started analyzing this data.

As our project is going to be based on this obtained data, this data will help us to come to certain conclusions on whether the fight against prison overcrowding was successful or not. Therefore, we are using inductive reasoning in the research process and in reaching the conclusion.

We have used interpretivist approach to our project. With this approach we were trying to gain the understanding of the overcrowding crisis of prisons and how and why did it become such a big problem in the prison system of the United States. With using the interpretivist approach, there is also a connection to what kind of data we have used.

Our project is mostly based on qualitative data as the main part of the literature used is academic literature supplemented by newspaper articles. This data is used to explain the phenomena of prison overcrowding. To certain kind of extent, we have also used quantitative data as part of our data is in the form of statistics concerning overcrowding and other data (overcrowding rates over the years, use of contract prison facilities, etc.).

Due to the variety of the sub-questions we have different approaches of how the data fulfills the task to answer the questions that are used.

- How did the overcrowding of prisons come to be in the United States?
- What did the U.S. and state governments do to solve the overcrowding problem of the prisons?
- How has this/these solution/solutions affected the U.S. government's main objective of reducing the overcrowding?
- How does the overcrowding problem stimulate more overcrowding?

All of these sub-questions will help us to answer our overall research question “*How do the United states of America fight prison overcrowding with the privatization of prisons? (A reflection on the overcrowding problem)*”

## **Conceptual framework and theory**

Our theoretical framework is a combination of three theories, the Overton Window, Comparative efficiency and Efficient Short-termism. Our research focus is to examine how the government has handled the overcrowding crises from 1980-present. Our goal with the theories is to develop an understanding of three critical aspects. Firstly, how the overcrowding became popular. Secondly, how do the proposals/solutions stand in contrast to the congestion and thirdly, how was the process getting to these solutions?

### **Overton Window**

The 'Overton Window' is a concept/Theory that examines and explains public discourse and the shifting and changing of it, specifically related to political public relations (Lehman, n.d.).

This Theory or concept is briefly used during the first supporting question when explaining how a candidate of one of the two major parties in the U.S. could campaign with such a radical position on crime and the 'war on drugs'.

The 'Overton window' suggests that the public discourse takes place in a narrowed window that is open to, popular positions up to acceptable positions as topics that can be debated and are acknowledgeable and changeable in a culture. Outside of this so-called window are 'radical positions' and 'unthinkable positions' (Lehman, n.d.). These do normally tend to cause irritation and outrage among the population and voters but by giving attention to these hard-lining positions the location of the window changes and former radical ideas seem acceptable and give more attention to formerly radical politicians that now fit the mainstream and popular will (Lehman, n.d.).

This model usually operates on a scale in between the ideological left and the ideological right. The window covers the political and cultural middle (Lehman, n.d.).

Moreover, extreme positions can become a popular position when extreme positions are used to guide the conversation into the direction of the wanted outcome. Therefore, an effect as with negotiation is made when a compromise is formed (Lehman, n.d.).



However, this compromise is made between the public that control the public discourse and the politician who uses this principle to stir the conversation into his/her favor.

### **Comparative Efficiency**

Comparative efficiency examines whether to privatize any given government function, in this matter, privatization of prisons will be our case. Comparative efficiency, in other words, wants only to know which is better, public or private (Freeman and Minow, 2009) It takes standpoint as to the functions the state are obligated to seek to amuse the masses, Comparative efficiency seems to have the virtue and value neutrality.

How do we determine whether the private sector is better than the public sector? To specify which is better it requires an extensive data which tends to be elusive and not transparent (United States Government Accountability Office, 2007). The public and private departments compared often vary in ways that confound comparison of performance. A 2007 report from the Government Accountability Office found that “*without comparable data, the Bureau of Prisons is not able to evaluate and justify whether confining inmates in private facilities is more effective than other confinement alternatives such as building new BOP facilities.*” (GAO, 2007 p. 2).

Because of the lack of comparable data, we cannot rely for sure on our findings or determine completely which prisons system performance must efficient. We apply the theory, only to clarify which prisons-system possess the best operational opportunities, Comparative efficiency’s sole objective concerns with maximizing efficiency (Freeman and Minow, 2009). In our project, we define and interpreted maximizing efficiency in the sense of the prison-system with greater reduction or prevention of overcrowding, regarding which rules and regulations they are bound to follow. Moreover, the knowledge leads us to an understanding of the implication of private prisons to overcome the overcrowding crises and how private prisons are positioned compared to public prisons.

The analysis incorporates two fields: Capacity of prisons and Operational cost. Our assessment of each field gives us an intuition of the public and private jails' opportunities and interest to manage their capacity and expenses. Are their managing motives, self-interest or objectively of reducing the overcrowding problem?

Relation to our research question, privatization was legalized to prevent further increase of the overcrowding problem (Schneider, 1999). Some critics have expressed concern over the fact that private prisons providers have a financial interest in increased incarceration and that industry members might, therefore, be tempted to use their political influence (Freeman and Minow, 2009)

We analyze the operational costs of private prisons in comparison to public prisons to find out whether the use of private prisons can be justified in such an enormous correctional system as the United States of America has. Operational costs that we have looked at include operational expenses related to more fields, such as construction, prisoners, prison staff, different programs and the competition on the market. It provides an insight into areas that constrain or limit the systems regarding lowering the overcrowding crisis.

The limitations of this approach are that Comparative efficiency's only interest is to know which is more efficient (Freeman et al., 2009). Framing the issue this way may direct us to miss all the more likely probability that neither alternative is competent or even sufficient. The debate over private prisons has somehow remained impervious to such considerations as has the more common discourse regarding prison administration (Rosenthal and Kouzmin, 1996). The priorities of Comparative efficiency have come to exert a sort of gravitational pull over the reflection of those whose job it is to run the prisons (Freeman et al., 2009). Therefore, we must, consider our approach and be aware of common troubling features for both public and private that may be vital for the increase or decrease of the overcrowding.

In this deliberative climate, virtually all policy challenges prisons administrators face is likely to be framed in comparative efficiency terms – even those challenges that arguably call out for more explicitly normative analysis (Freeman et al., 2009). To avoid overlooking essential responsibilities for prisons systems in general, we combine our comparative study with a normative analysis. Doing so, we will utilize the Efficient short-termism theory to evaluate the decision-making of privatization and the impact it has brought to the overcrowding crises. The short-termism is typically supported by economic cost calculations and decisions are made thereafter. In this case, the solution for overcrowding was urgently needed and the most cost-effective method was contracting private corporations and let them take care of the U.S. government's needs.

## **Efficient Short-termism**

The paper develops a theory where the owners, which in this case would be the government, pursue short-termism. This is described in the abstract: *“This paper develops a theory in which the owners of firms pursue short-termism in project choice to limit managerial rent-seeking behavior. Unlike in previous theories, a short-term bias in investment horizons maximizes firm value in the second-best case, whereas managers themselves prefer long-horizon projects. Short-termism benefits the firm in two ways: it limits managerial rent extraction by preventing investments in bad projects that delay information revelation about project quality and managerial ability, and it enables faster learning about managerial ability which allows more efficient subsequent decisions. This result does not depend on any stock mispricing or managerial desire to manipulate stock prices. The likelihood of short-termism is higher when corporate governance is stronger, and at lower levels of the corporate hierarchy. Numerous testable predictions of the analysis are discussed.”* (Thakor, 2016).

With the U.S. federal system build around a four-year-term as Commander in Chief, it could be argued that these short-term investments are the core of voter-oriented ideology – and political framework. It is important to understand that due to the mathematical complexity of this theory, we will only look into overall theoretical meaning and conclusion from the theory, and not into the specific models shown in the paper. Even though this theory is an economical one, it is still way too sophisticated on our behalf, and will in parts help with concluding the overall question. Different theory on efficiency will also be shown. The conclusions drawn in this chapter will also link to the findings in our theoretical analysis of privatization.

## **Literature Review**

Our research area distresses the implications of overcrowding prisons in the United States of America, how this problem appeared and what solutions possibly could reduce it. Moreover, we have assessed consequences of overcrowding for the inmates and further criminality after prison time. In our further investigation, we found out that there is several available research or literature on this theme, highly due to the overall interest in the U.S. around the globe and how they are handling criminality and thus what consequences it will have for their nation.

We have founded some limitations regarding our research area since some sources provided distinctive results for example did one article state that private prisons treat their inmates better and wages for employees are higher, but another article stated the exact opposite. Therefore, our research had a lack of comparable literature since there is not as much data of private prisons available as it is for state prisons. It seems like the transparency of what is published by private prisons is not as clear as it is with state prisons and since it private prisons were supposed to be a solution for the overcrowding it was difficult to find valid data. The majority of our literature is journals written by academics examining the correlations between profits and overcrowding in the U.S.

Overcrowding prisons in the U.S. is the result of decade's strict laws and policies against criminals. Due to excessive problems with drugs and racism in the past people began to be afraid, awoken a widespread of fear and therefore demanded solutions of politicians. Author Edward Kennedy was dealing with the problem for several years and argues that the current laws stress the limited government budget (Kennedy, 1985). Another scholar A. Kennedy argues in his journal that laws are too tough and is explaining some of them and how that is leading to overcrowding.

He is suggesting solutions in the law making to reduce criminality and satisfies society at the same time. In order to gain an understanding of the topic in terms of what happened politically we have used T. Mendelberg who is explaining how the politicians reacted to the crime and drug crisis after being pressured by the people.

In the literature we used are the reasons for overcrowding prisons in the U.S. quite similar. All authors agreeing on the fact that too harsh laws and pressure of the society is responsible for the dilemma.

Later on, hosting numerous people in prison became a lucrative business to keep. The problem of hosting that many criminals for long sentences is according to Kennedy that prisons filling up more and these people get not rehabilitated again in society.

Incarceration has been a common and widespread problem in the United States (Guetzkow et al., 2015). Joshua Guetzkow and Eric Schoon (2015) state that the condition for the rising incarceration rate is the massive expansion of the prison capacity. If the construction of new prisons were not established, the prison population could not have grown that fast (Guetzkow et al., 2015).

In the mid-1970 up to the late 1980s it was easier to put people in prison compared to building new ones. Guetzkow and Schoon (2015) examine the overcrowding litigation impact on U.S prisons. They point out three possible solutions in solving prison overcrowding: 1) Reducing prison admissions 2) Spend more on prison capacity 3) Increasing releases.

Further, the authors argue that the politicians can be tough on crimes without having to worry about the cost of it, they only have the responsibility of creating capacity to offenders. They provide an example of this problem in Florida, where the role of overcrowding has pushed the state to increase their spending on prisons. As they began to spend more money on prisons, they observed how it was politically popular. This illustrates that by provoking the politicians to spend more money on prisons, the growing overcrowding may have contributed to expanding the prison capacity, which is guiding a way of mass incarceration (Guetzkow et al., 2015).

The limitation of this article is that it cannot conclude the overall impact of prison overcrowding litigation, as the article is based on case studies, which is only looking at specific cases. Another thing to be aware of, is that it took several years after the prisoner were judged before the lawmakers within the states took action, which may question the reliability of the various statements concerning the litigation (Ibid).

James et al. (2013) states that the incarceration is the cornerstone of punishment of lawbreakers in the United States. The increasing inmate population continues to be a problem of the system as costs continue to rise. Many states begin to establish less punitive measures as solutions to lowering the costs and reducing the prison population (James et al., 2013).

Federal court has ordered states to reduce the inmate population in order to protect the inmates in regard to the constitutional rights. James et al. (2013) argues that this has resulted in some changes of the policies, but these solutions are only short-term fixes to a perpetual problem. James et al. (2013) provide various example of solutions to the overcrowding.

One example is California, who has tried to make bold policies in fighting the overcrowding with the result of a minimized effect because of the increased punishment to non-violent, non-serious and non-sex offenders.

Further, the authors state alternative solutions to incarceration such as regional jails, but this is just another short-term solution to the problem (James et al., 2013).

The limitation of this research is that it cannot say in general that all states are using short-term fixes in fighting the overcrowding problem, as the authors are only looking at some of the states dealing with overcrowding. However, the article gives an understanding of some states dealing with overcrowding and the impact of the various solutions.

In 2010, the prison population started to decline, which was a whole new part of America's history of criminal punishment (Goode, 2013). This could be the beginning of the end of mass incarceration in the United States. Erica Goode (2013) argues that this new evolution has been the result of changes in sentencing laws, plummeting crimes rates, tightened state budgets and changes of the public opinion. Besides this positive reduction of the prison population, the United States still have the highest incarceration rate than in other countries (Goode, 2013).

Further, Goode (2013) states that the recession has played a role in reducing the inmate populations, as many state prisons have been closed because of budgetary reasons. However, she argues that this has not been the deciding factor, but instead alternative solutions that works in reducing the problem and at the same time costs less (Goode, 2013). The author provides example of these deciding factors in reducing the problem such as the changes in the sentencing laws concerning drugs, diversion programs and softened policies. She adds that the change of the public attitude has as well played a major impact as it has diminished the interest of the politician to run campaigns that are tough on crimes. The American people have begun to think about who should go to prison and for how long. *"I don't think in modern history we've seen anything like this"* (Goode, 2013, p. 2).

It is important to understand that the attitude of people towards mass imprisonment has changed a lot. Politicians are admitting failure in how they handled the problems of crime and so are laws changing through different people in charge. Slowly there are alternatives to imprisonment. All the distinctive sources are significant for our assignment since we need to realize the different angles of what led to the overcrowding, before we can wonder about upcoming implications.

## **How did the overcrowding of prisons come to be in the United States?**

To understand where the overcrowding in prisons came from it is relevant to consider the trend of the Incarceration rate and the correlated events over the last century. During the 1970's and 1980's a sharp climb of the incarcerated people started, and prisons were and are overwhelmed in large parts with these high numbers of prisoners (Guetzkow and Schoon, 2015). In the last 40 years, the number of prisoners in the United States has almost quadrupled (Kennedy, 2015).

To allow for such a stark climb during the 1970's and 1980's there must have been something that has changed before, to lead to this climb. Therefore, investigating the events that happened during the 1960's is fundamental for understanding the following decades and happenings.

It all started during the Turmoil's in the 1960's, when the Civil rights movement and the Vietnam War were only the tip of the iceberg of the many chaotic topics in American politics (McKay, 2017). The main focus of the movement at the time was the commitment to enforce the African-Americans' civil rights against the discrimination of the black population in the southern states of the United states, which was legally codified at that time in the form of 'racial segregation'.

There it made significant reforms to equality and equation with up to the American constitutional law impacting significance (Schlanger, 2006). Protests and demonstrations, violent and non-violent flooded the streets of the Country and supported their viewpoints (Twombly and McDonald, n.d.). It signified the end of an era.

The election of 1968 and the campaign, which led up to election night presented this to the people. Since the incumbent President Lyndon Baines Johnson, for the democratic party, decided to not run for his re-election for the presidency.

The remaining candidates for the democratic party were the Vice-President Hubert Humphrey and the Senator from New York Robert 'Bobby' Kennedy. Kennedy was a well-known character in American politics, since his older brother, President John F. Kennedy the former democratic President, was assassinated earlier in the decade.

The year 1968 was in every way a tumultuous year, early in the campaign the charismatic civil-rights movement leader Dr. Martin Luther King was assassinated. After this tragic event it did not even take one month till the democratic contender Robert Kennedy was assassinated (Twombly et al., n.d.). All this contributed to the intensifying of the mood concerning the toughening the laws to fight the crime (Grimes and Loo, 2004).

The Republican challenger, Richard Nixon, was the earlier challenger who ran and lost against John F. Kennedy for the Presidency in the year 1960. After John F. Kennedy and Lyndon B. Johnson changed the ideological relation of the democratic party and changed it from a southern party to a northern one (Karol, 2009). That on the other hand also meant that the republican party had to change to find its new place within this machinery of American politics (Karol, 2009).

Richard Nixon therefore took advantage of the now ‘free’ voters that usually voted for the democratic party before it became the party of the civil rights movement and used a rather conservative message on civil rights issues as Karol (2009, p. 184) says: “...*racially conservative whites became a source of votes for Republicans.* “.

Using the principle behind the ‘Overton Window’ that explains the shifts of public discourse in politics. It is clear that the public discourse was influenced by the then Governor of Alabama George Wallace who campaigned as an independent with a very tough on crime strategy for the presidency (Worthington, 2002). He stood for a extremely conservative position on race, civil rights issues and had a somewhat extreme and unthinkable position on crime.

The just mentioned model of public discourse change therefore explains how the formerly unthinkable position on crime changed towards a more or less radical position, which was popular among the voters (McKay, 2017).

To carry these voters Nixon changed his rhetoric towards a more aggressive and radical position and formed a ‘Law and order’ campaign, which was the first big one of its kind. This position fitted into the newly shifted ‘acceptable and popular’ area within the model of the overton window. He took votes from the independent candidate Governor George Wallace that liked even more extreme positions but then voted for a candidate that was from one of the parties, because the chance of being elected as an independent is diminishable.

That position helped him to win the 1968 and (McKay, 2017). He also had to take advantage of the formerly democrat voters who now did not feel like they could vote for the new era of democrats with the Vice-President Hubert Humphrey being their leader on this forefront.



As Humphrey was clearly against the war and might have shown people signs of being too easy going with handling the crime problem.

This whole rhetoric was invigorated by the riots that occurred in Chicago during the Democratic National Convention (Grimes et al., 2004). People disagreeing with the Vietnam war went to the streets to protest and pictures of war like conditions in one of the biggest urban areas within the United states was seen on Televisions all around America. The evening news was full of terrifying news, aided by stories that drew new inner-city madness, and suburbs horrified by the rise of rap culture.

In the eyes of many Americans, the country was filled with criminal chaos. And that had to be put an end by any price (Kennedy, 2015). Voters who could not identify with such behavior therefore tended to vote for a tougher and clearer line on crime punishment (Grimes et al., 2004).

After Nixon was elected the President of the United states of America the climax of the turmoil was ending. Following however in the early 1970's the oil crisis hit the world. That led to a deep economic stagnation (Barsky and Kilian, 2004). Thereafter cities fought bankruptcy, ghettos grew and there was a wave of violent crime. Apparently overnight, American households were filled with fear (Schlanger, 2006).

Following two initiatives were created to fight these problems. Politicians did that by leading two interconnected wars: 'The War on Crime' and 'The War on Drugs' (Pettit and Western, 2004). With the beginning of the 1970's and increasing in the 1980's and 1990's, in response to the ever-increasing crime and abuse of drugs, the lawmakers throughout the country imposed harsh sentences against these behaviors (Kennedy, 2015).

The federal legislators created laws like minimum punishment and the three-strike laws that specify that a criminal who has already twice been convicted of a felony will automatically and compulsorily are sentenced to life imprisonment if convicted again. Early release with good leadership in prison is usually only possible after 25 years (Schlanger, 2006).

These "*one-size-fits-all*" laws are often valid for all offenders of the law and judges are no longer tailoring a punishment to the individual case (Kennedy, 2015, p. 3).

Federal state and local governments began spending more than one billion dollars to fight what the majority of people saw as a crisis: the dirty result of last decade's counterculture. Minimum punishment, strict and tough drug laws, and public security initiatives pervaded politics as prisons and police grew larger (Kennedy, 2006).

Across the country, minority-only neighborhoods have been cracking down on small offenses: a practice known as the 'Broken windows theory'. This offensive display of state authority was welcomed despite recognizable racism (Bernstein, 2018).

As a result, a tough attitude to crime became a requirement for public office. In 1988, George H. W. Bush made the move to the White House by using a notorious election campaign, in which he accused his opponent Michael Dukakis of having a gentle attitude towards crime (Mendelberg, 1997).

The unexpected star of the election campaign was a middle-aged black man named Willie Horton, who was released from a federal prison during Dukakis' term as Massachusetts Governor, and then raped and murdered a white woman (Mendelberg, 1997).

In order to bring the democratic party back on the political stage and targeting the to get back to power, Bill Clinton had to reinvent the Democrats as crime-hawks. He stated during the 1992 election campaign: "*We cannot reclaim our country until we recapture our neighborhoods.*" (Clinton, 1992).

In 1994, Congress went so far as to explicitly call for stiffer enforcement of states: A law called 'The Violent Crime Control and Law Enforcement Act', signed by President Clinton dictated that States, the more people they detained, the more money they would receive. It was a race involving 28 states and Washington D.C., by adopting stricter criminal laws (Lussenhop, 2016).

The nearly 5.000 prisons in the U.S. today are simply the result of supply and demand (Prisonstudies.org, 2018). Since 1970, the prison population of the United States has increased by 700 percent and 2.3 million people in the United states are imprisoned (Kennedy, 2015). That is the reason for the controversial business with the profit-making private prisons is booming. Imprisonment, whether for citizens or immigrants, is economically secure (Kennedy, 2015). The prison population since early the 1970's is the results of more than four decades of 'tough on crime' policies (Kennedy, 2015).

So, after exploring the backstory of the problem of the overcrowded prisons in the United states it becomes clear that through the chain of events that happened it created fear among the voters, unfortunately this fear was used as a campaign carrying promise by the Nixon campaign. This is not an irregular measure for political campaigns and can secure the victory.

In the case of Nixon's campaign, it worked out and he won. The government therefore made good on the promised tough line on crime and toughened the policies up (McKay, 2017). Tougher policies accordingly meant that criminals would face longer time in prisons.

That implied nevertheless that through the enforcement of these laws more people will be incarcerated and need to find space in the given facilities.

The given facilities, however did not have the capacity to house and manage these high amounts of criminals, therefore around 14 states as it stood at the end of 2016 ended up with overcrowded prisons these include states such as Illinois (138%), Nebraska (126%) Delaware (114%) etc. (Carson, 2018, p. 14). Other states such as California were forced to reduce the overcrowding significantly since the U.S. supreme court ruled that the right of the prisoners eighth amendment of the constitution was broken and the life in the prisons were considered 'inhumane' (Newman and Scott, 2012).

## **What did the U.S. government do to solve the overcrowding problem of the prisons?**

With the United States being one of the countries with most incarcerated people per capita (698 per 100.000 of the national population as of 2015) (Walmsley, 2016), the problem of overcrowding of prisons is bigger than ever. Are there any regulations on this problem, or is it a bad spiral that has the potential to continue for decades moving forward?

Incarceration has been the dominant form of punishing serious crimes in the United States (James et al., 2014, p. 124). Some argue that it creates an inefficient use of resources, as it has been overused to an extreme degree. Many of the states have begun to re-evaluated incarceration, to limit their resources.

After years of ignoring the problems within the correctional system of the United States, state courts and federal ruled that prison overcrowding must be solved, but the changes in the policy have often resulted in short-term fixes to the issue (James et al., 2014, p. 125).

There have been few periods in American history in which prisons have not has an issue of prison overcrowding. Least one-half of the states are under court order to reduce the prison overcrowding within their state (James et al., 2014, p. 126).

One of the problems is the inconsistent definition of prison overcrowding between states, federal courts, prisons, and agencies. This problem leads to methodological concerns in dealing with overcrowding in regard to its effects and causes (James et al., 2014, p. 126).

Further, prison overcrowding can often have an effect on recidivism as all inmates do not have access to correctional facilities in preventing recidivism (James et al., 2014, p. 126).

The United Nations Office on Drugs and Crime (UNODC) released a handbook on strategies to reduce overcrowding in prisons back in 2013. These strategies were designed to help solve overcrowding problems in prisons worldwide. But have these steps been followed in the U.S.?

And what goes into the suggestions such as “*reducing the scope of imprisonment and developing fair sentencing policies*”, “*improving the efficiency of the criminal justice system*”, “*access to legal assistance and legal aid*”, “*reducing pre-trial detention*”, “*alternatives to imprisonment*”, “*assisting with social reintegration and reducing reoffending*”, “*managing prison capacity*” and “*action plan to reduce prison overcrowding*” (UNODC, 2013).

Now, as this handbook is not written law, no countries are obliged to comply with the strategies. That includes the United States. Some pundits argue that judges are less willing to release individuals charged with crimes on their own recognizance (Humphreys, 2017). The study from the Vera Institute of Justice also shows that: “*(...) judges more commonly set cash bail amounts that many defendants can't pay.*” (Humphreys, 2017).

As the American Correctional Association do not really set any standards in terms of overcrowding, but more so the standards of safety in terms of preventing drug dealing etc. in the prisons, it is often up to the state officials to try to reduce prison overcrowding with legislative action.

The Federal Bureau of Prisons have also had a lot of pressure from human rights organizations and many others in supporting ‘compassionate release’, which can be explained as a special provision for inmates who are very sick or old (Thompson, 2018).

This method is also seen as a way to reduce overcrowding and cost for taxpayers in many states nationwide.

## **State responses to overcrowding**

There are three prevailing views of handling prison overcrowding (James et al., 2014, p. 129). First, is the increasing of prison capacity, which is the simplest and most common solution. Further, is the various diversion programs in the attempt to distract lawbreakers from prison time. Third, is the early release of inmates in seeking a reduction of prison populations.

The federal court has recently ordered early release of thousands of prisoners in California, in the effort to meet the constitutional rights (James et al., 2014, p. 127). Even worse, the overcrowded problem drives correctional administrators to adopt practices and policies, that may worsen other aspects of the prison system (James et al., 2014, p. 128). Especially looking at the dealing with mentally ill offenders, who has a hard time adjusting to prison rules, which the overcrowding exacerbates.

It has become very common to house the mentally ill inmates in solitary confinement to remove them from the general population (James et al., 2014, p. 128). Such practices illustrate that crises within the criminal justice often dictate policy choices, which is not always in the best interest of the individuals who are punished. Instead, it is often a question of what is cost-effective (James et al., 2014, p. 128).

California is one of the states that has a severe and long history of overcrowded prisons (James et al., 2014, p. 132). California has begun to legislate tough policies in order to reduce the prison population (James et al., 2014, p. 132).

The effect of the overcrowded prisons has been an increase in litigation, which is challenging the prison conditions, as inmates have litigated the state because of the conditions of confinement. The 2011 Public Safety Realignment was created to deal with the overcrowded prisons and also problems of recidivism, which has been a huge issue in California's prison system.

In 2011 California legislature passed a law, that allows non-serious, non-sex and non-violent offenders to serve their time in county jails and not in state prisons as normally done. Further, the law specifies that prisoners will not be released earlier (James et al., 2014, p. 132). California's multifaceted approach in reducing the prison population is a comprehensive strategy of different strategies established throughout the United States.

Despite the willingness, the state prisons are releasing prisoners earlier (James et al., 2014, p. 132). Women that are non-violent are released earlier as a part of an Alternative Custody Program. This means that they can serve their time outside of the prisons, but they need to be qualified according to several qualifications required.

By estimating this solution, it is possible of the release of 5.000 women, which is approximately half of the women in California's prisons. Further, GPS monitoring will be used with supervision. This solution can save the state six million dollars (James et al., 2014, p. 132).

The law enforcement will contribute to 60 crimes, categorized as being non-serious, are going to be punished as tough crimes. This will minimize the effectiveness of solving the overcrowding of prisons. The law contributes to an increase in inmates of offenders under county-levels supervision, which is supposed to help reducing the prison population.

Further, the new policy provides guidelines for county-level procedures. Not all inmates will get county supervision. It is primarily the ones who is characterized as being judge for serious crimes.

Presently, California has started to experiment with parole of non-revocable, which is important as California has struggles of recidivism for many years (James et al., 2014, p. 133). This new experiment means that offenders who have been paroled from a sentence of life time can be sent back to prison for violation within the parole.

In addition, the new policy allows revocations of paroles up to 180 days in a local county jail, which will replace the rest of one's sentence. This means that the responsibility will be shift from the state prisons to local jails, and thus the problem of overcrowding (James et al., 2014, p. 133).

Florida as well as California is characterized by having a huge problem of overcrowded prisons (James et al., 2014, p. 134). Florida has spent a lot of money in trying to reduce the problem of overcrowding. In 1972, the state implemented a guideline of sentences in the hope of eliminating disparate sentences (James et al., 2014, p. 134).

Some argue that this may reduce the prison population, but they may at the same time promote fairness and justice, which they cannot in this system (James et al., 2014, p. 134). Before these guidelines existed, many inmates would have been left under community control and thus not be incarcerated.

This will end up increasing the amount of incarcerated in the future and cost the state a lot to construct enough prison facilities (James et al., 2014, p. 134).

The state of Florida has further made use of the solution to increase prisoners earlier based on good behavior. This new policy established in November 1990 require the release of 900 inmates per week (James et al., 2014, p. 134). Even though, the early release of the prisoners seems necessary, the correctional administrators need to be aware of who prisoners they release in terms of public safety.

Further, Florida has provided the Community Control program build on systems of house arrest with electronic monitoring and programs concerning self-improvement. By being house arrested, the prisoners can expect a random visit at any time and they are required to do daily activity logs. Problems with the house arrest were the technology required, as the monitor was often unreliable.

However, the programs as a solution to the overcrowded prisons has been seemingly effective, as it has reduced the prison population, but only enough to operate the prisons near the maximum capacity (James et al., 2014, p. 135).

In West Virginia, a commission was established in order to help solving the problem of overcrowding. The commission observed how prisoners were kept in regional jails because of the lack of prison bed space. This had an effect on the prisoners, who did not have access to treatment programs and rehabilitative services, which would probably make recidivism occur (James et al., 2014, p. 136).

West Virginia has never traditionally made use of community corrections. The commission believed that diverting offenders into community corrections would be the solution to the problem, as the offenders will be distracted.

Another example of overcrowded prisons is in Oregon. In 1977, the state established an objective parole process in order to reduce the prison population (James et al., 2014, p. 135). The parole process was determined by parole outcomes examining the criminal history and offense severity.

However, the problem of the overcrowded prisons continued (James et al., 2014, p. 135). Oregon started to require guidelines for sentencing to factor the expected capacity of the prisons. Further, they required alternatives to incarceration, which could be probationary sentences as an example.

The state of Michigan has experienced the problem of overcrowded prisons as well (James et al., 2014, p. 135). If the capacity of prisons in Michigan is exceeded for 30 consecutive days, the commission will declare the overcrowding to the government.

The government will assert a state of emergency, which means that they will reduce the prisoners serving minimum sentences by 90 days (James et al., 2014, p. 135). In this way, the number of prisoners qualified for parole will increase and at the same time, the parole board is deciding who is granted the early release.

If the reduction of overcrowding is over 95 percent of capacity after the process, a reduction of another 90 days of the sentences will take place (James et al., 2014, p. 135). In 1981, 875 prisoners were released by using this method in reducing the prison population (James et al., 2014, p. 135)

There have been multifaceted solutions in the attempt of remedy overcrowding. The success of the various solutions to manage prison overcrowding differs, as each solution has its own shortcoming (James et al., 2014, p. 129).

### **Policies as a solution**

Three strikes regulations are not new; Since the late 19th century, the state of New York has been able to detain offenders for long periods of time because of ‘immorality’ (Persistent Felony Offender Law).

Especially after two young girls from California got murdered by someone who had been convicted of previous crimes (Kennedy, 2015). People started having the belief that people with a criminal history could not be rehabilitated. Since then European criminal laws also provide for higher penalties for repeated offenses than for first-time offenses, but here the courts have a much greater discretion (Kennedy, 2015).

In the U.S., it does not matter how long the two previous offenses took place for the application of the law. The Supreme Court has ruled that 25 or more years of imprisonment for the third offense are not grossly overdrawn and therefore not a cruel or unusual punishment according to the eighth Amendment (Kennedy, 2015).



Many U.S. states, however, differentiate according to the seriousness of the offenses. Mostly the first two offenses have to be violent crimes. The California Three Strikes Law, which is well-known for its sharpness and the multitude of convictions, does not provide for such a distinction. Here are classified by the law as ‘serious’ offenses without violence against people, especially burglary and car theft, to the offenses, which applies to the scheme (Kennedy, 2015).

In 2004, a proposal ‘Proposition 66’ to limit the application of this law to violent offenses was narrowly rejected by California voters in a referendum. In another referendum in November 2012, voters restricted the application of the law ‘Proposition 36’ to cases where the third offense was a serious or violent crime (Kennedy, 2015).

In 2012, the prison population began to decline for the third consecutive year, which has been the biggest decline in the United States’ history (Goode, 2013). The prison population has decreased from 1.598.783 in 2011 to 1.571.013 in 2012, which makes a decline of 1.7 percent (Goode, 2013).

The decline in percent appears small, but the fact that the decrease continued from 2010 to 2012 offers evidence of changes in America’s approach to criminal punishment (Goode, 2013). About half of the decline in 2012 occurred in California, as they were ordered to deal with their prison overcrowding by the Supreme Court (Goode, 2013).

The decline in prison populations is the result of plummeting crime rates, shifts in the public opinion, tightened state budgets and changes in the sentencing laws (Goode, 2013). Experts state that the continuing decline is not a random fluctuation.

Observers argue that the recession has played a role in reducing the prison population. From 2011 to 2012, minimum 17 states were closed because of budgetary reasons (Goode, 2013).

According to the director of Pew Charitable Trust, the cut in the budget has not played the deciding factor. He argues, that states providing diversion programs, softened policies on parole and federal sentencing laws for lower-level, especially the ones involving drugs, have played the shifting role in decreasing the prison population.

The changes of the public attitude have also played a major role in the observed decline (Goode, 2013). By dropping the crime rates over the last 20 years, it has reduced the public fears and thus the politicians running tough-on-crime campaigns.

The result has been an effort to reduce the nation’s trust in prisons, involving groups like Right on Crime, who is pushing for less punitive solutions for nonviolent offenders (Goode, 2013).

Some of the biggest reduction of prison populations have taken place in Texas, which has made a reduction of the number of inmates by more than 5.000 in 2012 (Goode, 2013). The state faced a problem in 2007, with the lack of 17.000 beds for inmates.

The State Legislature of Texas decided to stop building more prisons and instead provide drug treatment for nonviolent offenders (Goode, 2013). In Arkansas, the state managed to reduce their prison population by 1.400 inmates in 2012, which is the result of diversion programs and laws softening sentences for low-level offenders, which was passed in 2011 (Goode, 2013).

This provides an example of states establishing deliberate policies in reducing recidivism and the number of inmates, which is a big change looking at America's history in dealing with prison overcrowding (Goode, 2013).

Previously President Barack Obama and the U.S Sentencing Commission (USSC) have done a lot in the last decades to reduce the prison population in the United States (Federal Prison Population in Decline, 2016).

In 2007, the sentencing guidelines were changed retroactively by USSC, which resulted in the sentencing reduction of 16.511 inmates convicted crack dealers (Ibid). Further, in 2010 they implemented an amendment to reduce crack cocaine penalties retroactive. The outcome was 7,748 sentences reduced (Ibid.).

They made further changes to the sentencing guidelines in 2014, by reducing all drug trafficker's sentences, which estimated that 46,276 prisoners had their sentences reduced by an average of 18.8 percent.

Since it came into force in November 2015, almost 28.000 of those prisoners have been released (Ibid). In 2016, USSC documented resentencing and other sentences of modification for 24,7743 cases in 2015, which has been more than any other years. 90 percent of the cases were tied to the commission attempt to reduce the prison population (Ibid). President Obama has been able to grant 673 commutations, which is more than what the previous ten presidents have accomplished combined (Ibid).

## **Increasing prison capacity as a solution of overcrowding**

As it has been previously mentioned, other than earlier releases of convicts and introducing numerous programs, there is a third option to solve the overcrowding of prisons and that is, certainly an obvious choice, to increase the capacity of prisons (James et al., 2014, p. 129). By increasing prison capacity, we do not mean increasing the number of beds, because it would only “add fuel to the fire” as that does not solve overcrowding and merely worsens the conditions. Cases of overcrowding like this are then taken to courts under the Eighth Amendment of the United States Constitution's protection against cruel punishment (James et al., 2014, p. 128).

Increasing prison capacity rather represents the construction strategy. This requires building new prisons to accommodate the convicted persons since there is a growth of sentences on the account of tougher punishments.

In theory, when we build new prison facilities, the current ones will stop being overcrowded, which will help in prisons with more humane environments (James et al., 2014, p. 128).

When we look at construction of new prison spaces, this solution cannot be undertaken immediately as building new prisons is a long process that requires certain amount of time, in most cases seven to eight years (Clear et al., 2011).

Therefore, if building new prison facilities, to deal with overcrowding, is urgent, there is no immediate impact as the whole process cannot be done right away (James et al., 2014, p. 129).

Although the costs of building new prisons, and also expanding already built ones, are tremendous, the federal government of the United States of America and also half of the states either had “*stable or increasing prison populations in 2010*” (Porter, 2012, p. 5). Therefore, despite the price, the constructions of new prisons are initiated.

Building new prisons has both opponents and proponents. While the opponents argue this is not a viable solution as the new prisons get filled up with convicts waiting in county jails and the costs are too high, the supporters of construction strategy as a solution to the overcrowding think it boosts the development of the areas where the prisons are being built (James et al., p. 130).

But as building new prisons out of tax-payers' money is not a popular idea and the public is reluctant to fund such a project, although it is meant to ease the overcrowding problem.

A Gallup poll in 1982 showed that even though more than half of American citizens thinks there is a huge need for newly constructed prisons, majority of them does not want to pay for it (Kennedy, 1985, p. 117).

And even when there is financing for prison construction secured, it might face opposition of the people living in the area and the state governments or the federal government have to deal with such groups or find other viable solutions that would be financially safe for the state and the federal governments. (Kennedy, 1985, p. 117, 118)

And hereafter, some of the states started pushing for prisons operated by private companies.

Other U.S. states have tried to get around the public opinion through introducing the lease-revenue bonds. Procedure of using them was quite simple.

A state government established an agency and after this, it issued bonds and constructed prison facilities which were rented out to the department of correction of that state. Such process did not require any kind approval from voters.

But the rate of interest was much higher than with usual bonds, which meant that the cost for the government and the voters was also higher. (Musick and Gunsaulus-Musick, 2017, p. 76, 77)

## **Privatization of prisons as a solution**

Due to tougher punishments and stricter sentencing laws in 1980s for various crimes, the incarceration rates have risen, and prison populations has gone over its maximum capacities. But to finance construction of new prison facilities, state governments needed voters to approve such funding.

However, as previously mentioned, although people supported tougher punishment, they did not want to finance new prisons. In the 1980s, voters supported only 60% of such referenda (Mumford et al., 2016, p. 1).

As a result of this, state officials started to look for solutions somewhere else. To fight the overcrowding of public prisons, the states needed to turn to private firms as those are capable of building prisons much faster. Such a solution was interesting for the states as building prisons was done in much faster pace and there was no need for approval of referendum by the population. (Mumford et al., 2016, p. 2).

There was also the idea that private prisons can be held more accountable because they cannot be dismissed like state prisons. Nevertheless, private prisons do not have the same constitutive constraints as the state prisons (Norris, 1990).

Looking at privatization as the future step in solving the overcrowding crisis was certainly influenced by the Reagan's administration support of privatization (Sellers, 1988, p. 7). The backing of privatization by Reagan and his administration was really firm (as Reagan even appointed the head of newly formed institution 'President's Private Sector Survey on Cost Control') (Sellers, 1988, p. 7).

It is no surprise privatization of prisons also started to pave its way in this wake of widespread privatization. Growing support of privatization by the President Ronald Reagan has come at the same time as the rise in the prison population during the 'war of drugs' and 'tough on crime' campaign (Norris, 1990).

The privatization movement at the government level is either about reducing the obligation for provision of services or removing its obligation for production.

Governments in the United States viewed it the same way with privatization of prisons. They would continue to provide the prison service to the population, but the “*production*” process (meaning building and maintaining the prison facilities) would be in hands of the private sector (Sellers, 1988, p. 45).

The overcrowding of the prisons and the rising costs associated with it became a major economic problem for the U.S. federal and state governments. Private companies offered their help, and this was the beginning of the era of private prisons, which promised cost savings in the prisons and generally promised a decrease of the amount that the government would have to spend on the prison system (Norris, 1990).

Using private companies for operation of prison facilities has been one of the advantages of such a system for the state officials as they could get around the public opinion about constructing new prisons, since such public opinion would have been indicated by people turning down the proposals in various referenda as population was not keen about increasing the public debt by building prisons (McDonald, 1994, p. 37).

But another reason, very important one, were the costs of building private prisons. Private prisons' supporters argued privately run prison facilities would have been cheaper not only in relation to the construction, but also operating and maintaining it (Sellers, 1988, p. 67).

Therefore, private companies would take care of prison facilities for less money than if it would be financed by “*direct governmental provision*” (McDonald, 1994, p. 37). While lowering the costs, they would be able to provide better service than the government (Sellers, 1988, p. 67).

Although there are more convicts detained in private prisons currently than in the past, the number of private prison providers in the United States has decreased. While there is a certain competition between private prisons and public prisons, the competition between the private firms is slowly descending.

In 1999, there were 12 private firms running prisons and eight of these companies have been “*consumed*” by the bigger firms while only 2 new private prison firms have opened. (Mumford et al., 2016, p. 3) And even though there still might be a few private prison providers, the two biggest companies are responsible for 55 percent and 30 percent of all convicts detained in private prisons in the United States of America, respectively.

The third largest private prison firm makes up of 11 percent of all the private prison beds, which reveals that the three biggest private companies are responsible for 96 percent of places for convicts inside private prisons across the whole United States of America.

We can already see private prison monopoly in some of the states, for example one of the private firms runs all the contract prisons in California, Texas and Tennessee (Mumford et al., 2016, p. 3). Since the oligopoly in the private prison sector has grown in the United States, lobbyism has much stronger potential than if the market with private prisons would be dominated by small, but numerous, private prisons (Mumford et al., 2016, p. 4).

Therefore, to certain kind of extent, overcrowding of prisons and over-incarceration might be profitable for private firms and most importantly for the government and the taxpayer as the costs are lower for governments. It is important not to forget that there is a social cost associated to using for-profit facilities in sector such as this.

### **Overcrowding and privatization since 1980s**

The current state of completely maintained prisons by private companies was preceded by a motion set by the U.S. Immigration and Naturalization Service (INS).

In 1979, INS started to contract out to private firms to detain illegal immigrants awaiting their court hearings (McDonald, 1994, p. 30). By the year 1988, the number of privately owned detention facilities has increased to 7 and they had roughly 800 out of approximately 2700 immigrants (McDonald, 1990, p. 92).

The market with detention facilities was valuable for the private prison companies and some of the front-runners of the current private imprisonment companies have started in this time, including the Corrections Corporation of America which will be mentioned later (McDonald, 1994, p. 30).

Other than contracting out these detention facilities, the federal government's Bureau of Prisons has used private companies to operate community treatment centers since the second half of the 1960s and also used them to outsource certain kinds of services, but the entire administration of prisons was still controlled by the government (Norris, 1990).

Although there has been use of private companies even before, in the 1980s private companies got into the market with adult penal system prison facilities with the outburst of the overcrowding crisis as one of the possible reasons (McDonald, 1994, p. 30).

In 1981, the number of prisoners has increased in all of the states other than Michigan, which might be because of their “*emergency law*”, previously mentioned in the other solutions to overcrowding problem, and therefore Michigan had the decline of one-percent in prison population (Bureau of Justice Statistics, 1982, p. 1). Because of the overcrowding crisis, also the number of prisoners held in local jails had increased to 8 576 convicts in 20 states, most notably Alabama, Louisiana and Mississippi (Bureau of Justice Statistics, 1982, p. 3).

There have been some cases of contracting with private companies to run jails in 1985 and the start of 1986 in Florida and New Mexico, but the first real measure with private prisons to fight the overcrowding of prisons was opening private prison at the state level with 350 beds in St Mary's, Kentucky, by U.S. Corrections Corp. in 1986 (McDonald, 1994, p. 30).

Since the first contract prison, private prison facilities have spreaded to another 29 states (mainly states in the south and the northwest of the United States of America). Some of the states are using private prisons so extensively that the percentage of private prisons population cannot be simply overlooked. Private prison population makes up more than 20% in six states of the United States, almost 44% of all prisoners in New Mexico, roughly 39% in Montana and little bit over than 26 % in Oklahoma, 21.8% in Vermont and in North Dakota it is 21.6% (Mumford et al., 2016, p. 2, 3).

Even though opening privately operated prison facilities was done in order to reduce the overcrowding, some of these cases were not met with understanding as people, firstly fearing for their own life, were afraid of convicts escaping the facilities.

Case that really stirred up a conversation was Corrections Corporation of America's offer to take over the whole prison system of Tennessee while guaranteeing the new system run by them would meet the requirements set by the federal court judge, who previously concluded the whole system is in infringement with the Constitution of the United States of America because of prison conditions not being adequate as the prisons were largely overcrowded (McDonald, 1994, p. 30, 31).



But what was interesting and certainly a conflict of interest was that the wife of the governor of Tennessee was a shareholder of Corrections Corporation of America when this proposition took place (Musick and Gunsaulus-Musick, 2017, p. 84). Corrections Corporation of America, a private prison provider, was founded in 1983 by Thomas Beasley, a person with political connections in Tennessee (Musick et al., 2017, p. 84).

Private imprisonment has started being largely noticeable across the whole United States of America. The opinions of different organizations on contracting out prisons have been split between its supporters, organizations that opposed it and also those who took a neutral stand for the time being and asked for moratorium for a further study (McDonald, 1994, p. 31).

Till 1986, every annual change of the prison population was increasing, and, in this period, the largest increases of prisoners were in Alaska, California, Nevada and Hawaii. Roughly 14 000 prisoners were held in local jails because of prison overcrowding in the year 1986. (Bureau of Justice Statistics, 1987, p. 1, 3)

In 1986, 38 U.S. states have been ordered by the federal court to ease the overcrowding of prisons, as many prisons started adding up more beds into the prisons and such overcrowding was deemed unnecessarily cruel as prisoner's *"rights may be diminished..., a prisoner is not wholly stripped of constitutional protection when he is imprisoned for crime"* (Sellers, 1988, p. 66). Governments at all levels (federal, state and even local governments) were pressured into acquiring new facilities, either by constructing them or by turning unused buildings, previously used for other purposes, into such facilities (McDonald, 1994, p. 37).

The state of Texas may serve as an example of how prison privatization started at the state level. In 1987, the Texas laws allowed the Texas Department of Criminal Justice (TDCJ) to contract with Corrections Corporation of America and also the Wackenhut Corrections Corporation. To control the private prisons, TDCJ assigned one employee to each of these privatized facilities (Musick & Gunsaulus-Musick, 2017, p. 85).

By the start of 1991, there have been only 44 privately owned prison facilities which detained approximately 15.000 prisoners. This number is relatively small considering the overall number of prisons and other facilities across the country was 4.900 at that time (McDonald, 1994, p. 31).

Although private prison construction has not experienced a big “boom”, the numbers have continued rising steadily and maximum-security prisons have also started being operated by private companies, such as four maximum-security prison facilities in Texas (McDonald, 1994, p. 31).

In 1995, the overcrowding was more severe with almost 33,000 prisoners detained in local jails, although the year-over-year number had declined (Bureau of Justice Statistics, 1996, p. 6). In 1995 there was still no mention of privately operated prisons in the official statistics, but by year 2000, all over the United States were more than 150 adult correctional facilities already operating or being constructed (Musick & Gunsaulus-Musick, 2017, p. 85). And by the end of the 20th century, 28 out of all 50 U.S. states had approved legislation entitling private organizations to run prison facilities and the federal government had also approved of such use to help reduce the overcrowding of prison facilities (Musick & Gunsaulus-Musick, 2017, p. 84).

In 2000, 21 states of the United States of America and the federal prisons were operating at more than 100 percent of their prison capacity (Bureau of Justice Statistics, 2001, p. 9). The year 2000, was one of the first years they included privately owned prison in the official United States Department of Justice statistics. Privately operated facilities held almost 90,000 convicts (5.8% of state inmates and 10.7% of federal prison inmates). There were 264 privately operated facilities at the end of 2000 (Bureau of Justice Statistics, 2001, p. 1).

From 2000 to 2005, the number of inmates in federal prison system has increased by 74.2% and the number of state convicts by 7.2%. Out of all the state and federal inmates seven-percent were held in privately operated prisons making up more than 100,000 inmates in 2005 (Bureau of Justice Statistics, 2006, p. 5).

The federal prison system and 23 U.S. states operated at or above highest capacity (Bureau of Justice Statistics, 2006, p. 7). In July 2002, Corrections Corporation of America had the sixth biggest correctional system over all of the United States ranking behind State of Texas, State of California, the Federal Bureau of Prisons (Federal prisons), State of New York and State of Florida (Musick et al., 2017, p. 85).

Privately owned prisons held almost 130.000 inmates at the end of 2010. That made up nearly 7% of state prisoners and about 16% of federal inmates.

About 19 states were operating above their highest capacity with seven states and the Bureau of Prisons' prison facilities being 25% over it and those were Massachusetts at 139%, Illinois at 144%, North Dakota at 136%, Ohio at 127%, Wisconsin at 125%, Alabama at 196% of their highest capacity (Bureau of Justice Statistics, 2011, p. 7).

In 2015, Corrections Corporation of America became the fifth largest prison system in the United States taking New York's place. Another large company providing private prisons is the Geo Group which was created by taking over other private prison providers such as Cornell Companies or the big Wackenhut Corrections Corporation.

Later in 2015, Geo Group had operated 106 prison facilities with roughly 85.000 convicts and taking the Corrections Corporation of America's title as the biggest prison provider in the United States of America (Musick et al., 2017, p. 86).

In 2016, the number of inmates decreased by 21.200 since the end of 2016 (Bureau of Justice Statistics, 2018, p. 1). Therefore, the decline continued as it happened in almost all years since 2010 with exemption of 2013 when the prison population of the United States of America increased by 0.5 percent.

Such a trend started while Obama's presidential term (Bureau of Justice Statistics, 2014, p. 1). But while the number of prisoners decreased, the overcrowding crisis continued in 14 U.S. states and also in the federal prison system (states such as Illinois, Nebraska, Iowa, etc.). Out of all prisoners, nine-percent were held in privately operated prisons in 2016. These prisons were in 28 of all US states (e. g. New Mexico, Montana, Oklahoma, Tennessee, Hawaii, etc.). Although the number of inmates in private prisons grew by two-percent since 2015, the number of convicts in federal private prisons declined by two-percent (Bureau of Justice Statistics, 2018, p. 1, 14).

That means federal prisons were more inclined to reducing the use of private prison facilities in comparison to state prisons. Even though there has been growth of the private prisons in the 21st century, currently it has dropped by eight-percent since its pinnacle in the 2012.

This development can be seen as a result of six states (Arkansas, Kentucky, Maine, Michigan, Utah, Wisconsin) getting rid of private prison facilities, reasoning with reducing the costs and making safety measures, and another six states (Alaska, California, Idaho, Maryland, North Carolina, South Dakota) reducing the use of private prison providers (Carson, 2018, p. 16).

The federal prison population has grown by approximately 800 percent since 1980 to the 2010s. As there was huge overcrowding crisis, the Federal Bureau of Prisons could not accommodate these prisoners and that is why they started contracting with private companies to operate prison facilities.

Since the prison population has started declining since 2010, the Deputy Attorney General has decided to put out a memo asking to begin the process of reducing the use of private operated facilities and eventually closing the private prison sector (Yates, 2016).

### **Analysis of Efficient short-termism**

As stated beforehand, the Federal Bureau of Prisons: “(...) *contract with the private sector to help manage our inmate population.*” (BOP, nd.). That’s another way of saying that it is a method to try to reduce overcrowding. It is a well-known fact, that U.S. federal prisons overcrowding issues has been on the rise from the past century, as a report from the GAO from 2012 also shows (GAO, 2012). The main issues are explained in the introduction to the report: “*According to BOP, the growth in the federal inmate population has negatively affected inmates, staff, and infrastructure, but BOP has acted within its authority to help mitigate the effects of this growth. BOP officials reported increased use of double and triple bunking, waiting lists for education and drug treatment programs, limited meaningful work opportunities, and increased inmate-to-staff ratios.*”

*These factors, taken together, contribute to increased inmate misconduct, which negatively affects the safety and security of inmates and staff. BOP officials and union representatives voiced concerns about a serious incident occurring. To manage its growing population, BOP staggers meal times and segregates inmates involved in disciplinary infractions, among other things.*” (GOP, 2012).

As these problems have risen, the need for contract prisons have increased with the U.S. federal government now contracting twelve contract prisons with a total of around 21.366 inmates as of February 2017 (Zapotovsky, 2017). These problems have also been described by former deputy attorney general under the Obama administration, Sally Yates: *“They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, they do not maintain the same level of safety and security (...)”* (Zapotovsky, 2017).

As the study from the GAO concluded that there were problems with the private prisons, it challenges the theory behind Thakor’s paper, in which he states: *“In the area of corporate investment policy, one of the most widely-studied topics is corporate ‘short-termism’ or ‘investment myopia’, which is the practice of preferring lower-valued short-term projects over higher-valued long-term projects. It is asserted by many that short-termism is responsible for numerous ills, including excessive risk-taking and underinvestment in R&D, and that it may even represent a danger to capitalism itself.”* (Thakor, 2016).

As we translate this to our current project, the U.S. and state government was faced with overcrowding problems and responded with a short-term investment in contracting private corporations and their institutions, and “*resolve*” the problem in that way. An example of how overcrowding came to be in California is described in an article in the Business Insider which quotes certain takes of the radio documentary ‘Prisons in Crisis: A State of Emergency’: *“(...) Then California began aggressively increasing sentencing in the late 1980s and 1990s in response to nationwide fear about high crime rates. Several high-profile crimes by parolees including the murder of 12-year-old Polly Klauss stoked fear in California, according to ‘Prisons in Crisis’. California enacted more than 1000 laws that increased sentencing in a five-year span to settle these fears, law professor Jonathan Simon told ‘Prisons in Crisis’ producer JoAnn Marr.”* (Fuchs, 2013).

It is common known sense, that the U.S. government started this method of hiring contract prisons, as it was a cheaper solution than building new federal institutions themselves. As the short-term investment and solution to overcrowding that today’s private prisons are, the political discourse in today’s America can be argued to even further fertilize their profit, even though public and political support has decreased: *“But the private prison industry is resilient. Moving forward, the industry is likely to grow, thanks to criminal imprisonment, immigrant*

*detention and rehabilitative services. First, private prisons will continue to imprison criminals. In a reversal of the previous administration, Trump's Department of Justice announced that it will order the Bureau of Prisons to continue contracting with private prison operators. Consequently, a major source revenue will remain open to the industry.*" (Burkhardt, 2017).

Thakor argues that even though short-termism gets a lot of research and public debate which generally concludes that short-term orientation in project choices sacrifices long-term value (...) (Thakor, 2016), there's still benefits to gain from short-termism. It is only fair to look at the other research of short-termism and there is plenty to find. As mentioned before, the Trump administration ordered the Bureau of Prisons to continue contracting with private prisons, which was in complete contrast with the orders from the Department of Justice under the Obama administration.

The concept of short-termism in American politics is explained well in a blog post at Huffington Post: *"Consider, for example, the problem of democratic elections. In the United States, members of the House of Representatives barely have any time to focus on legislation. During their two-year terms, they have to spend virtually the entire period raising money for the next election. The problem is only slightly better for the president, who has an 18-month period of opportunity to push through important laws before turning attention to the next campaign."* (Feffer, 2013).

The background for the discussion of the usage of private prisons in controlling overcrowding problems, stems from a BOP report that concluded that: *"We found that in majority of the categories we examined, contract prisons incurred more safety and security incidents per capita than comparable BOP institutions."* (Office of the Inspector General, 2016). Several persons have been outspoken of this report and has questioned the usage of private prisons for its purpose of controlling overcrowding but under certain standards set from the BOP.

One of them is Bernie Sanders: *"In my view, corporations should not be allowed to make a profit by building more jails and keeping more Americans behind bars. (...) Criminal justice and public safety are, without a doubt, the responsibility of the citizens of our country, not private corporations, and they should be carried out by those who answer to voters, not those who answer to investors."* (Gusovsky, 2016).

It's hard to know what the exact solution for overcrowding will be for the United States. As of now, the political system is built in a way that capitalism can go deep into the roots of the fundamentals of governance. That includes the justice system. There are plenty of opinions on how the overcrowding can be resolved. Pundits and the citizens of America usually takes two sides of this. There is the side who thinks and argues that the overcrowding should be resolved with stricter fines and penalties, which in theory should create fear for the citizens and in that way decrease the crime rates and incarceration rate.

Then there is the other side who argues that the legislation should be more forgiving and focus more on fines and rehabilitation. These arguments include sending fewer people to prison for drug crimes, give prisoners a full year off their sentences for participation in a drug rehabilitation program and releasing more elderly prisoners from Bureau of Prisons custody (Knafo, 2013).

No matter what part you agree with, the discussion is still open, and the U.S. still has a livid fight with overcrowding of incarceration institutions and that fight will still be ongoing with a politically split country.

### **Comparative analysis - Prison capacity**

Property and violent crime rates have declined since 1973, in the years between 1988 and 1997, the U.S. prison population increased dramatically (Levitt, 2004). In a little less than a decade, the U.S. prison population nearly doubled, rising from 627.600 inmates in 1988 to 1.244.554 inmates in 1997. In 1997, the federal prison system reported functioning at 19 percent over capacity, and state prisons said operating at 24 percent over capacity.

The immense numbers exceeding by far, combined with a 1992 executive order issued by President George Herbert Walker Bush encourage and all federal agencies to encourage state and local governments to utilize private prisons, led governments to look to private prisons as a necessary supplement to public ones.

In 2016, 14 states and the Federal Prisons met or exceeded the maximum measure of their prison facilities' capacity, and 26 states and the BOP had several prisoners in their custody that met or exceeded their minimum number of beds (Carson, 2016, p. 14). As state and federal facilities are forced to operate at or above capacity, solutions are increasingly being sought from the private sector.

In response to the dramatic increase in prison population, a significant incentive of prison privatization was to facilitate a quick offering of flexible space with little political pressures (Austin & Coventry, 2001). With less political influence, prisons can act more freely and not held by the same responsibilities. Private jails enable the government to speed up the process of building a prison because the legislators do not have to authorize bonds and other requirements (Camp & Gaes, 2002). Because public jails have a stricter and more fixed process, it takes them more time and effort to build a prison.

One would argue that a private prison is, therefore, more suitable for a quick solution regarding reducing the overcrowding. It takes the government over two years to build a public prison compared to a private prison corporation that can make a prison in 18 months (Antonuccio, 2008). Private prisons can be selective of inmates and manage prison population levels by transporting prisoners to specific sections where there are more significant needs. It lessens the threat of overcrowding on local systems. (Vittana.org, 2018)

Different states have optioned not to apply privatization as a solution, four of them have the highest overcrowded prison systems: Illinois 138% Nebraska 126%, Iowa 115%, Delaware 114%. Finally, the private sector operated at 82% capacity while public sector prisons operated on average at 113% capacity (Peck, John 2001).

Hence, private prisons were running at 18% below their capacity levels while public prisons were operating at 13% above their originated capacity levels. The consequence of exceeding the capacity may affect the relative quality of prisons.

According to several studies, private jails with same security level as a public are safer due to lower capacity rate which creates lesser dangerous inmates (Perrone and Pratt, 2003). Comparing privates' capacity rate with public's, the option to operate selectively appears, therefore, more efficient concerning prevention further overcrowding.



Although, an important encounter, this may be due to more to the nature of the private sector as an ‘overflow mechanism’ which takes them for the public sector than to any particular philosophy or operating objective that it may ascribe.

### **Comparative analysis - Operational cost**

Private prison advocates claim that private prisons save taxpayers money because they are subject to less bureaucracy than public prisons, private prison corporations claim they can build and staff their prisons more quickly and less expensively than can federal jails (Perrone and Pratt, 2003). Making a penitentiary requires resources and material goods. Private prisons can negotiate item costs and purchase in bulk (Perrone et al., 2003). One would assume/argue that private prisons are more effective in building prisons because of their flexibility to deal with whomever they want without being restricted by the same laws as public prisons.

Building new prisons requires financing. But financing constructing new prison facilities needs the approval of voters. People supported tougher punishment, but in contradiction to that they did not want to pay for construction of new prisons. Voters needed to approve this in referenda and 40 percent of this referenda have not passed in the 1980s (Mumford et al., 2016, p. 1). Incarceration is expensive, and the more efficiently it can be achieved, the more taxpayer money may be freed up for satisfying other public needs.

That is why the private firms are used in prison systems as they can reduce operational costs and use innovations in these cases and therefore bring cost-saving to the public sector. The question is whether they are introducing innovations like this (Mumford et al., 2016, p. 1). Reducing the costs might lead to financial savings that could be used to build new prison facilities to relieve the overcrowding of prisons already in use.

There have been many debates about whether private imprisonment is less costly than public prisons. Opponents of this system are claiming costs of contracting and additional supervising of these private prisons would balance the savings, while the supporters of private prison system conclude that with bigger freedom to operate the prison efficiently, the reduced costs will be visible (McDonald, 1994).

When prisons have to finance its own operation, the cost of it depends not only on the number of prisoners detained in this prison, but also on the needs of prisoners or rather limitations in accepting inmates. While public prisons cannot 'cherry-pick' prisoners, for privately operated prison facilities it is possible to do so. Private prisons might not want to take in convicts with health problems or violent offences and they are also more likely to operate facilities with prisoners that do not need high security (Mumford et al., 2016. p. 1).

But if private prisons decide to accept only minimum-security prisoners, the overcrowding crisis in medium and high security facilities will not be on the right way to solve it.

Reducing costs is also connected to staff of prisons. Private prisons do not only pay less to its officers, but in addition to that they employ lower number of officers (Mumford et al., 2016, p. 5). Although it reduces the cost per inmate, furthermore it means one officer is responsible for more inmates. In addition, if the salary is not good enough in private prisons, staff members might not feel as satisfied with their job, not dedicate enough time for the inmates, and the prisoners could feel as inferior group to others (Musick & Gunsaulus-Musick, 2017).

Ultimately, the officers in private prison sector earn even less than officers working for prisons in the state or the federal prison systems (Sachdev, 2008). Therefore, there is lesser chance of the rehabilitation process being successful and recidivism rate might not decrease. Reducing the recidivism and trying to ultimately end is important for the prison system. If previously imprisoned people get into prison system again, it will not help overcrowding crisis and only furthermore worsen the problem of overcrowding.

Reducing the recidivism rate does not have to be the main objective for private prisons as they are pro-profit, therefore, private prisons might have different incentives (Mumford et al., 2016, p. 1).

With a 'healthy' private sector there is always competition associated with it. Companies compete in who is going to provide the service or product for the lowest cost. But in the private prison sector there has been a trend of companies merging together, the competition dropped, and therefore oligopoly has appeared in this sector.

Since the two largest private prison providers make up 85% of all private prison beds, they do not have to feel inclined to reduce the prices for the governments as much as in a sector with “*healthy*” competition (Mumford et al., 2016, p. 3). And if the costs are not cut down, the governments might not be able to finance as many new constructions as they could have, which will poorly influence the overcrowding crisis.

One of the important financial parts of prisons are education and health care. In this case, private and public prisons are more alike, as public prisons contract out these services with the private sector.

Providing good educational programs for the prisoners is very important as that will help them in assimilating in future when they will be done serving their time in the prison (Sellers, 1988). In random on-site visits, Sellers (1988) came to the conclusion that the private prisons are better in providing such services. But if the prisoners are not provided sufficient programs, the rehabilitation is less likely to happen, and therefore, again, recidivism rate would not go down, which would negatively influence the overcrowding situation of prison system.

## **How has this/these solution/solutions affected the U.S. government's main objective of reducing the overcrowding?**

Several states have made use of various solutions in reducing the prison overcrowding. If we take California as an example, they have implemented tough policies in order to reduce the inmate population within the prisons.

Being tough on crimes has proved to worsening the problem, as more offenders are going to prison. Further, the state has released thousands of inmates before time, which can save the cost of almost 6 million dollars for the state.

Releasing inmates earlier is a solution used in Florida as well. They have released prisoners earlier upon good behavior. By releasing prisoners early, it can affect the safety of the public in some cases. However, this solution has been effective in reducing the overcrowding in Florida, but this can also turn out to be a less effective solution as we see in Oregon.

Florida has further provided house arrest and programs concerning self-improvement. Florida has been able to reduce their prison population as well as California with the help of these solutions but only enough to manage the prisons at the maximum capacity.

Florida has also tried with laws which provided guidelines for sentencing, but this solution worsened the problem, as many people were sent to prison who would normally left under community control. This solution would increase the prison population and be very expensive as new prisoners would be constructed in order to deal with all these prisoners.

California and Florida are two of the states who have the biggest problems in terms of overcrowded prisons. The two mentioned examples are illustrating that states are coming up with solutions, some of them might be effective but they are all short-term fixes to a perpetual problem. Federal and state courts have tried to solve the overcrowded problem by making changes in the policies, which has also been the result of short fixes to the problem. The choice of solution is often the question of what is cost-effective.

The cost-effective solutions in changing the policies may even worsen the problem of overcrowding or move the problem from the state prisons to the county jails in some cases as we see in California.

In a state like West Virginia, offenders are housed in regional prison because of the lack of prison capacity. This solution can even worsen the overcrowding problem as prisoners will not have the access to treatment programs, which can further make recidivism occur. Diversion and treatment programs have been an effective solution to the overcrowding problem, which is connected with the changing of the public attitude towards the punishment of offenders.

The belief that people can change and succeed is leading the way for treatment programs. Diversion programs and treatment programs have a positive effect on recidivism as it will probably decline. Therefore, it is a good solution to the problem in combination with the changes of the laws. We can see how these programs in helping offenders have made an impact in states like Texas and Arkansas.

By introducing these programs, they have been able to reduce their prison population.

In 2010, the prison population began to decline, which is at the same as the changes in America's approach to criminal punishment started. We observe how public opinion starts to change, which makes the politicians transform the policies to softer ones, because of the missing interest in tough policies.

The tough policies have worsened the overcrowding problem, so the changing attitude towards America's criminal system characterized by punishment, is a huge positive change because it has the effect on the policies. Changing the crime policies is the most effective solution in solving the overcrowding.

Especially the changes of the sentencing laws regarding drug crimes has been an effective solution in solving the overcrowding problem of prisons. The involvement of groups like Right on Crime has had a positive effect in reducing the prison population, as they have pushed for less punitive solutions for non-violent offenders.

Further, the recession has played a role, as many prisons have been closed, which means that new tools need to be used, as the prison capacity decreases. If the capacity of prisons declines and still the same offenders goes to prison, changes to the policies regarding crime needed to happen in order to make fewer offenders doing prison time.

Deliberate policy is the solution in the United States in reducing recidivism and the prison population, which is proved with the decline in the incarceration as the government started to make softer policies concerning crime.

The previous president of the United States Barack Obama was able to make the incarceration rate decline by introducing new changes of the policies. Obama granted 673 commutations, by making softer policies and thus reducing sentences.

The tough policies were creating the big problem of prison overcrowding in the United States, by going back and make changes of the policies who caused the problem, the country is able to change the problem for the better.

As overcrowding became an enormous problem in the United States of America in the 1980s because of the war on drugs that politicians waged and also being tough on crime, the governments needed to find a viable solution.

As one of the solutions they started using privatization. A new market with private prisons opened up.

After more than 30 years of privatization of prisons, governments should be able to look whether the privatization helped to solve the overcrowding problem. If we look at the quality and costs of private prisons, these prisons did not perform superior to publicly owned prisons, although the reasoning behind applying them to the prison system was reducing the costs and improving the quality of services provided by prisons.

From the point of operational costs of private prisons, there is not enough viable data to sufficiently compare public prisons and the ones operated privately.

Private prison facilities do not have to release all of its data about costs they have had in comparison to public prisons which are obliged to.

Although from the data that is available we can recognize private prisons are cheaper than its counterpart, we have to ask the question whether it is convenient to have cheaper private prisons which do not provide better or at least the same quality of services like education, healthcare, quality of facility as the building and if they do not use better qualified officers.

As these are all fields that can influence the probability of inmate coming back to jail, the recidivism rate can immensely increase, and that will worsen the overcrowding problem also.

In a review of the Federal Bureau of Prisons' Monitoring of Contract Prisons published by Office of the Inspector General at United States Department of Justice (2016), they have found out that private prisons had more incidents per capita in almost all of the categories compared to the Bureau of Prisons' facilities. Bureau of Prisons have found safety and security weaknesses in three contract prisons that were visited in order to write the review.

These incidents and deficiencies can be seen as a problem with rehabilitating the convicts. If the rehabilitation is not successful in these private prisons, recidivism rate will not go down as the convicts might get into prison system again and overcrowding will remain in prison systems all over the United States of America. So, if contract prisons perform unsatisfactorily in this sense, that means private prisons are more contributing to the overcrowding crisis than public prisons are.

If we look at the prison capacity and how they can increase it, private prisons are more likely to succeed in taking care of overcrowding crisis rather than public prisons.

While it takes seven to eight years for public prison to be constructed and it includes enormous costs associated with it, for private companies it is much easier to get prison facility ‘up and running’, for example they can reuse spaces that are no longer used for its previous purposes.

This is reducing the costs for the private companies and saves time as the whole process is faster and more efficient. Therefore, private prisons are more adaptable to such changes as the overcrowding of the prisons is.

Although constructing new prisons is not a long-term solution for overcrowding of the United States' prison system, as a short-term and immediate solution, private prisons can reduce overcrowding to a greater extent than prisons operated by the Bureau of Prisons.

Sally Q. Yates (2016), the then Deputy Attorney General, has stated that although private prisons helped excessively throughout the difficult times with the overcrowding problem. But because of few reasons, such as prison population decreasing for the last few years, the contract prisons not being able to offer same level of programs and services, private prisons not saving costs as extensively as they were supposed to and furthermore having lower level of security and safety in them, she expressed the request of reducing the use of private prisons and ultimately ending it as the services provided by the Bureau of Prisons are not easily copied by others and these services are vital in decreasing the recidivism rate and therefore solving the overcrowding crisis.

## **How does the overcrowding problem stimulate more overcrowding?**

Unfortunately overcrowding has a ‘loop effect’. As soon as prisons are overcrowded once it will produce further overcrowding, by not offering the incarcerated people services they need to rehabilitate from and build a life that is sustainable without crime in the ‘normal’ society. These lacking services include topics like sufficient healthcare (physical as well as mental care), lack of education opportunities and lack of social contacts with non-criminals.

This process can be seen in the state of California. Before the supreme court ruling to reduce the overcrowding down, California held “*approximately 156.000 inmates*” in prisons that are designed to hold “*...approximately 85.000 inmates.*” (Newman and Scott, 2012, p. 547).

So, California held had up to the year 2011 nearly double the number of inmates in their prisons than what was the suggested maximum capacity. Thus, California’s prison system was one of the most overcrowded prison system in the United states.

California is moreover also the state with the worst recidivism rate in the United states. The recidivism rate measures the inmates that fulfill their sentence in prison are released and re-commit a crime and are for that reason being re-incarcerated.

That means that due to California’s bad presence on the front of overcrowded prisons it is only being reinforced with the unacceptable recidivism rate. Comparing California to a state that is doing much better with the topic of recidivism is the state of Maine. Maine has a recidivism rate of 22.4 percent (Bjafactsheets.iir.com, 2015).

Compared to the golden state California, which has a recidivism rate currently (latest stand 2015) around 61 percent (Bjafactsheets.iir.com, 2015) but had it at approximately 65.1 percent during the time when the supreme court ruled its reduction of the overcrowding in 2011 (California Department of Corrections And Rehabilitation, 2012).

Researchers such as Mr. Keith M. Chen from the Yale University and Mr. Jesse M. Shapiro from the University of Chicago wrote a paper in which harsher prison conditions in relation to the recidivism rate was explored. The paper concludes that “*...harsher prison conditions lead to more post-release crime.*” (Chen and Shapiro, 2007, p. 1).

Therefore, it is required to lower the overcrowding to improve factors that increase the prison conditions and consequently lower the recidivism rate, which has a reversal effect on the overcrowding as well.

To explore these factors that need improvement this next section is separated into three different topics that are recognized as the main factors on influencing the recidivism of individual inmates and result in the lowering of the overall recidivism rate.

The first factor is the Care factor. This mainly investigates the physical/medical Healthcare and the mental health treating. Following that the social relations are inspected and the influence on the recidivism and the last if the three primary factors for recidivism is the education prisoners can obtain while fulfilling their sentences in relation to the recidivism rate.



## **Healthcare (Physical healthcare and Mental healthcare)**

As mentioned earlier problems related to the quality of care could not be fulfilled to an acceptable amount. That could be seen for example on the U.S. supreme court ruling for the state of California's prison system. The case "*Brown v. Plata*" tells how "*overcrowding was the primary cause of the inmates' inadequate medical and mental health care.*" (Newman et al., 2012, p. 547).

As stated in the beginning of this chapter the overcrowding problem causes often a higher recidivism rate due to factors such as health-care. This can be explained in various ways.

A higher recidivism rate usually is correlated with an unsuccessful re-integration into the 'normal' society after released for the correctional facility. This integration process is harder to bring about when former inmates are not able to make the step to search for work, nor work itself, when physical or mental illness are present.

These physical and mental health problems are often not treated during the stay in the correctional facilities due to "*concerns about privacy and dignity as well as waiting time for treatment, co-payments, and concealing problems in order to obtain work opportunities [within the prison].*" (Hatton, Kleffel and Fisher, 2006, p. 119).

The privacy concerns of the inmates were expressed as being "*very uncomfortable*" since problems have to be first discussed with prison officers, who then determine if the inmate is in need of professional care or not (Hatton et al., 2006, p. 130). But by having to talk to officers first an extra barrier is created and specially women reported not feeling safe with doing so, since most officers are male.

When eventually the officers would find the requests appropriate enough to let the inmate see a health professional it would take very long waiting times (Hatton, 2006). Hatton et al. (2006, p. 131) reported of inmates waiting for seemingly simple requests "*excessively long*".

These simple tasks could for example be things such as getting a pregnancy test, which took the officials more than a month to present the results. In that time the female inmate worked in the prison and had to carry heavy things and do physical hard work, consequently she miscarried (Hatton et al., 2006). Insufficient help like that also leads to mentally demoralizing effects and has chances of sticking with the inmates even after the sentence was fulfilled.

Furthermore, inmates are reported to being treated in a bad manner. Obviously, a prison is not a vacation but as Hatton et al. (2006) report inmates were treated in inhumane ways and handled without any kind of decency that shows a slight respect of other human beings.

Correctional facilities have the task to create a punishment but also need to rehabilitate criminals. The state of California even writes in their yearly review that: “*The mission of the California Department of Corrections and Rehabilitation is ... providing effective rehabilitation and treatment, and integrating offenders successfully into the community.*” (California Department of Corrections and Rehabilitation, 2012). To successfully allow that to happen a change of culture needs to occur from the officers that work within the prisons.

These factors within the facets of prison healthcare need to be changed and fixed to give inmates the possibility to start from scratch. By creating barriers and hurdles that inmates need to overcome, an increase of the recidivism is likely to be the case.

When inmates are released after fulfilling their sentence they need to be able to search for a job and actually work to start their ‘new’ life. That however, requires them to be healthy and physically as well as mentally fit to manage the tasks that they are given.

### **Social aspects (e.g. Relationships)**

Another factor that is massively changing the prospects of the success of the re-integration into society is the relationships the inmate develops. Family relationships are proven to grow the success rate of re-integration and success with finding a job after the inmate is released (Berg and Huebner, 2011).

Furthermore, the location of the prison with the distance to the inmates’ home gives indication for the success of the successful rehabilitation (Berg et al., 2004). The closer the prison is to the inmates’ community the higher the chances for a sustainable rehabilitation, because behaviors that are likely to be tied to certain relationships (most likely to family members or close friends with a good influence) can be sustained after the release of the inmate.

When however, these relationships are held with family and friends that live far away the likelihood that good behaviors can be sustained are significantly less, due to the very different environment the former-inmate will himself/herself (Berg et al., 2004).

Berg and Huebner (2011) state that the involvement of family ties has great influence on the recidivism of the inmate. The relation with the inmates' family is valuable to the recidivism in three ways. These are the “*controlling effect*” family members have over the former inmate, “*emotional support*” for the inmate and support for an “*identity transformation*” (Berg et al., 2004, 385).

The first of the three factors within Social interactions specifically with members of the family is the so-called ‘controlling effect’ (Berg et al., 2011). That means that the family ties the inmate has have some kind of ‘social control’ over the inmates’ behavior.

Berg and Huebner (2011, p. 385) put it like this “*Family ties represent a source of social control in that they connect reentering offenders to the conventional social order and in doing so thwart their impulses to recidivate.*”.

That can reflect in things such as the changing of the daily routines but also restrict the people they socialize with (Berg et al., 2011).

The second factor is the ‘emotional support’ that family members practice on the inmate. This kind of emotional support is particularly important during the “*stressful challenges of reentry.*” (Berg et al., 2011, p. 385).

Laub and Sampson (2003) even argue that this emotional support works as a protection towards bad influences and confusing experiences, that are often reasons for re-offending and therefore re-incarceration. Research also indicates that through shaming processes coming from side of the family towards the inmate, forces the former inmate to social re-integrate more careful (Berg et al., 2011).

The third factor, how family members influence of the inmates’ success in terms of re-integration and no re-incarceration. Is the support to develop an ‘alternative identity’ (Berg et al., 2011).

Berg et al. refer to the findings of Giordano, Cernkovich and Rudoph who explored exactly this phenomenon Berg et al. (2011, p. 386) state that family and other “*intimate networks are representative of a structural contingency or a hook for change.*”.

With the now changed role of the former inmate a new kind of contributing to the society is developed. The former inmate therefore, also perceives his/her role in society as a more important one and commits the staying out of trouble.

Visher and Courtney (2006) also found that after a three-month release period that former inmates identify their family as the single most important element of successful re-integration.

By the encouragement of families supporting and guiding their member of the family that was incarcerated it can produce a difference for the overcrowding. Active backing of those members should be a 'normal' process in every inmate's release process.

## **Education**

The last factor that we will introduce within this paper concerning the recidivism in relation to the overcrowding is the education that inmates can obtain.

Education is an important offering for the inmates, due to the possibilities of future employment, that drastically rises when simple courses are attended (Vacca, 2004).

Vacca (2004, p. 299) also argues that courses that promote and "*help prisoners with their social skills, artistic development and techniques and strategies to help them deal with their emotions*" is important in the development of the inmates. These courses should be provided within the sentencing time and help the prisons to reintegrate the inmates successfully and therefore reduce the recidivism rate.

The Canadian researcher Duguid (1997) studied the effect of education in correctional facilities on the inmates' recidivism and came up with the result that inmates who participated in two or more college courses had a 50 percent lower risk to recidivate. That suggests that education has an immense influence on the inmates' lifestyle and well-being in general.

Skills that support the inmates' future as with skills that can improve the inmates' employability are factors that should be more taught in correctional facilities (Vacca, 2004). These skills can be skills that we might think of as basic skills such as reading and writing properly, but also college courses are offered in some of the prisons and vocational training.

Furthermore, courses that teaches "*...social skills...*", "*... techniques and strategies to help them deal with their emotions.*" (Vacca, 2004, p. 297). Unfortunately, many people in positions of authority due to the overcrowding in many of the 50 American states education cannot be evenly offered to all of the inmates, because problems like a lack of teaching staff is plaguing the United states (Vacca, 2004).

All in all, it must be said that the fields ‘Care’ such as physical and mental healthcare is important to allow the inmate to fulfill their sentence and not have long-term health problems that may affect their recidivism, due to difficulties with finding a job.

As said in the sections before, the recidivism is dependent on many factors, but the factor that is often referred to by former inmates that helped them most after fulfilling their sentence is their social relationships with their close family and friends.

Therefore, it is important that families of inmates are encouraged to help the inmate get back on his/her feet.

Finding a job is a key part of the re-integration process that helps the former inmates to become good contributing members of society. This job is more likely to be found, when inmates can attend different courses and might even finish a degree while fulfilling their sentence in prison.

Therefore, an improvement of more teachers and more and better material leads to a lower recidivism rate, which then results in a reduced overcrowding problem.

## **Discussion**

### **How has Trump changed the notion of overcrowding reduction since he overtook the office of president after Obama's successful overcrowding reduction years?**

The prison population was decreasing throughout most of the years of Obama's administration and his attorney general Eric Holder pushed for and enforced legislation with minimum sentencing for low-level drug offences. The first decrease in the prison population happened in 2010, just one year after Obama taking over the seat of the president of the United States of America.

But Donald Trump's approach to the prison system is completely different from Obama's. He appointed Jeff Sessions as the current Attorney General of the United States of America. The Economist (2017) cited Jeff Sessions that prosecutors should “*charge and pursue the most serious, readily provable offence*” in all of the cases as they have “*responsibility to enforce the law*”. This includes longer sentences even for low-level offenders.

On a question about whether the prisons should release non-violent offenders from the prisons to reduce overcrowding, Donald Trump answered that the United States should rather “*build more prisons*”.

Obviously, constructing more prison facilities is a solution, as we mentioned before, but it is not a long-term solution. The United States of America is the ‘biggest prison’ in the world and building more prisons will not solve the overcrowding problem.

Rather, it will just postpone having to solve this problem for the next decades or if they will be efficient in constructing new prisons maybe even for the next generation. But as we stated, ‘putting a plaster on a bleeding hand’ is just a short-term solution like building more prisons is short-term solution to the problem of overcrowded prison facilities.

There has been a visible shift in the federal government's ideas between Obama’s and Trump's administration on how to solve the overcrowding problem and also how to reform the ‘broken’ prison system of the United States of America. And although it is debatable whether the shift of ideas was in the right direction, it is important that the American population is talking about this problem. And thankfully, that's what is currently happening.

Most notably we can see various television series where the story is taking place in prison and some of them are looking at the bad conditions in the United States' prison facilities, for example one of the most favorite Netflix TV shows, *Orange is the New Black*, which talks about prison facility for women which gets into the hands of a private company and experience the overcrowding problem.

It is very important to talk about such a controversial topic. Although we often think of convicts as second-class citizens and we do not give them the same kind of opportunities, we should try to change our attitudes and understand that they are also human creatures. Even though they might have done something wrong in their past, in many of the cases just once, they do not deserve to live in inhumane conditions in prison facilities that are overcrowded and not up to the desirable standards.

## **Will the problem of overcrowding of the prisons in the United States of America ever disappear?**

Is it possible to get rid of the problem of overcrowded prisons or is it a problem that's fixed to the prison system of the United States of America constantly?

Although it is a problem that the United States' prison system is dealing with for quite some time, we think it is possible to reduce the prison population under the level of capacity of the prisons. With applying sustainable solutions this is something that can be achieved over a period of time.

The United States of America should take example of steps in the fight against the overcrowding problems, for example policies, legislation and various programs, from other countries successful in eradicating the overcrowding, such as many European countries.

Even though there is the overcrowding problem even in numerous European countries, most of them are successful in avoiding the problem of overcrowded prisons.

Now it is up to the future governments, both the federal and state ones, to introduce such solutions that will help in reducing the overcrowding problem. These solutions should be long-term, viable and sustainable in the conditions of prison system in the United States of America.

Hopefully, they will be able to see the reasons behind overcrowding arising in the past and they will try not to repeat the mistakes of their predecessors and that the politicians will avoid walking the path of populist ideas just to get elected.

## **Would it be possible to reduce the overcrowding problem of prisons through the capital punishment?**

Most of the U.S. states still use the capital punishment as a legal penalty, although it is not used as frequently as it was used in the past. Currently, lethal injections are used to execute the capital punishment, but in the past various methods were used, for example electrocution, gas inhalation, hanging, shooting, etc. (Kas et al., 2016).

Capital punishment is generally better known as the death penalty. Would return of numerous death penalties help in reducing the overcrowding problem?

The American prison system is immensely overcrowded. When we look at the death penalty, we can see its use in two ways. There are groups of prisoners that got in the prison system by doing horrendous atrocities, such as murder, rape, etc.

They do not even regret their actions many times. By charging people like this with the death penalty, undoubtedly with thorough evidence about them being guilty, the overcrowding problem could be reduced.

We can look at the death penalty also from another perspective. As we previously mentioned, politicians introduced legislation with minimum punishment, that includes relatively high sentences even for 'soft crimes', for example regarding drugs, to scare people from committing crimes. Such a plan had not worked out, because it might not have been too deterrent.

But would the death penalty not be enough to make people afraid to commit crimes of certain types? If it would, less people would maybe enter the prison system year after year, therefore the overcrowding would be successfully decreased or maybe would even completely cease to be, and the costs of prison system would go down.

The capital punishment is very controversial topic and that is why it need to be looked upon with a 'sober mind'. On one hand, we should look at what is beneficial for the United States of America and its nation, but on the other hand, we need to also look at the value of every life, whether it is an upstanding citizen, a poor worker or, as in this case, a prisoner.

The Supreme Court of the United States looked at this debate and ruled that the use of lethal injection does not contravene with the Eighth Amendment of the United States Constitution which forbids "*cruel and unusual punishment*" (Kas et al., 2016, p. 1132). For a comparison, as we previously mentioned, it was ruled that overcrowding of prisons is in the violation with the Eighth Amendment of the United States Constitution.



## Conclusion

Due to increasing problems with drugs and racism in the U.S. after the 1960's, the rate of crime increased massively. As a result, the public demanded tough actions from the state or rather from the politicians against it.

Therefore, candidates started campaigning and praised harsher laws, to reduce the rate of crime and benefit from it at once. Thus, the public discourse has shifted as well due to those extreme positions of the politicians.

It was the belief of the citizens and the government that if these laws come into effect, life would get better and safer again since fear went through the cities those days. However, due to a shift of policies in the legislation people got disproportional long sentences for soft crimes and suddenly a mass-imprisonment emerged in the United States of America.

The new laws lead over the years to a new problem that is still present from then until today, what makes politicians and other thinkers still worrying about it.

All at once there were overcrowded prisons and the consequence of the new laws and the harsh attitude towards all criminal backfired. People are not becoming rehabilitated and sit partially for minimal drug possession for several decades in prison.

Over the years, the U.S. has become the largest jail operator and has the highest proportion of prisoners to total population. There have been made up several possible solutions for the problem of overcrowding, for instance creating privatization of prisons to reduce overcrowding on a lower cost, which is indeed helping in the beginning to take some of the burden away, reduce the number of prisoners and build up new facilities, but in the long-term it did not help to reduce the mass-imprisonment or better the actual problem the Americans have here.

From the perspective of the overcrowding problem the solution of private prisons is not helping as it is seen as a market- business model which impacts the treatment and rehabilitation of prisoners due to the for-profit motivations.

Private prisons encouraging laws like the 'three strikes law' and supporting policies which goes hard on crime since they are lobbying them to increase profit at the of the prisoners. Corporations behind private prisons are making profit with having numerous prisoners; thus, it is in their greatest interest to keep the numbers of prisoners high, which makes it contra productive when it was considered to reduce the burden of the state prisons.

However, this contradicts the government's objective.

Some further solutions among others are diversion and treatment programs to on the one hand rehabilitate the inmates better and on the other hand create an alternative to jail time. This has been working out well so far and the incarceration rate started to decline in 2010 due to some policy changes which became more soften concerning crimes and reduced sentences. We can argue that the current achievements regarding treatments with focus on special supervision for prisoners have a better impact on their rehabilitee than being in an overcrowded prison for decades without any program. Despite the known fact that these programs are helping to reduce the overcrowding in prisons in the United States, it is not common to use them, since it is cost-intensive to provide for everyone. Apart from that are these programs craving for many resources, like persons who want to do this kind of job and wages, which are deficient.

It must be financially worthwhile for the supposedly most capitalist nation in the world to put an end to mass imprisonment. Washington can persuade regional governments to provide alternatives to imprisonment by promising funds. This has already been done on a small scale, as initiatives have been taken to reduce the rate of recidivism by offering inmates scholarship at discharge. In addition, the Second Chance Act has strengthened state reintegration programs.

A system of this size will not disappear overnight since it will take time to balance the policy of the last 50 years, especially in a way that is both, fair and reasonable to the people. However, these programs might be costly now, but people could argue that they are going to be worth it in the long-term and this together with changing the law, by adapting some of them could help to reduce the problem of overcrowding in the future even more.

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