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**Women behind bars:
the complex reality of the U.S. prison-
industrial complex**

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*Jails and prisons are designed to break human beings,
to convert the population into specimens in a zoo -
obedient to our keepers, but dangerous to each other.*

ANGELA DAVIS

TABLE OF CONTENTS

Introduction	6
Chapter 1: Prison boom	10
1.1 Prison boom in the 20th century	10
1.2 European prison boom	13
1.3 American prison boom	16
Chapter 2: The American prison system	20
2.1 The prison-industrial complex	20
2.2 Early American prison system	22
2.3 The construction of the modern American penal and criminal justice system: the «Southern strategy»	28
2.4 Johnson and Nixon's policy against criminality	31
2.5 Privatization of the American prison system	36
2.6 UK prison privatization	41
2.7 The failure behind America's incarceration binge	44
2.8 Correction Corporation of America (CCA)	47
2.9 Private prison companies go public	51
2.10 Private prison's real efficiency: win or fail?	54
2.11 Malesko case: health care in private prisons	57
2.12 Today American private prisons' situation	60
Chapter 3: America's main targets: who are the ones really affected by its prison system	68
3.1 The evolution of the penitentiary in the 20 th century	68
3.2 Working rights within American private prisons	73
3.3 Juvenile detention in the United States	79
3.4 Juvenile justice in the International Law	82

3.5 American prison's population: the minorities	84
3.5.1 Minorities in the early penitentiaries	84
3.5.2 Native Americans	85
3.5.3 African-Americans in private prisons	90
3.5.4 Women within the prison privatization system	97
Chapter 4: The voices of women behind bars	104
4.1 A network of female abolitionists' movements	104
4.2 Life in prison: women's testimonies	108
4.2.1 Being mothers behind bars	109
4.2.1.1 Keeping strong relationship between mothers and children	109
4.2.1.2 Children Foster Care System	112
4.2.1.3 Giving birth in prison	115
4.2.2 Women prisoners and health care system	121
4.2.3 Women's cruel prison reality: mental, physical and sexual abuse	130
4.2.4 Destination United States: asylum seekers and political refugees	139
4.2.4.1 Female asylum seekers and political refugees	140
Chapter 5: A powerful voice, Angela Davis	146
5.1 The life of Angela Davis	146
5.2 Angela Davis' thought on the prison-industrial complex	150
5.3 An interview with Angela Davis	152
Conclusion	162
Abstract	166
Bibliography	178
Sitography	194

INTRODUCTION

Women behind bars: the complex reality of the U.S. prison-industrial complex is the title of my thesis: my aim is to give attention to a problem that is really affecting American female detainees.

Female prisoners are a minority within the U.S. prison system, who face everyday very noteworthy challenges, from an inadequate prison healthcare system to an overwhelming prevalence of sexual abuses. The reality within American prisons is far from being acceptable: it's unimaginable that a democracy still allows the violation of basic human rights, as it occurs in female facilities where women are subjected to abuse, sexual violence and many other brutal practices.

The U.S. prison system basically perpetuates violence towards women, whom vulnerability makes them an easy target in the hands of a male-centered system.

My thesis not only wants to highlight the flaws of a democratic system, as the American one claims to be, but also it attempts to give more dignity to women who silently suffer for all those injustices. Through my work, I want to denounce a system that takes advantages of the fragility and vulnerability of all those women who had and will have to face prisons.

Unfortunately, little attention has been given to this alarming situation in the United States while it's nearly unknown here in Italy. Because of this lack of interest towards this particular topic, it has been very difficult to collect the necessary information in Italian libraries, as books about this subject actually haven't been even written yet. As a matter of fact, for my references I've only cited an Italian work - the one by Lucia Re, *Carcere e Globalizzazione*- which has been very useful to introduce the topic of my discussion, as it makes an overall analysis of the American prison system along with the one of other countries of the world.

Due to the lack of Italian works, the remaining bibliography is based on American books which focus on U.S. only, such as *Capitalist Punishment: prison privatization and human rights* by Alex Friedman and Christian Parenti, *Punishment for sale: private prisons, big business and the incarceration binge* by Donna Selman and Paul Leighton, *Women Behind Bars: The Crisis of Women in the U.S. Prison System*, by Silja J. A. Talvi, *Abolition Democracy: beyond empire, prisons, and torture* by Angela Y. Davis. All those books are in Kindle Edition, so quotes are referred in position rather than pages, as occurred with paperback books, such as *Interrupted Life: experiences of incarcerated women in the United States* by Rickie Solinger, Paula C. Johnson, Martha L. Raimon, Tina Reynolds and Ruby C. Tapia, *Inside this place, not of it. Narratives from women's prisons* by Ayelet Waldman and Robin Levi.

Thanks to internet, I was also able to consult different articles of foreign magazines, that could help me to better describe the U.S. situation as they are more recent than some of my books; besides, I also listened and quoted some of Angela Davis' interviews and lectures that I found on Youtube. The majority of data reported in my work are updated, while some refer to almost twenty years ago because I wasn't able to find any recent data, as the direct source cannot be traced nowhere.

In order to present the main topic of my thesis, which is the condition of female detainees in U.S. prisons, first I decided to draw a reference frame that could lead the reader towards the heart of my thesis. So, I started analyzing the background of the U.S. prison system and little by little I narrowed down the discussion focusing only on women.

The thesis is divided into five chapters, each one focuses on a single aspect of the complex U.S. prison reality: chapter by chapter I got close to the main topic of my work.

On chapter one, *Prison Boom*, I began talking about a striking phenomenon that are really affecting Western society, that is called «prison boom». According to the data gathered in the last decades, the United States appears to be the main country affected by it, as shown by the striking numbers registered so far. America has been the witness of a great expansion of its prison population, which grew greatly since the second half of the 20th century. Nowadays two millions of Americans are living behind bars; what strikes the most about this concerning data is that the majority of detainees belong to minority communities. The main target of U.S. justice policy is the African-American community: as a matter of fact 70% of prisoners are blacks, followed by Hispanics and Native Americans. Due to this trend, American prison facilities are overcrowded and the living conditions, under which people are forced to live, are among the worst in comparison with other Western countries.

On chapter two, *The American Prison System*, I first introduced a recurrent term «prison-industrial complex» which scholars usually use to refer to the American criminal justice system, because of its recent historical background. In fact, over the last three decades, it has been largely transformed by its rapid growth and by the increasing importance of private interests within the criminal justice system. Privatization has been one of the most affecting factor behind the increase of the imprisonment rate: private firms don't care about improving detainees' living conditions, in terms of health care for example, on the contrary their only interest is to boost their profit. The logic behind American criminal justice system is the idea of the «rich getting richer»: private corporations want to maximize their profits by expanding their business which leads to the expansion of prison and criminal justice system as well. In a few words, the U.S. prison system is a very complex topic to

discuss about: besides its external structure, I also focus on its internal characteristics. As a matter of fact, prisoners' living conditions are the worst in respect of other Western prisons, in terms of lack of health care or rehabilitations' opportunities. American prisons don't aim to re-educate criminals, rather it tests their limits.

On chapter three, *America's main targets: who are the ones really affected by its prison system*, I described the historical evolution of the institution of prison, from the first models of penitentiaries to the modern ones. Generally speaking, the prison system is a very complex reality that affects both male and female convicts. But more precisely, it affects minority communities living within U.S. borders: African-Americans, Native Americans and Hispanics are the targets of modern criminalization policies.

Nevertheless, I decided to shift my attention on women's realities, because I consider astonishing the fact that a democracy still allows today this inhuman treatment on female detainees.

On chapter four, *The voices of women behind bars*, I specifically reported real testimonies of former female prisoners, each one describing a specific aspect of women imprisonment such as delivery, health care treatment, abuse and sexual violence. As shown by different testimonies, women's prison experience is far more cruel than men's one, as they have to face very challenging situations every day. They are usually subjected to abuse and to other brutal treatments, as the use of shackles for example, because their vulnerability makes them the easiest target. From the last few decades, female incarceration has become a widespread phenomenon within the United States which has provoked negative effects on the society, in particular it affects children who lose their primary and only caregiver because of an highly punitive justice system. Unfortunately this particular topic is still unknown by the majority of the American population, who are induced by the politics and media to consider female prisoners as «fallen women». Americans are manipulated by what they read and hear, so nobody will do anything to stop it until the moment this situation will finally have the attention it deserves.

On chapter five, *A powerful voice, Angela Davis*, I decided to conclude my thesis by focusing on the life and work of Angela Y. Davis, one of the top five female American activist, who has put herself in the frontline to fight the prison system that she personally experienced thirty years ago. She is known to be the spokeswoman of a particular project, called «abolition democracy», which hopes for a new democracy in the future, where there won't be prisons but institutions that will provide help to people in need, in order to stop them from falling into the vicious cycle of criminality.

CHAPTER ONE - Prison Boom

1.1 Prison boom in the 20th century

As stated by Lucia Re in her book, *Carcere e Globalizzazione* (2006)¹, during the last decades of the 20th century and in the first years of the 21st century the Western countries have faced a new problem: the great increase of the imprisonment rate, which has never been experienced before.

The escalating number of inmates in both continents is due principally to the legislative and administrative policies which have been adopted since the second half of the 1980s.

Scholars narrowed down, in two different standpoints, the causes that have led the Western world into this direction.

According to the first standpoint, the reason for this trend is due mainly to globalization, which also affects the penitentiary system by trying to unify national cultures as well as the penal and the criminal ones. Globalization is producing a new territorial reconfiguration which leads to changes in both the social and political structures. The urban crisis, triggered by the economic restructuring in the industrialized countries, has changed the urban fabric and social composition of the European and American metropolis, by causing insecurity and fear towards criminality. From the 1980s the issue of urban violence started to be discussed both in Europe and in the United States. This problem was mainly rooted in the U.S., rather than in Europe, where it caused the so-called urban riots, triggered by ethnics groups that needed to resort to violence in order to make their voices heard.

On the other hand, the second standpoint believes that its origin derives from the penal and penitentiary policies which have been adopted by the United States and Europe over the years.

The model upon which modern prisons have been built over the centuries is the one that comes from the 16th and 17th century. More precisely, the Dutch prisons have given the disciplinary paradigms that have been used for the modern penitentiary system, the aim of which was the inmates' education from a moral point of view. Basically it was more a religious reform that was supposed to re-educate inmates to work and to the respect of social rules.

On the contrary, as highlighted by Alexis de Tocqueville, the penitentiary system had as primary object the punishment of the offender in order to re-generate him morally. Tocqueville doesn't

¹ Re, L. (2006). "*Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa*". Laterza, Roma and Bari.

support the moral finality of prisons because he said that it was unacceptable for any liberal society to allow that kind of treatment. He suggests that the prisoner, once out of jail, should not be expected to be a better person but one who is more obedient to the law, because society can only ask that of him. Tocqueville was a French historian and political scientist: he is best known for his interest in the American prison and political system which culminated into the publication, in 1835 and 1840, of the *Democracy in America*. Even if he wrote long before the time taken into consideration in this thesis, he needs to be mentioned because in a way he forecasts the future of the penitentiary and justice system of America. As a matter of fact, Tocqueville states that the American penitentiary model is part of the so-called American dream: he basically highlights the connection between the penitentiary system and the social order. As he said in his book, America stood and still stands today, as the perfect model of freedom but at the same time a complex despotic order that prevails within prisons. This is due to the tendency of Americans to consider their safety more important than other things that they should care about: their aim is to stop criminality at any cost, without considering the impact this attitude can cause. Because of globalization, this approach is spread everywhere, so related consequences cannot be contained anymore.

To better understand how this increase of the imprisonment rate has changed and is changing Western countries, a benchmark is needed that can help us understand clearly. This benchmark is the imprisonment rate itself which is calculated by comparing the number of inmates of a certain period of time and place with the number of inhabitants of the same period of time and place.

For example, among Western countries, Europe has been affected by the increase of the imprisonment rate: according to the data recorded by the European Council and by the national statistics, the number of people living behind bars has increased rapidly in the last fifteen years, although both in the 1980s and 1990s the imprisonment rate was already high. During the 1980s in countries - like Italy, Spain, the Netherlands and Germany - the detention rate was contained: it was the lowest compared to other European countries.

In Italy the detention rate almost doubled from 1988 to 2003, shifting from 60,4 to 100 inmates per 100,000 individuals. A similar increase also occurred in Spain where, within the space of fourteen years, the rate touched 204 inmates per 100,000 individuals; in 2001, both in the Netherlands and Germany, it was about 93 prisoners per 100,000 individuals. On the contrary in France the prison population was pretty abundant during the 1980s, then it decreased in the 1990s, declining to 95

inmates per 100,000 individuals. In the following years it continued to fluctuate but it mainly stayed stable, at 95 prisoners per 100,000 individuals.

With the exception of France, since 2004 a further boost has been registered everywhere in Europe. The highest detention rate was recorded in England and Wales where it reached 143 inmates per 100,000 individuals. For an overall analysis, it can be said that the European detention rate is around 100 inmates per 100,000 individuals.

The data recorded in Europe cannot be compared to those recorded in the United States, which holds the record of 726 inmates per 100,000 individuals: as a matter of fact 11 million people enter American jails every year, mainly African-American young adults between 20-30 years old. Usually inmates belong to particular social categories, such as African-Americans and Hispanics. Mostly men are incarcerated rather than women, who hold the presence rate of 8,1% respect with the overall American prison population.

The United States incarcerates more people than South Africa and Brazil every year. Due to this trend, American prison facilities are overcrowded and the living conditions, under which people are forced to live, are among the worst in comparison with other Western countries.

The Human Rights Watch² shows its concern over the American prison situation both because of the quantity and quality data recorded.

To conclude, it can be said that the EU and American penal and penitentiary policies share some analogies: they can be seen as complementary as well, even if they own distinctive rationalities. As stated by Zygmunt Bauman³, the globalized world is a minority within the world itself: contemporary Western societies do not appear socially united; on the contrary they are divided because of an increasing inequality. Globalization is changing the world in which we are all living through the reconfiguration of the social control system: as a matter of fact, contemporary social control does not want to regulate mis-fitting individuals because, instead, it prefers to block them in order to exclude their participation from collective life. By doing so, it has become a sort of «border control»⁴ whose aim is basically to forbid mis-fitting individuals to be part of the social world, by considering them as rejects. In post-modern societies the control is split in two different circuits of surveillance and discipline. One focuses on those who are included, who can be controlled through

² Human Rights Watch. (2003). *Prisons Condition in the United States 2002*, Human Rights Watch, New York, in Re, L. (2006). *"Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa"*. Laterza, Roma and Bari.

³ Bauman, Z. (2000). "Community. Seeking Safety in an Insecure World", Polity Press, London, cited in Re, L. (2006). *"Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa"*. Laterza, Roma and Bari.

⁴ Boyne, R. (2000). "Post-panopticism". *Economy and Society*, 2, 287, cited in in Re, L. (2006). *"Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa"*. Laterza, Roma and Bari, pag. 159.

conformity devices that are typical of the consumer world, because they have access to the market. The other, on the other hand, focuses on the rejects who are little by little marginalized through penal policies, such as for example the «Three Strikes Law». These policies are vulnerable because modern Western countries lack a penal culture and they reject the acknowledgement of complex fields, such as psychology, sociology and law.

1.2 European prison boom

After the end of the Second World War, almost every democratic country within Western Europe had agreed to install a new penitentiary model: according to this, the aim of the punishment had to re-educate and re-socialize inmates. Because of this, the penitentiary system became an institution of the social state whose sole purpose was to form good and respectful citizens. As pointed out by Michel Foucault⁵, the Western European penitentiary system had a double nature. The first one was a humanitarian nature, inspired by both Christian and socio-democratic orientations, which used to deal with the problem by considering it as a lack of socialization. The second nature was a paternalistic one which considered the criminal as the object of a special treatment, who needed to have his/her bad temper corrected, in order to turn him/her into an adult individual able to live according to the social rules. Since the 1970s this is the model that Europe had followed, even if it was a topic of discussion at the time: as a matter of fact, it had been harshly criticized along with the American model, because of its paternalistic nature. Despite all the criticism and the emergence of new tendencies in penal practices, as occurred for example in the United Kingdom, the penitentiary system has never been changed as successfully as occurred in the United States. The re-educative model is still used today because its function has been linked together with the welfare state: this connection is the result of a cultural transformation, according to which the re-socialization has legally become a citizenship right of every prisoner. Besides, the European penitentiary model also takes into consideration the defense of inmates' rights by promoting alternative punishments without only considering prison as the only solution: this has been established also by the «European Prison Rules» which have been adopted by the Council of Europe in 1987.

⁵ Foucault, M. (1975). "Surveiller et punir". Gallimard, Paris, cited in Re, L. (2006). "*Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa*". Laterza, Roma and Bari, pag. 100.

Furthermore, the penal field left behind the idea of criminality as seen as a social question, by preferring a different approach which has led to the increase of the incarceration process, which in turn causes overcrowding in prisons.

Since the 1980s criticism has arisen and a new philosophy has emerged: according to this, the punishment needed to have an incapacitating function but it was very soon abandoned because it worsened the living conditions of inmates. The crisis that affected the European penitentiary system led to the consolidation of the prison as an instrument of penal control as occurred also in the United States. Back in the days the penitentiary model, as conceived during the 70's, was seen as a theoretical and juridical model that did not fit with the contemporary penal reality.

During the 1990s, the situation started to improve because of the slow but effective EU process, which also involved the penal system. The birth of the European Union has had a positive influence on the trend of the detention rate: as a matter of fact, its birth has had a successful effect in the subsequent balance between the penal and penitentiary system within EU countries. The juridical model sponsored by the European Union is the old penitentiary one: even though the Charter of Fundamental Rights of the European Union does not include any rules on the re-educative function of the punishment, the European legislative balance establishes a prison model oriented towards the re-socialization of the inmates.

It's difficult to draw a picture of the European prison system of the 1990s because the continent seems to be divided in three different geographical areas. The first is that of Northern Europe, where the increase of the prison population was contained in the 1990s and its main peak reached +19% in Norway. As a matter of fact Scandinavian countries are reluctant to use imprisonment as a means of punishment as shown also by the data recorded in Finland and Sweden.

In the second geographical area there are the United Kingdom and Ireland where the rate of the prison population was already high in the 1980s and, in the following decade, it further increased by reaching +40%. The same rate was also recorded in Southern Europe, which is the third geographical area considered.

In the other European countries one cannot detect a corresponding trend of increase based on geographical areas: there are some analogies between France and Austria with +12/13%, while in Switzerland and Belgium the rate was superior in both countries, where it reached +24/27%. Before its reunification, Germany was not as strongly inclined to imprisonment as it was during the 1990s, when the prison population increased to +40%. In Eastern Europe the data show very different situations: the record was held by the Czech Republic with +282% while the minimum rate was

recorded in Estonia with +3%. The increase of the prison population in Lithuania and in Bulgaria was +60%, while the Slovakian rate recalls that of Southern Europe.

Since the late 1990s, the imprisonment rate has not stopped growing as we can see from the data recorded from 1999 to 2003 within the countries that are members of the European Council. There emerges a decrease only in the countries that entered the European Union in 2004, such as the Czech Republic (-25,1%), Lithuania (-25,1%) and Latvia (-1,7%), and in those who are waiting to enter, like Turkey (-14,8%) for example. The reason for the decrease within those countries can be found in the political and historical events that occurred during the last years as well as because they had to change in order to fit in with European parameters.

The imprisonment rate is not homogenous among European countries, as reported by the Council of Europe⁶, while the detention rate is quite the opposite: in fact the European countries can be divided into five groups. The largest one is composed by Northern Europe, Continental Europe plus Ireland, Italy, Greece, the former republics of Yugoslavia and Albany. They all present a detention rate that fluctuates between 50 and 100 inmates per 100.000 individuals. The second group is formed by the United Kingdom, Spain, Portugal, Luxemburg and Bulgaria where the rate is over 100 inmates per 100,000 individuals. In the third group, which includes the Czech Republic, Slovakia, Hungary and Romania, the detention rate is between 150 and 199 inmates per 100,000 individuals. Another group consists of Poland and Lithuania where the rate is over 200 inmates per 100,000 individuals. In the fifth group, that of the former Soviet republics - such as Estonia, Latvia, Ukraine and Moldova- the detention rate fluctuates between 300 and 499 inmates per 100,000 individuals. In a few words, the further east we move, the more the rate increases. It can be noticed that Western Europe and the majority of the countries in the European Union belong to the first two groups. The European integration process seems to have favored an adjustment to the detention rate between 50 and 100 inmates per 100,000 individuals. Nevertheless the European prison population is still growing, mainly because European countries are focused on incarceration as a means to restrain criminality. This trend is due to the enactment of both national and EU laws which cause the increase of the prison population; it is supported also by globalization which is trying to import the American criminal and justice policies within Europe.

⁶ Council Of Europe. (2004). " Space I. Survey 2003, Council of Europe Annual Penal Statistics", Strasbourg, cited in Re, L. (2006). "*Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa*". Laterza, Roma and Bari.

1.3 American prison boom

The phenomenon related to the escalation of the imprisonment rate has started to be called a «prison boom» and, according to the data gathered in the last decades, the United States appears to be the main country affected by it, as shown by the striking numbers registered so far.

To better understand the impact of this phenomenon within American boundaries, we must look back to the past in order to see how rooted the problem really is.

We must take into consideration two different years, which are considered central for the analysis of the American social and political transformation of the 20th century. Firstly 1968, which is a very relevant year because it marked the beginning of a change in the penal and penitentiary field: as a matter of fact, in view of the presidential election, Richard Nixon decided to drive people's attention on security by promising the electors that, one of the projects within his agenda as American president, would be to stop the growing criminality.

The second important year was 1973, because since then the rate of incarceration has increased rapidly.

Scholars tend to consider one year more important than the other, but it would be better to consider them as equally relevant, since the emergence of a security policy and the penitentiary increase are two correlated phenomena.

Between the second half of the 1960s and the first half of the 1970s two different topics, such as the security dilemma and the inefficiency of prison facilities, started to be linked together. The former was obviously a political and media problem, while the second used to be handled by more expert individuals, like criminologists and sociologists. At first these two issues grew up apart but then it was evident that they were better if considered together by being actually so similar.

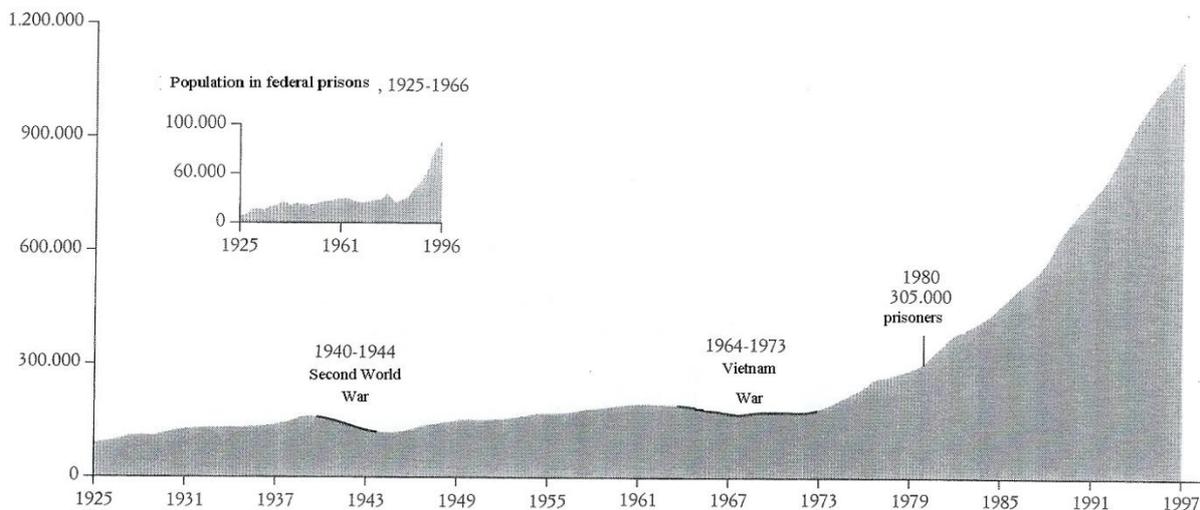
The reason behind Nixon's concern over security rests on the growing debate about the increasing criminality during the 1960s that affected both the academic world and the administrative offices.

In 1968 the Congress enacted the «Safe Street Act» which instituted the *Law Enforcement Assistance Administration* (LEAA) whose main job was to allocate money to the local police forces. This was considered a big step forward because, from that moment on, the federal government started to be involved in fighting criminality, considering that it had always been handled only locally.

In the same year, an independent organization created by the former American President Johnson, the *President's Commission on Law Enforcement and Administration of Justice*, published a report

in which it showed the reduction of imprisonment's rate, by declaring the presence of only 425,000 people living behind bars in America. At the time there was no problem of overcrowded facilities. Six years later, in 1973, Nixon received a new report about the condition of the American justice system, but this time it was edited by the National Advisory Commission on Criminal Justice Standards and Goals, another independent agency, which posited that the penitentiary population had stopped decreasing. The commission didn't show any concern about this new trend, but it suggested the construction of new prison facilities and the closure of juvenile centers. At the time there were only 204,000 inmates, one of the lowest rates in American history. If we look at the period between 1925 and 2000, the number of inmates has always increased, with the exception of two periods: during the Second World War and during the late 1960s until 1973. As a matter of fact 1973 marked the beginning of a new period in which the number of inmates started to grow rapidly: in a few years the detention rate increased from 98 inmates to 111 per 100,000 inhabitants. During the 1980s the rate continued to increase by reaching 202 inmates per 100,000 inhabitants and the trend did not stop: in fact today the rate is about 726 inmates per 100,000 inhabitants. Scholars have begun to call this phenomenon the «prison boom»; and some of them started to worry about this trend, by forecasting shocking data for the current century.

Graphic 1.3 Tendency of American penitentiary population 1925-1997 (national and federal prisons)



Source: Bureau of Justice Statistics, *Crime and Justice Atlas 2000*, US Department of Justice, Bureau of Justice Statistics, Washington D.C. 2001, p. 42.⁷

In 2001, due to American involvement in the Middle East and the need for money to invest in military capabilities, the government tried to cut the money destined to the penal system in order to reduce the prison population, but the plan failed. The numbers have continued to increase without intermission until today.

Scholar questioned the reasons behind this so-called «prison boom»: different hypotheses have been formulated over the years. The simplest and most logical one is the increase of criminality. Analyzing the data gathered during the second part of the 20th century, it can be noticed that the 1960s were a decade marked by a clear increase in the criminal rate, which only slowed down ten years later. In a few words, the big incarceration trend of the 1970s is the direct consequence of the growing criminal acts of the previous decade.

In 1990, even if the criminality rate started to decrease, the overall security concern did not stop: mass incarceration started to be applied all over America, as part of the «zero tolerance» policy wanted by the conservative liberalism. As a matter of fact, the «zero tolerance» is a policy adopted by the police forces to exert control over a territory in order to repress a great variety of crimes that can threaten the life of individuals. This policy is not a result of globalization only, but it also derives from 19th century ideology. The conservative liberalism looked back to it because they believed that the economic status had the power to influence the intellectual capacity of every citizen. It meant that everyone who belonged to the lower social classes would be destined to be a criminal somehow: by saying so, liberals contributed to the criminalization of poverty, referring to poorer people as part of a dangerous class.

The principal aim of mass incarceration was to keep the social order under control, but it failed: it didn't succeed in calming down Americans, but on the contrary it provoked destabilization and fear. Even mass media attention on criminality had a negative influence on the overall feeling of insecurity by creating panic and chaos.

The prime targets of mass incarceration were, and still are, African-Americans and Hispanics, who represent the two main minorities within the United States. The negative aspect of mass incarceration, from the point of view of black and Hispanic communities, is that it takes social and economic resources away from them, by incarcerating men and women who should lead towards

⁷ Bureau of Justice Statistics. (2001). *Crime and Justice Atlas 2000*, US Department of Justice, Bureau of Justice Statistics, Washington D.C., pag. 42, in Re, L. (2006). "*Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa*". Laterza, Roma and Bari, pag. 22.

progress and renovation. In this way it condemns those communities to a degradation that in the future will escalate into «ghettoization». Violence is the common means for survival used by the young population, mainly employed among African-Americans kids who live in the inner-cities. In the U.S. inner-cities are usually represented as the hideout of illegality and violence.

According to the National Criminal Justice Commission violence and crime must be distinguished: the main purpose of a democratic penal system should be to eliminate violence rather than to reduce criminality in general. The principal threat for citizens is the spread of violence, which does not always lead to the violation of the penal law, as pointed out by Donziger⁸.

Repressive policies do not help in erasing violence within the society, but on the contrary they make violence even more rooted and they also foster social fear, by supporting the purchase of weapons indirectly.

The supporters of the «zero tolerance» policy believed in the myth of the efficiency of tough penal policies because of their success in the reduction of criminality, as recorded in New York at the end of the 1990s. In fact, New York has always been seen as the city where severe approaches were finally employed to fight criminality: as a matter of fact New York stands as the perfect model that everyone should follow to better handle public order, by applying the «law and order» model.

Actually the zero tolerance trend of the 1990s had begun already in the previous decade in order to fight a great variety of crimes considered as potential threats.

Although critics do recognize the evident decrease of the criminal rate in the area of New York, they still notice that the same policies adopted in New York have not had the same results if applied in other U.S. cities. This statement is supported by the uneven tendency of criminality within the United States itself during the 1990s, maybe because criminality has moved into other geographical areas.

Even if the committing of crimes has decreased in New York, critics also observe that this trend did not lead to a decline in the numbers of inmates in New York's facilities.

Nevertheless the «New York case» still is considered a real success, credited mainly to the organization system of the New York Police Department.

⁸ Donziger. (by), "The Real War on Crime", cited in Re, L. (2006). *"Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa"*. Laterza, Roma and Bari.

CHAPTER TWO - The American Prison System

2.1 The prison-industrial complex

Scholars usually refer to the American criminal justice system with the expression «prison-industrial complex» because of its recent historical background: as a matter of fact, over the last three decades, it has been largely transformed by its rapid growth and by the increasing importance of private interests within the criminal justice system. The expression «prison-industrial complex» was first used by urban theorist Mike Davis in 1995, who used it to describe a multi-billion prison-building boom in California. The concept derives from the term «military-industrial complex», coined by President Dwight D. Eisenhower at the time of the early stage of the Cold War.

The professor of political studies Philip J. Wood⁹ narrows down three main tendencies, which have contributed to the formulation of this expression, which are: expansion, privatization and regression. All three tendencies are not to be considered singularly, on the contrary they are historically interrelated. According to the first tendency, America has been the witness of a great expansion of its prison population, which has grown greatly since the second half of the 20th century.

The second tendency is related to the increasing presence of the private sector in the penal economy mainly because of the incarceration boom which not only asked for more space, but which also coincided with a long period of economic crisis that affected people's life choices remarkably.

The third tendency is linked to the transformation of the American corrections system which has been called «penal regression» by Sir Leon Radzinowicz, a late British scholar of criminology. According to him, the system tends to become «more crude and cynical, displaying an increasing disregard for those fundamental considerations of a political social and moral nature from which the machinery of justice in a democratic society should never be cut off»¹⁰. The two main regressive tendencies in America are: first, a very large incarceration rate within marginalized communities, and second an increased use of violence as a means of social control.

⁹ Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States" in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

¹⁰ Radzinowicz, L. (1999). "Penal Regression", pag. 431, cited in Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States" in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 404.

The American penal system has been accused of being racist by targeting minorities, such as African-Americans and Hispanics, or the poorest social classes through, for example, the approval of the «war on drugs» under Reagan's administration or through the «Three Strikes» law. This accusation is confirmed by the data recorded so far: by December 31th 2000, 42,6 % of inmates in state and federal prisons were black, 18% were Hispanic; both have been mainly sentenced because of drug related felonies.

The explanation behind the expression «prison-industrial complex» and the related high crime rate can be found in the deeply rooted American cultural exceptionalism, which supports individualism and an easy access to weapons. However this is not the only theory: as a matter of fact other scholars believe that the American high crime rate is due to the fluctuation in the business cycle and to its related effects on the search for jobs.

Scholars have objected the exceptionalism theory by highlighting the historical relationship between crime rate and incarceration rate: there is no match between them, even if both increased in the last decades. It can be noticed that high incarceration rates are not caused by high crime rates and vice versa. The crime rate increased from 1960 to 1990, with an oscillatory trend, and then started to decrease; on the contrary, the imprisonment rate increased slowly from 1960 to 1980 and then started to grow rapidly until reaching its peak in the 1990s. To sum up, since the 1990s the two rates began to behave in opposing fashions.

Other evidence, which suggests the failure behind this theory, is shown by the nature of the crimes committed. According to the American exceptionalism supporters, violent crimes are more common than non-violent ones mainly because of such individualism, but it's not true: the percentage of offenders sentenced each year for violent crimes has fallen throughout the incarceration boom. During the 1990s, two thirds of the overall amount of inmates were imprisoned because of drugs or public order felonies.

Scholars have also pointed out that the American criminal trend was not exclusive, in fact the same tendency also occurred in other parts of the world, such as Canada, Australia and the United Kingdom: in all those countries crime rates fluctuated during the decades until the 1990s, since when it started to decrease. In those countries, as well, minorities were affected the most as shown by the data recorded by the Canadian Socio-Economic Information and Management Database, by the Australian Bureau of Statistics and finally by the British Crime Survey. A similar pattern can be explained by saying that the organization of criminal justice in a country can be influenced by its

culture and history: as a matter of fact both the American and British culture and history have a lot in common.

The rise of the «prison-industrial complex» has mainly to do with the disproportionate size of the prison population caused by the international character of the American criminal justice system and by the fact that America is different from any other contemporary liberal democracies, as stated by Sir Leon Radzinowicz in *Penal Regression*¹¹.

The modern American penal and justice system started to be created in the 1960s between two big crises that affected the country: the crisis of democracy, which began with the civil rights movement and the rise of the new left, and the economic crisis in the early 1970s, which triggered an economic restructuring. These two crises combined together produced the «expansion-privatization-regression syndrome»¹².

2.2 Early American prison system

To better understand how the modern American prison system works today, it is necessary to analyze its roots and background.

Harry Elmer Barnes, a professor of history at Clark's University and historian to the «Prison Investigating Commissions of New Jersey and Pennsylvania», claims that prison was born to be an institution where men have to be detained against their will¹³. Its origin is quite remote, but it is impossible to fix the precise date that marks the beginning of imprisonment as a punishment for crime. Focusing only on the American prison system, it can be said that it finds its origin in the English system because, at the time of its foundation, America was still under control of the British crown as a colony.

Prisons were among the first public buildings erected in the New World; they were a sort of «houses of detention». As Nathaniel Hawthorne wrote in *The Scarlet Letter*: «[...]The founders of a new colony, whatever Utopia of human virtue they might originally project, have invariably regarded it among their earliest practical necessities to allot a portion of the virgin soil as a cemetery, and another portion as the site of a prison [...]»¹⁴.

¹¹ *Ibidem*

¹² Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States", in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 472.

¹³ Barnes, H. E. (1921). "Historical Origin of Prison System in America", cited in "*Journal of Criminal Law and Criminology*", vol. 12, issue 1, article 5.

¹⁴ Hawthorne, N. (1850). "*The scarlett letter*". Kindle edition, p. 43.

As stated by Jack Lynch¹⁵, in contrast with today's custom, back in the 17th century American prisons were not used as a means of punishment; in fact, they weren't considered yet as a place of confinement where people must be locked up to serve a term of imprisonment. During those years, according to English and American law, criminal offenders used to be punished in different ways according to the crime they had committed: usually they were punished with fines, public shame, physical chastisement or death. Usually they were publically sentenced in order to shame the person and deter the others. Sanctions were public events and they included, for example, the ducking stool, the pillory, whipping, branding and the stocks. Prison was only a place where offenders used to stay before their trials or while awaiting punishment, which often included death.

The situation started to change during the 18th century when prisons were transformed not only in their physical form but also in their function: this transformation was due to the rise of trade, the development of early capitalism and the beginning of the Industrial Revolution which transformed the economy of the country. The fear of a pervasive criminality led the institution to change its approach towards offenders by condemning them to capital punishment for a great variety of crimes. The same attitude was shared by the English legal system which came to be known as the «Bloody Code»: it was called that because, between the late 17th century and the early 19th century, the English system was very harsh with criminals who used to be considered as lazy, sinful and greedy individuals that deserved little mercy. As a consequence, during that period of time, a huge number of criminals were sentenced to death. In the 18th century America was the prime destination of English convicts who were transported over there in order to be sold as servants; this punishment-trade stopped when America gained its independence in 1776 but it continued towards other English colonies, like Australia and Tasmania.

Both in England and America, many reformers started to ask whether harsh penalties really attempted to deter crime, since such an attitude actually seemed to only encourage criminals in general. As a matter of fact, thieves used to be sentenced to death as murderers and, as pointed out by the English writer Samuel Johnson in the 1750s, «if only murder were punished with death, very few robbers would stain their hands in blood; but when by the last act of cruelty no new danger is incurred and greater security may be obtained, upon what principle shall we bid them forbear?»¹⁶.

¹⁵ Lynch, J. (2001). "Cruel And Unusual: Prisons And Prison Reform", in "*Colonial Williamsburg Journal*", edited by Colonial Williamsburg Foundation. Also <http://www.history.org/Foundation/journal/Summer11/prison.cfm>

¹⁶*Ibidem*

Back in 1776 Thomas Jefferson attempted to eliminate the death penalty, except for murder and treason, through a bill that he strongly supported. He said once: «On the subject of the Criminal law all were agreed, that the punishment of death should be abolished, except for treason and murder; and that, for other felonies, should be substituted hard labor in the public work»¹⁷. Unfortunately, the bill was never approved for only one vote. Nevertheless, once America became independent, many states decided to reduce the number of death penalty offenses: for example the state of Pennsylvania eliminated the death penalty for robbery, burglary and sodomy.

During the late 18th century and early 19th century, the America legal system continued to change by developing a new and exclusive structure that needed to follow the Republican principles, rather than monarchical ones: so, from that moment on, only murderers were sentenced to death. Such a political decision was very important, because America reformers were finally able to escape from the tyranny of British justice.

In support of this new attitude, in 1787 Benjamin Rush, one of the signer of the Declaration of Independence, wrote a paper where he observed that « [...]the design of punishment is said to be,— 1st, to reform the person who suffers it,—2dly, to prevent the perpetration of crimes, by exciting terror in the minds of spectators; and,—3dly, to remove those persons from society, who have manifested, by their tempers and crimes, that they are unfit to live in it»¹⁸. Rush's point of view was deeply influenced by many different authors: he did not only read Beccaria's book *On crimes and punishment*, but also John Howard's *The State of the Prisons*, and Dufriche de Valaze's *Lois penales dans leur ordre naturel*. Thanks to all these readings, Rush was able to make a point against the public aspect of the punishment. As a matter of fact, the use of public punishments was something related to the monarchy only, so it was important for America to stand against it in order to cut any strings that linked the newborn country to its former homeland.

The American theorists behind such concrete transformation were Jeremy Bentham and John Howard: they both felt the urgency of a new penal era thanks to the influence of the work of many Europeans; most of all they had been influenced by the Italian philosopher Cesare Beccaria, whose book was very popular throughout America.

Therefore, prisons started to be re-evaluated as the main means of punishment; that process also took place because of the influence that the Enlightenment principles had had upon Americans reformers: as a matter of fact, prison began to be seen as a social institution whose task was to form

¹⁷ *Ibidem*

¹⁸ *Ibidem*

individuals. Criminals were no longer considered as hopeless, lazy, sinful and greedy individuals but, on the contrary, they started to be seen as rational beings capable of changing if shaped properly by the surrounding system. At the time, prison facilities did not meet the demands of that new attitude. Theoretically speaking, everything was ready for a change but, in concrete terms, the American system was far from actually succeeding. Prisons weren't born to be buildings for punishment: many of them were decaying residences that had been changed into prisons after having bars and padlocks added to them; most of the time, the living conditions, under which convicts were forced to live, were deplorable.

Even if the prison system started to improve for the better, the path ahead was still very rugged: optimism spread among American reformers, thanks to Beccaria's work, soon vanished since they realized it wasn't that simple to create a new efficient system. Prisons started to be overcrowded, expenses increased and taxpayers were unwilling to make inmates' life more acceptable: convicts were forced to live under the same living conditions as slaves in the South.

By the late 18th century, prisons were in a disastrous state: they were very dangerous places where inmates were tortured or turned insane.

The penitentiary was the first truly modern prison and, according to some authorities, it was a uniquely American institution. As a matter of fact, the penitentiary did not exist in the original colonies but, once America was born, it started to be adopted before any other country did. At first only few penitentiaries arose on American soil: they began to proliferate some years later, most of all under the presidency of Jackson, between 1820 and 1830.

The first American penitentiary, the Walnut Street Jail, was built in Philadelphia in 1790. This penitentiary was conceived as a rational and disciplined living place where inmates would be punished and personally reformed. Offenders must be living separately and isolated from the corrupt world, in which they used to live, in order to have the possibility for a moral redemption. Such isolation, combined with strict rules and craft work, was necessary to re-shape their behavior. The solitary confinement, which ruled life inside Walnut Street, can also be called the «Philadelphia or Pennsylvania System». The separate system, under which inmates were forced to live, recalled that of monks in the early Middle Ages.

Another famous penitentiary is the Auburn System, which introduced the congregate system: in contrast with the previous one, inmates were supposed to work all together in factories or as laborers. The only similarity those system shared was that prisoners had to sleep in solitary cells. As observed by Tocqueville and Beaumont, who travelled to America in 1830s to study the new born

prison system of the country, the congregate system sought to accomplish both penance and purity: the former by night in the solitude of their cells, the latter by day while working. These two, combined together, allowed prisoners to reflect and repent. The aim was to shape inmates into docile and obedient men.

For many years American forums had wondered what system was better and they finally came to a conclusion by declaring that the congregate one was the model upon which the American penitentiary had to be based: the reason why the congregate system won this face-off was due to the short supply of workers that America was suffering during the 19th century. As a matter of fact, the congregate system was able to exploit prisoners factory labor in order to keep up with the European workers supply standards. On the contrary, in Europe the solitary system prevailed as the dominant form of the penitentiary since there was a great supply of workers¹⁹.

As affirmed by Bailey McAfee and Hannah Smith²⁰, in the first half of the 19th century capital punishment was no longer applied, except for murder, because it started to be considered as an inappropriate sanction for a great variety of crimes. Imprisonment was used instead, but it needed a better management. Prisons weren't only used to hold inmates but they also had the task to rehabilitate needy prisoners: for this reason they started to be called also «reformatories» or «correctional facilities». The problem was that prisons were actually falling apart because of the lack of the necessary funds: inmates were not treated properly and they were often tortured by jailers.

This problematic situation lasted for many years until two prison reformers came along. What strikes one the most about those reformers was that they were both women.

The first was Dorothea Dix, a Massachusetts-based woman, who served in the Union during the Civil War as a nurse. She was first introduced to prison reform in England, where she went to recover from a very dangerous disease: during her stay, she got to know how the English system worked and she was inspired by what she saw. When she came back home in the 1840s, she decided to make a change. She started to help inmates, mostly the mentally ill ones who did not receive the appropriate medical attention: she believed that they deserved a better treatment because they were human beings after all. She visited many jails in order to take note for a document she was going to deliver and give to the Massachusetts legislatures. She successfully obtained new funds for the

¹⁹ Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "*Prisons: Today and Tomorrow*". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

²⁰ https://reformproject.wikispaces.com/prison_reform_19th_century

building of thirty-two mental hospitals, a school for the blinds and many nursing training facilities in order to form knowledgeable personnel able to take care of ill inmates.

The other female reformer was Elisa Farnham, a well-known American philanthropist, feminist, phrenologist, and author who is mostly remembered for her contribution as a prison reformist: in 1844, Mrs Farnham was the prison matron of Sing Sing Prison- a maximum security prison in the state of New York. She strongly believed in prison reforms and along with John Worth Edmonds, an inspector of the same facility, she managed to partially modify the Sing Sing system: as a matter of fact, she added an educational program, recreational activities and much more.

The contribution of both women wasn't enough: the public reaction to the treatment of prison inmates led to the creation of new prison reform organizations, such as the *Philadelphia Society for Alleviating the Miseries of Public Prisons* and the *Women's Prison Association* (WPA). The first society contributed to the creation of the Cherry Hill Penitentiary, which was built in 1829: it stood as the model upon which a new prison system was implemented, the so-called «Pennsylvania System» which was very influential within the United States. Its goal was to fight the criminal community and to encourage penance: it introduced different conveniences such as a system of central heating and a proper sanitary structure; besides, visitors, mails and newspapers were banned.

The second association managed to create a female department in the Prison Association of New York in 1845: as a matter of fact it asked for a separate women's prison quarters, to reform female inmates through religious observance and domestic training but, most of all, this organization successfully helped children of imprisoned mothers and it gave support to families.

Another important prison reform was the Auburn System, also known as the Silent System, which it was previously introduced. The Auburn prison was built in 1821 and it was the first of two prison authorized by the New York law. This system was partially based in solitary confinement: inmates were forced to work 10 hours in silent group all day, while they were kept separated by night. The Auburn System also took into consideration women's situation: at first, women were forced to sleep and work all together in a single room, then they were transferred to the new-female wing at Sing-Sing prison. Finally, in 1892 women were moved into a new building added to the Auburn prison where they could live properly. Because of its efficiency, the penal method claimed by the Auburn System gradually replaced the Pennsylvania one; it's still considered the most important penal institution in the Western hemisphere²¹.

²¹ Barnes, H.E., *supra* note 13.

Despite these prison reforms, the condition of state prison facilities got worse: in order to stop their deterioration, since the late 19th century the federal government started to be involved. At first, it ordered the construction of many new prisons, including the well-known Leavenworth and Alcatraz.

As stated in *The American Prison in Historical Perspective: Race, Gender, and Adjustment*²², «prisons that opened at the turn of the 20th century reflected the demise of the penitentiary and reformatory». In fact, prisons were seen more as industrial penal institution where inmates worked mainly to defray the operating costs. Very little attention was paid to their personal reform.

The situation did not improve either in the first half of the 20th century due to the historical events that marked the period and which distracted attention from this problem. Nevertheless criminality did not cease to exist; actually the two World Wars and Great Depression caused fluctuations of the inmate population. During all those difficult years, convicts were crowded together in dormitories and this caused a spread of unprecedented violence within all American prison facilities.

2.3 The construction of the modern American penal and criminal justice system: the «Southern strategy»

The American prison system started to change for the better from the second half of the 20th century: the crises that affected the United States in the 1960s and early 1970s had influenced the formulation and creation of the modern punitive policy and the related penal economy. Both the political rebellion and the economic crises of that period challenged the «Golden Age» status of American capitalism that had lasted from the end of the Second World War to the late 1960s.

After the end of the war, the social and political order was maintained thanks to the circle of rising productivity, profits, wages, standards of living, high level of employment and mass consumption which had been triggered by the new-born American production system, known as Fordism. Because of the stability guaranteed by the state in terms of work, the overall incarceration rates were low and falling but unfortunately this fortunate period did not last very long.

In the 1960s the situation got worse causing rising unemployment, falling real wages, worrying levels of consumer debt, increasing poverty rate and economic stagnation. Despite the successful and smooth plan of the earlier Fordism, the situation started to fail and new crises were about to explode. The model that started to be followed, in order to overcome such a period of crisis, was the

²² Johnson, R., Dobrzanska, A., Palla, S. (eds.), *supra* note 19.

Southern one whose plan, for the economic restructuring, had been launched nationwide: at first this accumulation strategy was only destined to be applied in the South after the Reconstruction era, which ended with the Compromise of 1877. The call for such a plan was due to the consequences of the Civil War in the Southern states: the aim was to reconstruct the states and the society of the Southern United States, with a special focus on civil rights. The Southern «de facto industrial policy»²³ wanted to create a safe haven that had to protect low-wage, labor-intensive, non-union employers from the industrial regime and tax structure of the Northeast and Midwest. According to the Southern sociologists, the well-working strategy had been jeopardized by different attempts aiming at the nationalization of Fordism, which characterized the Northern production system only. The Southern scholars feared an «Americanization of the Dixie»²⁴, but their accumulation strategy succeeded in surviving and nothing was able to destroy its foundations: they even felt threatened by the enactment of two major acts, such as the «Civil Rights Act» and the «Voting Rights Act».

The «Civil Rights Act» was enacted in 1964 under the presidency of Johnson who had been elected after the assassination of John F. Kennedy. The process that led to equal treatment of every American regardless of race had actually been triggered by Kennedy the year before his sudden death; even though the Republican party stood against its passage, the congress still decided to ratify it. It made it possible to hope for a change, most of all by those who had fought for so many years to see their rights finally recognized. In fact, this act marked the end of racial segregation in schools, workplaces and in other public facilities.

The «Voting Rights Act» passed in 1965 and it's considered as the natural consequence of the previous act: President Johnson was the one who introduced such a proposal to Congress, which they approved because their main fear was to appear weak in the eyes of the American population. According to this act, everyone, who is an American citizen and is legally registered on an electoral list, has the right to vote, no matter what race or what social position. The social reaction to both acts was unbelievable: the outbreak of violence due to their passing spread out all over the South, where white racists stood against those acts as they had done in the past against Martin Luther King, who was the main leader in the *African-American Civil Rights Movement*; white racists refused to

²³ Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States" in A. Coyle, A. Campbell and R. Neufeld (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 549.

²⁴ Egerton, J. (1974). "The Americanization of Dixie", cited in Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States" in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 567.

apply what established by both acts in terms, for example, of letting African-Americans be registered to vote.

The president in charge at the time of the economic crisis and of the political rebellion was the Republican Richard Nixon who was able to face the problematic situation by applying the so-called «Southern strategy»²⁵. Nixon's presidential campaign, both in 1968 and 1972, focused on such strategy in order to gain consensus in the Southern U.S.: he mainly addressed to the former Southern Democrat voters, who for many years had been beyond the reach of the Republican party. As a matter of fact, he had the chance to exploit their disaffection by stressing the consequences related to the passing of the «Civil Rights Act» that had been the cause of the change of their political orientation.

The aim of Nixon's «Southern strategy» was to criminalize, where possible, and demonize, where not, a list of activities that challenged the limits of the American democracy. Following the enactment of the «Civil Rights Act», the targets of such strategy were civil right and anti-war demonstrators, women and, most of all, African-Americans. Nixon's call for a return of a political and moral order, such as the one experienced during the early America, had different effects: for example, civil rights organizations filed lawsuits against prisons, claiming that they were violating the Eighth Amendment by using cruel and unusual punishment; because of that, courts allowed the improvement of inmates' living conditions, by giving to each one a bed and living space, three meals per day, medical care and opportunities for education.

Given that the South had always been a region with an high prison population, at the beginnings of the 1970s the rates got worsen since the enactment of that act: as a matter of fact, the incarceration rate was 220% higher than that in the Northeast and it was particularly higher than the regional average in Georgia, Texas and North Carolina.

Despite the risk of the «Americanization of the Dixie», the Southern accumulation strategy kept going very strong. On the contrary, it actually occurred the exact opposite: as a matter of fact, Nixon's «Southern Strategy» policy led to the «Dixification of America»²⁶. As pointed out by Stephen Cummings, «the economic development policies that we have implemented in the United

²⁵ Parenti, C. (2000). " Lockdown America: Police and Prisons in the Age of Crisis", cited in Wood, P.J. (2003). "The Rise of the Prison Industrial Complex in the United States" in Coyle, A., Campbell, A., Neufeld, R. (eds.) in *Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 479.

²⁶ Applebome, P. (1996). "Dixie Rising: How the South is Shaping American Values, Politics and Culture", cited in Wood, P. J. (2003). "The Rise of the Prison Industrial Complex in the United States", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) in *Capitalist Punishment - Prison Privatization & Human Rights*. Zed Books Ltd, London. Kindle edition, position 583.

States over the past three decades have taken on the characteristics of an up-to-date, modified version of those that have been in effect in the American South for decades»²⁷.

2.4 Johnson and Nixon's policy against criminality

As perfectly enunciated by Donna Selman and Paul Leighton in their book *Punishment for Sale*²⁸, the problematic situation that U.S. is still experiencing today in this important field is logically linked to the past of American society itself.

The 1960s and the 1970s are not remembered as peaceful years: riots, marches and acts of civil disobedience related to two big challenges ahead of them, such as the civil right movement and the Vietnam War.

According to the conservative part of the society such protests were not perceived positively but, on the contrary, they were seen as threats against the social order. On the other hand, liberalism strongly promoted such wave of new-found freedom. Society was changing and nobody had the power to stop that: the social fabric was increasingly mutating by accepting divorce, free love, teenager parenthood, drug use and above all, women's liberation from the traditional schemes that had imprisoned them for so many years.

During the same period, society witnessed another important change: criminality started to be no longer conceived as a local concern but as a federal one, so it basically became a national problem that needed an immediate tough solution. The shift took place at the time of the 1964's presidential election battle among the Republican candidate Barry Goldwater, the Independent George Wallace and the Democrat Lyndon B. Johnson. Because of that, crime began to be considered as a policy issue around which all three candidates built their own presidential campaign.

Goldwater and Wallace both agreed that the primary governmental responsibility was to foster a formal social control rather than social welfare: the logic behind this project was due to the conception that American society was too permissive. They believed in the need of a stricter enforcement of the criminal code by introducing a strong «law-and-order» program in their

²⁷ Cummings, S. D. (1998). "The Dixification of America", cited in Wood, P. J. (2003). "The Rise of the Prison Industrial Complex in the United States" in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 582.

²⁸ Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition.

presidential campaign, mostly due to the consequences linked to civil rights riots and to a rising crime rate.

Lyndon B. Johnson, who won the election, wanted to build a Great Society by spreading the benefits of America's economy; he stressed the need to discover the roots of the problem, which were the actual causes of criminality, so he decided to engage in a war against crime. The conservatives accused the justice system of benefiting criminals rather than preventing crime: for that reason they suggested to strengthen state control in order to stop criminals and to punish them more fairly.

Therefore, Conservative politicians inaugurated a new «tough on crime» policy: according to this new tendency, many offenders started to be locked up in jail for a very long period of time, even if they did not commit serious crimes. This policy received a great support by the media which sustained the belief that new buildings were necessary in order to guarantee public safety, since the incarceration rate started to increase. However, people did not show their support toward this policy, as they felt threatened by an even harder system which seemed to be more punitive rather than protective.

Because of this new policy, more offenders were sent to prisons but, as for any other subject, there were both positive and negative aspects to take into consideration. As a matter of fact, if the silver lining was to lock up as many criminals as possible to guarantee safety among the streets, on the other hand the negative side was that prisons started to be overcrowded. And there lay the reason that caused the outbreak of a new crisis: the need for new buildings called for money which in turn had to be collected by taxing Americans even more. The political decision behind a new taxation program fueled people's anger, which was already inflamed.

Besides, this new harder punishment policy was also supported by a new thesis, according to which poverty led people into immorality. As a matter of fact, poverty had been considered the main reason pushing people to commit crimes, mainly among African-American communities, where poverty and the lack of morals and values contributed to the spread of violence and disorder.

By doing so, the image of poverty changed completely and poor minorities were the ones mostly affected by such a shift: the impoverished individuals were not seen anymore as people in need of social justice, financial assistance and rehabilitation, but they became the ones to blame for street crime. They were considered dangerous, people from whom society should be protected rather than the ones who really needed protection and assistance. The «law-and-order» and the «tough on crime» policies were then supported by a new successful campaign, which rejected the old tactics

for fighting crime: Nixon's «war on crime» became the main priority of the country. By the end of the 1970s, Americans saw crime as their number one domestic problem; the fear of crimes increased impressively. Despite the decrease of the violent crime rate in the 1980s, people's anxiety kept going strong: as a matter of fact even if data showed a real positive tendency politicians continued to play the card of fear, with the support of the media, to promote harsher sentences.

When the poll reopened after the end of the mandate of President Carter, the Democratic party built their campaign by denouncing excessive policy brutality and by promising increased federal funding for jobs and education, since they considered poverty and unemployment as the main causes of criminality. On the other side, the Republican party focused their political plan on stronger punishments by including mandatory minimum sentences for drug offenders, who would become the main target of their political program. The election proclaimed Ronald Reagan as the new American president: Reagan and his team formulated a new anticrime agenda which included repressive measures, preventative detention and the reestablishment of the death penalty.

The «law-and-order» efforts to keep Americans focused on crime was the result of the cooperation between politicians and the media, which played an essential role over the years. This symbolic relationship is essential to win consensus among people: media had and has the power to sell a story because of the great trust the audience had in them. It's easier to tell a story of a young black man selling drugs, rather than specifying that he was a student, with no criminal record, who was forced to sell drug in order to collect some money because where he lived there weren't any job opportunities. In this specific case, the media preferred to stress his skin color rather than «justify» why he was doing that, even if he really committed something illegal. They ignored some facts because they preferred to sacrifice the truth in order to create news that should have the power to capture the audience's attention; they helped people to focus on some issues (like crime), rather than others (like unemployment, poverty and inequality). The media basically followed the politicians' agenda.

Since crime became a national problem, both the «law-and-order» and «tough on crime» policies started to show some big results: for example, from 1974 new prisons started to be built and some states, like Arizona and Illinois, decided to revise their criminal laws in order to increase penalties and follow the new sentences guidelines.

From the 1980s the prison population started to increase, partly due to an elevated fear of crime mostly fueled by the media. During the period of the Great Depression only a few prisons had been built in the United States and, since there wasn't enough room to welcome all those prisoners, a new

construction plan started in the 1980s: nevertheless, the newly built facilities weren't able to cope with this problem either. Because of a high incarceration rate, prisons started to be overcrowded and, due to the high number of inmates in each facility, living conditions inside them were considered unacceptable both by the guards and by inmates themselves. While politicians didn't see this situation as a real problem, the courts considered prison conditions as a violation of the Constitution itself.

In order to give full attention to this problem, we need to take into consideration some very important evidence -the «Ruiz v. Estelle» litigation²⁹: in 1972 an inmate, David Ruiz, filed a complaint against the Texas Department of Corrections Director, W.J. Estelle. The dangerous and degrading living and working conditions were the reason behind his accusation: Ruiz wrote fifteen handwritten pages where he stated that the TDC's (Texas Department of Corrections) management of prisons was far from being considered legal: as a matter of fact, Ruiz was able to prove that Texan prisons were violating the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishment³⁰. In his very long letter he basically narrowed down some of the problems the state's prison system had been suffering from a while: first of all, the overcrowding that obliged two or three inmates to live in a cell designed for a single one; second, inadequate security that was caused by the presence of few guards inside those facilities; third, inadequate healthcare; the last but not least problem was about unsafe working conditions under which inmates were forced to work. This case was the longest running prisoners' lawsuit in all U.S. history: the trial only began in 1980, that is eight years after the letter had been delivered, and it lasted for 129 days. Even if during the trial the state contested every single claim made by Ruiz, in the end the U.S. District Court still decided in favor of the plaintiff by ordering the Texan prison system to make some serious changes. Besides, the federal judge also decided to put the entire Texas system under court supervision³¹.

The state of Texas did not accept the sentence and it kept fighting through further appeals. Nevertheless, the state limited the prison population to 95% of prison capacity, it hired more guards and it improved medical treatment. In order to reduce the prison population, Texas started to release inmates sooner for good behavior, through parole (that consists in serve the remainder of one's

²⁹ http://texaspolitics.utexas.edu/archive/html/just/features/0505_01/ruiz.html

³⁰ http://www.law.cornell.edu/constitution/eighth_amendment

³¹ Vogel, R. (2004). "Silencing the cells: Mass incarceration and legal repression in U.S. prisons.", cited in Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in *"Punishment for sale-Private Prisons, Big Business and the Incarceration Binge"*. Rowman and Littlefield Publishers, Maryland. Kindle edition, position 809.

sentences in a community under supervision) or probation (that consists in the suspension of the sentence, but the offender still is supervised).

But those early release programs showed a negative result, called recidivism: as a matter of fact, by being released earlier, criminals served only a small fraction of their sentences and once out they immediately returned to their previous criminal activity. This system created a sort of vicious circle: basically the prison population rate kept being high so the Texas prison system needed to build new facilities. In fact, by the end of the 1980s the state started a big prison construction program: at the time of Ruiz's complaint there were only 18 prison facilities that could contain around 25,000 inmates, twenty years later there were 89 new buildings that can accommodate more than 140,000 prisoners. Ruiz's famous complaint paved the way for the presentation of other similar accusations, like the one in Florida and Alabama: the case in Florida, known as the «Costello v. Wainwright» (1977), and the Alabama's one, the «Paugh v. Locke» (1976) were both complaining against the condition of confinement by highlighting the bad sanitary and security conditions under which they were forced to live.

Overcrowding was a very sensitive issue: it did not only cause complaints, but also other much more violent manifestations. As a matter of fact, it did provoke prison riots at Attica (1971), Santa Fe (1980) and Southern Michigan Prison at Jackson (1981). If we consider only the latter one, it's astonishing to think that overcrowding was a real problem there, as it was the world's largest walled prison existing during those years.

The problem was getting worse day by day and it was not only related to federal prisons but also to county and city jails as well: for this reason the international meeting of the *American Federation of State, County, and Municipal Employees* (AFSCME) was finally held in 1982 to discuss the situation. During this meeting, they not only acknowledged the undeniable mental stress and physical danger guards faced every day, but they also recognized that prison facilities were far too old, so prisoners were not safe in there. The result of the meeting is expressed in the Resolution No. 69 (1982): the AFSCME called for \$ 6.5 billion in federal aid to build new facilities.

This wave of lawsuits, riots and even the gathering of the AFSCME upset the entire country: as a matter of fact by 1985, the majority of U.S.'s prisons were under court's order to correct conditions in case they were violating what established in the Eighth Amendment of the Constitution. The ones

who did not follow the rules faced contempt charges, as the case of Tennessee where the correction commissioner was fined and nearly imprisoned for contempt of court³².

The increasing prison population rate was the direct consequence of the stricter sentencing guidelines and drug laws that politicians were following in order to keep going with their «tough-on-crime» program, but at the same time politicians wanted to protect state and local facilities from federal court interventions. The only solution possible to please every single actor, involved in this particular situation, was to increase funding for prison building and facility renovations.

If on the one hand the problem started to be solved, on the other hand the financial burden became the fiscal nightmare for every single U.S. state. The only solution, that seemed acceptable in pleasing every part involved in the American prison and criminal organization, was the privatization of the prison system.

2.5 Privatization of the American prison system

In contemporary liberal democracies, prison is still perceived as an obscure place; the majority of people only judges prison by its surface, in fact only a few of them actually know what prisons need to work.

Focusing on the American case, a great quantity of public resources is invested in the penitentiary system: a lot of money is spent on the maintenance and efficiency of the criminal justice system and, as a consequence, many other social fields suffer by not receiving the right amount of money that could allow them to work correctly. Because of the great social cost this system requires, the United States has witnessed the creation of a new trend: privatization.

The American criminal justice system not only includes detention centers, county jails and state prisons but it also includes private corporations, which recently entered the incarceration business. As Sinden (2003)³³ states, privatization of the criminal justice system has been wanted largely by the neo-liberalists who decided to transfer traditionally public goods to the private sector, which is supposed to be more efficient and less corrupt. The choice to provide the correctional services is brave because it's not a task that can be easily handled: they not only have to protect society but they also have to take care of inmates in different ways, such as education, physical and mental

³² Humphrey, T. (1985). "Prison overcrowding in Tennessee forces emergency legislative session", in "Christian Science Monitor" (November 6,3), cited in Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 825.

³³ Sinden, J. (2003). "The Problem of Prison Privatization: the US Experience" in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

health in order to give them what they need and to allow them to return one day into the community.

Privatization is not a simple topic to write about: as a matter of fact there are many problematic aspects to take into consideration. The main one is the use, by the private sector, of prisoners' labor to produce goods and services. This controversial subject is not to be considered as a recent fact: as a matter of fact privatization is rooted in the Medieval era, in England to be more specific.

Focusing on the U.S, situation, even during the 17th and 18th century privatization of prison started in several states, as for example in Texas and California where the private sector began to incorporate penitentiaries. Although this can seem a big change for U.S. society, the prison reality was far from being good; in fact inmates' living conditions were so terrible that many of them committed suicide, while others maimed themselves on purpose as a form of protest.

Besides, there is a long tradition of exploiting the prisoners' labor both by the American and by worldwide governments. There is proof that inmates in the 19th century had been used for this purpose as occurred, for example, in a private prison in Ontario. Even if this usage had been abolished at the beginning of the 20th century, it sadly reappeared around the 1980s: for this reason in 1986 a former U.S. Supreme Court Justice judge called for the transformation of U.S. prisons into «factories with fences» in order to reduce the cost of incarceration.

Due to the poor condition and abuse within prison facilities, at the beginning of the 20th century the task of taking care of this issue was transferred under the federal jurisdiction, but it was a hiatus that only lasted for a few decades. During the 1980s the private sector reappeared in the scene in the form of neo-liberalism, whose main adherent was President Ronald Reagan who strongly supported privatization in general, by saying that even the most basic government function should be ruled by the private sector. To this purpose, Reagan created a «privatization czar», a post in the Office of Management & Budget, and he also nominated a President's Commission on Privatization. Despite Reagan's political decision, which created a wave of anti-government feeling, most part of Americans positively welcomed the privatization project because, since they were all affected by a deep economic recession and a growing public debt, the idea that their money would not be used any more for the maintenance of prisons was great. Besides privatization, Reagan's neo-liberal agenda also included deregulation, free trade, defense spending and labor unions.

Reagan supporters believed the American criminal justice system was ripe for privatization because of the great increase in the cost of correctional services. According to Sinden³⁴, the reason why

³⁴ *Ibidem*

costs have increased so rapidly lies in the rise of the prison population: as a matter of fact, in the last twenty years the number of inmates has increased three fold since 1980. The reason behind this phenomenon cannot be linked either to the rising crime or to arrests, but it was due mainly to sentencing policies. As reported in 1996 by the U.S. G.A.O. (Government Accountability Office), «[...]inmate population growth in recent years can be traced in large part to major legislation intended to get tough on criminals, particularly drug offenders. Examples of this new "get tough" policy include mandatory minimum sentences and repeat offenders provisions»³⁵.

During the same decade President Reagan along with his wife, Nancy Reagan, started to support a «war on drugs», which basically consisted in identifying, arresting and punishing everyone involved in the drug trade. This war was considered to be «color blind»: it means that everyone who committed a crime would be punished, no matter the skin color or culture of origin.

In order for this «war» to be effective, Reagan increased the budget of law enforcement agencies, such as F.B.I. (Federal Bureau Investigation) and D.E.A. (Drug Enforcement Administration) for example. But in addition, he also decided to create new institutions such as the OCDETF (Organized Crime Drug Enforcement Task Force). Reagan's war on drugs was supported also by the U.S. Congress which promulgated, back in 1984, two different but correlated acts, such as the «Comprehensive Crime Control Act» and the «Sentencing Reform Act»: both wanted to establish mandatory minimums for many drug-related felonies, in order to regulate the years an individual must spent in prison. What these two acts established was severely criticized by lawyer groups, legislators and judges because they did not agree with the arbitrary nature of mandatory minimum sentences, as pointed out by Sinden³⁶.

The aim of this «war» was to make consumers stop using drugs but, as shown by the results of the survey - made by the National Institute for Drug Abuse- such a war actually failed. As a consequence, the «war on drugs» had caused the increase of the penal and penitentiary costs and it was also the main reason of African-Americans' imprisonment: between 1985-1995 42% of them have entered in prisons due to felonies related to consumption or drug -pushing.

Although many years have passed since its introduction, the «war on drugs» policy has never been renewed, even though it has never achieved relevant results.

³⁵ United States General Accounting Office (1996). "Private and public prisons - studies comparing operational costs and/or quality of service", cited in Sinden, J. (2003). "The Problem of Prison Privatization: The US Experience", in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 1196.

³⁶ *Ibidem*

Still today the «war on drugs» continues to be a discussed topic within America: it has been posited that this so-called «war» is part of a broader scheme linked to the will of American politicians to «get tough-on-crime», as they have been doing since the 1980s. A relevant example of this criminal toughness is the «Three Strikes» law, which was approved in Washington in 1991: according to this legislation, if someone is arrested for the third time, he/she will be sentenced to twenty-five years of prison. In order to strike people's attention, the law even leads to the creation of a new slogan, which is «three strikes and you're out»³⁷.

The «Three Strike» law has been created in order to stop and punish the most recidivist and dangerous transgressors, but if we look closely to it we can also see that along with some effective pros there are also some cons that need to be taken into consideration: as a matter of fact, sometimes it can happen that people who have committed only small felonies for three times are sentenced to twenty-five years. Therefore this act is applied no matter the type of crime, basically without even distinguishing between very serious crimes and less serious ones. Similar laws have been decreed by half of the U.S. states in the following years, including the state of California in 1994 whose laws are known to be the stricter ones. In other states, according to the weak impact it has had on the detention rate, the law has had more a symbolic meaning: it has been considered only as a message to make people believe in a new state efficiency. On the contrary the Californian law presents some differences if compared with those of other states: as a matter of fact, it makes provision for a great variety of felonies, called the «strikeable offenses»³⁸; besides, if the offender is accused for the third time, he/she can be sentenced or to 25 years of jail or to life imprisonment, even for a small felony. Because of the possibility of life imprisonment as a punishment, the Californian law is considered to be tougher than other states' laws.

Scholars have often considered the «Three Strike» law to be the perfect example of a new penal trend which needs to be applied both in the political and theoretic point of view.

It's evident that, because of the combination of the «Three Strikes» law with the political plan to be tough on crimes in general, the rate of imprisonment in U.S. detention centers has greatly increased since 1980s. The consequent overcrowded prisons all over the country set the stage for private sector to step forward in the criminal justice system thanks also to the rise of neo-liberalism.

The increasing involvement of new corporations in this field was accepted by the majority because they declared to guarantee for less quantity of money the same level of correctional services.

³⁷ Re, L. (2006). "Carcere e Globalizzazione - Il boom penitenziario negli Stati Uniti e in Europa". Laterza, Roma and Bari, p. 77.

³⁸ *Ivi*, p. 83.

This change in the criminal justice field proved the private sector to be more efficient than the public one. For example, if the public sector does not have lot of incentives to reduce costs, in contrast the private sector, because of the market's competition and the risk of loss or bankruptcy, tend to minimize costs by leading more cost-effective operations. In the bargain, the private sector has proved to be faster and more proficient in the building of new prison facilities due to the great increase of the jail population throughout North America.

During the 1980s, in response to the commitment of the private sector, privately owned prisons emerged in the U.S., mainly in Texas and California. By the end of the decade, private firms were operating two dozen major facilities and today they are handling circa 102 facilities, which hold more than 100,000 inmates across the United States. The top four states, within which the private sector is still effectively present today, are: Texas with 43 facilities, followed by California with 24 facilities, then Florida with 10 facilities and the fourth and last one is Colorado with 9 facilities.

Within the private prison industry, alongside with privately owned prisons, new major players have appeared too, such as the for-profit prisons firms. Among the latter, the most important new player is the Corrections Corporation of America (CCA), based in Tennessee. The CCA is controlling circa half of the privates prisons not only in the U.S., but also in the United Kingdom and Australia. It's followed, by size and importance, by the former Wackenhut Correction Corporation, now called GEO, which controls about a quarter of the private jails. Geographically speaking, the majority of the prisons facilities are placed in the Southern and Western U.S..

The prison system played a very important role also in the creation of new cities: as a matter of fact they started to be built around prison facilities because they provided possibilities of new jobs for people living thereby. Nevertheless, private prisons not only concern city planning but they also play a major role in the Stock Exchange by becoming a favorite on Wall Street.

From the legal point of view, the emergence of private prisons has caused a very intense debate asking the legality of this tendency, based on the modern principle of International Law which claims that a state owns the monopoly of the legitimate use of violence and coercion in society. According to this statement, only the State has the right to detain and sentence criminals, so privatization's detractors claimed that the government could not transfer its task to the private sector, because it would lose part of its authority.

In response to this question, many scholars have confirmed the legality of private prisons because each state is free to delegate the imprisonment task to whoever it wants. In addition, it must be said that each private facility needs the consent of the state legislature: as a matter of fact private prisons

must adopt the same statutes that regulate public correctional facilities as well. In order to be legal, they must follow a contract, stipulated by the government, which establishes minimum service levels such as educational and rehabilitation services. Besides, the government continues to supervise the effectiveness of private facilities mainly through inspections once a year but, as affirmed by J. Keating Jr.³⁹, those inspections are not enough because inmates are continually deprived of their basic human rights due to physical abuse and lack of essential services.

This is still a real challenge which is very difficult to overcome because correctional corporations do not support the presence of full-time governmental teams, even if necessary, as their work will cause the increase of costs that firms must pay.

2.6 UK prison privatization

At its beginning the American justice system was born from the English one but, once independent, it started to grow on its own. But what happened to the English justice system?

In 1776 the new born United States began standing alone in the world for the first time: Americans had successfully fought for their rights and started to create their own jurisdiction. England was no longer part of them but they could not deny how influential the monarchy had been for their growth. From that moment on, the U.S. has created its own path that it was destined to rejoin with that of the United Kingdom almost two hundred years later.

As stated by Stephan Nathan⁴⁰, the United Kingdom moved its first step toward privatization in 1984 when the right-wing tank, the *Andrew Smith Institution* (ASI), promoted this ideological theory basing its proposal on the recent developments that had occurred in the U.S.. According to ASI, the UK should implement prison privatization because «it would overcome the spiraling costs of the prison system and the shortage of places by using innovative managerial and technological methods and by contracting resources on capital investments rather than increased labor costs»⁴¹. At first, Conservatives and some of the Thatcherites did not approve this proposal but they soon changed their mind in favor of privatization. The UK started to move seriously toward privatization

³⁹ Keating, J.Jr., cited in Sinden, J. (2003). "The Problem of Prison Privatization: the US Experience" in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 1316.

⁴⁰ Nathan, S. (2003). "Prison Privatization in the United Kingdom", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

⁴¹ Smith, A. (1984). "Omega Report on Justice Policy", cited in Nathan, S. (2003). "Prison Privatization in the United Kingdom", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 5378.

when the parliamentary Select Committee on Home Affairs examined the state and the use of prison in both England and Wales: in order to take the most suitable decision for the future of the country, the committee declared the need to visit other countries, where prison privatization was on, and among all the different destinations they could choose, they decided to take only just trip to the U.S. during October 1986. Once there, they only visited two prison facilities both run by CCA; when back, they wrote a report where they exposed the principal advantages of contracting out prisons to private companies: first of all, the committee highlighted the fact that taxpayers would be relieved since their money would not be used any more to pay for prison maintenance; second, new buildings would be built; third, those new prisons would be more efficient. The report suggested the idea that the Home Office should do an experiment before committing completely to privatization, even if it did not present any recommendations to follow. Even if in 1991 the parliament enacted the «Criminal Justice Act», and the prime minister of that period, Angela Rumbold, said that they should move slowly and carefully but none of this happened. As a matter of fact, a European security firm, called Group 4, was immediately awarded a contract to manage Wolds, a newly built facility that was supposed to contain 320 male prisoners. In addition, on February 3rd 1993 the «Criminal Justice Act» was extended from new prisons to existing facilities. In other words, they did not follow the initial «step by step» strategy even if there was proof that all was not well in Wolds, as pointed out by the report of the *Prison Reform Trust on Wolds* after the first year of privatization. Despite the critical report, in 1993 the government still announced that all new prisons would be privately built and operated.

As previously said, the CCA had influenced the Home Affairs Committee: in fact, in 1987 CCA formed a British company, the UK Detention Services Ltd. (UKDS), as a joint venture with two British construction companies, Sir Robert McAlpine & Sons Ltd. and John Mowlem & Co.. Both companies were contributors to the then Conservative party.

One of the UKDS's goals was to lobby the government to implement prison privatization and it took more or less three years to convince it: UKDS' first prison contract was signed only in 1992.

Since the opening of the first private facility, the UK has developed the most privatized criminal justice system of Europe, as affirmed by Nathan. As a matter of fact, in 2001 there were more than 6,000 male prisoners, held in private facilities in England and Wales, which was 8% of the total prison population. Scotland works differently, since it enjoys a small independence: it has a separate prison service, which includes only one private prison that held approximately 600 inmates.

The UK is the only European country that has engaged in prison privatization: in terms of the number of private prisons, the UK is second only to the U.S.. Privatization was not only implemented in prisons but, for example, also in the management of training centers for young offenders and of immigration detention centers. The UK's largest private prison companies is the Premier Custodial Group Ltd., which was formerly born as a joint venture between GEO and the British facilities management firm, the Serco plc. Today the company provides a range of different services, including prisons, security training centers and immigration reception centers.

In 1992, the Conservative government created the Private Finance Initiative (PFI), which «is a financial mechanism to obtain private finance which could satisfy the political need to increase investment in infrastructure without affecting public borrowing, guarantee large contracts for construction companies and new investment opportunities for finance capital»⁴². Today PFI is still the only option for procuring new prisons.

The original reason for contracting out the management of private prisons included cost savings: in terms of privately financed-built prisons (PFI), there is no evidence that all new facilities were not built quickly than before, but it's also true that there is no evidence as well to say that the public sector would not be able to do the same. Another reason that pushes the UK toward privatization was that it would help them solve the problem of overcrowding.

Private companies quickly started to strut about their own success, mainly thanks to the help of the media, which helped them promote their services all over the world. However, as occurred also in the American private prison system, all that glitters is not gold: as a matter of fact, UK private prison companies, along with their success, have never shown the world where they actually failed. Furthermore the great results, obtained in England and Wales in 2003 and 2004, pushed the Scottish Executive to plan the construction of three new private prisons in order to replace old facilities.

Prison privatization, supported by the Thatcher government, found only one obstacle along its path: that was the Labor party which considered such a tendency as a morally repugnant policy. As a matter of fact, their plan was to bring back private prisons into public ownership since they believed that it was the only safe solution to the problem. Nevertheless, today the UK government is still committed to prison privatization.

⁴² Whitfield, D. (2001). "Public Services or Corporate Welfare", cited in Nathan, S. (2003). "Prison Privatization in the United Kingdom", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 5473.

2.7 The failure behind America's incarceration binge

As said by Donna Selman and Paul Leighton in *Punishment for sale*, the United States «reflects the largest prison expansion the world has ever know»⁴³: from 1980 to 2000 the United States built more prisons than it had ever done in its previous years. The U.S. detains the highest incarceration rate in the world: it's followed by Russia, Mexico and Canada. On the contrary, the country which has the lowest incarceration rate is Japan.

The «incarceration binge», witnessed by the country, demanded for new buildings, which in turn asked for an increasing corrections budgets. The money destined to it increased dramatically from the early 1970s until 2008: the flow of money has been very important for the creation and growth of private prisons and of the criminal justice industrial complex.

Private prison companies started to get a foothold from the 1980s: little by little they gained legitimacy despite the conservatism of both governments and business. Prison privatization is still growing strong today and it contributes to the continuous expansion of the multi-billion-dollar multinational incarceration business.

Private prison companies started to grow legitimately thirty years ago, mainly thanks to two main trends. The first one is the great increase of the number of prisoners all over the country, due to the «war on crimes» and the «get tough-on-crime» policy both inaugurated in the previous decades. The second trend was linked to the emergence of small governments that were considered better than bigger ones since they would benefit by outsourcing services to business. This tendency would lead to a reduction of costs and to an improvement of services by allowing free market competition. To better understand how much the number of prisoners increased in the last century, we need to analyze the data gathered together by the Bureau of Justice Statistics which only takes into consideration federal prisoners, as there is no longer any historical register of inmates in local jails. The incarceration rate from 1925 to 2005 shows a very interesting tendency: the short period from 1925 to 1970 shows a stable rate which completely changed from the decision of President Richard Nixon to run the first «law and order» campaign. The increase of the number of prisoners did not only require larger budgets for corrections, but it also caused the increased number of other actors, such as police men and courts which are necessary for arresting and for processing offenders.

Criminologists claim that the flow of people's money into the incarceration community was the fuel that led to an increased feeling of social injustice among Americans. They considered the

⁴³ Selman, D., Leighton, S. (eds.), *supra* note 28. Kindle edition, position 347.

«incarceration binge» as a natural experiment for the crime reduction; but, as shown by the data, it had completely failed. In fact, we could not consider the «incarceration binge» as a success, mainly due to three main factors. First, the increasing number of the prison population should have stopped criminals breaking the law; on the contrary the incarceration growth has had little effects on crime rates which began to fall very recently, in the early 1990s. The second factor suggests that the failure of the «incarceration binge» lies in the reaction of people in seeing how their money was spent: as a matter of fact hundreds of billions have been inefficiently spent by the United States in their pursuit of crime reduction. Because of this, Americans started to wonder how that money could have been used more properly and what part of society could have been benefited by such a quantity of dollars. As an American legislator once said, «For every dollar you're spending on correction, you're not spending that on primary and secondary education, you're not spending it on colleges and tourism. It's just money down a rate hole, basically»⁴⁴. Americans blamed governments which had preferred to fund prison expansion rather than taking care of other aspect of the social life such as: education, crime prevention, community programs, drug and alcohol treatment. They basically sustained the punishing over the possibility of preventing crimes, which could have only been possible by supporting citizens where and when they really needed help: as a matter of fact, if governments had had paid more attention to education or to drug and alcohol treatment, maybe crimes would have decreased since more people could have had the opportunity to receive efficient help, which in turn could have saved them from falling into the crime vortex.

The third reason behind the failure of the «incarceration binge» lies in its impact within American society: it has caused social harm in many ways which include the undermining of public safety, the disrupting of communities and it also contributed to racial and economic inequality. In fact, the excessive use of incarceration increased both crimes and violence. It's true that the «war on drugs» took off the street many drug sellers, but that kind of crime did not cease to exist as wished: on the contrary new ways were forged in order to continue the drug market, as for example the recruitment of younger individuals, mainly inside African-American communities. This particular change did not occur without any consequences: as pointed out by Blumstein and Wallman, «the reduction in age of the workers in the crack trade entailed a predictable increase in violence, as the inclination to

⁴⁴ Huling, T.(2002). "Building a prison economy in rural America", in Chesney-Lind, M., Mauer, M. "Invisible punishment: The collateral consequences of mass imprisonment". New York, The New Press, pp. 194-213, cited in Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 482.

deliberate before acting is simply less developed in the young»⁴⁵. In addition, the social disorganization suffered by poor communities, where the highest levels of incarceration are registered, led to even more instability within communities and within prisons as well, where prisoners commit more crimes than they would have done outside. As the prison population has grown, the proportion of incarcerated minorities has also increased, as shown by the following table which has been created thanks to the data gathered together by the Bureau of Justice Statistics on June 30th, 2006.

Table 2.7 People under Control of the Criminal Justice System by Gender, Race, and Ethnicity

	<i>Jail (rate per 100,000) Midyear 2006</i>	<i>Prison (rate per 100,000) 2008</i>	<i>Percentage of Adult Population Ever Incarcerated in Prison 2001</i>	<i>Percentage Ever Going to Prison during Lifetime if Born in 2001</i>
White	170	N/A	1.4	3.4
Male		727	2.6	5.9
Female		93	0.5	0.9
Black	815	N/A	8.9	18.6
Male		4,777	16.6	32.2
Female		349	1.7	5.6
Hispanic	283	N/A	4.3	10
Male		1,760	7.7	17.2
Female		147	0.7	2.2

Source: Bureau of Justice Statistics (2003, 1 and tables 5 and 9; 2007a, 6; 2009, 18). BJS does not regularly report overall incarceration rates for race and has not recently reported jail incarceration rates by race⁴⁶.

As shown by the data provided above, minorities are the ones mostly affected by the «get tough» policy; besides serving a term of imprisonment, minority communities are also affected by many other indirect but legal consequences: for example, by felony disenfranchisement or by denial of the legitimate voting rights to the offenders once they are released. Since the enactment of the Fourteenth Amendment back in 1868 - which states that «all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges

⁴⁵ Blumstein, A., Wallman, J. (2000). "The crime drop in America". New York, Cambridge University Press, pp- 4-5, cited in Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 512.

⁴⁶ Bureau of Justice Statistics. (2003). "Prevalence of imprisonment in the U.S. population, 1974-2001". Washington, DC, U.S. Department of Justice, cited in Selman, D., Leighton, P.(eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 522.

or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws»⁴⁷ - Southern states were eager to adopt these laws, mainly to reduce African-American citizens' social power. Even today they continue to disenfranchise the 13% of African-American men but they also apply these rules to 2% of the U.S. population⁴⁸.

The critical analysis under which the «incarceration binge» has been fully scanned is useful in order to understand the rise of private prisons along with the larger criminal justice-industrial complex.

The logic behind the American criminal justice system in general is the idea of the «rich getting richer»: the business, which manages the entire system, wants to maximize profits by expanding business opportunities which lead to the expansion of the prison and criminal justice system as well. Americans have always had a love-hate relationship with business in general, which is important for both the economy and the livelihood of the entire country.

In order to live, privatization needs both a strong anti-government sentiment and a pro-business bias: in the case of private prison such a combination is required to be strong enough since people have difficulties in accepting that it is their concern now, rather than the government's responsibility, as it used to be once.

2.8 Correction Corporation of America (CCA)

Focusing on the development of prison privatization, we need to take into consideration today major actors, which are CCA and GEO: both are multinational and for-profit corporations, that hold most of American inmates today as in the past as well.

GEO, that was formerly named as Wackenhut Correction Corporation, is the second-largest private prison company in U.S.: GEO has been founded in 1954 by George Wackenhut, a former FBI employee, which now owns detention centers in U.S., Australia, the United Kingdom and in South Africa. GEO is only preceded by the CCA, which is the first-largest private prison company in North America.

⁴⁷ <http://www.law.cornell.edu/constitution/amendmentxiv>

⁴⁸ King, R. (2006). "A decade of reform: Felony disenfranchisement policy in the United States". Washington DC, The Sentencing Project, cited in Selman, D., Leighton, P. (eds.) (2010). "America's Incarceration Binge- The Expansion of Prisons, Budgets and Injustice", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 532.

The Correction Corporation of America (CCA) first appeared on the scene in 1983 and its founders were Thomas W. Beasley and Doctor R. Crants, two Nashville businessmen and lawyers, who envisioned a new private prison business whose object was to cope with the expansion of the prison population and with the growing privatization tendency.

Their innovational vision led them to create the CCA: at first, this appeared to be a very risky venture for two young men but they didn't care since they were driven to solve the prison problem with the hope of making a lot of money out of it.

Even if the odds were against them, they proved the opposite: as a matter of fact, the CCA is now the largest American private correction company that owns and manages private prisons and detention centers for all levels of government. Only three years after its birth, it has been listed on the stock exchange. CCA's founders believed that a new era was about to come, by saying that they could sell prison privatization and as Beasley said once: «We knew the era of big government was over. We could sell privatization as a solution, you sell it just like you were selling cars, or real estate, or hamburgers» (CCA Source 2003)⁴⁹. To stay on topic, they received support from a venture capitalist Jack Massey who had once backed the *Kentucky Fried Chicken*, the *Mrs. Winner's Chicken & Biscuits* and the *Hospital Corporation of America* (HCA). The latter one is important because it stood as a model for the planning of CCA by being a successful for-profit health care institution. Massey did not only invest in CCA, but he also played the role of consultant.

Besides Massey's important help, the first problem that CCA's founders encountered in their way was to convince more leaders to contract out to their brand-new company even though they were aware that it was a very challenging question to ask, as there was no guarantee of success, since such a request was a real challenge at the time. CCA's founders believed in the opportunities offered by the free market and they also believed that incarceration was the only answer to solve the crime problem. In order to gain consensus, they exploited the general discontent about the big-governments waste of money by stressing that such a waste was the real cause of the prison problem. During the early years, CCA's agenda was mainly focused on the economic aspect, by promoting cost savings and efficiency. Once the company was off to a good start, they widened the range by focusing also on the political and societal field.

Before becoming the company of today, CCA first tried to purchase the Tennessee prison system and this move allowed them to gain the necessary spotlight that would later turn them into a

⁴⁹ Selman, D., Leighton, P. (eds.), *supra* note 28. Kindle edition, position 943.

nationwide company: little by little the company was able to build its legitimacy, which allowed them to sell their innovative idea better.

As occurred in many other states, Tennessee had to modify its own prison system: some of its prisons were very old and for this reason they did not respect the principles established by the Eighth Amendment. Therefore the state needed for approximately \$380 million in order to build new facilities but it did not have the necessary resources: the CCA stepped forward and took over as a buyer by offering its bid for the purchase of the Tennessee prison system. As expressed by one of CCA's CEO, their plan was to pay the state for the right to manage the system under the state's supervision and to use private money in order to improve the system itself: they believed this was a win/win program, as both the state and company could take advantage from this situation.

And they proved right: the timing of CCA's offer could not have been better. They presented the bid on September 12th 1985, when the National Association of Criminal Justice Planners was holding its annual conference. At the conference table were present a lot of authorities, such as prosecutors, judges, corrections officers, sheriffs and criminal justice planners: they all welcomed positively the CCA's offer which became quickly the main topic of the whole conference. On November, the offer was presented to the National Association of Counties that held the Fourth National Assembly on the Jail Crisis: promoters of prison and jail privatization addressed the audience with the purpose of convincing them that privatization was the only answer to the problem. Simultaneously in Washington D.C. privatization promoters were selling the same idea on a federal level. The risky challenge CCA had undertaken had a great echo all over the country: both the *New York Times* and the *Washington Post* gave a lot of attention to this rising tendency focusing on the achievements of CCA. Both articles and advertisements, to better promote prison privatization, stressed the main positive aspect of the whole deal, which was cost savings. Money always draws everybody's attention.

In addition, privatization promoters also pointed out how this solution was the best answer to the mounting court orders surrounding constitutional violations and, as Crane once promised, the CCA's agenda was formulated in line with the *American Correctional Association (ACA)* standards. Tennessee eventually turned down CCA's offer but few years later the «Private Prison Act» (1986) passed: according to this act, two states facilities must be privately owned. Despite having failed in Tennessee, CCA did not stop in front of this first obstacle: the media exposure allowed them to make privatization a topic of conversation among government officials. CCA was

ready to launch their program out of Tennessee's borders, they wanted to expand their vision nationwide.

Besides the media attention, CCA needed for a concrete and explicit endorsement that Reagan's policy later gave them with the establishment of the President's Commission on Privatization, in 1987. Such institution was created during Reagan's final year in office: one of the commission's goals was to review the correct division of responsibility between the federal government and the private sector and to help this rising industry to overcome many of the challenges related to its legitimacy.

As a matter of fact, one of the first challenges CCA had to face was about the legality of contracting out a government function. The commission dismissed this obstacle by observing that no states had ever enacted any specific law prohibiting privately operated correctional facilities; it also highlighted that no matter what the government still maintained its jurisdiction and control. In line with what had just been stated, privatization promoters argued that their own agenda acted as a service in support of the governmental function: private prisons continued to be the responsibility of the state's government that had to supervise and regulate them by following what was established by the laws.

The second challenge to privatization involved the issue of accountability and liability: privatization detractors pointed out that contractors were insulated from the public and they were not subject to the same political controls as government officials. Once again the commission intervened by saying that liability in general was a nonissue; it also pointed out that the public system had already encountered liability litigation in the past so nothing different was happening there: contracting would not cost the government more by increasing its liability exposure. On the contrary, privatization could reduce the amount of liability and of litigation thanks to the development of «model prison contract provisions», as stated by Selman and Leighton⁵⁰.

The third challenge privatization had to overcome was related to the data about both cost and quality: at the time of the commission's hearing and final report, no research had ever been made to compare the quality of operational private prisons to government-managed facilities. Although AFSCME claimed that privatization was failing in terms of quality, the commission decided to verify this aspect by relying upon the data recorded in 1984 by the *National Institute of Correction* (NIC). Even though the data were registered before the move to operational privatization in the core adult prison population, the commission still consulted them: to better counter the claim of low

⁵⁰ *Ivi*, position 1336.

quality, it used an original interpretations of the finding by claiming that prison administrators cited more benefits than liabilities since privatization took over⁵¹. Regarding the cost aspect of the question, the commission continued to cover up the problem with quality issues: using the same data, it reported that since privatization some agencies started to save money, while others did not but still witnessed some operational benefits that outweighed the cost factors⁵².

In its final report, the commission presented several recommendations: one for example was about expanding privatization of a federal correctional institution or facility as an experiment to allow outside researchers to evaluate it by studying the following results.

Privatization's detractors criticized the commission's recommendations by pointing how it covered up some real issues with stretching solutions: for example, the commission declared the contracting legal only because it had already been done. It's true that there wasn't any law regarding this topic, but the commission did not take into consideration that society is always evolving and changing, so it's obvious that some laws simply don't exist. Another point made by the critics was that contracting private prisons started before the data of the experiment had actually been collected.

2.9 Private prison companies go public

In order to provide a better explanation of the interests of private prisons and the prison-industrial complex, we need to focus on money. As stated in the previous chapter, money is essential: the entire business behind prison privatization circles around the maximization of profits.

An initial public offering (IPO) is a financial expression which refers to the first time a private company issues shares to the public and becomes traded on a stock exchange. This operation is also called «going public».

As occurred also with the CCA, the IPO allows a company to raise a great amount of money by selling a share, which is a partial ownership, to anyone interested in investing in a company. The IPO is not only about the flow of money, but it also regards the flow of information which must be disclosed to the public and to the potential investors through filings with the Securities and Exchange Commission (SEC). SEC was born after the 1929 stock market crash and its goal was to restore investors' faith after a very difficult period, that of the Great Depression.

⁵¹ Linowes, D. F. (1988). "Privatization: Toward more effective government-report of the President's Commission on Privatization". Washington D.C., Government Printing Office, p.150, cited in Selman, D., Leighton, P. (eds.) (2010). "The Big Government "problem" and the Kentucky Fried Prison solution", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 1360.

⁵² *Ibidem*

Before going public, companies have to be prepared: first, they need to hire a law firm that could help them in security laws and in preparing all the SEC filings; second, they need to engage in corporate restructuring; third, they must also hire an intermediate whose charge is to transfer the stock between the company and those who want to purchase share of the IPO.

Although over the years very few private prisons decided to undertake the risky path of going public, the IPO prospectus are a precious source of information that allows us to better understand how the business operation of private prisons actually works. The documents provided show both the benefits and risks that a capital could face in investing in the prison-industrial complex.

In 1987 CCA embarked in going public by editing a 63 pages prospectus, entitled «Prisons and the Corrections Industry», which included a variety of exhibits: such as documents about the employment agreements with executives, stock ownership plans for executives and employees, loan agreements with banks, stock option details and, most of all, all the contracts CCA had stipulated with governments. Basically every single actor involved in this business must play fair. In line with this observation, in its prospectus CCA presented itself as a company that manages prison and other correctional facilities for governmental agencies, by saying that the company was at the time the leader in the prison privatization sector.

In addition to what just affirmed, it also provided all its financial information since its birth, in 1983: CCA report showed that during the first year the company lost \$531,000 without receiving any revenue. The situation change in 1984 when CCA started to collect revenues thanks to the payments from governments. The money owned by the company have been broken into several categories in order to allow the system to work smoothly: great part of those expenses were destined to the operating sector since the company have to pay salary and employee benefits, besides guaranteeing food, insurance and supplies. The next largest expense was destined to the administrative field, which consists of salaries of officers and other corporate headquarters personnel, legal, accounting and other professional fees, travel and entertainment expenses and rental for the CCA's executive offices. Another portion of money was invested into the «development», that basically consisted of promotional and marketing expenses incurred by the company for the general promotion of prisons privatization. In order to promote privatization, CCA envisioned itself as the only company that could offer a working solution to the prison problem, by stressing that privatization had been accepted in many other contexts, such as hospital management and refuse collections, in which the private sector proved itself the ability to offer better services at a lower cost.

CCA's prospectus also took into consideration the potential risks the company could face in embarking into the stock exchange business. One of the main risk was the possible decrease of crime rates, and since private prisons works thanks to criminality, this could be a serious concern to take into account. Nevertheless, CCA's document didn't contain any references related to this possibility: in 1986 crime was increasing and sentencing patterns were only likely to get tougher, so CCA's most serious concern was about contracting successfully with governments. After having enlisted four possible risks, the document ended saying that it would employ registered lobbyist in states that were considering legislation about privatization.

As observed in the CCA's prospectus, the increasing incarceration rate stopped to be perceived as a social problem but it started to be seen as a business opportunity: it became a lucrative market.

CCA was one of the many other private prison companies that went public; as the time passed private prisons began to recruit key former governments employees to become executives or members of the board of trustees. Politics entered in prison privatization: as matter of fact many prominent politician became part of those companies. The list of names is very long, but what is most astonishing is that private prison started to be a business anyone's was interested to be part of.

A new world has been forged behind private prison business: companies started to strengthen their tights with policy makers through campaign contribution and by hiring former government officials and registered lobbyists. CCA, for example, became involved with professional organizations that play a major role in criminal justice policy making, like the American Legislative Exchange Council (ALEC), which is considered by many as «one of the nation's most powerful and least known corporate lobbies»⁵³. Besides CCA, ALEC's corporate members include at least other dozen companies that are involved in prison business: such as the drug companies *Merck and Glaxo Smith-Klein* and the telephone companies that both compete for lucrative prison contracts. The payoff for membership is that it gives the correction corporations the opportunity to show the benefits of prison privatization to lawmakers. On the contrary, critics stand against this relationship because it seems that business executives take advantage from it by advising state lawmakers to make sentencing policies stricter and longer in order to keep incarceration rate as high as they need it to be; in their defense, private prison executives claim that they do not push for longer sentencing

⁵³ Ollson, K. (2002). "Ghostwriting the law", in "Mother Jones", cited in Selman, D., Leighton, P.(eds.) (2010). "The Prison-Industrial Complex. Profits, Vested Interests and Politics ", in "*Punishment for sale-Private Prisons, Big Business and the Incarceration Binge*". Rowman and Littlefield Publishers, Maryland. Kindle edition, position 1890.

policies. As any other issue, virtue is its own rewards: this public-private partnership is still today a controversial topic of discussion in U.S. forums.

The industry's specific strategies to maintain and to perpetuate its existence from the mid-1990s to 2003 have evolved with changing political, economic and societal conditions.

Private prisons do face problem every day, they are not a perfect working machine: their problems are similar to the ones faced by public facilities because they both do business with inefficient governments. Despite all, this complex industry still remains the major player and permanent fixture in America corrections. On the local level, private prisons continue to align with criminal decision makers through the use of campaign donations. Financially speaking, the industry can rely on its connections, on the political side of the corrections-industrial complex, on its ability to influence federal legislation by accessing in agency heads, and most of all it can rely on the radicalized fear of American society in criminality.

Private prisons will continue to exist because they still are more efficient than governments, but skepticism will never end. Private prisons were born from an «incarceration binge» that proved to be only a way to waste taxpayers' money and that produced small effects on crime, but at the same time, it contributed greatly to perpetrate injustice, especially the racial one. Prison's ongoing operation contributes to economic inequality, because in order to make up for high overhead in form of executive pay, lobbying and fees to Wall Street firms, they pay lower-level staff less than the government would.

2.10 Private prison's real efficiency: win or fail?

Besides the financial aspect of privatization, are private prisons really more effective than governments? Let's make a step back: privatization emerged in U.S. as a way to discipline the country's criminal justice system. It's all started during Reagan's administration with the introduction tougher policy in order to stop the spread of criminality. «Zero tolerance» policies and stricter sentences became essential along with the federal «war on drugs»: the consequential effects produced a great increase of the prison population. Prison started to be overcrowded so the federal government moved towards privatization by contracting out public services to private companies. Federal policymakers also urged both the US Marshal Service and the Immigration and Naturalization Service to contract for detention beds for pre-trial prisoners and undocumented immigrants. A new business machine started to step forward in the national scene that since its beginning has been driven by the two major private prison companies, that are the CCA and the

GEO. U.S. policymakers firmly believed that privatization could solve a great amount of problem within the prison system, such as the ones related to the deterioration of the buildings, to the crowded condition, and to the rising correctional costs.

As stated by Judith Green⁵⁴, all private prison corporations promised to revolutionize the entire business of corrections by prospecting a rich agenda of future benefits: for example, they guaranteed that private prison guards would receive higher wages and that prisoners would get better living conditions with improved programs, full-time assignment to work or educational activities. American taxpayers would also benefit because the program's goal was to finally save their money. Everyone would be happy, but unfortunately the promise of higher quality services at lower costs was not demonstrated by solid evidence.

After approximately 25 years since privatization has bloomed, too many American prisons are still plagued by the same problems that used to affect them in the past. Overcrowding, understaffing, sub-standards healthcare and human rights abuse are still widespread problems. It seems that private prisons produced a much worse record of deprivation, violence and abuse than it can be found in the public prison system. Private prisons poor-performance had been noticed by periodical supervisions: many states, such as Arkansas, Louisiana, North Carolina, Ohio, South Carolina and Texas, have ended private contracting, once they witnessed how poorly managed prisons were. During the 1990s the industry touched its peak: privatization's advocates did spend a lot of efforts in cost-savings and profit-taking entails but in the process they sacrificed to monitor and improve other important aspects, such as the quality of programs, facility security and public safety.

Despite state's government contract out their local prison to private prison companies, they do not lose their jurisdiction: as a matter of fact the state has to periodically inspect them to check the good-functioning of the system in order to guarantee the respect of prisoner's human rights.

For example, in 1998 the University of Minnesota Law School Institute sponsored a research whose aim was to evaluate the performance of one CCA's prisons, the medium-security Prairie Correctional Facility (PCF) in Appleton (Minnesota): research had to verify if the correctional services and program offered by CCA could be compared to the one offered in other three medium-security facilities run by the Minnesota Department of Corrections (DOC). Appleton is a small farming community in southern Minnesota, near the border with South Dakota: the Prairie Correctional Facility, before being owned by CCA, was a city-owned and non-profit private prison

⁵⁴ Green, J. (2003). "Lack of Correctional Services", in A. Coyle, A. Campbell and R. Neufeld (eds.) in *Capitalist Punishment - Prison Privatization & Human Rights*. Zed Books Ltd, London. Kindle edition.

facility run in 1990 by the Appleton Prison Corporation, based in the city of Appleton. In 1996, the corporation remained in default on the prison bonds that caused them to run into debt: so CCA stepped forward.

Basically university researchers conducted an inquiry whose results could determine who, between private and public prison, could be considered the more efficient. The same number of prisoners were interviewed in all four facilities because researchers wanted to see what was inmates' prospective about all aspect of prison operations, such as health care, counseling services, educational and treatment programs, work assignments, recreations, routine daily activities, prison safety and security. Prisoners had to answer to a questionnaire that allowed researchers to compare the final results. The research proved that there were a lot of significant differences in correctional services delivery and program operations among DOC's facilities and PCF: the differences favored the public system for the most part. Medical care delivery seemed to be more or less equivalent in both system: the only difference concern the dental care that prevailed in the public prisons; besides DOC's prisons instructed prisoners in general health issue and they also provided HIV/AIDS education to most prisoners. In addition, the Minnesota's public facilities inquired made educational program available to prisoners by giving them also the opportunity to prepare themselves for new employment opportunities. In both system, only a few prisoners perceived to be adequately prepared for release, while the majority asked for more help in house arrangement and job contacts while in jail. Another important aspect to take into consideration was how both system faced substantial abuse treatment, since drug is one of the main plague of Minnesota: DOC's facilities provided treatment programs that were perceived very helpful by the persons concerned, as it offered therapeutic session and drug education classes. PCF never scheduled this type of therapeutic programs, even if they were requested in the contract stipulated by CCA at the time of the buy. The private system win the face-off only in the work assignment program: as a matter of fact CCA established a private-sector prison industry shop at PCF; prisoners showed their approval in working because it felt like it was real. They were happy to make money, even if a large portion of their wages were deducted to offset the cost of their incarceration, because they felt to be independent.

The research proved that DOC's prison worked more efficiently than PCF: for this reason proponents of prison privatization pushed to introduce market competition into the field of corrections as a possible solution to solve many chronic problems that affected the private sector.

The findings of the Minnesota research proved that privatization lowers the level of correctional effectiveness, facility security and public safety. In the case of the Minnesota private facility, it can be said that CCA efforts were addressed to saving costs rather than increasing profits. Besides, PCF's deficiencies seemed to be due to structural differences in how the private sector approached to prison management.

Green ended her analysis by adding that both CCA and GEO have been repeatedly cited for understaffing, deficient work assignments and education programs. Nevertheless, new researches reports have proved that those lacks do not cause deleterious effects on prison operations.

2.11 Malesko case: health care in private prisons

Health care is a serious issue that must not be neglected and, speaking of lack of efficiency, this paragraph will prove how a private prison took care of one of its sick prisoner through a real testimony.

As Elizabeth Alexander reports in her essay⁵⁵, in 1994 John Malesko was serving an eighteen-month sentence in a federal prison: thanks to his good behavior the Bureau of Prison decided to transferred him in another facility, the half-way house called Le Marquis facility, owned by the Community Corrections Center, in New York City. The new facility, also known as CSC, is a for-profit prison corporation that once was used to be run by another private corporation, that was the CCA. Malesko had been previously diagnosed with a congestive heart failure, so CSC was aware of his health condition: after six week since his transfer, Malesko notified that he run out of his heart medications but nobody in CSC didn't take care of refilling them. Malesko's misfortune was not over: CSC policy obliged all prisoners, living below the sixth floor, to use stairs rather than the elevator, since the authorized staff only had the right to use it. Despite his heart problem, Malesko was treated as any other prisoners even if this could be dangerous for his health; even though he was able for a while to cope with this problem by persuading some staff members to let him use the elevator, unfortunately he was not always so lucky. In fact it happened that one day a staff member obliged him to take the stairs without even considering his heart disease. He obeyed but, while attempting to comply with that order, he had an heart attack that made him fall on the stairs by causing him permanent head injuries. After the accident, he filed suit against the corporation: the resulting legal case is known as the litigation *Malesko v. Correctional Services Corporaion*

⁵⁵ Alexander, E. (2003). " Private Prisons and Health Care: the HMO from hell", in Coyle, A., Campbell, A., Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

(2001)⁵⁶. In response to Malesko's accusation, the corporation's lawyers claimed that the corporation, as the U.S. government as well, was not subject to suit for any violation since they were not responsible for Malesko's health care. The federal court threw out the accusation basing its decision on this assumption: in order to avoid similar case in the future, the Supreme Court has ruled that for-profit corporations, that are run under contract with federal government such as CSC for example, are protected from suit for their constitutional violations.

Malesko case is important because it can help us understand the real dangers related to the turning over of core governmental function, as just the cited health care one, to private prisons. The victory of CSC in Malesko case is quite astonishing since they are legally allowed to deny prisoners the necessary health care they need: it's relevant to remember that the majority of inmates suffer from many different disease, most likely due to their drug history. According to Ditton⁵⁷, prisoners suffer from serious mental illness far more frequently than the general population.

Public health officials argue that, aside from the evident humanitarian violation suffered by 2 millions prisoners, prison health care must be a top priority as public health care is, since prisoners once out will re-enter in the community. For example, tuberculosis is the main infectious disease suffered by prisoners: this is an airborne infection that can be widely spread in overcrowded prison facilities which are the best environment for the disease to spread. Ill prisoners were and are not treated adequately in private prisons, so if they survive during their sentence, there can be the risk that they will carry the infection outside: therefore, the possibility for people to catch the virus increases. So private prisons total negligence in health care issues can cause serious consequences in the outside community, by exposing people to infection diseases that could be possibly prevented.

The reason why private prisons cut costs in operational areas, whether linked to security or health care programs, is motivated by their will to save money. As I said in previous paragraphs, the government had the right to periodically inspect private prisons, as well as public ones: even if private prisons formally agreed in their contract that contracting government agencies can monitor their performance, actually they are not subject of the same supervision as public prisons. A reason why governmental agencies do not perform adequate monitoring in private prisons is due to their fear to appear as a failure in the case that privates prisons are not performing satisfactorily what

⁵⁶ <http://www.law.cornell.edu/supremecourt/text/534/61>

⁵⁷ Ditton, P. M. (1999). "Mental Health and Treatment of Inmates and Probationers", cited in Alexander, E. (2003). "Private Prisons and Health Care: the HMO from hell", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2062.

established by the contract they have stipulated at the beginning of their partnership. If the contract is not fully respected, the private company can risk to lose the contract or to suffer other penalties. Besides government's supervision, the other deterrent private companies might fear is the possibility of litigation if, for example, they fail in providing adequate health care, as occurred at the time of the Malesko case. In fact, they succeeded in protecting themselves from litigation thanks to the «Prison Litigation Reform Act» (PLRA): the act, enacted by the Congress in 1996, restricts the ability of state and federal prisoners to seek damages and it makes more difficult for prisoners to obtain lawyers. Basically neither the threat of government's supervision nor the litigation costs provide sufficient incentives to prevent these denials, even if it's obvious that private prisons do fail in providing care since their priority is to reduce costs, mainly in food and medical care, so they can pocket more money.

Not only CSC, but also other private prison corporations have been charged for not having provide health and mental care to prisoners under their custody: for example, the CCA has been charged multiple times for having denied the necessary health care to its needy inmates.

Even though litigations do not stop private prisons from cutting health care services, however they have had some deterrent effects: as a matter of fact, litigation has the power to draw public attention to facilities' failures and it also gives opportunities to external eyes to examine documents in search for evidence to prove that private prison do deny care by cutting costs in these important fields. Bad press and an over a million and half dollars fine is what occurred to CCA in the late 1990s: the litigation against CCA' s Youngstown contributed significantly to the collapse of the corporation. As a matter of fact, «CCA settled the litigation against the facility for the largest class action money damages ever recovered in a prison case and comprehensive changes in practices»⁵⁸. CCA hadn't even a chance to win the case because the Supreme Court Act wasn't enacted yet.

This is what happened: in 1997 the District of Columbia contracted to send prisoners in the medium security facility Northeast Ohio Correctional Center in Youngtown (Ohio), run by CCA, that accepted all 900 prisoners without even classifying them in order to separate dangerous inmates from others. This negligence caused the facility a lawsuit: in fact, after less than a month two prisoners had been stabbed to death. This accident pushed the prisoners, just transferred to Youngstown, to file a lawsuit against the facility complaining for an inefficient health care. The

⁵⁸ Gerhardstein, A. (2000). " Prison Litigation: The Youngstown case and Theories of Liability", cited in Alexander, E. (2003). " Private Prisons and Health Care: the HMO from hell", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2193.

Correction Trustee for the District of Columbia issued a report where it affirmed that, when the fact occurred, Youngstown facility did not have the adequate medical staff: at the time of the transfer, there were only a few medics available, with no experience, who felt overwhelmed by the great number of prisoners that had just come in. For this reason the usual procedures were not followed: the CCA's facility failed in delivery medical care to prisoners, most of all to those who really needed for a special medical attention because of their chronic disease. It can be asked why CCA did accept all those prisoners without even looking on their medical records and the only answer possible is that they put into the foreground their own interests: as a matter of fact, they wanted to boost the prison's occupancy rate and to increase the resulting payments destined to the corporation itself.

Prior to the events of September 11, private prisons in U.S. were in deep trouble: as Tharp says⁵⁹, CCA was on the verge of bankruptcy and even the Wackenhut Corrections Corporation (GEO) wasn't in a better financial shape. But after September 11, the Bureau of Prisons (BOP), which administrates the federal prison system, issued its largest requests of the year: it asked to lock up non-citizens charged with crime in Georgia and to hold fifteen hundred detainees in the desert of the southwest U.S.. Considering its financial condition, CCA did not lose the occasion to maximize its profits and stepped forward, as many other private prison companies, to cash in new federal contracts. By doing so, CCA was able to rise its stocks over 300%: private prison company executives hoped that «a large-scale increase in detention of undocumented immigrants would serve to boost the federal market for detention beds, with the Immigration and Naturalization Service replacing the Federal Bureau of Prisons as the new target of opportunity»⁶⁰, since the more beds were occupied, the more private prison profits would grow.

In conclusion, with the victory in the Supreme Court of CSC, all prison corporations will always benefit from immunity from legal challenges, in case they won't provide the adequate health care to prisoners as long as they operate under contracts with the federal government.

2.12 Today American private prisons situation

After a long analysis of how American private prisons developed since its early beginning, I think that it's important to focus also on today situation. To better understand what is happening in our

⁵⁹ Tharp, P. (2001). "Prison Companies Get Hot". New York Post, October 4, cited in Alexander, E. (2003). " Private Prisons and Health Care: the HMO from hell", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) in "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2226.

⁶⁰ <http://www.projectcensored.org/25-federal-government-bails-out-failing-private-prisons/>

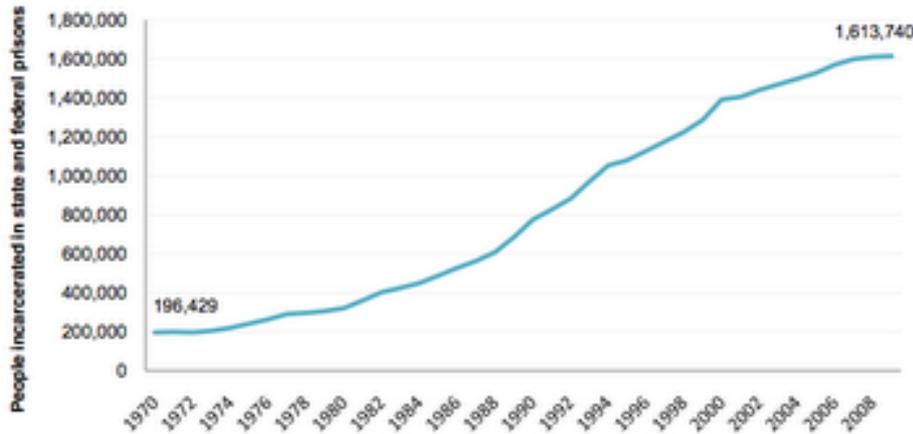
current century, I preferred to base this paragraph on articles rather than books, since they are more actual than anything other work ever published.

American privatization is a living machine, it always changes: new data are recorded every day to allow researchers to update what we know so far.

First, I would like to start with a very interesting article written by Nile Bowie⁶¹, a journalist who works for the *Centre for Research on Globalization* (CRG) which, according to its website, is a Canadian independent research and media organization. This article was published on February 6th, 2012. As pointed out by Bowie, the United States of America holds the highest incarceration rate in the world: for every 100,000 Americans, there are 743 citizens locked up in jail. Nowadays, there are more than 6 million people incarcerated in U.S.: this rate is much bigger than the one ever recorded in the former Soviet Union, when prisoners were used to be locked up in the gulags. As already stated, state and federal prisons are contracted out to private prison corporations whose goal is housing the maximum numbers of inmates for the longest time. Private prisons are paid a fixed amount of money for each prisoner they hold per day: they are able to maximize their profit by spending the minimum amount of state and federal funds. So the remaining amount of money ends directly in their pockets. Because of market competition, state and federal governments contract private corporations, by letting them run prisons, to keep their promise of maintaining correctional facilities at lower costs. The two biggest private prison corporations are the CCA and the GEO: both combined revenue of over \$2,9 billion in 2010.

⁶¹ <http://www.globalresearch.ca/profit-driven-prison-industrial-complex-the-economics-of-incarceration-in-the-usa/29109>

Table 2.12a - The state and federal prison population increased 722% between 1970-2009

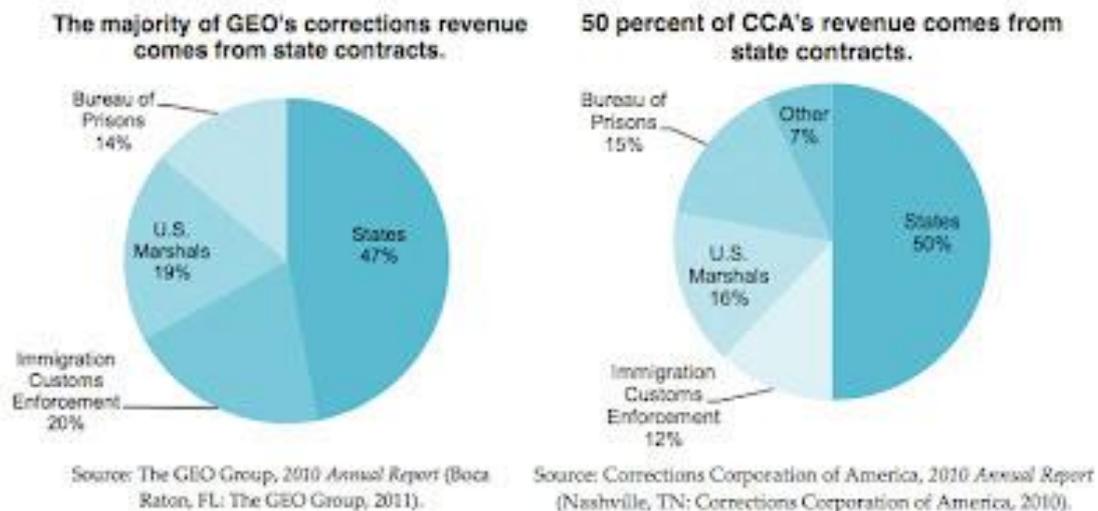


Source: Nile Bowie, Global Research, February 6th 2012⁶².

As shown by the table above, the number of both state and federal prisoners greatly increased within the space of nearly 40 years: private corporations do have great influence over the American legal system. Millions of dollars are spent every year lobbying state official and political candidates: by doing so, private corporations do support some politician rather than others, for example by sponsoring their campaign, but in turn those politicians have to push for introducing harsher zero tolerance policies, that at the end will only benefit privates' pockets. In short, it's legitimate to say that private prison corporations have the power to manipulate the judicial system as they want, since they have a great influence on politicians. This is how privatization works in the U.S.: for example, at the time of CCA's birth, the co-founder Beasley tried to exploit his political connections with the aim of exert control over the entire prison system of Tennessee. Nowadays, CCA runs 65 facilities and owns contracts with some America agencies, such as U.S. Marshall Service, Immigration and Customs Enforcement (ICE) and the Bureau of Prisons. On the other hand, GEO run 118 detention centre throughout not only the U.S., but also in South Africa, UK and Australia.

⁶²*Ibidem*

Table 2.12b - GEO v. CCA's corrections revenue



Source: Nile Bowie, Global Research, February 6th 2012⁶³.

The private prison business also takes advantages of the new harsher immigration legislation: in the last few years, most of all after September 11, the number of illegal immigrants incarcerated is rising greatly under Immigration and Customs Enforcement.

Bowie continues his accurate analysis by pointing out a fact that only few people are aware of: in fact all military helmets, ammunition belts, bulletproof vests, ID tags, uniforms, tents, bags and other equipment used by military occupation forces are produced by prisoners in federal prisons across the U.S.. In the past, many Americans have criticized countries, such as China and North Korea, for their role in exploiting prisoner labor to create commodity products. Nevertheless they do the same thing: U.S. prisoners are forced to work with no union protection, benefits or health and safety protection, even if they are regularly exposed to dangerous chemicals. Besides the lack of protection, for all the work done prisoners only earn a pittance: as a matter of fact they receive approximately 17 cents per hour. Basically Americans do exploit prisoners' labor force as well as China and North Korea do.

In addition, the potential profit of the prison labor boom has encouraged the biggest U.S. corporate society to shift their production forces into American prisons. Some of those famous companies are: IBM, Boeing, Motorola, Microsoft, AT&T, Wireless, Texas Instrument, Dell, Compaq, Honeywell, Hewlett-Packard, Nortel, Lucent Technologies, 3Com, Intel, Northern Telecom, TWA,

⁶³*Ididem*

Nordstrom's, Revlon, Macy's, Pierre Cardin, Victoria's Secret, and Target. They all have started to mount production operations in US prisons. Bowie's inquiry do also make an excellent point: as a matter of fact, the same companies that outsource the production of their products to American prisons simultaneously sponsor civil societies that support humanitarian causes.

In addition, the majority of Americans is not aware of what there is in the government's agenda: as a matter of a fact, U.S. government is trying to modify the legal infrastructure of the country to allow for an expansion of the domestic prison system at the expense of civil rights.

On December 31st, 2011, Barack Obama signed into law the «National Defense Authorization Act» (NDAA) H.R.: according to it, U.S. citizens can be arbitrarily detained in military detention without due process – might they be predictably be deemed radical, conspiratorial or suspected of terrorism. This legislation becomes increasingly more dangerous as citizens can be labeled domestic extremists based on their constitutionally protected activism or personal political leanings.

Bowie ends his article stating that the increasing influence of the prison industrial complex, over official legislation and economic undertakings, can only bring to a negative consequence: that consists in reprehensibly threatening basic human rights.

On November 2nd, 2011, the *American Civil Liberties Union* (ACLU) published its latest report, «Banking on Bondage: Private Prisons and Mass Incarceration»⁶⁴: as the title itself recalls, the topic of discussion is linked to today private prisons and mass incarceration tendency. The report is divided into three parts: in the first one, it traces the rise of the for-profit prison corporations over the past 30 years; the second part, on the other hand, focuses on the supposed benefits connected to private prison business; the third part ends the inquiry with the discussion over how private prisons manage to obtain control of more and more human beings and taxpayer dollars. The report closes by saying that private prisons cannot be the solution to the problem of mass incarceration: as it points out, the high incarceration rate that U.S. is witnessing today can seen more as a moral and economic failure. Even if this tendency can be considered a windfall for prison private corporations, on the other hand, it is also a serious harm for the whole country: the society pays for it, both economically and emotionally speaking, while private companies obtain more and more government dollars. The report affirms that mass incarceration can only wreak communities, most of all the African-American and Hispanic ones, who are considered the biggest losers, since they are the main targets of new harsher sentences, whose aim is to lock up minor offenders for long times only to fill as many prison beds as possible to please private prison companies.

⁶⁴ <https://www.aclu.org/prisoners-rights/banking-bondage-private-prisons-and-mass-incarceration>

The ACLU report inspired Sherwood Ross, a Miami-based public relations consultant, who wrote an article for Global Research on November 12th, 2011: in her articles, besides paraphrasing some parts of the ACLU report, she also cited lawyer David Shapiro of the same ACLU Prison Project who said that incarceration business, «[...]has been a bonanza for the private prison industry, which rakes in billions of dollars a year and dishes out multi-million dollar compensation packages to its top executives». Shapiro also stated that, « it is imperative that we halt the expansion of for-profit incarceration; since the private prison industry helped create, and continues to feed off, the social ill of mass incarceration»⁶⁵.

Franco Polese⁶⁶ presents, in an article he wrote on August 25th 2013, today's major prison privatization detractor, that is Frank Smith; for 15 years Smith is fighting against this business by accusing politicians and lawmakers to accept lobbyists support for their campaigns if in turn they use their power to change law in favor of private companies' interests. He states that prison privatization generates a vicious circle that only benefits the government and private corporations, while it affects taxpayers and the weakest members of the community, who are the main target of American justice policy. Private corporations influence lawmakers to make sentences harder for small offenders, that are commonly African-Americans or Hispanics, in order to have more beds occupied since companies receive an income for each prisoner locked up in one of their facilities.

Until now I've only taken a look on today private prison situation, but some changes are also occurring into the public sector. As a matter of fact, on August 12th 2013, the Attorney General Eric Holder announces that he wants to reform America's justice system in order to reduce the number of prisoners locked up in overcrowded federal prisons. Holder works for the U.S. Justice Department under Obama's administration since 2009 and moreover he is the first black American to hold the Attorney General position. This reform has become his top priority in the last year. His proposal was presented to the *American Bar Association's House of Delegates* meeting held in San Francisco: he wants to review the traditional criminal policies, as the tough on crime and anti drug ones, because he's worried about the prison overcrowded situation. Besides he has also observed that prison overcrowding does also have important consequences in the economy of the country: in 2012, the U.S. government had spent over \$80 million for the maintenance of federal prisons. Holder pushes for the suspension of draconian mandatory minimum sentences that are moot sentences which do not take into consideration the circumstances under which a crime can be

⁶⁵ <http://www.globalresearch.ca/the-incarceration-business-america-s-private-prisons/27631>

⁶⁶ <http://www.ilfarosulmondo.it/le-carceri-private-usa-tra-business-corruzione-e-repressione/>

committed. Since it's the government that has to pay to maintain federal prisons, it ought to stop sentencing small offenders with harsh punishments because is a counterproductive attitude: strict sentences do not improve U.S. safety, but on the contrary they favor a vicious circle of poverty and criminality that not only lead people to prisons, but it has also weaken the community. As Holder states, prisons have to punish and re-educate offenders instead of being considered more as warehouse where criminals are locked up and forgotten by the rest of the world. Through Holder's reform, dangerous criminals will be harshly sentences, as they deserve, while small offenders will undergoing treatments that will help them deal with their problem. Holder, who is part of Obama's administration, has received support also from the Republicans whose aim is to reduce public expenditures as well. Many state are enacting new reforms in order to decrease incarceration rate within their state: for example, Kentucky enacted a new law that establishes incarceration will be applied only in case of a great wrong while other resources will be invested in alternative punishments and to improve the cities' surveillance; even Texas and Arkansas have changed their laws that now establishes probation for small offenders rather than jail and both state are investing their money in activities that will help addicted to detoxify. Through this reform, Holder plans to reduce the prison population and save \$400 million in the next ten years. Last September Holder has presented his resignation, even if lately the U.S. Justice Department has taken important steps towards a new criminal justice reform thanks to his work.

CHAPTER THREE -

America's main targets: who are the ones really affected by its prison system

3.1 The evolution of the penitentiary in the 20th century

The penitentiary was born in an historical period of strong optimism in regard to the idea of reforming criminals. It should have manifested the Enlightenment belief, according to which people are thought as «white canvas» on which environments, including reformatory prison environments, would forged individual characters.

On its early beginning, the penitentiary had been considered as the first truly modern prison: it has been defined as an uniquely American institution, that started to proliferate throughout the country mainly under the presidency of Jackson, between 1820 and 1830.

The penitentiary was completely ignored by many Southern states: for example, the first prisons in Texas were basically extensions of slave plantations. According to Crouch and Marquart⁶⁷, Southern plantations prisons were considered as the equivalent of Northern industrial prisons. The difference between them is very simple, as hinted by their name too: the first one used to exploit prisoners' labor in plantation, as they did with former slaves, in order to keep fueling Southern economy; the latter, on the other hand, used to exploit prisoners' labor in factories, since the Northern economy was commonly linked to development of industrial forces.

Since the early 19th century, when penitentiaries were firstly introduced, Southern prisons founded their roots into slave-labor practices: they became formal business institutions, obviously marked by a very strict discipline. It's ironic that penitentiaries in the North had found their first expression in the management of these institutions.

Southern plantation prisons mostly contained black prisoners, both men and women: despite the success of African-Americans' emancipation, black individuals still were the main targets of Southern criminal policies. In fact, for most of the time, they were incarcerated for meaningless reasons only to be used by prisons that would exploit them in different hard work activities: for example, some were destined to work in fields owned by the same prison, while others were employed to build some public works, such as roads and railroads. Black men did not end up in

⁶⁷ Crouch, B. M., Marquart, J. W. (1989). " An Appeal to Justice: Litigated Reform of Texas Prisons". Austin, University of Texas Press, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., " *Prisons: Today and Tomorrow* ". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

prisons only, but sometimes they were also forced to follow prisonlike work regimes in order to pay off some of their debts they contracted with white landowners, that used to be their former owners when slaves. Besides working on fields, prisoners did also work in chain gangs, which were a means of punishment that consisted in chaining together group of inmates to make them do challenging works. Chain gangs included black female prisoners as well as black male prisoners: besides, women were subjected to the same harsh regime as men (Rafter, 1990)⁶⁸. Only few whites worked in chain gang or field labor, since both punishments were commonly reserved for blacks prisoners. To sum up, we can assume that, since the abolition of slavery, Southern prisons were only used to legally perpetuate slavery: as a matter of fact, chain gangs were originated in plantations to punish unbehaved slaves.

The primary descendent and heir of the penitentiary was the Big House, a maximum security prison, which started to appear in the first half of the 20th century. The Big House prison did not aim neither to punish nor to gain any profits from it: as a matter of fact, activities were only used to maintain order within the building. In the South, the Big House emerged as the natural evolution of those plantation prisons: it fostered discipline and control for those prisoners who could not work in fields, because of their age or possible infirmity. On the contrary, the Big Houses of Northern states were more than gutted penitentiaries.

The difference between the Big House and its ancestor, the penitentiary, was the kind of life they offered to prisoners: as a matter of fact, if in the first one life culminated in boredom, in the latter inmates' permanence lacked of comfort or distraction. Nevertheless, the Big House routine culminated into a series of humanitarian milestones that greatly improved prisoners' life.

The first amelioration was the introduction of tobacco which was happily welcomed by prisoners.

The second enhancement was the abolishment of corporal punishment, that became an unauthorized activity by the turn of the 20th century: in Sing Sing, for example, it was abolished back in 1871. Nevertheless, corporal punishments continued to be used in some Southern prisons for much of the 20th century (Johnson, 2002)⁶⁹.

⁶⁸ Rafter, N. H. (1990). "Partial Justice: Women in State Prisons, 1800–1935". Boston, Northeastern University Press, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "*Prisons: Today and Tomorrow*". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

⁶⁹ Johnson, R. (2002). "Hard Time: Understanding and Reforming the Prison". Belmont, CA, Wadsworth, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "*Prisons: Today and Tomorrow*". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

The third and last improvement was the concession of more freedom to prisoners: this final reform was considered very important because it changed completely the concept of prisons. As a matter of fact, the Big House was more humane than the penitentiary, but still there were some similarities between the two. For example in the Big House, and in the penitentiary as well, order was kept through threats and force; moreover, in both prevailed the rules of silence since it represented the authority of keepers. As Lewis Lawes once told: the silence was the «hush of repression»⁷⁰.

Despite the comfortable life offered by the Big House, prisoners still led spartan lives: for example, cells were narrow and possessions limited to the essential. Only food was in good supply.

The penitentiaries were mainly funded on terror, while Big House on boredom instead: prisoners' routine was very monotonous, in fact they claimed to feel dead rather than alive.

Big House prisons contained an overrepresentation of minorities and, as in the larger society too, prisoners were racially segregated, mainly in Southern prisons: as a matter of fact, minorities formed a world by their own, apart from white prisoners and white officials; in addition, they did also live under harsher and more restricted conditions, mainly speaking in terms of work.

The Big House was not only a male prison, but a female prison as well: the origin of female prisons dated back to penitentiaries, when the number of female penitentiary prisoners increased so fast that new separate units had to be built in order to hold them within men's penitentiaries. Some years later, those units were replaced with completely separate and autonomous institutions, run by a custodial model: the confinement in custodial regimes was very hard on women. As occurred in male prisons as well, also in female custodial facilities there was a great variety of kind of offenders, such as petty thieves, addicts or prostitute of different ages and nationalities. They had to submit to their superiors, unless they were punished; besides, sexual abuse was a common practice in custodial prisons, since they were run only by men who exploited women physical inferiority. Female prisoners were molested everywhere and by everyone: they did not have any choice or power to fight them back, as they were only considered as spoiled goods that were there only to please male keepers.

As a 19th century observer said once, criminal women were «if possible, more depraved than the men; they have less reason, more passion and no shame. Collected generally from the vitiated sewer

⁷⁰ Lawes, L. E. (1932). "Twenty Thousand Years in Sing Sing". New York, Ray Long and Richard R. Smith, Inc, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "Prisons: Today and Tomorrow". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

of venality, they are schooled in its depravity, and practiced in its impudence»⁷¹. The situation did not improve during the 20th century either, at least through the period when men ran female custodial prisons.

The Big House was little by little substituted by a new kind of prison, that was the correctional institution which emerged in the 1940s and 1950s.

The differences between Big Houses and the correctional institutions were tangible: prisoners' living routine was more relaxed and accommodating. Correctional institutions did not correct, but in turn they did not abolish the pains of incarcerations as well: they offered more acceptable human conditions even if, for most part of the time, they basically occupied the same physical plants of former Big Houses. Correctional institutes also offered more liberal mails and visitation policies, along with more educational and therapeutic programs. No matter life in there was less inhuman and repressive, boredom still prevailed, as occurred in Big Houses. Correctional officials did promise programs but sometimes they did not keep their words, because they were not prepared yet to run a correctional enterprise, neither had the necessary resources to make that happen. Correctional facilities wanted to transform prisoners, as did penitentiary as well, but in the end they did not accomplish in doing anything they promised, since they often left prisoners more or less unaltered. So far they seemed comfortable places, but they were not: punishment was hidden behind this monotonous life: prisons were built for punishment and that was what they did. Punishment, to be considered as such, does not have to be corporal only but there are many other ways, much more incisive and painful: massive walls that surrounded prisoners and narrowed spaces do the trick. Mental punishment is far more terrible than corporal one: the first leaves you more profound scars, while the latter leaves you only temporary ones, that will soon vanish. Narrow, grey walls, no sight of the exterior world are all elements that contributed to create an oppressive environment. Today things are changed: in fact, only a few prisons still have painted interiors with grey. The majority opted for pale grey, while some others have used more colorful dye: this is the case of facilities reserved for prisoners judged to be little dangerous or for women. As a matter of fact, women's penal facilities look more like college campuses than prisons: despite the appearance, they are still prison with a lot of rules and few program opportunities, that mainly follow stereotypical gender lines by focusing on domestic skills rather than job ones.

⁷¹ Coffey, W. A. (1823). "Inside Out: Or, An Interior View of the New York State Prison; Together with Bibliographic Sketches of the Lives of Several of the Convicts". New York, printed for the author, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., *Prisons: Today and Tomorrow*. Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

Speaking about how things work nowadays, it can be said that prisons are formally called correctional institutions. The name can be delusive: as a matter of fact, today prisons are experiencing an higher rate of inmates' violence that at any other time since the introduction of the penitentiary. This is occurring mostly in men's prisons: uprisings and riots are very common, mainly in Attica and Santa Fe facility, where accidents like those happen regularly. Violence does not only explode among prisoners only, but also between them and guards: unprofessional behavior is more frequent today than in the past, as well as racial and ethnic discriminations.

Former Big Houses and past correctional institutions left a discontent trail, due to failed programs and racial segregation, that today correctional facilities have inherited in terms of violence: as a matter of fact, minority groups incarcerated in U.S. prison - which are African-Americans, Latin Americans and Native Americans - are central sources of violence. Over the years, minorities have accumulated a lot of confidence and power that in turn they use to dominate and abuse whites, who are the despised minority behind bars nowadays. Since 1980s, violence have reached alarming proportions in American male prisons but now things are slowly changing: the data shows a decreasing tendency due to nonviolent accommodations that have settled down everybody's tempers.

Very different is the situation in women's prisons, where racial and ethnic relations are very calm and smooth. Nevertheless, new problems are emerging today in women's prisons: the transaction, from correctional places to containment one, is causing serious consequences into the culture of institutions themselves. A new institution has been built, named the York Correctional Institution, which is meant to be modeled on confinement prisons: this new facility is committed basically on rehabilitation and it's based on high-security men's prisons. If in former institution women could have the possibility to rearrange their cells, now individuality is prohibited: for example, they have to wear uniforms and are called by their last name (Griffith, 2003)⁷². Besides, sexual humiliation is one of the thing modern prison have inherited from Big Houses.

Increasing tensions and resentments are the results of today strict regimes, in both male and female prisons, which strongly influence prisoners and guards' daily life.

The logic behind prisons is that the growth through adversity is very important in order to change prisoners themselves: this is very difficult today to accomplish because of facilities' overcrowded

⁷² Griffith, D. (2003). "Bad Girls", in W. Lamb (Ed.), " Couldn't Keep It to Myself: Testimonies from Our Imprisoned Sisters", pp. 335-350. New York: HarperCollins, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "*Prisons: Today and Tomorrow*". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

and underfunded conditions. Most of all speaking of numbers, lately in U.S. penal institutions minorities are excessively present, while women incarceration rate is growing more than men one does. In order to avoid a further deterioration of today American male and female prisons, it's necessary to think about new strategies able to improve the legitimate human needs and to reduce the overuse of prisons, particularly among minority communities.

3.2 Working Rights within American private prisons

The private correction institution is a flawed system: if one thing goes wrong, another follows right away. Since they all are corporation driven mostly by profits, their inappropriate behavior causes drastic changes in the mission of correction and rehabilitation that they should accomplish, as they are correctional institution first of all.

The problem is that we can't see what actually happens behind those walls and neither state corrections and legislators can: private prisons are hidden from the public eye. As previously highlighted, private prisons are not perfect, they fail in many things: in order to understand why they don't work, first we should focus on the origin of the problem. Basically private facilities officials prefer to boost their profit, so they try to cut expenditures where possible. They invest less in front line staffing, which in turn diminishes security that jeopardizes safety within private prisons. They put in harm prisons guards, inmates and the community in general. Those money will end directly in wardens and company executives' pockets.

A national enquiry, run by the *National Council on Crime and Delinquency* (NCCD), pointed out that private prisons «have a significantly lower staffing level, lower salaries and higher rate of assaults on staff and inmates than public facilities»⁷³.

It shows that labor cost cutting is increasingly endemic within private prison business. The findings of the NCCD research are confirmed also by many other studies, in particular by three reports that have been published in the late 1990s and early 2000s.

The first report, *U.S. Department of Justice Report on Northeast Ohio Correctional Center*⁷⁴, has been made in November 25th 1998: it notifies all kind of deficiencies, errors and mismanagement

⁷³ Branstetter, Z., Hoberock, B. (1999). "When Trouble Strikes Prisons", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4597.

⁷⁴ Clark, J. L. (1998). " US Department of Justice Report on Northeast Ohio Correctional Center", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4625.

attributed to Northeast Ohio Correctional Center, run by the CCA. The lack of experience, in guards and staff in general, led to disorder that culminated in prisoners' escaping, stabbing and deaths.

The second report, *A review of the Jena Juvenile Justice Center, Jena, Louisiana*⁷⁵, has been conducted by the U.S. Department of Justice (DOJ) on February 2000: this investigation found out that juveniles in Jena, run by the GEO, were subjected to abuse and they were neglected as well by some of the staff members. Federal investigators held responsible of such a problem the high staff turnover and poor guard training.

The third report, *Briefing Report-Florence Correctional Facility: Report of the Hawaii monitors for the CCA Florence Correctional Facility*⁷⁶, dates back to April 30th 2001: it concerns the Florence Correctional Facility in Arizona, run by the CCA, which opened the previous year and housed some Hawaii prisoners. The Hawaii monitors, after a series of accidents involving both prisoners and guards, were sent to inspect the facility: they noticed that, because of the lack of experience of the prison guards, it was not a safe environment. Besides a strong staff's discontent, they also pointed out that prisoners were in control of the facility: as a matter of fact, they corrupted the staff members to introduce drug into the prisons.

To conclude, it's necessary to highlight that all three report show the same problems related to prison employees: chronic employee turnover, understaffing, poor training and an high rate of violence are the direct consequences of cost cutting. As affirmed by the *National Institute of Corrections* (NIC), «privatization changes the way taxpayer dollars are spent on prison inmates: less is spent on employees having direct contact with prisoners; more is spent on prison-level administration, monitoring activities by state officials, corporate overhead and corporate profits»⁷⁷. This attitude is the fuse that makes the whole system to blow: all different actors, involved in private prison business, are entwined together, if one fails, the other will too.

In order to confirm what stated by many studies and enquires, many data have been gathered together to compare the situation between private and public prison employees to see who earn the most: this wasn't a simple task because most of the information about private prisons' employee

⁷⁵ Ray, N. K. (2000). "A Review of the Jena Juvenile Justice Center, Jena, Louisiana", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4614.

⁷⁶ State of Hawaii (2001). "Briefing Report - Florence Correctional Facility", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4597.

⁷⁷ McDonald, D. C., et al (1998). "Private Prisons in the Unites States", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4587.

wages are not held to any public disclosure requirements. The comparison is possible thanks to the data offered by the *Correction Yearbook*, the most important source for correlations statistics, which began to publish self-reported data since 1998.

The disparity between the private and public sector salaries is quite evident, as shown by the tables below.

Table 3.2a - Average salary, comparison between COS and Private Guards

	<u>Average Starting Salary</u>	
	1997	1998
Public COS (Correctional officers)	\$21,246	\$21,855
Private Guards	\$ 17,344	\$19,344

	<u>Average Maximum Salary</u>	
	1997	1998
Public COS (Correctional officers)	\$ 34,004	\$34,728
Private Guards	\$ 20,448	\$ 21,790

Source: The *Corrections Yearbook* (1998,1999,2000).⁷⁸

In terms of quality, it's obvious that the private sector cannot compete with the public one: private prisons officials do not care about inmates or their employees' working condition, as their main interest is making more money out of it, that directly ends in their own pockets.

As a matter of fact, management and company officers are not treated as employees are: for example, their wages were far more higher than the ones of their workers. Money, that they save by

⁷⁸ Camp, C., Camp, G. (eds.) (1999). "The Corrections Yearbook (1998, 1999, 2000)", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4638.

not paying fairly those employees, ends directly in their pay slips. Even private prison consultants benefit from this situation, along with corrections, corporate executives and insiders: they all receive excessive salaries that cannot compete with those earned by every single member of the staff.

The fact is that prison employees are essential for the well-functioning of the whole system: they are important for the order maintenance, as well as for aiding inmates' rehabilitation.

Due to low wages, there is an high employee turnover that obstructs the development of the important relationship between the prisoners and members of the staff. Since employees are continuously changing, very often private prison officials are forced to hire inexperienced and naive men in order to fill up the empty workplaces. As a matter of fact, private prison guards consider their job as a temporary place of employment until a much more paid work will come in their way.

The continuous employee turnover is also known as the «green» workforce: «the greener the workforce, the more likely there will be lapses in fundamental security procedures [...]», as affirmed by two private prisons researchers, Scott Camp and Gerald Gaes⁷⁹. As a matter of fact, if private prison officials continue to offer low wages, they will only obtain green workforce: it's their choice. The higher is the employee turnover, the more intensified violence, riots and security compromises will be: in fact, an high turnover only brings to less stability. As observed by the data of the *Corrections Yearbook*, from 1997 to 1999 the turnover rate for private prison guards is about 3 times higher than the one of the public sector corrections officers⁸⁰.

Due to an high turnover, the private prison industry is obliged to hire new employees in a very short time, without taking in consideration their background or experience. Despite lack of available information, there is only a few evidence about the industry's hiring practices: for example, it's known that some facilities do hire former convicts as guards or as jailers. An high turnover does not only exist among employees, but among the management ranks too: this situation can suggest how the private mode of operation is structurally flawed.

As previously stated, an high employee turnover causes understaffing which sometimes is deliberate rather than unintended: as a matter of fact, «private prisons companies leave positions

⁷⁹ Camp, S. D., Gaes, G. G. (eds.) (2001). "Growth and Quality of U.S. Private Prisons", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4704.

⁸⁰ Camp, C., Camp, G. (eds.), *supra* note 78.

open to boost their profits»⁸¹. They coped with understaffing by forcing their employees to work longer hours in order to cover vacant positions, even if they legally can't: so, they benefits from this situation since they do not pay overtimes. They save money, not only by not hiring the necessary staff members, but also by not rewarding fairly those who really worked hard in order to keep the system going.

In a few words, staffing shortage does only affect employees who are not paid for their overtime when they have to work extra hours. Basically, private prisons firms are not willing to pay overtime because it cuts into their profits. As occurred for example in the GEO's Juvenile Prison in Michigan, some guards have reported to work long hours (sometimes 70/80 hours per week) to cover those two or three guards posts that were routinely left unfilled. One day, the head of the facility decided to locked the guards in, in order to not making them to leave the prisons; in response, because of their frustration, guards began to take out their discontent on prisoners, by provoking them in order to start a fight (Kolker, 2000)⁸².

Recently many CCA's employees have sued the company for failing to pay overtime, but despite all of this, it seems that those private prison firms will continue in this direction even at the expenses of the public safety: they prefer leaving post unattended rather than pay employees' overtime.

The regular turnover in private prison makes it nearly impossible to train staff properly, since they have to fill quickly free positions: for this reason, very often employees are put in danger situation since they don't have the necessary tools to cope with problems. To better understand how poorly those employees are trained, it's necessary to look at the data contained in the *Corrections Yearbook* that proved what just stated: the average amount of pre-service training, required for inexperienced employees, is less in private prisons than in public ones.

⁸¹ Bates, E. (1998). "Private Prisons", in "The Nation", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4762.

⁸² Kolker, K. (2000). "Short Staffing, Long Hours Create Danger, Guards Say", in "The Grand Rapid Press", cited in Miller, J. (2003). "Worker Rights in Private Prisons", in Coyle, A., Campbell, A., and Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 4764.

Table 3.2b - Pre-service Training Hours

	<u>Pre-service Training Hours</u>		
	1997	1998	1999
Public	232	240	250
Private	189	177	149

Source: The *Corrections Yearbook* (1998,1999,2000)⁸³.

As indicated by the data above, the average amount of pre-service training is decreasing in private prisons, while in public ones the tendency is quite the opposite.

This is a serious problem: as a matter of fact, hiring unqualified personnel only to fill vacant positions is both a dangerous and disturbing practice. Far more alarming is that private prison firms do avoid pre-service training on purpose, only to reduce personnel cost; besides, they have also given employees company stock for retirement rather than a real pension.

Basically not only the uncertainty of a risky retirement plan can negatively affect the staff, but underpayment and the consequent understaffing as well can play as detractors in this situation.

Lately, private prison companies cope with this problem by building new facilities with modern designs, integrating technology that are far more effective than those used in public prisons. These innovations and advancements are aimed to substitute personnel's work in order to obviously reduce labor costs. In order to build all those new modern facilities, private prison firms spend taxpayer money, not theirs: as a matter of fact, it has changed the way taxpayer money are spent, for example it's documented that numerous taxpayer subsidies are used for private prison projects.

So, where does the saved money go instead? The answer is pretty clear: the amount of money that is saved in terms of labor costs (wages, overtime, retirement) directly goes in private prison officials' pocket. As any other worker, private prison officers could decide to strike to stand for their rights, but they actually can't: as a matter of fact, both state legislatures and courts have determined that a strike is not in the public interest, so basically they are prohibited from striking. In contrast, private prison guards are covered by federal law, the «National Labor Relation Act», which allows them to strike: there are any state legislation that can prohibit that.

⁸³ Camp, C., Camp, G., *supra* note 78.

Economically speaking, building new facilities does not only benefit the private prison company, as said above, but also people leaving nearby. This is a new form of economic development: for example, Youngstown let a private prison firm to import inmates into its community from another state, only because it creates new job positions. Despite the fact that Youngstown private facility could only offer low wages and high turnover, the community did welcome it no matter what, because a poor job is always better than no job at all.

It's necessary to affirm that private prisons do not always offer a steady source of employment, but they sort of «exploit» people's need of work: in fact, sometimes people do accept any kind of job position, no matter the wage or the condition, only to earn some money necessary for their survival. To conclude, money is the fuel that allow the whole system to work: in the case of private prisons business, it's not used efficiently to answer all the requests the system asks for, even if this kind of behavior puts at peril the entire community.

3.3 Juvenile Detention in the United States

During the last years, the juvenile detention has rapidly become a growing industry: as estimated by the *National Juvenile Detention Association*, 5% of the American juvenile facilities are privately owned and operated. As a matter of fact, the population of young offenders held in privately facilities has grown 9.6% from 1991 to 1995: they were counted to be approximately 35,600 young transgressors, as demonstrated by a study of the *Office of Juvenile Justice and Delinquency Prevention (OJJDP)*⁸⁴.

In 1996 a new research had been published, a report called *At Risk Youth: A Growth Industry*, which affirmed that there were 10,000 to 15,000 private juvenile justice service providers nationwide; while, publicly speaking, juvenile correction companies made \$75 billion in net profit during that year. By observing the data regarding public profits, private companies, which mainly provided adult correctional services, decided to jump on juvenile detention bandwagon in order to boost further their overall profits, as they collect them from the millions of dollars they receive through governments contracts. For example, the CCA, GEO and Corrections Services Corp. have all expanded their incarceration services to include for-profit juvenile facilities.

⁸⁴ Prison Privatization Report International (PPRI). (1997). London, cited in Friedman, A. (2003). "Juvenile Crime Pays - But at What Cost?", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 1452.

The majority of private services for young offenders are provided by companies which are specialized in such a field as for example by one of the industry leader, the *Youth Services International* (YSI): it runs over 20 juvenile facilities with more than 4,000 beds; it was bought by the Correctional Services Corp, in 1999. Other famous companies involved in the juvenile for-profit corrections, alongside the YSI, are: Rebound Inc., Youthtrack and Children's Comprehensive Services, based in Nashville and Tennessee.

As occurred also in the past for adult correctional facilities, the privatization of juvenile correctional-related services had been seen as the only possible solution by local governments. John Joyce of the Florida Department of Juvenile Justice, says: «the private sector is financially better able to fill the immediacy of the need to offer the kinds of programs that are necessary»⁸⁵; his statement has been supported by Judy Brisco, member of the Texas Youth Commissions, who states: «they fill a vital role because we can't meet the needs of every kid»⁸⁶.

Despite state governments' decisions, people's reaction was not positive: for example, as occurred back in 1997, the YSI decided to build new detention centers in Pennsylvania and New York but their plan had been canceled due to local community members' resistance. People's opposition can be motivated basically by two reasons: first, it prevailed a sort of «not in my backyard»⁸⁷ attitude; second, people do criticize private companies that run adult prisons, since they see their move towards juvenile detention business as an inherent conflict of interest in rehabilitating offenders. In a few words, the majority of Americans considered as immoral companies' behavior, considering that their goal is to boost profits from incarcerating inmates: so, how was it possible that they want to engage in young offender's rehabilitation, and at the same time support incarceration as much as possible? This question cannot be easily answered since the more beds are occupied the more they increase their revenues.

Americas do not only blame private firms, but governments too: as a matter of fact, they believed it was inopportune for governments to contract out their own responsibility for the control and custody of inmates to the private sector.

Local communities do also address their concern to safety and security issues, following what happened in private juvenile centers: for example, many accidents were recorded in the Charles R. Hickey School, a facility for serious young offenders based in Maryland, where not only offenders

⁸⁵ Friedman, A. (2003). "Juvenile Crime Pays - But at What Cost?", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) *Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 1472.

⁸⁶ *Ibidem*

⁸⁷ *Ibidem*

escaped but also there are evidence of rape against female staff members. Basing from the evidence, it can be assumed that the problem sometimes is not linked to offenders themselves only, but to the company which decided to run the facility: for example, in 1997 the South Carolina decided to not renew a \$14 million contract with the CCA to manage the 400 beds Columbia Training Centers due to the many complains presented by young offenders against CCA's employees, that claimed to have been physical abused and that they were denied food and medical care as well. Private companies' interests are only focused on profits, they do not take into consideration any human factors, neither rehabilitation nor safe environment for incarcerated young offenders: because of this kind of attitude, an increasing number of privately run juvenile detentions centers have been cited for abusive conditions.

Despite this and many other setbacks, private juvenile corrections industry keeps growing as state and local governments try to cope with decreasing budgets and increasing numbers of juvenile offenders, whose rate is the direct consequence of the «tough-on-crime» legislation in which America has been engaged with since 1970s.

The major evidences of inappropriate conducts have been registered in for-profit juvenile facilities in Louisiana, Arkansas and Colorado: in all three centers, reports have demonstrated abuse, misconduct and inadequate performances towards young offenders that cannot be considered acceptable, because facilities as these ones have to help young offenders rather than injured them physically and morally, more than they already are, since presumably they all have difficult and problematic backgrounds that evidently have led them to illegal behaviors.

However companies do pay for their mistakes: those who have committed such a crime, like abuse or denial of the necessary medical care, have been sentenced by the federal court, while in turn juvenile centers have received money awards in order to improve their own environments.

Privately-operated juvenile facilities are not the only ones who detained the monopoly on abuse and malfeasance: as a matter of fact, their public counterparts share the same responsibility as well. In fact, gross deficiencies exist too in many state juvenile justice departments, largely due to the «tough-on-crime» policy. Even if lawmakers allowed the construction of new juvenile facilities, they often overlook to supply them with the necessary funds, equipments, vocational and treatments services; as stated by the Georgia Department of Juvenile Justice Chairman Sherman Day, it is «much easier to get new facilities from the legislature than to get more programs»⁸⁸

⁸⁸ *Ibidem*

Nevertheless, some of the worst case of abuse and neglect have been registered in privately-operated juvenile centers, as they prefer to reduce costs in employee training, wages and staffing-level only to make their profits bigger. Besides this economic reason, there is also another factor that determined the mistreatment of juvenile offenders in private facilities: as a matter of fact, they hold a large number of young who suffer from mental disabilities. As recorded by the mental health authorities, over 20% of incarcerated juveniles present serious psychiatric problems. So, why do private facilities accept to hold them? The answer is very simple: they accept to bed mentally ill offenders because in turn they can charge higher fees to have housed them, even though they are often not able to provide the necessary mental health care or treatment services. Moreover, private juvenile centers have no interests in rehabilitation, because they considered it as being counter-productive since they need a stable flow of youthful offenders to ensure a persistent stream of revenues. Despite all these negative evidences, state governments keep contracting out to private firm because they also have only interest in money saving. Nevertheless, by doing so they do not solve the problem at all: as a matter of fact, the long term costs to society are much higher when juvenile centers are run by private companies, because juvenile leave them more traumatized, brutalized and neglected than when they entered. Basically, in this way the society continues to fuel the cycle of abuse and delinquency by turning young offender to adult criminals.

3.4 Juvenile Justice in the International Law

During the past fifty years, the topic of juvenile detention has been a central issue worldwide: the international human rights movement has witnessed important advancement in the field of child's rights. Since 1948, the International Law has seen the succession of the adoption of numerous declarations regarding the protection of young offenders: the first one was the *Universal Declaration of Human Rights* at the United Nation⁸⁹, even if the majority of its entitlements has as subjects adults rather than children. After different attempts over the years, the UN organized the sixth Congress on the Prevention of Crime and Treatment of Offenders in 1980: the following result was a set of guidelines for children accused of having committed a crime that was later drafted and adopted in 1985, with the name of *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*⁹⁰. It was the first international legal instrument that presents a

⁸⁹ UNGA Res. 217A (III) of 10 December 1948, cited in Hecht, M. E., Habsha, D. (2003). "International Law and the Privatization of Juvenile Justice", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

⁹⁰ http://www.child-abuse.com/childhouse/childrens_rights/dci_bei1.html

series of norms about the administration of the juvenile justice in regard of children's rights. As a matter of fact, it provides instructions to State for the protection of children's rights and respect for their needs: it calls for the development of a separate and specialized system which should be founded on a model of fair and human responses for juveniles involved with criminal activities⁹¹.

In 1989, the UN opened for signature the *Convention on the Rights of the Child* (CRC): it was only one document that wanted to clarify how States should take care of young offenders. In line with what just stated, many States started to redraft their national legislations on juvenile delinquency, also because of the advancement, both in International Law and domestic forums, of the pressure from child advocates and civil libertarians.

The CRC came into force on 1990 after being ratified by 194 nations: it was signed by every member of the UN, except for South Sudan, Somalia and the U.S.. Lately, the first two countries are changing their domestic legislations in order to enter in the treaty. According to the preamble of the CRC: «the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection»⁹². The text of the CRC includes many important principle, as the one expressed by the Article 37 which requires that detention and imprisonment have to be imposed «only as a measure of last resort and for the shortest appropriate period of time»⁹³. The role played by the State is essential, since its main task is to guarantee the possibility of juveniles' rehabilitation in order to give them an appropriate role into the society they are part of. As proved by many studies, the best deterrent for juvenile delinquency is the establishment of programs to ensure healthier children, stronger families, better schools and more cohesive communities. As a matter of fact, young offenders are strongly influenced by their background, which often includes abuse, parental rejection, neglect and harsh punishments. In line with what affirmed by the CRC, the International Law started to support the idea that States to develop police that can prevent children to commit crimes: for this reason, the international community engaged itself into two new declarations in 1990: first, the *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*; second, the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules)*.

⁹¹ Van Bueren, G. (1998). "The International Law on the Rights of the Child", p.170, cited in Hecht, M. E., Habsha, D. (2003). "International Law and the Privatization of Juvenile Justice", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) *Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

⁹² Covell, K., Howe, R. B. (2001). "The Challenge of Children's Rights for Canada", p.91, cited in Hecht, M. E., Habsha, D. (2003). "International Law and the Privatization of Juvenile Justice", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) *Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2411.

⁹³ CRC Article 37. GA Resolution 45/112.

Despite all those important steps forward in juvenile justice, this area of interest still is relatively static; in a recent enquiry, published by the International Network on Juvenile Justice of Defense for Children International, the author defines the juvenile justice as an «unwanted child»⁹⁴ of States when it comes to their obligations under the CRC. Juvenile detention is not a popular topic: juveniles are a marginalized group who appears to be very difficult to adjust.

All the different declarations ratified over the past fifty years have tried to focus on the treatment of children and youth deprived of their liberty, which is most frequent measure applied to young offenders. The problem is that all the right in International Law have proved to be inadequate to finally eliminate the worst forms of detention and imprisonment: one of the cause of this failure has been privatization. As a matter of fact States started to delegate to private firms with the hope of better compliance and to meet also the demand for more jails: so they allow private companies to step forward, even knowing that they first interest is profit rather than helping young offenders. Basically, as occurred in the past with adult imprisonment, the juvenile detention has become a business too. So the problem is privatization, but who is the one to blame? The real responsibility lies with the State: as a matter of fact, the government chooses to delegate its public duty to private firms without ensuring that the service delivered by them follows its law, both national and international speaking.

The road ahead is till rough before claiming that juvenile detention works correctly: many countries, in particular Canada and the UK, have achieved great results in such a field by drafting law that can fit with the international responsibility. Nevertheless, the reality is not very much improved with respect to the one of fifty years ago.

3.5 American prisons' population: the minorities

3.5.1 Minorities in the early penitentiaries

At the time of its appearance, «the penitentiary was considered a noble experiment in human reform»⁹⁵. A noble experiment that was not meant for women and blacks, because they were considered barely humans since at the time they were slaves, while women were mostly used as subservient domestics. Basically, they were not seen as fit candidates for the penitentiary's

⁹⁴ Hecht, M. E., Habsha, D. (2003). "International Law and the Privatization of Juvenile Justice", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2365.

⁹⁵ Johnson, R., Dobrzanska, A., Palla, S. (eds.), *supra* note 19.

rehabilitation regime, as stated by Dodge⁹⁶ in 2002. For example, the only few women exposed to the penitentiary regime were warehoused and relegated to remote institutional settings, as attics, where they often were abused since there was no supervisor. As for blacks too, first penitentiaries held very few African-Americans because the majority was mainly imprisoned in slave plantations, but there are few evidence of that since early prison census did not take into account a category for blacks, as pointed out by Cahala⁹⁷. Women and blacks were the only minorities not considered suitable for penitentiary, since immigrants, a minority group too, received the same treatment as any other white and male prisoners: basically, some minorities were not treated equally neither in respect to other minorities nor to «common» citizens.

At time of its emergence, the penitentiary was only a deceptive facade of humanity, where physical and psychological pain occupied a central role in the correction of individuals: it was perceived as an inhumane institution, based on fear and violence. The penitentiary, as conceived in the past, had not succeeded in what it aimed for, in fact it proved to be only a unworkable institution.

Many reforms and new policies have come during the years, that have forged the today American justice system: speaking of minorities, it should be interesting to observe how they are treated nowadays in modern public and private facilities, in order to see if things have changed for them as well.

3.5.2 Native Americans

One of the first minorities I would like to present is the one of the Native Americans, which have had a long history of negative interaction with the American legal system.

During the past fifty years, the incarceration rate of Indians has greatly increased due to many different reasons: first of all, because of the oppression that they have suffered, followed by the imposition of an estranged ideology that later led to a clash of cultures, and finally because of a strong distrust towards the criminal justice system.

⁹⁶ Dodge, M. (2002). "Whores and Thieves of the Worst Kind: A Study of Women, Crime, and Prisons", DeKalb: Northern Illinois University Press, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "Prisons: Today and Tomorrow". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

⁹⁷ Cahalan, M. (1979). "Trends in Incarceration in the United States Since 1880", in "Crime and Delinquency", 25, 1: 9-41, cited in Johnson, R., Dobrzanska, A., Palla, S. (eds.) (2005). "The American Prison in Historical Perspective: Race, Gender, and Adjustment", in Pollock, J. M., "Prisons: Today and Tomorrow". Aspen Publishers, Inc. 2nd edition, 2005: 22-42.

Today, there are approximately two million prisoners in state, local and federal facilities and 1,6% are Native Americans and Hawaiian Natives: since 6% of all American inmates are locked up in private prisons, the total amount of Native Americans locked up in for-profit facilities is rather small if compared to the one of other minorities held in there.

In order to understand Native Americans' imprisonment, it's necessary to take a look on their historical and sociological context. First of all according to the common belief, the United States of America were born upon principles of freedom and justice, but it's not true if we focus on how Indians were treated in the process. At the time of the founding fathers, Native Americans were considered to be savages: such a term was used as a negative comparative stereotype by both Jefferson and Paine. Native Americans kept being judged as inferior human beings for many years: as a matter of fact, they were able to grant U.S. citizenship only in 1924, five years after women and fifty-nine years after black males were finally allowed to vote.

It's interest to see how Indians were actually affected by the American criminal justice system: this unfair relationship is based on four main serious issues.

First of all Native Americans are, after black Americans, the first ethnicity with the higher rate of imprisonment. The disproportionate incarceration rate is increasingly growing while the whites and Hispanic rate keeps being rather flat, even if the black rate has actually dropped in the current years. Today there are approximately 26,000 Native Americans in U.S. jails and prisons: it's necessary to examine this remarkable disproportion in ethnic representations state-by-state, because each one presents different situations. For example in Arizona, where there are many reservations policed by tribal authorities, the incarceration rate is not higher than non-Natives. On the contrary in South Dakota, where 10% of the overall population is Indian, male and female Indians make up 23% and 35% respectively of all prisoners. In Montana, where 6,8% of citizens are Native, there are 18,8% of men and 29,6% of female inmates: during the last decade, the incarceration rate of Native women has strongly increased faster than men's one. Similar discrepancy can be found in juvenile detention as well: for example, in South Dakota the total amount of Native juveniles is about 27%, while in Montana 18% of all young inmates are Indians. The most astonishing rate is the one recorded in Alaska there are 36% of Native young offenders locked up behind bars.

The second issue, regarding Native Americans' relationship with the U.S. criminal justice system, includes the so-called institutional «color-blindness»⁹⁸. As a matter of fact, they do not receive any

⁹⁸ Smith, F. (2003). "Incarceration of Native Americans and Private Prisons", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 3692.

kind of respects towards their traditions and customs by the American government, which often ignores their cultural beliefs and practices. This institutional «color-blindness» behavior is denied by U.S. senate, which in turn claims that there is no discrimination in any American prisons. Despite what claimed by the federal authorities, Natives have no faith in the criminal justice system, since they perceive a very fervent discrimination against their own race.

According to Ruth Steinberger⁹⁹:

Statistics show that from initial contact with police to length of sentence, the differences disproportionately punish Native Americans, ultimately affecting families and communities as well... While the origins of the problems are complex, and it is impossible to highlight one particular fault, statistics reveal that the sum of those problems place Indians into confinement far earlier, and for less serious crimes than other Americans. Additionally, indications are than being denied parole opportunities may increase the sentences served by Indians even further.

She also noticed that Natives get parole at half the rate of whites, but have their paroles violated twice as often: parole or probation is usually granted by public facilities in order to allow inmate to transit back to normal life, while private owned prisons do rarely provide this support. Very often, Indians are arrested for the consumption of narcotic substances or for alcohol abuse; they live in reservations, so it's quite uncommon that they mingle with American's dirty affairs.

Native Americans are known to be very trust-worthy, as a matter of fact they only tell the truth since they considered it very important: thanks to this behavior, they facilitate prosecution, since they not only confess, but also give important details of the crimes for which they are charged. Despite their honesty, Indians have an inadequate legal representation. In addition to all of this, private facilities, due to an high staff turnover and their poorly training, confine Native Americans in a disengaging way from their own culture, by failing to recognize the need for an environment that holds in high regard the use of tradition for the rehabilitation process.

The third issue, regarding the unfair relationship between this minority and the U.S. criminal justice system, claims that, once imprisoned, Native Americans cannot have access to spirituality and home communities. This is a serious violation of their basic rights: even if they have been legally recognized as an ethnicity within U.S. borders, Indian prisoners often face criminal discrimination.

⁹⁹ Steinberger, R., "Incarcerated Indians, Part I", cited in Smith, F. (2003). "Incarceration of Native Americans and Private Prisons", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 3753.

According to their own culture, healing needs to use traditional resources. As affirmed by Frank Smith¹⁰⁰, after having fully confessed their crimes, offenders feel the urgency to engage themselves in providing restitution to their victims, and in cleaning themselves of the behavior and attitudes that caused them to hurt others. This process usually needs for elders and spiritual guides and for the participation in healing circles: it's quite impossible that all of this is allowed in prisons, since this culturally-based rehabilitative practice often clashes with the prison administration and rules. As a matter of fact, Native Americans have been forbidden the use of traditional healing, despite it is an influent deterrent to recidivism. For example they are not allowed to use sweat lodge, to wear long hair and to use material central to the religious process such as cedar, sage and sweetgrass.

Native Americans condemn American prisons to be racist, as they notice how the same rules are not applied to other communities: for example, Christian community has more freedom in terms of being able of practice their religion.

The problem concerning Indian discrimination has started to be solved around 1993 with the enactment of the «Native American Free Exercise of Religion Act», authorized by the Hawaiian Senator Daniel Inouye: it establishes parity for Indian inmate religious observances, including access to spiritual leaders, materials used during ceremonies, food for religious diets, outdoor secure sweat lodges and teepees. Besides, it granted to wear long hairs if this practice is part of their traditional belief. The act was signed by the then American President Bill Clinton, who states that his administration would work for the full restoration of religious freedom that would end only when Native American religious practices had received the protection they deserved.

Despite the law, for-profit private prisons have continued to deny access to important spiritual opportunities: for example, with the rise of privatization, many multinational corporation have built new facilities in areas with the lowest taxes and wages. Because of this, prisoners of all ethnicity have been dislocated far away from their homes: speaking for Native Americans, this tendency is negatively affecting them, since they need to be close to their families and support system in order to achieve their rehabilitation potential.

The fourth issue, regarding Native Americans' relationship with the U.S. criminal justice system, focuses on the high percentage of alcohol-related behavior resulting in Indians imprisonment. In fact, another problem that need to be solved is their alcohol-related addiction: unfortunately, for-profit private prisons do not engage in this rehabilitation field, since they are more interested in cutting expenses than in outcomes.

¹⁰⁰ Smith, F., *supra* note 98.

The American criminal justice system is quite different from the Native justice tradition: as a matter of fact, justice within the Native community has been of a reconciliatory nature. It's a common fact that they admit their guilt, but it happens that sometimes an offender can be exiled from the community if his or her behavior is considered intolerable and a shame for the whole community. If incarceration is a foreign concept, exile is used as the last resort: in fact it's considered to be the worst punishment that could be applied in a cooperative society, as the Native one.

Alaska has many legally recognized Native tribes living within the state's border, so such a field is widely studied; in 1996 an Alaska Justice Center survey affirmed that usually tribes have « [...]their own policies and methods for dealing with most crimes and social control problems in the communities [...]»¹⁰¹.

Many words have been spoken about this topic during the years: for example, Ada Pecos Melton, former Director of the American Indian and Native Justice Program at the U.S. Department of Justice, has stated¹⁰²:

The American paradigm is based on a retributive philosophy that is hierarchical, adversarial, punitive and guided by codified laws and written rules, procedures and guidelines. [...] Punishment is used to appease the victim, to satisfy society's desire for revenge.

On the contrary,

The indigenous paradigm is based on a holistic philosophy and a world view of the aboriginal inhabitants of North America. These systems are guided by the unwritten customary laws, traditions, and practices learned primarily by example and through the oral teachings of tribal elders. The holistic philosophy is a circle of justice that connects everyone involved with a problem or conflict on a continuum, with everyone focused on the same center. The continuum represents the entire process, from disclosure of problems, to discussion and resolution, to making amends and restoring relationships.

It's can be easily deducted that the Native justice tradition is quite different from the American one. Natives Americans belong to different tribes, the most famous is the Navajo one: the Navajo Nation Chief Justice Robert Yazzie once said that Indians are wise men who store laws in their hearts, not in books. According to Navajo tradition, it's wrong to use coercion on each other.

¹⁰¹ Ivi, position 3885.

¹⁰² Melton, P. A.. "Indigenous Justice system and Tribal Society", cited in Smith F. (2003). "Incarceration of Native Americans and Private Prisons", in Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 3895.

The American Congress and the Department of Justice have both promoted the development of the community empowerment, alternatives of incarceration, and tribal courts, the funding to ensure their viability: despite all these efforts, their plan is still unfinished. Because of Native cultural ethic, they are taught to respect authorities and they usually do not stand up for their own rights: due to this behavior, Natives are considered to be vulnerable to exploitation in an unfamiliar environment, such as the one of private prisons.

No matter the efforts, «America, in its attempt to correct what it perceives as a rampant injustice in Indian America, creates a greater injustice by forcing its culture upon Indian peoples», as stated by Judge Vicenti¹⁰³.

3.5.3 African-Americans in private prisons

African-American men, women and children are imprisoned each year in disproportionately higher numbers than any other ethnic group in both public and private facilities. Speaking of the private sector, African-Americans are the minority that mostly reap private companies benefits. As a matter of fact, prison privatization does support many crucial injustices that only lead to deeper racial disparities in U.S. justice system: by doing so, it contributes to the perpetuation of the exploitation and victimization of the black community.

As affirmed by Monique W. Morris¹⁰⁴, the American justice system claims to be founded on honor, impartiality and fairness but it's not quite true: in fact, black offenders often receive impartial judgment that results in lengthy prison sentences. The reason of this impartiality can be motivated by the legacy of African-Americans' long negative historic relationship with the U.S. law. The legal journey of blacks within the U.S. is pretty complicated: it's all started with their official enslavement, followed by the legalized apartheid that led to a governmental policy of civil rights which should have made amends for the historical disadvantages that have affected African-Americans for many years. But it actually failed since it only has increased the racial biases that continue to poison the American administration of justice. There are many well-documented evidences that are used to explain the impact of private prisons on black communities.

Nowadays, African-Americans experience the highest representations in the criminal and juvenile justice system, even if sometimes they do not really have committed the crime for which they are

¹⁰³ Smith, F., *supra* note 98.

¹⁰⁴ Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

charged. According to the statistics offered by Bonczar and Beck¹⁰⁵ in their work, African-Americans males have a 1 in 4 chance of being imprisoned in their life span, compared to a 1 in 6 chance for Hispanic male and to 1 in 23 chance for white males. Institutionalism only aims to support burgeoning prison industrial complex that will lead to the creation of an economic system that is encouraging the incarceration of African-Americans.

Because of this tendency, in 2000 over one million black men and women have been put behind bars: the largest number ever registered within the United States.

The combination of both the effects of the prison industrial complex and of prison privatization has had major impact on the African-American communities: they are undermining blacks' ability to exist and to hold a position within their belonging society in a very significant way.

Prison privatization is an essential element of the prison industrial complex since it does not only encourage the idea that imprisonment is the unique remedy for addressing crime, but it's also responsible for supporting a well-documented evidence of inhumane conditions and brutality that have been imposed to offenders. Basically, policies have fostered economically-driven prison industry at the expense of African-Americans, who have continued to be the main source of profit for private corporations. Criminalization and incarceration are provoking a double effect: on the one hand, private firms have greatly profited from this tendency, on the other hand African-American community are involuntarily subject of oppressive condition, that can vaguely recall slavery.

The prevalence of violence in ethnic communities, such as the black one, depends on many different but correlated factors: economy, politics and social stratification are the ones to blame for making the community's member more vulnerable to fall into the criminal justice's clutches. The phenomenon of «racialization» of the urban space has led to the «ghettoization» of African-Americans citizens: it makes impossible for them to have access to adequate health care or to education.

This «racialization» is still pretty much embedded in the American society, since the climate surrounding this tendency has negatively influence people's mind: as a matter of fact, the majority supports race incarceration, because they believe that blacks are the perpetrators of criminality.

¹⁰⁵ Bonczar, T. P., Beck, A. (1997). "Lifetime Likelihood of Going to State or Federal Prison". Bureau of Justice Statistics, US Department of Justice, Washington DC, cited in Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 2781.

People's minds are easily manipulated by the mass media: it has the power to shape the ideas and action of the American audience. The media has painted the image of African-American offenders as animals, namely it pictures them as beings incapable of rehabilitation who only deserve long prison sentences and punitive policies. Medias are culpable for having inaccurately represented who really commits crimes: as a matter of fact, newspapers and newscasts have both over-report crimes committed by blacks, while on the contrary they under-represent crimes committed by whites, and they also are used to under-report crimes where African-Americans are actually the victims.

Basically the skin color started to be perceived negatively, in fact it has become the scapegoat of culpability: race comes into being the synonymous of criminality.

African-Americans communities are still today struggling to find a place and a space in the society in which they live: the prison industrial complex is taking advantage of this situation, by «offering» an institutionalized dwell that impede both black offenders' abilities to rehabilitate and the larger black community's capacity to fully participate in the American culture.

On the historical point of view, the African-American community had walked through a lot of obstacle to find a place within the American society: in 1975, the sociologist Robert Staples¹⁰⁶ discussed the relationship between race and crime using a colonial analogy. Since they have been labeled as a culturally-colonized group, they suffer a never-ending victimization based on a justice system that only favors white Americans. Both policies and practices have reinforced the marginalization of blacks through disproportionate unemployment, poor education, poor housing and ongoing social stigmatization. African-Americans are accustomed to marginalization that corresponds to the accumulation of years of educational, economic and cultural oppression: basically, it has demonized individuals of African descent as beings incapable of rehabilitation and as beings who are often criminalized, based on the assumption that according to the public understanding they commit most crimes. Criminality is only considered in terms of who is arrested and punished, but people do not take into consideration the social factors responsible to lead people to crime vortex.

The disproportional incarceration of African-Americans is the result of the united action of four different causes: first, their historical background; second, their socio-economic status; third, their cultural situation; fourth, the juridical and justice decisions made by law enforcement, prosecutors

¹⁰⁶ Staples, R. (1975). "White Racism, Black Crime, and American Justice: An Application of the Colonial Model", cited in Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

and judges. All together have determined which population is over-represented and disproportionately punished. This unfair tendency has been registered since 1872: for example in 1892, African-American arrests were reported as being at a rate nine times greater than their proportion to the general population. In support of this tendency, Ida B. Wells-Barnett documented cases where white men used to commit crimes with their faces painted in black or cases where police officers openly expressed prejudiced feelings towards black people.

In response to all of this, African-Americans did not only start to lose faith in the fairness of justice and in the integrity of courts, but also they have begun to think that the criminal justice and slavery were both forms of «white men's oppression».

Black women were not only marginalized for their skin color, but also for their gender: as a matter of fact, African-American girls have witnessed a long history of unequal sentencing and treatment by the justice system. No matter the importance of such a issue, there is no trustworthy evidence about African-American female' experience since it was not be considered as a group worthy of study: the only pieces of information available today are the ones related to women's position relative to black men or white females. Because of this, it created a distorted image of black womanhood that have influenced negatively the way in which black female victims and offenders have been treated by the American criminal justice system. For example, in 1970 they were seven times more likely to be incarcerated for prostitution than women of any other ethnic groups; besides, police officers used to apply more severe sanctions to black women no matter how serious crimes really were. For most part of the time, they were condemned mainly for their being loud and aggressive, which both are signs typical of every African-American woman.

Generally speaking, it should be underlined that people pay small attention to what causes African-Americans' vulnerability, as a matter of fact they only consider the problem on the surface: it's more convenient to label them as criminal, rather than understands what it's really hidden beyond the surface we all see. In few words, Americans value less blacks' life than whites' and they show this disinterest by not protecting it, as much they protect their own.

According to Monique W. Morris, «[...] the use of incarceration and institutionalization in response to crime and delinquency in black communities may be seen as a continuation of the American cultural legacy of slavery and creation of an economy that thrives on the continued subjugation of people of African descent [...]»¹⁰⁷.

¹⁰⁷ Morris, W. M., *supra* note 104. Kindle edition, position 2876.

The «racialization» of crime has caused an incarceration disparity in today American private prisons, that affects African-American men, women and children alike. Speaking of juvenile detention, in 1997 black youth represented 39% of all youth in private juvenile facilities, more than twice their proportion of the U.S. youth population¹⁰⁸. An increased surveillance in African-American communities is the one to blame for being the main cause of racial disparity in American prisons as it make them more vulnerable to arrest. In 1998 a new inquiry had been conducted in Washington State: according to this study, the justice system is used to portray black young offenders by charging them for crimes related to internal factors, as the attitude, without considering external factors, that might as well influence their behavior, as the environment does. The American justice system tends to see African-American children as common offenders, without taking into consideration their mental health needs when necessary while staying in juvenile detention center during their sentences. As a consequence, those no-treated needs increase and become more serious as time passes: so, they make these youths more likely to fall again into criminality once adults. As previously affirmed, since facilities' main goal is to boost their profits, they have no interest to rehabilitate young offenders now, because they will be «career criminals» in their adulthood.

Therefore the justice system sort of two-faced player: on the one hand, it wants to take criminals off the streets, but in the other hand it also allows injustice to continue. The criminal and juvenile justice system keeps impeding African-Americans to fit into the society, by offering them their version of place, which is defined through degrees of culpability rather than true merits.

The race criminalization led to the definition of a new theory by author H. C. Cooley, who coined the term «looking glass self»¹⁰⁹ back in 1902: it means that the individual perception of his/her self is largely determined by the way others related to him/her. If we applied this theory to ethnic community, such as the African-American one, we can notice that if a community is treated as inferior or inhumane, the consequence will be that they will see themselves like this, as others do. This is what happens exactly to black children who show a violent and criminal behavior, which is perceived as a rite of passage rather than an indiscretion.

The consequences of the prison-industrial complex have been devastating African-Americans' communities in terms of health, education, economic and civic development.

¹⁰⁸ Poe-Yamagata, E., Jones, M. (2000). "And Justice for Some: Differential Treatment of Minority Youth in the Justice System". Washington, D.C., Youth Law Center, cited in Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

¹⁰⁹ Morris, W. M., *supra* note 104. Kindle edition, position 2957.

The majority of families are affected by tough incarceration policies: millions of black men and women sentenced are parents. As a matter of fact, it is calculated that 7 in 10 women under correctional sanction have children under the age of 18: an estimated 72% of women on probation, 70% of women in local prisons, 65% of women in state prisons and 59% of women in federal prisons have young offspring. A survey conducted by Tracy Snell¹¹⁰ has shown that 1,5 million minor children, disproportionately African-Americans, have one or both their parents incarcerated in public and private facilities. Those children are more vulnerable than others, besides they suffer from trauma related to the events surrounding them. In 1993, the *National Council on Crime and Delinquency* (NCCD) published a study which demonstrated that 43% of the children of incarcerated mothers were African-Americans, and 52% of those children were female. When both parents have a criminal records, children have to be allocate to their relatives: unfortunately some states do not allocate foster care funds to fulfill those disadvantaged families, so they basically condemn some children to be raise in poverty.

Furthermore, children, whose mothers were in prison at the time of their birth, have more probability of being born drug-exposed as their mothers did not receive the necessary prenatal care. As a consequence, they can face many difficulties once they grow up: for example they can experience poor peer relations, poor school performance and a difficult relationship with their parents. All these different aspects negatively affect their already marginalized position within the American society.

The problem is accentuated by the impossibility, for the majority of those children, to not have the chance to visit their parents when they spend their sentence in jail, because they are placed in out-of-state facilities which are far from their hometowns. Healthy family relationships are seriously damaged: it's said that the consequent family dysfunction is a reminiscent of slavery.

Children's present and future condition is not the only problem affecting African-Americans' communities: as a matter of fact, in terms of health issues, black inmates have an higher possibility to contract infectious diseases during the incarceration time than other racial and ethnic members. This higher risk is obviously due to the disproportional presence of black prisoners among the multi-ethnic population of American prisons. Generally speaking, the reason why inmates usually contract serious diseases is due to the lack of an adequate culturally-competent services that aren't

¹¹⁰ Snell, T. (1996). "Survey of Inmates of State Correctional Facilities". Bureau Of Justice Statistics, Washington DC, cited in Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

able to address their needs. African-Americans contract health risks because of a basic inadequacy of prisons' educational, counseling and treatment programs: in fact, those programs do not usually attract black inmates or do not succeed in rehabilitating them.

HIV is the main infectious disease spread within American prison facilities: millions of African-Americans have been identified as HIV-positive. Proportionally speaking, since there are fewer women imprisoned than men, the number of HIV-infected men is bigger. Since it's an infectious illness, the fact that it is commonly contracted by African-Americans inmates, it means that US prisons are held in very negligent conditions. The transmission of HIV is mainly caused by rape: the majority of men, women and children have unfortunately experience abuse in jail. Once released, they do not only put at risk the outside community, but there is the chance that they «[...] return far more violent and antisocial than before they were raped»¹¹¹, as stated by the President of Stop Prisoner Rape, Tom Cahill.

The sexual abuse is always a very serious issue: in the case of prisons, it's alarming how many prisoners are raped everyday within correctional facilities. Speaking of private prisons, it's made possible since they cut costs by not hiring the necessary qualified supervisions, which could be useful in terms of guaranteeing a far more safe place for inmates to live.

Because of a disproportionate rate of African-American female prisoners, sexual abuse is a worrying plague: in 1996, Human Rights Watch report observed that male correctional employees have vaginally, anally and orally raped female inmates. In 1996 another study, conducted by the NCCD, reported that 44% of women under correctional authority confessed that they were physically or sexually abused. Sexual abuse leaves deep internal scars that are difficult to heal: as a matter of fact, women when return to the outside community have damaged self-esteem that contributes to the deterioration of their perceived self-worth. It impedes them to value their own life and contributions to society. To sum up, it generates the foundation for the cycle of abuse that makes African-American women the most victimized population of U.S..

The consequences of the prison industrial complex have been devastating African-Americans' communities in terms of economic development too. Black citizens have been stigmatized and exploited in order to boost the capitalist American prison profits.

According to the U.S. Department of Commerce, in 1997 the poverty rate for African-Americans was at 27% , compared with 11% for whites, 14% for Asian and Pacific Islanders and 27% for Hispanics: obviously, the incarcerated population is not include in unemployment and poverty

¹¹¹ Morris, M. W., *supra* note 104. Kindle edition, position 3049.

statistics, which does not take into consideration over one million African-American men and women. If they weren't in jail, the rate of blacks' unemployment would be much higher. Moreover, once they are released, the majority has difficulty to find a job into the community due to illegal racial discrimination, societal biases against former inmates and their lack of employable skills in a competitive market.

The combination of poverty, unemployment, poor access to quality education programs and health care it's fatal for African-American communities, because it makes them more vulnerable than any other ethnic and racial groups.

Finally, speaking of blacks' civic involvement, it must be said that African-American former prisoners do not have the right to vote in many U.S. states: as a matter of fact in Washington, Wyoming, New Mexico, Texas, Iowa, Virginia, Mississippi, Alabama and Florida over 20% of African-American men are temporarily or permanently unable to vote because of their criminal records¹¹². The civic voice of the black community is mostly unheard, if we considered that a great number of its members cannot vote due to their criminal past. The negation of a normal civic right, like the voting one, contributes in making them incapable to participate in society as any other American citizens. Therefore, as affirmed by Monique W. Morris, when the racial prejudice compromises the integrity of the justice process, the impact of having an impaired civic voice is amplified.

To conclude, through the unfair justice system's methods of punishment applied to the African-American community, blacks have hardly found their place within the American society. In addition to all the collateral affects exposed above, there is a new one to take into consideration: as a matter of fact, the criminalization of the race has impacted negatively the lives of decent and innocent black people as well. The blackness has become the synonymous of criminality: this association will continue as long as the prison industrial complex is legally allowed to continue the «exploitation» of the African-Americans, that can be seen as the perpetuation of slavery.

3.5.4 Women within the prison privatization system

Female prisoners are more fragile than men, since they face far more challenging difficulties along their way, both as inmates and as free women. Their sexual vulnerability and their probable responsibility for small children have made them easy targets, particularly within the prison system.

¹¹² Crose, E. (2000). "America's Prison Generation". Newsweek, cited in Morris, M. W. (2003). "Prison Privatization: The Arrested Development of Afro-Americans", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

According to the Bureau of Justice Statistics¹¹³, women in general are more likely to have severe substances abuse history, co-existing mental disorders, and lower self-esteem probably related to an extensive victimization of their gender within the society and to a period of chronic unemployment. As stated by Katherine Van Wormer¹¹⁴, between 1980 and 1995 the number of women entering in U.S. prison increased by almost 400%: the female incarcerated rate almost doubled the male one.

Within the space of the last decades, women fought and still are fighting for gender equality: equality under the law has not taken into consideration the inequality in most part of male/female relationship. For example, very often women are charged for a crime that they didn't actually commit, only because their husbands easily pin it on them in order to escape from the law.

In the case of the justice system, equality comes «with a vengeance», as affirmed by Chesney-Lind and Pollok¹¹⁵: new heavy sentence guidelines have sort of created a «new female criminal»¹¹⁶ myth, in order to justify women's harsher treatment by both the civil and criminal courts. As a matter of fact, recently courts tend to see women as offenders first and then as women: by doing so, they basically treat women by following inappropriate male standards. The problem about gender-equality is far more complicated than what appears in the surface: the role of women in society is double, they are both workers but most of all they are mothers. It's right that courts treat them as men, but they have to consider that by hardly punishing women for crime that they sometimes do not commit, they do also punish their children who are condemned as well, since the child support system does not offer the adequate help.

Approximately 75% of female detainees have been incarcerated for nonviolent offenses, mostly due to the enforcement of zero tolerance sentences for drug-related crimes. The majority of female convicts are poor and uneducated: as a matter of fact, only four in ten women were employed full-time before being imprisoned, while 30% of them received welfare assistance prior to arrest.

Focusing on the ethnic factor, African-American women are imprisoned eight time more likely than non-Hispanic whites and twice as likely as Latina women. Drug is the main cause behind the

¹¹³ Bureau of Justice Statistics (1999). "Women Offenders", in Messina, N. P., Prendergast, L. (2000). "Therapeutic Community Treatment for Women in Prison", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "Capitalist Punishment - Prison Privatization & Human Rights". Zed Books Ltd, London. Kindle edition.

¹¹⁴ Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "Capitalist Punishment - Prison Privatization & Human Rights". Zed Books Ltd, London. Kindle edition.

¹¹⁵ Chesney-Lind, M., Pollock, J. (1994). "Women's Prisons: Equality with a Vengeance", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "Capitalist Punishment - Prison Privatization & Human Rights". Zed Books Ltd, London. Kindle edition, position 3275.

¹¹⁶ Van Wormer, K., *supra* note 114. Kindle edition, position 3275.

increased phenomenon of female incarceration of the last few decades: the «war on drugs» has become a war targeting minorities and women in particular.

As previously stated, nationwide 65% of women in state prisons are mothers of small children and the majority of them are the only providers: when a woman is arrested, her children can be sent to a relative or can be given in custody of child support system. The problem is that, because the lack of efficiency of child support systems, children of incarcerated mothers risk to fall into the crime cycle as well. As a matter of fact, rage and anger will lead those children to develop emotional and legal problems while growing, that can possibly transform them in future criminal offenders.

In 1999 the *U.S. News and World Report* conducted a survey in order to see how many juvenile transgressors had mothers who has been previously imprisoned: the result showed that in Iowa for example 64% of girls admitted that their mothers had criminal records¹¹⁷.

Poverty and unemployment led women to engage in drug-related crimes in order to earn some money in order to sustain their babies and themselves; unfortunately, they do not only are part of the drug smuggling, but women are also addicted to it. As a matter of fact, 40% of women in state prisons admitted to use drugs, while alcohol abuse is more common among male offenders. Drug addiction is the consequence of an hard path of lives: women's victimization leads girls on following desperate ways in order to escape sexual and physical abuse at home. The data recorded by the Bureau of Justice Statistics shows that 57% of women reported to have been sexually and physically abused, mostly before their 18th birthday. As affirmed by M. Chesney-Lind¹¹⁸, abused women usually run away and they end up seeking comfort in drugs and in drug gangs, who usually persuade them to prostitute them in order to survive on the streets. Prostitution may provide means of survival particularly in inner-city women, since they face more extreme economic difficulties.

Since drug is the main cause of women incarceration, efficiently mandatory drug treatment with close aftercare monitoring could provide great cost savings for the community, by saving children from following their mothers footstep. But those kind of treatment are not actually working because they are not sufficiently financed by states' government, that prefer to build new prison facilities in order to imprisoned a far more great number of offenders. Unfortunately this is not the solution,

¹¹⁷ Locy, T. (1999). "Like Mother, Like Daughter?", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

¹¹⁸ Chesney-Lind, M. (1995). "Girls, Delinquency, and Juvenile Justice", cited in cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

because they will not reduce the rate of intergenerational crime, on the contrary they allow the perpetuation of criminality generation after generation.

Focusing on the role of the International Law in the rights of female prisoners, it must be remembered that U.S. was one of the treaty states that signed the *Universal Declaration of Human Rights* back in 1948: according to the Article 5, «no one shall be subjected to torture or to cruel, inhumane or degrading treatment and punishment»¹¹⁹.

Despite U.S. was one of the signatory states, American prisons do not always respect what stated by such an article, as occurred in female correctional facilities for example. In line with the respect of women detainees' rights, in 1994 the U.S. ratified the *Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*: it only signed such a convention with one condition, which consists that individuals would be given no more rights than those provided by the U.S. Constitution. Basically this clause has important implications for convicts who are very often treat badly while under custody: as a matter of fact, U.S. shows resistance to international human rights commitments, as occurred when its Senate decided not to ratify the *Convention on the Elimination of all Forms of Discrimination Against Women*. According to this convention, every signatory States must provide adequate health care services and protections against gender-based violence, with particular attention to women.

Besides, the United Nations has adopted standards, that even if they have not the same legal counts of treaties in general, have moral power anyway. One of those standards is the UN Standards Minimum Rules for the Treatment of Prisoners, which is very important for imprisoned women: as a matter of fact, the Rule 53(3) says that women should be attended and supervised only by women officers. But this is not what happened within the U.S. prison system: in fact, nondiscrimination guidelines have eliminated most restrictions on women working in men's prisons and vice versa. More often than not, women imprisoned in American facilities are guarded by men: for this reason, violations against female convicts have been reported in almost every states.

A very important issue that needs to be taken into consideration is the health care service, in particular the one provided within female prison facilities: the physical and mental needs of female inmates far exceed those of men. As a matter of fact, if compared to men, women in prisons have higher rates of illness related to substance abuse, mental health problems and HIV infections.

¹¹⁹ United Nations (1948). "Universal Declaration of Human Rights", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition, position 3341.

Besides those serious illness, according to Amnesty International¹²⁰ 6 to 10 of women are pregnant at the time of their incarceration. The problem is that female prisons lack of an adequate medical staff, partly because of the explosion of female prison population. In 1999, the U.S. General Accounting Office¹²¹ published a report that highlighted the failure of the state to provide a competent medical care which should be able to meet the particular needs of female detainees. Whether privately, publicly or state owned facility, medical care is always privatized through contractual arrangements: in fact, every firm receives a fixed rate to provide medical services to inmates and every saved dollars benefit the company's profit margin. The profit motive is the main incentive that pushes firms to cut down costs at the expense of quality and care: because of this tendency, accentuated by privatization, rehabilitation is totally left behind. The general *modus operandi* consists that, in order to increase incomes, companies tend to cut down wages, lower staff ratios and they also reduced health care spending for convicts and employees alike.

The consequent risk is that services provided for health care, educational programs and treatment go to the lowest bidder. As a matter of fact, usually prison firms contracts out to external medical centers: for example, the female facility of Iowa, Mitchellville, committed it to the highly-related University of Iowa Hospital. Another kind of arrangement is the one when the firm contracts out to a private medical company or hospital services. Since contracting out to external services, the quality of treatment has been mixed, in fact this tendency can provide some professional and legal protection to doctors, who in turn can report human rights violation of detainees and testify as well in internal hearings or in courts in the case of possible law suits.

Focusing on prison privatization, a total of 120 privately owned facilities are authorized to house women: privatization is causing serious implications for female offenders who often need medical care because of the frequent abuse or because of their pregnancy status. The problem is that privatization's cutting cost causes the reduction in quality of services: for example, in California a medical investigation showed a lack of prenatal care for pregnant women housed in private facilities; in Nevada, the medical care provided by CCA at women's prison in Las Vegas is as much as inadequate to meet women's needs.

¹²⁰ Amnesty International (1999). "Not Part of My Sentence", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

¹²¹ US General Accounting Office (1999). "Women in Prison", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

Contracting health care to external hospital generates systemic problems due to the lack of coordination of services and medical information, as shown by higher rates of miscarriage and babies died at birth¹²². Pregnant women usually do not receive the adequate medical attention during the gestation or during labor: as a matter of fact dangerous methods are used such as the use of legs shackles while in labor, that is very risky for both mother and child.

Sexual abuse in private prisons is a real and serious issue: thanks to idealism and determination of legal aid lawyers and feminist organizations, such as the *National Women's Law Center*, stories of abuse finally started to come out. As a matter of fact, stories of rape, revenge deprivations, forced nudity in lockup, pregnancies in a closed system where men are the only guards, forced abortion barely received attention until seven or eight years ago.

In North America only male guards are placed in contact positions over female detainees. Across the country, there are many stories of sexual molesting incidents where inmates are abused by members of the prison staff. Private prisons present the worst case, mainly because of the poorly paid and trained staff and their low accountability. Despite states usually contract out prisons to private firm, its responsibility towards female inmates does not stop when things like that happen. On the contrary, the state is far more responsible than private firms, since it does not show any interest in what happen to its citizens while in jails, in particular to women who are more vulnerable than men, even if they perfectly know how the private prison system works.

Another fact that it's necessary to take into consideration is the female prison labor. Modern prison labor sometimes is compared to slavery, since prison workers are usually paid about 11 cents per hour. Women, for example, are typically paid 15 to 30 cents per hour. Generally speaking, American inmates, both male and female, receive low wages in respect to other countries' detainees. According to the *Universal Declaration of Human Rights*, any form of slavery is outlawed, but on the contrary, the U.S. Constitution declares with the 13th Amendment that involuntary servitude is not illegal as punishment for crime. Since U.S. is a signatory part of the *Universal Declaration of Human Rights*, the federal government introduced new policies that allow prisoners to chose between taking low paying job or serving longer sentences, in order to justify prison labor.

Nowadays prison-made goods flow into all sector of the economy by competing with outside companies and job, while at first they were only manufactured for state agencies. Private firms have

¹²² Marshall, M. (1999). "Health Care for Incarcerated Pregnant Women", cited in Van Wormer, K. (2003). "Prison Privatization and Women", in A. Coyle, A., Campbell, A., Neufeld, R. (eds.) "*Capitalist Punishment - Prison Privatization & Human Rights*". Zed Books Ltd, London. Kindle edition.

happily welcomed this booming market, since they exploit prisoners' labor who have no voice for claiming neither benefits nor health insurance, as any other «normal» workers rightly do.

Besides, the use of prison labor is continuously fueled also by the demand of many famous corporations, such as J.C. Penney or Victoria's Secret, that exploit it in order to cut costs and increase profit margins.

To conclude, privatization of the American prisons is the main cause of the overall negligence towards basic human rights, particularly those that regard female detainees. Standards have declined drastically since private firms' interests take the place of humanitarian concerns, as occurred especially for health care, mental care and addiction treatment. And the subsequent consequences are paid by the unpowered and unvoiced female prisoners.

CHAPTER FOUR - THE VOICES OF WOMEN BEHIND BARS

4.1 A network of female abolitionists' movements

The United States has incarcerated a large percentage of its population that any other nation in the world, because it has pursued severe criminal justice policies, such as mandatory minimum sentences and the «Three-Strike» law.

Minorities are the main target of those harsh policies, for example nearly 70% of incarcerated women are Africans and Latinas. In general, female detainees are usually incriminated for nonviolent offenses and low-level drug offenses.

Women's incarceration is a real issue within the American prison system: the majority of them is poor and lacks of an adequate economic support system. Women usually have only a few employment opportunities and skills, since they do not receive an adequate education while growing up. As a matter of fact a high percentage of them had a difficult childhood, since they have been physically and sexually abused. Besides, a great number of women are mother at the time of their incarceration: as they lived a harsh childhood, since there isn't a supporting system, their children are condemned as well.

From the late 20th century, feminism has started to fight against women's incarceration, claiming that the violence inflicted is not necessary for their ultimate rehabilitation.

Since 1977 the population of female inmates in the United States has increased by over 700%: their struggle against such a deprivation system has been lessened for a very long time. Women have long suffered for having been excluded by an adequate health care system, but in particular by their children's lives, who are in turn condemned to grow without their mothers.

Fortunately from the past eight years, testimonies of incarcerated women have been finally gathered together in order to show the complex reality of the American prison system, where prisoners «have been institutionally erased from the category of human beings»¹²³.

The book, *Interrupted Stories-Experiences of Incarcerated Women in the United States*¹²⁴, is a collection of more than fifty testimonies. These testimonies are like windows that give us access to this hidden reality: as a matter of fact, the minority of the U.S. population is really aware of what

¹²³ Tapia, R. C. (2010). "Certain Failures-Representing the Experience of Incarcerated Women in the United States", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles, p. 1.

¹²⁴ Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) (2010). *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

happen behind bars. Women exposed themselves by narrating their own experience within prisons: the book is an unique assemblage of a great variety of voices, each one focusing on a different aspect of their own past or current experience behind bars.

The issue of female incarceration has also been recently discussed by feminist movements, that approach the problem by following two different philosophical roads in order to denounce prison's inequality: reformism and abolitionism.

The anti-prison movement has brought to people's attention the increasing problem of mass-incarceration: such a tendency was the result of «tough-on-crime» policies that have lengthened prison sentences and widened the web of criminal activities. The state and federal government decided to invest their money on the construction of new prison facilities, by cutting funds destined to other aspect of society. The shift in public spending for new social and economic transformations has had serious repercussions on women, in particular because they are forced to turn to survival strategies that are linked to criminality. As a matter of fact, «poverty, racism, gender-violence and sometimes addiction intersect to create a cycle of survival, criminalization and repeated incarceration»¹²⁵, as Julia Sudbury once wrote. She is a well-known abolitionist, whose thesis explains the socioeconomic roots of mass incarceration in the U.S. and the criminalization of migrants: she motivated such a tendency by analyzing three interrelated factors.

First, she individualized the impacts of globalization and economic reconstructing on the low sector of society: because of the decreasing in social expenditures, criminalization has become the primary response to growing poverty. Women's poverty is criminalized in many different ways: as a matter of fact, in order to survive in the face of declining incomes and few economic opportunities, they turn to street economy, sex work, petty theft and welfare fraud. When caught, they are first condemned to short jail sentences that later turn into long one¹²⁶.

The second factor, as highlighted by Julia Sudbury to motivate what led to mass incarceration, is related to the «war on drugs», which has been a major contributor to the American imprisonment binge of the last decades. The Latin community has been the main target of such a policy: 33% of

¹²⁵ Sudbury, J. (2010). "Unpacking the Crisis-Women of Color, Globalization, and the Prison-Industrial Complex", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles, p. 11.

¹²⁶ Richie, B. (2002). "Queering Antiprison Work", in Roberts, D. *Shattered Bonds: The Color of Child Welfare*. New York, Basic Civitas Books, cited in Sudbury, J. (2010). "Unpacking the Crisis-Women of Color, Globalization, and the Prison-Industrial Complex", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

prisoners held for drug offenses in federal prisons are Latinos/as, who have been stereotyped as narco-traffickers. On the other hand, African-Americans are more usually known to be dealers or distributors. The reason why Latinos in general are hit the most by the «war on drugs» policy is due to the fact that they are subject to over-policing, random stops for suspected insurance and immigration violations, as they usually bring drug across the borders or because they live outside the American law like sort of aliens. Speaking about gender, Latinas are more vulnerable to criminalization and incarceration. In fact, they usually prefer taking the blame in place of their male family members: as a matter of fact, they often take full responsibility for a crime that they did not commit only to protect their menfolk¹²⁷. Once arrested, female Hispanics are disadvantaged by their low status inside the patriarchic structured drug network, so they do not receive the adequate support from the exterior despite their own sacrifice.

The third factor of mass incarceration is linked to migration from the global South, that fuels the incarceration rate of U.S.: globalization and neoliberal economic policies have created a structural conditions for mass movement of women, who are particularly vulnerable in many different ways. As a matter of fact they are mainly affected by structural adjustment policies, like the economic reforms in America: these policies lead governments to cut funds in education, health care and social provisions. Migration is a solution to escape from extreme poverty: women usually migrate in Northern States. Because of an intense flow of migrants, the control of national borders has been intensified: the majority of immigrants come from Latin America, the Caribbean, Asia and the Philippines. Women hope to rely on family reunification provisions in immigration legislation or come on temporary work visas but those, who can are not qualified to have access to such possibilities, are forced to rely on migrant traffickers. Recently, U.S. immigration policy has become more punitive, as the budgets of the U.S. Citizenship and Immigration Services (U.S.C.I.S.) has grown very rapidly. The American control border mainly focuses on Mexico, in order to control an ever increasing flow of migrants, who have been considered as a national security concern rather than a economic issue.

The criminalization of immigrant Latinas is one of the factor that has fueled the U.S. prison expansion since 1980. Noncitizen immigrant women are usually classified as «criminal aliens»¹²⁸, who are not only sentenced for immigration-related charges, as they are often involved in drug-

¹²⁷ Díaz-Cotto. "Chicana Lives and Criminal Justice", cited in Sudbury, J. (2010). "Unpacking the Crisis-Women of Color, Globalization, and the Prison-Industrial Complex", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles, p. 15.

¹²⁸ Ivi, p. 17.

related activities: in federal prison, they are 27% of the overall prison's population; while in state prisons, they are the 80% only in five states, such as Arizona, California, Florida, New York and Texas¹²⁹.

The impact of the «prison-industrial complex» on families and communities has brought to the creation of a deeply-rooted anti-prison movement: such a movement is formed by organizations, campaign and lobby groups, activist collectives, nonprofits, prison associations and student groups. Women activists have ensured the visibility of female detainees and their issues through organizations, such as the *National Network for Women in Prison*, the *California Coalition for Women Prisoners*, *Justice Now*, *Free Battered Women*, *Legal Services for Prisoners with Children* and the *Out of Control Lesbian Committee to Support Women Political Prisoners*.

Women of color play a fundamental role within the different anti-prison movements. Focusing on the American situation, the main activist-intellectuals and former prisoners are Angela Y. Davis, Ruth Wilson Gilmore, Ramona Africa, Linda Evans and Kemba Smith: they all are playing key roles in examining the prison-industrial complex's consequences, in order to mobilize oppositions. Being both activists and mothers, women activists do not only organize community groups but they also provide support to prisoners and their family.

In general, female abolitionists fight for a different punitive solution rather than prison, because female detainees are not safe within jails, since they are very often exposed to male violence. In support to this theory, a group of activists has founded in 1998 the *Critical Resistance*: one of its founders is Angela Y. Davis, who plays a crucial role in coordinating different organization in order to formulate alternatives to the prison-industrial complex.

According to the *Critical Resistance*, abolitionism is a political vision that seeks to create alternatives to prisons and to transform people's consciousness. Their idea is to create a world without prisons: they believe to set up a network of supporting programs that could help the recovery of convicts, since the majority is struggling with drug or mental problems.

They also support decarceration, which targets only a specific portion of the overall prison population: it consists in ending sentences of low risk female detainees. For example, the FBW

¹²⁹ US Government Accountability Office. (2005) "Information on Criminal Aliens Incarcerated in Federal and State Prisons and Local Jails". Washington D.C., cited in Sudbury, J. (2010). "Unpacking the Crisis-Women of Color, Globalization, and the Prison-Industrial Complex", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

(*Free Battered Women*) promotes a campaign for the release of women incarcerated for killing an abuser for defending themselves, since they all have a long history of intimate violence.

4.2 Life in prison: women's testimonies

From the last few decades, female incarceration is a very widespread phenomenon in the United States, particularly among girls and women who have all lived difficult life experiences: some of them come from broken houses, others from economically disadvantage communities. The color of their skin plays a crucial part in the whole criminal system: as a matter of fact, black women are four time more likely to be incarcerated than white women¹³⁰.

According to Kara Gotsch, director of advocacy for the Sentencing Project in Washington D.C., the rate of imprisoned women has reached a serious peak: as matter of fact, the number of female detainees increased at nearly double the rate of male convicts, since 1980 women have been the ones mainly embroiled in the «war on drugs». The most serious consequence of this negative tendency has affected thousands of children, who lose their principal caregiver in the process.

Prisoners are an invisible population to the eyes of the majority of Americans, who usually tends to consider only male convicts rather than female ones. In fact, Americans generally don't take into account an important branch of the overall prison population, namely the female prisoners whose realities and complexities are far more worse than those experienced by men, as women are very vulnerable human beings.

Female prisoners are a minority within the U.S. prison system, who face everyday very noteworthy challenges, from an inadequate prison healthcare system to an overwhelming prevalence of sexual abuses. Because of an increasingly privatization tendency, the condition under which female detainees are kept is different throughout the country: the only thing in common they all have is the difficulty of maintaining family relationships, or even relationships with their legal representation, because of the barriers erected that impede communications with the outside world.

Speaking about the criminal records, a small proportion of women in prison are incarcerated today for violent crimes: the rate of murder and manslaughter among female convicts decreased by 12% from 1995 to 2004. As a matter of fact, women are mainly charged for drug-related offenses as a result of the long-going «war on drugs». According to the collective imagination, female criminals

¹³⁰ Human Right Watch. (2006). "Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls", cited in Talvi, S.J.A. (2007). "Introduction: Invisible Struggle", in "*Women behind bars: The Crisis of Women in the U.S. Prison System*". Seal Press, Emeryville, California. Kindle edition, position 134.

are stereotyped by the media, which divulgates the image of «fallen women»: they are perceived as damaged human beings and as mothers who have failed their children and their families.

In the following sections, I'm going to present different testimonies of women living behind bars.

In order to do so, I have decided to gather them into different areas of interests.

4.2.1 Being mothers behind bars

Historically prisons was created to punish men, but then they have opened their gates to women too. Laws changed, on the contrary the prison system did not: as the female population increased, nobody did care to change it in order to meet the particular needs that women usually have.

This highly punitive criminal justice system has not only deconstructed entire families, but it also pushes women to commit the same mistakes all over again. and children to fall into criminal behaviors as well. As a matter of fact, both recidivism and a high rate of juvenile delinquency are the two big flaws of the current punitive system.

It's widely documented that a great part of female detainees are mothers: some with growing infants outside, others enter in prison during their pregnancy. Besides, 81% of female detainees are the primary caretakers of children, so once they are locked in jails their children would be left alone.

It can also happen that pregnant women have to deliver in jail if they are still serving their term of imprisonment. Delivery in prison is quite brutal: women's ankles are tied with shackles and babies are immediately taken away from them. Women have described delivery as one of the most shocking experience they have ever lived.

4.2.1.1 Keeping strong the relationship between mothers and children

Children's future has to be a primary concern: as a matter of fact, almost two and a half million children have one of their parents in prison. A great part of incarcerated mothers tries to keep in contact with their children, even if they lost custody. It's very difficult for them to cultivate such a relationship, since facilities are located far away from their homes. Female abolitionists ask at least for a prison reform, that could help both mothers and children: on the one hand, mothers usually develop a depressing status because of the consequent painful emotional struggle; on the other hand, children are forced to grow up without even seeing their own mother. Recent researches have showed that a regular contact between incarcerated mothers and their children is fundamental to prevent mental and health problems. Despite that, no programs have been yet conceived.

A group of activists, the *Women and Children Justice*, was born in 1998 and it has engaged with the cause of alleviate the plight of both women prisoners and children: in fact, they have been working with prison officials and families to create a program in order to bring children to visit their parents in prison. The program was first meant to be applied in the State of California where the Chowchilla prison facility is located five hours away from Los Angeles, three hours from San Francisco and nine hours from San Diego.

The program, called *Get on the Bus*, wants to bring families together, even if for a short period of time: it wants to partially ease the devastating effect of incarceration and to overcome the physical distance, since very often women are located in prison facilities that are far away from their actual homes.

As a matter of fact, *Get on the Bus* consists in organizing a trip to Chowchilla: there are thirty buses available in order to welcome over six hundred children from all over California to visit their mothers. Usually, the trip is due the day before Mother's Day.

During this long-lasting trip, children are amused by volunteers, who try hard to make the journey as pleasant as they can: for example, each child has a brightly colored t-shirt and a bag filled with many goods. They do not travel alone, on the contrary they are accompanied by their guardian or by a member of the program. Once arrived, they are able to stay with their mother for four hours. Volunteers try their best to make their visit the best one possible: for example, volunteer photographers take family portraits that children can take home. The photo usually is the most loved keep-sake of the day, that children often hold onto very closely during the way back home. Mothers also give them teddy bears and letters. This experience is filled with many different emotions and it also gives them a memory that will guide them in both hard and happy times during their forced separation.

This successful programs leads to the creation of another legislative campaign, the *Chowchilla Family Express*, that will freely transport every month children and members of their families to the facility. Such a program is the first seed of a up-coming systemic change: as a matter of fact, it has been granted by the State of California itself.

This successful program inspired other communities to step forward, such as the ones in Washington, Arizona, Florida and Texas.

In the following part of this section I report some extracts of a prisoner's testimony that highlight the emotions behind a special encounter between a mother and her child, that it was made possible by a program similar to the one offered in California.

Kimberly, a prisoner of the Riverside Unit (Texas), has offered her testimony about this moving experience¹³¹: in 2002, she was finally able to see her seven-years-old son after being incarcerated three years before, as they live in two different states.

[...] I was so excited last night that it was hard for me to fall asleep. You see, today is my first visit with my seven-years-old son since I was first incarcerated three years ago. My mother and son flew to Texas from Utah just to see me. I've been waiting for this for so long just so I could hug my son.[...]

The door opens, and I see this beautiful set of green eyes that look so much like the child I left three years before, yet he is so tall, and all his baby fat is gone. His face lights up, but not as bright as mine, and we embrace in a hug strong enough to bend steel. [...] This is the moment I've waited so long for.

My eyes float over the guard, and I recognize a glimmer of the hatred that fills so many in her position. Angry prison guards who feel their only mission in life is to make us feel less than human. [...]

In the room where the visit took place there was a library filled with children books. As any child would do, her son gets up to get some books but a guard forbids him to do so, by using a very harsh tone. He immediately obeys, while Kimberly feels herself powerless.

[...]I am shocked that this guard spoke so harshly to my child, when all he was doing was getting a book to read. Humiliation creeps over me as I realize I can do nothing about it. If I cause a scene, my visit will be canceled. Yet my hurt is strong. [...] I'm still hurt, angry and humiliated because I wasn't able to protect my child from the hate within these walls. It is understandable if a guard speaks to an inmate in such a manner, but not to an innocent child.[...] When I asked my son if he wanted to come again to visit me, he hugged his head and said no. This incident will remain in his memory every time he thinks of our visit. It's hard enough being incarcerated and dealing with abuse by prison guards. On top of that, we have to deal with their abuse of our family when they visit us. It's no wonder over half the prison population never receives a visit during their incarceration.

The joy, to finally being able to see her son, had been partially obscured by this episode: this is an example to show how inadequate the prison system is, since it is not able to meet women and

¹³¹ Burke, K. (2002). "Do I have to Stand for this?", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

children's needs. No matter the crime, women still are human beings with feelings, while children cannot be punished or treated badly only because of their mothers' particular condition. Speaking of Kimberly's story, the guard is the one to blame, as she took advantage of a child's innocence to make his mother even more miserable: as a result, she negatively scarred the boy, by impeding him from enjoying his short visit with his mother after all that time apart.

Kimberly ends her testimony by saying that her child has never come back after that incident. Despite she misses him a lot, some sort of a justice has been accomplished: the guard was fired for the way she treated Kimberly's son.

In spite of everything, Kimberly's son has brighter future perspectives than many other children who are not as lucky as he was: he has been given custody to his grandmother, who saved him from entering in a new circle of deprivation and loneliness.

4.2.1.2. Children Foster Care System

Once their mothers enter in jails, children are immediately insert by law in the foster care system: the state must follow the necessary procedures to determine how their future will be. At first, it was meant to be only a temporary living adjustment but, since today mandatory prison sentences are longer than the ones in the past, foster care has become more a permanent solution for a lot of children, whose mothers are the only caregiver they have.

Incarcerated mothers face many obstacles in trying to continue their parental right while they're serving a sentence, as the child welfare system is not build up to meet none of their needs. The impossibility of maintaining a relationship with their children, often has serious repercussion on women's mental health. From children's point of view, when they enter in foster care, the path ahead of them is the opposite of smooth: in fact, he/she has to face many difficult challenges that will presumably shape his/her personality in a very negative way. The system often fails children and it leads them into the inevitable crime vortex. Mothers are asking to policymakers, human rights advocates and researchers to raise their voice against such a failing system, which is only fueling the vicious cycle of criminality. It's necessary for the system to be changed, in order to allow mother and children to keep being unite despite the physical obstacle between them.

When a child enters in foster care, there are two possibilities: relatives can foster him/her, but in case no-one offered him/her a home, the child is fostered by an estrange family. It's not that simple: the majority comes from needy families, for this reason a large proportion of children is living with

non-relative foster care families. According to the recorded data, there are today 11,500 children of 5,000 mothers who are living with non-relative foster care families¹³².

On November 1997, President Clinton signed the «Adoption and Safe Families Act» (ASFA) in order to improve the safety of children, to promote adoption and other permanent homes for children, and finally to support families. Such an act has been thought to guarantee children's safety and to increase the possibility of making them like their new permanent homes.

Once a child is settled, mothers have to be careful if they don't want to lose for good their parental right: they must participate in case planning in order to remain involved in their children's lives and to demonstrate their ability to perform their parental right as well. The problem is that policies and practices of the child welfare system make impossible to mothers to fulfill these kind of requirements. When mothers are judged to be unable to perform their parental right, they consequently lose it for good: so, children stop to be legally part of them. Legally speaking, the exact term is the termination of parental right (TPR): under ASFA, TFR procedures starts when the child has been in foster care for fifteen of the most recent twenty-two months, or when the court has settled that the child is an «abandoned infant». An exception can be made if the child is given in custody to relatives: in this particular case, the state agency does not follow normal procedures for the best interest of the child.

Very often, women's sentences last about two years and, during this short period of time, they risk to lose their parental right: such a problem still needs to be fixed, since once out they can perform it, unless the child is not proved to have been subject of abuse or mistreatment prior to this mother's arrest. The only way to fix the problem is to coordinate both the criminal system and child welfare agencies: as a matter of fact, these two system usually make decisions that may enter in conflict with each other. It should be necessary that both systems work together in order to develop coordinated policies for incarcerated mothers and their families: unfortunately, this is not possible since there are no reliable data yet in support of such a plan.

Since 1997, all states enacted similar legislations in the following years: today, 36 states have TPR statues that deal directly with parental incarceration; of these, 25 have taken into consideration the length of incarceration.

Carole is one of the many incarcerated mothers who has lost her parental right while serving her sentence¹³³. Mother of four children, she is a drug-addicted and two of her children had tested

¹³² Halperin, R., Harris, J. L. (2004). "Parental Rights of Incarcerated Mothers with Children in Foster Care: A Policy Vacuum", in *"The Prison Issue"*. Vol. 30, No. 2, Feminist Studies Inc.

positive for drugs at birth. She was arrested for having sold crack to an undercover cop soon after having given birth. Her oldest children have been fostered to some relatives of her, while the baby was temporary given to her brother since she was supposed to stay in prison for only six months. Unfortunately, she returned to drug use so she was then sentenced to 24 months of residential treatment in order to cure her addiction. During the first months of treatment, her cousin asked her to adopt the newborn baby until she completed her rehabilitation, as her brother gave him up. She accepted and continued to have visit with his son on a regular basis. When moved to a new center near home, she stopped seeing her son, because her parental right has terminated, according to what establish by the AFSA. Carole has never been informed with it, so it all comes out of the blue.

[...]I challenged the termination of parental right (TPR) and fought in court, but as time went on, I was told by the foster parents, the caseworker, and the law guardian that removing my now 3^{1/2} year-old son from the foster parents would harm him. The experts believed that due to my drug use while pregnant, my son had delayed development.[...]

After a long process and intimidations made by ACS (Administration for Children's Services), she agreed on open adoption, which consisted on letting her see her son on prearranged visits. So far so good. But she starting seeing him less frequently since her cousins moved to another state. He knows Carole is his birth mother, but they see each other only two or three times a year. His adoptive parents don't consider her presence in their son's life as a priority, so they sort of obstruct her visits. Carole can do nothing and she feels powerless: she can't be present for him, but on the contrary she still continue to be part in her other children's life, despite the fact that they have being adopted as well.

[...]Today I resent ASFA and the child welfare system, the coercion of the law guardian, the ACS attorney, and the cousins who adopted my son. My resentment has fueled my work as an advocate for other mothers who may not know their rights or kwon how to interpret the ASFA laws. If I had the information then that I now have, and/or had a parent advocate, I would never have consented to my son adoption.[...]

She decided to pursue her education career by attending a college that would allow her to become an advocate on such a field, in order to bring her help and support to incarcerated mothers like she was. She is proudly drug-free for over nine years and happily engaged in changing foster care

¹³³ Carole E. "ASFA, TPR, My life, My Children, My Motherhood", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) "*Interrupted Life-Experiences of Incarcerated Women in the United States*". University of California Press, Berkeley and Los Angeles.

system's procedures related to the termination of parental rights. Carole preferred not to going back to court only to protect her son from a custody battle.

[...]ASFA's time clock starts ticking the moment a child enters the system, placing children at risk for termination from their mothers and their whole family, and perhaps at elevated risk of incarceration themselves, as a result. When mothers are released, they may find that they no longer have their children. Faced with this loss, many mothers like me find it difficult to maintain the positive state of mind that promotes a healthy reentry and helps thwart recidivism. I was fortunate to have support and resources.[...]

4.2.1.3 Giving birth in prison

On November 2011, the *American College of Obstetricians and Gynecologists* published an essay where it exposed how the criminal justice system, prisons in particular, must deal with pregnancy. According to the *American College of Obstetricians and Gynecologists*¹³⁴, every female prison facility should be prepared to welcome pregnant incarcerated women: the problem is that very few of them are really well-equipped in terms of medical and psychological support during pregnancy and post-partum period.

On the average, 6-10% of female prisoners are pregnant: the higher rates have been recorded in juvenile facilities rather than in adult ones¹³⁵. Often, female convicts' pregnancies are unplanned and at high-risk, since they are endangered by the lack of the adequate prenatal care and by other factors, such as domestic violence, poor nutrition, mental illness and drug or alcohol abuse.

Prior to incarceration, every women should be evaluated for pregnancy risk by asking them about their menstrual history, heterosexual activity, and contraceptive use; besides, they should be tested for pregnancy, because in case of resulting positive they need the necessary prenatal care or abortion services. Women, who decide to continue their pregnancy, need to be regularly monitored by an obstetric care throughout all the gestation and the postpartum period as well.

Due to an high risk of substance abuse and HIV infection among female detainees in general, pregnant women must be immediately tested in order to see if they suffer from one of those problems. Once the addiction is identified, they need to start an assisted therapy that should help

¹³⁴<http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>

¹³⁵ Clarke, J.G., Hebert, M.R., Rosengard, C., Rose, J.S., DaSilva, K.M., Stein M.D. (eds.) (2006)." Reproductive health care and family planning needs among incarcerated women". *Am J Public Health*, cited in <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>

them and their babies, who risk to born earlier or to suffer from fetal distress. Generally speaking, but in particular when pregnancy is involved, effective drug and alcohol rehabilitation treatment are fundamental. Among the necessary kinds of attentions every pregnant prisoner should receive, there is also the need of a good maternal nutrition, such as vitamins and minerals, that are useful for the delivery of a healthy, full-term newborns.

As serving their sentence, it's also required their contribution in terms of work: pregnant women should not stand or participate in repetitive, exhausting, physical lifting because there's always the risk that babies born before their due-dates. Once having given birth, they should be recover for 4-6 weeks before getting back to work.

The *American College of Obstetricians and Gynecologists* also suggests that correctional officers or guards do not need to be always present in the room during a routine control or labor and delivery, unless the safety of the medical staff has been compromised.

Furthermore, it is very important that it's better keeping together mothers and their babies: prison nurseries should be considered for women during the postpartum period. If correctional facilities do not include any of those nurseries, they should in turn have provisions for letting women visiting their babies. The importance of guaranteeing the possibility of the creation of a bond between mothers and babies must not be underestimated: as a matter of fact women, who are able to spend their time with their children, show lower rate of recidivism. Prison nurseries programs have proven that, by giving this opportunity, foster care placement can be avoided and it can also allow the formation of the mother-baby bond during a crucial period of the infant development. Breastfeeding is highly recommended, as both mothers and babies would benefit from it: incarcerated mothers, who wants to breastfeed, should be allowed to either breastfeed or to deliver their milk.

The report, published by the *American College of Obstetricians and Gynecologists*, after having showed how to deal with pregnancy in prison, it proves how the U.S. is not adequately prepared to it: it highlights that 38 states have failed to settle policies suitable for guaranteeing the adequate prenatal care to pregnant detainees; it also points out that 41 states do not require prenatal nutrition counseling or do not provide an appropriate nutrition to imprisoned pregnant convicts; finally, it states that 48 states do not offer pregnant women any HIV screening tests. To sum up, it evidently demonstrates the little attention the U.S. prison system has towards pregnancy.

In my opinion, one of the most astonishing aspect is the use of restraints, that are usually known and called shackling: it is a physical restraint employed to control the movement of a prisoners' body, which includes belly chains, leg shackles and handcuffs. In order to stop this brutal treatment

to pregnant detainees, in 2007 the U.S. Marshall Services banned the use of shackling only when a pregnant woman is in labor, delivery or during the post-delivery period¹³⁶.

A year later, the Federal Bureau of Prisons decided to end the practice of shackling in all federal correctional facilities¹³⁷: therefore, the *American Correctional Association* (ACA) endorsed the standards that prohibit the use of restraints on inmates during labor and delivery. According to these standards, restraints cannot be used even prior to labor, but unfortunately they are not mandatory.

The debate over the use of shackling was not still over yet: in fact, in October 2010 the National Commission on Correctional Health Care stood against the use of restraints on female detainees throughout pregnancy while serving their sentence: it presented guidelines that correctional facilities can or cannot follow, since its decision was not mandatory as well. Basically it's up to state and local prisons and jails to forbid the use of restraints. Since 2000 18 American (California, Colorado, Florida, Arizona, New Mexico, New York, etc.) have enacted a law that limits the use of restraints on pregnant detainees.

The main reason, behind the use of shackling, is to keep female offenders from escaping or harming others and themselves even if it has been rarely necessary, as the majority of them has been sentenced for nonviolent offenses. During labor, no woman has ever tried to escape while not using shackling, as demonstrated by different reports¹³⁸; besides, from doctors' point of view, these restraints can also interfere with their work by making labor and delivery even more difficult to execute. While shackling during transportation to medical care facilities should be required only in exceptional circumstances for both pregnant women and women within 6 weeks postpartum. If needed, it should be the least restrictive possible and it should never impede leg movement or the ability to break an eventual fall, in order to not compromise either mothers and babies' safety.

In 1998, Kebby Warner¹³⁹ was incarcerated for a small felony in the Michigan Department of Corrections, when she was twenty-five years old. Once she entered in jail, she was not properly evaluated, as the *American College of Obstetricians and Gynecologists* previously suggested. Her first month in prison was terrible: only due to her pain, the medical care staff decided to visit her. They diagnosed her with stomach flu, but they were wrong because she was actually pregnant. Kebby didn't know what to do: abortion was out of choice, so she took into consideration adoption.

¹³⁶ http://www.usmarshals.gov/foia/Directives-Policy/prisoner_ops/restraining_devices.pdf

¹³⁷ http://lsrj.org/documents/factsheets/13_RJ_Prison_System.pdf

¹³⁸ http://www.wpaonline.org/pdf/Shackling%20Brief_final.pdf

¹³⁹ Warner, K. (2002). "Pregnancy, Motherhood and Loss in Prison-a personal story", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

This was not a simple decision to make: her life would have changed no matter the decision. Despite the importance of such a choice, once her pregnancy was confirmed, the doctor gave her some pamphlets and only two hours to make up her mind. She wasn't able to contact her husband, she was completely alone. At the end, she decided to keep the baby, as she counted on the father's baby. Because of her diabetes and her high-risk pregnancy, she was sent to an hospital where she could be monitored by an adequate medical staff. She was happy, because she didn't trust to put her baby's life in the hands of the Michigan Department of Corrections.

[...]Every time I went for a "medical" run, I had to get a humiliating strip-search when I left and returned to prison. Prisoners are placed in belly chains and our hands are cuffed for the duration of the visit unless the doctor asks that they be removed. At about six month of pregnancy, the strip-searches become difficult. By this time, my emotional state was up and down, and most of the time I left the "strip room" in tears from shame and humiliation.[...]

Sometimes, I looked forward to the medical run-escape, even though I went in chains.[...]

In order to reach the hospital, Kebby was transported in a van where she often got carsick. Since she was a prisoners, guards couldn't allow neither to stop the car nor open the window.

[...]The guards looked at me as if I was about to run at any moment, pregnant in chains.

Inside the prison, I was placed in a "pregnancy unit". It surprised me that there were so many pregnant women in prison-sometimes as many as twenty-including some who came just before their due date. I wondered about the cold-heartedness of judges who sent these women to prison when there are other alternatives. Was there anyone to speak up for these women who were bringing life into the world? [...]

Kebby became closer with other pregnant detainees: she was able to share her worries and fears. They were all followed by a childbirth instructor, besides they also attended therapy session in parenting, substance abuse, domestic violence, prenatal care, childbirth and postpartum.

During a control visit, Kebby found out that she was expecting twins: unfortunately one of the twins' heart had stopped beating. She was devastated by the news and no-one was there to support her.

[...]Behind prison walls, women are not allowed to show emotion. Our anger, pain and other feelings must be kept under tight control. [...]So except for tears, I kept all my emotions inside.[...]

While serving her time in prison, she lost contact with her husband. She had to contact her parents, who agreed to take the child until her release.

[...]No one was with me during labor, and guards stayed in my room most of the time, though I was not chained as I've heard others have been. Most of the nurses treated me as a human being instead of a prisoner. But thirty minutes after giving birth, I was once again handcuffed and chained and wheeled to another floor. My daughter was allowed to stay in the room with me, instead of the nursery.[...]

According to the regulation of the Michigan Department of Corrections, a woman can only spend twenty-four hours with her baby before she is brought back to prison. Kebby tried her best to spend more time with her newborn child. She was able to stay three more days with her baby, as she refused to eat. She was afraid of what would have happened after: she had seen women who came back to their cells in a total state of shock and confusion.

[...]Then I heard the guard say, "Come on Warner". I gave her to the nurse. With every click of the handcuffs and the sound of the chain being locked, my heart shattered. Before I was escorted out in a wheelchair, the nurse took Helen out of the room. My heart and soul went with her. I was taken back to prison, tears streaming down my face. I was in shock and despair, hoping only to wake up from this nightmare. The guard said, "If you wanted to have children, you should have stayed out of prison". I can remember looking at her, full of hatred.[...]

Because of her anger and desperation, Kebby wasn't able to accept the situation, so she decided to fight against the system along with other women, no matter the consequences.

After four months, a new problem arose: after the death of Kebby's father, her mother gave up the baby to the state. Despite Kebby's disappointment, Helen was put in the child foster care system, since no other family member accepted to welcome the baby within their homes.

According to the Michigan law, if a parent is incarcerated for two years, she is considered neglectful so the parental rights can be terminated. This is exactly what happened to Kebby.

Helen was finally adopted and Kebby could do nothing to stop this. She was alone and powerless. Her determination to change the system led her to start a new organization, called *People Against Court Kidnapping* (P.A.C.K.), which aims to oppose legal kidnapping of children around the country and to give support to pregnant detainees who have no one to turn to. She uses her experience and her voice to fight against this unjust system, because there will always be pregnant women in prisons, that like her, will be victims of this inadequate prison system.

A similar story is the one of Olivia Hamilton¹⁴⁰, who was six-month pregnant at the time of her incarceration. Married and already mother of two, she was sentenced for having embezzled money. She was condemned to serve a six months sentence in a prison in Pennsylvania. Abandoned by her mother, she grew up in Louisiana with her grandmother that took her of her. Despite her grandmother's attention, she did not have an happy childhood: she got in trouble and spent ten days in a juvenile detention center in New Orleans. She got pregnant with her first child at seventeen years old. Despite the teenager pregnancy, she was able to finish school and graduate. After having tried to unsuccessfully reconnect with her mother, she decided to start her life again. She even started college and a new boyfriend came into her life, the one that will later became her husband. Two years after Hurricane Katrina, she was pregnant again with her second child: even if she had a work, she wasn't able to pay the bills. So, she ended up embezzling money. Because of this little felony, she had to face court that sentenced her to a year of prison. She hoped to evade prison, since she had never committed any crime before. But the judge did not care, despite her evident stage of pregnancy.

[...]When the court bailiff took me from the court to a holding cell in Georgia, a guard put the cuffs around my belly and on my wrists, like a chain. When I sat down, the cuffs were real, real tight, so I was basically standing up the whole time. [...]

Even if she was six-month pregnant, she was finally able to see a doctor after one month in jail. Besides, she did receive neither vitamins nor prenatal care.

[...]Then one day, when I was seven month pregnant, the guards called me down. They shackled my stomach and my feet and took me to see am OB-GYN. I mean, you walk like this through the front door looking as if you've murdered someone, and I just thought it was really degrading. I kwon I made a mistake, but I don't think I deserved to be ashamed or embarrassed in this way. And even once I'd got in the back where actual doctors' offices were, the shackles didn't come off. They took them off my feet, but nothing else; the shackles stayed on my stomach. [...]

Because of her good behavior, she had to stay in prison for six months with nine years' probation. Despite the degrading way she was treated, the only thing that kept her going on was her unborn child. Olivia was then moved to a prison in Pennsylvania, where she did not receive a warm welcome, especially by guards who yelled at her.

¹⁴⁰ Levi, R., Waldman, A. (eds.) (2011). "Olivia Hamilton", in "*Inside this place, not of it. Narratives from women's prisons*". McSweeney's Books, San Francisco.

[...] "Nobody cares if you're pregnant! You shouldn't have got in trouble. You're a sad excuse for a mother. You don't care about your kids!" [...]

No crime can be justified, but Olivia did not deserve such a treatment: before being a prisoner, she is always a woman and a mother who needs to be respected. Guards were usually brutal with her, in particular the female ones.

Olivia was supposed to give birth the day before Memorial Day weekend: because of the upcoming festivity, the medical staff was in hurry to make her deliver the soon as possible, even if she didn't show any sign of labor yet. She was forced to pack her things, because they decided that it was time the baby to come out. She hadn't had any say in the matter. She was induced to labor despite her will, only because it was a holiday weekend.

[...] They put me in a room and shackled me. I was more upset that anything that the baby just wasn't ready, and I didn't want to be forced. They gave me Pitocin, but it wasn't working. Later, in the middle of the night, the doctor came in to check on me. He came in and he started poking inside me with an instrument. [...] He put it inside me and started poking the bag of water, where the amniotic fluid was, so he could bust it. [...]

She went through a lot of pain for nothing; the baby did want to be born yet. The day after the doctors decided to do a c-section in order to fasten things up.

[...] A sergeant came in and said, "She needs to be shackled, She's no different from anybody else." I was hurting, and I was tired. I said to the sergeant, "Ma'am, there is no way I need these shackles. I'm not going anywhere; I'm in pain. You've got a guard in my room. And I don't know if you have kids, but this ain't something fun to have your hands shackled for." But she made them keep the shackles on me when I went in for the c-section. [...]

Basically, she was forced to do c-section, not because her baby was at risk, but only because the doctor had other plans. As a matter of fact, his patient life was less important than the holiday weekend ahead.

4.2.2 Women prisoners and health care system

Generally speaking, it must be said that the health care issue is one of the hottest topic within American forums: as a matter of fact, as stated by Silja J.A. Talvi¹⁴¹, 46 millions of Americans do not have health insurance. Despite the lack of an overall medical safety net, we must take into

¹⁴¹ Talvi, S.J.A. (2007). *Women behind bars: The Crisis of Women in the U.S. Prison System*. Seal Press, Emeryville, California. Kindle edition.

consideration that illness and disease are serious problematic factors of a larger healthcare crisis, which is the one that are affecting prisoners all over the United States. In facts, they are forced to accept whatever level of medical attention, medication or surgery in order to survive in prisons¹⁴².

Prisoners do not only lose freedom, but their human rights as well. Health is one of them.

Such a problem is affecting men as well as women locked up in prisons, whose causes of death are generally identical. The most common causes of death are heart disease, cancer, liver disease, AIDS and suicide¹⁴³. The problem is not only confined among prison's walls, but on the contrary it follows former prisoners even when they finally come back into the outside world: in fact, a study conducted in Washington state has documented that they are at far greater risk of death than people with no criminal record. The most common reason of death among former prisoners are drug overdose, cardiovascular disease, suicide and homicide; besides, female former convicts are more likely to die than men.

The reason of this disparity must be found in today prison medical healthcare system, which is still designed for men, rather than women: as a matter of fact, because of its lack of adequacy to meet female needs, it is considered the worst aspect of life in prison, on par with sexual violence and treatment of mentally ill detainees.

Women are physically more vulnerable than men, so they face more serious health problem since their entrance in prison: as pointed out the sociologist and ethnographer Tammy Anderson¹⁴⁴, «women's reproductive events of pregnancy, childbirth, and puerperium give women unique morbidity not experienced by men; [...] compared to men, women have higher illness rates for infective disease, respiratory and digestive system conditions, injuries, ear diseases, headaches, genitourinary disorders, and skin and musculoskeletal diseases».

Because of the inadequacy of the prison healthcare system to meet female needs, that it's still designed for male prisoners only, the gynecological care is, for example, considered a special service: as a matter of fact, checkups and follow-ups for irregular Pap smears are among the biggest

¹⁴² Talvi, S.J.A. (2002). "Prison on Laboratory", published in *"In These Times"*, January 2002. Kindle edition.

¹⁴³ Mumola, C. J. (2007). "Medical Causes of Death in State Prison, 2001-2004), cited in Talvi, S.J.A. (2007). "Chapter 4: Dangerous Medicine", in *"Women behind bars: The Crisis of Women in the U.S. Prison System"*. Seal Press, Emeryville, California. Kindle edition.

¹⁴⁴ Anderson, T. "Issues in the Availability of Health Care for Women Prisoners", in Sharp, S. F. (2003). "The Incarcerated Woman: Rehabilitative Programming in Women's Prisons", cited in Talvi, S.J.A. (2007). "Chapter 4: Dangerous Medicine", in *"Women behind bars: The Crisis of Women in the U.S. Prison System"*. Seal Press, Emeryville, California. Kindle edition, p. 88.

complaints that women have about prison medical system. For this reason, cervical cancer is very common among female detainees.

To sum up, incarcerated women's health is so poor, during and after serving sentence, as the result of a combination of different factors. First of all, the lack of preventive healthcare before and after incarceration; second, drug-use, unprotected sex and violence; third, a persistent medical negligence; fourth, misdiagnosis of diseases; fifth, high-risk surgeries as well as the lack of post-surgery care; sixth, an inadequate supply of hygienic tools (such as soaps, toilet paper); seventh, sexual or physical abuse by medical and/or dental staff, who are often rarely skilled. This is only a small part of a longer list of factors. Privatization is the main responsible, since prison facilities have started to contract out medical services, by relying upon outside corporate health providers that are usually incompetent or neglectful. Another responsible is the criminal justice system, whose policies do not take into consideration a variety of aspect, such as age, pregnancy and disability. If they considered this important aspect, they would maybe punish female offenders differently: for example, instead of prison, they could be placed in different facilities where they would not be exposed to the same work and physical demands as the rest of the prison population.

There are a lot of stories, reports, essays that documented the deterioration of women's health: *Justice Now*, in particular, has engaged itself in the fight against the inadequate prison healthcare system. It is a California-based, human rights nonprofit organization, which born in response to the California Department of Corrections and Rehabilitation (CDCR)'s inefficiency in delivering a sufficient medical care to its female prisoners.

Justice Now wants to end violence inflicted by the prison-industrial complex against individuals and families: according to this organization, the entire prison system is a failure, so the healthcare system cannot go far from this incompetence as being part of it.

In its work, *Justice Now* has focused mainly on three health care crises, which are the consequences of the deficient healthcare in American prisons, in particular in the California ones. The biggest female prison in the whole world is the Valley State Prison, in Chowchilla (California), which is known to have one of the tougher system of the country.

The first crisis is the one related to an insufficient treatment and containment of the epidemic of hepatitis C: as a matter of fact, the death rate of people with hepatitis C virus is currently estimated at eight thousand to ten thousand death a year. *Justice Now's* work does only examine California women's prisons: it has proved that they provides inadequate policies and procedures for screening and detection, so basically there are a lot undiagnosed HCV cases among female prisoners detained

in that facility. It does not only lack in providing the necessary tools, but it also hires medical staff members who are usually neglectful and low-skilled. If prisoners already know to be positive to HCV, once in prison, they do not have always access to treatment; besides, they are given little information about this disease so, for example, they don't know that there are a lot of risks associated with HCV infections. Without the necessary information, usually women refuse treatment while serving in prisons. Because of all those reason, California women's prisons are denying the right to family because they often cause unnecessary health complications and premature death. Besides, female prisoners are often unable to stay in contact with their family, not only because they have been moved far from home, but also because of the deterioration of their health or their premature death while serving their sentence in prison.

The second crisis is linked to an insufficient use of Pap smears to detect cervical cancer, which a very common disease among female detainees, who are at high risks for a great variety of different factors: for example, it's easy for them to contract the human Papillomavirus because of sex at early age, multiple sex partners, sex with uncircumcised men, smoking, HIV, Chlamydia infection, diets low in fruits and vegetables, excess body weight, oral contraceptives, multiple pregnancies, low socio-economic status, family histories of health problems. Generally speaking, it's not easy to persuade female prisoners to get a Pap smears because they are usually affected by different social and psychological factors, such as childhood sexual abuse or insufficient information about cervical cancer. Nevertheless only few prisons do actual test, while the majority deny female prisoner an early detection of the virus. Unfortunately, too often that absence of care causes the loss of the reproductive capacity, so it basically violation the human right to family.

The third crisis is connected with the rising number of incarcerated women with serious mental illness, who are not treated adequately by the low-skilled prison staff members. According to Human Right Watch, prisoners affected with mental illness are very often physically and/or sexually abused, as well as mocked by both guards and prisoners. The majority of American female prisoners suffer from mental illness: in state prison nationwide, the female rate of mental illness reaches 73.1% of inmates. A great part of female detainees with mental illness have shown to have been abused as children and to have been homeless prior to the arrest. The use of drugs seems to be another factor linked to the appearance of such a disease, and the consequence dependence led those women to commit serious or little felonies. Despite this is a population in need of urgent and immediate assistance, they continue to be unheard. The current prison system lacks in providing an effective treatment: because of this disease, women are even more vulnerable than the normal, so

they also need experienced staff members, who must be able to take care of them adequately. As a matter of fact, the majority of correctional employees are not trained for this psychological and social work, besides they are usually uneducated about the common symptoms of various psychiatric disorders and state of emotional distress. The prison system is actually the one to blame, since they do not provide to employees a basic education that could help them handle those critical prisoners. *Justice Now* is fighting to find an alternative to imprisonment for all medically incapacitated women. It also has suggested a bill which promotes the early release for prisoners affected by medical incapacitation and terminal illness: unfortunately California governor, Arnold Schwarzenegger, vetoed it. Among other initiatives, *Justice Now* is also providing educational materials to female prisoners and to the outside community, in order to fill the gap created by the denial of information and care. They believe that, by promoting an understanding of the rights to health and family as human rights, they will succeed in creating an informed community, that will join them in the fight against the current prison system.

All those three crises are closely linked to the denial of the human right of family to incarcerated women. Mass incarceration is a human right violation, now more than in the past, since the number of women has increased during the last decades. Criminal policies target poor persons and people of color in particular: because of this tendency, millions of children have suffered the loss of parents and millions of families have been destroyed.

If on the one hand U.S. laws do not protect prisoners' rights, on the other hand the International Law offer them a greater protection: as a matter of fact, many international covenants recognize rights to make decisions, in particular relating to family and reproduction.

Justice Now's main target it's the CDCR, that is accused to violate the human right to family in many different ways. The most significant one is the prison healthcare system which limits, destroys, or harms female reproductive health and capacity, both during and after incarceration. Despite the right to family is still an undeveloped area of law, the International Covenant on Civil and Political Rights proclaims that the family must be protected by the society and the State (Article 23), as it represents a natural and fundamental group of unit of society. Very often reproductive rights are ignored by official and medical staff members, as they do not recognize the importance of the right to family as part of women rights. Despite the United States has ratified this covenant, the reproductive rights continues to be eroded by its prison healthcare system, as the nation shows little interest in providing an adequate medical treatment for persons in prisons.

One of the most powerful human rights protection act for women is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW): U.S. has never ratified it, leaving women with little protection against sex-based discrimination. According to CEDAW, women have the right to «decide freely and responsibly the number and spacing of their children and to have access to this information, education and means to enable them to exercise these rights»¹⁴⁵. Since U.S. does not ratify it, female prisoners are often unable to obtain abortion or they cannot have access to preventive care for cervical cancer. Because of lengthy prison sentences and of a failing medical care system, American female prisoners are locked up during their reproductive years or are unable to birth children upon their release.

Justice Now was the one which led an investigation, that turned out to be a violation of the human right to family to a female prisoner's detriment. As a matter of fact, a prisoner of Chowchilla's prison gives her testimony about having being denied to birth children after her release, since a surgeon gave her an oophorectomy, without her consent, at the time he performed a cystectomy. An oophorectomy can be considered as the equivalent of the castration for men.

Sheri Dwight¹⁴⁶ was sentenced to fifteen year of prison, after having killed her husband that had mentally and physically abused her. She did not have a very happy childhood, as her parents totally ignored her: despite this profound loneliness, she never got into drugs. At fourteen she first got pregnant and three years later another baby came into her life.

When she was seventeen, she met a boy that later would become her husband. Since the start of their marriage, he repeatedly abused her.

[...]Thirteen months it lasted, with him abusing me. It just got worse and worse. I've been raped and sodomized by him, I've been tied up and held hostage, I've been choked to the point where I passed out numerous times. He'd strip the cloths off my back, sometimes leaving me half-naked in the street. [...]He would take all the money out of my bank account so that I couldn't move. He would take the battery and disconnect the stuff out of my car so I would be stuck. It was a very degrading, humbling, shameful, embarrassing time in my life. I was not easy in my own home.[...]

¹⁴⁵ Hoffman, J. (2010). "Hep C, Pap Smears, and Basic Care-Justice Now and the Right to Family", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *"Interrupted Life-Experiences of Incarcerated Women in the United States"*. University of California Press, Berkeley and Los Angeles, p. 230.

¹⁴⁶ Levi, R., Waldman, A. (eds.) (2011). "Sheri Dwight", in *"Inside this place, not of it. Narratives from women's prisons"*. McSweeney's Books, San Francisco.

Finally, she realized that this situation needed to be ended, for both her children and her sake: they were in danger being around him, so she decided to move to her parents' house. Besides she also bought a gun, just in case her husband caught her off-guard. Sheri didn't trust the LAPD anymore: despite several police reports, emergency room reports about the wounds from the abuse, no authority had ever stopped him. Things deteriorated very quickly: when she came back to their home to pack her belongings, he threatened her so she took a decision, that changed her whole life.

[...]Everything in my identity, my integrity, everything was lying on the floor, shattered and cut up and destroyed. It triggered something inside of me and I pulled out my gun.[...] When he charged toward me I fired. [...]Somehow I got back to my parents' house because I just felt like I was never going to see my children again. I held my children until the police came.[...]

After having fight for her life, she had then to fight against the judicial system: despite neighbors' testimonies, police reports and medical records, the prosecutor wanted her to be sentenced for thirty years or for life.

[...]I was a young African-American woman, I was from the ghetto, I didn't have money or anything else like that, so of course my chances of going to prison and nobody giving a fuck about what happened to me was high.[...] It didn't matter to her (the judge) that I had iron marks on my chest, iron marks to this day on my arms, bruises and scars all up and down my body.[...]There was no consideration, no compassion for the fact that people like me were fighting for their lives in their own homes. There was no consideration of the fact that I was just like a prisoner coming out of war.[...]

Sheri was held for two years in a county jail waiting to her case to be defined, then she was moved to Chowchilla where she would serve her sentence. She was only twenty-one years old. She fully described Chowchilla: it is a very big compound that contains about four thousand women. There are four buildings in each yards each buildings welcome thirty-two rooms, while each room contains eight female detainees.

After two years in prison, Sheri started to feel a lot of abdominal pain during her period: for this reason, she decided to take a Pap smear that shows the presence of abnormal cells. She took several different tests to confirm the diagnosis, within the space of one year and a half. It was found out she had two ovarian cysts, one on each ovary: she was booked to have a simple chirurgical procedure to remove the cysts and to check, through a cone biopsy, a potential presence of cancer. She took her a lot of time before being operated, because there is only one gynecologist at the prison, even though

there are four thousand women that can need his expert advice. Besides, the patient-doctor relationship was far from being sympathetic or caring: prisoners are only numbers, there is no interest in knowing them deeper. After few more months after having received the test results, she was moved to a local hospital outside the prison. She signed her consent to get a cystectomy and to remove part of her uterus, but only in case of cancer. Hysterectomy is the equivalent of being sterilized. The operation went fine, but the post-operation was quite the opposite: she started to feel a lot of different symptoms. The doctors continued to repeat it was all in her head, but only after she realized that those were symptoms of the menopause. There was another girl in her hospital room, who said that Sheri had had a hysterectomy like her. She couldn't believe because it was not what she signed for. The girl was unfortunately right: the surgeon performed a hysterectomy, even if there was no cancer. Besides, nobody told her the truth. She would only discover it four years later, when *Justice Now* decided to look into her case. As a matter of fact, years went by and her menstrual cycle never showed up. She was told that she didn't need to be worried because everything was fine.

[...]Through their investigation, I finally found out that, during the surgery, the surgeon cut off the blood supply to my ovaries, killing them instantly. Instead of trying other techniques, or offering me alternative measures to go about this procedure, he'd just gone in and just *snap*, left me with no ovaries. Then after the cone biopsy, he'd sewed me up and never talked to me about it at all. [...]Before the surgery he'd even asked me if I wanted to have more children. I'd said: "Yeah, I'm hoping to find somebody one day who loves me. I didn't get a chance to raise my other sons, so I want the chance for a family again". He didn't listen to me What rights did I have for real? I was just an inmate.[...]

After some times in hospital, Sheri was moved back in prison and stayed in infirmary for a week. Despite a big surgery, nobody came in to check on her vitals, on her bandages. Even though this was a life-changing experience, she went through it alone. No-one offered to her, or to other women like her, a counseling to help her to deal with the fact that she has just lost the ability to have children. For a woman to lose the possibility to procreate is a challenging experience, because she is denied a fundamental aspect of her being a woman.

[...]They take for granted our ignorance, they take for granted the fact that we really don't have a voice for ourselves. We have to fight an organization that's bigger than us, stronger than us, and that's been there longer than us. [...] I remember the fact that even though I was a human being, just that uniform itself made me feel different. It made me feel less than

other people who were out there in society looking at me. It just made me feel less than a human being. That right there, it really messes with your mind.[...]

Because of *Justice Now's* investigation, her case was picked up by a law firm that fought for her harder than she actually did. At the end, they lost the cause against the surgeon, who still continues to work despite what he had illegally done. Even if she won, nobody would take her back what she lost but she hoped for an apology at least. .

[...]My right to reproduce was never an issue anyone cared about.[...]I felt mutilated. I noticed that a lot of African Americans women were going into prison in their fertile child-producing years, and coming back with these partial hysterectomies, complete hysterectomies, abnormal cells. I noticed that it was a pattern. [...]

There were times where I felt like my femininity had been taken from me, times where I felt very degraded. I felt like I wasn't my own person any more. The part of me being a mother had been taken from me too. So it was a lot of having to hold on to an identity that I no longer had, or trying to remember who I was while I was surviving in this condition. [...]

Sheri is now out of prison, but this experience will always been part of her. She would like to set up some programs to help and inform women. She wants to give them support that she never had.

Sheri's hysterectomy is a form of sterilization, which is usually perform when the patient's health is compromised by the presence of complications. Unfortunately, sterilization per se has been quite common procedures in American prison, in particular in California ones. Forty-eight states out of fifty ones considered sterilization to be legal as being a safety measures.

According to the California-based association *Center for Investigative Reporting (CIR)*¹⁴⁷, about 150 female detainees have been sterilized against their will from 2006 to 2010, by doctors employed by the CDCR. The data are pretty recent, but it's no doubt that these procedures had been employed even during the 1990s. Half-century ago forced sterilization was legally performed to poor and/or mentally ill prisoners, but since 1979 it has been banned by the state lawmakers. Today, according to the federal law, it's forbidden to perform tube litigations (sterilization) using federal money, but on the other hand it allows it if done with state money. Nevertheless, one of the journalist of this association has had access to the database of California's penitentiaries and he found out that all operations have been made without the necessary authorization of the state itself. Surgeons denied to have done any tubal litigations, despite evidences.

¹⁴⁷ <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>

On September 2014 California Governor, Jerry Brown, signed the bill that finally banned sterilization to female prisoners locked up in county jails, state prisons and other detention centers.

This important step in California's history that has been finally achieved after CIR's disclosure in July 2013, which showed that from 2006 to 2010 more than 130 female detainees had been sterilized through tubal ligations, despite this procedure violates prison rules.

The law does not only forbid tubal ligations but also any other practice that can destroy the reproductive capacity, as for example hysterectomy. It clarifies that this dramatic choice can be made only in case a woman's life is put in danger by some kind of disease: in this specific case, the prisoner needs to receive counseling from other independent doctors before the surgery.

The law will be effective since January 1st 2015: this is a big success for *Justice Now*, that has for long been engaged in this fight. As a matter of fact, in the last eight years they have tried to bring this issue to everyone's attention through organized workshops, emails, letters, tweets and Facebook posts. They created a big network and after a lot of work they finally succeeded.

According to the investigation led by CIR¹⁴⁸, from 2006 to 2013 tubal ligations has been performed to 144 female without the necessary consent: the procedure has been done to 50 white women, 53 Latino women, 35 black women and 6 women, who has been labeled as «others».

After this important achievement, the co-founder of *Justice Now*, Cynthia Chandler, affirms that they are now planning to educate prisoners on their rights, to monitor if and how the law will be respected and to support women who have been sterilized before the enactment of this law.

As she says, the journey to make female imprisonment as more respectable as possible is still long and difficult, but things are finally starting to change for the better.

4.2.3 Women's cruel prison reality: mental, physical and sexual abuse

Women's vulnerability occupies a central position within the topic of abuse: many female detainees have been abused multiple times during their childhood. They are scarred for life, but the situation goes worse when they enter prison: as a matter of fact, they are usually abused by prison guards or by other staff members, who take advantage of their «inferior» position within the prison's hierarchy. In order to stop this injustice, prisons should invest their little resources to protect female inmates. Unfortunately, they don't.

According to the International Law, the rape is an act of torture and all forms of sexual abuse are considered violations of the treatment of prisoners.

¹⁴⁸ <https://beta.cironline.org/reports/california-bans-coerced-sterilization-of-female-inmates/>

The rules regulating the treatment of prisoners have been settled by the *Standard Minimum Rules for the Treatment of Prisoners*, adopted in 1955 by the *First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners*. It has been later approved also by the Economic and Social Council with the resolution 663C (XXIV) both in 1957 and in 1977. However, even if the rules are not binding, they set out international standards for the treatment of prisoners based on both consensus and practice. These rules are founded on the principle of non-discrimination; with regard to women prisoners, Rule 8(a) and Rule 53 establish that men and women must be detained in separate institutions and that male staff member should not work in female prisons, because women should be attended and supervised only by women officers.

The *Standard Minimum Rules for the Treatment of Prisoners* has been reinforced by the *Basic Principle for the Treatment of Prisoners*, adopted by the General Assembly in its resolution 45/111 in 1996. The basic foundation of those principles lies on the belief that «all prisoners shall be treated with respect due to their inherent dignity and value as human beings»¹⁴⁹; besides, all prisoners retain their fundamental rights under the *Universal Declaration of Human Rights* as well as other rights contained in international conventions and declarations. Moreover, the U.S. has also ratified two very important agreement, such as the *Convention against the Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* and the *International Covenant on Civil and Political Rights*; besides, the U.S. constitution as well contains the *Eight* and *Fourth Amendment* which both protect prisoners' rights.

Back in the 1990's a lawyer from Sri Lanka, Radhika Coomaraswamy, led a special investigation about violence against women: she visited both state and federal prisons in six U.S. states and the district of Colombia, in order to take testimonies from female detainees and prison staff members. Her final report has highlighted that the majority of women prisoners are poor and black and the main reason behind their incarceration is due to drug trafficking. Besides, she also describes the way they are kept in prison as for example the use of shackles on refugees and asylum seekers at the airport, as well as on women during labor.

Ms. Coomaraswamy's investigation has contributed to the enactment the *United Nations Human Rights Commission* in 1999, which include a *Special Rapporteur* on violence against women in U.S. state and federal prisons. In fact, the UN commission has decided to create a number of special

¹⁴⁹ United Nation Report on Violence against Women in U.S, Prisons, in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) "*Interrupted Life-Experiences of Incarcerated Women in the United States*". University of California Press, Berkeley and Los Angeles, p. 47.

rapporteurs, whose work is important since it focuses on specific human rights violations: the report about violence against women is one of the great variety of reports that have been collected thanks to the decision of the commission itself. The final purpose is to stop violation in order to make the world a better place to live in. Ms. Coomaraswamy's report calls for minimum standards of treatment to conform with U.S. obligations under international human right treaties.

Ms. Coomaraswamy's report does focus in multiple aspect of women's violation that have been experienced by female detainees in U.S. prisons, in particular in the Minnesota and Michigan's ones.

The report has been divided in different sections, each one focusing on a single aspect related to the violation of women's rights. Those aspect are: the use of instruments of restraints, sexual misconduct, health care, parenting, grievance procedures, impunity and correctional officers, private industry, privatization of prisons. She concludes the report with a list of recommendations at both federal and state level, since U.S. states benefit from an autonomy that makes them responsible for their own criminal laws, prisons and prisoners legislations.

Speaking of sex in prison, the report stresses that sexual misconduct covers a wide range of abusive sexual practices: according to her investigation, rape isn't quite popular as sex for trade actually is. The problem is that sexual misconduct will always be a serious problem in U.S. if they continue to allow the presence of male guards in female facilities: in fact, the presence of men creates a situation in which sexual misconduct is more pervasive than if women were supervised by female guards. Correction officers argue that the presence of men in female facilities is necessary because prison should be considered as a microcosm society where men and women live together.

Since 2009 the mandate to write a new Special Rapporteur on violence against women has been given to Rashida Manjoo from South Africa.

In 2003, the U.S. Congress unanimously voted the enactment of a law, the *Prison Rape Elimination Act* (PREA), that decrees «zero tolerance» for rape in custodial settings, requires data about the incidence of rape in each state, and establishes a National Prison Rape Elimination Commission. In turn, the commission needs to develop national standards, besides each issue must be presented with a report which indicates causes and consequences of prison rape. In order to push facilities to prevent rape under their surveillance, the law offers incentives as well as disincentives for states, correctional agencies and correctional accrediting organizations, that fail to follow what stated by the law itself. In fact, the Bureau of Justice Statistics (BJS) requests to correctional agencies to report the number of instances of sexual violence occurred in their facilities. Then, the three states

with the highest numbers and the two states with the lowest rates must appear in front of the Review Panel on Prison, where they explain their rankings. If states fail to pursue the law standards, they will lose 5% of federal funds for criminal justice activities. On the contrary those, who show to have reduced, prevented or eliminated, will receive great assistance.

According to the PREA's text, the definition of rape is pretty accurate: as a matter of fact, «it recognizes that sexual assaults can be accomplished not only by actual force, but also through fear and intimidation»¹⁵⁰. On the other hand, PREA has given to BJS the possibility to widen the definition of rape in order to make easier the statistical analysis and reviewing about the prevalence of rape within prison walls. For this reason the legal definition does include: nonconsensual acts, abusive sexual contact, staff sexual misconduct and staff sexual harassment. The data collected by the BJS come from a great variety of different sources, such as records, reviews of correctional agencies, victim self-reports, surveys of former or soon-to be released detainees. On the other hand, human rights organizations are worried that correctional authorities will resort to PREA for every sexual expression, as for consensual sex between inmates. So, basically they fear that correctional authorities might use PREA for sanction inmates for sexual expression as a form of retaliation against them, even if they do not deserve it.

Generally speaking, sex in prison is a very discussed matter: most advocates and correctional authorities agree that consensual sex between staff and convicts should be avoided, since it could jeopardize prison safety and security. Besides, it can also be the main vehicle of transmission of HIV/AIDS among prisoners: in fact, according to the statistics the rate of infection for hepatitis and HIV is three times higher among convicts than in the outside population, in particular it's greater among female detainees. For example there are many reports of escapes, deaths and other outcomes due to staff relationship that have put at risk both staff and inmates' safety. Sex in prison is not easily to define, as it has multiple shades of meaning in respect to the different situation it can occur. Sex can be made for pleasure only with visitors, other prisoners and staff, even if the latter case it's highly prohibited by the majority of state policies for the reasons above. Another example of sex is the one performed for trade: as a matter of fact, prisoners sometimes use sex in order to gain access to items that they are not allowed to have, like cigarettes, chips or a phone call. In this specific case, sex is a commodity that should be forbidden as well, as it puts safety and security in

¹⁵⁰ Smith, B. V. (2010). "Analyzing Prison Sex-Reconciling Self-Expression with Safety", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*". University of California Press, Berkeley and Los Angeles, p. 113.

danger. Once it's prohibited, sex becomes a new way to express freedom by inmates, that they usually associated with transgression. As for usual, the prohibition of doing something leads people do it anyway, because breaking the rules is always appealing. For example, sex can become a detainee's tool to impede, control, embarrass or harm those who are in control within prisons' walls. So, having a sexual affair with staff members is perceived by convicts as a symbol of power. Although sex is usually associated with pleasure, there are cases in which it is only a means to procreate. As previously stated, the majority of female inmates are incarcerated during their fertile period, so it can happen that they want to conceive while in jails because it will be too late at the time of their release. Despite the many difficulties prison can harm female inmates, love can arise between staff members and prisoners or between prisoners as well: as a matter of fact, the desire to establish meaningful and caring relationships can motivated by the lack of love they experience during serving their sentences.

If human right organizations fight to contain the possible PREA sanctions as a form of retaliation, from the legal point of view little has been done about sex: in fact, court decisions have set parameters for sexual expression linked to sterilization and abortion. Because of the lack of legal materials, U.S. courts have turned to international human rights law in order to solve litigations arouse from this controversial issue. For example, two sources they rely on is the *International Covenant on Civil and Political Rights* (ICCPR) and the *United Nations Conventions against Torture* (CAT), both ratified by the United States, that stand against prison rape as a violation of the human right: according to the Article 10 of the ICCPR, «all persons deprived of their liberties shall be treated with humanity and with respect for the inherent dignity of the human person»¹⁵¹. Rape, by its own definition, implies suffer and pain and it constitutes torture when it's used to coerce and to intimidate someone. Humanity is not include in rape or abuse: women prisoners are still human who must be treated fairly despite their misconduct. Although the United States have a long history of exceptionalism toward the International Law, it has been influenced by the practice of other countries when it comes to solve national problem that are not include into its jurisprudence, such as the sexual expression of prisoners.

In 2006 the Federal Bureau of Prison (BOP) has classified prison rape as a felony and the Department of Justice (DOJ) has finally started to pay some attention to this particular and serious issue. As a matter of fact, it released a document which reports how sexual abuse is a widespread phenomenon within U.S. prisons: female detainees are very often abused by prison employees, but

¹⁵¹ Ivi, p. 118.

only 37% of them pay for what they did. Since sexual contact has been criminalized as a felony, guards can now face up to five years in prison¹⁵². On the contrary, in the rest of the Western world female detainees are supervised only or primarily by women, because all states follow the existing international standards. Due to U.S. exceptionalism in regard to international treaties, more than 6 thousand inmates file reports of sexual violence: they are not only sexually abused, but also visually and verbally by guards all over the country. The Bureau of Justice Statistics has observed that the higher rate of sexual abuse and violence is recorded in state-run juvenile facilities, where its rate is ten times higher than the one recorded in adult facilities¹⁵³. Today, there are about 95 thousand juveniles in custody in the U.S., where girls constitute 30% of the total population: usually they come from low-income environment and they have been numerously sexually, physically and emotionally abused. In September 2006, the Human Right Watch and the *American Civil Liberties Union* published a report that exposed the depth of abuse and neglect suffered by girls in New York juvenile facilities: the great majority of them are African-American or Latinas. This report vividly exposes what happens to them while in custody: besides violent restraints and punishments that cause them abrasions, cuts, bruises and broken bones, girls were also subjected to humiliating strip searches and verbal harassment¹⁵⁴. Over the years, more lawsuits and investigations have aroused in different states, such as Alabama, Texas and Colorado. Unfortunately, only one in four women reports having been sexually abused while under custody because their fear of retaliation. Sexual abuse is a common phenomenon in adult detentions centers, where half of female prisoners report physical and/or sexual abuse during their life: as a matter of fact, 57% of women in state prisons and 40% in federal ones have reported prior abuse¹⁵⁵. Rape does provoke a great variety of effects on women, who are internally and externally scarred, but it also has a devastating impact on women's likelihood of achieving a healthy and successfully reentry into society once they will be released.

¹⁵² Office of the Inspector General and the Department of Justice (2005). "Deterring Staff Sexual Abuse of Federal Inmates", cited in Talvi, S.J.A. (2007). "Chapter 3: Abuse behind walls", in *Women behind bars: The Crisis of Women in the U.S. Prison System*". Seal Press, Emeryville, California. Kindle edition.

¹⁵³ Beck, A. J., Harrison, P. M. (eds.) (2006). "Sexual Violence Reported by Correctional Authorities", in Talvi, S.J.A. (2007). "Chapter 3: Abuse behind walls", in *Women behind bars: The Crisis of Women in the U.S. Prison System*". Seal Press, Emeryville, California. Kindle edition.

¹⁵⁴ Human Right Watch, American Civil Liberties Union (2006), "Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls", in Talvi, S.J.A. (2007). "Chapter 3: Abuse behind walls", in *Women behind bars: The Crisis of Women in the U.S. Prison System*". Seal Press, Emeryville, California. Kindle edition.

¹⁵⁵ United States General Accounting Office (1999). "Women in Prison: Issue and Challenges Confronting U.S. Correctional Systems", in Talvi, S.J.A. (2007). "Chapter 3: Abuse behind walls", in *Women behind bars: The Crisis of Women in the U.S. Prison System*". Seal Press, Emeryville, California. Kindle edition.

Among the many testimonies of prison rape, I chose to cite Maria Taylor¹⁵⁶: she was imprisoned for a drug felony that turned out to be actually an homicide. Maria is a half-Latino girl, who grew up in Pittsburgh with her Mexican mother and brother. Her childhood wasn't very happy: as a matter of fact, at ten years-old she started to be abused by her landlord, that progressively turned to a full-on rape. Nobody notices it, so Maria decided to confess it to her mother, who at first doubted her own daughter by asking her if she was sure. Her mother, after having discussed with other components of the family, considered it more as an accident due to their landlord being drunk. Then no-one had ever brought back the topic: maybe her mother's behavior could be motivated by her fear to lose their home if they would have accused the landlord of rape. At least this was Maria's thought.

The rape continued during the years: when she was twelve, she got pregnant by their landlord but her mother convinced her to have an abortion and they both decided to make up a story in order to not expose the reality. Despite what she went through, Maria does not hate her mother for the way she handled things, because she thinks that she did the best she could do. Maria motivated her mother's approach with the fact that she did not have had any education or support; besides, her mother was raised to believe that these things just happen to girls.

Maria started to work in a clothing store in the mall: thanks to this work, things started to get better, she was even promoted to assistant manager. But one day people started to look at her differently: she was falsely accused of thief because some money were missing from the cash register. Although she did not lose the job, everybody thought that she was responsible only because her family was poor. She was really upset but she did not have any proof to prove they're wrong. When she was seventeen, she decided to drop school even if she really had very good grades. This decision would completely changed her life: she started to hang with a new group of girls that led her into the drug trafficking. As a matter of fact, she became involved in a marijuana deal: at first she didn't realize the trouble she was going to be tangled with. She had to drive her cousin and some friends to a drug deal in exchange of some extra money: her task was simple, as she had to drop them off, drive around the block and then come back to pick them up once the deal was over. But something were wrong: she heard gun-shots and then picked them up, without knowing that the deal had turned into armed robbery and murder. She was arrested and later convicted of second-degree murder, assault with the intent to harm and armed robbery. She was sentenced with twenty-five years of prison, because all participants of a felony in which a death occur are criminally responsible, even if

¹⁵⁶ Levi, R., Waldman, A. (eds.) (2011). "Maria Taylor", in "*Inside this place, not of it. Narratives from women's prisons*". McSweeney's Books, San Francisco.

participants do not know or intend to harm or kill someone. She was moved into a prison, where she spent in quarantine with other girls before being put with the general population. After two years, she was transferred to another facility: it looked better than the other one, but Maria immediately felt that something was different, in a negative way. Prisoner can spend time outdoor walking and smoking along with guards; she didn't feel comfortable in this situation.

[...]There was this one officer who would tell me I was pretty, or that I had nice legs. I remember feeling like I liked him telling me these things, but that I felt uncomfortable when he'd do or say dirty things, like when he would give me shakedowns, he'd cup my breasts or say things to my butt, like, "I'd like to lick that butt." But then if he told me I was pretty, of course I liked to hear that. You know, I like to hear nice things about myself.[...]

Although flattering this might have seemed, unfortunately things escalated for the worse: as the matter of fact, the officer started to become familiar with her in an excessive way.

[...]He would come in my unit, into my room, and just stand there and watch me. I wasn't doing anything in particular; I remember many times he would just stand there and watch me, and there was nothing I could do about it. Other times he would shake me down, and then he would tell me that he liked doing it.[...] When he worked in the unit, he would call me to the desk in front of people. That was the most humiliating part, him making me stand at the desk and talk to him.[...]

Because of this «special» attention he had for her, other detainees started say bad things about her because it seemed that she let him doing and saying these things.

[...]I didn't really want him to touch me. I didn't really want to be around him. If it were my choice, if I had anything to say about it, I would not be around that man. But there was no place to go to report him, because what he was doing to me, I had seen it happen to other women, and nobody had helped them, so why would I think anyone would help me?[...]

Unfortunately, things became worse than what she was used to. Verbal abuse escalated in rape.

[...]He grabbed me out of my room and took me into the bathroom right next to my room, and he started putting himself on me and pulling my jogging pants down. He had me against the sink, and he put himself in me. The other officer was standing outside of the bathroom, watching. That was the first time he raped me. At the time I didn't even know that what he'd done was rape, because I'd always had a thought that rape was when someone puts a gun to your head. It was just like when I was a child being abused. The difference was that when I was a child, those things were done in private, and even if people did know, it wasn't

something that was talked about. But in prison, nothing is private, and so people talk about it.[...]

She did not report it to the prison officer because prison officials wouldn't do anything other than retaliate against her. So, she had to silently bear this situation until the Department of Correction fired him. Despite he was accused of sexual harassment and assaults, that he inflicted also to many other inmates, he was actually fired because he had missed too many days at work. Maria would later learned that the Department had received a lot complaints against him, but nobody did nothing to stop from working there.

Once his was out, the nightmare was not over: many other officers molested her, since they felt as they could anything to her because of her past with the former officer. They made her stay in prison impossible, but no-one had never raped her like she was used to.

[...]When you're a prisoner in that environment, you don't feel like you have the power to say no. Your life, your every move, is controlled by these people. When you eat, when you sleep, everything is known. At the beginning of my prison term, I didn't feel like a human being. I didn't feel like I had any rights. I didn't feel like anyone cared. I never felt like I had the power to say no, until I met my lawyer. [...]

Ten years after being imprisoned, Maria had finally the opportunity to meet a lawyer who helped her to end this nightmare. Along with a group of abused women, she brought a suit against the prison for all sexual abuse she had suffered; she was ready to fight, despite she knew the consequences of this act. Little by little, she was isolated from the rest and became a new target: after having spoken to the media, no staff would talk to her. Because of the many reports the facilities received, they decided to hire female guards. Some of them were neutral to the subject, but other were manipulated or persuade by older staff members to retaliate against women involved in the lawsuits. Maria did not care, she was proud for what she was firmly standing against.

[...]I felt very proud to be in this group of women who had gone through similar things and were standing up against these people who had abused their power. It made me feel strong and powerful. It also helped me to deal with my demons.[...]

After thirteen years in prison, she petitioned to be released earlier by claiming that she was sentenced to twenty-five to fifty years although she had no prior criminal record. Because of this move, she feared that retaliation against her would become worse. In order to avoid it, she was moved to under protective custody and then to a different unit until her final release.

Once out, Maria has enrolled at the University of Pittsburgh and has created a program in support of former prisoners in order to help them find their way back into society, as for example how to write a résumé or to teach them some interview techniques because it's not easy to find job with a criminal record.

4.2.4 Destination United States: asylum seekers and political refugees

In 1965, the American Congress enacted an amendment to the «Immigration and Naturalization Act» (1952), which established that «a refugee is someone who had to flee his/her country of origin because of political persecution»¹⁵⁷. This definition is very important because it finally distinguished refugees from «aliens», who are those who entered illegally in the country as they do not benefit from such a right.

In the 1960s, the U.S. welcomed 600,000 Cubans who got permission to leave from Fidel Castro and later, in the 1980s, other 125,000 Cubans landed in South Florida. They all received a great treatment while emigrated Haitians, who reached the country at the same time of Cubans, did not. In fact, they were kept in detentions for months and sometimes years; some of them were even deported back in Haiti where they risked to be sentenced to death or imprisonment at least.

In 1992, President George H. W. Bush issued an *Executive Order* in order to repatriate all Haitians blocked at sea outside US territorial waters by the U.S. Coast Guard, without even controlling if among them there were actual refugees. The U.S. government motivated this decision by saying that, even if some Haitians deserved political asylum, the majority would come to U.S. only to seek better economic opportunities. Despite all attempts to block illegal emigration, the flow never stops: even today, Mexicans and Haitians cross the border with the hope to not be intercepted by Customs. Although U.S. strict policies, they usually succeed in entering in the country; the government is fully aware of that and call them «aliens». One of the main reason behind America's closure is due to the illegal trafficking (drugs, sex slavery, human organs, weapons) connected to migration: for example, the U.S. border with Mexico is highly controlled because most of the drugs entering in the country comes from there.

Even though they haven't committed any crime, asylum seekers are detained by U.S. Citizenship and Immigration Services in the Department of Homeland Security in immigration processing

¹⁵⁷ Bastien, M., Telford, R. (eds.) (2010). "Detention of Women Asylum Seekers in the United States: A Disgrace", in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) "*Interrupted Life-Experiences of Incarcerated Women in the United States*". University of California Press, Berkeley and Los Angeles, p. 287.

centers run by private corporations. This is the consequence related to the passage in 1996 of the «Illegal Immigration Reform and Immigration Responsibility Act» (IIRIRA): according to this act, U.S. Congress called for an instant implementation of expedited removal, which is a provision giving full authority to detain illegal refugees. If a refugee does not prove to the immigration officer a bona fide fear of persecution, he/she is immediately deported back to their home country without a hearing or an appeal in front of an immigration judge. On the contrary, if a refugee is able to present an asylum request by showing an actual fear of persecution, he/she will be allowed to stay and to present the case in front of a court of law. Unfortunately, under IIRIRA the whole process procedures usually takes a very long time, so in the meanwhile they are detained throughout the entire period.

4.2.4.1 Female asylum seekers and political refugees

The United States is one of the main destination of women escaping from their countries: as a matter of fact, many of 135,000 to 150,000 refugees are women who were forced to leave their home because of war, political instability; social conflicts that are linked to their gender is another reason as well: they risk state repression, political rapes, sexual slavery, prostitution and planned or forced marriage. Once they enter in the U.S., they do not receive the protection they actually need after a long and difficult journey, on the contrary they are put in prison where are frequently physically and mentally abused.

Because of great flows of people towards the country, U.S. started to build new prisons only to contract them out to private business nationwide, in order to detain undocumented immigrants and refugees. Privately owned county jails and detention centers facilities do also receive millions of dollars from the federal government for holding them throughout the process period. Despite this big flow of money, the prison living condition are still shameful. In fact, those infrastructures do not treat women in a humane and dignified way: on the contrary, they lack of adequate health care, telephones, education, recreation and a decent law library. Besides, women are denied a balanced diet, the ability to practice their own religion or to contact their family or their lawyers.

Many of those women come from poor countries, in particular from Latin America, Philippines, Caribbean and Asia: they hope to rely on family reunification provisions in immigration legislation or come on temporary work visas but those, who can are not qualified to have access to these possibilities, are forced to rely on migrant traffickers. Basically, they became to be known as «criminal aliens». Undocumented female immigrants try to live their life as normal as they can, but

they have to be very careful to not be intercepted by the numerous raids, that they organize in order to get rid of «aliens». Sometimes they succeed in living in the U.S. for many years: they work, pay taxes and contribute to the nation economy. They also create a family there, but once caught they are not able to show immigration paper as they do not have it. During raids, women usually feel humiliated for being hauled off in front of their children and for being locked up in jails.

The state of Florida is known to have ones of the worst immigrants and refugees detention centers of the country: one of them is the Turner Gilford Knight Center (TGK), which is a maximum-security prison that opened in 1989 to relieve the jail over-crowding in Miami-Dade County. It stipulated a contract with the Department of Homeland Security to house female asylum seekers. They are treated as any other female prisoners: the only difference is that they did not commit any crime. As a matter of fact they are photographed, fingerprinted, and given an uniform just like other criminal detainees. Once in jails, they face a lot of difficulties related to the language barriers, lack of access to legal advocates and telephones, inadequate room for meeting with their lawyers, lack of activities and medical care, the impossibility to contact their families abroad and the lack of access to sanitary services and personal-hygiene items.

As asylum seekers they have the right to private legal visitation, but in TGK it's quite impossible for them to have guaranteed such a right. Besides, there is no confidentiality since their meetings usually take place in busy hallways used by guards and other personnel to enter and exit the building. Family visits are quite difficult, as well: during noncontact visits, they are divided by a Plexiglas window with small holes that allow communication between them. Because of those holes, both women and visitors have to bend and to twist their heads in order to hear each other. According to female asylum seekers held in TGK, this is a form of psychological abuse.

But difficulties do not stop there: in fact, the majority of women prefer to stay inside during the recreation hour and to lose the possibility of some fresh air and sun only because they have to be strip searched when they come back inside.

Women feel helpless and hopeless inside there: they cannot do anything all day, as they do not have access to books, newspapers or to any recreation activities.

The lack of medical care is another serious problem they face in TGK: despite the complaints of human rights groups - such as the *Florida Immigrant Advocacy Center* (FIAC) - and of their lawyers, quality of medical attention they received is still insufficient, as they are often ignored for days. Women do often receive inadequate medications and they are also shackled or handcuffed to bed during their stay into the infirmary. Basically, they are treated as any other criminals.

Unfortunately, many women are also victims of abuse and racial insults by guards. Sometimes they are punished and locked up in isolated cells when they repeatedly ask for some sanitary items or when they do not understand what guards say due to language barriers.

Life in TGK is only an example of what women asylum seekers have to bear once they enter in the system. In fact, there are many other detention centers that offer the same treatments all over the country. Women accept to lose their dignity only because the reality in their home country is worse than what they experience there.

Because of Mexico's notorious trafficking business, for many years the Latinas have been the ones mainly affected by U.S. strict policies against «aliens», but since 9/11 the attention moved towards Muslims women, who started to be seen as the primarily target for the fear of new terrorists attacks. Nevertheless, the number of detained Muslim women has remained noticeably low.

Leticia M. Saucedo¹⁵⁸ reports the story of a Chinese girl, who after a long stressful journey has finally obtain the asylum seekers' right to stay in the United States. The hostile attitudes of the U.S. immigration system encourages the prosecution of immigrants, rather than determination of asylee status. The story of Mae is only an example of what women have to bear once they are coerced into human trafficking for purpose of involuntarily labor or/and sexual servitude.

Mae was eighteen-years old when she flee China. She comes from a very poor and rural area where employment was scarce and salaries were very low; her father had physically and emotionally abused her and her mother. Her father had no consideration of her: he used to call her stupid and he even sold her, his only child, to an older man from the city because he was only interested to improve his low financial condition. Mae tried to escape from her home, she did not want the man she was supposed to marry but unfortunately she failed. Her life was turning into a nightmare but her mother didn't let it to happen: with some help from her brother, she gave Mae the possibility to flee China towards an unknown destination. As a matter of fact, Mae's mother contacted the «snakeheads», or traffickers, who arranged her daughter's trip. Mae never learned how much this had cost to her mother, but she was happy to escape from her father and soon-to be husband.

[...]Mae traveled in fear of both the traffickers and the unknown every step of her trip.

Following the instructions of her contacts, Mae went from Hong Kong to Mandalay to Tokyo and finally to the United States. She did not know where she was going until the last

¹⁵⁸ Saucedo, L. M. (2010). "Victim or Criminal: The Experience of a Human-Trafficking Survivor in the U.S. Immigration System", in in Solinger, R., Johnson, P. C., Raimon, M. L., Reynolds, T., Tapia, R.C. (eds.) *Interrupted Life-Experiences of Incarcerated Women in the United States*. University of California Press, Berkeley and Los Angeles.

minute. At one point, the «snakeheads» took Mae's passport and gave her a passport belonging to a Singapore citizen, because Singaporeans do not require visas to enter the United States. They also gave her the phone number of her «snakehead» contact in the United States.[...]

Unfortunately, once in the airport U.S. Customs refused to let her in for passport fraud. Nobody told her to get rid of the passport before she got off the plane. Therefore, she was arrested and put in jail: she was able to call her «snakehead» contact for help, but the only way out was to pay a «snakehead» lawyer. She did not have the money, so she was given a federal public defender.

She was charged with a felony for attempting to enter with a false passport; after one year under custody, she pled guilty for passport fraud, as she did not have any choice.

Mae's journey inside U.S. immigration system was long and difficult: four months after her guilty plea, she was finally able to open practice in order to obtain the asylum seekers' status.

At the time of her arrival in the United States, Mae spoke no English. At first, the only way she could speak with her lawyers was through an interpreter. They work hard to let her win the case, by preparing all the required documentations for her asylum and trafficking applications.

She spend a really long time in jail: despite the difficulties related to live there, she was able little by little to learn English thanks to a dictionary a former inmates gave her before she was moved to another facility. She studied it every day and she even took English classes. She was determined to learn the language with the hope to have a future in the country.

This long period of uncertainty made her depressed and tired: she barely spoke with her mother in China, as the calling cards are really expensive. At least, she was able to contact her cousin and friends by letter, that told her how her life would be once she would be finally released. They told Mae that she would be living with other Chinese girls and she would work in a Chinese restaurant that would exploit her as her salary would be very low. Mae did not care, because she would do anything rather than returning in China where the slavery of a forced marriage was her only option.

After one year and a half in prison, Mae presented her story to an immigration court that finally granted her asylum seekers' status. The reason behind this decision was due to two factors: first, because of her fear of further persecution for resisting a forced marriage; second, because the court recognized that she was trafficked into the country.

Once she put all this experience behind her back, Mae moved to New York where she started to work in a restaurant. Mae is now happy with a new life ahead of her. Nevertheless despite her legal status, in all likelihood she is continuing to pay off the enormous debt to the traffickers because she

knows that her mother would be kill unless she pay. Unfortunately, it's very difficult for the FBI to stop human trafficking, because «snakeheads» are really smart as they do not leave any marks that could lead police to them: for example, as Mae story has revealed, they made sure she did not have sufficient details to give prosecutors in case they would decide to use her information for a successful trafficking conviction.

CHAPTER FIVE - A powerful voice, Angela Davis

5.1 The life of Angela Davis

I choose to conclude my thesis by citing the life and work of Angela Davis, despite the fact that I specifically deal with female imprisonment in the United States. Among many scholars that have discussed about U.S. prison system in general, I prefer to analyze Angela Davis' work because she's a woman, a black woman, who has taken her chances and has fought against the complex and long-lasting US prison system by raising her voice against it, besides her gender and color.

Every year Angela Davis is invited to lecture all around the world, as she is considered one of the top five most important black woman in American history.

On May 2013 Angela Davis has been invited to the annual public lecture in Feminist Theory Series, held by the University of Chicago: this event is the result of the collaboration between the *Center for the Study of Race, Politics, and Culture* (CSRPC) and the *Center for the Study of Gender and Sexuality* (CSGS). As affirmed during her introduction, «through her activism and scholarship over many decades, Angela Davis has been deeply involved in movement for social justice all around the world. Her work as an educator, both at university level and in the large public sphere, has always emphasized the importance of building communities of struggle for economic, racial and gender and sexual justice»¹⁵⁹.

Angela Davis is a versatile woman: she is a scholar, a political activist and a civil rights advocate. She is mostly known as the international member of the black liberation movement during the 1960s and 1970s and as a major feminist scholar who has written ones of the most innovating and enduring texts of the feminist thinking¹⁶⁰.

Angela Yvonne Davis¹⁶¹ was born in Birmingham, Alabama, on January 1944: she grown up in a well-off family that taught her the importance for whites and blacks to get along in the society, despite she lived during the segregation era. Both her parents were highly-educated: during college, her mother became part of the antiracism movement and her involvement in the fight against segregations was inherited later by her eldest daughter Angela. Besides, her parents were both member of the *National Association for the Advancement of Colored People* (NAACP)¹⁶², which

¹⁵⁹ <https://www.youtube.com/watch?v=IKb99K3AEaA>

¹⁶⁰ Davis, A. Y., Mendieta, E. (eds.) (2005). "Introduction", in *Abolition Democracy: beyond empire, prisons, and torture - Interview with Angela Y. Davis*". Seven Stories Press, New York. Kindle edition.

¹⁶¹ http://www.encyclopedia.com/topic/Angela_Yvonne_Davis.aspx

¹⁶² <http://www.naacp.org/pages/our-mission>

aims to guarantee political, educational, economic and social equality and to eliminate race-based discrimination.

Angela attended blacks-only schools and theatres: life was not easy for her, as she had to respect the limitations due to her skin color.

Since her teenagers years, she got interested into blacks' situations and she started to study important black historical and contemporary figures, such as Frederick Douglass, Sojourner Truth and Harriet Tubman. At the time, the civil right movement finally reached the city of Birmingham.

Her will to live far from her home city got her into an experimental program originated by the *American Friends Service Committee* (AFSC), which allowed Southern black students to attend integrated high school in the North. In fact, she went to Elisabeth Irwin High School in Greenwich Village (New York): it is a former public school, where she got the opportunity to learn about Socialism and Communism. She was an avid student, she read a lot of books as for example the *Communist Manifesto* by Karl Marx: just during those years, she became involved with the Communist Party as she joined a Marxist-Leninist youth organization.

At the age of seventeen, Angela enrolled at Brandeis University (Massachusetts): she was one of the only three black students and she found very difficult to establish a good connection with others.

During her summer vacation, she went to Finland to attend a convention of communist youth. This was an amazing experience for Angela, where she was able to meet people coming from all over the world. Thanks to this overwhelming encounter, she understood the importance of abolishing cultural barriers, as the language one. Nevertheless, while there she discovered that the U.S. central intelligence agency had put some of its agents throughout the gathering to monitor the situation: an FBI investigator questioned Angela about her being part of the communist meeting.

Once back in the United States, she decided to change her university path by deciding to major in French at Brandeis University (Massachusetts): she participated to the Hamilton College Junior Year in France Program: while in France, she was also able to study contemporary French literature at Sorbonne University. Her formation years were full of different experiences that forged her in the woman she was turning into. Because of her interest in philosophy, she had the opportunity to study with Herbert Marcuse, a very well-known German philosopher, that at the time was teaching at Brandeis University. Her passion towards this subject allowed her to obtain a two-years scholarship to study philosophy in Frankfurt, where she was able to enter in contact with the work by some of the most important philosophers of history, such as Kant, Hegel and Marx.

During her absence from home, things were finally changing: little by little America saw the emergence of the black liberation and black power movements. She came back home with the purpose of joining both of them.

She moved to Los Angeles, where she worked with different academic and community organizations that aimed to create a coalition to address problems to the African-American community: one of those groups is the well-known *Black Panther Political Party*. Her active role in this kind of fight was highly criticized by black male activists as they believed that women should not be leaders, on the contrary they have to raise and educate children and support men, who are the ones that could lead the fight for black liberation.

In 1968 Angela first joined *Black Panther Political Party* that later turned to be the *Student Nonviolent Coordinating Committee* (SNCC): after a short period of time, she left the group in order to join the *Che-Lumumba Club*, which is the black cell of the *Communist Party* located in Los Angeles. In the following year, she spent a month in Cuba as being part of a delegation of the *Communist Party*: this was an incredible experience, because there she was able to witness how racism had been slowly defeated. For example, she saw blacks who occupied leadership roles all over the country: this kind of observation made her think that the socialist system, as developed by Fidel Castro, could be the best solution for the fight against racism.

Once she came back in U.S., she found out that many newspapers accused her of illegal activities, such as gunrunning, only because she was member of the *Communist Party*. In that period the California governor, Ronald Reagan, enacted a decree which prohibited the University of California to hire communists. Despite this outrageous ordinance, Angela Davis continued to proudly affirm her membership to the party; besides, she got an injunction that impeded university's regents to fire her, as she worked at UCLA as assistant professor in the philosophy department. Because she stood still in her belief, she was threatened in multiple ways: menacing phone calls, hate mails and car bomb threats. Reagan's decree was proclaimed to be unconstitutional by the court itself: nevertheless, in 1970 the regents announced that Angela Davis would not be confirmed as assistant professor for the following academic year, because they accused her to hold inappropriate political speeches outside classrooms.

Although her academic career was put on hold, her involvement in the fight against racism still continued even stronger than before: as a matter of fact, she became part of a movement that aimed to free three black detainees from Soledad Prison in California. They were sentenced for having murdered a prison guard, who unintentionally came across with an insurrection of black prisoners

due to the killing of three black inmates by another guard. They all declared their innocence, so Davis decided to support them in the fight against the unfair and racist California prison system. She even started a personal correspondence with one of the prisoner and she also attended all the court hearings throughout the case. The situation escalated for the worse when another supporter, the brother of one of the three accused, tried to free them by using guns registered to Davis: four people were killed, even the court judge and the brother himself.

Despite Angela Davis' extraneousness, she was accused for kidnapping, conspiracy and murder which at the time used to be punishable by death in the state of California. Angela escaped in order to not be arrested, she fled under false identity all over the country, from Los Angeles to Las Vegas, Chicago Detroit, Miami and New York. In October 1970, she was caught in New York city by the FBI, which had placed her on its ten most wanted list: after two months in jail, she was moved to California where she was locked up for another 14 months. Her experience in prison was at least very important, because she was able to witness and to experience the black struggle within the U.S. prison system. In June 1972 she was finally released on bail, as the California Supreme Court decreed the abolishment of the death penalty in *People v. Anderson's* trial (6 Cal. 3d 628, 100 Cal. Rptr. 152, 493 P. 2d 880).

Her academic career was restored as the San Francisco State University decided to hire her; she even continued to be member of the *Communist Party*. Her active role made her win the Lenin Peace Prize in 1979 and she run twice for the American vice president position within the party itself. Besides her involvement in the party, she is also a founder of the *National Alliance against Racist and Political Repression* and she is on the board of the *National Political Congress of Black Women* and of the *National Black Women's Health project*.

Angela Davis conducted extensive researches in numerous issues, related to race, gender and imprisonment: she is the author of nine books, such as *Angela Davis: An Autobiography* (1974), *Women, Race, and Class* (1983), *Women, Culture, and Politics* (1989), and *Blues Legacies and Black Feminism* (1998).

From the 1990s, Davis has started to teach History of Consciousness and Feminist Studies at the University of California, Santa Cruz, that rewarded her as Professor *Emerita* for her great contribution and work. In 1994, she received the distinguished honor of an appointment to the University of California Presidential Chair in African American and Feminist Studies¹⁶³.

¹⁶³ http://feministstudies.ucsc.edu/faculty/singleton.php?singleton=true&cruz_id=aydavis

During the last two decades, she has lectured throughout the world: America, Europe, Africa, Asia, Australia and South America. She mainly discussed about different social problems, and more recently she has become involved in incarceration and in the generalized incrimination of those communities that are most affected by poverty and racial discrimination.

She even focuses on the prison-industrial complex problem: she is one of the founder member of the *Critical Resistance*, which is a national organization dedicated to dismantling of the prison-industrial complex. As a matter of fact, imprisonment has become the only answer to societal problems, and thus the possibility of a prison reform has been weakened by corporations' bigger interest in taking advantage of this situation rather than changing it for the best. Angela Davis's major concern is related to the nowadays tendency to spend a lot of resources for the prison system rather than educational institutions, which are far more important because if they work correctly, they will contribute to lead people toward the right and legal paths of life. Thanks to her great work, the notion of the prison-industrial complex has been popularized, so Americans are now finally acquainted with this serious problem, that has for a long time been hidden from the public eye. Angela Davis' struggle aims to the creation of a world without prisons and to build an abolitionist movement that will help her in changing the current 21th century.

5.2 Angela Davis' thought on the prison-industrial complex

Throughout her life, Angela Davis has dedicated her work to many different issues: among them, there is her fight against prisons, imprisonment and racialized punishment.

Proud member of the *Communist Party*, she believes that «prisons are the universities of revolutionaries»¹⁶⁴, as previously stated by Lenin: as a matter of fact, her own prison experience has marked her work so far. During her time in prison, she wrote some of her earliest works which focus on repression, punishment and racial violence, that are the direct consequences of whites' supremacy that characterized the United States.

At the time of her imprisonment, she was unfairly considered as an enemy of the country after having enter in the FBI ten most wanted list: the *Free Angela Davis* campaign had successfully led to the end of the trail that finally acquitted her.

Two of the major figures that influenced Davis's work are two African-American authors, Frederick Douglass and W.E.B. DuBois: both of them were very important for the formation of Davis' belief. She avidly read all their works around which she then built all her career: both Douglass and

¹⁶⁴ Davis, A. Y., Mendieta, E. (eds.), *supra note* 160.

DuBois stood against discrimination and racism and they fought for blacks' rights at the time of the American Civil War. Although the time had passed by, things were not so different in the 1970s: their words seemed so contemporary that Angela Davis considered them as her mentors. Despite they were both great activists and authors, she criticized part of their work, as she didn't completely agree on some aspects of their societal analysis that sometimes seemed limited and lacked of important observations.

During her first months in jail she read one of DuBois' essay, where he made an extreme critique of the American prison system. Both this essay and her imprisonment experience had pushed her to focus her attention on the prison-industrial complex problem.

According to Angela Davis, one of the functions of the prison-industrial complex is to withhold the vote from black people: as a matter of fact, in many U.S. states black former convicts are commonly disfranchised, no matter the crime they have committed. As recent studies have highlighted, former black detainees are branded for life and it's more difficult for them to entry back into society than white former detainees. Blacks are basically excluded from many different life opportunities: the problem is that this evident difficulty to get back on tracks can lead them back to criminality. This system creates a vicious circle, rather than helps them to get their life back together. To sum up, the system naturalizes the violence that is authorized against racial minorities: blacks are imprisoned because they are criminals, and they are criminals because they are blacks.

She considers prison to be a mechanism of wealth extraction from African-American people: it doesn't only exploit their force labor, but it also appropriates black social wealth. By social wealth, she means the resource that blacks allocate in order to sustain their communities, such as schools, churches, home ownerships. The problem is that social wealth doesn't return to communities, because of the high rate of blacks' imprisonment and the consequent withdrawn through political and economic disfranchisement and exclusion.

Davis repeatedly refers to the racial contract which is the social, political, cultural and economic reality in which being white is more advantageous than being black. Within this contract, the social punishment is acceptable as long as it affects primarily blacks. So, Americans tolerate a highly punitive society because its punishment is performed on blacks, not on them: the reason why they accept it is linked to the way the prison-industrial complex has domesticated the civic imagination of white Americans.

Angela Davis' analysis on the current American prison system continues by affirming that it is a regime based on sexual violence and that it's also highly racialized: in fact, it uses sexualized abuse to obtain and guarantee social control.

The prison-industrial complex has made people think that prisons are both inevitable and desirable: they are an institutionalized regime that only aim to deal with crime. But actually prisons are not the only means to stop criminality and social dysfunctions. Angela Davis hopes for a future without prisons, as she thinks that we can build a world where problems can be solved differently by investing resources on different institutions, rather than prisons and jails.

5.3 An interview with Angela Davis

Abolition Democracy: beyond empire, prisons, and torture - Interview with Angela Y. Davis, published in 2005, is one of her latest works: the title itself is quite meaningful, as it shows her project to abolish those institutions that allow the dominance of one group over others. She believes that an «abolition democracy» is the democracy that it's necessary to enact in order to change the future for the better. But, as long as the prison-industrial complex continues to live, the American democracy will always be a false democracy.

This book is the result of an interview made by Eduardo Mendieta to Angela Davis within the space of eight months: they reminisced all Angela's journey in order to show, through her answers, how Americans are currently experiencing one of the most intense crisis of their political and ethnical identity.

The book opens with an introduction written by the interviewer Eduardo Mendieta, a professor of Story Brook University (New York), where he sums up Angela Davis' career and thought. Then it follows the dialogue between him and Angela Davis, that recalls her journey by discussing different topics, divided into four main areas that make the whole interview a pleasant reading to the bitter end.

The first area of discussion, *Politics and Prisons*, starts by discussing how Angela Davis ended up writing her autobiography back in 1974: as she revealed, at first she hesitated in front of the idea of writing a book about her life, because she was young and because she didn't think that her own accomplishments were worthy enough to be told. But then she changed her mind as she realized that her fame was mainly the result of a massive global movement, that rose for achieving her freedom when she was imprisoned. She didn't want to appear as a typical heroine who wants to

teach a lesson to her readers, on the contrary she opted for a political autobiography that illustrates how her activism «had been shaped by movements and campaigns in communities of struggle»¹⁶⁵.

Prior to her autobiography she wrote a piece while in jail, *Reflections on the Black Woman's Role in the Community of Slaves*¹⁶⁶, where she puts in comparison the institution of prisons with slavery, despite she considered difficult to critically think about prison as a prisoner. Antonio Gramsci's prison notebooks had been her reference frame, despite they have never received the deserved attention by the worldwide readers.

Her career and activism have contributed to write her into the tradition of black slave narratives: she can thank this accomplishment to her philosophy background that allows her to question then and today realities, which cannot be answered by social scientific analysis. So her experience in the Frankfurt School has forged her impressively, as she had the chance to study with three major German philosopher, such as Theodor Adorno, Jürgen Habermas and Max Horkheimer. But it wasn't the only influence she had, as her involvement with the *Communist Party* had had a big role on her formation. Today she is no longer a member of the party, but she continues to share the same ideals: as a matter of fact, her political work would be worthless if she didn't believe that capitalism is the enemy of today society. According to Davis, it must be defeated in order to make space for a socialist future because the triumph of capitalism is only apparent, as its expansion is deepening human exploitation. Through her work, she is trying to create a new version of democracy, as challenging this project might appear, because today capitalist democracy is far from being a real one. She is quite aware that it won't be easy to achieve because capitalism has sneaked into our lives and now we can't live otherwise, since we all have grown an addiction to everything related to it, as commodities for example. Unlike the past, we got lazy as we like living in this way so dismantling capitalism would mean to change completely our lives as well. And nobody seems willing to do so. As affirmed by Davis, people must take advantage of what capitalism has offered, because it has actually given us the weapons of its own destruction. Technologies and internet, for example, are extremely lethal if correctly used.

The interview turns to discuss about racism and how it's still deeply embedded in American society. Many African-American scholars- such as W. E. B. DuBois, Frederick Douglass, Booker T.

¹⁶⁵Davis, A. Y., Mendieta, E. (eds.) (2005). "Politics and Prisons", in *Abolition Democracy: beyond prison, torture and empire - Interview with Angela Davis*. Seven Stories Press, New York. Kindle edition, p. 2.

¹⁶⁶Davis, A. Y. "Reflections on the Black Woman's Role in the Community of Slaves", in James, J. (1998). *The Angela Y. Davis Reader*. Black-well Publishers, Malden, in Davis, A. Y., Mendieta, E. (eds.) (2005). "Politics and Prisons", in *Abolition Democracy: beyond prison, torture and empire - Interview with Angela Davis*. Seven Stories Press, New York. Kindle edition.

Washington and John Brown- have profoundly influenced Marxism and Communism, but the black political thought itself has never been able to stand alone as it has been constructed on a continuous comparison between its exponents. By doing so, it only created tension between its members, that later has escalated into a tension between black nationalism and integration. As shown by her answers, Angela Davis disapproves both nationalism and rejection of black culture and formations around which the black political thought has divided itself. Therefore, she recognizes the great role of black nationalism in the United States: despite there are many version of it, she has always preferred the one identified by DuBois, that is the Pan-Americanism. In fact, he believed that black people in Western countries have the responsibility to fight for Africa, Asia and Latin America, not only for a biological connection or a racial link, but because they all share the same struggle. He believed in an Afro-Asian solidarity, without forgetting that Africa was the main target of colonialism and imperialism.

Black integration is little by little achieving great goals thanks also to the involvement of civil right movements: in fact, they opened the door to great political shifts by giving the opportunity to people to enter where they used to be excluded. As a matter of fact black people have held great tasks into the American government, as Colin Powell and Condoleeza Rice did for example. During the interview she didn't mention the greatest achievement ever, that is Barack Obama's presidential assignment, only because the book has been published prior to his first election. Nevertheless, in multiple occasion she showed her enthusiasm of having a black president but, as she said during a speech at the time of his second election: «I want to recognize that what we accomplish four years ago was the impossible, and I also want to point out that we may have given up our own power, and we may have assumed that it was all we needed to do[but during his first administration] it didn't turn out they way we have hoped.[...] But I want to propose a feminist way of addressing those contradictions right, because I think we need some more energy.[...] Four years ago we did this for Obama, this time let's do it for ourselves»¹⁶⁷.

Basically she shows her support for Obama, but at the same time she suggests that the path ahead is still long, so they cannot stop their fight because there is a black president. His twice victory is only the beginning of the end of racism in the U.S..

As she affirmed in the interview, «the assumption that the placement of black people [...] in the heart of the government would mean progress for the entire community was clearly fallacious»

¹⁶⁷ <https://www.youtube.com/watch?v=r47iNsDI-Y0>

because the great challenge of this century is not to demand equal opportunities to participate[...] rather, it is to identify and dismantle those structures in which racism continues to be embedded»¹⁶⁸. As a matter of fact, unfortunately racism is still deeply embedded in many different fields of American society, in particular in the punishment one. About this topic, Angela shows her concern since racial injustice is quite common, mainly because of the conservatism of the Supreme Court itself: it's very difficult today to blame racism as the predominant cause of black incarceration, because courts apparently act according to the Law, not the racial one. So in order to change things, she proposes to address their energies to structural racism, which is the one that determines who goes to prison or to school or who can have health insurance.

Speaking of injustice, in 2004 there was a court decision in Michigan - Grutter v. Bollinger- that proclaims that something must be done to preserve multiculturalism but, as she highlights, multiculturalism isn't the synonymous of racial justice. It seems more the synonymous of antiracism, because it's a category which admits both progressive and conservative interpretations. Multiculturalism is as important as racial justice, because it supports solidarity among different cultures that share the same struggle for equality and justice. Although in the United States live many different minorities, the racial justice seems more a black question, but only because they are the «superior minority»¹⁶⁹, as they have built the anti-racist agenda of America.

At this point of the interview, Mendieta recalls the years of her imprisonment when Nixon and Hoover address her as an enemy of the State: she was considered to be a communist, a terrorist and a criminal all at once. Angela considers her experience behind bars very significant, because it shaped her following career and activism. Nevertheless, her interest for the American prison system precedes her incarceration: as a matter of fact, before being arrested, she was already been active in many campaigns to free political prisoners. She even thinks that her activism was the cause of her own imprisonment.

Her great knowledge of the American prison system ended up being her work: Angela Davis supports the idea that prison is an institution which keeps maintaining racism alive. She believes that the rise of the prison-industrial complex is strictly related to racial imprisonment, which in turn is the direct consequence of slavery. Back in the 18th and 19th century, slavery became a receptacle for all those forms of punishment that were unacceptable for a country that was moving towards democracy. Despite it had been abolished, slavery still continues to live nowadays through a color-

¹⁶⁸ Davis, A, Y., Mendieta, E., *supra note* 165, pp. 10-11.

¹⁶⁹ *Ivi*, p. 14.

blind justice. Not only blacks' incarceration rate is higher than whites' one, but they also have more chances to be condemned to capital punishment than whites. The Law doesn't judge them for their skin color, but it's truth that, as far as their living conditions don't improve, it's obvious that minorities are the prime candidate for legal repression, as they turn to illegality in order to survive. As stated by Davis, «racism becomes invisible and unrecognizable»¹⁷⁰. Punishment can be considered as the primary consequence of an increased and racialized surveillance: as a matter of fact, communities' members are more likely to be incarcerated since they are usually kept under police control, in respect to white Americans. Prison is a necessary tool of punishment, but sometimes there can be other solutions as the range of social problems is pretty wide. Instead of building new facilities, America should invest differently its money in order to give an alternative to poor people, as for example building houses for homeless or developing an efficient educational system. But the logic of the incarceration binge is not about giving opportunities, it's rather about getting rid of those who can harm society. But it doesn't recognize that criminals are generally persons who need help, as they generally come from poor communities. To sum up, «prisons becomes a way of disappearing people in the false hope of disappearing the underlying social problems they represent»¹⁷¹.

Angela Davis continues her analysis by affirming that locking up work-age people is provoking negative effects on the nation welfares system, that is particularly disestablished by the growing women incarceration's rate. The problem is that the system itself is the main responsible of this tendency, as it doesn't provide practical solution to the problems of single, unemployed mothers who are forced to engage with drugs in order to maintain their own family.

Once incarcerated, women's trouble are not over: as a matter of fact, they are usually sexually assaulted, as for example they are force to undergo strip and cavity searches. Very little has been done to stop sexual coercion because, as far as it occurs in prison, it is justified as a normal and routine aspect of women's imprisonment.

The first part of the interview ends with Angela's plea for an immediate action towards these inhuman practices, because a society that allows them cannot be called democracy. She raises her voice in order to make people think about this serious problem, as she hopes that a new democracy will born in the future, where prisons will be substituted by other more efficient institutions that will be able to solve the social problems that are now affecting the country.

¹⁷⁰ *Ivi*, p. 19.

¹⁷¹ *Ivi*, p. 22.

The second area of discussion, *Sexual Coercion, Prisons and Feminist Responses*, starts with the denounce of U.S. «war on terror», in particular it focuses on the treatment of Guantánamo and Abu Ghraib prisoners. The atrocity and brutality that characterized prisoners' interrogations have leaked through the diffusion of photographs and videos. Bush's «war on terror» has fueled racism even further, as Middle East descendent has become the primary suspects all around the world: this war has targeted entire communities only because they practice Islam. Racialization based on religion is one of the main consequences of Bush's war: for example, the Islamic culture has become a weapon in the hands of U.S., since it's used as a form of torture against prisoners. All around the globe many feminist movements have mobilized in order to draw the attention on these atrocious practices as for example *Sisters United*, an Australia-based organization to which Davis is affiliated, that primarily works in solidarity with women in prisons.

Unfortunately prison violence is now institutionalized, both in military and domestic prisons; through her work, Davis wants to show to Americans how this system is a cancer in the heart of democracy. The abolitionist movement has a long history of successes and failures, but it's still going strong because conditions have gotten worse over the years, as shown by the great number of prisoners locked up in U.S. prisons and jails. The call for prison abolition is not an easy plan to achieve: it doesn't consist in dismantling prisons, it rather seeks to dismantle the economic, social and political conditions that have allowed the rise and growth of the prison-industrial complex. Prison is the consequence, not the cause. Prison is only a false solution to the problem: the capitalist society, by allowing poverty to persist, only enlarges prison population. Locking up poor uneducated people only reinforces the conditions that actually reproduce poverty.

As the title of book suggests, abolition democracy has become a primary project to accomplish for Davis but this term wasn't invented by her, in fact it directly comes from DuBois' political thought. Abolition is not only about demolition, on the contrary it foresees also the creation of new institution. This subject introduces the following part of the interview.

The third area of discussion, *Abolition Democracy*, first opens with the debate about torture practiced by Americans to prisoners, in particular those of Guantánamo and Abu Ghraib, that is consider legal only when both the national and international law consider it to be necessary. Publically speaking, very few people have given attention to this topic because they justify torture, since it needs to defend American democracy which is considered to be the quintessential of democracy. Davis affirms that the American democracy has become little by little the synonymous of capitalism. U.S. «war on terror» wants to show American exceptionalism, the superiority of U.S.

democracy, to the rest of the world. In many of her works, Davis usually refers to American exceptionalism as a modern form of imperialism, strictly connected to capitalism, and she also compares Bush «war on terror» with the Vietnam War.

The circulation of photographs and videos recorded in military prisons of Guantánamo and Abu Ghraib had had serious repercussion on the public opinion worldwide: for example, the British Court has referred to it as a «legal black hole»¹⁷². According to Davis, human rights activists need to find a way to contest the sovereign authority of the law, because it evidently has limits as well as at national and international level. The law cannot guarantee both justice and equality, as shown for example by the U.S. legislation. As a matter of fact, despite the passage of the civil rights legislation, American minorities are still afflicted with equality problems related to economics, race and gender. Davis also says that maybe those problems are even more embedded today than thirty years ago. During all those years, civil right movements have achieved great results, as they succeeded in purging the law of its references by enabling racial equality before the law. Unfortunately, at the same time such a process also enabled racial inequality: in fact, the law has lost its the capacity to acknowledge people as being racialized, the process made the law even more abstract. In this way the law is unable to perceive the unjust social conditions in which many people live. Therefore, by not taking into consideration these factors, minorities' communities are much more susceptible to imprisonment than the overall American population. The law doesn't pay attention on whether an individual had had the opportunity to receive a good education, or he/she lives under poor living conditions. Basically, the law doesn't recognize the conditions that usually are the responsible for leading people on the wrong path. So, prison is the inevitable destination.

The discussion harks on the term abolition democracy: as affirmed by Davis, «the prison-industrial complex is a result of the failure to enact abolition democracy»¹⁷³. As previously affirmed, the term was first introduced by DuBois in his work, *Black Reconstruction*, where he analyzed the historical period that followed slavery's abolishment. According to Dubois, slavery's abolishment needed to be followed by the abolition of the death penalty and of prisons. One hundred forty years later, the reconstruction process is still incomplete, because of the lack of democratic institutions. It's true that the death penalty has been outlawed by many U.S. states now, but it actually continues to exist

¹⁷² Ratner, M., Ray, E. (eds.) (2004). "Guantánamo: What the World Should Know". White River Junction, Chelsea Green Publishing, Vermont, in Davis, A. Y., Mendieta, E. (eds.) (2005). "Abolition Democracy", in *Abolition Democracy: beyond prison, torture and empire - Interview with Angela Davis*. Seven Stories Press, New York. Kindle edition, p. 74.

¹⁷³ Davis, A. Y., Mendieta, E. (eds.) (2005). "Abolition Democracy", in *Abolition Democracy: beyond prison, torture and empire - Interview with Angela Davis*. Seven Stories Press, New York. Kindle edition, p. 76.

since it has been disguised as life sentence without the possibility of parole. According to Angela Davis, today capital punishment can be translate as the inheritance of slavery: as a matter of fact, although slavery was finally abolished, blacks lacked access to resources that could make them actually free. Basically both the absence of these resources and the persistence of some forms of slavery have been the causes behind blacks imprisonment, whose rate is higher than any other minorities. As soon as resources will be available, the prison population will start to decrease for good. The presence now of blacks in high positions within the government is a great achievement, but as rightly affirmed by Davis, racism is not vanished, on the contrary it's even more effective and devastating today than thirty years ago. She motivates such a hard statement by providing the prison population statistics, which shows that more than two million people are currently living behind bars and that over 70% are blacks. She sarcastically calls U.S. as a racial democracy now that black people are in charge; she recognizes that these individuals are there only because of the activism of civil rights and racial movements, but their position is quite contradictory because they work for a government that actually allow racism to exist.

The fourth area of discussion of the interview, *Resistance, Language and Law*, has been conducted by Chad Kautzer, a graduate students at Stony Brook University and a peace activist. Angela Davis recalls her own prison experience that, along with her long-lasting activism, has forged her work: she became aware that prison plays an important role in the perpetuation of racism and political repression within U.S. society. She's perfectly conscious about today female imprisonment's conditions; sometimes she images how her life would be if the campaign for her release had failed instead. She maybe would be locked in one of the four California's female facilities. She will be forever grateful for what *Free Angela Davis* was able to accomplish, because it wasn't such an easy conquest to achieve. It was an extraordinary movement, not only because it saved her life, but also because it showed how powerful people are if united under the same goal.

During many of her public lectures all around the world, often students ask her how to create a powerful movement, such as the ones she belongs to, and her answer is that nobody can foresee whatever it will fail or succeed. They have to take their chances and wait for results to come. Nobody says it will be easy, but it is worth. They have to look back to past historical victories and take those as models to follow in order to see how people can actually gathered together despite racial, religious, class, political and geographical differences. As affirmed by Davis, «the creation of communities of struggle remains a major challenge today»¹⁷⁴.

¹⁷⁴ Ivi, p. 89.

The prison-industrial complex is a very complex concept to understand, as it includes multiples features such as «the population growth in domestic prisons, the emergence of new industries dependent on this growth, the retooling of old industries to accommodate and profit from imprisonment, the expansion of immigrant detention centers, and the use of military prisons as a major weapon in the so-called war on terror, the articulation of anti-crime rhetoric with anti-terrorism rhetoric»¹⁷⁵.

As highlighted by Davis, the prison-industrial complex isn't an American phenomenon only rather a global one, even if U.S. has played a crucial role in its formation. As a matter of fact, the proliferation of prisons and the amount of capitals involved have majorly contributed to U.S. economy, that in turn has had global implications as well.

In Davis's opinion, the treatment of Guantánamo and Abu Ghraib prisoners is not quite different from the one received by U.S. prisoners, especially in women's facilities where sexual violence is now the order of the day. Many lawsuits have been filed for sexual harassment and assault against states that allow these brutal and inhuman practices in their own facilities: suing against a state does imply that the state itself is an agent of sexual violence.

This alarming tendency is quietly known by the audience worldwide, thanks to the publishing of different reports such as the Human Right Watch's one, *All Too Familiar: Sexual Abuse in U.S. State Prisons*, that shows how systematic this abuse actually is.

Davis concludes her interview by stating that the prison-industrial complex is one of the means through which a state perpetuates terrorism: she comes up with this conclusion thanks to the word of Noam Chomsky who affirms that «the primary agent of terrorism is the state»¹⁷⁶. Terror is such a complex word that need to be explored better: the role of prison in America has contributed to spread terror among people, but this terror is quite specific as it's born as a response to an uncontrollable political economy. U.S. society avoids dealing with problems - poverty, lack of health insurance, lack of education, homelessness - and it prefers to get rid of people affected by those problems by locking them up in prisons. Thus prison has turned into an institution which is only dismantling the welfare system.

She finishes the interview by making an appeal for a change; America needs a movement, but in particular it needs people who are willing to struggle for peace and social justice because America's democracy is far from being a real democracy.

¹⁷⁵ Davis, A. Y., Mendieta, E. (eds.) (2005). "Resistance, Language and Law", in *Abolition Democracy: beyond prison, torture and empire - Interview with Angela Davis*. Seven Stories Press, New York. Kindle edition, p. 95.

¹⁷⁶ Ivi, p. 99.

CONCLUSION

I want to conclude my thesis by highlighting the main focus of the whole discussion: how is possible that a democracy, as the American one, still allows the system to brutally treat its own prisoners, female detainees in particular. Female prisoners are a minority within the U.S. prison system, who face everyday very noteworthy challenges, from an inadequate prison healthcare system to an overwhelming prevalence of sexual abuses. The United States portrays itself as a model democracy, upon which other states should fund their own society. In my opinion it's kind of a paradox, because the U.S. prison system is far from being a democratic institution if basic human rights are easily violated, as occurred within its prison's walls. The U.S. prison system basically perpetuates violence towards women, whom vulnerability makes them an easy target in the hands of a male system.

I decided specifically to talk about women incarceration in the United States: I find this topic to be very interesting mainly because I could analyze the situation under a particular point of view, that was the one of women. My choice to focus on such a subject was driven by my intention to give attention to a serious gender-related problem, which unfortunately is still unknown here in Italy. Therefore my thesis not only wants to highlight the flaws of a democratic system, but it also attempts to give more dignity to women who silently suffer for all those injustices.

In order to introduce women incarceration, I preferred starting with an analysis of the overall prison system in which then I collocated the most important part of my whole work. Because of the complexity of the American prison system, it's necessary to describe how the system has originated and developed over the years in order to help the reader understands today situation.

Nowadays two millions of Americans are living behind bars; what strikes the most about this concerning data is that the majority of detainees belong to minority communities. The main target of U.S. justice policy is the African-American community: as a matter of fact 70% of prisoners are blacks, followed by Hispanics and Native Americans. What is now happening in America, and in other countries of the world as well, has been called «prison boom»: this term perfectly described the phenomenon that is now affecting modern societies, that are witnessing a great increase of the imprisonment rate. Speaking of America only, it has seen a great expansion of its prison population, which grew greatly since the second half of the 20th century. Scholars usually refer to the American criminal justice system with the expression «prison-industrial complex», due to its recent historical background. In fact, over the last three decades, it has been largely transformed by its rapid growth

and by the increasing importance of private interests within the criminal justice system. Privatization has been one of the most affecting factor behind the increase of the imprisonment rate: private firms don't care about improving detainees' living conditions, in terms of health care for example, on the contrary their only interest is to boost their profit. The logic behind American criminal justice system is the idea of the «rich getting richer»: private corporations want to maximize their profits by expanding their business which leads to the expansion of prison and criminal justice system as well. About this particular phenomenon, I personally wanted to stress how politics and privatization are strictly connected: private firms financially support political campaigns, because they want the win of a certain candidate as they know that he will promote the enactment of new stricter criminals regulations which will increase the number of offenders incriminated. Basically, it exists a silence agreement between both parts based on money and interests, that will only benefit them rather than the population.

In a few words, the U.S. prison system is a very complex topic to discuss about: besides its external structure, I also focus on its internal characteristics. As a matter of fact, prisoners' living conditions are the worst in respect to other Western prisons, in terms of lack of health care or rehabilitations' opportunities. American prisons don't aim to re-educate criminals, rather it tests their limits.

In order to highlight how inmates live now in prison facilities, I described the historical evolution of the institution of prison, from the first models of penitentiaries to the modern ones. Generally speaking, the prison system is a very complex reality that affects both male and female convicts. But more precisely, it affects minority communities living within U.S. borders: African-Americans, Native Americans and Hispanics are the targets of modern criminalization policies.

Nevertheless, I decided to shift my attention on women's realities, because I consider astonishing the fact that a democracy still allows today this inhuman treatment on female detainees.

To support my initial project of reporting the violation of basic human rights against women prisoners, I decided to quote real testimonies that I previously collected. I think that the use of real stories makes the discussion more real, because it helps to better understand what prisoners actually face every day during their sentence. They are usually subjected to abuse and to other brutal treatments, as the use of shackles during labor for example, because their vulnerability makes them an easiest target. Since the majority of American female inmates are mothers, I also wanted to talk about children, how they live the forced separation with their primary and often only caregiver. Providing help to children is very important, because if the government ignore their needs they will fall into the crime cycle as their mothers, once grown up. Unfortunately, society hasn't yet

understand this urgent need, for this reason it is the main perpetrator of criminality among people. The amount of public money is not spent equally, because today capitalist society has more interests in improving only certain aspect of the social life, rather than prisons. Tougher criminal policies aim to imprison offenders, who are abandoned in prisons and hidden from the public eye. Nobody is willing to improve facilities, because the majority believes that spending dollars for prisons is a waste of time and money. The only actors to blame, for the American general ignorance about this tendency, are politics and media who have joined forces to make prisoners appear as weak and hopeless individuals. In particular, women prisoners are usually described as «fallen women»: this term is quite disappointing because women are portrayed in the worst way a person could be described.

Americans are manipulated by what they read and hear, so nobody will do anything to stop it until the moment this situation will finally have the attention it deserves. For this reason, I decided to conclude my thesis by focusing on the life and work of Angela Y. Davis, one of the top five female American activist, who has put herself in the frontline to fight the prison system that she personally experienced thirty years ago. She is known to be the spokeswoman of a particular project, called «abolition democracy», which hopes for a new democracy in the future, where there won't be prisons but institutions that will provide help to people in need, in order to stop them from falling into the vicious cycle of criminality.

Personally I admire Davis' strength because she has engaged herself in a very difficult fight: she is aware that activism now is very different from the one of the past. As a matter of fact, today a very few people are willing to fight for a right cause, despite the incredible facilitation they have in terms of inter-connection thanks to the internet. Nevertheless, I think that Angela Davis' plan for the future is an utopia rather than realistic, because she hopes for a change that will profoundly and permanently alter American basic foundation. I support the idea of creating new and better institutions that could help criminals to face their problems, as drugs for example, but I think that America isn't ready yet for such a big transformation.

ABSTRACT

Women behind bars: the complex reality of the U.S. prison-industrial complex è il titolo della mia tesi: come si può capire dal titolo stesso, il mio lavoro riguarda principalmente l'analisi della situazione in cui vivono oggi le detenute negli Stati Uniti d'America. La realtà all'interno delle carceri americane è molto complessa, sia dal punto di vista organizzativo sia dal punto di vista delle condizioni di vita dei prigionieri. Prima di arrivare al punto focale della mio lavoro, ho preferito tracciare un percorso che conducesse gradualmente il lettore: per questo motivo, ho cominciato a parlare di un fenomeno che ha interessato il mondo occidentale a partire dagli ultimi decenni del ventesimo secolo ad oggi. Gli studiosi hanno denominato questo fenomeno «boom carcerario»: come si può dedurre, tale espressione si riferisce alla crescita esponenziale del tasso di incarcerazione, che ha raggiunto livelli mai verificatisi prima nel corso della storia moderna.

L'aumento del numero di detenuti nelle carceri europee ed americane è principalmente legato a questioni che derivano da norme legislative ed amministrative, adottate a partire dagli anni '80.

Per poter meglio comprendere come la crescita del tasso di incarcerazione abbia già cambiato il volto dei paesi occidentali e stia tuttora continuando a farlo è necessario analizzare i dati finora raccolti dalla letteratura.

In Europa si è verificata una crescita consistente del tasso di incarcerazione: secondo i dati resi noti dal Consiglio d'Europa e dalle statistiche pubblicate dai singoli paesi, il numero di detenuti è cresciuto rapidamente negli ultimi quindici anni; ad eccezione della Francia, dal 2004 il tasso di incarcerazione ha subito un ulteriore drastico aumento in tutta Europa.

Ciò nonostante i dati registrati in Europa non sono paragonabili a quelli Americani: nel suolo statunitense il tasso di incarcerazione è di gran lunga maggiore in confronto a quello europeo. A causa di questi elevati tassi di incarcerazione le prigioni americane sono sovraffollate e le condizioni di vita al loro interno risultano essere le peggiori in confronto a quelle degli altri paesi del mondo occidentale. Su circa undici milioni di persone che entrano in carcere ogni anno negli Stati Uniti, la popolazione che viene maggiormente colpita fa parte delle due più numerose minoranze etniche presenti nel paese, vale a dire gli afro-americani e gli ispanici

Gli studiosi sono soliti chiamare il sistema penitenziario americano con l'espressione «*prison-industrial complex*»: l'uso di tale termine, di origine militare perché coniato dal presidente Eisenhower agli inizi della guerra fredda, è legato ai recenti sviluppi che hanno profondamente

trasformato la struttura di tale sistema, poiché è divenuto oggetto di interesse da parte delle società private e dal loro mercato in via di sviluppo e crescita.

Parlare del sistema carcerario americano non è semplice in quanto è parte di una più ampia realtà dalle caratteristiche molto complesse. Per poter capire come funziona oggi tale sistema, occorre prima analizzarne brevemente le origini che risalgono al periodo in cui gli Stati Uniti facevano ancora parte dell'impero britannico. All'epoca delle colonie il carcere era solamente un luogo dove i prigionieri sostavano in attesa delle esecuzioni pubbliche. Lo scopo di tali esecuzioni era duplice: umiliare il reo e allo stesso tempo impressionare il pubblico per far desistere le persone dal compiere reati.

La situazione comincia lentamente a modificarsi in relazione agli avvenimenti politici e commerciali dell'epoca, ma è l'indipendenza dalla Gran Bretagna a segnare l'inizio di una vera e propria ristrutturazione del sistema penitenziario secondo principi repubblicani e illuministi. Il processo di ristrutturazione perdura per più di un secolo e dopo numerose riforme il sistema penitenziario americano si affaccia al diciannovesimo secolo con una struttura simile a quella odierna. In quel periodo vengono costruiti nuovi penitenziari, poiché le vecchie strutture adibite a carceri erano state giudicate troppo vecchie e inadatte ad ospitare i prigionieri. Infatti, le condizioni di vita all'interno delle carceri erano state definite deplorabili: mancanza di igiene e spazi insufficienti mettevano a dura prova i detenuti e le detenute, e quest'ultime inizialmente erano addirittura rinchiusi all'interno di alcune aree penitenziari maschili. Solamente in seguito al forte incremento del tasso di incarcerazione femminile il governo statunitense prende la decisione di attuare un nuovo piano di costruzione di carceri solamente adibita ad ospitare prigionieri di genere femminile.

Il sistema carcerario americano comincia ad assestarsi definitivamente nella forma che tuttora lo caratterizza a partire dalla seconda metà del ventesimo secolo; le due grandi crisi negli anni '60 e '70 hanno avuto una forte influenza nella formulazione della moderna legislazione penale e di conseguenza negli aspetti economici che riguardano tale sistema. In quei due decenni la ribellione politica e la crisi economica avevano messo fine al periodo d'oro che aveva contraddistinto gli anni successivi alla Seconda Guerra Mondiale. Infatti, a partire dalla conclusione della guerra, l'ordine sociale e politico americano era stato garantito da un andamento positivo del mercato del lavoro che aveva a sua volta prodotto un forte miglioramento nelle condizioni di vita della popolazione.

Tale fiorente periodo, denominato Fordismo, aveva subito una battuta d'arresto a causa dell'emergere di una nuova crisi economica, contraddistinta da un forte aumento della povertà

causata a sua volta da una stagnazione economica. Il conseguente malessere diffuso tra la popolazione americana si era manifestato con un incremento della diffusione della criminalità.

La situazione peggiora ulteriormente negli anni '70 quando compaiono i primi movimenti per i diritti civili. Il presidente dell'epoca, Richard Nixon, aveva attuato una nuova politica, chiamata «*Southern Strategy*», il cui scopo era criminalizzare e demonizzare, per quanto possibile, un insieme di attività illegali che venivano addirittura tacciate di rappresentare una minaccia per la democrazia americana.

In questo periodo, accanto allo storico conservatorismo, inizia ad emergere una nuova corrente politica, il liberismo, che sosteneva la necessità di una maggiore libertà, alla luce dei numerosi ed inarrestabili cambiamenti che stavano investendo la società del tempo.

Avviene all'epoca un altro importante cambiamento: la criminalità comincia ad essere considerata un problema di competenza federale, oltre che semplicemente statale, diventando così una questione d'interesse nazionale che necessita quindi di una più immediata soluzione. Proprio in quegli anni le elezioni presidenziali vedono la vittoria del democratico Johnson: il nuovo presidente aveva deciso di affrontare di petto il problema avviando una «guerra contro il crimine» con lo scopo di estirpare tale fenomeno dalle radici.

Dal canto loro i conservatori non condividevano l'azione di governo, sostenendo al contrario che il sistema punitivo americano era sin troppo benevolo nei confronti dei criminali. Di conseguenza i conservatori inaugurano una politica più dura contro la criminalità: aumentano così sia il numero di prigionieri sia la durata delle condanne da scontare in prigione, nonostante la natura della maggior parte dei reati non fosse grave da meritare condanne così lunghe. Tale politica riceve l'appoggio da parte dei media che sostenevano anche un progetto che prevedeva la costruzione di nuove prigioni per una maggior tutela della sicurezza pubblica.

L'effetto sulla popolazione è tutt'altro che positivo: le persone infatti si sentono minacciate da questa nuova politica che sembra essere più punitiva che protettiva, al contrario di come in realtà voleva apparire. Ne consegue una crescita a dismisura del tasso di incarcerazione: se da una parte molti criminali vengono tolti dalle strade, dall'altra però le carceri cominciano a sovraffollarsi. Ne deriva quindi l'esigenza di costruire nuove strutture penitenziarie: per realizzare tale progetto è necessaria una maggiore disponibilità di denaro, e il governo per far fronte a questa urgenza aumenta la tassazione della popolazione. Gli americani ovviamente non accolgono di buon grado tale notizia e il conseguente disagio sociale sfocia in una nuova crisi.

Il tasso di criminalità era legato alla povertà della popolazione come in un circolo vizioso: più aumenta la criminalità più aumenta la condizione di povertà della popolazione, di conseguenza più aumentano i poveri più aumenta il numero di criminali e così via; la comunità che risente maggiormente di questo andamento di eventi è quella afro-americana. Un ulteriore effetto negativo a scapito della popolazione più povera è costituito dal fatto che queste persone venivano etichettate come criminali a prescindere dal fatto che avessero realmente commesso dei reati; in questo modo arrivavano a perdere anche la possibilità di ricevere aiuti attraverso l'assistenza finanziaria o medica. Un'altra conseguenza negativa è la diffusione radicale in tutto il paese di un forte sentimento di paura nei confronti della criminalità in genere e, nonostante la forte diminuzione di crimini violenti avvenuta nel corso degli anni '80, tale ansia diffusa tra i cittadini non mostra alcun segnale di ridimensionamento. Questo trend è conseguenza diretta dei piani politici di quel periodo storico: sfruttare la paura della popolazione rappresentava un asso nella manica per promuovere sentenze più severe.

Alla fine del mandato del democratico Carter, sale al potere il repubblicano Reagan con una nuova agenda politica che, sulla scia della «guerra al crimine», prevede un inasprimento delle misure repressive e soprattutto introduce delle importanti novità: una fra tutte, la ben nota «guerra contro la droga» di cui Reagan diventa portavoce assieme alla moglie Nancy.

Tutte le scelte politiche finora descritte, che promuovevano una prevenzione alla criminalità, fanno parte di un più ampio piano politico a tolleranza zero denominato «*law and order*»: i risultati concreti sono frutto di una lunga cooperazione tra la politica e i media. La comunione di intenti tra questi due attori della scena politica e sociale americana, pur nella loro diversità strutturale, rappresenta la chiave per l'ottenimento del consenso pubblico: infatti, sia i giornali sia la televisione contribuiscono ad alimentare la già citata paura verso la criminalità.

Questo scenario politico non può che causare un ulteriore aumento del tasso di incarcerazione che di conseguenza, come già avvenuto in passato, provoca un nuovo sovraffollamento delle carceri e un peggioramento delle condizioni di vita all'interno delle stesse, considerate deplorievoli sia dalle guardie sia dai prigionieri.

Se da un lato i politici si rifiutano di ammettere la realtà dei fatti, dall'altro le diverse corti di giustizia dichiarano tali condizioni come una violazione dei principi stabiliti dalla Costituzione Americana. Tali violazioni causano diverse controversie di tipo legale, perciò viene istituito un organo di supervisione, con il compito di supervisionare periodicamente le condizioni di vita all'interno delle diverse prigioni americane. In questo modo il problema sembra apparentemente

risolto, ma in realtà la gestione di questa nuova istituzione ha un costo economico oneroso che arriva a gravare sulle spalle dei singoli stati.

L'unica soluzione possibile per far fronte ad un'eccessiva spesa economica pubblica è stata lo slittamento graduale verso il settore privato, che pian piano è subentrato nella gestione del sistema carcerario americano. I neo-liberalisti rappresentano la fazione politica che maggiormente ha spinto nella direzione dell'affidamento di un settore da sempre pubblico nelle mani del privato, dal momento che quest'ultimo aveva già dimostrato in precedenza di saper gestire in modo più efficiente e meno corrotto. La privatizzazione si radica in modo stabile solo a partire dagli anni '80 sotto la presidenza Reagan anche se non rappresenta una novità di quel periodo, dal momento che ha origini più antiche.

La «guerra contro la droga», che causa un aumento dei costi di gestione del sistema penitenziario, e la «*Three Strikes Law*», una legge che prevedeva che al compimento del terzo reato il reo venisse condannato non con la pena prevista dal crimine commesso, ma con la pena massima prevista in assoluto dalla legislazione statunitense, rientrano all'interno di un più ampio progetto politico che vede come unica soluzione la privatizzazione. Entrambe le leggi, infatti, non possono che determinare un sovraffollamento delle prigioni: quando lo Stato non riesce più a gestire tale situazione si vede costretto a demandare alle compagnie private il compito di occuparsi della questione.

La privatizzazione viene accolta positivamente dalla popolazione americana per gli indubbi vantaggi che essa garantisce: infatti, se la gestione delle carceri fosse rimasta appannaggio dello Stato si sarebbe tradotta in un aumento della tassazione a svantaggio dei cittadini per far fronte all'ingente spesa; al contrario, le compagnie private offrivano una gestione dei servizi correzionali ad un prezzo concorrenziale rispetto al pubblico. Infatti, rispetto a quest'ultimo, il privato è fortemente motivato a minimizzare i costi per la presenza della competizione di mercato e del rischio di un'eventuale bancarotta.

A conti fatti, il settore privato si è effettivamente dimostrato veloce nella costruzione di nuove strutture: pian piano, nuove prigioni private compaiono ovunque all'interno del territorio americano, soprattutto negli stati del Texas e della California. La costruzione di nuove prigioni ha effetti positivi sul tessuto sociale: le strutture offrono nuove possibilità di lavoro che spingono le persone a trasferirsi nelle vicinanze, facendo sorgere così tutto attorno nuovi centri urbani.

Grazie alla privatizzazione compaiono sulla scena nazionale e internazionale nuovi attori, le compagnie for-profit: le due maggiori erano e tuttora sono la CCA e la GEO, che si spartiscono il

controllo delle prigioni private sia in America che in altre parti del mondo, come l'Australia e la Gran Bretagna.

Le prigioni gestite dal settore privato devono comunque rispettare le stesse leggi di quelle statali: per poter essere riconosciute ed abilitate al funzionamento, tali strutture devono stipulare un contratto con lo Stato impegnandosi a garantire lo stesso livello educativo e re-abilitativo di quelle pubbliche; inoltre, il governo ha il diritto di supervisionarle periodicamente, più precisamente almeno una volta l'anno, per controllare che non ci siano carenze.

Nonostante la gestione privatizzata delle carceri si sia creata una reputazione positiva, nella realtà dei fatti esistono evidenti lacune, soprattutto negli ambiti che riguardano aspetti medici, educativi e re-abilitativi. Il sistema privato è di fatto una macchina poco oleata, ricca di contraddizioni e difetti: le corporazioni sono prevalentemente orientate al profitto, di conseguenza gli obiettivi della riabilitazione e della correzione sono spesso messi in secondo piano nonostante siano la reale priorità. Il problema è che quanto accade all'interno di queste carceri riesce ad eludere il controllo dello Stato e l'attenzione mediatica: in realtà, il servizio offerto è spesso scadente perché il denaro a disposizione non viene investito per potenziare la struttura ma al contrario si preferisce effettuare tagli dove possibile.

Le compagnie private sostengono inoltre i candidati nelle campagne elettorali perché l'eventuale vittoria permetterebbe di ottenere dei vantaggi: una volta eletto, infatti, il candidato potrebbe promuovere politiche più severe contro il crimine, di conseguenza l'inasprimento delle leggi farebbe aumentare il numero di persone incriminate e quindi l'occupazione di un numero maggiore di letti all'interno delle prigioni. Ciò che principalmente conta sono i numeri: più letti occupati corrispondono ad un maggior guadagno perché lo Stato paga alle compagnie private una percentuale minima per ogni prigioniero ospitato nelle strutture.

Nell'ottica di massimizzare il profitto con il minimo investimento economico i servizi offerti sono spesso carenti: ad esempio, viene assunto personale non qualificato o si stipulano accordi con ospedali caratterizzati da un basso livello di competenza. Di fatto, gli impiegati all'interno delle carceri, guardie o medici che siano, spesso non sono in grado di affrontare i diversi problemi - soprattutto di tipo sanitario- che possono sorgere con i prigionieri perché non è stata fornita loro alcuna preparazione tecnica a riguardo. In realtà, anche le strutture pubbliche sono caratterizzate da livelli di inefficienza notevoli, seppur vincano di poco il confronto con quelle private.

In sintesi si può affermare che l'attuale sistema carcerario americano sia uno tra i peggiori all'interno mondo occidentale.

Dopo un excursus di tipo storico, è necessario porre maggiormente l'attenzione su questioni che riguardano il mondo all'interno delle carceri. I membri delle minoranze presenti all'interno degli Stati Uniti sono il target maggiormente colpito dalle severe politiche penali americane: nell'ordine si tratta di afro-americani, seguiti dai nativi americani e dagli ispanici.

Anche le donne rappresentano una categoria fortemente coinvolta nella questione: tra il 1980 e il 2005 la percentuale di incarcerazione femminile è cresciuta del 400%, raddoppiando quella maschile. Circa il 75% delle condanne femminili riguardano reati minori, principalmente legati al mondo della droga, a causa della già citata politica a tolleranza zero. Le minoranze sono anche in questo caso la categoria di persone più colpita dal momento che in carcere il numero di donne afro-americane è otto volte maggiore di quello delle donne bianche e il doppio quello delle donne ispaniche; la maggioranza delle detenute è di estrazione economica svantaggiata e poco acculturata. L'esperienza in carcere per una donna è molto più dura rispetto all'uomo, a causa delle maggiori vulnerabilità e fragilità che la mettono più a rischio di subire trattamenti poco umani, trasformando quindi le detenute in vittime nelle mani del sistema carcerario americano.

Le donne sono per l'appunto le principali vittime della «guerra contro la droga»: secondo quanto osservato dal *Bureau of Justice Statistics*, infatti, la diffusa vittimizzazione all'interno della società americana e la forte disoccupazione che caratterizzano la condizione femminile espongono le donne a maggiori rischi di manifestare sofferenza psicologica e sviluppare una bassa autostima. Questa condizione a sua volta, come in una spirale, espone maggiormente al rischio di commettere reati minori, come quelli che riguardano la sfera dello spaccio di droga.

La lotta per l'affermazione dei diritti femminili per la conquista a pieno titolo dell'uguaglianza tra i sessi ha portato con sé anche delle conseguenze negative per la donna: l'uguaglianza davanti alla legge si traduce in condanne pesanti a scapito delle donne, come se il reato fosse commesso da un uomo, senza tenere in sufficiente considerazione alcune peculiarità della condizione femminile, come ad esempio la maternità.

Un altro tassello importante per comprendere più approfonditamente le caratteristiche della condizione femminile in carcere è l'introduzione nell'immaginario pubblico di un nuovo modello, «la donna criminale»: i media hanno contribuito a diffondere l'idea che le detenute non siano altro che donne fallite, esseri umani «oramai danneggiati» senza speranza di una qualsivoglia redenzione e madri che hanno fallito nel loro ruolo educativo nei confronti dell'istituzione familiare e dei figli. Di fronte alla legge, dunque, la donna prima che essere tale è un semplice criminale, e ciò va ad influenzare pesantemente le modalità in cui vengono comminate le condanne.

Di centrale importanza è considerare anche il doppio ruolo che caratterizza la condizione femminile, lavoratrice e madre: l'inasprimento di pena per l'equiparazione agli uomini o le condanne per reati non commessi (come ad esempio quando le donne si costituiscono al posto degli uomini) ha conseguenze negative anche nei confronti degli eventuali figli, che vengono costretti a vivere lontani dalla propria madre, spesso l'unica figura genitoriale presente. I bambini quindi sono affidati provvisoriamente ad altri familiari o nel sistema dell'affido, in attesa di essere adottati.

Inoltre, il sistema giudiziario moderno, avendo come unico scopo la punizione del reo, dimostra la sua reale inefficacia nel non prevedere e promuovere operazioni di recupero e/o riabilitazione: in questo modo, infatti, le donne che ricevono una condanna spesso si trovano nella condizione di perpetrare ancora gli stessi reati nell'impossibilità di fare altrimenti e i loro figli, crescendo in un ambiente in cui la criminalità fa da sfondo, come in un circolo vizioso rischiano di sviluppare una propensione ad una vita al di fuori della legalità. In conclusione, due dei maggiori esiti negativi causati dal moderno sistema punitivo americano sono gli alti tassi di recidiva e di criminalità giovanile.

La privatizzazione, per i motivi già spiegati, ha reso le condizioni di vita delle detenute spesso inumane dal momento che sono costrette quotidianamente a vivere situazioni al limite della legalità. A tali difficoltà si aggiunge l'impossibilità di mantenere contatti con la propria famiglia durante la detenzione a causa delle barriere fisiche erette per impedire qualsiasi tipo di comunicazione con il mondo esterno.

Se la legge è mutata nel corso degli anni per adeguarsi ai cambiamenti della società, la gestione del sistema carcerario, di impronta prettamente maschile, non ha invece subito modifiche per adattarsi alla nuova realtà che ha visto l'aumento delle incarcerazioni femminili. Le carceri si dimostrano quindi strutture inadeguate per rispondere alle esigenze peculiari delle donne: ad esempio, durante il parto la detenuta in travaglio viene costretta a letto con le manette ai polsi e alle caviglie per prevenire la fuga, nonostante siano casi estremamente rari. Solo recentemente sia la *Federal Bureau of Prisons* che l'*American Correctional Association* si sono schierate contro l'uso di manette e catene per le detenute in travaglio: sono state emanate linee guida non di carattere obbligatorio; ne consegue che la decisione di aderirvi è a discrezione delle singole prigioni.

Solo alcune prigioni sono attrezzate per dare assistenza medica al parto ed assistenza psicologica alle puerpere nel periodo post-partum: questo dato è rilevante se si considera che il 6-10% delle carcerate sono in stato interessante all'inizio della detenzione, con un'incidenza maggiore nelle carceri giovanili rispetto a quelle per adulti. Un altro aspetto da considerare è il fatto che spesso le

detenute portano a termine gravidanze non desiderate e potenzialmente a rischio per una serie di fattori: scarse ed inadeguate cure prenatali, abuso di droga o alcol, mal nutrizione, sofferenza psicologica e violenza domestica subita; tutto questo determinerebbe la necessità di supporto medico specialistico che, al contrario, è totalmente assente.

Secondo *l'American College of Obstetricians and Gynecologists*, durante le visite mediche precedenti all'ingresso in carcere, ogni donna dovrebbe essere esaminata per escludere la presenza di malattie o gravidanze di cui non si è già a conoscenza. Nel caso la donna si trovi in stato interessante, la prigione dovrebbe garantire alle future madri le necessarie cure prenatali, una giusta e bilanciata alimentazione e regolari controlli medici per monitorare il proseguimento della gravidanza. Ogni gestante dovrebbe poi sottoporsi a degli esami per sé e per il feto per valutare lo stato di salute dal momento che sono molto diffusi sia l'abuso di sostanze sia la possibilità di aver contratto l'AIDS: nei casi in cui emerge positività le detenute dovrebbero cominciare una terapia assistita per evitare il rischio di nascite pre-termine o di sofferenze fetali.

Dopo il parto le madri possono trascorrere solo alcune ore con il proprio bambino, prima che venga portato via: molte donne rifiutandosi di lasciare il figlio fanno di tutto per poter ritardare il distacco, ad esempio rifiutandosi di mangiare. Il periodo più difficile per ogni partoriente è il rientro in carcere senza il proprio bambino: proprio in questo momento è molto alto il rischio di comparsa di sindromi depressive.

Per questo motivo *l'American College of Obstetricians and Gynecologists* promuove la presenza di infermerie all'interno delle prigioni in modo che le puerpere possano vivere assieme ai figli durante i loro primi mesi di vita, così da garantire la possibilità dell'instaurarsi di un contatto madre-bambino, fondamentale per entrambi. Nella realtà dei fatti sono veramente poche le prigioni che provvedono adeguatamente ai bisogni delle detenute in stato interessante: è evidente che il moderno sistema carcerario americano non si pone in alcun modo l'obiettivo di tutelare né loro né i bambini.

È ampiamente documentato che la maggior parte delle detenute americane siano madri single: è difficile che queste donne riescano a mantenere i rapporti con i propri figli, perché molto spesso vengono trasferite in carceri molte lontane da casa. La distanza fisica diventa quindi un'ulteriore barriera che funge da ostacolo al rapporto madre-figlio e compromette la salute di entrambi: a causa della separazione forzata, infatti, le madri sviluppano gravi sindromi depressive e i figli sono costretti a crescere senza il proprio unico punto di riferimento.

È stato dimostrato che regolari contatti giovano a entrambe le parti: aiutano a prevenire, infatti, la comparsa sia di sofferenza psicologica sia di problemi di salute. Alla luce di tale dato diversi

movimenti femminili pro-abolizionisti stanno lottando per promuovere una riforma a tutela di tali esigenze, con l'obiettivo di riuscire ad apportare modifiche significative al sistema carcerario americano.

Purtroppo ad oggi non è stato fatto ancora niente di concreto; nel frattempo è nato in California un programma, *Get on the Bus*, con l'obiettivo di aiutare queste famiglie a riunirsi, seppur brevemente: il programma mette a disposizione dei pullman per permettere ai bambini di trascorrere un'intera giornata con le loro madri che sono incarcerate in prigioni lontane dalle principali città dello stato californiano. Questo programma ha ottenuto un grande successo ed altri stati americani stanno provvedendo ad offrire servizi simili.

Per le madri detenute esiste un'ulteriore difficoltà: riuscire a mantenere la potestà genitoriale dei propri figli; ci sono diversi impedimenti che ostacolano la possibilità di mantenere il controllo genitoriale sulla vita della prole. Quando una madre entra in carcere, i figli vengono inseriti nei programmi di affidamento se nessun parente stretto può prendersene cura: inizia per loro un percorso ricco di insidie e difficoltà che va ad complicare ulteriormente la vita dei minori, una vita che ha come sfondo il mondo dell'illegalità con il rischio che, una volta cresciuti, tale sfera li assorba completamente come in un circolo vizioso.

Inoltre, a causa della severità delle pene, molto spesso le detenute devono scontare condanne molto lunghe e questo implica la perdita di qualsiasi diritto nei confronti dei figli, dal momento che la legge prevede la perdita della potestà genitoriale dopo due anni di incarcerazione. Per questo motivo, le madri detenute chiedono a gran voce una modifica della legge per poter tornare a pieno titolo genitori dei propri figli una volta scontata la pena, con l'eccezione dei casi in cui si siano verificati abusi o maltrattamenti. È richiesta una maggiore collaborazione tra il sistema legislativo penale e i programmi di affido perché vengano prese decisioni unanime circa le modalità di affidamento dei bambini: è necessario un piano comune d'azione, ma ad oggi la situazione è immutata, perché non esistono dati concreti su cui fondare tale iniziativa.

La qualità del sistema sanitario all'interno delle prigioni americane è uno dei temi più scottanti: ai prigionieri, sia uomini che donne, è destinata un'assistenza medica assolutamente scadente; non vengono quindi garantiti alcuni diritti umani fondamentali.

Nello specifico della condizione femminile, l'assistenza medica in carcere è uno tra gli aspetti peggiori della detenzione, paragonabile nella gravità solo agli episodi di violenza sessuale e al trattamento delle detenute con acuti problemi psicologici. Tra i doveri del sistema carcerario c'è quello di tutelare e garantire assistenza medica alla donna, in particolare per quanto riguarda il

sistema riproduttivo, che costituisce uno dei maggiori elementi di vulnerabilità della condizione femminile: in caso contrario, infatti, il rischio è la violazione del diritto stesso di famiglia. Più precisamente, sia l'eccessiva lunghezza della condanna sia cure mediche errate per patologie legate all'apparato riproduttivo privano la donna della possibilità di procreare durante gli anni della fertilità, non tutelando così il loro diritto alla famiglia.

Secondo il diritto internazionale, atti di tortura e forme di abuso sessuale sono considerati vere e proprie violazioni del trattamento dei prigionieri. Nel 2003 il governo degli Stati Uniti ha emanato una specifica legge contro lo stupro ed altri atti di violenza: per favorire il monitoraggio della situazione, la legge offre degli incentivi alle prigioni che si impegnano a risolvere questo problema; la stessa legge prevede inoltre il taglio dei fondi alle strutture penitenziarie che ignorano quanto stabilito.

Ciò nonostante rimangono frequenti gli episodi di violenza ed abuso sessuale all'interno delle carceri femminili: i principali carnefici sono le stesse guardie che molto spesso riescono anche a farla franca; infatti, sola una minima percentuale viene licenziata in seguito alla verifica, da parte dell'amministrazione, della veridicità delle accuse da parte delle vittime. Queste ultime spesso, però, tacciono per paura di ritorsioni da parte di altre guardie e delle altre prigioniere.

Una parte della popolazione carceraria femminile è composta da donne straniere, provenienti principalmente da Messico, Cuba e Filippine, in fuga dalla patria alla ricerca di migliori condizioni di vita. Molte di queste donne arrivano negli Stati Uniti con permessi di soggiorno falsi e con la speranza di ricongiungersi ad altri membri della famiglia, precedentemente immigrati nel paese.

Negli ultimi anni si è intensificato il controllo al confine messicano per impedire il passaggio illegale negli Stati Uniti di cittadini messicani, impiegati come corrieri della droga. Sono le donne ad essere soprattutto reclutate come corrieri: i cartelli messicani della droga sfruttano il desiderio di queste donne di entrare sul suolo americano per impiegarle nel traffico di stupefacenti; infatti, le donne pur di ricevere da parte dei cartelli i documenti necessari (anche se falsi) a passare il confine sono disposte a correre il rischio di trasportare partite di droga.

Inoltre, negli Stati Uniti vivono molte immigrate senza permesso di soggiorno: il governo centrale sta cercando di risolvere il problema organizzando raid per localizzarle e catturarle; queste donne vengono etichettate dallo Stato come "criminali alieni".

Un'altra categoria di detenute sono le donne in attesa di ricevere asilo politico: dal momento che il numero di donne che richiedono asilo per entrare in America è elevato, il governo statunitense richiede di provare il loro status fornendo una documentazione che attesti la presenza di un reale

pericolo di vita; in attesa della produzione di tale documentazione le donne vengono lasciate in carcere. Qualora l'apposita commissione approvi la richiesta d'asilo, le esiliate politiche vengono immediatamente scarcerate; al contrario, le donne, la cui richiesta viene rigettata, sono immediatamente rimpatriate.

Sono nati moltissimi movimenti con lo scopo di combattere contro le ingiustizie del sistema carcerario americano, tra cui *Critical Resistance* che ha come fondatrice Angela Y. Davis.

Angela Davis è considerata oggi una tra le più influenti donne afro-americane degli Stati Uniti: donna molto versatile, oltre ad essere una professoressa è infatti anche impegnata come attivista per i diritti civili e politici dei carcerati. L'impegno di Angela Davis nasce da una formazione culturale e soprattutto dalla sua esperienza all'interno delle carceri americane come detenuta.

Angela Davis afferma come gli Stati Uniti siano tutto tranne che una democrazia, nonostante l'auto-elevamento a modello democratico a livello internazionale. L'attivista motiva questa affermazione tramite la raccolta di diverse testimonianze circa la condizione attuale delle carceri americane.

Il principale progetto a cui sta lavorando è *Abolition Democracy*: in sintesi, Angela Davis vorrebbe gettare le basi per un mondo senza carceri; queste ultime dovrebbe essere invece sostituite da strutture programmate per prendersi realmente cura dei bisogni dei detenuti. Nonostante possa apparire come un'utopia, Davis ritiene fondamentale l'apporto e la collaborazione da parte della popolazione americana per riuscire a realizzare questo progetto in futuro: a suo parere, infatti, gli americani devono uscire dallo stato di inerzia creato dal capitalismo, in cui si trovano, per poter davvero lottare per conquistare una giustizia sociale.

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