

Bureaucratic Capitalism and the Immigration Detention Complex

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By Matthew Flynn

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The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) facilitating accountability and transparency in the treatment of detainees; and (3) encouraging scholarship in this field of immigration and refugee studies.

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By Matthew Flynn¹

Abstract: The work of post-structuralist political philosopher Giorgio Agamben (1998, 2005) has had a major influence on the study of immigration detention in Europe and elsewhere. In particular, his concepts *homo sacer* (“bare life”) and “zones of exemption” depict the growth of immigration detention practices as an expression of sovereign power through inclusive exclusion. In other words, states demonstrate their power to confer rights upon their citizens by denying those rights to others. This paper argues that post-structuralist approaches to the study of immigration detention present a number of theoretical and conceptual problems. Post-structuralist analyses focusing on discourses divorced from actors present teleological problems in terms of theory. Additionally, post-structural accounts of detention centres using concepts such as *homo sacer* and Banoptican (see Bigo 2007) tend to conflate human rights and citizenship rights, which does not hold up empirically because many asylum seekers and irregular migrants still have access to legal redress. In contrast to post-structural accounts, the notion of “bureaucratic capitalism” developed by sociologist Gideon Sjoberg (1999) provides an analytical framework that is both critical and non-deterministic in explaining the motives of many actors involved in detention regimes. Specifically, immigration detention can be explained by employing conceptual frameworks used to assess the corporate-state nexus; human agency; rationalization processes like specialization and division of labour; hierarchy, responsibility, and blameability; and secrecy systems. Sjoberg’s meso-level theory provides critical insights into detention regimes in the United States and Europe as well as the role of private- and public-sector interests seeking rents. Moreover, focusing on the organization of detention helps reveal the causes of human rights violations as well as their possible redress.

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Introduction

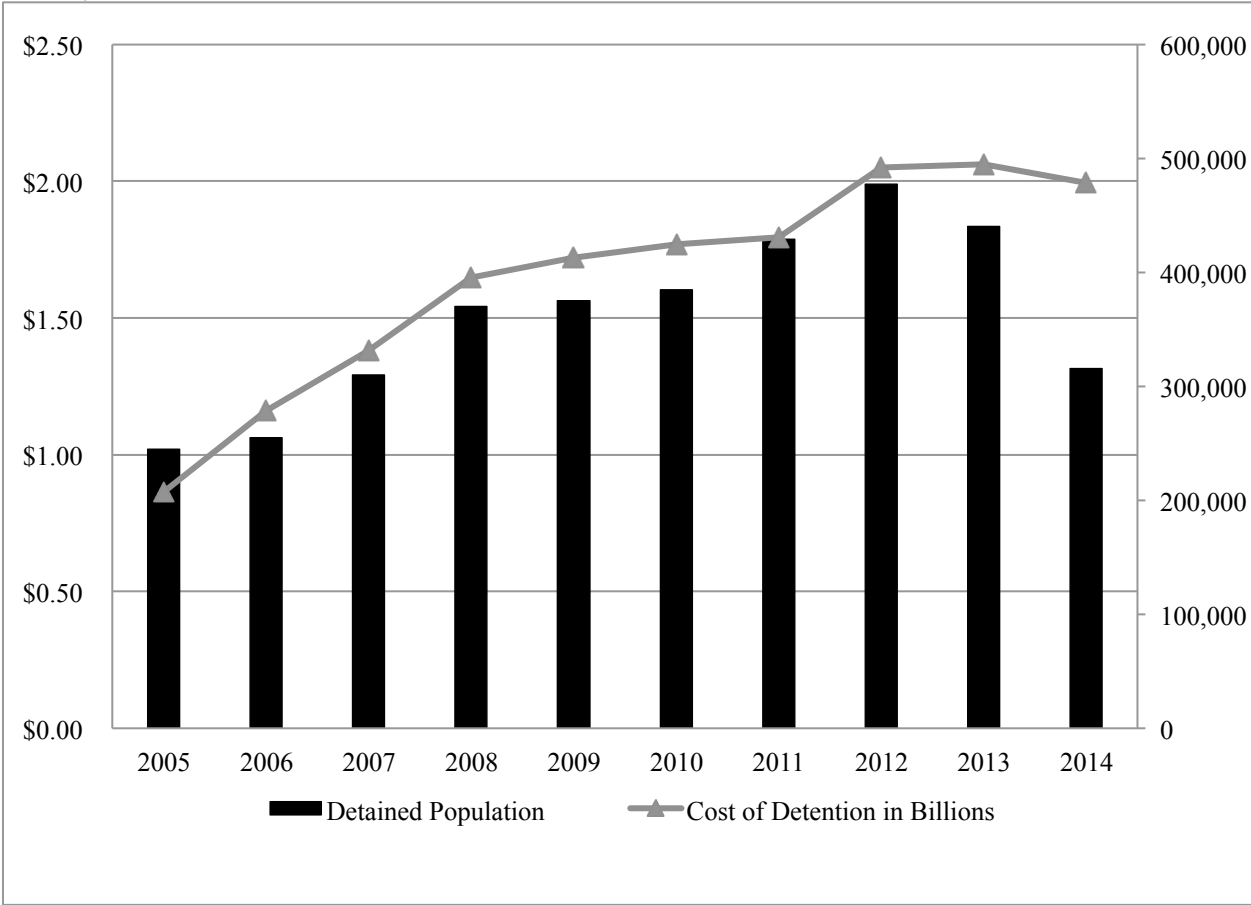
Although it remains very much a contested issue, many observers have concluded that deterrence policies and tactics employed by wealthy, advanced capitalist states of the West will not over the long term curtail efforts by migrants and asylum seekers to make perilous journeys across international borders in search of safe havens and better living conditions (Sampson 2015). According to the UN High Commissioner for Refugees (Edwards 2011:1), for example, “there is no empirical evidence that the prospect of being detained deters irregular migration, or discourages persons from seeking asylum.”

Further, government policies and international aid programs appear unable to stem today’s “age of migration” (Castles, Haas, and Miller 2013). Recent estimates show international migrant stocks rising from 154 million in 1990 to 231 million in 2013 as total migrant flows have more than doubled from an average of 2 million per year between 1990 and 2000 to about 4.6 million annually the following decade (OECD-UNDESA 2013).

A person’s decision to migrate is driven less by the migration policies of destination countries than by deeper push factors such as social change, political disruption, and concerns over personal security (Castles 2003). In addition, there is some evidence to indicate that when certain states employ so-called alternatives to detention (or rather, employ policies that fall short of detention), fewer than one in ten asylum seekers and deportation-based detainees who have been released from custody actually disappear (Edwards 2011).

Nevertheless, the lack of evidence concerning the efficacy of detention and other deterrence policies and the existence of cheaper non-custodial measures to prevent absconding has not reduced expenditures on immigration control in most major immigration destination countries. In fact, governments continue to commit ever-larger budgets to this. For example, between 2007 and 2013 the European Union slated four billion euros, or 60 percent of its total Home Affairs budget, to immigration control measures, despite regional economic austerity. This amount does not comprise the additional funding spent by individual member states. Spain, for example, increased its migration control budget to one billion euros between 2006 and 2009 (Andersson 2014:37). The U.S. Immigration and Customs Enforcement (ICE) had an operating budget of \$2.9 billion for detention and deportation in fiscal year 2009 alone (Immigration and Customs Enforcement 2009). The amount the U.S. federal government spends strictly on detention more than doubled between 2005 and 2010, and peaked at US\$2 billion in 2012 (see Figure One).

Figure One: Cost of Detention in US\$ Billions and Number of Detainees in the United States, 2005-2014



Sources: Immigration and Customs Enforcement. 2011. "ERO Facts and Statistics." Retrieved May 7, 2015 <http://www.ice.gov/doclib/foia/reports/ero-facts-and-statistics.pdf>; Department of Homeland Security. "Annual Performance Report 2012-2014" and "Congressional Budget Justification." Years 2012 and 2015. (Line Item "DRO - Custodial Operations."); and Transactional Records Access Clearinghouse, Syracuse University. Immigration and Customs Enforcement (ICE) Budget Expenditures FY 2005 - FY 2010. Retrieved May 7, 2015. <http://trac.syr.edu/immigration/reports/224/include/3.html>

Due to increased spending, the capacity for holding non-citizens in administrative detention has jumped exponentially. In the U.S., there were 7,500 beds in 1995, a figure that increased to more than 30,000 by 2009 (Immigration and Customs Enforcement 2009). In 2009, ICE reported that 378,582 people were placed in custody or supervision, with daily averages of 30,000 non-citizens located in 300 facilities and an additional 19,000 in alternative detention programs. While similar data has thus far not been made available for the entire European Union, according to one estimate, as of 2012 there were 473 detention centres located throughout Europe and bordering countries as of 2012, an increase from 324 in 2000 (Migreurop n.d.).

This rapid increase in immigration detention funding and capacity is a puzzle. Why have states opted for this course of action despite the fact that there is little or no evidence demonstrating its long-term efficacy or cost effectiveness? Who are the actors involved in the management of these people and what are their interests? What does immigration detention tell us about the role of complex organizations who view human bodies as "raw material" (Welch 2002)? I argue that post-structuralist accounts of immigration detention obscure more than they illuminate and depoliticize more than address problems associated with detention. Instead, I argue that the central issue concerns the operations and role of complex organizations in modern society, employing in particular the perspective of "bureaucratic capitalism" developed by Gideon Sjoberg (1999). Such an

approach can help provide an actor-focused perspective with respect to organizational arrangements geared towards revenue generation. In contrast to post-structuralist accounts, Sjoberg's meso-level analysis better elucidates the contemporary manifestation of global capitalism to analyse immigrant detention as an industry instead of just a metaphor. In effect, warehousing human bodies for financial gain becomes the central problematic.

Post-Structuralist Perspectives on Immigration Detention

Post-structural literature on detention tends to focus on concepts and issues related to sovereign power, legal discourses of control, and spatial-cognitive boundaries (Bigo 2007; Mountz 2011; Rajaram and Grundy-Warr 2004; Tsoukala 2011). These authors derive their conceptual framework from Foucault's notion of biopolitics and, more specifically, the work of political philosopher Giorgio Agamben (1998, 2005). Two of Agamben's concepts play a central role in discussions of immigration detention: homo sacer, a term he borrows from Roman law (in which it refers to a banned person) to denote depoliticized life, which contrasts with the political life of the citizen; and zones of exception, which are typified in his discourse using the term "camp." In his understanding of the development of states, Agamben argues that politics is constructed around notions of who belongs within the protections- and rights-conferring institutional arena of the state and those who do not. The latter become the object of state power through death and abuse in the zones of exception. Through this citizen/non-citizen dichotomy, sovereignty is exercised by inclusive exclusion, by acting upon itself of what it is not. In other words, the creation of zones of exemption, the creation of bare life, is a necessary part of the creation of state power.

Rajaram and Grundy-Warr (2004) apply the Agambenian framework to the cases of immigrant detention in Australia, Malaysia, and Thailand. They point to two aspects of Agamben's writings to bolster their argument: First, that the refugee, although an ideal type of homo sacer, should paradoxically be thought as being an integral part of the nation-state system, which for Agamben involves discursive efforts to delimit the meaning of being human. Accordingly, "the refugee becomes a controllable figure that can be held in discursive stasis—the meaning and identity of the refugee may be created according to the needs and whims of sovereign law" (Rajaram and Grundy-Warr 2004:41). Through the creation of a refugee status conferred by international norms, the state can restrict refugee rights in order to demonstrate sovereignty.

Bigo (2007) also analyses political discourses surrounding immigration detention by refocusing Foucault's interpretation of the panopticon. Instead of a system of governmentality through which everyone in a community is equally submitted to processes of surveillance and control, the "banopticon ... deals with the notion of exception, and the difference between surveillance for all but control of only a few" (Bigo 2007:6). The ban thus applies to issues related to security and construction of otherness. Specifically, the globalization of capital, information, and people disrupts the traditional role of the nation-state's boundaries. In its place, the "ban" operates within and around geographical boundaries but has the same intent of constructing zones of exclusion. The difference between "the state of exception" and the "ban" is that "the state of exception is the only visible moment of the Ban, the moment where arbitrariness is not a routine. But in the Ban the norm is the routine of the exception" (Bigo 2007:13). While refugee camps represent exceptional circumstances for exercising state power to exclude a group of people, the banopticon refers to the creation of permanent zones of exception, normalizing the permanent control of a designated group of outsiders by criminalizing illegal residence. The housing of terrorists suspects in Guantanamo, the proliferation of detention centres and international waiting zones, and the growth of their inverse—the

gated neighbourhood—all represent the permanent derogation that is a part of liberal governmentality (Bigo 2007).

Tsoukala's analysis of transit zones and detention centres builds on both Agamben and Bigo. New forms of controls of foreigners represent a distinct break from Foucaultian views of the panopticon and instead represent the creation of a new legal framework and different technology of discipline "covering the control of time and space through the control of human flows rather than through immobilized human bodies" (Tsoukala 2011:187). She argues that normalizing states of exception by controlling human flows of illegal migrants corresponds with the construction of a European identity and European state, as evidenced by the European Union's Schengen Agreement eliminating Europe's internal borders while strengthening its external borders.

Lastly, Mountz (2011) identifies the special role of islands for the sovereign's interest in promoting security at a distance, biopower through secrecy, and inclusion on archipelagos that, both legally and metaphorically, represent permanent zones of exclusion. "Nation states exploit the legal ambiguity, economic dependency, and partial forms of citizenship and political status on islands to advance security agendas" (Mountz 2011:118). Through an analysis of European, Australian, and North American islands, she shows how various technologies are used to monitor, direct, conceal, and exploit asylum seekers. Mountz also draws on the notion of "haunting," a concept articulated by Gordon (1997), to demonstrate sovereign efforts to disorient, isolate, and confuse migrants both geographically as well as legally in their attempts to struggle against their predicament. In sum, offshoring to islands plays a central role in the Agambenian necessity of sovereign power of exclusion through inclusion.

There are a number of theoretical and conceptual complications in these post-structuralist studies. By not specifying actors in the process of legal discourse in the creation of detention centres as zones of exemption, post-structuralist scholars tend to posit a functionalist argument susceptible to teleological thinking (Mouzelis 2003). In other words, the outcomes they seek to explain are transformed into social causes. Their premise is that detention centres play a central logic in the underlying dialectic of the state—its power to extend freedoms, rights, and ultimately to define human life is premised by denying the same to others. According to this circular thinking, we should see "the enclosure of certain human beings not as an anomaly of the logic of contemporary sovereignty, but a normal outcome of this logic" (Rajaram and Grundy-Warr 2004:36). Similarly, Tsoukala (2011:195) writes that the creation of these zones of exception should not come as a surprise to asylum seekers, refugees, and economic immigrants because "exclusion underlies sovereignty; freedom of movement becomes the new criterion for exclusion; and the exception is the necessary condition for the establishment of new zones that will further confirm sovereignty."

If this type of argumentation was to hold, then logically we should also expect to see its opposite: failure to create explicit zones of exception should weaken states and potentially lead to their collapse. But, in fact, there is no inherent necessity for the state to deny rights to "the other" in order to be able to uphold the rights of its members, a fact that is demonstrated in part by the lack of the immigration detention regimes in certain parts of the world, most notably in South America (see, for example, Ecuador in Global Detention Project 2015).

Arguably, immigration policies—including the use of detention centres—stem not from the invariant exercise of state power but from exceptional circumstances and changing politico-economic conditions. A political economy perspective of immigration in the Americas and Europe focuses more on the rising and falling demand for labour during times of economic expansion and contraction than the inexorable requirement of the

state to perform the power of granting and restricting rights. Increasing immigration controls, the rise of nativist sentiments, and the criminalization of foreign aliens, in turn, occur during times of economic decline (Hall et al. 1978) or possibly as efforts to keep labour costs down by keeping a segment of the work force without political rights and under threat. Nor does the state see refugees as an inherent risk to itself. This contrasts with the view of refugees as representing an inherent risk to sovereignty: “their intention of moving freely beyond state controls turn them into politically threatening figures since they blur the newly established differences between populations which are advantaged and disadvantaged, socially and economically” (Tsoukala 2011:196). The post-structural view overlooks the variation in even democratic countries, from Argentina to Australia, in terms of their detention policies and operations

The failure to specify actors involved in the creation of detention centres and associated policies also represents a teleological error in post-structuralist accounts. Disembodied notions of the state or sovereign power tend to substitute the role and intentions of actors classifying sets of people as illegal, constructing systems of control, and operating detention centres. For example, Bigo (2007:11) writes that “the will of the sovereign power is to dissociate the relations of power and to localize it in the hands of the sovereign.” Analysing the discourses of government ministers and agencies portrays them as unreflective actors expressing the underlying logic of the functional necessity of the state. Similarly, Rajaram and Grundy-Warr (2004:43) cite the following passage from Australia’s Department of Immigration, Multicultural and Indigenous Affairs as evidence of their argument: “Australia is a sovereign country which decides who can and who cannot enter and stay on its territory. Only Australian citizens have the unrestricted right to travel freely in and out of the country—all other people must have a legal authority in the form of a visa.” The decontextualized discourses fail to associate the concrete conditions to which actors respond, frame, and legitimate state power.

Another problem with post-structural views of immigrant detention is the conflation of citizenship rights with human rights. These critical perspectives highlight a contradiction faced by liberal democracies; that is, restricting the rights of a certain groups while at the same time holding such rights as core values. In fact, the restriction of such rights belies a certain discomfort and shame for regimes professing certain alienable rights (Flynn 2013). But citizenship rights are not the same as human rights, even though the conception of human rights grew out of the experience of citizenship rights. Still, citizenship rights refer to the relationship of rights and obligations between states and citizens deriving from membership in a political community. Human rights, on the other hand, are claims to human dignity with universal application regardless of one’s nationality or citizenship status. Nation-states remain the principal agents for upholding human rights as well as guaranteeing specific citizenship rights. While nation-states often are major human rights violators, they also shoulder the primary responsibility in upholding rights. In contrast, the international human rights community plays a key role in promoting normative frameworks and pressuring states to fulfil promises.

Failure to specify human and citizenship rights leads to empirical pitfalls. According to Rajaram and Grundy-Warr (2004), based on the Agamben’s logic, the state strips humanity of its human rights by creating zones where people have no recourse to legal systems or rights claims. “The territorialisation of life means that the refugee is put in a position where she lacks apportioned rights but depends on the charity or goodwill of aid workers or the police. The refugee is outside the law” (Rajaram and Grundy-Warr 2004:41). But in fact, and in contrast to this claim, refugees, as well as other non-citizen detainees, generally have recourse to clear set of laws and legal remedies, even if their specific legal status often restricts their ability to access these remedies and many countries are notorious for their failure to guarantee access to justice. Moreover, there are regional systems, for example at the level of the European Community, as well as

international treaties, governing the treatment of immigrants and setting positive norms for treatment of non-citizens. In critique of Agamben, Wilsher (2011:302) notes: “Where they have suffered serious breaches of their civil rights, by being detained without lawful authority, [immigration detainees] have not been denied access to justice to sue for damages or to challenge the legality of detention. In this sense they retain legal personality. Civil damages have also been awarded where detainees have suffered serious harm by reason of the conditions of detention.” The problem is differential citizenship status not the lack of rights per se that provides a necessary condition for human rights abuses. According a reduced set of rights to immigrant detainees is more a necessary condition than a sufficient one for the rise of detention centres and associated abuses that occurs within.

The causal logic of post-structural accounts sees abuses resulting from the creation of zones of exception necessary for the establishment of sovereign power. Agamben (1998:174) sees detainee mistreatment as necessarily resulting from the creation of “a space in which the normal order is de facto suspended and in which whether or not atrocities are committed depends not on law but on the civility and ethical sense of the police who temporarily act as sovereign” (Agamben 1998:174). Similarly, Tsoukala (2011:193) argues that police abuse—including physical and psychological abuse—stems from young, inexperienced police officials who are “excessively zealous in order to satisfy their hierarchical superior officers.” But instead of seeing abuse resulting, as she claims, from inclusive exclusion, these assertions draw our attention towards the way in which human rights violations are associated with the nature of the organizations constructed to manage human flows. In effect, they argue a form of methodological individualism on the one hand and the diffuse notion of sovereign power on the other. What is missing is an understanding of how abuse and mistreatment occur as a result of the function of complex organizations.

Immigration Detention through the Lens of Bureaucratic Capitalism

In economic sociology, the central problematic of contemporary immigration detention regimes is not the inexorable impulse of sovereignty to demonstrate its power through inclusive exclusion. Rather, it begins with the premise that complex organizations are a fact of life in modern society. For good or bad, they play a central role in social reproduction through the management, production, and distribution of goods, resources, and other necessities. Complex organizations reflect the underlying social structure and distribution of power in society, including class relations and social status, as well as embody specific cultural attributes such as values and norms (Portes 2006). Critically examining the role and nature of organizations in modern life provides insights into ways in which they either promote or abuse human rights in concrete situations. The conceptual framework developed by sociologist Gideon Sjoberg, specifically his work on “bureaucratic capitalism,” provides a useful blueprint for analysing the growth and operations of immigration detention regimes.

Sjoberg (1999) emphasizes the role of complex organizations in shaping modern capitalism and considers how these entities can be morally accountable. He combines the elite-based theories of power of Domhoff, Mann, and Mills with actor-oriented perspectives of Mead and Dewey. For Sjoberg, organizations are not reducible to the individuals that comprise them nor can the actions of individuals within an organizational field be adequately understood without considering the various rules and constraints in place:

“Once we recognize the role of human agents within organizational settings, two strategic patterns can be identified. First, organizational structures cannot exist without

human agents; yet organizations are not reducible to human agency. The normative order, as well as the economic and political resources of organizations, has a reality apart from any particular set of human agents. Second, if we take account of human agents in shaping organization arrangements, we discover that the end product (or the 'official reality') can be constructed by somewhat different sets of activities" (Sjoberg 1999:29).

Sjoberg's approach provides a conceptual framework that is empirically driven while retaining a critical stance that is neither deterministic nor teleological. Modern day capitalism cannot be understood without considering the role formal organizations play in the creation and distribution of resources that result in on-going social inequalities. "We must seek to understand the processes by which bureaucratic structures come to support and sustain privilege, as well as the processes by which social triage is produced," writes Sjoberg (1999:32).

In post-structuralist accounts, class inequalities typically do not become a central issue because state power is seen as focusing on whole groups of people irrespective of their class position. But in reality, while there are certainly exceptions, people from upper and middle classes rarely find themselves in immigration detention. In contrast, Sjoberg (1999:32) emphasizes that people "who attain privilege do so by relying upon corporate-state organizations, and they sustain their privileges through a complex set of organizational rules (reinforced by police power)." He therefore critiques post-moderns for their inherent relativism and diffuse notions of power that make challenging "contemporary organizational domination well-nigh impossible" (Sjoberg 1999:25).

Contemporary prison systems demonstrate social triage, i.e. harm for some to the benefit of others, which results more from human creativity than as a functional necessity of state. "The prison-industrial complex in the United States serves two functions. It sweeps the 'unwanted' (especially members of racial and ethnic minorities) off the streets, and it provides a stable market for producers of a rather wide range of goods and services," contends Sjoberg (1999:33). There appears to be a distinct class bias to how immigration detention regimes are organized and targeted.

One drawback in Sjoberg's schema is the inadequate development of why certain racial and ethnic minorities intersect with class to constitute the "unwanted." For example, he notes the growing documentation surrounding race, gender, ethnicity, and lifestyle but considers that these developments, while affecting the cosmetic make-up of organizations, do not confront the growth of centralized bureaucratic power. This gap in Sjoberg's work reveals a strength in post-structuralist, as well as post-colonial accounts, which draw our attention to discursive creations of "the other" as a key problematic. With this caveat, we can consider how bureaucratic capitalism, especially in relation to "unwanted" groups, links class-based dynamics to forms of ethno-nationalist tendencies. In other words, we can see the increased use of immigration detention centres as a means to profit from the active creation of vulnerable groups as exploitable commodities.

By appending critical constructions of "the other" to Sjoberg's economic sociology we can analyse the growth and operations of detention centres in terms of bureaucratic capitalism in a variety of contexts. In doing so, we can highlight the tendencies that lead to human rights abuses and consider alternative organizational arrangements. Specifically, our analysis of the immigrant detention industry will adapt the framework developed by Sjoberg (1999) for analysing organizations. These include the following dimensions: the corporate-state nexus; human agency; the rationalization process; hierarchy, blameability, and responsibility; and secrecy systems.

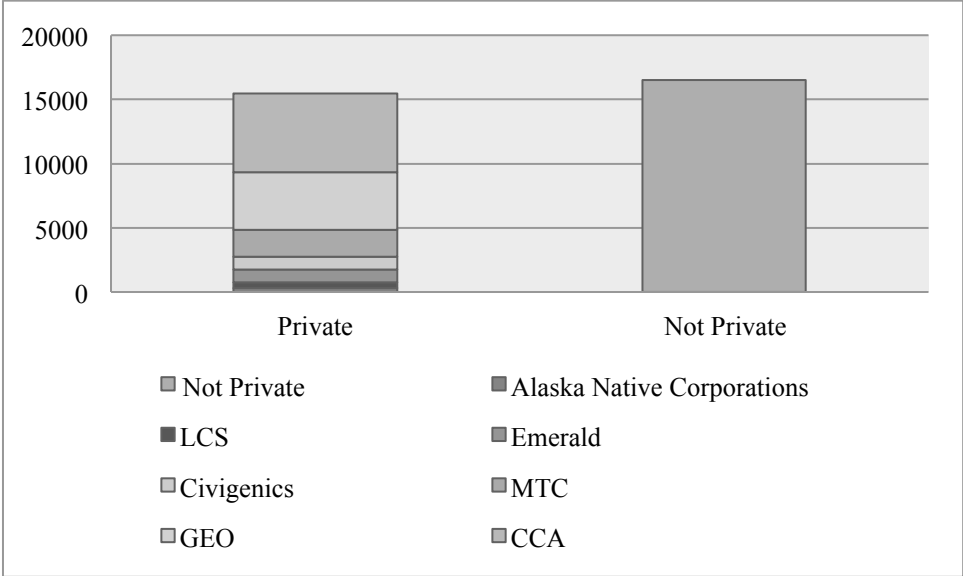
The Corporate-State Nexus

The focus on complex organizations as the drivers of modern capitalism helps highlight the increasingly blurred lines between the state and corporate sectors. “In effect, in most highly industrialized orders we find hybrid organizations that are a mix of the public and the private” (Sjoberg 1999:26). While in some countries the role of the private sector is greater than others, there are clear connections between the two. Still, the central problematic is the comprehensive nature of these arrangements, which is particularly evident in contemporary efforts to manage and control international migration, as reflected in the proliferation of phrases like the “migration industry” (Gammeltoft-Hansen and Sørensen 2012; Hernández-León 2008), the “illegality industry” (Andersson 2014), the “xénophobie business” (Rodier 2012), and the “immigration industrial complex” (Fernandes 2011). For Andersson (2014:15), this industry, which is ultimately responsible for the management of people, “allows for the consideration of a dispersed ‘value chain,’ or the distinct domains in which migrant illegality is processed, ‘packaged,’ presented, and ultimately rendered profitable.” Hernandez-Leon (2008:154) defines the “migration industry” as “the ensemble of entrepreneurs who, motivated by the pursuit of financial gain, provide a variety of services facilitating human mobility across international borders.” For her part, Fernandes (2011:23) helps focus attention on the control aspects of this industry, focusing particularly on the United States, where she characterizes the “immigration industrial complex” as being comprised of “big business interests that have always driven immigration policy [to increase their participation] in the enforcement of immigration law through lucrative federal contracts.”

The immigration industrial complex involves many interrelated actors at various levels of government. In the United States, state actors include ICE, the US Marshalls Service, as well as municipal governments. In Europe, the EU sets regional policies and offers additional funding, but member states are the primary enforcers and operators. These public bodies interact with private actors in innumerable ways: from contracting transportation services and procuring high-tech surveillance equipment to the purchase of necessary utilities such as fuel, food, and supplies to run operations. Immigration detention centres must be understood as operating within this larger network of business opportunities. Moreover, some of the largest private actors in immigration detention are transnational corporations that pursue contracts in the United States, Europe, and beyond. These include publicly traded companies like the Corrections Corporation of America (CCA), GEO, MTC, Group 4 Securicor (G4S), among others. A focus on the corporate-state nexus draws attention to the organizational arrangement of detention within and across countries to trace resource flows, policy initiatives, and delegation of responsibility.

Currently in the United States, for-profit companies account for nearly half of the capacity to house immigrant detainees. According to the Detention Watch Network (n.d.), in 2009, private-run facilities housed 15,942 people, or nearly half of the total detained population on a daily basis (see table one). The states with the highest average daily number of detainees included Texas (6,115), Georgia (1,804), and Arizona (1,779). Based on the total of 383,524 people detained in 2009, at an average cost of US\$122 per bed, we could estimate that private actors acquired almost half of the US\$1.7 billion spent on immigrant detention (Detention Watch Network n.d.). These are figures at the macro-economy of immigrant detention and do not take into consideration revenues from suppliers, utilities, or construction companies who serve existing and build new human warehouses. Nor are expenditures of the U.S. Marshalls Service included in the calculation.

Figure Two: Private vs. Non-Private Bed Capacity, 2009



Source: Adapted from Detention Watch Network (n.d.)

Focusing on the corporate-state nexus also draws our attention to what is commonly referred to as the “revolving door” between the public and private sectors. Several authors have noted the close ties between the private and public sectors in the U.S. security state (Alimahomed 2014; Fernandes 2011). For example, Fernandes (2011) details how private-sector interests played important roles in planning the creation of the U.S. Department of Homeland Security (DHS) through the Homeland Security Act of 2002. Although the law does not mention immigrants, DHS assumed responsibility for federal government immigration programs. In October 2002, President Bush’s Homeland Security Advisory Council included representatives from UBS, Paine Weber, Dow Chemical, and Eli Lilly, among others, along with business-friendly consultants from the intelligence and law enforcement industries to plan the operations of the Department. “DHS was conceived and created in a way that made it possible for private industry to become the driving force behind much of its operations” claims Fernandes (2011:178).

The revolving door is more apparent in the case of private detention centre operator CCA (Ackerman and Furman 2013; Feltz and Baksh 2013). Michael Conlon left his position as the head of the Federal Bureau of Prisons and 22 years of public service in 1993 in order to head up Strategic Planning for the corporation. He later served as CCA’s Chief Operating Office and Executive Vice President. Kim Porter left the INS after 25 years to manage relationships with ICE. Similarly, Anthony Odom assumed the role of managing CCA’s affairs with his former employer, the US Marshalls Service. The revolving door also operates in the opposite direction. President Bush nominated Gustavus Puryear IV, CCA’s general council, to a federal judgeship in Tennessee where CCA is based. Circulating key personal inside and outside of government provides “seamless connections between CCA and its federal funders” (Feltz and Baksh 2013:147).

The role of the private sector in Europe differs from the U.S. experience in part because of the former’s less centralized immigration governance structure. The Schengen Agreement, eradicating borders within the European Community while simultaneously strengthening external borders, took effect in 1995. Currently, the European Union (EU) adopts regional directives and norms but member states retain overall responsibility for conducting programmatic actions related to migration matters. When analysing the degree of privatization across European member states and in the United States, Menz (2011) connects the increasing neoliberal economic policy environment to increased

privatization. He argues that variation in neoliberalism (similar to variation in capitalism) accounts for extensive privatization of immigrant detention in the UK, Australia, and the United States on the one hand and the lack thereof in Germany and the Netherlands on the other. The underlying rationale, according to him, is the belief in the alleged efficiency of the private sector grounded in a neoliberal ideology. Initial contracts with the private sector create a path dependent situation that perpetuates the role of the private sector in the managing detention centres (Menz 2011).

While the ideological persuasion of policymakers cannot be underestimated, the situation in Europe is more complex than an either/or dichotomy along variations of neoliberalism predicated on path dependent models. Flynn and Cannon (2009), reviewing the cases of the Germany, Italy, and Sweden (as well as South Africa), demonstrate the various reasons and motivations for out-sourcing. In fact, government agencies in Portugal and France contract private, not-for-profit organizations to provide a range of services to detainees, including social, legal, and psychological counselling, while Italy outsources the management of detention facilities to the Red Cross. Back in the United States, municipal governments have looked to immigrant detention as a means to generate additional resources by placing detainees in local jail cells, often appearing to operate under a similar logic of the private sector (Conlon and Hiemstra 2014; Welch 2002).

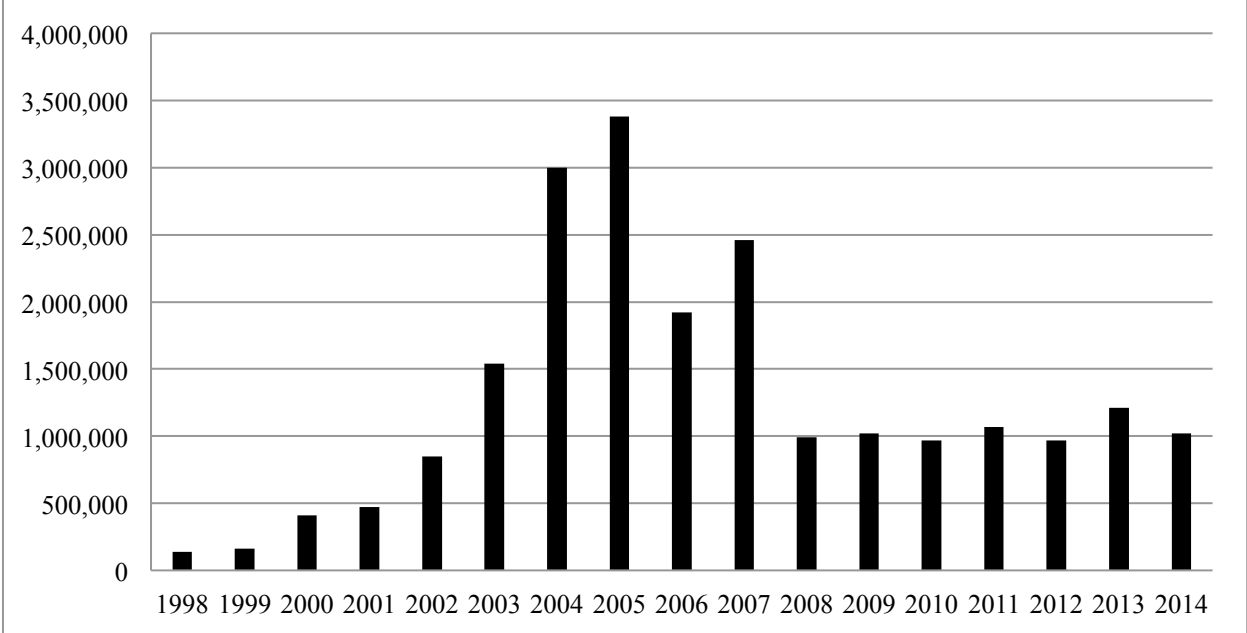
The diversity of organizational arrangements raises two important issues. First, the varied operations of detention centres reveal how complex organizations could potentially operate in ways that result in fewer incidences of abuse and offer more supportive services. While charitable organizations also face pressures similar to the private sector, including securing resources, cost-benefit concerns, etc., they also tend to operate according to a different logic. Secondly, the role of the private sector in immigrant detention should not only be seen as an irreversible tendency predicted by Menz's path dependent models. They can also be viewed through the conceptual lens of policy-making as a form of recurrent problem solving (see Haydu 2010; Howlett and Rayner 2006). Accordingly, human agency—the capacity to creatively address changing circumstances and interact with differing institutional legacies—plays a central role in understanding the proliferation of immigration detention and its alternatives.

Human Agency

To understand bureaucratic capitalism, Sjoberg (1999) emphasizes that human beings are reflective, engage in calculative rationality, create typologies, pursue parts-whole logic, and undertake a diverse array of social and interpretative actions. Within organizational fields, humans interact with norms and rules in creative ways, but such creativity depends on one's position in an organization and institutional field. Most notably, rule creators at the top of an organization employ holistic reasoning in their strategic decision-making when considering their organization's future trajectory. Holistic rationality, emphasizing corporate efficiency at the expense of individual members, plays a central role in organizational development and sustainability (Sjoberg 1999). In the search of new revenue streams, human actors set goals and develop strategies to achieve their objectives while legitimating their actions, such as through neoliberal ideologies. Understanding the role of human agency allows us to focus on the different strategies played by actors along the corporate-state nexus. These include efforts to change policies governing the out-sourcing of immigration detention, negotiations involving contracting agreements, and the re-interpretation of the terms of these agreements.

Ackerman and Furman (2013) highlight three ways by which private interests influence policies related to immigrant detention in the United States. First, campaign contributions seek to influence politicians. Between 1998 and 2012, private prison operators donated US\$900,000 to politicians at the federal level and US\$6 million at the state level. More donations occurred at the state level, especially in the states of California and Texas, to influence state criminal laws. CCA has also used political action committees to funnel resources to politicians on the House Committee on Homeland Security (Feltz and Baksh 2013). Second, CCA, GEO, and other entities, including the sector’s industry association, the Association of Private Correctional and Treatment Organizations, pay lobbyists to ensure that bills at the federal and state expand the use of private prisons. The firms that contract with ICE spent over US\$20 million on lobbying between 1999 and 2009. Figure Three details the lobbying expenditures of just CCA. The third strategy involves the use of policy-making networks. Private prison operators pay millions to members of the American Legislative Exchange Council (ALEC), which proposes legislation, sets up dedicated task forces, and provides a space for lobbyists, politicians, and the private sector to gather (Ackerman and Furman 2013). Comparable strategies and policy-making networks exist in the UK, including activities by CCA’s local affiliate and the neoliberal think tank Adam Smith Institute (Menz 2011).

Figure Three: Total Corporate Lobbying Expenditures by CCA in US Dollars, 1998-2009



Source: OpenSecrets.org (2015)

While these private operators claim they are not attempting to influence legislation related to criminal justice, the evidence suggests otherwise (Ackerman and Furman 2013; Feltz and Baksh 2013). First, legislation and policies have increasingly criminalized immigration. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 expanded criteria for state authorities to detain and deport immigrants. In 2004, the Bush administration zealously began to implement the Act of 1996 resulting in demand for beds outstripping installed capacity. The DHS initiated a program called “catch-and-release,” but conservative critiques of the policy led to change towards “catch-and-return.” The new policy, called the Secure Borders Initiative, placed suspects in detention before appearing before an immigration judge. Additional policies, including ICE’s 287(g) and Secure Communities program, were developed to allegedly target immigrants with felony convictions through cooperation agreements between federal agencies and local law enforcement. However, these efforts ended up arresting a disproportionate number of low-level offenders, including those guilty just of traffic

violations (Feltz and Baksh 2013; Young 2011). Also, legislative initiatives at the state level, such as Arizona's controversial SB1070, have been modelled on ALEC's policy blueprint "No Sanctuary Cities for Illegal Immigrants Act." While ICE (2009:11) states that it "focuses primarily on dangerous and repetitive criminal aliens," the agency lists the majority of "book-ins," or those taken into custody, as "non-criminals." Part of the reason for high-rates of incarceration and deportation of foreigners convicted of minor crimes includes ICE's quotas. The DHS Appropriations Act of 2010 first introduced a bed quota of 33,400, and subsequent years have kept similar mandates on the number of detained. Additionally, internal documents revealed that the agency specified a target of 400,000 deportations a year (Young 2011).

Rationalization, Efficiency, and Division of Labour

Fundamental to bureaucratic capitalism are the emergence of systems to reduce costs and expand sales by a more efficient use of division of labour. While lobbying, corporate donations, and policy networks can affect laws and policies to increase overall detention rates—i.e. the "macro-economies" of detention—rationalization processes seek to streamline operations for service provision through a division of labour, the micro-economy of detention. At one level, out-sourcing of immigration detention can be seen as increasing division of labour across the corporate-state nexus, similar to different forms of intra-firm trade carried out between different branches of a large corporation. At another level, the various organizational units along this human "value chain"—be it a private corporation like CCA or a local public jail—include management, human resources, accounting, among other activities. In these roles, human beings creatively achieve organizational goals that range from positively portraying a corporate face to the public while at the same time inventing ways to maximize rents. While much of the rationale for outsourcing assumes that private detention operators have built-in motives to provide adequate services, seeing human actors as balancing competing goals of acceptable treatment of the human product on the one hand while at the same time taking advantage of captive labour on the other provides more nuance to varied situations. For example, McDonald (1994:42) argues: "At least during the early stages of contracting, there appear to be certain disincentives to diminish services: if performance falls below agreed-upon standards ... firms risk losing contracts and clients." But this argument does not take into account rationalization processes internal to detention centres as well as some of the complexities of detention centre contracting in the countries like the United States.

Studies on the internal economies of immigration detention centres show how they appear to save tax payer resources by reducing costs through the over-exploitation of captive labour (Burnett and Chebe 2010; Conlon and Hiemstra 2014). Conlon and Hiemstra (2014) highlight how public prisons in the New York metropolitan area that include immigration operations reduce costs and generate additional revenue by creating micro-economies that are exploited by private contractors (important to note that while their stated focus is immigration detention, the arguments they advance arguably apply to criminal prison operations and not immigration detention strictly speaking). One way that detention providers profit is by restricting access to goods and services that detainees want or desire then selling such items at greatly inflated prices. Inmates are also forced to pay exorbitant rates for services like phone calls, paying up to 20 times prevailing rates. One example is the New Jersey's Essex County government's telephone contract with Global Tel*Link at a commission rate of 54 percent, which translates into an annual income of US\$925,000. Operators also use detainee labour, considered a privilege for the incarcerated, to reduce their overhead costs of facility maintenance and operations. Courts have upheld the right to pay detainees US\$1-3 per day which, according to one estimate, translated into US\$5-6 million in savings for one

187-bed facility. Lastly, the authors discuss the subcontracting of detainee labour to private interests. “These economies show that detained migrants’ social reproduction—their needs and daily routines—are tailored in ways that produce migrants as both captive consumers and labourers. Theirs is a captivity borne of a continued securitization of immigration, where migrants are relentlessly criminalized and dehumanized in ways that turn them into targets for the extraction of profit,” summarize (Conlon and Hiemstra 2014:342).

There are striking parallels between the United States and the United Kingdom in pursuing micro-economic rationalization processes. A study by Burnett and Chebe (2010) uncovered wages of £1-1.25 an hour and sometimes less paid to detainees for carrying out the basic upkeep and day-to-day operations of detention facilities. In turn, basic items, as well as phone cards, are sold back to detainees at greatly inflated prices. And similarly to the U.S. case, awarding paid labour is framed as a privilege and can be rescinded at any moment. In one case, the private contractor G4S paid detainee labourers vouchers that are only redeemable for items it provides. Burnett and Chebe (2010:101) write:

“There is a fundamental and obvious irony in that people who are prohibited from working as a result of their immigration status can be put in conditions where, if detained, they have to accept exploitative working practices. This is highlighted further when considering the fact that, on the one hand, the government is massively increasing resources and personnel to investigate and prevent undocumented working whilst, on the other, it is sanctioning conditions in IRCs that have many of the hallmarks of undocumented working.”

Regardless of private versus public control of the detention facility, operators have discovered ways to exploit captive labour to reduce costs and maximize rents, all the while without decreasing services to “agreed-upon standards.”

Needless to say, rationalization processes have translated into tremendous revenue gains for private contractors and for entrepreneurial public governments. Over-exploitative labour combined with lucrative contracts provides healthy profit margins. According to Fernandes (2011:194), in 2005 the average time a detainee spent in detention from arrest to deportation was 42.5 days. DHS paid on average \$85 per day, translating into \$3612 per detainee. In 2005, CCA estimated that it spends \$28.89 per inmate per day and profits \$50.26 for each inmate per day (Fernandes 2011). CCA was close to bankruptcy before 9/11 hit. With increasing “cimmigration” and use of its detention facilities, the company’s stock prices, revenues, and profits have skyrocketed. Between 2012 and 2014, the company’s revenue hovered around US\$1.7 billion and net profits between \$150-300 million on annual basis. The GEO group operates 106 facilities with a capacity of around 85,500 beds in United States, United Kingdom, Australia, and South Africa. Its revenues have steadily increased from US\$1.1 billion to US\$1.5 billion between 2011 and 2013 along with net income increasing from US\$63.5 million to US\$115 million during the same period.²

² Figures were taken from financial reporting websites, such as finance.yahoo.com and www.google.com/finance.

Hierarchy, Blameability, and Responsibility

Many observers of immigration detention see outsourcing detention to private actors or to sub-national governmental entities as a form of delegating responsibility to reduce costs and avoid legal issues (Flynn and Cannon 2009; Lahav 1998; Menz 2011). Regarding European practices, Lahav (1998) writes:

“These shifts in implementation to private, local, or international arrangements reflect less an abdication of state sovereignty, than an experiment in which national states involve agents as part of rational attempts to diminish the costs of migration. ... These strategies aim to enhance the political capacity of states to regulate migration, to make states more flexible and adaptable to all types of migration pressures, to shift the focus of responsiveness, and to generate more effective state legitimacy.”

Out-sourcing occurs not only to achieve efficiency and flexibility but also to shift blame and legal burdens. In fact, most countries define immigration detention not under criminal law but under administrative law. Nonetheless, implementing said law can involve potentially “aggressive forms of direct interaction” with detainees (Menz 2011).

Along the corporate-state nexus, specific forms of hierarchy and blameability within an organization must be considered. Specifically, there are more rules and constraints for those at the bottom of the hierarchy than for those at the top. Elite managers can delegate blame and responsibility on subordinates. When problems arise, those at the lowest end of the hierarchy face the direst circumstances, including job insecurity, dismal pay, and punitive action. Within an organization setting “social triage” occurs, whereby the most vulnerable are sacrificed at the expense of the privileged. Sjoberg (1999:33) writes that “people with the least knowledge of the system must interact with those organizational personnel who are the most constrained by the normative rules.” In other words, immigrants with the least knowledge of immigration laws and bureaucracies face those who often come from a lower socio-economic status in the home country who obtain formal employment. Thus, resources flow upwards in a bureaucratic organization by placing disadvantaged sectors of society against each other. Needless to say, there typically is a racial or ethnic division at the inter-personal level between the detention officials and detainees. Lastly, employees at detention centres tend to receive inadequate training and thus leading to several human rights abuses (Bacon 2005).

Practically every study on immigrant detention highlights the various human rights violations and abuses that occur within facilities. Instead of seeing these abuses as a form of homo sacer, or bare life, according to the followers of Agamben, a focus on the sociology of organizations sees the problem rooted in specific organizational arrangements. Through the corporate-state nexus, human agents interpret changes in rules governing the management of human beings, find ways to maximize revenue, and construct hierarchical systems to delegate responsibility to underpaid and undertrained detention staff responsible for managing and controlling asylum seekers and irregular immigrants depicted as “the other.” Still, there is some variation in cases of abuse. Central to the issue of abuses is the degree of transparency.

Secrecy Systems

Secrecy systems are both formal and informal. Formal systems include state and corporate secrets while the informal include the ways in which people within organizations attempt to monopolize information in order to protect themselves. The former typically occurs to fend off attacks from outside groups and organizations, while the informal operate as buffers between managers and their subordinates along lines of

hierarchical control, responsibility, and blameability. “We should not underestimate the power of secrecy arrangements; they are often the basis of corporate fraud or governmental malfeasance (yes, even the violation of human rights),” contends Sjoberg (2009:168). Consequently, it is not surprising that various scholars and activists have noted the degree of secrecy or silence surrounding immigration detention centres. For example, a central mission of the Global Detention Project (GDP), an organization dedicated to mapping out the global detention around the world, is to obtain access to data about these centres and increase transparency in the treatment of detainees. The GDP sees transparency as a fundamental element in any effort to check the spread of detention practices based on the premise that states seek to shield immigration detention from scrutiny because it challenges their claims to liberal orthodoxy, particularly with respect to the right to liberty (Flynn 2013).

The two main issues governing the flow of information in bureaucratic organizations concern accounting mechanisms and reports on abuses. While various insiders may know the flow of funds and resources across the state-corporate nexus, the lack of transparency to outsiders remains a significant problem. Contracts between government entities with private operators or sub-national bureaus often remain shrouded in secrecy. Additionally, access to detention centres remains severely restricted, and in turn detainees lack access to legal assistance and non-governmental support organizations and their families. Restricting access can be seen as a means to protect the range of abuses that occur with detention centres.

Despite similarities in secrecy systems at detention centres in the United States and in the European Union, there are distinct approaches in terms of monitoring and supervision given the embedded principal-agent relationships between central authorities and operators. In the EU, international organizations and supra-national bodies, such as the Council of Europe’s Committee on the Prevention of Torture, engage in extensive surveillance and oversight of detention operators. According to Flynn and Cannon (2009), “significant influence is exerted on some countries after official visits are made by such organizations, obliging them to provide detailed responses to each point of concern raised.” In fact, they note that a private security company operating a detention centre in the German state of Eisenhüttenstadt centre has been praised by activists and scholars alike for its conditions. In the United States, the situation appears differently. ICE often plays the role of both contractor and supervisor. Despite a consistent string of detainee abuses occurring in facilities operated by CCA and other private corporations, ICE continues to renew their contracts (Young 2011).

Conclusion

The growth in immigration detention and the magnitude of funding states dedicate to warehousing asylum seekers and irregular migrants continues to grow, despite the lack of evidence demonstrating their efficacy in disrupting immigration flows or in ensuring the presence of individuals before an immigration judge. Post-structuralists argue that detention centres represent a contemporary way in which sovereignty demonstrates its power to exclude through inclusion. In other words, state power carves out legal and physical spaces to control the movement of non-citizens while at the same time abusively restricting their rights. While this theoretical approach has some merits, a number of theoretical problems with the approach lead to problematic policy prescriptions. Most notable are the use of teleological arguments, a tight focus on discourses divorced from actors, and the conflation of citizenship and human rights.

It should not be surprising that given their approach, post-structuralists suggest contradictory and confusing policy suggestions. Agamben (2000) argues that the

concept of refugee should be divorced from the concept of human rights, since states fail to protect such persons accordingly. Rajaram and Warr (2004) also highlight the inadequacy of nation-states to protect refugees based on the 1951 Convention relating to the Status of Refugees. They argue: "Protection of irregular migrants must then begin with a re-questioning of the concept and limits of 'human rights' and must then be devised in such a way that this protection does not become the principle or sole responsibility of the nation-state" (Rajaram and Grundy-Warr 2004:59). A new independent tribunal, they argue, should be set up to adjudicate whether irregular migrants obtain the protections based on alternative international rights instruments such as the Universal Declaration of Human Rights and the International Convention on the Protection of the Rights of All Migrant Workers. This suggestion may have some merits, but still leaves open questions of implementation and the role of the nation-state. If sovereign power is the problem, then is it not necessary to question the existence of the sovereign? On the other hand, we have seen that alternative organization arrangements between regional and local players, as the case of Germany, can produce some level of improvement.

Compared to the post-structuralist perspective, a focus on the nature and composition of complex organization is the central problematic for understanding the immigration detention-related abuses. Accordingly, the state is both problem and solution, and so too are other large-scale organizations like for-profit corporations and even not-for-profit entities. A focus on what Sjoberg (1999) calls "bureaucratic capitalism" offers insight into the impact of global capitalism and provides tools for examining how corporations influence the state yet remain dependent on the state. Across the corporate-state nexus humans creatively act to change policies, enact rules, and reinterpret mandates. Through a social division of labour, rationalization processes seek efficiency to maximize resources for the organization. Hierarchical relations, out-sourcing of responsibility, and opportunities for blameability can result in various forms of abuse, but a key determinant is the degree of transparency. All these factors not only help us understand the operations of immigration detention centres but also offer possible solutions to redress abuse and correct human rights violations, including forms of "social triage" through which socially marginalized populations suffer to the benefit of elites groups.

If organizational arrangements are the problem, then a version of human rights that goes beyond individualistic notions of human rights must be employed. For Sjoberg (2001:42), human rights are "social claims made by individuals (or groups) upon organized power arrangements for the purpose of enhancing human dignity." Such an approach seeks to make organizations morally accountable, be they nominally operated by the state or private sector. On one level we must consider whether some activities of the "social control industry" should even be profitable, such as immigrant detention. But as we have seen, this is only part of the problem since publicly operated jails also seek new forms of revenue generation. Arguably, there is a need for a more radical restructuring of the immigration detention complex to ensure that government agencies and their sub-contractors are better held to account with respect to their efforts to uphold the rights of immigrants and asylum seekers. On the other hand, given the inherent, deep-seated nature of some of the problems associated with detention regimes, it seems more reasonable to argue that the best way forward is to resort to remedies that fall short of incarceration, rethinking the entire underlying rationales that have given rise to this unfortunate and paradoxical phenomenon.

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