

Downsizing the carceral state

The policy implications of prison guard unions

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As the growth of this nation's corrections apparatus threatens to bankrupt state governments across the nation, and as mass incarceration continues to tear at these same states' poorest communities of color, scholars have begun to question not only how we have come to be in this carceral crisis but also how policy makers might end it. Joshua Page (2011, this issue) offers several policy prescriptions for shrinking the carceral state in his article, "Fear of change: Prison officer unions and the perpetuation of the penal status quo." As he views it, prison officer unions erect significant barriers to existing as well as any new "efforts to implement sentencing reforms, shutter prisons, and slash corrections budgets." Therefore, policy makers must commit themselves to neutralizing the negative impact of these unions, both by confronting them to make the public aware of the ways in which their self-interest can work against the interests of the broader society and by making sure that their reasonable desire to be treated fairly as workers is accommodated.

Page (2011) is correct that policy makers interested in downsizing the carceral state must confront directly and aggressively those who have a direct interest in maintaining and/or expanding that same state. He is also right that policy makers must commit themselves to tackling the misleading and inaccurate crime and punishment narratives that these same self-interested parties regularly spin for voters to secure their "buy in" when it comes to keeping laws punitive and the number of Americans who are incarcerated sky high. Ultimately, however, Page's policy focus on prison guard unions is misguided. Specifically, he exaggerates the correction officers' advocacy for prison jobs at any price, as well as their desire for ever more draconian penal policies. Therefore, he overestimates how committed prison guards in fact are either to maintaining the carceral state as it currently exists or to bloating it further. In addition, Page overstates how pivotal prison guard activism has

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been in determining whether state carceral systems have expanded or shrunk in the last few decades. Ultimately, then, Page misreads the potential positive impact that targeting such unions would have in terms of downsizing of the carceral state writ large. Still, Page's policy recommendations have enormous potential. By tweaking them slightly and substituting his focus on prison guard unions for those whose level of political power and degree of economic self interest *do* in fact serve as a serious barrier to downsizing the carceral state, Page's prescription could have a tremendous positive impact on changing the penal status quo.

As Page (2011) points out, one of the main by-products of the rise of the carceral state and, more specifically, the advent of mass incarceration, has been an upsurge of guard interest in joining a union and, in some states, an increase in the number of guards who actually succeeded in their efforts to secure union representation. In that sense, then, Page is right to view guards unionization as "an unintended consequence of mass imprisonment"—those in the business of meting out punishment certainly never intended for guards to mobilize so fervently against the terrible working conditions that were virtually guaranteed once such staggering numbers of Americans were locked up.

State governments and private prison corporations certainly should have predicted such an outcome, however, because prison guards had protested vigorously and had sought union representation every time their working conditions deteriorated and their level of exploitation increased. During the 20th century, throughout the postwar period, American prison guards organized because they were consistently paid less than workers in other institutions, such as factories and schools, while they were equally exploited on the job and endured far more on-the-job injuries. These injuries stemmed from working in overcrowded prisons where the inmate-guard ratio was dangerously high. They occurred as well because guards were forced to manage and oversee inmate labor in prison factories that were completely unregulated and often treacherous. Indeed, as labor scholars Lynn Zimmer and James B. Jacobs (1981: 532) stressed, not only did prison guards "work under conditions of constant danger. . . Like coal miners, loggers, and longshoremen," but also like such other workers, poor working conditions had led guards as well "to frustration, discontent, and collective protest."

Indeed, this nation was rocked routinely by the labor activism of prison guards throughout the 1940s and 1950s, and from the mid-1960s onward, as states increasingly embraced laws and policies that, in turn, dramatically increased prison populations, such guard labor activism only grew. As one analyst wrote about the guard upheaval of the 1970s, "[i]n most states guards are lowest on the public protective service pay scale, behind police and firefighters as well as parole and probation officers and the state patrol. . . . At the same time, however, guards work under tight conditions of security that have been strained. . . . Compounding the complexity of the guard's job in Ohio are the large size of the prisons and high staff-inmate ratios" (Staudohar, 1976: 178). The problem of prison

overcrowding had become such a pressing workplace safety concern for Ohio's guards by the late 1960s that between 1969 and 1975 alone, they initiated 10 separate work stoppages (p. 181).

Page (2011) recognizes that prisons became increasingly unsafe workplaces for guards as the carceral state expanded, and he concedes willingly that guard efforts to unionize netted significant improvements that they sorely needed. Union formation and activism, he notes, "greatly improved its members' take-home" pay as well as gave them "a fantastic pension plan." What is more, he suggests, collective bargaining was an important tool for helping prison guards unions "to enhance its members' on-the-job autonomy and authority in matters ranging from shift and post assignments to personnel investigations and discipline." Still, Page argues, if the nation is serious about diminishing its political and economic reliance on imprisonment, the power and influence of these very unions must be put in check. Although guard unions are clearly good for their members, in Page's estimation, they are not good for society as a whole because their own self-interest—to keep prisons full and to keep the public tough on crime—makes them a determined and effective adversary in every serious attempt to downsize the carceral state.

The contention that what is good for guard workers is bad for the nation needs additional examination. To be sure, there are key examples where certain, and specifically two guard organizations—the California Correctional Peace Officers Association (CCPOA) and New York State Correctional Officers & Police Benevolent Association (NYSCOPBA)—have taken political positions that, when successfully adopted, led to greater rates of incarceration and, thus, to an expansion of the carceral state. Most guard unions have played a far smaller role in the political arena than either CCPOA or NYSCOPBA, however, and where they have decided to enter that fray, guard unions have often opposed state efforts to save money by closing prisons primarily because such closures are not accompanied by a similar reduction of inmate populations, which only makes other prisons even more crowded and even more dangerous. As even NYSCOPBA noted recently, closing prisons in New York quickly meant that this state's remaining penal institutions were "at 122 percent capacity" with increasing numbers of the inmates in them "double-bunked." Such severe overcrowding, in turn, resulted "in a dramatic increase in violence in prisons" (NYSCOPBA, 2011).

Prison guard unions have also tended to be vocal opponents to state efforts to maintain the penal status quo if that means the privatization of state penal institutions. This is significant because the only way that many states have been able to maintain the penal status quo has been by turning to private companies. Importantly, almost all recent growth of the carceral state has been in the private sector at taxpayer expense. In Tennessee, for example, even while state officials have been under increasing pressure to reduce the financial burden of mass incarceration, Republican Governor Bill Haslam recently managed to secure "nearly \$31 million in recurring money to keep open [Corrections Corporation of America's]

privately run prison in West Tennessee” and did so by “making deep cuts to other areas such as TennCare and higher education” (Schelzig, 2011).¹

Unions representing prison employees have in fact been fairly clearheaded that it is in their interest to resist the expansion of the carceral state even though corporations such as Corrections Corporation of America, Wackenhut, or GEO group might provide them with more jobs. To them privatization too often has translated into low pay, paltry benefits, and seriously unsafe working conditions—the exact injustices that they exist to fight. Indeed, unions like AFSCME Corrections United (ACU) have stated emphatically that “The imprisonment of human beings should not be driven by the bottom line” (AFSCME, *Don’t be a Prisoner*). The union representing prison employees in California, SEIU 1000, has been equally firm that it does not support prison expansion, even when it is funded by public dollars, just to provide its members jobs. In 2007 when Governor Schwarznegger sought to bolster corrections with an infusion of 10.9 million dollars, “The Service Employees International Union Local 1000 responded that the state should focus on expanding rehabilitation and re-entry programs rather than adding new bed space” (Furillo, 2007).

Not only do guard unions often resist the notion that it is in their self interest to expand the carceral state, but substantial evidence suggests that guard unions can also be quite critical of the specific draconian penal policies and practices that have put record numbers of people behind bars and have made life prison conditions so restrictive and punitive. In short, these too have had a negative effect on the quality of their working conditions. As one guard union official put it bluntly when speaking of how inmates should be treated in 2008, “[s]afer places for their loved ones to live in mean safer places for our members to work” (Abramsky, 2008). Even the former president of NYSCOPBA, Richard Harcrow, found himself leery of restrictive policies that clearly made correction officers’ time on the job more difficult. As he pointed out, one of the reasons why so many guards gravitated toward the NYSCOBPA and away from the older AFSCME union they had long been affiliated with back in the 1990s was because the new labor organization took a more vocal position against the increasingly dangerous workplaces that guards had begun to face thanks to new levels of overcrowding and to a reduction in things like recreation—both direct by-products of get-tough ideology and policy (R. Harcrow, personal communication, August 12, 2004).

Notably, this pragmatic view that punitive punishment practices deteriorate working conditions is often accompanied by the strong feeling that current prison policy is unnecessarily inhumane as well. As Brian Lowry, president of the Council of Prison Locals of the American Federation of Government Employees (AFGE), pointedly told lawmakers in 2010, it was time that prison officials find “new ways to foster the fair treatment of prison

1. TennCare is Tennessee’s managed care program for those who qualify for Medicaid in that state.

inmates and to improve the[ir] outcomes.” According to Lowry, prison guards and staff represented by the AFGE feel strongly that inmates should be protected from immediate abuses such as prison rape as well as given the long-term tools they needed to help them “reenter and remain in our communities,” and yet they are rarely heard. In their view, it is the Federal Bureau of Prisons that has made it “virtually impossible to properly implement the Prison Rape Elimination Act of 2003” or to roll back recidivism because it never was willing to fund “the additional staff positions and staff training that are necessary to accomplish these tasks” (American Federation of Government Employees [AFL-CIO], 2010).

Ultimately, then, placing prison guards at the forefront of conservative efforts to expand the carceral state and to make it more punitive, or even viewing them as reliable allies in such efforts, is problematic. They do not all, nor is there any evidence to suggest that most of them, believe, as Page (2011) suggests, that today’s punitive prisons work and must be defended. Still, the two prison unions that Page studies in detail mobilized in the 1990s and earlier 2000s to maintain high levels of incarceration as well as to promote more punitive carceral policies. And, even though both of these unions have, in recent years, altered many of their earlier positions and have, as one observer put it, come to perceive that “more prisons are a bad idea” (Abramsky, 2008), they did at one time work hard to support measures such as Three Strikes and were known to resist many efforts to reduce the carceral state. So, *when* prison guard unions have mobilized to bolster the carceral state, is Page right to assume that at least *their* actions were central to ensuring that negative outcome? Do Page’s powerful stories about the early conservative activism of the CCPOA or NYSCOPBA provide sufficient evidence to then argue that tackling prison guard unions would pave the way for positive reform outcomes?

One way to assess this is to look more closely at how the presence of a guard union does or does not in fact correlate with a state’s commitment to keeping its carceral apparatus large. It turns out, when one maps this nationally, that there is little correlation between the presence of guard unions, even the presence of large guard unions who have had a militantly conservative history like the CCPOA and NYSCOPBA, and the fate of a given state’s carceral apparatus. As it happens, only three of the six states that experienced the most substantial *increase* in prison populations in 2008 (Pennsylvania, Florida, Alabama, Indiana, Arizona, and Tennessee) had a serious guard union presence (Kirchhoff, 2010). And, of the five states that succeeded in making the biggest *dent* in their institutions of punishment that year (Massachusetts, Texas, Nevada, Wisconsin, and Georgia), several also had particularly powerful guard unions (Kirchhoff, 2010). In fact, by examining trends nationally and more carefully observing which states have successfully downsized prisons, as well as which have failed to do so, there is scant evidence to support that the presence or absence of strong guard unions is at all determinative.

That said, Page (2011) is very much correct that a key consequence of “America’s prison boom” was the “development of powerful organizations with interests in maintaining existing penal arrangements” and that taking on such groups could well assist reformers

in their efforts to downsize the carceral state. In states that have a high saturation of prisons—those that have time and again managed to resist efforts to reduce expenditures in the criminal justice arena—there were key parties at work namely private companies, that have spent extraordinary resources to influence the political arena as well as to shape the legal and policy arena and have very clearly been instrumental in seeing their conservative law-and-order visions to fruition. His focus on prison guard unions has, however, obscured who the most crucial players are in this regard. Indeed as one comprehensive report on the expansion of the carceral state reminds us pointedly, “[i]n addition to those working directly in institutions, many more jobs are tied to a multi-billion dollar private industry that constructs, finances, equips, and provides health care, education, food, rehabilitation and other services to prisons and jails” (Kirchhoff, 2010).

Notably, private prison corporations are not the only businesses that profit from the expansion of the carceral state and, thus, expend great energy on promoting the right political environment and on advocating for the right legal apparatus to secure their access to such profits. Myriad corporations that have nothing to do with building or running prisons themselves are nevertheless deeply invested in providing such institutions with both goods and services. From manufacturing bath towels, bedding, and binoculars, to selling padlocks, paper products, and restraining devices, to providing laundry, telephone, and medical services, private companies directly benefit when a state’s carceral apparatus is large and growing. These organizations also feel the pinch directly when states move to shrink that same carceral system. (Bender, 2000). Today, in fact, so many companies have come to rely on a large and growing carceral state, and so many now have strong economic incentives to make sure that prisons populations are not reduced, that they have their own trade show. Each year, they come together to hawk their wares at the American Correctional Association’s huge conventions, and the rest of the year, they rely on the “American Corrections Marketplace” to make sure their goods and services continue to sell well. Such companies also work together to promote legislation and policies that serve their economic interests in the carceral state via conservative groups such as the Association of Private Correctional and Treatment Organizations and the American Legislative Exchange Council (ALEC).² As one reporter discovered as she was investigating the recent boom in private prison growth, “[a]t least one executive with the Corrections Corporation actually sat on the [ALEC] committee that drafted get-tough-on-crime legislation” (“Transcript,” 2008).

Ultimately, then, Page (2011) is correct that policy makers need to pay closer attention to those in our society who are “self-interested” when it comes to keeping the carceral state large, and he is also right that they will need “to use confrontation and *make it personal*” or, as he says more specifically, that they will “need to argue publicly” that such groups are merely “stonewalling out of self-interest.” Clearly, however, the groups most deserving

2. See the “Web Sites” section at the end of the essay for more information on these organizations.

of such public condemnation are not the nation's prison guard unions. Not only do most guards not view prison expansion and punitive penal practices as desirable, but even in the flashy instances where guard unions have used their resources to stump for law-and-order measures, their support paled in comparison with that offered by wealthy corporations and conservative financiers. Consider, for example, that it was billionaire Henry T. Nicholas III's multimillion-dollar commitment to defeat Proposition 66, which not only allowed "its opponents to broadcast TV commercials for the first time" but also gave Governor Pete Wilson the confidence that he could actually defeat this measure that by all accounts was set to pass. As he put it, "[t]his was the cavalry coming over the ridge" (Mathews, 2004). The fact is that forces for repealing the most punitive elements of Three Strikes had less than \$100,000 to spend, whereas forces against Proposition 66 had nearly \$5 million.

That *corporate* self-interest is what most often determines how likely it is that new law-and-order legislation will pass or that new bricks will be laid to expand the carceral state is particularly obvious to the legislators of prison-filled districts. As Colorado State Representative Buffie McFadyen put it bluntly, "[s]ay, for example, you have a bill on reducing sentencing in a state legislature like mine—and it's time to look at it, you won't hear the private prison industry or the for-profit industry talking against the bill. But you'll see about four to six [of their] lobbyists in the room making sure that bill fails" ("Transcript," 2008). In short, then, it is *their* "narratives about crime" that most need challenging and their "[f]ear-based campaigns" that need to be ended (Page, 2011). As for the guard unions, most of them already are well aware that "mass imprisonment actually makes us less safe," and most of them are already vocally supportive of everything from "in-prison rehabilitation" to local "reentry programs" (Page, 2011).

It is clearly important to Page (2011) that, despite his call to rein in prison guard unions, policy makers do not find themselves unduly "scapegoating unions." However, because Page's own analysis misreads the role that prison guards play in our nation—both by exaggerating prison guard support of higher rates of incarceration as well as of more draconian penal policies and by overestimating how important and conclusive guard union activism is in the cases when it has veered in that direction—his policy recommendations might read as doing just that. Page has misunderstood which political actors actually need the sorts of policy interventions that he suggests. Each one of his four policy recommendations makes tremendous sense, but only when it is applied to those economic actors who clearly have the largest stake in keeping the carceral state bloated and who have played the most pivotal role—politically as well as economically—in preventing efforts to downsize it. Yes, some law-and-order zealots work as corrections officers, and yes, prisoner guard unions have, in some specific and high-profile moments, partnered with various right-leaning power brokers to try to determine the outcome of important legal and political battles. Overwhelmingly, however, prison guards and the unions that represent them spend most of their time simply trying to keep prison workplaces safe and trying to make sure that they are not exploited by the state, federal, and private entities that employ them. Indeed,

for these reasons, prison guards are not the policy problem. They are, in fact, a grassroots *antidote* to the policy problem created by conservative politicians as well as corporations who have an ideological and an economic stake in keeping the carceral state fat and healthy. Targeting these players—rather than prison guard unions—in the comprehensive policy ways that Joshua Page’s article recommends, might finally tip the balance in favor of those who wish to downsize—rather than bolster—this nation’s carceral state.

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Web Sites

American Correctional Association, aca.org/.

American Corrections Marketplace, correctionsmarketplace.com/.

American Legislative Exchange Council (ALEC),

alec.org/AM/Template.cfm?Section=Public_Safety_and_Elections&Template=/CM/HTMLDisplay.cfm&ContentID=15654/.

Association of Private Correctional and Treatment Organizations, apcto.org/news/releases.cfm/.

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