

Chapter 3

Discretion, contracting, and commodification: privatisation of US immigration detention as a technology of government

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Introduction

Until 2014, US immigration officials did not detain families indefinitely as a rule. The Immigration and Naturalization Service (INS) first contracted with Berks County in March, 2001, to hold up to 84 parents and children traveling with insufficient documentation while their asylum claims were processed, but the vast majority of arriving noncitizen families were released on their own recognizance or with bond. Policy changes in 2004 and 2005 created new categories of detainable people, and the new Bureau of Immigration and Customs Enforcement (ICE) opened the T. Don Hutto Family Residential Facility in 2006 to hold families subject to mandatory detention under the new rules (see Martin, 2012). The Obama Administration released all families from Hutto in 2009 as part of a broader detention system reform, but was careful to retain its *discretion* to detain families. In the summer of 2014, ICE encountered an unprecedented rise in undocumented children and families: 49,959 unaccompanied children and 52,326 family units were apprehended that year, mostly in the Rio Grande Valley of Texas (US Immigration and Customs Enforcement, 2014, 2). In response to what became known as the ‘child migrant crisis,’ ICE opened a 532-bed facility for families in Artesia, New Mexico.

The Artesia family detention centre was built at a border patrol training facility, 200 miles from the nearest city with immigration legal services. ICE implemented a no-release policy and an expedited immigration court procedure, with the goal of quickly deporting detained families. A volunteer lawyer network quickly formed to represent families (Manning n.d.), and multiple lawsuits followed, charging the immigration agency with violating the right to claim asylum, children's access to residential facilities, intimidation, lack of access to legal services, blanket detain-and-deport decisions regardless of individual circumstances, and refusal to release documents about detained families (*M.S.P.C v. Johnson* 2014, *American Immigration Council et al. v. DHS* 2014). With legal pressure mounting against detention procedures at Artesia, ICE closed the facility in the fall of 2014 and transferred families to facilities in Karnes County and Dilley County, Texas. These two facilities are owned by the two largest private corrections firms in the US, GEO Group and the Corrections Corporation of America, respectively. While GEO's facility was built as a 'civil detention centre' for low-risk detainees in 2012, the South Texas Family Detention Center has been constructed specifically for families. At 2,400 beds, the South Texas facility is the largest detention centre in the United States. All three of the family detention centres opened in 2014 were contracted quickly and without competitive bidding, a process that ICE defends as necessary to respond to large influxes. The role of ICE's authority to contract with private sector partners relied upon, in this case, the expediency of crisis to justify a drastic expansion of detention as a spatial practice of immigration control (Mountz and Hiemstra, 2014).

Because of family detention's fast expansion, and growing evidence of private corrections corporations' large lobbying expenditures, much of the popular and academic analysis has focused on collusion between private firms and migration policy-makers. While much blame is laid at private corporations' feet, family detention's story shows how nominally distinct economic logics of financial gain and political logics of deterrence and enforcement are entangled. This chapter argues that the private-public boundary itself is a *technology of government*, a distinction that enables certain practices, material arrangements, and logics. I focus on three processes through which "state" and

“private” actors codify formal relationships with each other: discretion, contracting, and commodification. Through the example of family detention, however, I show how messy and *ad hoc* these relationships can be and that processes of discretion, contracting, and commodification challenge the divisions between market and state, private and public, and political and economic actors. To better account for this messiness, I approach the boundary between public and private as a technology of government that enables immigration officials to control migrant life in particular ways. By emphasising the practices that make detention privatisation possible, this conceptual approach is at once flexible enough to account for the messiness of migration control on the ground and precise enough to critique exclusionary arrangements of power.

The following analysis is based on interviews with advocates and attorneys; visits to T. Don Hutto and Karnes City detention centres in 2010, 2011, and 2015; participant observation of the campaign to close Hutto from 2008 to 2010; and analysis of detainee testimonies and media, journalism, non-governmental reports, legal cases and government documents pertaining to family detention between 2009 and 2015. The chapter will first review contemporary approaches to the privatisation of immigration enforcement, then explain how understanding private-public boundaries as a technology of government opens up wider frames for these relationships. The third section works through some examples of discretion, contracting, and commodification to show how the public-private boundary is put to work to allow the expansion of family detention. The concluding discussion draws further inspiration from anthropological and sociological studies of the economy to elaborate a nuanced approach to political economies of enforcement.

Unpacking privatisation

Studies of immigration enforcement have focused a great deal on political rationalities, legal frameworks, and discursive productions of ‘illegal immigrant,’ ‘alien,’ ‘migrant,’ and ‘refugee.’ Recently, research has drilled down into banal and embodied practices of policing, detention, and

deportation, which has revealed highly variable detention conditions, ad hoc policing and transfer practices, and lasting physical and emotional effects of deportation (Conlon and Gill, 2013; Hiemstra, 2013; Mountz et al., 2013; Williams & Boyce, 2013; Coleman & Kocher, 2011; Conlon, 2011; Mountz, 2010; Coutin, 2010; Gill, 2009). Scholars have problematised policy discourses and elite framings of immigration through ethnographic approaches that emphasise the interconnectedness of human living and the intimacies of everyday life. While much of this work notes the prevalence of private prison and security companies in policing, processing, detention, and deportation practices, less work has problematised the process of marketisation of immigration enforcement at the same level of detail (a gap that this volume goes far to address). There are, however, some important efforts to provide an analytic frame for these political economic relationships across sociology, anthropology, geography, political science, and international relations. Two key terms, ‘industry’ and ‘assemblage,’ have dominated this emerging literature, deployed in distinct, but sympathetic, ways to conceptualise the complicated relationship between immigration control and non-state actors. Here I review this work, focusing on the implications industrial and assemblage conceptualisations have for analysing privatisation as a political process.

Migration, enforcement, and illegality as industry

Analyses of the political economy of immigration enforcement, especially the privatisation of detention in the United States, have revolved around various formulations of ‘the immigration industrial complex’ (Doty & Wheatley, 2013; Golash-Boza, 2009a, b; Fernandes, 2007; Welch, 2002). These studies have tracked campaign donations from the private corrections sector to politicians (Saldivar & Price, 2015); the ‘revolving door’ between immigration and corrections agencies and private prison companies (Golash-Boza, 2009a, b; Welch, 2002); media pundits’ exaggerated claims about immigration rates and terrorist threats (Golash-Boza, 2009a); the merging of counter-terrorism and immigration enforcement (Saldivar and Price, 2013) and the role of private corrections representatives in drafting immigration legislation (Doty and Wheatley, 2013). The broad claim

behind arguments for an ‘immigration industrial complex’ is that private sector, media, and immigration agencies emphasise enforcement, albeit to different ends, and this produces a ‘convergence of interests’ that supports the continued expansion of immigration detention in privatised facilities.

Focusing on immigration detention, Doty and Wheatley (2013) elaborate four specific components of the immigration industrial complex: (1) the US’ immigration law apparatus; (2) prison corporations; (3) ideas and worldviews of neoliberal commercialisation, deterrence, and criminalisation; and (4) lobbying, donation, and policy-making networks. This four-part complex forms a ‘massive, multifaceted, and intricate economy of power, which is composed of a widespread, diverse, self-perpetuating collection of organisations, laws, ideas, and actors’ (Doty and Wheatley, 2013, p. 438). This economy of power is neither purely economic nor purely political. It includes profit-oriented management knowledge, but also lobbying and campaign donations that seek to build the kind of personal connections that lead to contracts (Fernandes, 2007). The immigration industrial complex is not, then, a closed entity, but a compilation of networks sustained by multiple discourses, embodied practices, material infrastructures, and legal regimes.

Corporations are not, however, the only actors seeking to profit from the migration process, which has provoked some migration scholars to situate immigration control within a larger set of migration-related economic networks. Hernandez-Leon (2013) argues that migration studies has largely neglected the role of profit-seeking in migration’s facilitation, regulation, control and institutionalisation, and proposes the concept of ‘the migration industry’ to capture the entrepreneurial motivations of many actors across migration trajectories. He is most concerned with how ‘financial gain’ motivates migrants, facilitators, and a range of service providers alongside mutual aid and familial obligation. For Hernandez-Leon, profit-seeking and mutual aid are not mutually exclusive; rather, we should recognise that not only do migrants move in and out of different roles in the

migration process but that they have overlapping economic desires. This approach displaces profit-seeking from enterprises like corporations or smuggling networks, showing that profit-seeking is one of many economic rationalities and can be performed by anyone.

Gammeltoft-Hansen and Sørensen (2013) expand Hernandez-Leon's definition of the migration industry to include 'control providers' and non-profit 'rescue industry' organisations. For them, facilitation, control, and rescue form three (often overlapping) prongs of the migration industry with varying degrees of 'horizontal' and 'vertical' market integration. Their primary concern is to begin to tease out how economic rationalities are imbricated with migration decisions at every part of the facilitation and management process. In particular, they argue that state migration policies form an important part of the background context in which facilitators, rescuers, and migrants themselves operate. As states gather information about migration pathways and people smuggling networks, facilitators influence migration management policies carried out by states, and private operators profit from the performance of state migration control procedures. Migration brokers, both licit and illicit, make a premium from increased enforcement, and states respond to creative migration strategies with ever-more technological fixes.

For Andersson (2014) it is precisely this migration-enforcement feedback loop that is productive and that makes 'the illegality industry' a useful frame. Through his multi-sited study of migration in Africa and the Mediterranean, Andersson argues that the illegality industry works not just through economic relationships between agencies, contractors, facilitators, and travelers, but through discursively producing 'the migrant' as a category and 'illegality' as a condition, and threat as a quality of both. The term refers to economic, geographical, and symbolic elements of migration management in order to allow analytical flexibility: 'it foregrounds interactions among humans, technology, and the environment; it highlights how illegality is both fought and forged in material encounters; and it 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’ (Andersson, 2014, p. 15). Like Gammeltoft-Hansen and Sørensen’s ‘migration industry,’ Andersson’s ‘illegality industry’ emphasises the interrelatedness of actors across apparent boundaries of public, private, legal, illegal, state, and non-state. Like US scholars studying the immigration industrial complex, Andersson seeks to show how discursive categories produce migration as a particular kind of problem and the large amounts of money circulating between actors seeking to manage migration in various ways. All of these conceptualisations of industry seek to show that economic, social, and symbolic relationships are bound up with each other.

Across this work, there remains ambiguity about what, precisely, economic or profit-seeking practices are, where they begin and end, and to what extent profit-seeking behaviour or private firms’ motivations explain migration policy-making. Spener (2009) argues that most social scientists use the term ‘industry’ figuratively rather than analytically; it operates more as a metaphorical comparison than a full-fledged theoretical category. When, for example, are migrants treated *like* commodities and when are migrants actually priced, exchanged, and circulated? In many of the analyses cited above, framing human mobility as an industry has also implied a corporate structure of integration, valuing real estate, and creating markets that can narrow analysis of heterogeneous governmental practices to a single economic logic, namely a profit-oriented capitalist one. Spener argues that industrial figures of speech are, in fact, useful if we acknowledge them as such, and then turn our analysis to the specific types of activities, relationships, and circulations that produce human mobility. For studies of the intimate economies of detention, it is important to analyse not only the material processes of commoditisation, marketisation, embodied labour, and legal practices, but also to problematise the work that these terms do, as metaphors or as efforts to frame political relationships in new terms. Here I turn to another approach to the same problematic: the assemblage.

Migration governance as assemblages

Research in security studies and international relations has traced the imbrication of finance and security, but has conceptualised these new governmental arrangements not as an industrial complex but as an assemblage. The empirical content of this research is similar to the research reviewed above, in that it traces former officials' private sector enterprises and major governmental contracts with multi-national data management and security analysis firms. Coming from international relations and political science, much of this work has focused on state security agencies and contractors, however. Analyses of security-economy assemblages have emphasised shared ways of knowing space and time over sectoral interests, preferring to focus on the proliferation of certain knowledge practices instead of personal relationships between public and private sector actors.

For critical security studies and international relations scholars, the blurring of boundaries between state and economy has produced new legal and spatial formations of sovereignty. In her analysis of anti-terrorist financing policies, de Goede (2012) shows that speculative risk analysis practices from the financial sector were picked up by security professionals seeking to *preempt* the next terrorist attack. Preemptive security practices and financial speculation both require a particular disposition towards the future and its unpredictability, a conception of uncertainty, possibility, and emergence that allows for multiple forms of intervention with little evidence (Amoore, 2013). And because governments awarded counter-terrorism risk analysis contracts to some of the world's largest financial and accounting firms, the connection is material and monetary. Moreover, security professionals in North America and Europe use banal monetary transactions in the banking sector to track everyday mobilities and associations, so that economic activity itself becomes a medium of security knowledge (Amoore and de Goede, 2008).

In addition, US dominance in the private security sector has become an *economic development* concern for EU policy-makers, so much so that some EU-level agencies seek to establish a 'European civil security market' (Hoijsink, 2014). This market is supposed to bridge defense and individual

security sectors and has focused on hard- and software interoperability, or making data shareable across platforms. The European civil security market came to be through a series of EU-level research funding schemes, which recruited expertise from private sector security firms for recommendations on how to build a civil security market (Bigo & Jeandesboz, 2010). These examples do not fit neatly into narratives of public sector privatisation because state, supra-national, non-governmental, and corporate organisations worked together in a wide variety of capacities, with different contractual obligations. In addition, shared understandings of uncertainty and emergence are harder to capture by focusing on the public or private ownership of security activities.

For many of these scholars, European security governance is best conceptualised as an *assemblage* to grapple with the contingent agreements between different actors. Focused on the growing role of private security companies throughout the world, Abrahamsen and Williams (2009) argue for a ‘global security assemblage,’ ‘a complex and multilayered arrangement in which global capital, transnational private security, state authorities, local police, and international police advisers are integrated in the planning and provision of security’ (Abrahamsen and Williams, 2009, p. 8). This distribution of tasks traditionally left to sovereign state governments changes the substance and composition of sovereign power. De Goede argues for a ‘finance-security assemblage,’ ‘not so much a tightly drawn sovereign power but an apparatus in which diverse and sometimes contradictory elements come together to produce a logic of governing that works through an appeal to uncertain futures’ (2012, p. xxii). Also concerned with both public-private cross-pollination and the shared spatiotemporal calculations of possible futures, Amoore (2013) argues that contemporary security practices indicate an ‘alliance’ between economy and sovereignty, a sharing of knowledge practices, measurement techniques, and authority. In this ‘moving complex,’ economy and sovereignty ‘resonate’ and ‘infiltrate’ each other, rather than sorting neatly into separate spheres.

There are two important points to draw from this work. The first point is that private sector participation in public service provision is rather unexceptional in the context of neoliberal state restructuring. Non-governmental organisations operate youth detention facilities, hospitals, charter schools, public school testing and audits, infrastructure construction, security in public buildings, and a host of food, physical plant, and personnel services. Abrahamsen and Williams (2009) argue that the privatisation of security needs to be located in relation to broader transformations of governance that have reworked spatialities of public and private, global and local, state and non-state power. For example, Doty and Wheatley (2013) understand the United States' growing reliance on private prison firms as part of a broader trend towards the 'privatisation of sovereignty functions,' such as surveillance, immigration responsibilities, risk analysis, and policing. As Lahav (1998) has argued, enrolling third party actors like airlines and freight companies has allowed state agencies to extend control without expanding bureaucracy, producing 'reinvented forms of state sovereignty and exclusion' (Lahav, 1998, p. 678). Responsibility for migration control has been rescaled 'up,' 'out,' and 'down' in ways that do not curtail state power to manage population movement, but reduce political costs to European states while increasing their flexibility in controlling migration. Not the attenuation of state power once presumed by globalisation scholars, outsourced sovereignty functions like security and migration controls are indicative of changing governance arrangements and the blurring of key liberal legal dichotomies of public and private, state and market, national and international (Abrahamsen and Williams, 2009). In the case of migration control, outsourcing usually enables states to extend policing powers.

The second point is an analytical one. The economy-security assemblage approach shifts focus from the boundary-crossing of public and private to the techniques, technologies, and calculations that produce regimes of truth about security, mobility, and economy. This thread of research focuses on what Miller and Rose (2008) describe as *technologies of government*:

The actual mechanisms through which authorities of various sorts have sought to shape, normalize and instrumentalise the conduct, thought, decisions and aspirations of others in order to achieve the objectives they consider to be desirable....of apparently humble and mundane mechanisms which appear to make it possible to govern: techniques of notation, the invention of devices such as surveys and presentational forms such as habits; the inauguration of professional specialisms and vocabularies; building design and architectural forms—the list is heterogeneous and is, in principle, unlimited (Miller and Rose, 2008, p. 32).

In the context of immigration detention, technologies of government include head counts; facility audits; quality assurance measures; handbooks and protocols; entrance-way metal detectors; visitation regulations; dining hall menus and their development; ID checks for detained persons, staff and visitors; building designs and flow charts; per-bed economic analyses; real estate valuation of facilities; private correction firms' stock price valuation and credit ratings; corrections as an academic discipline and profession; and the myriad legal frameworks governing imprisonment, labour, state facilities, contracting, and administrative practice. For Miller and Rose (2008), technologies of government make political rationalities capable of being realised, and so these technologies not only enumerate, define, hierarchise, and order noncitizens as both individuals and populations, but also establish and reproduce certain forms of authority, expertise, and knowledge. In other words, detention's calculative practices create the conditions of possibility for particular forms of immigration detention, for the choice of contracted prisons over residential ones, for detention as a policy choice for vulnerable populations, and legal relief options available to detained noncitizens.

Technologies of government normalise detention as a migration policy, and they do so, in part, by creating relationships. Like all economic transactions—capitalist and otherwise—exchange creates social bonds and networks of circulation (Appadurai, 1988). These relationships require work and

continual maintenance, some of which occurs through repetition, rituals, and reciprocity of exchange. Supported by the material landscape of detention, the very real durability of a detention centre and contractual obligations that create a distinct timeline for particular relationships, outsourcing detention requires and sustains networks that attain their own momentum. Contracts, for example, make relationships between government agencies and service providers durable into the future. This ability to create durable networks, alliances, and infrastructure allows certain relations of power to calcify, to become sedimented in time and space. As Povinelli (2011) has argued, the management of time and the ability to create durable relationships is a key axis of social regulation. And so to understand how people become detainable, and how detention continues to be a favoured policy option, we must attend to the contracts that establish enduring relationships between actors, and to the forms of authority and knowledge practices that authorise contracting. More to the point, the practice of contracting relies upon and reproduces a particular formulation of 'public' and 'private,' and managing the boundary between them is a critically important technology of government in the US immigration detention system.

Here I return to family detention to show how 'privatisation' relies upon three specific technologies of government: discretion, contracting, and commodification. These technologies rely upon different legal norms, but are made to work together. What I will show is that immigration law's specific formulation of discretion is not so exceptional, but makes use of administrative norms at work throughout the executive branch. ICE's administrative discretion is crucially important to ICE's ability to form Inter-Governmental Service Agreements (IGSAs) with county governments, who can then contract detention centre management to companies or other organisations. This administrative discretion is, however, a bit different from its prosecutorial and executive discretion. These contracts not only link these actors in relationships that endure for the length of the contract, but it also does political work of translating detention into a range of services that can be priced. Thus, contracts authorise monetary exchanges that sustain these relationships, and translate detention into a series of exchange values, abstraction that conceals the violence of detention and the political questions of

sovereignty, right to mobility, and due process embedded in it (Mitchelson, 2014). Focusing on what makes privatisation possible, I analyse how discretion, contracting, and commodification are distinct technologies of government that are made to work together. In the concluding discussion, I discuss how this approach opens up broader understandings of economic practice.

Outsourcing family detention: discretion, contracting, and commodification

Legally defined discretion over immigration enforcement is a critical legal technology of government for immigration agencies in the United States, and crucial to enabling the fast growth of outsourced immigration and border enforcement. US immigration officials practice discretion in three important ways. First, they have prosecutorial discretion, which allows immigration prosecutors a degree of autonomy in deciding who to prosecute. This allows them to focus resources on particular groups of noncitizens (such as violent criminals) or to provide relief to other groups (such as ‘deferred action’ for noncitizens who entered the US as children). Second, they have administrative discretion to grant parole to detainees based on flight risks assessments. Third, immigration officials have executive discretion to decide what tools and practices, such as biometric passports and workplace raids, are necessary to enforce immigration legislation. Many of these policies are subject to Congressional funding, and Congress can set certain demands or limitations, such as requiring ICE to have 34,000 beds available to detain noncitizens. Administrative discretion has become a common legal tool throughout federal government policymaking to make government more efficient. Based on legal precedent (*Chevron USA v NRDC* 1984), courts defer to executive agencies because they are accountable to the voting public (via the presidential office) and this accountability forces those agencies to work in the best interests of affected populations (Neuman, 2006). With respect to immigration, conservative legislators argued that migrants’ multiple appeals of their deportation decisions led to inefficiency in achieving deportation goals (Neuman, 2006). Protected by judicial deference to executive agencies, an ICE officers’ decision-making process about who to detain, why, where, and for how long is exempt from federal court review. Thus, discretion’s overlapping legal

norms allowed ICE to expand its authority to detain, to define who is eligible for detention, and to choose what forms of detention are appropriate.

ICE implemented the first permanent family detention policy in March 2001 at the Berks County Family Shelter Care centre near Reading, Pennsylvania, (Berks hereafter) a location close to major airports in the New York City area. The facility was built as Berks Heim (German for *home*), a nursing home for indigent elderly people in the county. When a new elderly care facility was built in the late 1990s, the county looked for ways to use the old building. Berks County contracted with then-Immigration and Naturalization Services (INS) to hold noncitizen detainees in the county jail. County officials charged far more for detainee beds than it paid for county prisoners, allowing it to support further county operations. A family detention facility, however, had to meet the standards of care for minors laid out in a 1997 lawsuit, *Flores v. Meese*. Because other INS detention facilities were modelled on prisons rather than residential centres, INS faced a contradiction between court-mandated conditions for children and the actually existing conditions of its own facilities. Berks filled this gap, allowing INS to detain some families without violating children's entitlements. With these procedures in place, the county maintained around 84 persons in detention, primarily asylum-seeking families arriving without identity documentation.

The terrorist attacks of 11 September, 2001, heightened concerns over cross-border migration, and in 2003, the Department of Homeland Security (DHS) was founded, absorbing and reorganising 27 agencies including immigration, citizenship, and border enforcement (Martin and Simon, 2008). In 2004 and 2005, DHS expanded Expedited Removal, a provision in immigration legislation allowing summary deportation, from ports of entry to areas between ports of entry and maritime areas. In other words, DHS changed how it applied legislative categories, and in doing so, made a much larger set of noncitizens subject to mandatory detention, also required by immigration legislation. At the time, expanding detainability re-asserted the contradiction between immigration detention conditions and

children's protections: families who had not been subject to mandatory detention before now fell into that category. This move limited ICE officers' discretion to release families with Notices to Appear in immigration court. To address this gap in detention capacity, and to deter more families from attempting entry, ICE entered into an Intergovernmental Service Agreement (IGSA) with Williamson County, Texas, to detain families at the T. Don Hutto Family Detention Centre (Hutto hereafter) in 2006.

The Corrections Corporation of America built the T. Don Hutto Correctional Facility in 1995, as a medium-security facility for federal male inmates. Williamson County sub-contracted with CCA to provide the family detention services stipulated in its IGSA with ICE. CCA made no changes to Hutto's disciplinary procedures or physical appearance to accommodate its new population, and in 2007 advocates sued the Department of Homeland Security (DHS) under a previous class action settlement, *Flores v. Meese* (1997). As the ICE Field Office Director explained during the legal proceedings against family detention at Hutto:

In our IGSA's, our contractual arrangement is with the local government, the entity, state, county or local entity that has the facility. The county or whoever we have that contractual arrangement with, it's their choice who operates that facility for them. And that's the matter for the county in this case and CCA (*Bunikyte, et al. v. Chertoff, et al.* Deposition of Immigration and Customs Enforcement Field Office Director Marc Moore).

The ICE-CCA-Williamson County triumvirate became particularly complex during and after the lawsuit, as the federal court held ICE liable for its noncompliance with Flores, ICE held Williamson County liable for completing stipulated changes at Hutto, and Williamson County directed CCA to complete those changes:

More importantly, the IGSA is between the County and ICE, and Williamson County, TX is responsible for performance under the terms of the agreement. As background,

Williamson County was issued a change order under the IGSA on 2/16/2007 to make improvements to the facility to bring it more in-line with a non-secure facility required for ICE Residential Facilities. The Contracting Officer's Technical Representative authorized improvements and ICE is in the process of negotiating a final price for these changes with CCA. However, any changes to the IGSA should be directed by CCA through Williamson County, and then to the ICE Officer, as that's who the agreement with ICE is with. (Email from Anthony Gomez, ICE Deputy Assistant Director, Office of Acquisition Management, and Removal Operations to Hal Hawes, Assistant to Williamson County Attorney, April 5, 2007)

In most cases, CCA then sub-contracted with other private firms for painting, bath fixture replacement, fence removal, installing new child-safe doors, social services, and education (Email Correspondence from Damon Hininger, CCA on file with author), and ICE outsourced inspections to a private firm, as well. This created some confusion, as the functional relationships between ICE, CCA, and Williamson County did not cohere with the legal hierarchy of contracted responsibilities. Ultimately, Williamson County Commissioners' Court agreed to delegate authority to CCA, allowing ICE and CCA to negotiate Hutto's changes directly (Email Correspondence between Ashley Lewis, ICE Head of Contracting Activity and Gary Mead, Assistant Director of ICE Detention and Removal Operations, June 8, 2007). Thus, IGSA's and contracts produce complicated networks of liability, monetary circulation, and oversight.

The Obama Administration released Hutto's families in 2009, filling the empty beds with adult women. From 2009 to 2014, ICE returned to its previous policy of issuing Notices to Appear to most families, and Berks remained the only family detention facility. In 2013 and 2014 Customs and Border Patrol (CBP) and ICE faced an unprecedented increase in arriving unaccompanied children and families. In 2013, CBP apprehended 21,553 unaccompanied minors and 7,265 minors and adults

traveling as families; in 2014, CBP apprehended 49,959 unaccompanied children and 52,326 family members, as also discussed by Williams and Massaro (this volume) (US Immigration and Customs Enforcement 2014). Concerned about reports that people smugglers told children and families that the US would not detain them, ICE opened a 672-bed family detention centre in the border patrol training facility in Artesia, New Mexico. In addition, ICE implemented a detain-and-deport policy for all families held there (Carcamo, 2014; Preston, 2014a) and produced public advertisements about the dangers of crossing (Arnold, 2014). Artesia is 200 miles from the nearest city, and the facility was closed to visitors for over a month, including human rights representatives and lawyers. Policies on communication, legal orientations, and basic child welfare practices changed frequently (Detention Watch Network, 2014). ICE closed Artesia in December 2014 after a class action lawsuit charged due process violations (Preston, 2014b; *M.S.P.C. v. Johnson* 2014).

In the meantime, ICE renegotiated existing IGSAs with Karnes County, Texas, and Eloy County, Arizona, to open two more family detention centres. Karnes County and ICE have an IGSA for the Karnes County Residential Centre that is similar to Williamson County's, but Karnes County contracts with GEO Group, the second largest private prison company in the US after CCA. Opened in 2012 as a 'civil detention centre,' the facility held adult males until August 2014, when ICE began holding families there. The facility was built as a model facility for low risk detainees like asylum-seekers, and was touted as a significant step towards a civil model of immigration detention in the United States (US Immigration and Customs Enforcement, 2012). Within months, multiple reports of sexual assault emerged from the facility, and lawyers filed a legal complaint (Mexican American Legal and Educational Defense Fund, 2014).

Despite CCA's lacklustre performance at Hutto, ICE worked with CCA to open the South Texas Family Residential Facility in Dilley County, Texas, in December, 2014. While it opened with 480 beds, it has since expanded to 2,400 beds. In what ICE calls a 'creative response to a difficult

situation,' Eloy, Arizona, facilitates the 'pass-through' IGSA between ICE and CCA for the facility, even though the facility is located in Dilley County (Burnett, 2014). While Eloy houses another CCA detention centre, the county is 931 miles from the South Texas facility, departing from ICE's usual habit of working with counties in which detention centres are housed. To establish the centre, ICE revised its IGSA with Eloy County, rather than establishing a new one with Dilley County government. Eloy County passes ICE's payment of \$290 million to CCA, and CCA compensates Eloy \$438,000 for this service. In this arrangement, Eloy County officials seek financial gain by expanding their existing contract with ICE; for their part, ICE avoids time-consuming negotiations with a new county and lengthy competitive bidding requirements for contracting with the private sector. Thus, ICE's executive discretion enabled the creative revision of Eloy County's IGSA, through which Eloy County expanded its financial relationship with CCA. As technologies of government, discretion and contracting were made to work in ways that allowed ICE to expand family detention quickly and outside of "normal" bidding and negotiations. The service obligations and financial remunerations created by these contracts connect federal and county actors and companies in durable networks, relationships that allow firms to guarantee shareholders revenue over time.

Given the high involvement of non-state firms in the US detention (and criminal justice) system, commodification is integral to the operation of IGSA's, contracts, and ICE's ability to quickly expand and contract detention capacity. Intergovernmental Service Agreements price detention in 'bed days' (one person per bed per day) and include additional billable services of transportation, guards, and detainee work programmes (e.g. ICE's IGSA with Karnes County). Thus, pricing detention transforms policy aims into a priceable commodity, through per diem payment rates per bed or per migrant. These contractual relationships circulate money between federal, county, and non-state actors, forming networks of people working to reproduce detention. As Conlon and Hiemstra (2014) show, commissaries, communication, and bartering form additional economies within detention centres, so that detainees themselves become sources of income for contractors, through 'bed day' payments, labour, and profit on everyday comfort items. Detention centre 'privatisation' produces overlapping

circuits of exchange and a complex web of consumers, clients, service providers, and governmental agencies. In these economies, the boundaries of public and private do not fit neatly into profit-oriented and non-profit groups. Public counties seek monetary gain; detainees are commodities, labourers, and traders; and private companies enact disciplinary measures formerly reserved for sovereign governments. ICE's administrative, prosecutorial, and executive discretion and IGSA's extra-market flexibility allow state and non-state actors to expand and contract migration control practices outside of democratic processes and public oversight.

Conclusion

ICE can and does contract directly with CCA and GEO Group to run other immigration detention facilities, and so we must ask what these ICE-county-company arrangements facilitate. What strategies, knowledge practices, and legal tactics make family detention possible? What forms of authorisation enable it, and how is family detention maintained, rolled back, and expanded once again? In July 2015, a federal court judge ruled that any form of family detention violates *Flores v. Meese* and gave ICE until October to comply with her order to release families (*Flores v. Johnson* 2014). DHS attorneys appealed the decision, and have applied for childcare facility licenses to bring the Dilley and Karnes facilities into compliance with *Flores*. In October, advocates filed a temporary restraining order on the license process, and legal organizations have documented expedited deportation for asylum-seeking families in both facilities (*Grassroots Leadership v. Texas Department of Child and Family Services*, 2015; American Immigration Law Association, 2015). Legal rulings on “children’s special vulnerability” give federal courts more opportunities to intervene in ICE’s discretion, contracting, and commodification of family detention than adult detention (see Martin, 2011), but these rulings can also be used to legitimize and authorize detention practices. In this chapter, I have argued that discretion, contracting, and commodification enabled ICE to implement family detention at Berks, expand it to Hutto, roll it back to Berks, expand it to Artesia, and replace Artesia with Karnes and Dilley facilities. These three processes are integral to the ‘privatisation’ of detention, but understanding them as technologies of government opens up analysis of the active and

Comment [O1]: Applied for what? Is this something like “childcare facilities licenses”? This sentence doesn’t read quite right

Comment [O2]: Do you mean these to be scare quotes like I have here?

enthusiastic participation of state agencies in commodifying and contracting out state services. Particular legal formulations of ICE's discretion over immigration enforcement marked out its authority to develop, implement, and revise Intergovernmental Service Agreements with, in this chapter, county governments. These county governments entered into IGSA's for financial gain in the form of tax revenue (from employees) and pass through payments. Eloy and Karnes Counties contract detention services out to private corrections firms, and this public-public-private arrangement allows all parties to avoid lengthy competitive bidding processes. The IGSA's and contracts themselves detail the price ICE will pay for detaining people, with education, transportation, and additional costs for families individually detailed separately. This commodification process is not performed solely by for-profit companies; counties and federal agencies also detail the costs of providing government services in order to develop budgets, accounting procedures, and transparency of public spending. Pricing these services has become a normal technology of governing.

My goal here has been to destabilise the association between private actors and profit motives, public agencies and policy aims. As private and non-state actors become increasingly active in the everyday work of controlling human mobility and closing borders, our theoretical analysis of migration control's socio-technical arrangements is vitally important to our ability to provide meaningful critique. Here I want to draw out four important analytical points that follow from conceptualising privatised family detention as technologies of government. First, anyone can be an economic actor, regardless of their location in the public or private sector. As the examples above demonstrate, county government managers seek revenue streams to fund county activities, to provide employment, and to provide tax revenue. They value county-owned real estate, liabilities, and budgets, even while they do not report to shareholders in the same terms as private corporations. Following from Spener (2009), 'financial gain' is a more flexible description of the economic logics at work across public and private sectors in immigration detention. To fully appreciate how and why detention endures as an immigration control—and asylum prevention—strategy, we must be just as attuned to counties' financial incentives to maintain detention as an immigration policy as for-profit firms.

The second point is that discretion, contracting, and commodification do political work. Together, they inscribe detention (and imprisonment more broadly) in a marketised regime of value, in which value is calculated, exchanged, and circulated according to rules governing commerce, corporations, and public-private partnerships. What was once a fundamental sovereign right—the right to deny liberty—exercised by state officials has been translated into a service commodity, an amalgam of expertise, real estate, and labour. As such, it is not valued as an ethical or disciplinary practice oriented towards remaking men's souls (as analyzed by Foucault, 1995), but in terms of real estate values, long-term profitability, and stock prices. Translating detention and imprisonment into a marketised regime of value requires certain abstractions (Mitchelson, 2014) and these abstractions *depoliticise* incarceration as a policy practice to many of the actors involved in its daily operations.

The third point is that commodification is a political process, only ever partial and often refused by the humans and beings subjected to commodification. For Appadurai (1988, p. 41), commodities are 'complex social forms and distributions of knowledge,' that move in and out of commodification. Commodification produces new socio-technical arrangements that translate things into exchange values, circulate them, and insert them in a particular regime of value, a discursive regime of shared understandings about what things *are*, what they *mean*, how they relate to each other, and what they say about the person who owns them (see Appadurai, 1988; Callon, 1998). These valuations rely upon calculative practices like headcounts, centre capacity quotas, bed day pricing, oversight mechanisms, accounting, shareholder annual reports, migration population data, enforcement outcome expectations, and so on. Interrogating how these come to be linked up—and the authority that enables them to come together in particular forms—allows us to trace a broader range of relationships that enable the reproduction of detention as an enforcement strategy.

The fourth point is that ‘privatisation’ processes work to solidify certain boundaries between public and private, and these boundaries also work to delimit who may act as political subject, where, and on what terms. As Appadurai argues, people disagree about values and rules of exchanging commodities, and it is in these tensions between value, exchange, and commodity that ‘politics...links value and exchange in the social lives of commodities’ (Appadurai, 1988, p. 57). Likewise, Radin (1996) argues that human commodities are only partially commodified because their humanity places a moral limit on our willingness to view them solely in terms of money. Moreover, many commodified beings exceed the exchange relations in which they are placed; in short, they rebel (Collard, 2014). Detention centres are lively, peopled places, and the people detained in them are highly capable of disrupting their order, which in turn negates companies’ ability to sell detention centre space. For example, prisoners in a US Bureau of Prisons Criminal Alien prison in Willacy, Texas, overtook guards and controlled the facility for almost two days in February 2015, destroying the tent-like buildings that held them and rendering the facility unusable (Tyx, 2015). Detained mothers launched two hunger strikes at Karnes, refusing to work and send their kids to the school (Planas, 2015), and these protests were met with threats of separation. These refusals of commodification create their own politics, and their own publics, by asserting their right to be and act politically, despite families’ designations as undocumented and deportable. And so the boundary between public and private is itself a site of struggle.

Focusing on technologies of government allows us to reframe the privatisation of detention in a way that points to more diffuse geographies of complicity in imprisonment as a political project. What is perhaps exceptional about detention’s commercialisation is that the deprivation of liberty, or the right to imprison a private citizen, has long been a privileged—and highly restricted—right of liberal sovereign states. Next to the right to take life, the right to deny liberty is a right to a form of physical violence and state control that is quite different from state obligations to provide social benefits like education, healthcare, unemployment assistance, and housing. In fact, the individual’s relationship to the state is mediated by complex legal regimes stipulating the grounds, timing, and conditions in

which a state may confine a person. Enrolling non-state actors in this kind of state violence, however, inscribes detention and incarceration in different regimes of value; processes of marketisation and commodification work to revalue the denial of liberty, translating it from an issue of sovereign and individual rights to the right to accumulate wealth, the ability of markets to provide efficient services, and the responsibility of states to both secure national territory and rule efficiently. We need a conceptualisation of privatisation that accommodates a diverse range of financial relationships, actors, logics, and calculative practices to ground a critique of detention and incarceration beyond a profit motive, to trace the complex geographies of participation in an exclusionary regime of value.

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