

PRIVATE PRISONS

**JOHN HOWARD SOCIETY OF ALBERTA
1994**

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INTRODUCTION

The Alberta government has recently announced plans to privatize management of one or more provincial jails. The issue of privatization has been a recurrent theme in the field of corrections. Historically, all prisons were private endeavours which gradually came under the control of government. Over the last 20 years, a resurgence of interest has led governments around the world to reconsider the feasibility of such practices. This interest has resulted in an intense debate, with scholars and practitioners arguing both for and against the concept of the private prison. Many theoretical and practical issues have been identified. Unfortunately, the arguments both for and against privatization are essentially rhetorical given the lack of support from empirical evidence.

HISTORY

The involvement of the private sector in the corrections field is not a new idea. Historically, prisons originated as private endeavours. Ignatieff (1978) documents the early history of prisons in England. The earliest type of closed incarceration facility was the house of corrections or bridewell (Ignatieff, 1978). These facilities were operated by keepers who earned their income not from the government, but from offender fees and contracts from other businesses making use of inmate labour (Ericson, 1992). In theory, prisoners were supposed to pay for their keep while staying in prison. They could do so through monetary payments where feasible or through hard labour. Unfortunately, high inmate turnover rates and low productivity levels resulted in a lack of profits for the prison warden (Ignatieff, 1978). Typically, the inability to generate profits from inmate labour resulted in flagrant abuses by keepers and staff (Ericson, 1992). Frequently, offenders were forced to beg from people passing by. In other cases, wardens found it much cheaper to chain inmates permanently, thereby decreasing the number of staff needed to monitor them (Ignatieff, 1978). Furthermore, they were able to ignore the declining condition of their facilities since prisoners could not escape if they were constantly in irons.

Up until the 18th century, the monitoring mechanisms for prisons were weak and frequently ignored. There were essentially three known sources of prison control: the sheriff, the magistrate and the grand jury. Unfortunately, the methods they were to use in policing bridewells were unspecified and the responsibility was frequently ignored. In the 18th century, change began to occur as a result of the efforts of John Howard. John Howard was the first sheriff in England who zealously pursued the task of monitoring the operations of prisons (Ignatieff, 1978). Throughout his career, Howard diligently visited and monitored every aspect of prison life in England. In 1777, Howard compiled his research into his famous publication The State of the Prisons in England and Wales. From his findings, Howard proposed numerous changes to the penal system which reflected his disciplined views on life (Ignatieff, 1978). These proposals included the abolition of the fee system, the establishment of regular diet, the provision of religious instruction and protection from disease. Gradually, the state assumed control of the English penal system.

Government control over corrections was pursued in most western countries including Canada and the United States. However, complete state control over prisons did not occur until the end of

World War II in some parts of the U.S. (Cox & Osterhoff, 1991). The period since the mid-1940s also marked a transition in the philosophy of corrections. First, rehabilitation became a central theme of imprisonment and treatment was embraced by prison officials (Cox & Osterhoff, 1991). Later, reintegration became the main focus with more and more community corrections programs being initiated. In the 1980s, the use of private sector involvement gradually increased. More frequently, non-profit groups throughout the United States and Canada started running community programs for offenders. This involvement expanded and numerous community based halfway houses were established (Ericson, McMahon, & Evans 1992).

Also, in the 1980s, growing incarceration rates and increasing debt caused governments to look for new strategies to deal with offenders. Thomas Beasley and Dr. R. Crantz formed the first private prison company, Corrections Corporation of America (CCA) in the early 1980s (Press, 1990; Thomas & Logan, 1993). CCA has grown significantly over the past 11 years. Last year, the company's revenues exceeded \$100 million (Corrections Corporation of America, 1993). Several other companies have since formed, including Wackenhut, Pricor and Buckingham Security Company to name but a few. The companies have expanded to provide services in several states and parts of Europe and Australia (Rutherford, 1990; Ryan & Ward, 1989).

PRIVATIZATION

Privatization refers to the transfer of traditional government responsibilities from the public sector to the private sector. In recent years, two major concerns have forced governments around the world to look to the privatization of prisons. One concern is the growing trend towards over-incarceration. Scholars have attributed this trend to several factors including: perceived increases in crime, heightened fear of victimization, increased enforcement of drug offences, domestic abuse and sex offences, as well as a public shift to a law and order mentality (Avio, 1991; Cox & Osterhoff, 1993; McDonald, 1990). As such, existing prison facilities are overcrowded and the state must either build new facilities or look to the private sector.

Besides the problem of a growing jail population, governments are also faced with reducing expenditures to meet debt obligations without increasing taxes (McDonald, 1990). In Alberta, privatization of corrections can be seen in the larger context of increasing private sector involvement in traditional government functions. This is illustrated by the recent sale of government departments such as vital statistics, liquor sales and the department of motor vehicles. Intrigued by private sector claims of reducing the cost of incarceration by at least 5%, the Alberta government has invited proposals from private interests to provide prison management.

Privatization in criminal justice is widespread and by no means limited to corrections. Logan (1990, pp. 58-59) observes that other aspects of the criminal justice system have been subject to varying degrees of private investment. These areas have included everything from policing and victim services to court services and community corrections.

Privatization in corrections is separated into four broad categories: private financing and construction of facilities, private prison industries, private provision of specific services and private prison management (Cox & Osterhoff, 1993; Joel, 1993; Leonard, 1990; McCrie, 1993; Sevick, 1987). Private financing and construction is the use of private capital to fund and build prisons that the government will operate (Cox & Osterhoff, 1993). This is achieved through two types of agreements. In a rental agreement, the government pays monthly rent on the prison facilities. In a lease/purchase agreement, the government pays a slightly elevated monthly charge with the eventuality that they will own the facilities after a specified time. Both types of agreements offer the government freedom to stop using the facility should jail populations diminish. They also offer fixed monthly costs without any long-term commitment of tax dollars (Cikins, 1993).

Prison industries are another privatization strategy. This involves the use of inmate labour for private purposes (Bronson, Bronson, Wynne, & Olson, 1992). Private prison industries work like public prison industries in that inmates receive daily pay for their labour and the goods and services produced are sold to the public. The most common public example of prison industry in Canada is CORCAN, a federal corrections initiative. Private prison industries have grown considerably in the United States following the active public support of Chief Justice Burger in the early 1980s (Burger, 1992). Two famous examples include Best Western International Inc. and Transworld Airlines Inc. who contract for inmates to provide services such as telephone booking agents.

The third type of privatization involves contracting out for specific services such as the provision of food services, medical and mental health services, pre-trial release and diversion programs, halfway houses, restitution programs and alcohol and drug treatment programs (Cox & Osterhoff, 1993; Joel 1993; Saxton; 1988). Joel (1993) notes that all but nine American states have contracted out for miscellaneous services to varying degrees. In Canada, nonprofit groups such as the John Howard Society provide a variety of programs for offenders both in the community and in prisons.

The final type of privatization involves contracting out prison management. Private prison management is the most heavily debated of the four types of privatization. Sevick (1987, p. 3) notes that private prison management is “fraught with unresolved legal, managerial and philosophical questions.” The remainder of this paper will be a discussion of the arguments for and against privatization of prisons, as well as a presentation of empirical evidence.

THEORETICAL ISSUES

Logan (1990) categorizes the main theoretical arguments concerning privatization into the following ten categories: propriety, cost, quality, quantity, flexibility, security, liability, accountability, corruption and dependence. While there is considerable literature concerning each of these categories, there is no substantive evidence that validates any of the opinions expressed.

Propriety

At issue in propriety are the ethical considerations surrounding privatization of government responsibilities. Logan summarizes the basic questions as follows:

Is it proper for imprisonment to be administered by anyone other than government officials and employees? How might private delegation of authority affect the legitimation of prisons in the eyes of inmates or the public? Is the “profit motive” more or less compatible with doing justice than are the motives to be found within state bureaucracies, employee unions, or nonprofit agencies? Should prison contracts permit the private exercise of quasi-judicial authority (i.e. classification, discipline, allocation of gain time)?(1990, p. 39)

Proponents for privatization argue that contracting out prison services does not necessarily replace government in delivering justice services. Contractually managed prisons do not exist on their own authority (Janus, 1993). Through effective monitoring of private operators’ activities, the government maintains control over these essential services and adds a new layer of independent corrections review. They also note that the very nature of privatization can enhance justice because “prison supply would be more responsive to changes in demand, both upwards and downwards” (Logan, 1990, p. 41). It is further claimed that to gain the cooperation of inmates, to lower costs and to ensure contract renewal, private prison staff have an incentive to treat inmates fairly. Moreover, they note that, since businesses want to operate from the most profitable position, contracting can force the government to address the purpose of imprisonment, be it incapacitation, punishment or rehabilitation. Attempting to provide the required services to meet all the goals of corrections is more costly than defining a single such goal and working to accomplish it. Business would undoubtedly push government in the direction of fewer, better defined correctional goals. Furthermore, they work from the assumption that constitutional obligations will apply to both private providers and government, thus ensuring due process. The question of abusing due process should not derive from the fact that private companies are looking for profits but rather from the fact that they will wield an enormous degree of power (Logan, 1990). Therefore, the public sector is equally likely to abuse their position. Solutions to abuse of power should not be designed for private prisons exclusively, but for all detention facilities.

Conversely, opponents argue that one reason that government exists is to provide essential justice services. In the words of Logan (1990, p. 59), “the power to coerce is part of what defines state ... it can give up any amount of that power but if it gives up too much, it ceases to be sovereign; if it gives up all of it, it ceases to be a state.” Through the democratic process, the public elects those people best suited to exercise the power and authority of government. The contracting process, therefore, represents an “improper delegation to private hands of coercive power and authority” (Logan, 1990, p. 45). Business, it is argued, is more interested in making a profit than in adequately performing the task of dispensing justice (Joel, 1993). Others have argued that there are certain legal questions regarding the use of deadly force by the private sector. It is felt that the government cannot legally hand over to private interests the right to use deadly force in the pursuit of justice. As with many legal issues, the validity of this argument cannot be readily determined until the courts make

a final decision. Others have noted that it is “objectional that private profit be earned as a consequence of the public meting out punishment” (Leonard, 1990, p. 79).

The question of propriety is an ethical one based on assumptions about the nature of government and its role in corrections. Decisions regarding the ability of the public sector to contract prison management will include an element of principle based on beliefs about justice.

Cost

Another consideration is the potential for the private sector to reduce the costs of incarcerating offenders. This area has been the most common source of debate both for and against privatization, since empirical evidence is obtainable but is typically fraught with methodological concerns. As such, opinions vary regarding the cost savings involved in privatizing.

Proponents argue that contracting will reduce the cost of incarceration through several means at which the private sector has proven proficient. First, the business sector is better equipped to finance, site and construct prisons swiftly and inexpensively (Brakel, 1992; Calabrese, 1993; Guzek, 1992; Turner, 1988). Physical facilities are considered management tools. Building design is used to decrease the number of staff needed to secure the facility. Businesses can anticipate the type and number of clients they would need to construct for and the types of programs that would be run there (Hutto, 1988). Second, where possible, private providers can create economies of scale by contracting across jurisdictions (Logan, 1990). For example, a prison situated in Alberta might be able to lower the costs to Alberta by contracting out unoccupied space to Saskatchewan or British Columbia. Third, contracting can greatly reduce public employee pensions and benefits plans while at the same time making use of more effective personnel management, better working conditions and less overcrowding. This would result in increased employee morale with less absenteeism (Joel, 1993; Turner, 1988). Fourth, privatization discourages waste and encourages innovation in material management without the rigid procurement restrictions which the government places on itself (Brakel, 1992; Joel, 1993). Government normally dictates which suppliers can be used, what procedure must be followed to do so and what channels are appropriate to follow. Businesses do not usually impose these time consuming and profit losing strategies. They can act quickly to reward employees for improvement in efficiency (Calabrese, 1993; Turner, 1988). Fifth, a common force within government departments is to continuously maximize their budgets to protect their long term interest. The claim is that government departments try to enlarge their budgets in anticipation of later cutbacks. A large budget will allow the department to weather cutbacks without complete elimination. Finally, government departments have considerable hidden costs such as maintenance costs and staff training (Logan, 1990). Businesses, on the other hand, tend to include these figures in their costs to government, thereby accounting for the total cost of incarceration. Beyond basic cost cutting measures, privatization provides several “hidden rebates” to government through business taxes, pension and unemployment insurance contribution and property taxes (Guzek, 1992)

Those opposed argue that private sector involvement cannot possibly reduce costs for many reasons (Leonard, 1990). First, contracting adds a profit margin to the basic costs. This would make

incarceration more costly. Second, contracting creates its own hidden costs including the costs of contracting, initiating, negotiating, managing and monitoring contracts, as well as for termination payouts and retraining for displaced government workers (Logan, 1990). There are also social costs associated with privatization, including the cost of potential unemployment insurance recipients. Third, the private sector may engage in “lowballing” - underbidding each other and then subsequently raising their prices in contract renewals after services have been established (Joel, 1993). Fourth, while contracts encourage competition in the initial phases, the ensuing contracts attract little competition since a government is more inclined to make use of an established service (Logan, 1990). Critics also argue that the true benefits of competition in the private sector may not apply since there are relatively few potential corrections suppliers (Mason, 1993; Joel, 1993). Finally, opponents question many of the assumptions made by proponents. The methods used for cost cutting by the private sector are not exclusive. The government could equally take advantage of techniques such as building design and staff management. The empirical evidence regarding the cost effectiveness of privatization tends to be contradictory and inconclusive. It is impossible to compare existing private prisons with their public counterparts. First, the cost data that exists for each represents a different set of accounting measures (Leonard, 1990). Government accounting measures are designed for fund control rather than cost analysis. Public prison studies do not include all the same information as those of private prisons. Second, the services provided by the private sector are not entirely equivalent to those in the public sector (Leonard, 1990; McDonald, 1990a). Private prisons tend to be of a lower security classification or juvenile detention facilities, offering different programming than their public sector counterparts. Third, the per diem figure for prisoners that is generally used to compare government and the private sector is a poor measure of cost. Because most prison costs are fixed, the per diem figures are incredibly sensitive to the size of the prison population (McDonald, 1990a).

It is important to acknowledge that there are limitations to the comparisons that are available. Chi (1982), in comparing two types of community correctional centres, found that it was slightly less expensive to maintain work release programs within the private sector. In a study of the Okeechobee Youth Detention Centre in Florida, the American Correctional Association (Brown, 1985) concluded that no cost savings were realized after the facility was turned over to the private sector. Donahue (1988), studying data reported from private and public youth detention centres, concluded that the difference in operating costs was minuscule. Logan and McGriff (1989) estimated that savings from privatization were 3% to 8% less than if the public sector were to resume operations. McDonald (1990) found that data from Immigration and Naturalization Services (INS), who contracted out a number of detention centres, showed some centres demonstrating incredible savings and others showing significant cost increases. The Texas Sunset Advisory Commission (1991) found that the two private companies operating in that state produced savings between 5% and 15%. Therefore, it is clear that available data is inconsistent.

Quality

The question of quality centres on whether private providers are able or motivated to provide adequate and superior programming for inmates. The one study regarding the quality of services in the private sector is riddled with considerable methodological problems.

Advocates of privatization argue that the contracting process will increase quality from both private sector and public sector corrections providers. Government prisons would be able to compare their services to those of the private sector. Currently, there is nothing to which the public can compare itself. Furthermore, quality is a good measure for comparing the two methods of delivery, just as cost is currently used to compare the two sectors (Calabrese, 1993; Logan, 1990). To maintain their contracts, businesses will be forced to maintain a high level of quality (Brakel, 1992; Hutto, 1988). By introducing competition into the area of prison management, government will be forced to illustrate the quality of their services and, in doing so, they are likely to increase their standards. The private sector can create new levels of specialization and expertise, thereby increasing the quality of their services. In the process, they will promote creativity and enthusiasm that will devise new ideas that would not be possible under government. It would be necessary for private vendors to provide the information necessary for state officials, advocacy groups and the public to evaluate expenditures and the quality of their services (Logan, 1990). The private sector could “hardly do worse than some public prisons in terms of quality” (Logan, 1990, p. 56).

Adversaries note that part of the fundamental nature of the private sector entails the reduction of costs. Proprietary vendors will be inclined to cut corners to reduce costs. In cutting corners, the quality of the programming will undoubtedly be affected (Joel, 1993). Quality and profits are opposing forces and the private sector will undoubtedly lean towards profits. Furthermore, it is believed that the quality of private services will likely appear better than government services. The public will undoubtedly pressure the government to retain control of the maximum and medium facilities, thereby relegating the least troublesome of offenders to the private sector, a practice known as “correctional creaming” (DiIulio, 1990; Logan, 1990). Cox and Osterhoff (1993) remark that most private corrections facilities are minimum security but there is a gradual expansion into greater security. It is also argued that cutting expenditures on personnel will likely result in a decreased professionalism among staff members (Cox and Osterhoff, 1993).

The first study on quality was, unfortunately, limited in terms of the validity of its methods and findings, as well as the degree to which it can be generalized to the whole offender population. The study, conducted by Brakel (1988) at the Silverdale Detention Centre in Chattanooga, Tennessee, found that inmates rated the quality of services at the private institution more favourably than those services at a similar public institution. The author questioned inmates regarding 16 different measures of quality: general cleanliness and upkeep, safety and security, classification, staff competence, medical services, food services, recreation, education and vocational training, work, religious and counselling services, disciplinary system, requests and grievances, legal access, correspondence, telephone and visitation, outside community contacts and release. Except for three areas (food services, recreation and release), inmates rated the Silverdale Detention Centre very favourably. The author also notes that the three areas criticized were subsequently improved by the facility.

A study by Hatry, Brounstein and Levinson (1993) for the Urban Institute compared private and public institutions in Kentucky and Massachusetts. They used several indicators to measure conditions of confinement, internal security and control, social management and rehabilitation, management issues and cost. They concluded that:

[f]or a substantial majority of these performance indicators, the privately operated facilities had at least a small advantage. By and large, both staff and inmates gave better ratings to the services and programs at the privately operated facilities; escapee rates were lower; there were fewer disturbances by inmates; and in general, staff and offenders felt more comfortable at the privately operated facilities (Hatry, Brounstein, & Levinson, 1993, p. 198).

Quantity

Quantity refers to the potential for privatization to affect the number of individuals incarcerated at any given time. Supporters argue that the privatization movement derives from the natural trend towards increasing incarceration. Private prisons exist to alleviate an existing capacity crisis because contractors can build new facilities faster than the government can. As the rate of incarceration changes, the private sector can adapt more quickly than government to the changing demand by selling facilities or buying new ones (Logan, 1990). Where private prisons operate across jurisdictional boundaries, occupancy rates can be maintained at reasonable rates by distributing inmates across areas.

Challengers assert that the drive to increase demand for services in order to increase profits will create an incentive for companies to lobby for laws and public policies that serve special interests. More specifically, private prison companies may lobby for “law and order” and increased incapacitation (Joel, 1993). Second, the current state of crowding may be causing a reduced tendency to incarcerate. Therefore, if private interests can increase the feasibility of jail terms, the justice system may respond by relaxing the search for effective alternatives (Logan, 1990). Third, if private interests are given control over release of an offender on parole, it is believed that the profit motive will cause them to hold prisoners as long as possible, particularly if their pay per inmate is based on a per diem rate.

Flexibility

The issue of flexibility centres around the following questions:

Will private contracts bring with them the greater flexibility characteristic of small businesses and entrepreneurs? Do they reduce red tape and avoid the perpetuation of agencies and programs commonly found in government? Can the private sector more accurately anticipate and more rapidly respond to the correctional needs of government? Will contracts bring with them their own form of rigidity, such as restrictions on what can be expected or demanded? Do contracts encourage short-term, over long-term, planning? (Logan, 1990, p. 39)

Defenders of the privatization movement argue that proprietary operators are under fewer restrictions than are their public counterparts. This increased flexibility affords them the opportunity to promote innovation and experimentation. Contractors are unburdened by the wealth of red tape and government restrictions that plague the public sector, thereby freeing time for change and action. In addition, there tends to be less political pressure among private providers than among public ones that leads to increased freedom to create change (Logan, 1990). Contracting also reduces the tendency towards bureaucratic self-perpetuation that, in turn, perpetuates the status quo. Within government, individuals protect their jobs by resisting change in structure and process, fearing that change will eliminate the need for their position. Further, the profit motive encourages flexibility in the form of economies of scale where prisons are developed to meet special purposes (ie., protective custody, AIDS patients, etc.) (Logan, 1990).

Challengers argue that the rigid regulations needed to protect against other potential problems creates an environment where the private sector is unwilling to deviate from the stringent demands of the agreement (DiIulio, 1990). The contracting process can be stopped abruptly by negative public reaction, political changeover and legal challenges that create an unstable environment for private operators to work from and to initiate change (Logan, 1990). There is, additionally, some concern that private involvement will decrease the ability of criminal justice agencies to interact, thereby decreasing the development of alternate strategies to longer incarceration.

Security

Can the private sector guarantee the same level of security that currently exists under the public system? The public has a disproportionate fear of crime in general and of escaped prisoners in particular. Therefore, it is a recurring concern that private vendors will not provide adequate security for their wards.

Supporters maintain that if there is a sufficient level of concern about security, then the contracting process would be strengthened in this area. Necessary security precautions would be the very basis of a prison management contract, but additional conditions could be specified for increased staff training in this area. Furthermore, contracts can vary as to the degree that they delineate what steps

are appropriate for ensuring security. If an escape were to occur, the private prison would be susceptible to discharge since public outcry would force government to reconsider its contract with the company. Therefore, the contractor has an increased motivation to provide secure facilities. Private companies are also able to provide their staff with the most up to date security equipment (Hutto, 1988). Further, private prison guards are less likely to go on strike since they are less protected from termination than their public counterparts (Logan, 1990).

Those who oppose privatization argue that the private vendor will cut corners by reducing staff training, making the facility more susceptible to escapes (Logan, 1990). Also, it is held that contracting will limit the ability of the government to respond to any emergencies that do arise (Logan, 1990). First, a private vendor, trying to perpetuate the contract, may not inform government officials of a crisis that has come to light. Second, the government may be unable to respond quickly due to resistance from a private sector party that is attempting to control matters independently. Third, a poorly arranged contract may force the government to use the contracting agency until the contract expires, despite the performance of the contractor. Opponents to private prisons argue that strikes may actually be more likely among private staff, since striking may not be illegal for them. Decreased pay and benefits may also result in an increase in staff turnover causing a drop in security. Finally, proponents' claims that staff would be provided with up to date equipment are questioned; the private sector is not likely to spend money to regularly update equipment since that would result in decreased profits.

Liability

Liability questions the role that private sector involvement will have in diverting legal costs away from the government should civil suits arise. For example, if a prisoner was subject to abuse from prison staff, the inmate would have more groups to sue. The government, in the current system, is the only group who can be sued for such incidence. Under privatization, civil liability would shift to the private prison company. Government avoids potentially expensive law suits. Opponents question whether the government can legitimately displace these costs to the private sector. Will privatization reduce the responsibility of the government with respect to ensuring the rights of offenders? Will they still be legally accountable for violations of prisoners' rights? It is also questionable whether government should be liable for the actions of private business staff members over whom they have no direct control.

Proponents of privatization argue that contracting may decrease the negative costs to the government either through higher quality performance or through indemnification and insurance. Essentially, government would be able to deflect civil suit damages to the private sector manager. Opponents argue that government cannot escape liability since the contractor operates as an extension of the state (Logan, 1990). In effect, this exposes government to potential suits for cases over which they have limited control (Joel, 1993). They also contend that liability should fall on the government since they are the party best able to absorb the costs. Thomas and Logan (1993) find that privatization in the United States has not yet proven problematic in terms of legal liability. Joel (1993, p. 69) notes that "the consensus among legal scholars is that because the government entity

retains ultimate authority and responsibility for the contractor, contracting out constitutes 'state action'."

Liability raises special concerns in terms of the Canadian constitution. Cooper (1993) argues that in order for governments to avoid liability for the actions of private prison staff, contracts would need to be written to indicate that private prison companies represent entirely separate entities from government. In this sense, a legal distance would be created, separating the private and public sectors. This, however, raises a significant constitutional issue. The Charter of Rights and Freedoms, which is the main protector of prisoners' rights in Canada, applies only to government. Over the years, a number of private groups performing government responsibilities have legally challenged the Charter's jurisdiction over them. These have included miscellaneous hospitals and universities. The question which arises is whether the Charter will apply to the private prison.

In McKinney v. University of Guelph, the Supreme Court identified three essential criteria for determining whether a subordinate organization could be considered to be part of government. The three questions which should be asked are as follows:

Does the legislative, executive or administrative branch of government exercise general control over the entity in question? Does the entity perform a traditional government function or a function which in more modern times is recognized as a responsibility of the state? Is the entity one that acts pursuant to statutory authority specifically granted to it to enable it to further an objective that government seeks to promote in the broader public interest? (Geddes, 1994)

With respect to private prisons, the latter two questions are answered relatively easily. A private prison is obviously performing a government responsibility. It is equally obvious that its authority is derived from the government's desire to promote the public interest. However, the degree of control is not easily determined. In two separate court cases, it was held that both hospitals and universities could not be considered government since the government's control over the daily operation of these facilities was rather limited. The situation with prisons is slightly different since they are more likely to be controlled through extensive contract regulation and through monitoring agencies. However, as noted above, to protect themselves from suits, government needs to distance itself from business interests. The question will ultimately result in a balance of these two concerns.

Accountability

Logan includes the following concerns under the area of accountability:

Is accountability decreased because private prisons are less accessible to public scrutiny or increased because the private sector is more vulnerable than the state to legal controls? Do contracts diffuse responsibility? Do they increase it by providing another mechanism of control over prison managers? How accountable are correctional institutions personnel under current arrangements? (1990, p. 40)

Advocates argue that privatization serves to increase the accountability procedure in several ways. First, contracting increases accountability because the market processes of competition are added to the traditional political pressures that surround corrections. Second, the government would be able to monitor and regulate a private party better than it could monitor itself, as a degree of independence ensures critical appraisal. Business interests may force government to address the issue of objective performance measures that have yet to be developed. Contract monitoring will create an adherence of staff to procedure. This can limit and control the discretion available to administrators regarding discipline of inmates. Furthermore, contracted prisons will be more visible and accountable, receiving greater attention from media, advocacy groups and the public (Logan, 1990). Specific conditions can be included to require prisons to become accredited by some level of standards, typically those of the American Correctional Association (Logan, 1990). Furthermore, competition encourages businesses to police each other, adding an additional control mechanism (Logan, 1990). Contracting offers ease in altering the status quo when “bad management has become entrenched and resistant to reform” (Logan, 1990, p. 44). Certain authors have been bold in their optimism regarding accountability. Thomas and Logan (1993) find that:

A careful comparison of public sector corrections agencies with private sector corrections firms that focuses on the important issue of accountability would necessarily find greater economic, legal and political accountability when correctional services are provided by the private sector. (p. 233)

Opponents, on the other hand, argue that private operators are actually insulated from the public in that they are not held accountable in public elections. They are not subject to the same democratic controls as the government. Privatization also diffuses responsibility because government and business will engage in endless debate, each blaming the other (Logan, 1990). Contracting may also cause government to ignore its responsibilities in corrections and to decrease the monitoring that occurs. Accountability may be restricted because contracts are difficult to draft and are subject to lengthy civil enforcement that can cause problems in the long run (Logan, 1990).

Corruption

This issue centres on a shift in the potential for corruption should a private company enter the corrections field. For example, would a private prison warden be more susceptible to bribes from wealthy inmates for better living conditions than would a public prison warden? Some argue that corruption is inevitable within a profit oriented arena. Others argue that corruption is inevitable whether the players are public or private. A second concern is the degree to which corruption can be controlled. Can it be monitored more effectively within the public sector? Will the independence allow the government to better police the private sector?

Proponents of privatization argue that the nature of the contracting process gives private managers a guaranteed interest in maintaining the reputation of their facility. If the government discovers that corruption is present, it is not likely to renew the contract with that company (Logan, 1990). Furthermore, the profit motive may actually counteract the potential for corruption. A company

would be aware that its profit motives rest entirely on the shoulder of its reputation. Therefore, the company would not be willing to sacrifice its reputation for a relatively small amount of temporary additional income.

Opponents argue that in an environment where making a profit is of importance, the appeal of potential bribery is intensified (Leonard, 1990). They also point to the potential corruption that would occur between public officials and the private sector. For example, will companies be willing to “pay off” monitoring agents who discover infractions within a prison? Will competition for contracts be reduced to the company who can “buy” enough of the contracting officials? It is argued that private involvement will increase the potential for obvious and subtle forms of bribery, including political contributions and kickbacks (Logan, 1990).

Dependence

The dependence issue is more of a one-sided argument in favour of privatization. Essentially, the government relies on a limited pool of suppliers which makes it vulnerable to drastic price changes and lack of supplies. By using one supplier, the government also reduces the competition since other businesses would lack a market for their products. With privatization, dependence on a limited number of suppliers would be eliminated by the ease with which the company could change suppliers. This would increase not only the profitability of the company but would also make it less vulnerable to strikes, slowdowns or bad management on the part of the suppliers (Joel, 1993; Logan, 1990).

PRACTICAL ISSUES

The process of contracting for services consists of several stages for the contracting agency. Each of these steps involves specific issues of concern that need to be addressed as the process unfolds. Bowman, Hakim and Seidenstat (1992) divide the contracting process into six major steps: the decision to privatize, the establishment of goals, a review of the organization of the system, an analysis of the legal and liability issues, the preparation of the Request for Proposal (RFP) and evaluation and control. For the purposes of this discussion, a further division of the final section will be taken from Gemignani (1993) who separates the final stage into evaluation of proposals, contracting with a specific agency, and monitoring the performance of the contractor.

The Decision To Privatize

The decision to privatize derives mainly from governments questioning whether they can afford to house the current or anticipated offender population. In some cases, governments will be considering privatization in a effort to reduce the overall costs of the corrections system. In both cases, a full review of the direct, hidden and opportunity costs should be undertaken to obtain a full impression of the existing situation. The contracting agency should determine a maximum amount that they would be willing to spend per inmate if the private sector were to be utilized. If that maximum figure is obtainable based on the projected savings of 5% to 10%, then the government should consider the

potential social costs associated with the change. Social costs include whether public sentiment would support the move to private corrections and the inevitable development of opposition from special interest groups, including advocacy groups and union agencies among others.

In a few rare cases, decisions to privatize may derive from other political forces. In some cases, a government may anticipate that a special project would be better undertaken by a non-governmental agency. An example of this would include the operation of an Aboriginal jail being contracted to an Aboriginal justice advocacy group. In these cases, other considerations must be added to those mentioned above. As such, potential social and political benefits will be acquired from making use of special interest groups.

Establishment of Goals

One of the major benefits of the contracting process is that a government is typically confronted with defining the goals of corrections. Governments usually refuse to state outright whether corrections is designed to provide incapacitation, punishment, deterrence or rehabilitation. Frequently, correctional agencies list all these goals as organizational aims. The private sector, however, is acutely aware that providing for all these goals is impossible and not economically feasible (Keikbusch, 1992). Therefore, government must decide which of these goals will take precedence over the others. In doing so, the government will not only clarify its intentions but may also discover methods of reducing expenditures in its current operations.

Organizational Review

Once a review of current costs and correctional goals has been conducted, the government needs to conduct an internal analysis to consider the potential for change. Occasionally, having refocused and clarified certain issues, the government will be able to determine areas of excess where savings could be accrued without contracting out the authority of imprisonment. If the existing bureaucracy is amenable to making those changes, then it is possible to avoid contracting out. If sufficient savings cannot be found, then the government proceeds.

Analysis of Legal and Liability Issues

A review of federal and provincial legislation will determine whether privatization is possible. As mentioned earlier, specific constitutional concerns will need to be addressed to protect the rights of offenders vis-à-vis the Charter of Rights and Freedoms. Furthermore, correctional legislation will have to be adapted to include the use of private firms under the same guidelines. Typically, legal questions will not surface until after the private agency has initiated services and will, therefore, be answered by the courts.

Preparation of the Request for Proposal

In preparing a Request for Proposal (RFP), the government must be clear about its goals and expectations (Calabrese, 1993). In order for agencies to submit valid proposals, they must be provided with sufficient information to account for all expenditures and programming. If a RFP does not delineate anticipations clearly, then a few well developed major companies will appear more impressive than smaller agencies that are capable of providing quality programming. Once the RFP is prepared, then it can be circulated to interested companies and agencies.

Review of Proposals

The review of proposals will likely consist of a tedious breakdown from each applicant. Each proposal will address social, economic and organizational considerations to differing degrees and the company or agency with the best programming, staffing and cost savings will be selected. Selection will ultimately reflect the interests of the government.

Contracting

Following selection of the company or agency, a comprehensive contract must be drawn up detailing the specific conditions necessary to meet the objectives of the contracting agency. Guzek (1992) outlines three potential types of contracts, each referring to the basic type of privatization that is being pursued. An operation and maintenance contract describes the situation where assets are owned by the public sector but managed by the private sector. This type of contract creates reduced per diem figures as a result of lower overhead costs to the private provider. Furthermore, greater attention can be devoted to the staffing and programming available at the facility. A lease contract reflects the situation where assets are owned by the private sector but operated by government. This contract offers the ability for government to have fixed monthly expenses and to avoid tying up future taxpayers' funds. There is no long term commitment in the lease agreement. With a service contract, assets are both owned and operated by the private sector. This type of contract has all the benefits of an operations and maintenance agreement but allows for deferred costs through capital gains for the private sector. The latter two contracts may result in savings to the business investors in terms of taxes.

Other considerations need to be balanced in the final contract. The liability question needs to be addressed since ultimately it may take away the constitutional protection guaranteed to offenders. Price caps are usually incorporated to prevent unreasonable increases in fees once the service has been established. Typically, fee increases are restricted to inflation as marked by the Consumer Price Index (Logan, 1990). Governments may also make provisions for contractors to gain accreditation from formal correctional associations. Once the contract is completed, services can be transferred.

The initial transfer of services is usually included in the contracting phase since it can involve an inordinate number of considerations not regarded as normal operating procedure. This includes compensating displaced workers, training new staff members, transferring and securing files, transferring inmates, establishing services and contacting other criminal justice agencies.

Monitoring

This is typically the final process in privatization. However, it is an ongoing process that should last through the duration of any contract. Historically, monitoring by private agencies was unable to prevent wardens from committing atrocious abuses. Not until John Howard formally initiated the monitoring process did the situation begin to change. Keating (1990) describes several methods of monitoring private agencies. First, governments are responsible for assuring that the contract is being fulfilled adequately. This involves three different processes: a document review, basic observation and a financial audit. The document review should consist of statistical data, periodic reports, grievance reports, incidence reports and programming reports. Monitoring personnel should also be required to visit the prison site at least annually, preferably more frequently, to conduct inspections and interviews with staff and inmates. Finally, experienced auditors can review the private organization's financial statements to determine the savings. The combination of these procedures will allow the government to determine the degree of contract compliance.

Another strategy of monitoring involves the requirement of accreditation. Accrediting agencies, like the American Correctional Association, require private prisons to undergo "an extensive examination of conditions, operations, security, programs, staffing, training, services, management and so on" (Keating, 1990, p. 147). Through this process, an independent agency is used to oversee the operations of private prisons.

A third strategy for monitoring private corrections is the court model. In the United States, the courts created "institutional masters" in cases where "defendant correctional bureaucrats were unwilling and unable to implement remedial orders after their institutions or systems were found to be unconstitutional" (Keating, 1990, p. 148). These masters are provided free reign to inspect the workings of facilities. They make regular reports to the courts informing them of institutional conditions and of compliance with court orders. This mechanism has been used to monitor both private and public sector management where deemed necessary.

Three types of internal administrative mechanisms have been used to monitor privatization. First, some areas have created a public official position known as an ombudsmen to investigate and resolve complaints. Typically, ombudsmen have been used by government to police their own agencies but Keating (1990) suggests that ombudsmen could have their power extended to the private sector. A similar position could also be created by private institutions to formalize the grievance process internally. Second, grievance procedures need to be established so that prisoners can voice their concerns. These procedures are thought, however, to be tools by which management can control staff as opposed to legitimate means for monitoring the quality of institutional life. A third option is the creation of grievance commissions consisting of people from outside the correctional establishment. The commission would hear inmate and staff complaints.

The final method of monitoring private prisons is the use of public scrutiny. This can take the form of visiting attorneys or of prisoner rights advocacy groups. In Canada, this has taken the form of non-profit advocacy groups like the John Howard Society and the Elizabeth Fry Society. The

involvement of volunteers and staff from these organizations can be made a requirement of contracting to ensure that an external non-government agency is involved in overseeing private prisons. Keating (1990) notes that there are some limits to the use of public scrutiny in that some community representatives may be easily influenced to overlook infractions by prison managers and that volunteers tend to burn out more quickly than paid staff members.

CONCLUSION

The question of whether to privatize prisons is a complicated one which involves numerous theoretical and practical considerations. Unfortunately, limited empirical information is available to provide guidance. In an era of fiscal restraint, it is not surprising that the Alberta government is searching for new ways to cut costs. However, the literature sends a clear message that any decision to privatize prisons should be made carefully. It is hoped that the Alberta government will conduct a thorough examination of the issues before engaging in prison privatization.

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