PRIVATE PRISONS

JOHN HOWARD SOCIETY OF ALBERTA

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EXECUTIVE SUMMARY

Privatization refers to the transfer of traditional responsibilities from the public sector to the private sector. Historically, all prisons were private endeavours which gradually came under the control of government. During the last two decades, a renewed interest has led governments around the world to reconsider the usefulness of private prisons, the result being the rapid re-emergence of private prisons in the United States, Australia, Britain and Canada.

Generally, there are two specific concerns motivating the movement toward privatizing prisons: (a) the perception of deteriorating conditions of public prisons; and (b) the growing trend toward over-incarceration. Specifically in Canada, the issue of overcrowding remains a concern. While prison overcrowding is less severe than it was, it is still a problem in our country, in particular in some provincial prisons like those in Ontario, where inmates are housed five per cell in extreme circumstances, although three appears to be the norm. With respect to federal prisons, double bunking is still common, as well.

In Alberta, the suggestion of the privatization of corrections can be seen in the larger context of increasing private sector involvement in traditional government functions. Intrigued by private sector claims of reducing the cost of incarceration, the Alberta government is considering private prison management. Indeed, privatization in criminal justice is widespread and is by no means limited to corrections. Other aspects of the criminal justice system have been subject to varying degrees of private investment, including everything from policing and victim services to court services and community corrections, suggesting that focussing the debate on private prisons is perhaps a red herring to avoid addressing the real issue, which is prison expansion.

There are six main stages in the privatization of prisons: (a) the decision to privatize; (b) the establishment of goals; (c) an organizational review; (d) an analysis of legal and liability issues; (e) the preparation of the request for proposal; and (f) evaluation and control, which itself can be broken down into three sub-stages: (i) the evaluation of proposals; (ii) contracting with a specific private contracting agency; and (iii) monitoring the performance of the contractor.

There are four broad categories of privatization: (a) private financing and construction; (b) private prison industries; (c) private provision of specific services; and (d) private prison management. Of these categories, private prison management is the most controversial and heavily debated.

Although the John Howard Society of Alberta acknowledges that the privatization of prisons is theoretically possible, we recognize that the reality of instituting private prisons may result in the deterioration of the facilities themselves, of the public perception of government and of the constitutional protection of inmates as guaranteed by the Canadian Charter of Rights and Freedoms ("the Charter") (1982). Some of the main theoretical issues concerning the privatization of prisons are: (a) propriety; (b) cost; (c) quality; (d) quantity; (e) liability; and (f) accountability.

The issue of propriety is an ethical one based on assumptions about the nature of government and its role in corrections. Whereas proponents of privatization suggest that contracting out prison management to the private sector does not replace government in dispensing justice, opponents

believe that it is wholly inappropriate for government to delegate its authority to punish to the private sector. Opponents further point out that government has long been trusted with the authority to punish offenders, and should therefore be extremely cautious in delegating this responsibility, as doing so may taint its position of trust in the public eye.

The issue of cost involves the potential for the private sector to reduce the expense of incarceration. This has been the most common source of debate both in favour of, and in opposition to, the privatization of prisons. Proponents of privatization argue that private prisons alleviate the overcrowding crisis and subsequent cost increases that currently exist in public prisons, whereas opponents argue that private sector involvement does not reduce costs. In reality, studies reveal inconsistent findings about the cost effectiveness of private prisons in comparison to their public counterparts, suggesting that private prisons are no more cost effective than are public prisons.

The issue of quality centres on whether the private sector is able or motivated to provide not only adequate but superior programming for inmates. Proponents of privatization argue that the contracting process increases quality from both government and the private sector, whereas opponents argue that the private sector is inclined to cut corners to reduce costs and maximize profit, thereby sacrificing the quality of programs in the process. In reality, approximately 40 studies on private prisons in the United States have been completed but have failed to settle the ongoing debate.

The issue of quantity refers to the potential for privatization to affect the vast number of individuals incarcerated on a given day. Proponents of privatization argue that private prisons exist to alleviate an existing capacity crisis, because private contracting agencies are able to build new facilities faster than can government. Conversely, opponents fear that the drive to increase demand for services, so as to increase profit, may generate an incentive for private prison operators to lobby for "law and order" and increased incapacitation. Opponents further question why the justice system accepts the capacity crisis and chooses to respond by building new facilities, rather than address the correctional policy that initiated the crisis in the first place.

The issue of liability refers to the role that private sector involvement will play in diverting legal costs away from government should a civil suit arise. Whereas proponents of privatization argue that government can contract out of liability by expressly doing so in initial contracts with private contracting agencies, opponents point out that this raises a significant constitutional issue. The Charter (1982), which is the main protector of inmates' rights in Canada, applies only to government, raising the question that if private contracting agencies do not operate as extensions of government, how will inmates be guaranteed protection? On the other hand, if private contracting agencies do continue to so operate, then government will be exposed to potential civil suits for incidents over which it has limited, if any, control.

The issue of accountability involves the degree to which private contracting agencies are accountable to the public regarding their treatment of, and security over, inmates. Not surprising, proponents of privatization argue that accountability will be increased by privatization, whereas opponents argue that the result will be that private contracting agencies will actually be insulated from public scrutiny.

Nevertheless, some Canadian provinces have forged ahead with the privatization of prisons, beginning recently in Ontario. In November 2001, Canada's first adult private prison, Central North Correctional Centre (CNCC), opened in Penetanguishene, Ontario. CNCC is a multi-purpose facility for offenders serving sentences of up to two years less a day, as well as approximately 200 remand inmates awaiting bail, trial or trial dates. A five year contract has been entered into, outlining that the Ontario government owns the property and buildings, while the private contracting agency must keep the buildings in good condition. The private contracting agency chosen to operate CNCC was Management & Training Corporation (MTC), a private American company in business since 1980. During the five year contract, CNCC will be compared to the Central East Correctional Centre (CECC) in Lindsay, Ontario, which will be publicly run.

After careful consideration, the John Howard Society of Alberta suggests that private prisons do not constitute an effective, just and humane response to the causes and consequences of crime. We question whether the reality of instituting private prisons in Canada will result in the deterioration of the facilities themselves, of the public perception of government and of the constitutional protection of inmates as guaranteed by the Charter (1982). We also question the appropriateness of government delegating its authority to punish to the private sector, and further wonder whether government will nevertheless be held liable for any potential abuses by private prison staff over which it has limited, if any, control. We further wonder why Canada should spend money in either public or private prisons, instead of confronting the real issue, which we suggest is prison expansion.

With respect to the issue of prison overcrowding in Canada, we suggest that privatization will not resolve the problem, and therefore we recommend the exploration of the correctional policy choices that have led to the need for prison expansion. We recommend that additional large scale research studies be undertaken, in an attempt to resolve the debate once and for all. Finally, we suggest that Canada put a halt to the construction and management of private prisons in this country, and redirect the millions of dollars that it has to spend on prison privatization into social and community initiatives and support programs instead.

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INTRODUCTION

Privatization refers to the transfer of traditional government responsibilities from the public sector to the private sector. The issue of privatization has been a recurrent theme in the area of corrections. Historically, all prisons were private endeavours which gradually came under the control of government. During the last two decades, a renewed interest has led governments around the world to reconsider the usefulness of private prisons. This interest has resulted in an intense debate, with scholars and practitioners arguing both for and against the institution of private prisons. Many theoretical and practical issues have been identified. In the meantime, private prisons have rapidly re-emerged in the United States, Australia and Britain, and have recently found their way into Canada. This paper will examine the history of private prisons, as well as the theoretical issues and practical reality of privatization, in particular with reference to the Canadian experience.

HISTORY

Private sector involvement in the area of corrections is not a new idea. Historically, prisons originated as private endeavours. Ignatieff (1978) documents the early history of prison evolution in England. The earliest type of closed incarceration facility was the house of corrections, known as a "bridewell." This facility was operated by keepers who received their incomes, not from government, but from offender fees and contracts from other businesses making use of inmate labour (Ericson, McMahon & Evans, 1992). In theory, inmates were supposed to pay for their keep while being housed in prison. If they could afford monetary payments, they would pay accordingly. If they could not afford such payments, they would pay for their keep through hard labour.

Unfortunately, high inmate turnover rates and low productivity levels resulted in a lack of profit for prison wardens (Ignatieff, 1978). Typically, the inability to generate profit from inmate labour resulted in flagrant abuses by keepers and staff (Ericson et al., 1992). Frequently, inmates were forced to beg from people passing by. In other cases, prison wardens found it much cheaper to chain inmates permanently, thereby decreasing the number of staff needed to monitor them (Ignatieff, 1978). Further, prison wardens were able to ignore the declining condition of their facilities, since inmates could not escape if they were constantly in irons.

Until the 18th century, 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 that were supposed to be used in policing bridewells were unspecified, and the responsibility was frequently ignored.

Then, in the 18th century, change began to occur as a result of the efforts of John Howard. Howard was the first sheriff in England to zealously pursue 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, compiling his research in his famous publication, The State of the Prisons in

England and Wales (1777). 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, government 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 control did not occur in some parts of the United States until the end of World War II (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, such that treatment was embraced by prison officials. Later, reintegration became the main focus, with increasing community corrections programs being initiated. In the 1980s, the use of private sector involvement gradually increased. More frequently, non-profit groups throughout Canada and the United States began operating community programs for offenders. This involvement expanded and numerous community based halfway houses were established (Ericson et al., 1992).

Growing incarceration rates and increasing debt caused governments to look for new strategies to deal with offenders. The appeal of the private prison re-emerged. 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). Several other companies followed suit, including Wackenhut, Pricor and Buckingham Security Company. With respect to the success of these companies, it appears that both CCA and Wackenhut are still successfully in operation today (for more information, see http://biz.yahoo.com/p/c/cxw.html and http://biz.yahoo.com/p/w/wak.html respectively). However, the John Howard Society of Alberta has been unable to locate any current record confirming either Pricor's or Buckingham Security Company's continued existence, suggesting that they are, perhaps, no longer in operation. This suggestion reflects the reality of competition in privatization.

The Decision to Privatize

The decision to privatize derives mainly from government questioning whether it can afford to house the current or anticipated offender population. In some cases, government will consider privatization in an effort to reduce the overall cost of corrections. 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. A private contracting agency should determine the maximum amount that it would be willing to spend per inmate, if the private sector were to be used. If that maximum figure is obtainable based on the projected savings of 5% to 10%, then government may consider the potential social costs associated with the change. Social costs include whether public sentiment would support the move to privatize corrections, as well as the inevitable development of opposition from interested parties, including advocacy groups and union agencies, among others.

In a few rare cases, the decision to privatize may derive from other political forces. In some cases, 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 addressed in addition to those mentioned above. As such, potential social and political benefits may be acquired from making use of interested agencies.

Establishment of Goals

One of the major benefits of the contracting process is that government is typically required to define the goals of corrections. Government correctional departments usually list the goals of corrections as incapacitation, punishment, deterrence and rehabilitation. The private sector, however, is acutely aware that providing for all of these goals is financially impossible (Keikbusch, 1992). Therefore, government must decide which of these goals is to take priority over the others. In doing so, government not only clarifies 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, government must conduct an internal analysis to consider the potential for change. Occasionally, having refocused and clarified certain issues, government is able to determine areas of excess where savings may be accrued. If the existing bureaucracy is amenable to making those changes, then it is possible to avoid contracting out. If sufficient savings cannot be found, however, then government may proceed with privatization.

Analysis of Legal and Liability Issues

When proceeding with privatization, a review of federal and provincial legislation must first determine that privatization is permitted. Specific constitutional concerns must be addressed to protect the rights of offenders in accordance with the Canadian Charter of Rights and Freedoms ("the Charter") (1982). Furthermore, correctional legislation must be adapted to include the use of private contracting agencies under the same guidelines. Typically, legal questions will not surface until after a private contracting 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), government must be clear about its goals and expectations (Calabrese, 1993). In order for private contracting 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 private contracting agencies may appear more impressive than smaller ones that may also be capable of providing quality programming.

Evaluation and Control

Gemignani (1992) separates this final stage of privatization into three sub-stages: evaluation of proposals, contracting with a specific private contracting agency and monitoring the performance of the private contracting agency. We will discuss each sub-stage in turn.

Evaluation of proposals

The evaluation of proposals usually consists of a tedious breakdown from each applicant. Each proposal addresses social, economic and organizational considerations to differing degrees, and the private contracting agency with the best programming, staffing and cost savings will be selected. Selection will ultimately reflect the interests of government.

Contracting with a specific private contracting agency

Following selection of the private contracting agency, a comprehensive contract must be drawn up detailing the specific conditions necessary to meet the objectives of that agency. Guzek (1992) outlines three potential types of contracts, each referring to the basic type of privatization being pursued.

First, an *operation and maintenance contract* describes the situation where assets are owned by the public sector, but are managed by the private sector. This type of contract creates reduced per diem figures as a result of lower overhead costs to the private contracting agency, and permits greater attention to be paid to the staffing and programming available at the facility.

Next, a *lease contract* describes the situation where assets are owned by the private sector, but are operated by government. This contract offers government the ability to have fixed monthly expenses, and to avoid tying up future taxpayers' funds without a long term commitment.

Finally, a *service contract* describes the situation where assets are both owned and operated by the private sector. This type of contract has all the benefits of an operations and maintenance contract, but allows for deferred costs through capital gains for the private sector.

Regardless of the type of contract being pursued, other considerations need to be balanced in the final contract, as well. The question of liability (which will be discussed later in this paper) needs to be addressed, since ultimately private contracting may remove the constitutional protection guaranteed to offenders. Price caps are usually incorporated to prevent unreasonable increases in fees once a service has been established. Typically, fee increases are restricted to inflation as marked by the Consumer Price Index (Logan, 1990).

In addition, government may also make provision for contractors to gain accreditation from formal correctional associations. Once the contract is completed, services may be transferred. The initial

transfer of services is usually included in the contracting phase, since it may 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 the performance of the contractor

Monitoring the performance of the contractor is typically the final aspect of privatization. However, it is an ongoing aspect that should last throughout the duration of any contract. Historically, monitoring by private contracting agencies was incapable of preventing prison 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 contracting agencies. The first method involves government being held responsible for ensuring that a contract is being fulfilled adequately. This method involves three different processes: document review, basic observation and a financial audit. A document review should consist of statistical data, periodic reports, grievance reports, incidence reports and programming reports. With respect to basic observation, monitoring personnel should be required to visit a prison site at least annually, preferably more frequently, to conduct inspections and interviews with staff and inmates. Finally, a financial audit should be performed by experienced auditors, who should review a private contracting agency's financial statements to determine any savings. The combination of these processes allows government to determine the degree of contract compliance.

A second method of monitoring involves the requirement of accreditation. Accrediting private contracting 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 monitor the operations of private prisons.

A third method of monitoring private corrections is the court model. In the United States, the courts have 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 given 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 also 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 be created by private institutions to formalize the grievance process internally. Second, grievance procedures may 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 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 may be made a requirement of contracting, to ensure that an external non-government agency is involved in monitoring 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 volunteers tend to burn out more quickly than paid staff members.

WHAT'S MOTIVATING THE MOVEMENT TOWARD PRIVATIZING PRISONS?

In recent years, two major concerns have encouraged governments around the world to reconsider the privatization of prisons. One concern is the perception of deteriorating conditions of public prisons. The second concern is the growing trend towards over-incarceration. Scholars have attributed the latter trend to several factors, including: perceived increases in crime, heightened fear of victimization, and increased enforcement of drug offences, domestic abuse and sex offences (Avio, 1991; Cox & Osterhoff, 1993; McDonald, 1990). As such, existing prison facilities are overcrowded, and some governments have begun to either build new facilities or look to the private sector.

In Canada, the issue of overcrowding remains a concern. In fact, the Correctional Service of Canada (CSC) "and seven of the provinces/territories reported over-capacity populations" (Canadian Centre for Justice Statistics, 1996). According to Graham Stewart, Executive Director of the John Howard Society of Canada, prison overcrowding is less severe than it was, but it is still a problem in our country, in particular in some provincial prisons like those in Ontario (G. Stewart, personal communication, May 14, 2002). In fact, these institutions sometimes house up to five inmates per cell in extreme circumstances, although three appears to be the norm. Double bunking in federal prisons is still common, as well.

Generally, the literature lends support for the concern regarding prison overcrowding. However, certain authors raise the question as to the appropriateness of prison expansion as the best solution to the crisis. Gregory (1989) suggests that the criminal justice system has failed to clarify an acceptable basis for its policies of crime and punishment, such that a growing prison population and rampant costs are the most obvious results, with prison construction programs following suit.

Privatization in criminal justice is widespread and is by no means limited to corrections. Logan (1990) 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.

Indeed, perhaps focussing the debate on private prisons is simply a red herring to avoid addressing the real issue, which is prison expansion. Canada may be well advised to refrain from instituting private prisons, until we can benefit from the experiences of other countries who have forged ahead with privatization.

In Alberta, the suggestion of the privatization of corrections can be seen in the larger context of increasing private sector involvement in traditional government functions. This is illustrated by the 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, the Alberta government is considering private prison management.

Categories of Privatization

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). We will briefly discuss the first three categories, and explore the fourth category in greater depth.

Private financing and construction

Private financing and construction involves the use of private capital to fund and build prisons that government will operate (Cox & Osterhoff, 1993). This is achieved through two types of agreements. In a *rental agreement*, government pays monthly rent on the prison facility. In a *lease/purchase agreement*, government pays a slightly elevated monthly charge, with the understanding that it will own the facility after a specified time. Both types of agreements offer government the freedom to stop using the facility should jail populations diminish, as well as fixed monthly costs without any long term commitment of tax dollars (Cikins, 1993).

Private prison industries

Private prison industries involve the use of inmate labour for private purposes (Bronson, Bronson, Wynne, & Olson, 1992). These industries operate 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 provision of specific services

The private provision of specific services involves the contracting out of particular services, including: 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). In Canada, non-profit advocacy groups such as the John Howard Society and the Elizabeth Fry Society provide a variety of programs for offenders, both in the community and in prisons.

Private prison management

Private prison management involves the management of prison facilities by the private sector. Not surprisingly, this is the most heavily debated of the four categories of privatization. Sevick (1987, p. 3) notes that private prison management is "fraught with unresolved legal, managerial and philosophical questions." Some of these questions will be explored in the balance of this paper, by way of a critical discussion of the arguments in favour of, and in opposition to, the privatization of prisons. A presentation of available research findings will reveal the contrast between the theory and reality of the privatization of prisons.

THE PRIVATIZATION OF PRISONS: THEORY vs. REALITY

Although the John Howard Society of Alberta acknowledges that the privatization of prisons is theoretically possible, we recognize that the reality of instituting private prisons may result in the deterioration of the facilities themselves, of the public perception of government and of the constitutional protection of inmates as guaranteed by the Charter (1982). As we will demonstrate, the available research on private prisons is inconclusive with respect to the superior quality of private prisons when compared to public prisons, as well as being inconclusive with respect to the question of whether private prisons are more cost-effective than are their public counterparts.

To begin, Logan (1990) categorizes some of the main theoretical issues concerning the privatization of prisons as follows: propriety, cost, quality, quantity, liability and accountability. We will consider each category in turn.

Propriety

The issue of propriety is an ethical one based on assumptions about the nature of government and its role in corrections. Indeed, decisions regarding the appropriateness of government to contract out prison management to the private sector must include an element of principle based on beliefs about justice. Crucial to any debate about private prisons is the identification of government's limits in delegating its authority to punish. 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 of privatization argue that contracting out prison management to the private sector does not necessarily replace government in dispensing justice. They submit that a contractually managed prison does not exist on its own authority (Janus, 1993), but rather exists as an extension of government. On this basis, proponents suggest that concerns about constitutional protection for inmates are unnecessary, as the Charter (1982) still applies. They further assert that government maintains control over essential services through effective monitoring of the private contracting agency's activities, thereby adding a new layer of independent corrections review. According to Logan (1990), the very nature of privatization enhances justice, as "prison supply would be more responsive to changes in demand, both upwards and downwards" (p. 41). Finally, proponents suggest that private prison staff have multiple incentives to treat inmates fairly: to gain the cooperation of inmates, to lower costs and to ensure contract renewal.

Opponents of privatization, on the other hand, argue that one reason government exists is to provide essential justice services. Logan states that "the power to coerce is part of what defines [the] 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" (1990, p. 59). Opponents therefore believe that the contracting process represents an "improper delegation to private hands of coercive power and authority" (p. 45). Unfortunately, not only is such a delegation improper, but opponents also fear that it is potentially dangerous, as the private sector is believed to be more interested in making a profit than in adequately performing the task of dispensing justice (Joel, 1993).

Opponents are quick to point out that government has long been trusted with the authority to punish offenders, and should therefore be extremely cautious in delegating this responsibility, as doing so may taint its position of trust in the public eye. Indeed, such a delegation may be viewed by the public as an abuse of this trust, and government should be careful in this regard (Moyle, 2001, p.79). Finally, since government makes the laws, punishes offenders through the courts, and prisons are integral to government's punishment function, opponents of privatization believe that it is wholly inappropriate for government to delegate its authority to punish to the private sector (Joel, 1993, p. 79).

Cost

The issue of cost involves the potential for the private sector to reduce the expense of incarceration. This has been the most common source of debate both in favour of, and in opposition to, the privatization of prisons. Proponents suggest that private prisons alleviate the overcrowding crisis and subsequent cost increases that currently exist in public prisons. At the same time, opponents predict that any cost savings attributable to privatization will be short term only, and that long term costs will likely exceed current levels of spending due to the need to keep a stable or growing inmate population and ensure private sector profit (Pratt & Maahs, 1999).

To begin, proponents argue that private contracting reduces the cost of incarceration through several means at which the private sector has proven proficient. Following are five main points put forward by proponents of privatization, in support of their argument.

First, the private 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, and building design is used to decrease the number of staff needed to secure a facility. The private sector anticipates the type and number of clients for which it needs to construct a facility, and the types of programs that will be operated there (Hutto, 1988).

Second, where possible, the private sector can create economies of scale by contracting across jurisdictions (Logan, 1990). For example, a prison situated in Alberta may be able to lower the costs to Alberta by contracting out unoccupied space to Saskatchewan or British Columbia.

Third, private contracting greatly reduces 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 results in increased employee morale with less absenteeism (Joel, 1993; Turner, 1988).

Fourth, proponents argue that privatization discourages waste and encourages innovation in material management, without the rigid procurement restrictions which government places upon itself (Brakel, 1992; Joel, 1993). To be sure, government normally dictates which suppliers can be used, what procedures must be followed, and what channels are appropriate to pursue. The private sector does not usually impose such time consuming and profit losing strategies upon itself. It acts quickly to reward employees for improvement in efficiency (Calabrese, 1993; Turner, 1988).

Finally, a common force within government departments is to continuously maximize their budgets to protect their long term interests. The claim is that government departments try to enlarge their budgets in anticipation of later cutbacks. Large budgets allow departments to survive cutbacks without complete elimination. Finally, government departments have considerable hidden costs such as maintenance costs and staff training (Logan, 1990). The private sector, on the other hand, tends to include these figures in its 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).

Opponents of privatization argue that private sector involvement does not reduce costs for many reasons (Leonard, 1990). Following are six main points put forward by opponents of privatization, in support of their argument.

First, private contracting adds a profit margin to the basic costs, making incarceration more expensive. This additional expense should be taken into account.

Second, private 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 respective prices in contract renewals after services have been established (Joel, 1993). Such an anticipated expense should be considered, as well.

Fourth, while contracts may encourage competition in the initial phases, ensuing contracts attract little competition since government is more inclined to make use of an already established service (Logan, 1990). As well, the benefits of competition in the private sector do not apply since there are relatively few potential corrections suppliers (Joel, 1993; Mason, 1993). This is certainly evidenced by the speed with which both Pricor and Buckingham Security Company appear to have been lost in the shuffle by CCA and Wackenhut.

Fifth, the methods used for cost cutting by the private sector are not exclusive. Just as the private sector can make use of methods to cut costs, so too can government.

Finally, given that existing evidence illustrates how the private prison industry tends to favour increased incarceration, opponents fear that alternatives to incarceration will not likely be promoted, regardless of the cost society will pay as a result (Lippke, 1997). While this does not necessarily constitute a financial cost, it does translate into a social cost that should be taken into account.

Having now considered the theoretical arguments both in favour of, and in opposition to, the privatization of prisons with respect to cost, we will now examine the reality of the cost effectiveness of private prisons in comparison to their public counterparts. Indeed, not only are inconsistent findings about the cost of private prisons discovered across studies, but they are found within the same studies, as well. For example, although one American study has found private prisons to be more cost effective than public prisons, that same study concluded that delegating the responsibility of managing prisons from government to the private sector is unlikely to alleviate much of the financial

burden of state correctional budgets (Pratt & Maahs, 1999). In fact, private prisons have not been found to consistently demonstrate substantial cost savings, and sometimes they have been shown to cost more (Shichor, 1995).

Another study was conducted in California (1994) that assessed costs between one privately managed (medium security) prison and two publicly managed (one medium and one high security) prisons. The study revealed that the private prison's annual cost per inmate was higher than the comparable cost of one of the publicly run prisons, but was lower than the other (GAO, 1996). This illustrates the potential for inconsistency of research findings within the same study.

Researchers have also conducted studies that have found private prisons to be wholly ineffective. Okeechobee, a private prison in Florida, was compared to a public prison in the same state (Levinson, 1985). It was found that the private operator contracted to run Okeechobee could not reduce costs at the 10% to 15% rate it had originally claimed. In fact, a cost comparison determined that the actual costs of the two programs were almost identical. This finding illustrates that private prisons do not necessarily result in any real cost savings.

A study by Sechrest and Shichor (1993) determined that private prisons in California averaged a per diem rate of $54.49 per day per inmate, whereas public prisons averaged $50.08. This finding, too, suggests that private prisons do not necessarily result in any real cost savings.

More recently, a large scale research study about private prisons was conducted by Pratt and Maahs (1999). Their research performed a meta-analysis of the existing private prisons literature, which means that it included and analysed the data of previous studies. Although 24 independent studies were evaluated, cost effectiveness was the only variable considered. Results from this meta-analysis revealed that private prisons were no more cost effective than were public prisons.

Quality

The issue of quality centres on whether the private sector is able or motivated to provide not only adequate but superior programming for inmates. While opponents of privatization appear to hold a stronger theoretical position in the debate, unfortunately the literature fails to provide conclusive evidence to resolve the issue.

To begin, proponents argue that the contracting process increases quality from both government and the private sector. They assert that, by introducing competition into the arena of prison management, government is forced to illustrate the quality of its services and, as a result, is likely increase its standards. They further assert that, to maintain contracts, the private sector will be encouraged to maintain a high level of quality of services, as well (Brakel, 1992; Hutto, 1988).

Proponents suggest that the private sector can create new levels of specialization and expertise, thereby increasing the quality of its services, and promoting creativity and enthusiasm that is not

possible by government. In addition, the private sector can provide information to government, advocacy groups and the public, to evaluate expenditures and the quality of its services (Logan, 1990).

Opponents of privatization, on the other hand, argue that the private sector is inclined to cut corners to reduce costs, and thereby maximize profit. In cutting corners, the quality of programming is undoubtedly affected (Joel, 1993). To be sure, quality and profit are opposing forces, and the private sector undoubtedly leans towards profit. Opponents further argue that cutting expenditures on personnel likely results in decreased professionalism among staff members (Cox & Osterhoff, 1993).

Of serious concern to opponents is the belief that minimum security offenders are assigned to the control of the private sector, while only maximum and medium security offenders remain controlled by government. This practice is known as "correctional creaming" (DiIulio, 1990; Logan, 1990). Their concern is grounded in the fact that, as Cox and Osterhoff (1993) remark, most private correctional facilities are minimum security, such that the majority of offenders will fall under the control of the private sector, and consequently will be subject to its standard of quality, which is not superior to that maintained by government.

As noted above, the literature fails to conclusively resolve the debate. 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 as follows:

> For 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 (p. 198).

Three years later, a study by Logan (1996) compared one private prison and one public prison in New Mexico, where quality of service was the only variable considered. He found that, while the staff survey data and official data records (quality) supported the private prison, the public prison outscored the private prison with respect to inmate satisfaction.

As noted above, a study compared Okeechobee, a private prison in Florida, to a public prison in the same state (Levinson, 1985). The private prison was found to have lower staff morale, a higher staff turnover rate and a less orderly and well maintained facility. These findings illustrate that private prisons are not necessarily superior to public prisons with respect to quality.

Again as noted above, a study by Sechrest and Shichor (1993) found that, according to inmate surveys, public prisons were better in service than were their private counterparts. This finding, too, suggests that private prisons are not necessarily superior to public prisons with respect to quality.

In fact, approximately 40 studies on private prisons in the United States have been completed, but have failed to settle the ongoing debate (Pratt & Maahs, 1999). This is largely because correctional literature suffers from a scarcity of large scale studies about the quality of service provision in public prisons versus private prisons. Inconsistency in the literature may result from the large number of small scale studies that have been published. The problem with small scale research is that the extent of comparison between public prisons and private prisons is usually composed of one public prison versus one private prison, often in the same state. The limitations of this research result in extreme variation, inconsistency in findings and no clear evidence to support or oppose the operation of private prisons.

Quantity

The issue of quantity refers to the potential for privatization to affect the vast number of individuals incarcerated at any given time. Proponents argue that the privatization movement derives from the natural trend toward increasing incarceration. They claim that private prisons exist to alleviate an existing capacity crisis, because private contracting agencies are able to build new facilities faster than is government. As the rate of incarceration changes, proponents suggest that the private sector can adapt more quickly than can government to the changing demand, by selling facilities or buying new ones (Logan, 1990).

Opponents, on the other hand, assert that the drive to increase demand for services, so as to increase profit, generates an incentive for the private sector to lobby for laws and public policies that serve special interests. More specifically, private prison operators may lobby for "law and order" and increased incapacitation (Joel, 1993). Further, the current state of overcrowding may be causing a reduced tendency to incarcerate. Therefore, if the private sector increases the availability of prison terms, the criminal justice system may respond by relaxing the search for effective alternatives (Logan, 1990).

If the private sector is given control over the release of offenders on parole, opponents fear that the profit motive will encourage the detention of prisoners as long as possible, in particular if the pay per inmate is based on a per diem rate. Finally, opponents question why the justice system accepts the capacity crisis and chooses to respond by building new facilities, rather than address the correctional policy that initiated the crisis in the first place.

Liability

The issue of liability refers to the role that private sector involvement will play in diverting legal costs away from government should a civil suit arise. For example, if an inmate were abused by private

prison staff, that inmate will have additional entities to sue. In the public prison system, government is the only entity that can be sued for such an incident. Under privatization, the private contracting agency will also be liable.

Proponents argue that private contracting decreases the negative costs to government, either through higher quality performance or through indemnification and insurance. In fact, they agree with Cooper (1993) that government avoids liability for the actions of a private contracting agency, by expressly confirming in their contracts that the private contracting agency represents an entirely separate entity from government. In this sense, a legal distance is created, separating the private and public sectors, in effect protecting government from liability. Essentially, government deflects civil suit damages to the private contracting agency.

However, opponents of privatization point out that a significant constitutional issue is raised if government and private contracting agencies expressly confirm in their contracts that they are separate legal entities. The Charter (1982), which is the main protector of inmates' rights in Canada, applies only to government. If private contracting agencies do not operate as extensions of government, the question arises whether the Charter applies to those agencies. If not, how will inmates' rights be guaranteed protection? Without such protection, how can government be justified in contracting itself out of liability? On the other hand, if private contracting agencies continue to operate as extensions of government, than government will be exposed to potential civil suits for incidents over which it has limited, if any, control (Joel, 1993).

Accountability

The issue of accountability involves the degree to which private contracting agencies are accountable to the public regarding their treatment of, and security over, inmates. Logan (1990) asks the following questions with respect to 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? (p. 40)

Proponents argue that privatization increases accountability in several ways. First, the market processes of competition adds to the traditional political pressures that surround corrections. Second, government is able to monitor and regulate a private contracting agency better than it can monitor itself, as a degree of independence ensures critical appraisal. Next, private sector interests encourage government to address the issue of objective performance measures that have yet to be developed. As well, private contract monitoring creates an adherence by staff to procedure. This limits and controls the discretion available to administrators regarding discipline of inmates.

Proponents further assert that privately contracted prisons are more visible and accountable, receiving greater attention from media, advocacy groups and the public (Logan, 1990). Next, they claim that specific conditions can be included to require prisons to become accredited by some level of standards, typically those of the American Correctional Association. Further, proponents suggest that competition encourages private contracting agencies to police each other, adding an additional control mechanism. Finally, they argue that private contracting offers ease in altering the status quo, when "bad management has become entrenched and resistant to reform" (p. 44).

In fact, certain authors have been bold in their optimism regarding accountability. Thomas & Logan (1993) found 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 contracting agencies are actually insulated from the public, in that they are not held accountable in public elections. To be sure, they are not subject to the same democratic controls as is government. Arguably, public accountability with respect to the standards of private prisons is not sufficient. Indeed, privatization diffuses responsibility because government and private contracting agencies will engage in endless debate, each blaming the other (Logan, 1990). Private contracting also encourages government to ignore its responsibilities in corrections and to decrease the monitoring that occurs. Finally, 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.

THE CANADIAN EXPERIENCE

Having explored the theoretical positions of both proponents and opponents of privatization, as well as the reality of private prisons as outlined in the literature, we will now consider the reality of instituting private prisons in Canada. Indeed, some Canadian provinces have forged ahead with the privatization of prisons, beginning recently in Ontario.

In November 2001, Canada's first adult private prison, Central North Correctional Centre (CNCC), opened in Penetanguishene, Ontario. According to the terms of the contract, the Ontario government owns the property and buildings, while the private contracting agency must keep the buildings in good condition. As referred to above, CNCC is therefore an example of an *operation and maintenance contract*, which means that the assets are owned by the public sector, but are managed by the private sector. Consequently, we would expect to see reduced per diem figures as a result of lower overhead costs to the private contracting agency, and greater attention being devoted to the staffing and programming available at the facility.

Management & Training Corporation (MTC) was selected as the private contracting agency of CNCC, with public safety being government's main priority. MTC is a private American company in business since 1980, and notes as its mandate a commitment to providing inmates with education for their successful reentry into society (for more information, see http://www.mtctrains.com/Corrections/corrections.html).

CNCC is a multi-purpose facility for offenders serving sentences of up to two years less a day, as well as approximately 200 remand inmates awaiting bail, trial or trial dates. The institution includes areas for rehabilitation, programming, an infirmary and separate buildings for an industrial work program. It houses 1,184 inmates at full capacity, consisting of six maximum security units of 192 beds each for male accommodation, and a separate 32 bed unit for females.

Then Correctional Services Minister Rob Sampson stated that "all correctional facilities will be held to the same high performance standards whether they are privately or publicly run" (Ministry of Correctional Services, May 5, 2001). A five year contract has been entered into for a per diem rate of $79.45. Over this period, the operation will be compared to the Central East Correctional Centre (CECC) in Lindsay, Ontario, which will be publicly run. The total contract value over five years is $170,818,717.00, or just over $34 million per year.

Eurest Dining Services (EDS) has been chosen as the private contracting agency for food production for Ontario prisons (including CNCC), and is the operator of the new Cook Chill Food Production Centre (CCFPC) at the new Maplehurst facility, which is to begin operating this spring in Milton, Ontario. The cook chill system allows meals to be prepared in advance, chilled for short term storage and re-heated for serving. The intent is to save tax payer dollars through large volume food preparation. CCFPC will initially supply approximately 19,000 meals daily for inmates at the Maplehurst facility, CECC and CNCC.

Opponents of privatization point out that, as these three correctional institutions account for approximately 50% of the ministry's adult offender population in Ontario (for more information, see http://www.corrections.mcs.gov.on.ca/english/cservices/cook_chill_nr.html), competition among other private contracting agencies is likely an illusion. To be sure, once EDS is established and relied upon, the chance of another private contracting agency being chosen later is diminished.

Next, opponents suggest that the privatization of CNCC will not result in substantial cost savings or a superior quality of programming for inmates. They further suggest that the delegation of authority over CNCC to MTC is an inappropriate delegation of government responsibility, and that government will, nevertheless, be liable for abuses by that staff.

Finally, it is noteworthy that the comparison between CNCC and CECC is based on the same flawed research design as those studies conducted in the United States, where one private prison was compared to one public prison, often in the same state, resulting in limited and variable research findings of a small scale, with no clear evidence to support or oppose the operation of private prisons.

CONFLICT OF INTEREST

The John Howard Society of Alberta recognizes that objectivity is crucial when researching private prisons. Unfortunately, some researchers have appeared more interested in supporting their own ideological positions and consequently have constructed "simple (cost) comparisons" that lack analytical and methodological rigour (Logan, 1990, p. 96). There has been intense speculation as to whether researchers are personally invested in any private contracting agency, and further, if research is being funded by any private contracting agency. Is personal profit the ultimate motivator?

The ethics of research in the field of privatization are consequently sometimes questionable. This offers one explanation as to how different research studies can produce such varying results. Unfortunately, this leaves the reader, government and any agency involved in the politics of private prisons struggling to understand the discrepancies.

One such circumstance of unethical research in the private prisons arena involved an inspector for the Texas Commission on Jail Standards. In 1997, the acting inspector gave Dickens County prison the highest ratings possible for prison standards. A month later, the inspector acknowledged that he worked as a consultant for a private prison company, which paid him $42,000 per year (Schlosser, 1998, p. 68).

The John Howard Society of Alberta acknowledges that both the continuation of private prisons and the development of policy regarding prison privatization are largely based on the research in the field. This can be dangerous, as is illustrated by the above ethics cases. To be sure, the literature is not consistent, with each new study providing results contrary to the last.

DISCUSSION

The question of whether to privatize Canadian prisons is a complicated one which involves numerous theoretical and practical considerations. As discussed throughout this paper, the evidence available in private prisons literature is inconclusive at best, which has implications for both correctional policy makers and researchers.

First, there has been no strong evidence to support the superiority of private prisons over public prisons with respect to cost. Second, there is a lack of large scale research into the quality of service provision in private prisons versus public prisons, such as the quality and availability of treatment services and overall amenities. Third, the question is raised as to the appropriateness of government delegating its authority to punish to the private sector. Finally, the issue of government liability for potential abuses by private prison staff over which it has limited, if any, control, remains a matter of debate.

After careful consideration, the John Howard Society of Alberta suggests that private prisons do not constitute an effective, just and humane response to the causes and consequences of crime. We question whether the reality of instituting private prisons in Canada will result in the deterioration of the facilities themselves, of the public perception of government and of the constitutional protection of inmates as guaranteed by the Charter (1982). We also question the appropriateness of government delegating its authority to punish to the private sector, and further wonder whether government will nevertheless be held liable for any potential abuses by private prison staff over which it has limited, if any, control. We further wonder why Canada should spend money in either public or private prisons, instead of confronting the real issue, which is prison expansion.

With respect to the issue of prison overcrowding in Canada, we suggest that privatization will not resolve the problem, and therefore we recommend the exploration of the correctional policy choices that have led to the need for prison expansion. We recommend that additional large scale research studies be undertaken, in an attempt to resolve the debate once and for all. Finally, we suggest that Canada put a halt to the construction and management of private prisons in this country, and redirect the millions of dollars that it has to spend on prison privatization into social and community initiatives and support programs instead.

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