

PRIVATIZATION OF PRISONS: PROS AND CONS

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I. Introduction

The tendency of the growing number of inmates and prisons required to maintain these criminals has increased the concern on behalf of the government and gained attention of the public, over the last decades, regarding the issue of financing prisons and prison operation services for lower cost and better quality (Lukemeyer & McCorkle, 2006). The census data designates that, currently, there are more than 2.3 million inmates in the US prisons (Bureau of Justice Statistics, 2008) which is considered to be respectively more than in other developed world countries (Campo & McFerson, 2008; Bowman, Hakim, & Seidenstat, 1996). As the number of the inmates continues to grow the cost of the maintaining correctional facilities and service provision also increases. Hence, the money of the taxpayers spent for prison provision becomes more politically visible (Johnston, 1990). Public is more interested in demanding punitive punishments but less willing to finance prisons and prison services which require big amount taxpayers' money (Lukemeyer & McCorkle, 2006; Jewkes & Johnston, 2006). Therefore, public executives face the challenge of doing more for less and being more efficient and effective while building, maintaining, operating, and financing prisons (Shichor, 1998).

The overcrowd problem of prison population, economical and financial burden of prison maintenance, political environment of the free-market solutions, arguments regarding establishing effective and efficient provision of public services via market competition are some of the crucial factors which enhance the tendency toward outsourcing of prison system and services either partially or completely, and to rely more on private contractors (Johnston, 1990; Moore, 1998). Government has been actively seeking alternatives for a growing incarceration problem, which has yet to be resolved. Some states have been implementing different strategies such as community based institutions, home confinement, etc. to alleviate the issue of overpopulation but these alternatives are successful in short-term period

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and can cope with only small proportion of convicted criminals. Government still experiences the need for additional jails and correctional facilities (Moore, 1998).

Privatization is considered as one of the choices for coping with continuously growing challenge of prison management and improvement of government operations (Johnston, 1990). In general, outsourcing of prison system refers to transferring governments' functions of owning, maintaining, building, and operating public prisons to private institutions and relying on private sector, which operate for profit, in delivering public services and satisfying public need (Jewkes & Johnston, 2006; Ogle, 1999). Literature and previously done researches draw attention on different reasons and outlines significant rationales which act as the main basis for advocacy and argument of prison privatization. Proponents of privatization emphasize a variety of causes for favoring outsourcing due to: ideology that government cannot effectively deliver required services; that privatization brings relatively more flexibility and innovation in the management of prison system and service provision; affirmative perspectives regarding free-market competition which may spur the cost effectiveness and quality boost of service delivery; psychological dislike of the government, etc. (Freiberg, 1999). However, the focal general premise behind the privatization of the correctional institutions and consideration for policymakers, administrators, and citizens for outsourcing prison system and services to private entities is the argument that private contractors can deliver services for better quality, lower operational costs, and more flexibly than that of government agencies (Shichor, 1998; Lukemeyer & McCorkle, 2006; Perrone & Pratt, 2003; Pratt & Maahs, 1999; Bowman, Hakim, & Seidenstat, 1996; Mays & Gray, 1996).

While demonstrating many positive contributions there are also significant number of risk factors which urges attention. Opponents of privatization argue that outsourcing of specific government functions as prison regulation does not only lead to cost saving policy choices but, at the same time, turns privatization of the correctional facilities to be a profit-making business and leads to mechanical preference for the growth of prison industry every year. In other words, private organizations which manages correctional facilities contract their funds based on the number of inmates which gives them incentive to increase the population of the prisons due to profit maximization (Johnston, 1990). Privatization may also reduce accountability to citizens; affect prison conditions (quality of inmate's life, health care, work-programs, recreational services, etc.) by cutting the costs of living conditions and standards; hamper the ethical concern of the traditional government's fundamental obligation of delivering certain

services as safety, national security, environmental protection, etc. which does not need to be contracted out and carried out by private parties (Johnston, 1990; Dunham, 1986; Price & Riccucci, 2005); lead to lower security of institutions and facilities (number of escapes, deaths, etc.); cause unfair mistreatment and ineffective rehabilitation of inmates (drug rehabilitation, education, etc.); create control and monitoring problems for government and be less transparent to public in decisions, actions and policy choices (Campo & McFerson, 2008); etc.

This paper discusses the growing concern of prison overpopulation, and analyzes the historical background of the privatization of correctional facilities, and explores pros and cons of outsourcing traditional government function as prison management. The discussion of the paper is based on the literature review of the conducted researches of top scholars. Conducted preliminary analysis brings to sight the notion that privatization of prison system may not always be good for government. At the same time with many positive determinants outsourcing of prisons also carries some potential risks. Even though privatization is not a new concept it has been significantly favored over the last decades. Therefore, conducted empirical and theoretical studies catch only partial aspects of privatization, hence do not clearly describe the complete benefits and outcome of prison privatization.

II. Background Information and Policy Decisions of Privatization

Every year the United States (US) spends more than 60 billion dollars to house the inmates (Warren, 2006). Statistics exhibit shows that the overall crime rate has increased up to 600% since 1970s. More than 200 jail cells are being constructed in US every day to sustain growing number of prisoners. The average cost spent for the housing expenses of one inmate, in a year, ranges between \$22,000 and \$25,000. More than 6 million people are under supervision, either in the form of parole or probation (Hearts & Minds, 2007). Currently, the construction cost of the prison facilities is extremely huge. The numbers indicate that the construction price for one maximum-security prison bed costs \$54,000, while it is \$46,000 for medium-security bed and \$26,000 for minimum-security facility (Bowman, Hakim, & Seidenstat, 1996; Logan, 1990). The total capacity of the inmates in prisons has increased 832% only in the last decades (Pratt & Maahs, 1999). The advocates of privatization claim that private sector can be more effective in building, operating and financing prisons and lessen the burden of the government entities in implementing these functions (Shichor, 1998).

The involvement of the private sector in the prison industry and outsourcing of government's correctional facilities is not a new phenomenon or concept in the US history. Even though privatization has gained excessive respect since 1980s traditionally private organizations have been providing range of services to many US prisons as: food provision, health care, laundry, etc. since the beginning of 20th century. Government has also been engaging in agreements, in 19th century, with private contractors where the prisoners were being used as labor by private sector, and private contractors were responsible for housing inmates, paying labor fee, etc. (Shichor, 1998; Bowman, Hakim, & Seidenstat, 1996; Camp & Gaes, 2002; Price & Riccucci, 2005; Dunham, 1986). The Changing socio-political environment, new policy choices and climate, late in 1970s and 1980s, led to increase in prison population. The War on Drugs policy decision of the US government caused incredible growth of determinants and skyrocketed correctional costs. While previously having enough capacity and resources to cope with the challenge of imprisonment U.S. is now facing certain obstacles (Pratt & Maahs, 1999; Logan, 1990). The major two forces which stimulated the movement toward privatization and made policymakers to consider this option, since 1980s, is the growing concern of deteriorating conditions of public prisons and extraordinary growth of prison population (Pratt & Maahs, 1999). Texas became the first state which privatized prison facilities, in 1983, after U.S. Congress enacted the Percy Amendment in 1972. Today there are more than 151 private correctional facilities which operate in 30 states. The capacity of privately owned prison facilities has grown from 20,000 to 143,000 in a short period of time. Florida is considered to be among the first five states in terms of number of privately owned correctional facilities (Price & Riccucci, 2005).

Literature identifies different perspectives and various types of partial or complete privatization of public prisons. According to Lukemeyer & McCorkle (2006) privatization of the prisons consists of four types:

- 1) Contracting out for government services as medical care, food services, staffing;
- 2) Contracting for the employment of prison inmates and using them as employees;
- 3) Privatizing construction and financing of public prisons; and lastly,
- 4) Privatizing the management of prison facility.

Jewkes & Johnston (2006) also enumerates activities of the prison services to four different set of functions which can be privatized by private contractors. These are: 1) ancillary service functions which include different

activities as “catering, education, health care, prison workshops and farms, prison escort services” (p: 60), 2) design and construction functions which refer to building of new prisons and facilities, 3) financing functions which refer to raising alternative funding sources as investments, private loans, etc. to taxpayers’ money, and 4) management and operation functions.

1. Arguments for Privatizing Prisons

The advocates of the private sector claims that private companies experience little legal, political and social constraints; are not subject to political mandates and bureaucratic restrictions; have relatively more freedom and flexibility in adjusting their management functions, goals and technologies; are more innovative and not limited with strict standardized procedures; focus more on revenue gains; are more motivated than public sector, and are more successful in competitive market than that of public organizations. Proponents argue that private sector is lenient toward innovation and can provide better value for money in their actions and operations. The structure, framework and system of private organizations are more centralized on profitability, effectiveness, and efficiency (Ogle, 1999; Lukemeyer & McCorkle, 2006; Price & Riccucci, 2005; Pratt & Maahs, 1999; Moore, 1998; Shichor, 1998; Roth, 2004; GAO, 1996).

Cost effectiveness, efficiency and flexibility: In general, there are three key reasons which support the idea of cost effectiveness, efficiency and flexibility which are emphasized as: Competition that creates incentives to provide more for less, being free of red tape which enhances managerial flexibility, and innovation which leads to significant savings of operational cost and manpower (Roth, 2004). The primary argument for the outsourcing of correctional facilities is the putative notion of market driven competition which creates incentives and efficiency. When competing for government contracts private organizations, either directly or indirectly, are being forced to provide better services for the possible lowest prices, be more innovative, provide more choices, be more goal oriented, etc. While contracting out generic/traditional government service as prison provision it is of crucial importance to focus on long-term goals rather than short term objectives. The contract puts certain requirements for competitors and defines punishments, most time, if these requirements are not being followed. The competition among public agencies is relatively more absent than it is in the private sector because they are more environmentally constrained. Since the primary focus of private sector is financial gain they are more concerned with providing better quality services for possible lower cost (Ogle, 1999; Mays & Gray, 1996; Logan, 1990).

Private organizations also exercise freedom in managing their staff and are not limited with civil-service rules. They have more flexibility in using positive and negative incentives to motivate employees (Moore, 1998; Mays & Gray, 1996). The new management approaches and techniques, the way of doing things different from the government, and the innovative designs allow the private institutions to plan and remodel correctional facilities in a more innovative and effective way and achieve long-term cost savings. For instance, advocates of privatization claim that private organizations are more successful in the speed of prison facility constructions and are more efficient in saving building, operation and maintenance costs since they are not subject to various costly rules and limitations such as purchasing restrictions, law barriers, etc. imposed by government (Moore, 1998; Mays & Gray, 1996). Literature also demonstrates that two third of the whole operating budget of the correctional facilities is spent for the personnel/staff expenses. Therefore, the private sector tends to reduce the cost spent for the personnel provided that they do not create any staff deficiency. Private companies, use the new innovative designs of the correctional facilities which operate on a fewer number of staff and dramatically reduce the labor costs. They use different technology and techniques to monitor prisoners with few staff members (Moore, 1998; Mays & Gray, 1996).

Opposite from private sector, public agencies are more concerned with spending the money allocated by the government, sustaining positive yearly balance and increasing their budget rather than delivering services more cost effectively. In other words private sector is not constrained with red tape and enjoys relatively more management flexibility. They are more flexible in initiating and expanding new management techniques and approaches, adopting new technologies, fostering innovation to reduce the operation and service delivery costs, improving efficiency and deploying workforce more productively (Logan, 1990). Privatization gives managerial flexibility in regulating purchasing and maintenance costs and expenditures. Private companies are free of complex bureaucratic purchasing rules which give them opportunity to accept effective decisions letting them to save money and time. For instance, if the correctional facility requires any technology or equipment then private company can simply purchase it from the most appropriate supplier rather than requesting it from complex purchasing process. Private organizations are also flexible in accepting decisions that will save the organization future maintenance cost. Whereas, public companies face challenges in getting approval to the decisions related with the maintenance. Private organizations are more flexible in sustaining such

investments and establish long-term goals which could lead to reduced future expenditures (Moore, 1998).

An example which explores the cost effectiveness of privately owned prison facilities can be the area of incidents and assaults. Literature defines that most of the incidents occurring between prisoners or prisoners and officers cost a lot of money for the government and public prisons. Due to increase in personnel cost and staff requirements, emerging from the incident related lawsuits, staff and money become one of the central focuses for private sector. Different from public organizations, privately owned correctional facilities tend to show greater interest to these incidents and maintain tight control of the prison environment in order to prevent assaults and establish the legitimacy of the correctional officers' power and authority in the prisoners' eyes. The empirical study of different public and private correctional facilities demonstrate that facilities operated by the private organizations tend to have few incidents than government organizations (Logan, 1990).

Proponents of private prisons also claim that quality of living conditions and services that the inmates receive are higher in private correction facilities than that of publicly owned (Lukemeyer & McCorkle, 2006). Moore (1998) notes that the private organizations tend to provide high quality services because they know that failure to do so may result in the termination of the contract or the replacement of the contractor. Also, the future probability of private organizations to win new contracts depends on their performance in the current agreement. Thomas & Logan (1993) summarize the studies conducted on quality and service provision on correctional facilities which were previously owned by public organizations and later became privatized. The study comprise conducted surveys which were distributed to the inmates to assess their perception on quality factors and service provisions after privatization. They conclude that in a variety of quality indicators private prisons are much ahead than public institutions. The similar research was conducted by Logan (1992) in New Mexico women's prison who compared the results to federal women's prison. She comprised the quality of confinement of the prisons based on eight dimensions and came to the conclusion that inmates favor private prisons and consider them relatively high quality service providers than publicly owned prisons.

2.Arguments against Privatization

Ethical issues and profit as a motivation indicator for private sector:
Opponents of privatization argue that even if it contributes to positive social

benefits, traditionally prison operation and management has been regarded as a constitutional prerogative of the state which cannot to be delegated to private parties (Dunham, 1986). Correction is the part of justice system and need to be carried by the government. Only government should be legitimate and exercise such power (Roth, 2004). Shichor (1998) notes that there are no significant constitutional barrier which would prevent private sector from implementing punishment of criminals. However, if described from ethical perspective punishment is considered to be moral issue which has traditionally been the core responsibility of the government and it is still questionable to transfer this government function to any private entity (Shichor, 1998). Johnston (1990) also notes ethical concerns of privatization and emphasize that how ethical it would be to gain profit from one's punishment. Critics of privatization argue that private organizations are primarily motivated by profit maximization which would eventually conflict with implementing justice. The assumption of opponents suggest that the profit motives of the private organizations is core issue for their existence which will be more crucial for them than "welfare of inmates, the needs of the state, or the interests of justice" (Roth, 2004:62). Opponents argue that private contractors will not follow the standards, cut the costs, and pursue the monetary profit. The power of decision over inmate's length of imprisonment would also be influenced by monetary factors. Because private sector receive funds based on the number of inmates it will affect their actions and lead to acceptance of the unfair discipline or parole decisions that would increase the length of inmate's time in prison and give the organization more profit (Johnston, 1990; Logan, *Private Prisons: Cons and Pros*, 1990).

Opponents also argue that the incentive of maximization of profits would affect the quality of services and standards and have the negative impact on inmate's life and welfare. Critics suggest that private organizations use the utmost possible options to save from all possible expenditures. Therefore, they will tend to cut costs from daily necessities and expenditures of inmates as cutting from heating, food, medical care, etc. which will affect their life in prison. Opponents also suggest that profit oriented incentives will lead to unfair decisions as locking prisoners in their cells for longer time which would prevent them using different services and reduce the cost of utilities, monitoring, staff time used to provide security, etc. Monetary incentives may also lead to cut the quality of work programs and influence the quality of rehabilitation activities. Which all means "any cost savings will come at the expense of the quality" (Roth, 2004:48).

Accountability, Legitimacy and Monitoring: Opponents of privatization argues that delegating power to private organizations have negative effects on public accountability. Even though the government can delegate authority and power to private corporations to implement certain punishment functions the government is still liable for the negative outcomes and circumstances which could emerge (Shichor, 1998). The core purposes, responsibilities and functions of public and private organizations are more different. Public sector decisions are influenced by legal boundaries, mandates, rules, etc. The structure of publicly owned prisons is based on a chain of command ranging from correctional officer to elected public representative. Publicly owned prisons operate on the money of taxpayers. Therefore, they hold the burden of legitimizing their decisions and are accountable to public for their actions. On the other hand, private organizations are not restricted with bureaucratic rules, procedures, strict legislation and constraints. They are not subject to the same mandates as public organizations and experience comparatively more flexibility in their decisions and actions (Roth, 2004).

Strict monitoring process is necessary to sustain the accountability of privately owned prison decisions and actions. However, there can be certain challenges in sustaining successful monitoring process. One issue can be the cost of monitoring process. If the monitoring process is too costly and time consuming then it could create less willingness to implement it. Another argument is that it is hardly possible that government monitoring would cover all “activities in the prison all the time” (Shichor, 1998:91). Shichor (1998) and Roth (2004) emphasize that there are always situations when private organizations exercise power and opportunity to affect inmates’ conditions of confinement. Government cannot always be watchdog of privately owned prisons. Therefore, the lack of monitoring may create situations where private organizations simply decide to increase the number of disciplinary cases, increase inmates’ stay length and keep the occupation of prisons to high degree.

III. Comparison issues of publicly and privately owned prisons

Lukemeyer & McCorkle (2006) draws attention on a number of research and emphasize that the comparison of the cost effectiveness and quality of publicly and privately owned prisons is a complex process. It is difficult to implement because public and private prison facilities may significantly be different from each other in a variety of reasons. For example, they may exist in the boundaries of different jurisdictions. They can be different in their functions, purposes, types of inmates, age of facilities, design, security needs, philosophy, etc. The difference in the purpose of the accounting of the

public and private facilities also makes the comparison problematic. Publicly owned prisons are not primarily designed for cost-saving accounting functions and do not centralize their focus on cost-effectiveness data. Because public sector does not take into consideration some of the cost-saving related information and expenditures it creates the lack of the data to implement the comparison process. Perrone & Pratt (2003) also conducts similar research and emphasize the importance of similarity while implementing comparison of public and private prisons. In other words it is important to implement comparison with similar custody levels and properties. For example, to compare the public and private prisons with different minimum security needs, in terms of disciplinary reports and inmate assaults, there is a need to be more accurate and take into consideration the indicator of the type and level of danger of inmates who are being housed at those prisons. In other words, in order to compare the public prison with medium security level because the inmates are more dangerous and private prison with minimum level security because the inmates are less dangerous there it is significant to focus on custody level and be as much objective as possible. Perrone & Pratt (2003) emphasize the importance of the age of prison facilities. They analyze previously conducted empirical studies and conclude that often times conducted comparison researches did not properly match important prison characteristics. For instance, some of the correctional institutions experienced less riots and escapes, operated more successfully and provided high quality services because the age of the facilities was relatively less than others and because inmates in those prisons were lower danger level.

Pratt & Maahs (1999) conducts an empirical research and reviews the previous literature about prison privatization. They argue that, that while some studies advocates the operational cost-effectiveness and efficiency of privately owned prisons, than its public counterparts, others suggest that privatization of prison facilities fails to meet the achievement of its premise. They stress that there is lack of empirical studies proving either success or failure of privately owned organizations in terms of two factors. Firstly, most empirical studies concentrate on a relatively few number of facilities and generalize the results to other institutions. The second factor is that lack of analytical and methodological measurement, and the ideological belief on behalf of some researchers about the positiveness of prison privatization leads to simple cost comparisons rather than exploring the real outcome of privatization.

IV. Summary and Discussion

Outsourcing generic government function as prison operation and management has been considered as an alternative for current rising issue of prison overpopulation. However, literature describes that privatization is not a panacea for the prison overcrowding and success is not always guaranteed. Proponents and opponents of privatization brings to notion many positive and negative arguments which cause favorism and conflict. While some argue that it could be more cost effective and efficient in service delivery and save government's money others oppose that it will be successful only in short-term and will not succeed in the implementation of its premise. Also, it is not ethical to outsource traditional responsibility of the government function, empower private sector and give vast authority and control over citizen's life. Literature argue that many empirical studies do not reflect the true outcome of privatization. Some of the empirical studies lack methodological issues and some are basically conducted on the positive belief of the researchers and do not take into consideration deep issues. GAO (1996) discusses five most recognized studies which were conducted in Texas, New Mexico, California, Tennessee, and Washington to compare operational cost and quality of correctional facilities after being privatized in order to determine the success of the basic premise behind the privatization. The correctional facilities which were analyzed varied on different characteristics as geographic location, types of inmates with different levels of security, etc. Methodology and measurement of the comparisons also were different which allowed different perspectives and view points. The results of the conducted study concludes that there is little generalizable evidence which could give the clear idea about positiveness and negativeness if to move toward privatization. The conducted studies are not generic and have methodological weaknesses. While some studies focus on specific inmate population it is not appropriate to generalize the results. Variety of state and regional differences – as cost of living, correctional philosophy, etc. – age of private organizations, and methodological weaknesses of conducted research provide little guidance about the true nature and outcome of prison privatization.

In his response to Oklahoma Senator Don Nickles, Thomas Kane – Assistant Director for Information, Policy and Public Affairs for the U.S. Department of Justice Federal Bureau of Prisons (FBOP) – stressed that private organizations failed to meet their promise regarding cost effectiveness, and had significant problems in managing inmates. The comparison of the public and private prison facilities demonstrated that in fact many BOP facilities are much cost effective than private corrections.

Mr. Thomas notes that in general public facilities are 11% more cost effective than privately owned prisons (New Jersey State Policemen's Benevolent Association, n.a.). Both proponents and opponents provide rational explanations for favoring or opposing prison privatization. More structured and strong methodological framework, data and case examples needed to compare the real premise of prison privatization.

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