Privatization of Prisons: Costs and Consequences

Introduction

The privatization of prisons is generally undertaken by states and the federal government in order to lower the cost of housing prisoners. Whether cost savings actually result is debatable. Importantly, the ways in which private prisons do cut costs are problematic from the perspective of public safety, human rights, and public policy. In some well-documented cases, prisoners have escaped due to lax security and poorly trained staff. More generally, staff turnover rates are often high and the compensation packages of private prison guards may be inadequate to attract the best candidates.

Observers have questioned the cost-benefit analysis asserted by states in favor of privatization and also raise serious concerns about the perverse incentives created by prisoner quotas built into prison-management contracts. An overview of the advantages and disadvantages of using the corporate structure to build, manage, and operate private prisons is provided below. Panelists at the 2014 Working in the Public Interest Conference may raise additional issues.

Background and Analysis

Public discourse generally acknowledges the fact that the United States has a disproportionately high number of people in prison relative to all other countries in the world.\(^1\) Indeed, it is an often-cited statistic that with 5% of the world’s population, the U.S. houses 25% of the world’s prisoners.\(^2\)


Private entities providing detention services to the government to meet the problem of overcrowding in US prisons is nothing new. During the colonial era, private individuals provided detention services for the government. However, it was not until the 1980’s that large-scale corporate prisons became a part of the correctional facility landscape. Corrections Corporation of America (CCA), the largest and best-known private-prison owner/operator, obtained its first government contract from the U.S. Department of Justice for an Immigration and Naturalization Services (INS) facility in Texas in 1983.\(^3\) The Department of Justice provides the following summary of the private-sector role in federal incarceration:

The housing of federal prisoners is the responsibility of three Department of Justice (DOJ) components: the U.S. Marshals Service (USMS), the Immigration and Naturalization Service (INS), and the Federal Bureau of Prisons (BOP). The USMS detains individuals awaiting trial for federal crimes. The INS detains persons charged with violating immigration laws, entering the country illegally, or awaiting deportation. The BOP maintains custody of persons convicted of crimes and sentenced to federal prison.

All three components obtain space for prisoners through contracts with private contractors and through intergovernmental agreements (IGAs) with state and local governments. In some cases, the space and services obtained through an IGA are actually provided by a private contractor of the state or local government entity. Private prison contractors provide DOJ with about 18,000 beds each day.

Most private prison space is provided to the DOJ by three corporations: Corrections Corporation of America (CCA), Wackenhut Corrections Corporation (WCC), and Cornell Corrections.\(^4\)

The increasing role private prisons play in the criminal justice system is controversial for a host of reasons. The most striking criticisms have followed on reports of egregious prisoner

---


abuse. For example, the U.S. Department of Justice produced a report in June of 2013 documenting that over 30% of juvenile detainees were sexually victimized at Paulding Regional Detention Center – a privately run facility northwest of Atlanta. While that facility will be closing (“based totally on economics” according to the Georgia Department of Juvenile Justice Director), the trend towards privatization of juvenile detention facilities continues.

Another well-documented concern of private-prison critics is that the contracts between the operators of prisons and their public clients consistently contain occupancy guarantees in the form of quotas. In tandem with quotas, these contracts may provide for empty-bed payments, resulting in a perverse incentive for criminal justice administrators to funnel prisoners into the private facilities. A 2013 report from In the Public Interest, a D.C. non-profit, summarizes the situation:

In 2012, Corrections Corporation of America (CCA), the largest for-profit private prison company in the country, sent a letter to 48 state governors offering to buy their public prisons. CCA offered to buy and operate a state’s prison in exchange for a 20-year contract, which would include a 90 percent occupancy rate guarantee for the entire term. Essentially, the state would have to guarantee that its prison would be 90 percent filled for the next 20 years (a quota), or pay the company for unused prison beds if the number of inmates dipped below 90 percent capacity at any point during the contract term (a “low-crime tax” that essentially penalizes taxpayers when prison incarceration rates fall).

Fortunately, no state took CCA up on its outrageous offer. But many private prison companies have been successful at inserting occupancy guarantee provisions into prison privatization contracts, requiring states to maintain high occupancy levels in their private prisons.

---

For example, three privately-run prisons in Arizona are governed by contracts that contain 100 percent inmate quotas. The state of Arizona is contractually obligated to keep these prisons filled to 100 percent capacity, or pay the private company for any unused beds.8

The rate of growth in the number of inmates held in federal custody in a given year, over approximately the last decade, from 2000 to 2011, was only 1.3%.9 Standing alone, this number seems small, but consider that in 2012 “about 1 in every 35 adults in the United States, or 2.9% of adult residents, was on probation or parole or incarcerated in prison or jail, the same rate observed in 1997.”10 Rates of growth in incarceration and criminal justice supervision may be relatively low because the mass incarceration phenomena reached its present alarming magnitude long ago. Nonetheless, the rate of growth in private-prison populations is much higher than the growth of the prisoner population as a whole. Between 2000 and 2011, there was an average annual increase of 10.5% for federal inmates in private facilities.11

The most apparent advantage to using private versus public prisons to house inmates is the cost. Since private corporations are not subject to governmental accountability regulations like the Administrative Procedure Act and the Freedom of Information Act, the government does not have to be as transparent about the privatization process, and the public’s approval is not needed. This allows private prisons to save time and money by constructing operational prisons in less time than the public sector. Private prison corporations are also more highly incentivized to reduce costs than the public sector, since they are motivated by profit rather than concerns for the public. The competitive nature of corporations further encourages cost efficiency via the bid-making process, unlike the public sector. However, one way that corporations cut costs is by paying guards less, meaning that private correctional officers are predictably less qualified, resulting in reports of greater prisoner abuse in private facilities.12

8 Id.
10 Id.
11 Id.
One major benefit motivating governments to use private prisons is that corporations serve as insulation from liability for claims by both prison employees and inmates. Since corporations are usually highly insured to cover such claims, often accounted for in their bid to the government, this arrangement is mutually beneficial to both parties. Corporations must also pay a tax to the government, which is an additional cost-efficient incentive for using the private prison structure. An interrelated way private prisons cut costs is by building prisons in the states cheapest to do so, and then transporting inmates from other states to that location.

While there are some advantages to using private prisons as part of the prison system, cost-savings in private prisons create incentives that are not always aligned with the public interest. For example, rehabilitation of inmates often costs more than simply providing space to deal with overcrowding, but can reduce recidivism rates. However, from a corporation’s perspective, expenditures to rehabilitate inmates are not necessarily warranted, unless there are provisions in their contracts to incentivize such expenses.

**Conclusion**

There is no doubt the United States’ prison system requires reform and there are distinct problems created by the haphazard use of both private and public prisons throughout the country. Using private prisons is a cause for concern because there are fewer practical and legal opportunities to press for accountability. The housing of inmates may be viewed as a cost in need of minimization regardless of whether prisons are run publicly or privately and private operation of some detention facilities may be ultimately provide a viable alternative to public management. However, before that alternative is adopted, minimum health, safety and rehabilitation requirements must be absolutely assured and public accountability must also be institutionalized.