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NOTE:

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PRIVATIZATION ISSUES

INTRODUCTION

There are two key issues about the future of prisons in New Mexico. One concerns the number of people behind bars and their sentences. Should we send fewer (more) offenders to prison and, once there, should they serve shorter (longer) terms? The other issue is whether prison services are better provided by private firms rather than by the state. Should we privatize corrections in New Mexico, in (greater) part or in whole?

These two issues are not entirely independent. The reason is that it is much easier to build new private facilities than to convert existing facilities from public to private. Thus, it is no accident that the current proposal is to build private facilities at Hobbs and Santa Rosa. It is also possible to privatize existing facilities, if not an entire correctional system, and that too has been proposed.

Some argue that prisons should remain in the public domain, even if private contractors provide better services at a lower cost, because corrections is an "inherently governmental function." This term is hard to define. Still, privatization opponents believe that they know such a function when they see one: the Army, State Police, Metropolitan Court and, they hasten to add, corrections. Opponents also worry that privatized correction firms are less accountable to the people than are public corrections agencies.

Proponents of privatization dismiss the notion that corrections is an inherently governmental function. For them, the key question is not philosophical, but practical: do private or public corrections provide the citizens the best value for their taxpayer dollar? Proponents believe that, in fact, private firms can provide less-expensive and more efficient service as compared to public corrections. The competitive market promotes efficiency.

In short, there are at least four measuring sticks against which to compare public versus private corrections: cost, quality, accountability, and authority. Before considering each in greater detail, we (a) clear away two diversionary issues about privatization; (b) consider the history of privatization nationwide and its current status; and (c) examine the current costs of corrections in New Mexico.

USELESS ISSUES

Only the most ardent advocate (if not true believer) would disagree that privatization of corrections is a nettlesome issue, involving tradeoffs among desired ends and a fair amount of guesswork about the future. Two issues, however, do little to promote that debate in a productive direction.

Distraction 1 -- Spirit of Public versus Profit Motive: It would be unfair and without foundation to deny that public correctional workers and management are motivated, to some significant degree, by

an admirable commitment to public service. By contrast, the ethic of public service might be wholly absent from private corrections; that is, these employees might be in it only to earn a profit and not to serve the public.

Nevertheless, this purported difference in motivation, even if valid (and it may not be), provides only the thinnest argument for the superiority of public corrections over private corrections. In buying a car, one is more likely to get what one wants by looking under the hood than into the hearts of those who profited from the car's sale. The manufacturers of your Mercedes Benz (sic.) no doubt were seeking a profit; but they also made a fine car.

The spirit of public service might indeed provide a superior foundation for corrections than the profit motive -- or vice versa. For example, The Cabot Stock of the Month newsletter, which advises investors on "stocks that can make your money multiply several times over" recently recommended Correctional Corporation of America (CCA) stock, not for any reasons of public service but for profit, pure and simple. Their reasoning is revealing.

CCA has found that the best way to keep labor costs low and business profitable is to keep prisons peaceful. To this end it focuses on improving inmate attitudes. It treats inmates humanely, in a way that maintains their dignity. Thus, instead of overcrowded prisons that are breeding grounds for crime and violence, you get a peaceful institution that serves the needs of the customer and makes a profit.¹

This might be an all too Panglossian view of one private corrections firm. Yet it is not an impossible one, at least as can be determined by motive alone.

Distraction 2 -- Means Matter Most: Much of the debate over public versus private corrections is conducted through a comparison of means (averages). It is asked, for example, if the average private prison is safer and more orderly than the average public prison? From a policy point of view, of equal importance, but receiving far less attention, is variation around the means. For example, even if private prisons are, on average, safer and more orderly than public prisons, the best public prison might outperform the best private prison.

Statistical averages -- even assuming they go in favor of private over public -- do not preclude one from producing a superior public system. One does not build and manage "average" prisons or prison systems.

¹The Cabot Stock of the Month (Salem, MA: Cabot Heritage Foundation, June, 1996).

HISTORY OF PRIVATE PRISONS

The history of privatization can be divided into at least two periods. We might be at the edge of a third.

Period 1: 1900-1980

Private involvement in corrections has a long and often sordid history. In the nineteenth and early twentieth centuries, inmates were leased out as a source of labor to business firms. In some states, including Texas, Mississippi and Louisiana, entire prisons were leased to private contractors.² Inmates were often beaten, sometimes even killed, for minor infractions of rules. The basic necessities of life were often provided at a level far below that specified in contracts.³ For example, an 1875 investigation in Texas found that private operators failed to provide inmates adequate food or medical care. "Whippings were frequently administered that left inmates 'sacrificed in a most shocking manner.'"⁴ In California's San Quentin Prison, inmate food consisted of "spoiled beef, maggoty hams, wormy flour, rusty mackerel, and coarse brown bread."⁵ Punishment was brutal.

Most of these practices were curtailed during the Great Depression, when legislatures (spurred by legislative and journalistic exposes) enacted "state use" laws. Prisoners could produce only products for state "use," such as license plates.⁶ After that, private prisons recede in importance in American corrections until the 1980s.

Period 2: 1981-1996

In the 1980s, a number of states enacted laws that permitted the operation of private correctional facilities. In large measure, this was a move in response to the rapidly growing inmate population that had generated a search for low-cost but effective alternatives. Initially, privatization was limited to

²Nicole B. Casarez, "Furthering the Accountability Principle in Privatized Federal Corrections: The Need for Access to Private Prison Records," University of Michigan Journal of Law Reform, 249 (Winter, 1995), 18.

³John J. DiIulio, "Private Prisons," Crime File Study Guide. (Washington: National Institute of Justice, n.d.), 3.

⁴Quoted in Alexis M. Durham, "The Future of Correctional Privatization: Lessons from the Past," in Gary Bowman, Simon Hakin, and Paul Seidens (eds.), Privatizing Correctional Institutions (New Brunswick: Rutgers University Press, 1994), 41.

⁵Ibid., p. 41.

⁶Aric Press, "The Good, the Bad, and the Ugly: Private Prisons in the 1980s," in Douglas C. McDonald (ed.), Private Prisons and the Public Interest (New Brunswick: Rutgers University Press, 1990), 20-21; John J. DiIulio, "Private Prisons," 3.

community- based and non-security facilities, such as juvenile detention centers, centers to hold illegal aliens, and half-way houses.⁷

Then, in January, 1986, the U.S. Corrections Corporation opened the first state private prison, a minimum security facility for 300 inmates in Marion, Kentucky.⁸ As of December, 1994, there were 80 private corrections facilities in the United States (see Appendix A). These facilities include state prisons (e.g., New Mexico Women's Correctional Facility), jails (e.g., Santa Fe Detention Center) and federal detention facilities (e.g., Torrance County Detention Facility).

Opponents of privatization argue that the case for privatization has been inflated because of "creaming." This is the practice of private facilities housing only low custody inmates, who are easier and less expensive to manage. This is partly borne out by Table 1, which classifies the 80 facilities in Appendix A based on their custody level.

Table 1. Security Level of 80 Private Correctional Facilities

<u>Security level</u>	<u>Number of facilities</u>
Maximum	3
Medium/Maximum	2
Medium	2
Minimum/Medium	10
Minimum	30
All Levels	10
Pre-arraignment	1

Of the 80 private correctional facilities, only three are maximum security facilities and another four are either medium/maximum or medium. None of the country's large male maximum-security facilities, such as the State Prison of Southern Michigan ("Jackson") or Attica Correctional Facility, have been privatized. Of the three privatized maximum security facilities, only one (Dickens Detention Center, Texas) is a "standard" maximum security facility for state prisoners.

One can argue that this only shows that the privatization of maximum security prisons has not been tried to any great extent. This is probably a fair assessment.

⁷Gary Bowman, Simon Hakin, and Paul Seidens "Introduction," in Privatizing Correctional Institutions, p. 7.

⁸John J. DiIulio, No Escape: The Future of American Corrections (New York: Basic Books, 1991), 181.

Period 3: 1996 - ?

No state correctional system -- as can be seen in Appendix A -- has been fully or even substantially privatized. Texas has 24 private facilities, followed by California (5), Florida (4), and Kentucky (3). Texas has 123 facilities, so even the leading privatization state has less than a quarter of its facilities in private hands. The confinement of privatization to specific facilities, as against the privatization of entire jurisdictions, was almost otherwise historically and may become otherwise in the future.

In 1986, the Nashville-based Corrections Corporation of America (CCA) made a bid to privatize Tennessee's entire correctional system.⁹ CCA was willing to put up \$100 million in cash, and invest another \$150 million in improvements, which would include funds for the construction of two 500-inmate prisons. In return, CCA would receive the state's entire \$200 million budget. The state ultimately rejected the offer.

To date, no correctional system has achieved what Tennessee nearly did (for better or worse). At least two, and possibly three, jurisdictions are currently contemplating the privatization of their entire system. Both New York City and Washington, D.C. are entertaining the possibility. Washington, D.C. has recently privatized one facility, and Mayor Marion Barry has announced that he plans to privatize more than three-quarters of the system within three years.¹⁰ New York City is also contemplating the privatization of its system.

There is, of course, current discussion about the possibility of the privatization of New Mexico's entire prison system. Three points need to be considered. First, a correctional agency is more than the aggregate of its prisons. Thus, any evidence about the effectiveness of the privatization of particular prisons does not necessarily carry over to the privatization of a correctional agency.

Second, there may be specific problems associated with the privatization of an entire system. For example, in 1989, the American Bar Association issued "Guidelines Concerning Privatization of Prisons and Jails."¹¹ One of ten key points was that the contract should have a clause permitting "termination of contract and assumption of government control." While this clause is unlikely to be invoked, "each jurisdiction should have a comprehensive plan -- in advance of entering into a contract -- for assuming control of a facility immediately if necessary." The assumption of "government control" of a prison system would be more difficult than of a prison. This and other potential problems require advance thought.

⁹Aric Press, "Private Prisons in the 1980s," 28.

¹⁰The Cabot Stock of the Month, June 1996.

¹¹American Bar Association, Criminal Justice Section, "Report to the House of Delegates, February, 1990," Reprinted in Government Law Center, Albany Law School, Privatization and Regionalization of Prisons and Jails: A Symposium. (Albany: Albany Law School, 1994), 139 [10].

Third, it should be recalled that private corrections (in its modern form) is only about a decade old. One should anticipate new forms, new breakthroughs. Whether the privatization of a correctional system should be one of those new forms remains an open question.

PRISONS IN NEW MEXICO

Much of the debate over privatization is driven by concerns over the increasing costs of corrections. Indeed the operating budget in New Mexico -- as shown in Table 2 -- has increased substantially over the last decade and a half.

Table 2: Operating Budget for New Mexico Department of Corrections and Inmate Population

Fiscal year	(a) Current dollars ^a	(b) Constant 1993 dollars ^{ab}	(c) Number of Prisoners 1,000,000	(d) Ratio of b to c x
1981	29.1	51.3	1475	34,780
1982	46.3	74.1	1616	45,854
1983	54.9	81.7	1807	45,213
1984	61.0	87.8	2023	43,401
1985	70.6	96.7	2120	45,613
1986	77.6	98.5	2339	42,112
1987	74.3	95.1	2557	37,192
1988	84.7	105.6	2659	39,714
1989	95.2	114.2	2949	38,724
1990	92.3	106.1	3134	33,854
1991	103.4	114.0	3164	36,030
1992	107.3	114.2	3325	34,346
1993	108.2	111.0	3472	31,970
1994	110.2	110.2	3716	29,655
1995	116.8	114.5	4152	27,758

^a In millions of dollars.

^b Calculated using the GDP deflator, with fiscal year 1993 = 1.00.

Source: New Mexico Department of Corrections, Annual Report, 1992-1993. (Santa Fe: NMDOC, 1993); New Mexico First, Crime, Corrections and Law in New Mexico (Albuquerque: New Mexico First, 1995).

While Table 2 shows that the costs of corrections in New Mexico has increased substantially since 1980, it also reveals that most of this increase can be explained by an even faster rise in the number of inmates housed. Column "d" indicates that, in constant dollars, the per inmate cost in 1994 (\$29,655) is only 68 percent of the per inmate cost in 1984 (\$43,401). Corrections in New Mexico is becoming less expensive per inmate rather than more expensive.

Still, New Mexico corrections remains costly compared to other corrections systems. According to one estimate, in 1990 New Mexico had the 8th most expensive correctional system (cost per-inmate) in the country.¹²

There are at least two explanations for this. One is the Duran Consent Decree, which both imposes standards higher than the federal courts now require and is expensive to administer. Second, while New Mexico has a relatively high crime rate (about 6th in the nation in 1992), it imprisons relatively few offenders relative to its level of crime.¹³ Thus, assuming that the crimes committed in New Mexico are no less serious on average than elsewhere in the country, we should anticipate that those behind bars in New Mexico are more serious criminals than the inmates in prisons nationwide. It is more expensive to house higher custody inmates than lower custody inmates.

In sum, taxpayers could hardly be blamed for favoring an arrangement that would lower the costs of corrections. At the same time, the high cost of corrections in New Mexico may be driven by forces that are (partly) external to the system. These same forces would, presumably, affect privatized facilities. Still, there is some speculation that privatization would hasten the lifting of the Duran decree.

PRIVATIZATION: PROS AND CONS

Costs

Short of hiring a platoon of accountants, and maybe even then, it is impossible to say with any degree of certainty if the privatization of corrections produces substantial costs savings. One problem is that there are only a handful of studies that directly examine the issue. Another problem is the sheer difficulty of determining corrections costs.

Wayne Calabrese reports that the State of Florida paid a group of highly qualified accountants and lawyers a quarter of a million dollars to determine the cost of housing one inmate for one day in a

¹²American Legislative Exchange Council Report Card on Crime and Punishment, (ALEC: Washington, D.C, 1994), 21. Any comparisons between states on correctional budgets should be made with extreme caution. States use different methods in reporting their budget.

¹³*Ibid.*

high security Florida prison.¹⁴ According to Calabrese, despite a voluminous report, no clear determination was made. It was nearly impossible to distinguish site-specific costs from system-wide costs.

The task of comparing the costs of private prisons versus public prisons is even more problematic, because the facilities being compared may differ physically and in their inmate populations. For example, it has been widely reported that the costs of the proposed facilities at Hobbs and Santa Rosa are far below the current DOC average -- \$79 per inmate per day versus \$39 per inmate per day. These are spectacular savings. But, as was pointed out at the June Council meeting, architectural innovations (e.g., elimination of blind spots) have lowered the operating costs of new prisons. New public corrections facilities would, presumably, be able to take advantage of those savings as well.

Nevertheless, the few cost comparisons that have been made seem to indicate the privatization of correctional facilities does yield significant costs savings. In a carefully conducted study, Logan and McGriff studied the cost savings, if any, of the privatization of the Hamilton County Penal Farm, a 350-bed minimum/medium security facility in Tennessee. They found that "contracting out prison management generated annual savings of at least 4 to 8 percent--and more likely in the range of 5 to 15 percent--compared to the estimated cost of direct county management."¹⁵

Another study was mandated by the Texas State Legislature, which prohibited the state from contracting with a private prison vendor unless the contract provided for savings of at least ten percent. The study found that:

The private prisons were operating at close to ten percent less than the cost of a hypothetical unit run by the states¹⁶.

Charles Thomas and Charles Logan, among the most learned and careful privatization advocates, conclude that on average privatization can be expected to yield cost saving in the range of 5 to 15 percent.¹⁷ Still, given the uncertainty of calculating costs, that is not an unchallengeable conclusion -- in either direction.

¹⁴Wayne H. Calabrese, "Low Cost, High Quality, Good Fit: Why Not Privatization," in Privatizing Correctional Institutions, 176.

¹⁵Charles H. Logan and Bill W. McGriff, Comparing Costs of Public and Private Prisons: A Case Study, NIJ Research in Action, (Washington, D.C.: National Institute of Justice, 1989), 2.

¹⁶Texas Performance Review, "Increase Privatization of Prison Operations," July, 1991, 19.

¹⁷Charles W. Thomas and Charles H. Logan, "The Development, Present Status, and Future Potential of Correctional Privatization in America," in Privatizing Correctional Institutions, 230.

Quality

No one would deny that the pre-World War-II record of private corrections was grim. Still, the record of public corrections in the same historical period was also bleak. More significantly, the private corrections firms that emerged in the 1980s have so little in common with their historical counterparts that they must be judged on their own terms and compared with contemporaneous public counterparts.¹⁸

Unfortunately, this has been seldom done. Three studies are of particular note. Charles Logan, in a federally-funded study, compared the quality of confinement in three multi-level security women's prisons: (a) CCA's New Mexico Women's Corrections facility in Grants; (b) Western New Mexico Correctional Facility, which held the same female population before the opening of the CCA facility (it also served as intake center for the state's male prisoners); and (c) a federal prison for women at Alderson, West Virginia.¹⁹ "Quality of confinement" was measured along eight dimensions: security, inmate activity, safety of inmates and staff, order, health and mental health care, staff fairness, living conditions, and management. The study used data from institutional records in addition to surveys of inmates and staff. Logan found that all three prisons were high quality institutions and that each had its strengths and weaknesses. Overall, however, "the private prison outperformed the state and federal prisons, often by quite substantial margins."²⁰

A second study, conducted by the Urban Institute under a federal grant, compared (a) the performance of a public versus a private minimum security adult prison in Kentucky; and (b) a public versus a private secure treatment facility for juveniles in Massachusetts.²¹ The data collected from all four sites included agency records, survey of inmates and staff at each institution, interviews with officials with oversight responsibility for the facilities, and inspection of the facilities by research staff. In general, the privately operated facilities, in both Kentucky and Massachusetts, edged out the public facility in their respective states. The researcher concluded that:

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;

¹⁸Ibid.

¹⁹Charles H. Logan, "Well Kept: Comparing Quality of Confinement in Private and Public Prisons," The Journal of Criminal Law and Criminology, 85, no. 3 (1992), 577-613.

²⁰Ibid., 601.

²¹Harry P. Harty, Paul J. Brounstein, and Robert B. Levinson, "Comparison of Privately and Publicly Operated Corrections Facilities in Kentucky and Massachusetts," in Privatizing Correctional Institutions.

escape rates were lower; there were fewer disturbances by inmates; and in general, staff and offenders felt more comfortable at the privately operated facilities.²²

Moreover, longer staff experience and higher wages at the state facilities did not lead to superior staff performance. "By and large," the Urban Institute researchers observed, "staff in privately operated [facilities] appeared to be more enthusiastic about their work, more involved in their work, and more interested in working with inmates than their public counterparts."²³ Management appeared "more flexible and less regimented" in the private facilities, which "made life in the privately-operated correctional facilities more pleasant for both inmates and staff."

At the same time, however, the Urban Institute researchers commented that some of the progressive steps introduced in the private facilities could also be introduced in the public ones. "We suspect," they noted, "that at least some of the advantages of the privately operated facilities could be regained by the public sector in these corrections environments if management and organizational hindrances, such as rigid procedure, could be alleviated."²⁴

A third study, conducted by the Select Oversight Committee of the Tennessee legislature, brought together officials from the State's Department of Corrections and executives from the Corrections Corporation of America to evaluate the performance of the CCA run South Central Correctional Center and two state-managed prisons.²⁵ Each facility was rated for administration, safety and conditions, health services, mental health, treatment, and security. The CCA facility was given an overall score of 98.49; the two state operated facilities received scores of 97.17 and 98.34. These differences were deemed to be slight. The study concludes that "all three facilities were operated at essentially the same level of performance."²⁶

Democratic Accountability

The concept of "democratic accountability" refers to the idea that state agencies must be held accountable to higher authority. This line of accountability normally runs from the agency's front-line staff, up through the chain of command to an agency head who, in turn, is accountable to elected

²²Ibid., 198.

²³Ibid., 199.

²⁴Ibid., 199.

²⁵Select Oversight Committee on Corrections, Tennessee State Legislature, Comparative Evaluation of Privately-managed CCA Prison (South Central Correctional Center) and State-managed Prototypical Prisons (Northeast Correctional Center, Northwest Correctional Center). February 1, 1995.

²⁶Ibid., p. 68.

officials. These elected officials must answer to the electorate, who may turn them out if their policies or the implementation of those policies are perceived to be wasteful or otherwise inappropriate.

Critics of privatization argue that placing corrections in the hands of private firms will undermine the chain of accountability. At its harshest, the argument is that private contractors will cut costs and services to line their own pockets, as well as confine inmates for longer periods in order to squeeze the last possible dime out of the state.

This argument may ultimately prove to be valid, but its empirical basis is currently thin. First, a reasonably good argument can be made that contracting enhances, rather than undermines, accountability. The contracts themselves, if carefully crafted, specify the obligations of the firms in specific details. Thomas and Logan observe that

Contracts identify goals, standards, and criteria against which the performance of contractors is measured. They define the sanctions that may be imposed on the contractor if its obligations are not met satisfactorily. They provide for adjustments in the terms of the contracts should the need for adjustments arise. Further, whether because of statutory or contractual language, a government contract monitor is commonly if not invariably required to assess compliance on a continuous basis.²⁷

Second, private prison contractors (like automobile manufacturers) have a reputation to preserve; it's the lifeblood of their business. If one firm or another develops a reputation for cheating on their contracts, they can expect their stock to plunge and future business to disappear.

On the other hand, there are some instances in which private contractors have failed to live up to their contractual obligations. The most recent example, reported in the New York Times, involved an Immigration and Naturalization Service (INS) facility in Elizabeth, New Jersey under the management of Esmor Correctional Services.²⁸ A year ago last June, a melee erupted at the facility resulting in heavy property damage. A subsequent INS investigation found a double failure. First, Esmor had operated the facility with poorly paid, under-trained staff, who degraded and harassed the immigrant detainees. Second, the INS monitor with responsibility for overseeing compliance with the contract had failed to perform his duty adequately. He complained that Esmor officials had not kept him adequately informed and would not take advice. "I think it was impossible for me to adequately oversee the contract and the facility," he told a reporter.

Yet the relevant question is not if accountability of private firms can break down, but rather if that accountability is more likely to break down with greater consequences in private facilities than in

²⁷Charles W. Thomas and Charles H. Logan, "The Development, Present Status, and Future Potential of Correctional Privatization in America." In Privatizing Correctional Institutions, 232.

²⁸New York Times, "Changes Are Few as Jail Reopens a Year After Immigrant Uprising," July 7, 1996.

public facilities. Prison disturbances are not unknown to public facilities, and they too are often due to lapses in accountability.²⁹

Finally, the argument that private contractors will keep inmates behind bars longer for their own pecuniary reasons is not a strong one. The American Bar Association guidelines on this are explicit:

There are some types of matters--especially those involving the nature and length of inmate confinement--that are particularly close to the core of governmental responsibility, and thus least appropriate for delegation.³⁰

Government alone must exercise control of entry into and exit from the correctional system. Of course, it is possible for private contractors to circumvent this governmental control, say, by concocting bogus evidence against inmates so they lose the "good time" that they would otherwise have earned.

Something along this line was alleged several years ago by the Albuquerque Journal with regard to the CCA-operated new Mexico Women's Correctional Facility (NMWCF).³¹ Based upon inmate complaints (apparently they had no other data) the Journal speculated that NMWCF inmates were receiving fewer program opportunities and less good time than the inmates at the state-operated prisons. They offered this explanation of the presumed differences:

Of course, things like education, which might help these women get a grip on the straight life once they get out, cost money. Shortening sentences through good time can also lower the occupancy rate, which a private prison has the same incentive to maximize as a hotel.

Yet, recently collected data do not bear out the allegation. CCA-NMWCF inmates, on average, forfeited less than half the number of days, as a proportion of the time they served, as the inmates in the other State facilities.³² Of course, this can be explained by differences in the culture of men's and women's prisons. The relevant point is that there is no evidence that CCA-NMWCF is circumventing State policy with regard to good time.

²⁹Bert Useem and Peter Kimball, State of Siege: U.S Prison Riots, 1971-1986 (New York: Oxford University Press, 1989); Bert Useem, Camille Camp, and George Camp, Resolution of Prison Riots: Strategy and Policy (New York: Oxford University Press, 1996).

³⁰American Bar Association, Criminal Justice Section, "Report to House of Delegates," 139 [10].

³¹Albuquerque Journal, "Prison Experiment Raises Doubts About Privatization." September 7, 1994.

³²Calculated as following: forfeited days/time served X 100. This figure for inmates in NMWCF was 1.4 and 2.9 for the rest of the inmate population.

Also, Logan (in the above-mentioned study) found that NMWCF outperformed both the women's prison (when it was under State control) and a federal women's prison in providing "inmate activity" (e.g., work and industry programs, education and training programs, recreation, and religious services). Activity was measured by both institutional records (on the assumption that more-is-better) and surveys of inmates (asking them about program quality and usefulness).³³

In sum, strict monitoring can limit, although not preclude, the possibility that contractors will subvert the chain of accountability.³⁴

Authority

There are certain tasks that we reserve to the government, not for reasons of efficiency or costs, but because only the government can effectively and symbolically represent the people as a whole.³⁵

These tasks, as we noted at the outset, are inherently governmental functions. Is corrections one of them?

One might assume that broad political ideology might dictate the answer given to this question. Conservatives would lean toward privatization and liberals toward insisting that corrections remain in the hands of the government. Almost, but not quite.

The strongest argument against the privatization of corrections has been developed by conservative critic John DiIulio. He argues that when coercion is used in the name of the public -- at the extreme, the incarceration of a citizen -- it is critical that this task be performed by a public rather than a private agency:

To remain legitimate and morally significant, the authority to govern behind bars, to deprive citizens of their liberty, to coerce (and even kill) them, must remain in the hand of government authorities.³⁶

³³Charles Logan, "Quality of Confinement," 583-584.

³⁴Also, it might be pointed out that public employees, at least in principle, could manipulate the system to serve their self interest. A grim example of this occurred about a decade ago, when a wave of arsons in Boston was finally solved when it was discovered that a Boston firefighter had been setting the fires in order to prevent proposed layoffs.

³⁵James Q. Wilson, Bureaucracy: What Government Agencies Do and Why They Do It. (New York: Basic Books, 1989), 359-364.

³⁶John J. DiIulio, "What's Wrong with Private Prisons," Public Interest 92 (Summer, 1988), 79.

He adds that symbols do matter: "The badge of the arresting policeman, the robes of the judge, and the state a patch on the uniform of the corrections officer are symbols of the inherently public nature of crime and punishment."³⁷

DiIulio's argument has not gone unchallenged. All rights, Charles Logan responds, are ultimately derived from the people. Consequently, "the state does not own the right to punish," Logan maintains. "It merely administers it in trust, on behalf of the people and under rule of law. Because the authority does not originate with the state, it does not attach inherently or uniquely to it, and can be passed along."³⁸ As to the idea that patch on sleeve of a correctional officer matters, Logan asserts that inmates are relatively indifferent. "Prisoners will be more concerned about practical, not philosophical distinctions. They will care more about how the guards treat them, than about what insignia grace their uniform."³⁹

In sum, a key question about privatization is whether private prisons constitute a wrongful delegation of governmental authority. As any administrator knows, some things cannot be passed on to his or her subordinates; he or she must do them himself or herself, or they should not be done. Likewise, the state may have to reserve the performance of punishment of its citizens to itself rather than to delegate it to a commercial firm.

POLICY RECOMMENDATIONS

Whether New Mexico corrections should be steered down the route of privatization we cannot say. Still, several general observations can be made.

- ! **Buying Smart.** Even if the overall case for privatization can be established, this does not ensure that the specific contract the state enters into is a good contract. It is possible to buy a lemon. One of the biggest challenges in the privatization movement is to write contracts in a way that advances the public interest.

- ! **Long on Claims, Short on Data.** Despite claims to the contrary, the empirical case for (or against) private corrections remains quite thin. The necessary research simply has not been done; perhaps even the necessary experience has not been accumulated.

³⁷Ibid., 79.

³⁸Charles H. Logan, "The Propriety of Proprietary Prisons." Federal Probations, (September, 1987), 36.

³⁹Ibid, 36.

- ! **Non-reducibility of Moral Issues.** The moral and ethical issues about privatization cannot be resolved by appeals to data alone. Almost any governmental function can be privatized, perhaps even with consistent gains in efficiency. But not every governmental function should be privatized. For example, there is a reason why the New Mexico Criminal and Juvenile Justice Coordinating Council was not contracted out; the reason goes beyond efficiency.

- ! **Privatization of a Facility versus System.** Privatization of a correctional system is a different undertaking than privatization of specific facilities. It should be anticipated that system privatization will experience its own problems and its own gains. At least currently, experience from other jurisdictions will be no guide, since system-wide privatization has not been done.

- ! **Benchmarking.** Even if it could be shown that privatized facilities have a better record than public facilities, there is no inherent reason why the lessons gained in the private sector could not emulating them, can increase the quality and lower costs on both sides.

- ! **Piece of the puzzle.** The privatization issue might be best seen as only one element of the overall transformation of the criminal justice system in New Mexico. For example, if (or when) the new private facilities at Hobbs and Santa Rosa come on line, this may permit existing facilities to be dedicated to other purposes, such as secure detention facilities for juveniles. Also, this would permit the state to address important issues related to protecting the future employability and pension of current DOC employees.

APPENDIX A

PRIVATE CORRECTIONAL FACILITIES					
Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
Tuscaloosa Metro Detention Facility, AL	Concept, Inc.	Tuscaloosa County	230	All Levels	New
Federal Bureau of Prisons/Immigration and Naturalization Service Detention Center, AZ	Concept, Inc.	Federal Bureau of Prisons	850	Medium	New
Central Arizona Detention Center, AZ	Corrections Corporation of America	U.S. Marshals Service	466	Medium	New
Marana Community Treatment Facility, AZ	Management and Training Corporation	State of Arizona	448	Minimum	New
Baker Community Correction Facility, CA	Cornell Cox, Inc.	State of California	250	Minimum/ Medium	Renovation
Mesa Verde Community Correction Facility, CA	Alternative Programs, Inc.	State of California	240	Minimum	New
Eagle Mountain Return-to-Custody CA	Management and Training Corporation	State of California	434	Minimum	Renovation
Leo Chesney Community Correction Facility, CA	Cornell Cox, Inc.	State of California	219	Minimum/ Medium	New

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
McFarland Return-to-Custody Facility, CA	Wackenhut Corrections Corporation	State of California	215	Minimum	New
San Diego City Jail, CA	Wackenhut Corrections Corporation	City of San Diego	125	Minimum	New
Seal Beach Detention Facility, CA	Corrections Services, Inc.	City of Seal Beach	29	Pre-arraignment	Renovation
Aurora/Immigration and Naturalization Service Processing Center, CO	Wackenhut corrections Corporation	Immigration and Naturalization Service	150	Minimum/Medium	New
To be determined, CO	The Villa at Greeley, Inc.	State of Colorado	NA	Minimum	New
To be determined, FL	Corrections Corporation of America	State of Florida	NA	Medium	New
Hernando County Jail, FL	Corrections Corporation of America	Hernando County	210	All Levels	Take Over
Glades Correctional Center, FL	Wackenhut Corrections Corporation	State of Florida	NA	Medium	New
Gadsden County Correctional Facility, FL	U.S. Corrections Corporation	State of Florida	NA	Minimum/Medium	New
Palm Beach Correctional Center, FL	Wackenhut Corrections Corporation	State of Florida	NA	Medium	New

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
Bay County Jail, FL	Corrections Corporation of America	Bay County	252	All Levels	Take Over
Bay County Jail Annex, FL	Corrections Corporation of America	Bay County	270	All Levels	New
Leavenworth Detention Center, KS	Corrections Corporation of America	U.S. Marshals Service	285	Maximum	New
Labette County Conservation Camp, KS	Corrections Partners, Inc.	State of Kansas	104	Minimum	New
Lee Adjustment Center, KY	U.S. Corrections Corporation	Commonwealth of Kentucky	500	Minimum	New
River City Correctional Center, KY	U.S. Corrections Corporation	Jefferson County	325	Minimum	Renovation
Marion Adjustment Center, KY	U.S. Corrections Corporation	Commonwealth of Kentucky	500	Minimum	New
Otter Creek Correctional Center, KY	U.S. Corrections Corporation	Commonwealth of Kentucky	300	Minimum	New
Allen Correctional Center, LA	Wackenhut Corrections Corporation	State of Louisiana	1277	Medium/Maximum	New
Winn Parish Correction Center, LA	Corrections Corporation of America	State of Louisiana	1277	Medium/Maximum	New

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
To be determined, MS	Corrections Partners, Inc.	State of Mississippi	NA	Medium	New
Marshall County Correctional Center, MS	Wackenhut Corrections Corporation	State of Mississippi	NA	Medium	New
Elizabeth Processing Center, NJ	Esmor Correctional Services, Inc.	Immigration and Naturalization Service	326	Minimum/ Medium	Renovation
Torrance County Detention Facility, NM	Corrections Corporation of America	U.S. Marshals Service	282	Minimum/ Medium	New
New Mexico Women's Correction Facility , NM	Corrections Corporation of America	State of New Mexico	236	All Levels	New
Santa Fe Detention Center, NM	Corrections Corporation of America	Santa Fe County; U.S. Marshals service	227	All Levels	Take Over
New York/ Immigration and Naturalization Service Processing Center, NY	Wackenhut Corrections Corporation	Immigration and Naturalization Service	104	Medium	Renovation New
Great Plains Correctional Facility, OK	Corrections Partners, Inc.	State of North Carolina	502	Medium	New
Davis Corrections Center, OK	Corrections Corporation of America	State of Oklahoma	NA	Medium	New

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
To be determined, PR	Wackenhut Corrections Corporation	Commonwealth of Puerto Rico	NA	All Levels	New
To be determined, PR	Corrections Corporation of America	Commonwealth of Puerto Rico	NA	Medium	New
To be determined, PR	Corrections Corporation of America	Commonwealth of Puerto Rico	NA	Medium	New
Central Falls Detention Facility, RI	Cornell Cox, Inc.	U.S. Marshals Service	308	Maximum	Take Over
Silverdale Facilities, TN	Corrections Corporation of America	Hamilton County	414	Minimum	New
South Central Correctional Center, TN	Corrections Corporation of America	State of Tennessee	1287	Medium	New
West Tennessee Detention Facility, TN	Corrections Corporation of America	U.S. Marshals Service	316	All Levels	New
Metro-Davidson County Detention Center, TN	Corrections Corporation of America	Davidson County	993	Medium	New
City of Big Spring Correctional Center, TX	Mid-Tex Detention, Inc.	Federal Bureau of Prisons	362	Minimum/ Medium	Renovation
City of Big Spring Correctional Center, TX	Mid-Tex Detention, Inc.	Federal Bureau of Prisons	342	Minimum/ Medium	Renovation

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
City of Big Spring Correctional Center, TX	Mid-Tex Detention, Inc.	Federal Bureau of Prisons	NA	Minimum/ Medium	New
Bridgeport Pre-Release Center, TX	Wackenhut Corrections Corporation	State of Texas	520	Minimum	New
Bridgeport Pre-Parole Transfer Facility, TX	Concept, Inc.	State of Texas	200	Minimum	Renovation
Brownfield Intermediate Sanction Facility, TX	Concept, Inc.	State of Texas	230	Minimum/ Medium	New
Cleveland Pre-Release Center, TX	Corrections Corporation of America	State of Texas	520	Minimum	New
Crystal City Detention Center, TX	Dove Development Corporation	State of Texas	355	Medium	Take-over
To be determined, TX	U.S. Corrections Corporation	State of Texas	NA	Minimum/ Medium	New
Eden Detention Center, TX	Eden Detention Center, Inc.	Federal Bureau of Prisons	700	Minimum/ Medium	New
North Texas Intermediate Sanctions, TX	Wackenhut Corrections Corporation	State of Texas	401	Minimum	Renovation

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
Limestone County Detention Facility, TX	Capital Correctional Resources, Inc.	State of Texas	664	Minimum/Medium	New
Texas State Jail Facility, TX	Management and Training Corporation	State of Texas	NA	Minimum	New
Houston Processing Center, TX	Corrections Corporation of America	Immigration and Naturalization Service	341	Minimum	New
South Texas Intermediate Sanction Facility, TX	Esmor Correctional Services, Inc.	State of Texas	401	Minimum	Renovation
Jack County Correctional Center, TX	Wackenhut Corrections Corporation	State of Texas	NA	Minimum/Medium	New
New Vision Chemical Dependency Treatment, TX	Wackenhut Corrections Corporation	State of Texas	518	Minimum	New
Laredo Processing Center, TX	Corrections Corporations of America	Immigration and Naturalization Services	224	Minimum	New
Lockhart Pre-Release Center, TX	Wackenhut Corrections Corporation	State of Texas	500	Minimum	New
Lockhart Work Program Facility, TX	Wackenhut Corrections Corporation	City of Lockhart	497	Minimum	New

PRIVATE CORRECTIONAL FACILITIES... continued...

Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
Mineral Wells Pre-Parole Transfer Facility, TX	Concept, Inc.	State of Texas	1,045	Minimum	Renovation
Newton County Detention Facility, TX	Bobby Ross Group	State of Texas	751	Minimum/Medium	Take-over
Odessa Detention Center, TX	GRW Corporation	City of Odessa	100	All levels	Take-over
To be determined, TX	Concept, Inc.	State of Texas	NA	Minimum	New
Frio Detention Center, TX	Dove Development Corporation	State of Texas	266	Minimum/Medium	Take-over
Central Texas Parole Violator Facility, TX	Wackenhut Corrections Corporation	State of Texas	540	All levels	Take-over
Dickens Detention Center, TX	North American Corrections	State of Texas	439	Maximum	New
Sweetwater Pre-Parole, TX	Concept, Inc.	State of Texas	270	Minimum	Take-over
Tarrant County Community, TX Correction	Esmor Correctional Services, Inc.	Tarrant County	318	Minimum	New
Travis County Community, TX Corrections Center	Wackenhut Corrections Corporation	State of Texas	NA	Minimum/Medium	New
Venus Pre-Release Center, TX	Corrections Corporation of America	State of Texas	1,000	Minimum	New

PRIVATE CORRECTIONAL FACILITIES... continued...					
Facility Name / Location	Management Company	Primary Source of Prisoners	Present Population	Security Level	Facility Construction
Cameron-Willacy Counties Community, TX	Wackenhut Corrections Corporation	State of Texas	NA	Minimum/Medium	New
To be determined, TX	Concept, Inc.	State of Texas	NA	Minimum	New
To be determined, UT	Management and Training Corporation	State of Utah	NA	Minimum	New
Seattle Processing Center, WA	Esmor Correctional Services, Inc.	Immigration and Naturalization Service	191	Minimum/Medium	Renovation

Source: *Sourcebook of Criminal Justice Statistics 1994*, Table 1.85, p. 102-108.