

Comparing Public and Private Prison Systems

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Abstract

Governments are responsible for deciding which services citizens want provided publicly and then providing (authorizing, empowering, administering) them at levels for which the citizens are willing to pay. Of those services desired from a government, part can be best produced or delivered by that government, while many others can be delivered better by alternative means. (Finely:1989, IX)

The state governments of the United States have assumed the responsibility for the provision of prison services. The government has a responsibility to provide these services at the best price, and quality. There has been increasing criticism of the way our government provides prison system services. The criticisms stem partly from the overcrowding that has occurred, related to the phenomenal growth of the prison population. Overcrowding exacerbated another serious problem: a large proportion of the nation's penal facilities were outmoded and even obsolete by contemporary standards. A government survey conducted in 1983 found that half of all state and federal prisons in operation at the time were more than 35 years old and a substantial number of these were more than a hundred. (Bureau of Justice: 1983, Table 16)

Only about one-fifth of all state and federal prisons at this time had been accredited by the Commission on Accreditation for Corrections. Many states were forced to release prisoners to stay within the maximum allowable bed levels. Correctional administrators found themselves in a difficult position, unable to staunch the flow of prisoners and constrained in the ability to build more prisons quickly. Many state governments were reaching their debt ceilings and were unable to issue more bonds to finance prison construction. Even though voters were supporting legislation to send more criminal offenders to prison and for longer times, they often voted down prison construction debt proposals. (Abt:1998,8)

These issues have forced state and federal governments to look for alternative ways of providing prison system services. Contracting or privatization as an alternative method of providing for prison services gained support through the middle 1980's and the 1990's.

In conducting this study I will attempt to provide an insight into whether governments at state levels are making proper decisions in providing adult prison system provision.

The information I examined covers 1985 to the present. This study is being conducted at the “state,” levels. My population will be the “state prison systems,” in the United States. The unit of analysis will be “adult prison system”.

Is there a way to make prison systems more efficient and cost effective? While the cost of local government services has been rising, many local government decision-makers are facing considerable resistance to tax increases. Costs are rising faster in the public sector than in any other major sector of the economy (except construction). (Benson, 1990:179)

The government has a responsibility to provide prison system services, with the best cost solution, and an acceptable quality level. The dilemma that policy makers face is how to accomplish this task in the absence of competition, given constituent pressure for cost reductions, and the demand to keep the public safe.

My research is dedicated to comparing “public prison systems” to “contracted prison systems,” two choices available to policy makers. My paper will frame the history of contracting for prison systems, discuss the arguments for and against privatization, discuss the performance issues and standards for prison systems, conduct an analysis of the costs for both contracted systems and public systems, and describe what conditions are necessary for introduction of privatization.

In conducting this study I hope to provide an insight into whether governments at state levels are making proper decisions in providing cost effective and quality prison systems. The two central questions that I will attempt to answer in this comparative analysis are: 1) Does contracting for prison operations save money?, and 2) Do privately operated facilities provide equal or better services than publicly operated facilities?

Government has accepted the role of prison system provision. Is it doing its duty to the public by providing it at the best price, and service level? Is privatization of prison services the best method for providing these services? I will use the information provided by scholars and the government to try to answer these questions.

What is Privatization?

Privatization is any change from public toward private provision or production of services. Thus contracting out to a company for services previously produced by publicly employed persons is privatization while contracting out to other governments is an alternative delivery (production) but not privatization.

Privatization is commonly defined as any process aimed at shifting functions and responsibilities, in whole or part, from the government to the private sector. Privatization can take various forms. The most common form is contracting. In this method the government remains the financier and has management and policy control over the type and quality of services to be provided. This method is utilized 92% of the time when governments decide to privatize corrections on the state level. Another form of privatization occurs when a government transfers ownership of assets, commercial type enterprises, or responsibilities to the private sector. This is also called “asset sale,” and generally the government would have no role in the financial support, management, or oversight of a sold asset. Another more recent variation of privatization is “managed competition.” In this scenario the contracting agency of the government can submit a bid to compete against the private bidders. (GAO: 1997,5)

One alternative to public management of prison systems is “contracting” services out. Contracting is also referred to as, “privatization.” When governments turn to “privatization”, they are utilizing services from firms, which are not government owned. Public policymakers have an obligation to the electorate to provide for the delivery of correctional services that meets or exceeds relevant constitutional, legal, and professional standards, at the lowest possible costs to those that elected them. (Thomas: 1997, 2)

Because today’s prison system is in a crisis characterized by rising costs, overcrowding, and reduced fiscal resources, policy makers and prison administrators are searching for new ways to ensure the wisest use of public resources while meeting corrections needs. For many the search has led to privatization. (Stewart, 1986, 1)

History of Prison System Provision

In order to understand the past and current trends of prison system provision, managers must be able to refer to the history of prison system provision in the United States. Studying the history of prison provision in the United States gives us valuable insight in making prison provision decisions.

In addressing the history of contracting for prison systems I will describe how the government became involved with prison management. I will discuss the trends towards privatization in prison systems, the reasons for this shift, and describe the different conditions that encourage or discourage policy makers from contracting with private firms for services.

Privatization, an alternative to sole government administration of prison systems, began to evolve in the 1980's. Privatization of prison systems was not new in the history of the United States. In the earlier history of our country most of the prison activities were handled at the local level and paid for by the citizens of that jurisdiction. In recent history government became the sole provider of these services. As a result of this, Logan wrote: "There is a clear pattern, that has emerged, one that is characteristic of goods and services produced under monopoly conditions. Quality is low, prices are high, and the supply has not kept up with demand." (Logan, 1990:178)

In the mid-1800's, penny-pinching state legislatures awarded contracts to private entrepreneurs to operate and manage Louisiana's first state prison, New York's Auburn and Sing-Sing penitentiaries, and others. These institutions became models for entire sections of the nation where privatized prisons were the norm later in the century. These prisons were supposed to turn a profit for the state, or at least pay for themselves. Typically privatization was limited: The state leased or contracted convict labor to private companies. In some cases, such as Texas, however, the corrections function was turned over wholesale to private interests, which promised to control delinquents at no cost to the state. In Texas one company had turned a \$500,000 profit as a result of using adult prisoners as laborers. In addition to these profits the company also paid

the state \$350,000 during the life of its contract. The residents of Texas decided that these profits should be realized by the state and eventually cancelled its contract with the supplier. As a result of this the state realized \$3.4 million more in profits, utilizing prisoner labor, on prison farms.

(Brister: 1996,1)

As the system spread, labor and businesses complained that using unpaid convict labor constituted “unfair” competition. Of equal concern to reformers--but of less weight to politicians--was the issue of prisoner abuse under the private corrections regime. Anecdotal evidence from across the country painted a grim picture; while state officials remained indifferent or were bought off by private interests, prisoners suffered malnourishment, frequent whippings, overwork and overcrowding. A series of investigations of state prisons confirmed the tales of horror and produced public outrage. As with anti-trust legislation and the progressive reforms which followed, public pressure impelled government regulation of private sector abuse.

By the turn of the century, concerted opposition from labor, business, and reformers forced the states to take direct responsibility for prisons, thus bringing the first era of private prisons to an end. (Smith: 1993,2)

The concept of privatized prisons peaked during the 19th century’s Industrial Revolution and was completely phased out in the 1950’s after several highly publicized prisoner exploitation scandals. Contracting out for laundry, food, medical, education, and vocational services, however, had continued to be widespread. (Hakim: 1996,2)

By mid-century, the notion that governments were responsible for the administration of justice, and especially imprisonment, had become so well entrenched that many argued that imprisonment is an “intrinsic” or “core” function of the government. (American bar association: 1989,3)

But as the twentieth century stumbles to an end, the hard lessons of a hundred years ago have been drowned out by the clamor of free market ideologues. Again, privatization is encroaching even further on what had been state responsibilities, and prison systems are the target of private interests. The shift to privatization coalesced in the mid-1980’s, when three trends converged: the ideological imperatives of the free market; the huge increase in the number of prisoners; and the concomitant increase in imprisonment costs. In the Reagan years, the argument of the

superiority of free enterprise resonated profoundly. Only the fire department seemed safe, as everything from municipal garbage services to Third World State enterprises went on sale. Proponents of privatized prisons put forward a simple case: The private sector can do it cheaper and more efficiently. This assortment of entrepreneurs, free market ideologues, cash-strapped public officials, and academics promised design and management innovations without reducing costs or sacrificing “quality of service.” In any case, they noted correctly, public sector corrections systems are in a state of chronic failure by any measure, and no other politically or economically feasible solution is on the table. (Smith: 1993,2)

The contemporary push to privatize corrections takes place against a socioeconomic background of severe and seemingly intractable crisis. Under the impetus of Reaganite social Darwinism, with its “toughness” on criminal offenders, prison populations soared through the 1980’s and into the 1990’s making the U.S. the unquestioned world leader in jailing its own populace. By 1990, 421 Americans out of every 100,000 were behind bars, easily outdistancing our closest competitors, South Africa and the then USSR. By 1992, the U.S. rate had climbed to 455. In human terms, the number of people in jails and prisons on any given day tops 1.2 million, up from fewer than 400,000 at the start of the Reagan era. (Smith: 1993,2)

The phenomenon of private prisons and jails came into the public eye in the mid-1980’s, when the fledgling Corrections Corporation of America (CCA) offered to take over the entire state of Tennessee’s troubled prison system, with a 99-year lease from the state, for which it would pay \$250 million dollars. CCA would then charge the state a per diem fee for housing the state’s prisoners. The company would also guarantee that the prisons would meet federal standards of which the state was in violation. The state refused, but this ignited widespread press attention and public debate. (Abt: 1998,4)

The interest in contracting out for the delivery of various goods and services has been heightened by several well-publicized studies whose authors imply that private, profit seeking firms can deliver the same or superior quality goods and services at a substantial cost savings over (or perhaps we should say under) public sector production. (Benson, 1990: 179)

The nation’s prison population increased one-third between 1978 and 1982, and state and federal prison populations increased by approximately 74 percent from 1979 to 1986. According to

recent court rulings, 60 to 80 percent of the nation's jails and prisons are "overcrowded." (Logan, 1990:7). The number of state and federal prisoners totaled 581,609 by the end of 1987, up 76 percent from 1980. Prison capacity, however, has not kept up with the increasing population.

Overall, state prisons in 1987 were filled to somewhere between 105 percent and 120 percent of capacity. Over 12,000 state prisoners had to be held in local jails because other facilities were overflowing. (Logan: 1990,7)

Prison operations accounted for about 80% of all state correctional expenditures in 1996. The average inmate cost to states is approximately \$21,000 per year. State prison expenditures rose 160% from \$946 million in 1990 to \$22 billion in 1996. Nearly all money was used for daily operations. (Thomas: 1998,5)

Annual per capita costs (in 1996 constant dollars) for selected State expenditures

Fiscal year	Total Correction	Prisons	Health	Education	Public Welfare	Natural Resources
1985	\$53	\$40	\$67	\$749	\$392	\$39
1990	81	62	93	861	490	46
1995	101	78	120	970	757	49
1996	103	79	123	994	738	49
Average %	7.2%	7.3%	6.6%	3.6%	7.0%	2.9%

(Thomas: 1998,1) Private facility census

On December 31, 1997 there were 1,168,197 prisoners being held in Federal and State public prison facilities. There were 52,370 prisoners being held in private prison facilities. The prisoners being held in the private facilities constituted 4.3% of the total population. By 1997, the numbers of adults in privately operated secure facilities of all sorts-prison, jails, and illegal immigrant detention centers-reached about 64,000, which constituted less than three percent of the entire United States population of confined adults. The number of facilities had grown to approximately 140, and the industry's revenues probably approached \$1 billion. (Abt: 1998,iii)

Ten Year Growth in Rated Capacity of Private Secure Adult Correctional Facilities

Year	Rate
1989	10,973
1990	15,300
1991	15,476
1992	20,687
1993	32,555
1994	49,154
1995	63,595
1996	85,201
1997	106,940
1998	132,572

(Thomas: 1998,1) Private facility census

The rated capacity growth for private facilities has grown over twelve times, from 10,973 to 132,572, between 1989 and 1998. Estimates in 1996 showed that one 700-bed jail and one 1,600-bed prison needed to be opened every week just to meet the rising demand. The projected annual construction costs for that year would have been \$5.98 billion. The political climate favoring decreasing taxes, and reducing the size of government, prohibited governments from building many more prisons. The “get tough- three strikes laws” yielded a greater number of inmates. Federal funding to the states and local governments for measures to combat violent crime had risen by one third, reaching as high as \$15 billion in 1996. (Thomas: 1998,5)

The most active states with privatization are Texas with (43) facilities, California (24) facilities, Florida (10) facilities, and Colorado (9). Most privately managed facilities are located in the Sunbelt states where labor unions are still fairly weak. Some of these states are Texas, Florida, New Mexico, and Oklahoma which have the highest concentrations of private facilities.

By 1999 there were 186 privately operated correctional facilities in the world holding a total of 132,346 inmates. Thirty U.S. States, Puerto Rico, and Washington D.C. had 158 private facilities. (Austin: 1999,2.)

In the U.S., everything from prisons to schools has been privatized. With the Republicans controlling congress, Washington's right-of-center think tanks believe the time is right to push a slew of ambitious ideas. Taxpayer's are not in favor of raising taxes but demand that they live in a safe society. With 1.5 million people behind bars, the United States imprisons a larger share of its population than any other nation. The number of incarcerated in the United States has grown much faster than the population in past decade, leading to serious overcrowding in local, state, and federal facilities. (Hakim: 1996,1)

When the actual year-end 1996 population of prisoners housed in private facilities is examined, 76 percent were state prisoners, 14 percent were federal prisoners, and only 10 percent were local prisoners. (Thomas: 1996,6)

A movement to reduce overcrowding and save money led state and federal governments to contract with private firms for prison services. The next section describes who these firms are.

Distribution and Capacity of Private Facility Capacities as of 1/99

State	# of Adult Private Prisons	Private facility Capacities
1. Arizona	6	6,860
2. Arkansas	2	1,200
3. California	24	11,294
4. Colorado	9	4,644
5. District of Columbia	1	866
6. Florida	10	6,255
7. Georgia	5	6,418
8. Idaho	1	1,250
9. Illinois	1	220
10. Indiana	1	670
11. Kansas	2	529
12. Kentucky	4	2,631
13. Louisiana	2	2,948
14. Michigan	1	480
15. Minnesota	1	1,338
16. Mississippi	6	4,630
17. Missouri	2	660
18. Montana	1	512
19. Nevada	1	500
20. New Jersey	1	300
21. New Mexico	7	4,696
22. New York	1	200
23. North Carolina	2	2,112
24. Ohio	2	2,256
25. Oklahoma	8	9,702
26. Pennsylvania	1	1,200
27. Puerto Rico	4	3,000
28. Rhode Island	1	302
29. Tennessee	6	7,326
30. Texas	43	29,577
31. Utah	1	400
32. Virginia	1	1500
33. Washington	1	150

(Thomas: 1999,1)

What Firms are Involved With Privatization of Prison Systems?

As of 12/31/98 there were 12 firms that had contracts with federal or state corrections departments. The following graph lists these companies, gives their U.S. market share, and gives the total capacity of prisoners.

Company	Market Share in United States	Total Capacity
Alternative Programs Inc.	.29%	340
Avalon Correctional Services, Inc	.30%	350
The Bobby Ross Group	.40%	464
CiviGenics, Inc.	3.05%	3,563
Cornell Corrections, Inc.	5.06%	5,916
Correctional Services Corporation	5.89%	6,891
Correctional Systems, Inc.	.23%	272
Corrections Corporation of America	57.54%	67,286
The GRW Corporation	.31%	362
Management & Training Corporation	5.51%	6,447
Maranatha Production Co.	.43%	500
Wackenhut Corrections Corporation	20.99%	24,541

(Thomas, 1998,2)

Of the 162 worldwide facilities under contract in 1997 Corrections Corporation of America had 60, Wackenhut had 41, and the rest of the privatization companies had 61. As of June 22, 2000 there are 158 secure adult correctional facilities in the United States. Corrections Corporation of America had a capacity to house 63,487 inmates in the United States. Their next closest competitor Wackenhut, had a capacity of 26,704. The industry total capacity was 120,253. CCA had 52 percent, and Wackenhut held 22 percent, of that capacity.

Two firms, Corrections Corporation and Wackenhut Corporation had control over 75% of the privatized prison market as of June 2000. (Thomas: 2000, 5)

Corrections Corporation of America is the industry leader in privatized prison provision. This company is solely dependent on privatized imprisonment for its revenues. Founded in 1983 by the investors behind Kentucky Fried Chicken, CCA used the sales skills of Nashville banker/financier Dr. R. Crants, and the political connections of former Tennessee Republican Party Chair Tom Beasley, to win early contracts. In the next 9 years, CCA grew steadily to become the industry leader. (Smith: 1993, 4)

According to Business Week, Wackenhut Corrections Corporation is a fast moving up-and-comer in the private prison business. Second only to Corrections Corporation of America, Wackenhut is capitalizing on its international dominance and expanded range of services to fuel breakout growth. Analysts expect Wackenhut's revenues to climb 51% to an estimated \$208 million in 1997. According to CEO George C. Zoley, if the company maintains its market share and growth rate, it will be a \$1 billion company or more by 2004. Much of Wackenhut's growth has come at the expense of its major rival Corrections Corporation of America. In July 1997 Wackenhut beat out its bigger rival to win a \$300 million a year contract to run a federal prison in Taft, California. Zoley stated that "Innovative facility design that uses fewer people and more technology to monitor inmates and lower labor costs have helped privatizers meet tough cost-savings goals." (Holland: 1997,3)

Wackenhut was founded by former FBI official George Wackenhut in 1954. Wackenhut started as a private security firm. It is a diversified company. Activities of this company is comprised of 43 percent private security, 22 percent international division, 15 percent airport security services, 10 percent contracts to guard nuclear installations, and 10 percent for private corrections. Given the high rate of return in its corrections division-10 percent compared to 1.8- percent overall-Wackenhut has indicated that it wants to see that area grow. (Smith: 1993, 4)

What is Necessary for the Introduction of Privatization?

The General Accounting Office Report on privatization in March, 1997 provided information on lessons learned by, and the related experiences of, state and city governments in implementing privatization efforts. In this study the GAO noted that the governments they studied tailored their approaches to privatization to their particular political, economic, and labor environments. The study goes on to report six lessons learned that were generally common to all six governments studied.

- First of all, privatization can be best introduced and sustained when there is a committed political leader to champion it. In the study the leaders played a crucial role in introducing privatization. These leaders built internal and external support for privatization, sustained momentum for their privatization initiatives, and adjusted implementation strategies when barriers to privatization arose
- Second, governments need to establish an organizational and analytical structure to implement the privatization effort. This structure can include commissions, staff offices, and analytical frameworks for privatization decision making.
- Third, governments may need to enact legislative changes and/or reduce resources available to government agencies in order to encourage greater use of privatization.
- Fourth, reliable and complete cost data on government activities are needed to assess the overall performance of activities targeted for privatization, to support informed privatization decisions, and to make these decisions easier to implement and justify to potential critics. This is challenging because obtaining complete cost and performance data by activities from government accounting systems is difficult.
- Fifth, governments need to develop strategies to help their workforces make the transition to a private-sector environment. These strategies may involve employees in the privatization process, provide training to help prepare them for privatization, and create a safety net for displaced employees. Employees can be allowed to bid on the services along with the private sector companies.

- Finally, when a government's direct role in the delivery of services is reduced through privatization, a need is created for enhanced monitoring and oversight that evaluates compliance with the terms of the privatization agreement and evaluates performance in delivering services to ensure that the government's interests are fully protected.

(GAO:1997,5)

What is Necessary for a Valid Comparative Analysis of Prison Systems?

A recent GAO study (referred to in this paper), conducted in 1996, concluded that comparative studies of public and private correctional facilities should: 1) focus on both operational costs and quality of service; (2) evaluate operational costs at existing comparable, not hypothetical, facilities; (3) employ multiple indicators or data sources to objectively measure quality of service issues; and (4) be based upon data collected over several years. (GAO: 1996,1)

To answer the question of whether contracting saves money by using private firms, it is necessary to discuss the important studies that have been conducted to date, and their significance. There are differences between public and private cost systems. These differences need to be defined. There are issues relating to doing a comparative analysis because facility sizes, and numbers of prisoners being housed in given facilities differ. Quality measurements must be consistent when comparing public and private prison systems.

Dr C.W. Thomas, a well respected and leading expert on prison privatization, criticized the authors of the GAO report. Thomas asserts that the 1996 GAO report is fundamentally flawed because it endorses and accepts a logically and methodologically absurd premise that is wrongly described as a generally accepted characteristic of any comparative research on prisons: “the private and public prisons selected for comparison should be as similar as possible regarding design and capacity, security level, and types of inmates.” He goes on to say that the people conducting the study obviously had no background whatsoever in corrections. Thomas contends that the critical point missed by the authors, but by nobody who is familiar with corrections, is that a critical means by which the private sector typically yields the greatest cost benefits to government comes with construction costs, reduced operating costs, enhanced program delivery capabilities, and provision of a safer and more secure environment for both staff and prisoners. For the authors of the GAO Report to limit or even attempt to limit their attention to comparisons of similarly designed facilities and to defend their position with a false claim that it elevates the methodological rigor of their work is patently absurd. Thomas goes on to say that what is needed to do a

valid comparative analysis is to design the comparative study in a longitudinal nature and remove potential researcher biases to the maximum degree possible. (Thomas: 1996, 2)

To answer the question of whether contracting saves money by using private firms, it is necessary to discuss the important studies that have been conducted to date, and their significance. There are differences between public and private cost systems. These differences need to be defined.

There are issues relating to doing a comparative analysis because facility sizes, and numbers of prisoners being housed in given facilities may be different. Performance of private contractors is another important issue when comparing the differences in the two systems. Defining prison performance is complicated and not always measured consistently among various government agencies.

What are the Arguments for and against privatization of prison contracting?

There have been many arguments for and against privatized prison systems. According to Charles Logan, the arguments for and against privatization of prison systems, can be broken up into ten categories. These are propriety, costing, quality, quantity, flexibility, security, liability, accountability, corruption, and dependence. Proponents of privatization of prison systems state that private companies have incentives to govern their inmates more fairly, are more responsive to changes in demand, accountable for due process just as public employees, that contracting adds another layer of public monitoring which enhances due process, that contracting clarifies purposes of imprisonment, and finally, that contracting is compatible with federal law. Some opponents state that contracting delegates coercive powers to private interests which is improper, that profit motives may put private interests ahead of public interests, and that contracting raises legal questions about use of potential deadly force. The arguments for and against privatization on the basis of cost are based on financing, site selection, profit, competition and many other issues. The arguments for and against privatization of prison based on quality stem from motives, standards, measurements, skills, and level of service. Accountability arguments are related to monitoring, certifications, and visibility. Corruption arguments stem from monetary influence such as kickbacks and campaign contributions. (Logan: 1990, 48)

Phil Smith contends that imprisonment is an ugly business under any regime, but the prospect of a privatized prison system raises difficult and disturbing questions beyond those associated with a solely state-operated prison system. It has been, after all, a common assumption that the criminalization and punishment of certain behaviors--the deprivation of physical liberty and even of life itself--are not amenable to private sector usurpation. Some of the arguments that form this assumption are ethical, some legal, and others practical, but all are being challenged by a growing group of special interests. (Smith: 1993,1)

Turning to the private sector to provide new prison beds was an attractive solution to many governments facing debt restrictions. If a private firm financed, constructed, and operated a new prison, payments to the firm by governments for housing the state's prisoners could be charged against operations budget, rather than capital budgets, thereby avoiding any need for increasing debt. (Abt, 1998,8)

The growth and development of the private imprisonment industry received important support from broader political and ideological developments in the mid-1980's. On both sides of the Atlantic, in the United States and Great Britain, conservative governments held sway and launched concerted attacks on the institutional structures and ideology of the welfare state. (Heilman: 1992,155)

“Privatization” initiatives gained influential proponents, although the opportunities in this country were fewer, largely because governments here hold fewer assets that can be privatized and because a wide variety of services funded by governments had long been delivered by private contractors. Despite this, the public landscape in the United States was combed in search of targets for privatization of contracting, and prisons were identified by some as promising opportunities for expanding private sector involvement. (President’s Commission on Privatization: 1988)

For a variety of reasons, the belief emerged that contracting for services, including correctional services, was superior to direct government provision. Private firms were said to be more efficient as they are not mired in the “red tape” that encumbers public agencies, especially in procurement and labor relations. Private managers can hire and fire without the constraints of civil services and restrictions on creating budget lines for new employees; labor can be disciplined and reassigned with far greater ease in the private sector, especially if labor is not unionized. (Abt: 1998,9)

Another purported advantage of the private sector was its greater efficiency in the face of competition. According to this line of argument, public agencies have monopolies on services, and few incentives exist to discover and implement ways of efficiency. Shielded from the demands of the marketplace, public managers may not strive for greater productivity but for maintaining their positions by avoiding risks. Government positions and agency budgets, once established, are difficult to reduce because constituencies are created inside and outside government that press legislatures for continued funding. In contrast, competition in the private marketplace, and the risk of losing money or going out of business, supposedly stimulates the search for increased efficiency. (Abt: 1998,10)

The critics of privatization have challenged these beliefs. Donahue argues that there is little room for technological innovation in prisons because of their labor-intensive nature. (Donahue: 1990, 5) Another argument is the high priority given to maximizing profits creates

incentives to minimize costs, which may lead to reductions in service and quality. (American Bar Association: unpublished, 4)

Other arguments are that private companies overcharge the government and provide poor performance. Others argue that the southern private prison systems that were in effect during the civil war, were appalling, and death rates were higher than in public systems. (Cable: 1969)

Since the last round of prison privatization ended a century ago, a strong ethical and practical presumption has grown up that imprisonment should be solely a function of the state. The practical challenge centers around the material self interest of the various pro-privatization constituencies. There are two broad areas of concern: efficiency, i.e., can private operators be trusted to run prisons for less without sacrificing “quality of service”; and accountability, i.e., what oversight mechanisms will assure that society’s interests come before those of the managing corporations. As to efficiency--leaving aside for a moment critical questions about what “efficiency” means in prison operations--three well--designed comparative studies found that private operators did run prisons more cheaply without sacrificing “quality.” Typically, the studies found, Wackenhut and CCA were able to provide cost saving of five to fifteen percent while still maintaining high marks for provision of services. Even in Texas, which has one of the lowest per prisoner rates, both Wackenhut and CCA came in cheaper. But what about “efficiency”? If the term means nothing more than the ability to house bodies cheaply while complying with minimal standards, then industry leaders, at least, appear to be efficient. Imprisonment, however is generally acknowledged to include, at best, deterrence and rehabilitation, or at least, reduction of recidivism rates. While there is no definitive private-public comparative study on recidivism, the private prisons, as opposed to the state, have a direct conflict of interest. By reducing the number of repeat offenders, they are in effect reducing the supply of profit producing “customers.” It is in the material interest of these companies, therefore to produce not prisoners who have “paid their debt to society,” but ones that will continue to pay and pay on the installment plan. The question of accountability is a legal sinkhole. Under U.S. Law, the state is subject to constitutional restraints that do not apply to private entities. With prisoners’ rights already under attack from Congress and the federal courts, and with ambiguous case law on private versus public liability, some legal scholars are worried. They fear that privatized prisons place inmates in a legal limbo-caught in a gray area between the state and the private sector-unable to hold either answerable for infringements of their

constitutional right. Another accountability issue concerns monitoring. The profit-motive could cause private operations to cut corners, leading to poor or unsafe conditions. Proponents of privatization argue that regulation and careful state monitoring of compliance will protect inmates sufficiently, but that contention must come as cold comfort to prisoners who have already felt the tender mercies of the state. The record so far, however, shows that compared to the murderous outbreaks in state penitentiaries, incidents of violence, riot, escape and the like have been relatively rare in the private prisons. Direct comparisons are problematic, however, as CCA's Leavenworth facility opened in 1992, is the first, and so far only, private sector institution to handle maximum-security inmates as its primary function. (Smith: 1993,2)

According to Smith, the most worrisome aspect of prison privatization is the inevitable emergence of a private "prison lobby" concerned not with social welfare but with increasing its dividends, not with doing good, but with doing well. Sentencing guidelines, parole rules, corrections budgets, and new criminal legislation are areas in which private prison operators have a vested interest and could influence policy decisions. They could also benefit by manipulating public fear of crime. Unlike most other public policy arenas, criminal justice policy is largely determined not by the realities of crime but by its perception. (Smith: 1993,1)

Privatizing correctional facilities raises a number of legal and public policy issues. Concerns exist about the potential liability of a government agency for the actions of its contractor. If a contractor violates a confined person's rights or causes injury or death, would the government agency be liable? The extent of a contractor's obligations to uphold a constitutional right is itself subject to dispute. Normally constitutional protections apply to government facilities. There are questions of whether contractors would be bound by the same requirements.

Would a private correctional facility be considered as acting with the authority and responsibility of the government? The courts may be moving toward a determination that private prisons may be considered to be performing a public function and the same obligations apply. (Hakim: 1996,4)

The effort to keep a lid on staffing and benefits generates widespread criticisms from public employee unions and other opponents of privatization who claim private companies understaff prisons, under-compensate their employees and over-promise savings. Many state and county officials claim they are competitive with the private sector. (Hakim: 1996,5)

While financing arrangements are certainly part of the allure of going to private companies this seemingly advantageous deal underscores one of the risks in taking prisons out of the public realm. Companies can decide if they would like to move more lucrative prisoners from out of state or from the federal government; the contracting organization could be stuck with many local offenders and no place to put them. (Hakim: 1996,5)

The claims made by the proponents of outsourcing, on the basis of cost, is the superiority of privatized prison systems. According to Logan there is very little empirical evidence to prove or disprove these arguments. As a result, both advocates and critics of privatized prisons, base their contentions on theoretical grounds and on analogies to privatization in other areas. (Logan, 1990,79). Many studies have been conducted since Logan made this assertion. Dr. Charles Thomas of the University of Florida stated in 1996 in a report to the U. S. Congress's sub-committee on crime, more than a decade of experience by contracting agencies on three continents, consistently reveals that first, private firms typically deliver correctional services of a caliber at least equal to those by government agencies and, second, that they do so at a cost below--often substantially below--agency costs. (Thomas: 1996, 1)

One corporation that I examined, CSC, had noted that their code of ethics is to meet the highest standards of legal and ethical conduct. The CSC code of ethics establishes an impeccable standard of proper action, attitudes, and language used in conducting our daily activities, designed to protect against any impropriety or appearance of impropriety by a CSC employee. CSC adheres to the highest standards of corrections and provides its services in accordance with the guidelines issued by the contracting agencies, the American Correctional Association and the National Commission on Corrections Healthcare. CSC's Code of Conduct for all employees and management, and an intense internal and corporate audit oversight of all facilities ensures consistent, high quality services.

The introduction of private correction corporations may change the dynamics of the correction policymaking process. Rather than consensus, there is a potential for conflict among interest groups, particularly between the correctional employees unions, and private correction corporations. Both Nationally and at the state level, studies have identified the American Federation of State, County, and Municipal Employees (AFSCME), the National Sheriff's

Association, the American Civil Liberties Union (ACLU) and the American Bar Association as opponents or critics of privatization. Agency bureaucrats may align themselves with the employee's unions or perhaps function as mediators among the diverse interests. Each interest group can be expected to have its respective champions among elected officials. (Stoltz: 1997,7)

Special interest groups participate at all levels of American government. These groups often operate as part of political sub-governments and these sub-governments change. Criminal justice policy operates in such a political environment. There are three conclusions about interest groups in criminal justice: (a) Among the various interest groups that attempt to influence criminal justice policy, those groups that are professionally concerned with the outcomes seem to exert more influence than those that have a social service or public interest concern; (b) the particular structure, power, and goals of criminal justice interest groups are related to social, cultural, and economic conditions in various states; and (c) criminal justice legislation is generally conceived by small numbers of influential legislators, administrators, and interest group representatives and enacted on a consensual basis by state legislatures. (Stoltz: 1997,3)

Logan mentions in his arguments that contracting brings new opportunities for corruption (i.e., political spoils, conflict of interest, bribes, kickbacks). Private corrections corporations may seek to involve legislative committees; legislators; or elected officials, such as governors. (Stolz: 1997,7)

Critics of privatization state that these interest groups will try to influence policymakers by bribes or political contributions. Critics state that other interest groups, such as the ACLU, may see diminishing influence if concrete monetary goals become more dominant in the corrections sub-government. (Stolz: 1997,7)

Two decades ago there were no local jail systems or prison systems managed by private companies. Today this is not the case. Statutes in 28 states allow for the full-scale management of prison systems and ten more states are of the legal opinion that existing general corrections statutes provide all of the authority they require. Equally important is the fact that there is no indication the appeal of correctional privatization is diminishing. (Thomas: 2000, 2)

The opponents of privatization are slowly losing ground to this new business sector. Public Managers must be aware of the arguments for and against privatization of prison systems. These arguments will vary among different jurisdictions. It is critical to public managers that they understand these arguments and that they are informed and cautious when they address the issue of privatization.

What are the Costing Classifications?

There are many debates on whether the privatization of correction services involves lower costs than publicly provided correction services. The cost concerns and speculation center on private firms low balling bids, or the additional costs relating to monitoring the contracts.

There are three elements of costing to be considered when comparing privatization vs. public prison systems. These elements are finance, construction, and operation. Financing can be somewhat cheaper for public borrowers than for private firms. Public agencies can offer bonds to help finance projects. This may sound good, but as I mentioned earlier, taxpayers have the final say on whether to approve the bond issue. Other public jurisdictions have borrowed beyond a point where they can secure new financing. Private financing and lease-purchase agreements offer a way to pay for new prison systems out of existing operating budgets. It is important to note that these costs need to be included in an outsourcing initiative. Construction is the second element that has to be taken into consideration when we are comparing newly built private prisons vs. newly built public prisons. Private companies have demonstrated repeatedly that they can locate, finance, design, and construct prisons more rapidly than the government can. Corrections Corporation of America reports its construction costs to be about 80 percent of what the government pays for construction. (Logan, 1990: 79) CCA notes that it can build not only faster, thereby saving inflation costs, but also at a lower immediate cost, since construction contractors charge the government more. (Logan, 1990: 79) The construction charges that would be incurred as a result of the government building a prison would have to be taken into account if we are to compare the private versus public costs.

However, the main costs to be considered are the operation costs. These costs are made up of salaries, administration, food service, and surveillance activities. The salaries account for 80 percent of a prison's operating costs. (Logan, 1990: 99).

Costs associated with running a prison system can be defined as indirect and direct costs. These costs are readily available when we look at the data provided by outsourcing companies. Costs can be defined into a relatively easy format. These costs are facilities costs, salaries and wages, consumable maintenance supplies, utilities, medicine and personal care,

food and kitchen supplies, uniforms, capital outlay (equipment), and other operating expenses. (Logan, 1990:107) It is not easy to capture all costs associated with running a public prison system. In order to accomplish this a model must be developed to define public costs associated to running a public prison. There are cost elements that need to be defined. These cost elements are:

- Capital costs: Land purchases, construction, major equipment, depreciation or amortization.
- Finance costs: service and interest on bonds
- executive offices (governor, mayor, and so forth) or administrative offices (e.g., personnel services, central purchasing, data processing, general services administration).
- External oversight costs: inspections program monitoring, administrative or judicial reviews and appeals of decisions, auditing, and other comptroller services.
- Legal service costs: counsel, litigation, and other legal services occasioned by the activities of the correctional agency or facility in question but charged to other budgets (includes publicly funded litigation costs of inmate plaintiffs or defendants as well as defense of the institution or agency and its political jurisdiction).
- General liability costs: successful legal claims, punitive damages, fines, court costs, general liability insurance premiums or costs of administering a self-insurance plan.
- Property insurance costs: premiums or self- insurance costs for fire, theft, and casualty protection (or risk-cost of uninsured losses.
- Staff training costs.
- Transportation costs: transportation services, vehicles, vehicle maintenance, fuel, parts, and related costs that may be provided by other departments.
- Food costs: other government agencies may provide surplus food or subsidies.
- Interagency personnel costs: other agencies may provide hospitalization, mental care, education services, recreation, counseling, or other treatment plans.
- Opportunity costs: taxes or rent foregone from alternative uses of land or buildings.
- Unemployment and workers compensation costs. (Logan, 1990:99)

What do the Cost Studies Say?

It is inevitable that U.S. society will not be able to get by without paying taxes for services such as prison system management. How much we pay is the responsibility of the government and the people. There is increasing pressure from the public to decrease costs of services that are supplied by the government. Taxpayers are becoming increasingly resistant to any tax increases. Government agencies at the federal, state, and local levels have turned to privatization of services in order to reduce budgets, maintain the level of services, and to become more flexible in creating service delivery mechanisms. Has the analysis of current data proven conclusively that privatization is the most cost-effective method of administering prison systems?

The 1998 study by the Abt group noted that only a very small portion of facilities that are operated by private firms have been evaluated systematically to determine how much more or less the government would spend in the absence of contracting for operations. The Abt study also states that it is difficult to have much confidence in conclusions about the relative costs of public versus private provision when we have systematic cost comparisons of such a small and dated subset. (Abt: 1998,1)

A number of research studies have been reported since early 1980's that aimed to compare the cost of privately operated facilities with publicly operated ones. Most studies were conducted at adult prison systems. The Abt Associates study concerned adult facilities. The Abt study only considered rigorous research designs, which report their methods and data in sufficient detail to assess the strength of their findings. The Abt group looked at several studies and offered an analysis of each.

In 1991, the state of Tennessee contracted with the Corrections Corporation of America (CCA) to operate the South Central Correctional Center (SCCC), a 961 bed, multi-custody (minimum-to-maximum-security) facility. As required by law, the Tennessee Fiscal Review Committee undertook to "compare the full costs of the contractor with the state's full costs of operating similar facilities." Two publicly operated prisons were selected for comparison: Northwest Correctional Center (NWCC) and the Northeast Correctional Center (NECC). The Fiscal Review Committee study is a model cost comparison. It allocated "line item" cost

data for each prison to specific management functions (administration, security, etc). Adjustments were made to operating costs (also reported by management function) which included netting out commissary revenues against commissary expenses, allowing for changes in food services inventories and non-comparable programs, eliminating depreciation expenses as a public facility expense (because there were corresponding sets of expenses in the private facility), and adding monitoring costs to the expenses reported for the private facility. After such adjustments, the Fiscal Review Committee found that the daily operating cost during FY 1994, exclusive of any costs allocated to central office, averaged \$31.95 in the two public facilities, compared to \$33.78 in the CCA facility. By this measure, the private facility was 5.7 percent more costly than the two public facilities, on average. When adjustments were made for differences in the size of the facilities to equalize the comparison (more specifically, in the average numbers of prisoners under custody in each one), the cost difference diminished to one percent. Adding the allocated share of the Department of Correction's central office costs to the three facilities changed the estimates slightly. The CCA facility was then found to be one percent less costly, on average, than the public facilities. The Fiscal Review Committee report did not directly address the question of whether or not privatization actually saves money for the taxpayers in Tennessee. (Abt: 1998,38)

The Washington State Legislative Budget Committee (LBC) addressed this question as it tackled its own version of the prison privatization question. (Washington Legislative Budget Committee, 1995:Appendix 3) The Washington Legislative Budget Committee conducted further analyses of the Tennessee data but followed a slightly different tack. Instead of analyzing the cost incurred by CCA of operating SCCC, the Washington Legislative Budget Committee started with the revenues received by CCA and adjusted these data for differences between public and private management responsibilities. The Tennessee Fiscal Review Committee had excluded medical expenses for CCA from its analysis because it lacked sufficient data. It was necessary to estimate these costs in order to compute CCA's operating surplus and to compare private per diem rates with those derived for the state-run facilities NWCC and NECC. The Washington Legislative Budget Committee concluded that the estimated total daily cost to the taxpayers of the privately operated CCA facility was \$37.65, as compared to \$40.16 at the NECC and \$40.19 at NWCC. (Abt: 1998,39)

Julianne Nelson undertook further analysis of the Tennessee data, reported in both the Fiscal Review Committee and the Washington Legislative Budget Committee studies, to discern differences in how costs were allocated in the CCA facility compared to the two public

facilities. (This study was commissioned by the National Institute of Corrections in conjunction with the Abt Associates study.) Nelson found that:

- Non-Medical operating costs per inmate day were virtually identical in the public and private prisons studied.
- At the CCA facility, more was spent on administration and less on security, relative to the public facilities, including corporate overhead and monitoring by state officials.
- Contracting for SCCC may have saved money for Tennessee's taxpayers by averting expenditures for state government overhead activities. That is, the observed state-level overhead expenses were lower than what they would have been had SCCC been publicly managed.
- Labor costs were lower at the private facility: \$16.89 per prisoner/day at the CCA facility, as opposed to \$19.63 at NECC and \$20.96 at NWCC. Security staff costs were also lower: \$9.96 per prisoner/day at the CCA facility, versus \$12.57 at NECC and \$14.55 at NWCC.
- Employee benefits were also lower at the CCA facility. The average employee benefit rates were 28 and 29 percent at the two public facilities, and 22 percent at the CCA facility. Wide variation existed among CCA staff: administrative employees enjoyed a benefit rate of almost 80 percent, while others received benefits at the rate of 13-14 percent of salary.

Nelson explained that the pattern of expenditures indicates that the "bulk of reported cost savings at the privately managed prison studied in Tennessee can be attributed to the differences in per-inmate medical expenditures and allocated state overhead costs. (Labor cost savings were offset by the increased administrative cost....)."

What remains unclear, however, is whether the apparently lower overhead costs are merely accounting artifacts rather than reductions in expenditures. It is unlikely that overhead activities were actually cut back, or that significant increases in expenditures for overhead were averted by contracting for a single facility. The actual difference in expenditures was therefore small, if any. (Abt: 1998,40)

The State of Louisiana contracted with two different private correctional firms, the Corrections Corporation of America and Wackenhut Corrections Corporation, to operate two prisons for men. The former firm contracted to operate the Winn Correctional Center, the latter the Allen Correctional Center. Both opened in 1990. (Abt: 1998,40)

In 1996, Professors William G. Archembeault and Donald R. Deis Jr. of, the school of Social Work and the Department of Accounting at Louisiana State University, reported the findings of their 600 page study, which compared the cost and performance, of the two private facilities, with a third, the Avoyelles Correctional Center, operated by the Louisiana Department of Public Safety and Corrections. (Archembeault: 1996,16)

The basic question addressed by Archembeault and Deis was how the full cost per inmate-day in a publicly managed prison (i.e. Avoyelles Correctional Center) compared with the full per diem cost of housing an inmate in either of two privately managed facilities. Their choice of comparison institutions was appropriate. All three institutions were built by the state and shared a common design. The capacities of all three were identical-1474 beds. They are located in the same section of rural Louisiana and draw from the same general labor pool. All three house maximum, medium, and minimum security prisoners in approximately the same proportions. Moreover, the private facilities appear to be well integrated into the ongoing operations of the ongoing operations of the state's public correctional agency. They adopted the same rules and procedures that govern the state's prisons, and the upper management of these two privately operated prisons participate in agency-wide management functions. A number of the potentially confounding factors are thereby held constant, permitting a comparison of institutions that vary only in their being managed and operated by either the state correctional agency or by private firms. (Abt: 1998,40)

Professors Archembeault and Deis compared expenditure data for all three prisons for five fiscal years, 1992 through 1996. As they were interested in assessing the total cost and savings to the taxpayers, they based their analysis upon the state's fees paid to the management firms and sought to identify all costs incurred by other agencies or other government accounts. They also sought to estimate a variety of costs not accounted for on an annualized basis, such as self-insurance. Numerous other adjustments were made, such as for costs associated with prison industry programs and services provided by local vocational/technical schools. After such adjustments, it was determined that the lower costs for these two facilities had saved Louisiana taxpayers 12.75 percent annually. The CCA facility in Winnfield saved an average of 11.69 percent. The Wackenhut facility in Allen saved an average of 13.8 percent. (Abt: 1998,40)

At approximately the same time the State of Washington's Legislative Budget Committee

examined expenditure data for the same three facilities and came up with different conclusions about the savings. The Budget Committee's report was released before Archambeault and Deis released theirs. Comparing the two reveals that they took different approaches to estimating some costs or made different assumptions. In the end, the Budget Committee concluded that the state could expect to break even on its two contracts during FY 1996 when all facilities were operating at full capacity. Whereas the CCA facility was costing about one percent more than the state facility during that year, according to the Budget Committee's analysts, the Wackenhut facility was saving the state an equivalent amount. (The Budget Committee suggested that costs of the three private and public facilities had recently converged and that the private facilities had been costing the state approximately four percent less during FY 1994.) (State of Washington Legislative Budget Committee: 1996,96)

Julianne Nelson reviewed both the Archambeault and Deis study and the Budget Committee report and identified a number of difficulties in the former. She concluded that the savings associated with private operation in the Winn and Allen facilities are more in the range estimated by the Budget Committee analysts. That is, during fiscal year 1996, the savings were more likely to be below 5 percent than above 12 percent. Savings to the taxpayers could be greater, she argues, if contracting out operations of facilities results in cutbacks in state-level overhead expenses. (Abt: 1998,41)

The controversy over the appropriate measure of operating costs in Florida prisons shows how hard it is to get all sides to agree on whether or not privatization saves money. Current state law helps identify the participants in this debate. Chapter 89-526 of the Florida State Statutes, enacted in 1989, first authorized the state Department of Corrections to enter into contracts with private prison management companies. The subsequent Chapter 93-406, adopted in 1994, created the Correctional Privatization Commission, to expedite prison privatization; it is housed in the State Department of Management Services and operates independently of the Department of Corrections. Chapter 957.05 qualifies the authority of the Correctional Privatization Commission, requiring it to demonstrate—before any contract is signed—that private prison management will result in at least a 7 percent savings. (Abt: 1998, 41)

In the summer of 1995, two prisons opened under contract with the Correctional Privatization Commission. One, the Bay Correctional Facility, is operated by CCA; the second, the Moore

Haven Correctional Facility, is operated by Wackenhut Corrections Corporation. Both are 750-bed prisons that were designed for medium-security prisoners. To provide for ongoing independent oversight, Florida state law required the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review the performances of all management companies that operate private prison facilities in Florida (this may include both vendors under contract to the Correctional Privatization Commission and those under contract to the Department of Corrections). A separate oversight board, the Florida Corrections Commission, was established in 1994 and is “charged with reviewing the effectiveness and efficiency of (Florida’s) correctional efforts, recommending policies, and evaluating the implementation of approved policies.” Not surprisingly, these different parties do not always favor the same measure of privatization benefits. In its Annual Report for the fiscal year 1996-97, the Department of Corrections argued that all three privately managed adult prison facilities were more expensive than similar publicly run facilities would have been. Using a somewhat different approach, the OPPAGA reached a similar conclusion. Nevertheless, the OPPAGA report included responses from the Correctional Privatization Commission, the Corrections Corporation of America, and Wackenhut proposing alternative methodologies—ones that led to conclusions directly opposed to those reported by the Department of Corrections and the OPPAGA. (Abt: 1998,41)

The Department of Corrections’ estimates are somewhat biased against the privately managed firms. The per diem rate for the men’s public prison is derived as the average of nine other facilities; all but one of these public facilities is substantially larger than any of the private facilities being analyzed. The report states that given the economies of scale in prison operation, this approach understates the public sector cost of running a prison comparable in size to Bay or Moore Haven. Nevertheless, the OPPAGA reached a similar conclusion from a more appropriate starting place. It compared two private men’s facilities (Bay and Moore Haven) with a single comparably sized public facility, the Lawtey Correctional Institution. In its analysis, the OPPAGA started with the management fee due to CCA and Wackenhut (for running Bay and Moore Haven, respectively); it then deducted monitoring costs paid by the management companies, property taxes not paid, and medical insurance co-payments collected from prisoners and retained by the prison operators. For the Lawtey facility, the OPPAGA used the annual cost of operations, health services, and education programs reported for this facility by the Department of Corrections

in its Annual Report. All three cost estimates were then adjusted for differences in scale economies, the scope of management responsibilities and the quality of services provided. The OPPAGA estimated that Moore Haven was more expensive to operate than its public sector equivalent; it also argued that the Bay facility was only 0.2 percent cheaper. Neither private facility achieved the 7 percent cost savings required by law. (Abt: 1998,41)

In response to this finding, CCA proposed some adjustments that substantially change the interpretation of the data: they argue that private management at Bay and Moore Haven saved taxpayers respectively, 8.3 and 6.0 percent of state costs. This difference arises primarily from three simple changes: an increase in the CCA's credit for taxes paid to the state, an increase in CCA's credit for the "Inmate Welfare Trust Fund Net Revenue," and a decrease in the state's adjustment for "medical costs for higher medical grade inmates at Lawtey." The OPPAGA itself rejected these three CCA amendments, observing that CCA sought to claim credit for more tax revenue than was properly attributable to its Bay facility, that it retained custody over Inmate Welfare Trust Fund balances, and that Lawtey inmates had considerably more medical needs than those at the Bay facility. (Abt: 1998,42)

This debate is further complicated by an adjustment that the OPPAGA could have made but ultimately rejected. As in Louisiana, the state retirement system was not fully funded by past payroll deductions. To eliminate this shortfall, a surcharge of 5.78 percent was included in the payroll costs reported for Lawtey. The OPPAGA justified counting this surcharge, stating that "it is still a cost to the taxpayers. Privates do not pay this and thus should be able to reduce costs in comparison to state by at least 5.78% of payroll. (Abt: 1998,43)

This accounting decision biases the comparison against the public facilities, however. The unfounded liability was incurred in the past; the surcharge was imposed to collect the funds needed to cover that liability. To compare the current costs of operating public and private facilities, the surcharge should not be counted. In other words, payroll costs at the Lawtey facility should be 5.78 percent lower than what is reported by OPPAGA. Omitting this surcharge brings the cost of the public and private facilities yet closer together, although the end result does not change the basic conclusions: there is no strong evidence indicating that contracting for these facilities rather than direct government operations saved taxpayers' money in Florida. (Abt: 1998,43)

In 1987, the Texas State Legislature enacted a law authorizing the Texas Department of

Corrections to contract with private vendors and county commissioners to finance, construct, operate, maintain or manage correctional facilities. In June of that year, a request for proposals was issued offering the opportunity to operate four 500-bed prisons, to be structured as pre-release centers, with programming designed to reintegrate prisoners back into society upon their release. Such programming would include educational and vocational programs as well as counseling and treatment for drug and alcohol abuse, domestic difficulties, and other problem areas. Contracts were ultimately awarded to the Corrections Corporation of America (CCA) for two facilities, and to the Wackenhut Corrections Corporation for two other 500-bed facilities. The two facilities operated by CCA were located in Cleveland and Venus, Texas. The two operated by Wackenhut were in Bridgeport and Kyle, Texas. These facilities began receiving prisoners during the summer of 1989. The law specified that the state could not contract with a private vendor without an assurance that services would cost at least 10 % less than the state would have to spend for an equivalent facility. The task of determining if the private firms were delivering the service at least 10% below the state's cost was given to the Sunset Advisory Commission. The challenge was to find comparison institutions operated by the state. The statute specified that the commission should analyze the cost and quality of services in the private prisons as compared to the cost and quality of any similar state services. However, as the commission noted in its 1991 report, "The development of a cost estimate was complicated by the fact that the TDCJ did not, and still does not, operate a comparable facility." (Abt: 1998,44)

The commission therefore requested that the Texas Department of Criminal Justice develop two cost estimates: (1) the total cost to the state of contracting for the operation of the privately operated prisons, and (2) the total cost to the state if Texas Department of Criminal Justice operated the facilities directly. The estimate of the former cost included actual contract costs plus a number of other direct and overhead costs borne by the state in support of this contract. The second estimate included all direct and indirect costs that would be associated with direct government operation of the CCA facilities and, separately, the Wackenhut facilities. The commission concluded, from a comparison of the actual costs and the estimated costs, that contracting saved the state 14-15 percent—more than the required 10 percent. However, some of

the savings to the state were in the form of payments by each of the firms to local governments with approximated taxes. Moreover, the cost to the state of the capital asset is the same, regardless of whether the facilities are managed by the private firms or the Texas Department of Criminal Justice. Not counting these payments in lieu of taxes, private operation appears to cost the state 8.8 or 9.7 percent less than direct Texas Department of Criminal Justice operation, depending upon the facility—or slightly less than the savings required by statute. The payments in lieu of taxes appear to be simply a fee paid by the private firms to governments so that the net cost to Texas of contracting exceeds the 10 percent threshold. (Abt: 1998,44)

An examination of the commission's report indicates that the principal sources of savings associated with contracting, apart from this payment, were lower operating costs and lower overhead expenditure by the state. Operating costs were \$1.53 to \$1.96 lower on a daily per prisoner basis; state overhead costs were \$1.36 less for the private facilities. The precise reason for the lower operating costs cannot be identified because the report provides only aggregate-level expenditure data. In short: the evidence from Texas suggest that the private firms are delivering a service that would cost the government approximately 9-10 percent more if the state's corrections department operated the facilities directly. This assumes that the estimates of the department's costs of direct operation are accurate, of course. Lacking more information about how these costs were estimated, it is not possible to evaluate them. (Abt: 1998,45)

In 1993, the Arizona Department of Corrections awarded a contract to the Management and Training Corporation to design, construct, operate, and own a 450-bed minimum-security state prison for men and women. This prison, the Marana Community Correctional Treatment Facility, was evaluated by Charles Thomas to assess how the facility's costs and performance compared with other comparable institutions in Arizona. Unfortunately, no equivalent facility operated by the Department of Correction existed in the state. The Marana Facility is the only one in the state that houses both men and women. Other things being equal, that fact alone would affect any cost comparison significantly because women prisoners are generally more costly to house than men. Thomas acknowledged a variety of differences between the Marana facility and others. For example, many of the publicly operated prisons used for comparison housed prisoners in tents, which no doubt affected the level of per inmate expenditure in these facilities. Moreover, the

Marana Facility, by design and legislative wish, provides a higher level of programming—both in the types of programs and the level of inmate involvement in them—than other Arizona facilities generally. Thomas’s solution to this was to compare costs at Marana to the average costs of all 15 minimum-security prisons operated directly by the state’s Department of Corrections. (Abt: 1998,45)

During fiscal year 1996, the operating costs of the Marana Facility, including adjustments for payments by the management for ad valorem property taxes, were \$13,140 per prisoner per year, or \$35.90 per day. This compared to an average operating cost for the 15 state-operated minimum security prisons that year of \$15,766 per prisoner per year, or \$43.08 per day, a difference of almost 17 percent. (Abt: 1998,45)

However, the Marana Facility was not the least expensive of the minimum-security prisons operating during FY 1996. Three publicly operated facilities were less costly (before crediting the private facility for payment of property tax). Indeed, seven of the fifteen publicly operated facilities were within five percent of the cost of the Marana Facility. Even after adjusting for payment of property taxes by the management firm, Marana still remained more expensive to operate than two of the public facilities did. In light of this, Thomas concluded “Given the limitations of the available data and the heterogeneity of the facilities, it would be speculative to conclude that a precise cost savings had been achieved. (Abt: 1998,46)

Perhaps the main finding of this review is that only a very small percentage of those facilities operated by private firms have been evaluated systematically to determine how much more or less the relevant government would spend in the absence of contracting for operations. Ninety-one contracts existed on December 31, 1997 with privately operated secure confinement facilities that held prisoners on that day, and some undetermined number of facilities also held prisoners sent to them through non-contractual means (that is, via an intergovernmental agency agreement). The number of contracts that have been issued during the past decade is much higher. But only a handful have been subjected to close scrutiny with respect to their costs, relative to the cost of directly government provisions. Moreover, some of these studies examined contracts that were negotiated in the early days of this industry. It is difficult to have much confidence in conclusions about the relative costs of public versus private provision when we have systematic cost comparisons of such a small and dated subset. (Abt: 1998,46) In Florida and Arizona no

strong evidence of significant savings exists. In Louisiana, Tennessee, and Texas, the studies find that contracting did reduce costs to government. Some of the savings reportedly associated with contracting are seen to flow from lower spending by state governments for “overhead” administrative functions. These savings may only be apparent, an artifact of how government expenditures are allocated to all correctional facilities in the state. Governments will not actually realize these savings unless they actually reduce overhead spending in conjunction with contracting, rather than merely shifting the allocated share of an unchanged expenditure to the government-operated facilities. (Abt, 1998,46)

Generally unstudied in these few evaluations is the potential for either governments or private firms to control specific types of costs, such as spending for prisoner health care. Expenditures for prisoner health care have been rising at a much faster rate than for other non-medical correctional activities, in part because prisons are subject to the same inflationary pressures experienced in the broader health care marketplace. However, prisons have generally lagged behind other sectors in developing procedures for managing these costs. Private firms that operate prisons are certain to implement “managed care” strategies to contain costs, all of which could also be adopted by public correctional agencies. (Abt: 1998,46)

Charles Logan reported that the findings in the Louisiana studies indicated that the private facilities had fewer critical incidents, provided a safer work environment for employees, provided a safer living environment for prisoners, and involved proportionately more prisoners in basic education, literacy, and vocational training programs. This study was significant because it examined three identically designed prisons with highly comparable prisoner populations. (Thomas: 1997,2).

Studies that were conducted in Florida and Arizona show no strong evidence of significant savings. Tennessee and Texas, as well as Louisiana found that contracting did reduce costs to government. Some of the savings reportedly associated with contracting are seen to flow from lower spending by state governments for “overhead” and administrative functions. (Abt: 1998,46)

Even though cost containment is not the most frequently reported reason for contracting with private firms to operate prisons, it is no doubt a common hope among policymakers that governments will indeed save money by doing so. Whether contracting for prison operations

actually saves taxpayer's money remains an open question, however. (Abt: 1998,33)

The proponents of privatization claim that contracting does save money. Others say that there are not enough savings or that it costs more to contract the prison systems out. Unfortunately there has been no industry wide study to prove conclusively which side is right.

There are several reasons for this. It is reasonable to expect that one could easily answer the question by comparing expenditures for imprisoning offenders in a public correctional agency to the payments to private firms. Unfortunately, such comparisons are usually not so straightforward and, indeed, are often misleading for two principal reasons. First, the facilities may differ in ways that confound comparison of costs. Second, differences between public and private sector accounting procedures make the very identification of comparable costs difficult.

Although several studies comparing public and private correctional costs have sought to overcome these and other difficulties, not all have succeeded fully. Analysis of the studies' methods and assumptions, and reanalysis of their findings, suggests in some instances that the purported cost advantages, if any, of privately operated facilities may be less dramatic than reported. It is hard to make informed decisions on which system provides the best costs without valid and comprehensive studies. (Abt: 1998,34).

Determining how privatization saves the government money is difficult in many jurisdictions because no publicly managed prisons exist that are similar enough to warrant direct comparison with the private facilities. For instance, in New Mexico, the women's prison in the state's correctional department is operated by a contractor. Finding a comparable publicly operated facility in the state is impossible, and women's prisons are operated quite differently than facilities for men and generally cost more. (Abt: 1998,34).

The cost of prisons is also a function of their size, as larger facilities benefit from economies of scale up to a certain point. (Schmidt: 1984,355). How full- or overcrowded- they are also affects their cost. Other things being equal, more heavily utilized prisons, and even more overcrowded ones, are less costly on a per-prisoner basis because staffing levels in prisons are relatively fixed. Privately operated prisons are probably less likely to be overcrowded than public ones, and thus, finding similarly utilized public prisons in the same jurisdiction may be difficult (Abt: 1998:34)

Performance of public and private prison systems.

In the article “The organization of government in metropolitan areas: A theoretical inquiry,” Vince Ostrom and his colleagues discuss the nature of public goods and services. They define the conditions that give rise to public rather than private provision of goods and services. These three conditions are 1) public goods arising from efforts to control indirect consequences, externalities or spillover effects; 2) public goods provided because some goods and services cannot be packaged, and 3) public goods consisting of the maintenance of preferred states of community affairs. (Ostrom: 1961,831).

Externalities are caused when third parties become affected by the actions of two other parties. Packageability of goods and services is the ability to differentiate a commodity or service before it can be sold in the private market. The distinguishing factor in packageability is that people can be excluded from enjoying a private good. Public goods are not easily excludable to individuals. The private goods are also measurable and quantifiable with data. With the ability to monitor data, private goods can be analyzed for performance, and compared for their efficiency. The market also determines the price. In the private sector, the market drives firms to produce goods and services at the most efficient levels. This is not so easy with public goods and services. With provision of public services it is hard to develop effective measurements, because of the allocation of joint costs as well as joint benefits inherent in the public system. Public provision of goods and services may not be as efficient if there is no competition to determine pricing. Ostrom notes that with public goods and services involving “the maintenance of preferred states of community affairs,” a modified form of packagability occurs. The government can introduce a form of measurability and quantification. This exclusion can be modified from the individual consumer to all the members within a given boundary. (Ostrom: 1961,831) Ostrom points out that even though the government is in charge of the prison activities as a representative of the population, the government can contract these services if it better serves the people.

These are important concepts in understanding how government is organized to provide goods

and services to a given population. The government provides prison systems at the federal, state, and local Levels.

Efficiency is achieving an outcome with minimal factors of input. Efficiency is the wisest use of resources that produces the best services. The A.C.A. (American Correctional Association) accredits public and contracted facilities. The ACA monitors prison systems. In general the state and federal governments demand that the contracted systems perform like public systems. Performance is one measurement of efficiency. There are different factors, along with performance, which effect the efficiency of public and private systems. One factor stated by many experts is competition. Competition is not present in public prison systems. In contracted prison systems firms compete with each other and the market determines the price and factors needed to perform the job.

Policymakers will need to make choices relating to the performance of prison contractors versus public prison systems. The president's Commission on Privatization, established by President Reagan, describes contracting as a means not only of increasing the efficiency but also the effectiveness of public administration. Thus: "Contracting the administration of jails and prisons at the federal, state and local levels could lead to improved, more efficient operations. (President's Commission on Privatization, 1988, xviii) More recently, the National Performance Review has also supported privatization as one means of improving effectiveness as well as efficiency. (Abt: 1998,47 Charles Thomas and his associates report that studies of private prison operations in Florida, Louisiana, and the United Kingdom "demonstrate that these cost savings are often matched with performance improvements (e.g., fewer disturbances, fewer escapes, increased prisoner involvement in work programs, and more programs aimed at reducing recidivism. (Thomas: 1997, iv) The General Accounting Office of the United States is more cautious in their analysis of privatization. The GAO states they "offer little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service if they were to move toward privatizing correctional facilities. (GAO: 1996,3)

The policymaker needs to set up a system to monitor contractor compliance and be able to give contractors a well-defined statement of requirements before they bid on the contract. The

question of how well private prison systems perform in contrast to public prison systems needs to be addressed also. The Abt study published in 1998, surveyed all of the corrections departments across the nation to find out whether and why these institutions contracted for prison systems. The survey states that 23 states reported having contracts with private firms on December 31, 1997. The Federal Bureau of prisons, the Commonwealth of Puerto Rico and the District of Columbia also had contracts. In addition, two more states had intergovernmental agency agreements to house prisoners in other states. (Abt: 1998,47) The Abt group sent out surveys to all of the governmental units to ask what the reasons were for contracting with private firms. The study produced the reasons or objectives for doing this. These reasons are:

Objective	Number of States Citing this objective	% of States Citing This Objective
Reduce overcrowding	24	86
Speed of acquiring Beds	21	75
Gaining operational flexibility	17	61
Operational cost savings	16	57
Construction cost savings	16	57
Improving caliber of services	12	43
Reducing legal liability	11	39
Other	6	21

(Abt: 1998, 16)

The highest priority reasons for contracting these services are by far to reduce overcrowding, speed the acquiring of additional beds, and gain operational flexibility. The contracting in most jurisdictions surveyed did not result from the correctional agencies initiative. Of the 28 jurisdictions that were contracting with private firms in the closing days of 1997, 11 reported that the initiatives were mandated by the legislature, five by the governor, and three resulted from a court order or consent decree. Only seven reported taking the initiative to contract for private prisons. (Abt: 1998,16) If performance and cost were not the main reasons for contracting, should it make a difference to administrators whether they are receiving a good

market price and quality services? Responsible administrators and concerned citizens should be very concerned about this. How does one gauge the success of prison operations? What are the outcomes of prisons intended to be, whether publicly or privately operated? Reaching agreement on those questions has been difficult. (Abt: 1998,49)

What does performance mean with respect to prisons, both private and public? At the federal level the Government Performance and Results Act of 1993 (GPRA), the Clinger-Cohen Act of 1996, the revised handbook to the office of Management and Budget Circular A-76, and the Clinton Administration's major management reform initiative- the National Performance Review(NPR) have stimulated greater attention to improving government performance.

To many, the prevailing thought on imprisonment, is that it is a way to rehabilitate prisoners and lower recidivism rates. The recidivism rates have been high in recent years, which has made many correctional administrators look at imprisonment as at least a way to keep criminals off the streets and prevent them from committing crimes in society. (Abt: 1998,48)

Simple incapacitation cannot be the only purpose, however. Rather containment must also be constitutional. Faced with claims of appalling conditions in prisons, the federal courts began in the early 1970's to intervene in prison administration. Entire state prison systems were found to be in violation of the Eighth Amendment's prohibition of "cruel and unusual punishment," and nearly all states were forced to spend large amounts of money to institute the required improvements. In response to the perceived absence of national standards, correctional professional associations began to promulgate such standards for prison administration. Most prominent are those established by the American Correctional Association (ACA), first in the mid 1970's. Since then the American Correctional Association has published standards for many different types of correctional facilities. The American Correctional Association has established an auditing system to accredit facilities. (Abt: 1998,48) The effect of various trends has generally been to conceive of prison performance quite narrowly as conformance to law, state rules and regulations, and professional standards. Procedural compliance or accreditation is what most state correctional agencies contract with private facilities to do. (Abt: 1998, 48)

In general, the state and federal governments demand in their contracts that privately operated facilities perform like their public sector counterparts. The statements of requirements to the

contractors specify that compliance will be required with the same procedural rules, regulations, and standards that are in force in the public facilities. The American Correctional Association accredits public facilities. According to the Abt survey correctional administrators reported that at least 57 of the contracts in force at the end of 1997 required that facilities achieve an ACA accreditation within a specified time frame. (Abt: 1998,49)

The monitoring of private contracts requires that some time needs to be spent by state administrators performing these activities. Good performance is seen as complying with the terms of the contract-the rules, regulations, and standards included explicitly in statement of work or reference.(Abt: 1998,52)

The Abt Studies show that the bulk of contract terminations have resulted from a reduced need for beds. In five cases, terminations occurred as a result of vendor violations. In each of these five cases, the agency and the contracting facility were located in different states.

The ability to measure contractors' performance against public institutions is framed in the contract wording and also from standards devised by the ACA. There is no doubt that inclusions of such procedural requirements in contracts is necessary. Governments may remain liable for the performance of contractors. Compliance with national standards and laws provides governments a measure of protection against lawsuits (Abt: 1998, 50)

Our governments' practice of monitoring privately operated prisons varies widely. All contracts receive some oversight from the contracting agency. This ranges from minimal attention from a centrally located contract administrator to a combination of a contract administrator and one or more on-site monitors. (Abt: 1998, 50)

One way of conceiving of prisons' performance as procedurally based is to frame goals as *outcomes* and to identify and measure indicators that assess the facility's progress toward accomplishing these goals. This conforms to how many correctional administrators see their job. Even though legislators, governors, correctional theorists, and other parties may differ in how they define the mission of the prison, correctional administrators in public and private facilities generally agree with one another on both the general and specific goals of their assignment. Prisons should be operated to maximize public safety, either by keeping prisoners behind walls or maintaining strong controls over those who are released for short periods of work or education or for short furloughs and the like. Prisoners should be occupied rather than idle. Prisons should

be safe internally both for prisoners and staff. Health care should be sufficient. Public safety could be measured by numbers of escapes. The number of assaults by prisoners could be measured. Even though most correctional administrator could agree upon a number of outcomes that could be used to assess their success, in addition to compliance with various procedural rules and regulations and recognized standards, most contracts have not taken such an approach. Rather good performance is seen as complying with the terms of the contract- the rules, regulations, and standards included explicitly in the statement of work or by reference. (Abt: 1998, 52)

The 1996 GAO report states that assessments of quality can take several approaches. For example, one is a compliance approach. This approach involves assessing whether or to what extent the prisons being compared are in compliance with applicable American Correctional Association standards and /or other relevant policy and procedural guidelines and/or court orders and consent decrees. Another approach is to assess performance measures. For example, inspection results, and accidental injury reports. (GAO: 1996,5)

The Abt Associates survey of state administrators asked contract monitors to assess the performance of each of the facilities that were operated under contract with their agencies. More specifically, the monitors were asked, “ In your professional opinion, does the quality of service provided in this facility fall below, equal, or exceed (a) that of the contract requirements? (b) the quality of service in other reasonably comparable facilities in your system operated directly by the public correctional authorities?” Most (68 of the 89 responses) reported that the contractors’ performance met the contractual requirements; only three exceeded requirements; ten were seen as failing to meet requirements. Similarly, most (58) were assessed to be the equals in terms of performance to similar facilities operated by the government correctional agency; ten were thought to exceed the performance of these government facilities; and 12 were deemed inferior. Thus, about three-quarters of those facilities under contract with state or federal agencies in the closing days of 1997 were assessed as delivering performance equivalent to that found in comparable government operated facilities in the same jurisdictions. (Abt: 1998, 53)

Comparing the quality of service at private and public prisons also presents challenges and, in fact, can be more difficult than comparing costs. The concept of “quality” is neither easily

defined nor measured. For example, although the American Correctional Association (ACA) sets accreditation standards for prisons, accredited facilities can vary widely in terms of overall quality. According to ACA officials, such variances occur because ACA accreditation means that a facility has met minimum standards. (GAO: 1996, 5)

The 1996 GAO study concerned the Texas study of 1991, New Mexico study of 1991, California study of 1994, the Tennessee study of 1995, and finally the Washington study of 1996. Of these five studies, the Texas study did not assess quality of service. The New Mexico study was funded by the National Institute of Justice. This study compared the quality of service at three multi-custody facilities (minimum to maximum-security levels) for women, i.e., a private prison and a state-run prison in New Mexico and a federal prison in West Virginia. The California study was conducted by California State University. The study focused on three community correctional facilities for men and the contracts were held by the State of California. Regarding quality of service, the study compared the three facilities with two state facilities.

The Tennessee study compared two public prisons with one private prison. The Washington study was conducted by that state to consider whether to go to privatization as an alternative to public prison management. The study analyzed information from other states. Regarding quality of service, the study compared the three Tennessee facilities, the three Louisiana facilities, and two Washington facilities. (GAO: 1996,7)

The GAO report states that while the studies varied in terms of methodological rigor, they do, to differing degrees, offer some indication of comparative quality of service in the specific settings they assessed. Of the two studies that made the most detailed comparative assessments, one study (New Mexico) reported equivocal findings, and the other study (Tennessee) reported no difference between the compared private and public facilities. (GAO: 1996,7) The few studies that have compared the quality of service of private and public prisons provide little information that is widely applicable to various correctional settings. The GAO report states that the prisons studied were not necessarily representative of prisons in either the state studied or other jurisdictions. The GAO stated that the studies offer little generalizable guidance for other jurisdictions about what to expect regarding comparative quality of service if they were to move toward privatizing correctional facilities. (GAO: 1996,10)

The 1998 Abt study was a review of the evaluations for Massachusetts, Kentucky, California,

Tennessee, Arizona, Louisiana, New Mexico, Florida as well as the Washington State review of literature. (Abt: 1998,Appendix2, 3)

In 1987 and 1988, the Urban Institute undertook a study in Massachusetts and Kentucky to fill the void of empirical findings available to aid states and local governments in making choices about private corrections. While prison population growth and associated costs had led some to advocate the privatization of corrections, opponents of privatization questioned the propriety, legality, and constitutionality of private prisons. At the time of this study, there had been little empirical data used to test the assumption that the cost and quality of private sector correctional facilities were superior to that of public sector facilities. The institute's objective in this study was to assess and identify any differences in cost, service quality, and effectiveness between publicly and privately run facilities and to identify reasons for any differences that were found. Legal, propriety, and philosophical issues of private corrections were intentionally not addressed by the study. (Abt: 1998,Appendix2, 3)

The study compared three pairs of facilities, one pair of minimum-security adult facilities in Kentucky and two pairs of facilities which housed violent juveniles in Massachusetts. Each pair consisted of one private and one public facility. Common methodological methods were employed during the collection of data in both states. Although the study employed common data collection methods in both states, the analysis and reporting were produced independently for each state. The Abt Associates state that there was considerable loss of comparability in the application and interpretation of the measures and in the construction of the tables that were used to summarize the findings. They go on to report that this lack of integration defeated any benefit derived from common methodology. There were concerns in the comparability of inmate characteristics in each pair of facilities. The principal findings of the study were that the quality of services and programs were superior at the privately run facilities. The method for determining superior performance in the provision of services was based on counting the number of measures (from each of four types of data: agency records, inmate and staff questionnaires, interviews with facility officials, and visual inspection ratings) on which each private or public facility exceeded, or performed better, than its comparison facility. The study goes on to say that there were deficiencies in the statistical methods of analysis. There were no coherent or systematic models specifying desirable performance outcomes and structural or operational processes that would be expected to accelerate or inhibit those levels of performance. Performance models would have allowed the evaluators to

test for institutional differences in a more systematic, precise manner, explicitly acknowledge preexisting differences, and adjust the expected outcomes accordingly. The methods employed resulted in arbitrary decisions and attributions about degrees of comparability and levels of performance. The same could be said for the rest of the studies conducted. (Abt: 1998,Appendix2, 5)

In adult corrections, California entered into contracting for prison services in 1991 by allowing cities, counties, and private companies to operate Community Corrections Facilities (CCF's). Originally, these facilities were intended to house only inmates who had been returned to custody for parole violations. But given the crowding pressures in the state of California, the decision was soon made to allow new admissions in the facilities. Originally there were 12 facilities, but by the time of the Sechrest and Schichor study (1994), the number declined to 11. There were two types of data collected for quality comparisons. First surveys were administered to staff and inmates at each of the study facilities. Additionally interviews were conducted with the wardens at the study facilities. The second source of data came from official inmate data as provided by the Offender Information Services Branch of the California Department of Corrections (CDC). (Abt: 1998,Appendix2, 6)

The survey instruments used were taken from the surveys used in the study of private facilities in Massachusetts and Kentucky by the Urban Institute (1989). Unfortunately, because of study constraints, the surveys were administered to a fairly small number of inmates, and these inmates were not chosen randomly. The Abt Associates decided that since the results could not be generalized to the staff and inmate populations from whom they were drawn, there was no reason to review the results. In summary, the California study's methodological limitations prohibit drawing any overall conclusions about quality of service. (Abt: 1998,Appendix2, 6)

The Tennessee prison system came under intense capacity pressures in the 1980's. In 1991 the state adopted legislation enabling the contracting out of correctional services to private contractors. The enabling legislation required a research component to assess quality and cost (Tennessee Select Oversight Committee on Corrections 1995). As stated: TCA 41-24-105(d) The contract may be renewed only if the contractor is providing at least the same quality of services as the state at a lower cost, or if the contractor is providing services superior in quality to those

provided by the state at essentially the same cost. As a result, the Tennessee department of Correction along with the private contractor (CCA), were brought together to formulate a methodology for comparing these services. The Vanderbilt Institute assisted in this effort. The effort was not an academic research project but it fulfilled the requirements of the legislation. (Abt: 1998,Appendix2, 8)

Six elements of comparative methodology were used. Only three of the elements actually received weight in computing the final aggregate score. An audit portion counted for 60 percent of the total score. A list of 200 elements was compiled. Ratings of compliance in the areas of Administration, Safety, and conditions, Health Services, Mental Health, Treatment, and Security were compiled as well as an overall rating of compliance. In the first inspection the results were comparable at all of the facilities with the public facilities performing slightly better than the private facility. On the second inspection all of the facilities were virtually identical. The second element to receive weight was the safety and security index (25 percent). All of the institutions both public and private received exceptionally high marks and were virtually identical. The final element to receive weight (15 percent) was an index of programs and activities. This review was the numbers of inmates in education and work status. The Tennessee evaluation is often cited as one of the most methodological attempts at comparing private and public prisons. For one, it compares institutions that were of similar architectural designs, were opened at the same time, and were designed to house inmates of similar custody levels. Nonetheless, Abt Associates point out that there were six serious shortcomings to the evaluations. First, the reviews were based solely on operational audits of the same three facilities. Second it was not clear that the facilities provided an apples to apples and oranges to oranges comparison. Third the evaluation is a one- shot comparison even though data were collected over two years. Fourth only a single source of data, the compliance audit, was used to construct the final scores. Fifth there was no documentation of how the private sector had employed innovations in maintaining or improving quality. Finally there was no mention in the evaluation about the consequences of privatization, and how the public operations may have changed as a result. (Abt: 1998,Appendix2, 9)

The Washington State Legislative Budget Committee (LBC) was asked to submit a report by January 1996 on the feasibility of privatizing Washington State Department of Corrections

Facilities. Part of this study included an examination of quality issues. The researchers did not collect original data for their assessment of the impact upon quality created by contracting for correctional services. Instead, they reviewed studies conducted by Logan (1991) and the Tennessee Select Oversight Committee (1995). The Washington researchers concluded that these studies demonstrated no significant differences in quality between the publicly and privately operated prisons. They actually do not provide any information about how they reached this conclusion. The Abt Associates were surprised at this since the Washington (LBC) conclusion was at odds with Logan's claim that the private contractor provided better quality than the state and federal prisons in this study. (Abt: 1998,10)

The Utah-based firm Management and Training Corporation (MTC) won a contract from the state of Arizona in 1993. The private institution's name is now known as the Marana Community Correctional Treatment Facility (MTC). The contract between Arizona and MTC, by law, required that the contract could not be renewed unless there was evidence of either 1) cost savings and comparable quality or 2) comparable cost and superior quality. Dr Charles Thomas was selected to conduct the corresponding evaluation. Thomas was faced at the onset with a number of serious methodological problems. First, the Marana facility is a dual gender facility. There are no dual gender facilities operated by the state of Arizona to serve as a point of comparison. Second, the prisoner population profile is different from those of the publicly operated minimum-security prisons in Arizona. Third, the classification of the inmate population tends to be less serious at Marana than at other Arizona facilities. Finally the physical design of Marana is unlike that of other Arizona Facilities. Thomas decided to do a comparison of Marana with the average of all minimum-security prisons in Arizona. Thomas' concludes that there is a high risk that operating cost and performance comparisons of the Marana Community Correctional Treatment Facility could yield misleading results because there is no state-operated prison in Arizona that houses inmates similar to Marana or runs similar programs. Second, the performance comparison on the dimension of protecting the public safety interest as measured by the frequency of escapes, major disturbances, and injuries caused to visitors revealed that the record for the Marana Community Correctional Treatment Facility was superior to that of state operated level two (minimum) prisons. Third performance comparison on the dimension of protecting staff and prisoners from the risk of personal injury or death caused by homicide, battery, assault, and arson revealed that the

record of the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two prisons. Fourth, the performance comparison on the dimension of educational, treatment, and work programs offered at the Marana Community Correctional Treatment Facility and those found at the state-operated Level Two prisons varied too much. This did not allow for fair comparative conclusions to be reached. Fifth, the performance on the dimension of compliance with professional standards as measured by routine Department performance audits, litigation initiated by either prisoners or staff members, inmate grievances, and compliance with in-service training requirements for staff members revealed that the overall record of the Marana Community Correctional Treatment Facility was superior to that of the state operated Level Two prisons. Sixth, a balanced consideration of the entire set of individual performance indicators revealed that the overall performance record of the Marana Community Correctional Treatment Facility was superior to that of the state-operated Level Two prisons. Finally, notwithstanding the conclusion that, when compared with all state-operated Level Two prisons, the quality of performance at Marana was superior to that of the state-operated prisons, it was found that one or more individual state-operated prisons had performance records that were equivalent or superior to that of Marana. (Abt: 1998, Appendix 2,12)

In 1996 the state of Louisiana had funded an evaluation of its prison privatization efforts. Archambeault and Deis produced a report comparing 3 institutions which have the same architectural design, accommodate approximately the same amount of inmates, were built and activated at approximately the same time, are located in rural areas of the state, and house inmates of comparable security levels. Allen Correctional Center is operated by Wackenhut Corrections Corporation (WCC). Avoyelles Correctional Center is operated by the Louisiana Department of Public Safety and Corrections, And Winn Correctional Center is operated by the Corrections Corporation of America (CCA). The primary reason for this study was to evaluate the cost and performance of two private and one public prison. Over 200 measures were collected and analyzed by Archambeault and Deis. These measures covered issues about safety, risk, effectiveness, performance, and cost. The data covered several years (fiscal years 1992 through part of fiscal year 1995) and represented monthly occurrences at the facilities. The performance measures included data on escapes, assaults on staff and inmates, assault outcomes, sex offenses, aggravated sex offenses, institutional disturbances, deaths due to violence, suicide, of illness, disciplinary

actions, gunshots, grievances, drug tests, communicable diseases, inmate education and vocational training participation, GED's earned, basic literacy, college participation, and various indicia of medical care. Staffing data included use of sick and maternity leave, resignations, and grievances. Each performance measure was analyzed separately; however, scales of these measures were also constructed and analyzed. (Abt: 1998, Appendix2, 17)

Archambeault and Deis concluded that the two private prisons outperformed the public institution on most of the performance measures, including critical incidents, safer working environment for staff, a safer environment for inmates, judicious use of disciplinary actions, more efficient use of security personnel, higher inmate program participation, and higher use of inmate transfer to community settings. The public institution was credited with outperforming the private institution on measures of escape, aggravated sex offenses, substance abuse, the breadth of education and vocational training in the number of inmates served, and the breadth of treatment, recreation, social services, and habilitative services to inmates.

Robert C. Thomas, the principle management Audit/Supervisor for the State of Washington's Joint Legislative Audit and Review Committee expressed concerns about the validity of Archambeault's and Deis' reporting mechanisms. He stated that the private prison managers might not be reporting all incidents. On page 513 of the Archambeault and Deis report they make a statement, "Privately operated prisons have a definite place in the planning of any state's total prison system." Thomas argued that the conclusion was unwarranted by the study and that a private alternative may not be in the best interests of the state. The Abt report defended Archambeault and Deis by saying that their conclusion was more guarded. Abt contends that the authors conclusion went on to state that privatization of prison beds should be limited to ensure that the incentive to compete is not lost. (Abt: 1998, Appendix2, 21)

Charles Logan has published, "Well kept: Comparing quality of confinement in private and public prisons," as both a National Institute of Justice monograph and a condensed version in the Journal of Criminal Law and Criminology (Vol. 83, PP 577-613, 1992). This report was based on the New Mexico prison report, taken primarily from a report by Harer, Karacki, and Gaes (1995) In both his monograph and paper, Logan first outlined a theoretical model, the Confinement model, which he used to form the basis of comparisons among three institutions. He proceeded

to develop institution performance indicators, which represented various dimensions of his Confinement model. This confinement model is succinctly represented in his own words: The mission of a prison is to keep prisoners—to keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy—and to do it with fairness, without undue suffering and efficiently as possible. (Logan: 1992,580)

The authors of the Abt study agree with Logan's conceptual framework, but they believe there are critical goals not adequately addressed in his model. The Abt study also was critical because Logan used three institutions, which limited the kinds of analysis that could be employed. He also had probable bias with using staff perceptions to rate the performance indicators at each of the institutions. Other biases, noted by Abt, were that members of the private staff worked as public prison guards previously, and the private facility was brand new as opposed to the older public facilities. The final and perhaps most damaging bias influence is that Logan did not have a full complement of measures for each institution for computing the overall index of "quality." In particular, approximately 30 percent of the measures that were used in the comparison were missing for the Federal facility. The Abt study remarked that Logan had done a remarkable job conceptualizing the dimensions of confinement, but they strongly believe that his lack of institutional experience limited his ability to compare the correctional institutions on specific performance indicators, especially since he relied on his own judgment about performance indicators. His lack of fundamental understanding about how prisons operate and how they are managed limits the usefulness of "Well Kept." Due to the methodological problems in Logan's works the Abt report goes on to say that his attempts to evaluate the relative merits of public and private facilities falls far short of rigorous or conclusive analysis. (Abt: 1998,Appendix 2,27)

A final study noted by Abt was a 1998 Florida evaluation conducted by Lanza-Kaduce and Parker. This study compared recidivism rates of inmates released from prisons operated by the Florida Department of Corrections to those inmates released from a prison operated by the Corrections Corporation of America and a prison operated by Wackenhut Corrections Corporation. The at-risk release period for the offenders was 12 months and recidivism was defined either as a re-arrest, a new offense, a new commitment, a technical violation, or a summary measure based on the first four indicators. The report gave the following results: 1)

private releasees had a lower recidivism percentage on every one of the 5 indicators except technical violations. The overall measure indicated a recidivism percentage of 17 percent for the inmates released from private prisons and 24 percent for inmates released from the public institutions. A critical assessment of this study was written by the Florida Department of Corrections. This report names four significant problems with the Lanza-Kaduce and Parker study. The first problem focused on the putative equivalency of the private and matched public inmate releasees. The second issue is that over 30 percent of the individuals housed in the private institution were previously housed in the public institutions. A third issue revolved around the relatively small size of the sample. The final, more serious error, was the way in which Lanza-Kaduce and Parker procedurally measured recidivism. (Abt: 1998, Appendix 2,29)

The Abt summary of the previous studies concludes that for the most part those that have compared public and private corrections have concluded that the private correctional facilities performed as well or better than the public institutions. However they found that most of the studies were fundamentally flawed. The Abt study agrees with the GAO report of 1996 that there is “little information that is widely applicable to various correctional settings (p.11).” Abt goes on to say the most significant problem with all the studies is that they fail to develop a coherent model of institutional performance in terms of cost and quality of operations. Such a model would include the structure of the relationship between process and outcome measures. The model would also make explicit those factors that must be controlled to make institutional comparisons meaningful. (Abt: 1998, Appendix 2,31)

Conclusions of the Studies

There is increasing pressure from the public to decrease costs of services that are supplied by the government. Taxpayers are becoming increasingly resistant to any tax increases. The need for government services still are being demanded. Government agencies at the federal, state, and local levels have turned to privatization of services in order to reduce budgets, maintain the level of services, and to become more flexible in creating service delivery mechanisms. Has the analysis of current data proven conclusively that privatization is the most cost-effective and quality method of administering prison systems?

Many opponents of prison privatization argue that the cost studies do not prove that privatization saves money. The proponents of privatization of prison systems state that there is sufficient information to prove privatization saves money. When I look at the information from the studies it is clear that more studies need to be conducted to prove whether privatization does indeed save money. There has been no industry-wide study conducted to prove or disprove conclusively that privatization of prison systems saves money. Conducting an industry-wide study would be a massive undertaking. There are many issues, as I have mentioned throughout this thesis that would have to be addressed. One issue that would have to be addressed is to have a cost model that levels the cost systems in the public and private operations. Accounting procedures of public and private prison systems differ. Public accounting procedures make cost identification especially difficult due to the deficient treatment of capital expenses, the focus on the agency rather than the service delivered, and methods for allocating overhead costs. (Abt: 1998,35) Private firms have adopted accounting conventions to spread expenditures for capital assets throughout the period of the 'assets' useful life, so that the year-to-year cost of a service includes some portion of the physical assets that are "consumed" in the production of that service. Public accounting systems make no such attempt. In the public sector, the capital expenditures are accounted for in the year they occur. (Abt: 1998,35) In public accounting, dispersed costs are not necessarily borne by the agency that has responsibility for prisons. These costs are absorbed by several agencies. Special studies are required to capture all expenditures from all of the agencies. There is also the problem of capturing all the costs of the private firms that may be borne by the public organization. This is

especially true with the costs of monitoring the private company by the government. Overhead expenditures incurred by various agencies of government in support of prisons and prison administration must be borne by both the public and private prison systems. There needs to be an agreement between industry professionals and academicians on how these cost systems should be developed and utilized. (Abt: 1998,37)

Another issue, determining how privatization saves the government money, is difficult in many jurisdictions because no publicly managed prisons exist that are similar enough to warrant direct comparison with the private facilities. Professionals and academicians need to agree and implement a costing method to effectively level up these types of differences. The revitalization of privatization of public prison systems has only occurred since the-mid 1980's. There have not been enough data accumulated to prove convincingly that privatization saves money. Knowing that this industry is growing at ever increasing rates requires more studies, to be conducted, which have validity and can be generalized to prisons throughout the United States. As the 1996 GAO report stated, these studies should be conducted over several years using multiple data sources. (GAO: 1996,1)

Professor Charles Thomas, the Director of the Private Corrections Project, asserted in his Private Adult Correctional Facility Census that over the last decade reasonable assessment of the available cost analyses lends at least qualified support to the claims of privatization proponents that meaningful costs savings can be achieved by contracting out. To be sure, there is little one can find in this body of evidence that would support an expectation of massive cost savings. All other things being equal, for example, a typical American jurisdiction could anticipate that economies in the rough range of 10 to 20 percent would be realized by privatization-perhaps at the low end of the range for initiatives focusing on the privatization of existing facilities and at the high end of the range for new design-finance-construct-manage projects. It would be quite misleading to describe cost savings of this magnitude as trivial. (Abt: 1998,33)

Dr. Thomas, in his critique of the GAO report of 1996, states that although the research literature quite clearly indicates that assessments of the cost and benefits of correctional privatization vary from place to place and study to study, it supports at least two important conclusions. More than a decade of experience by contracting agencies on three continents consistently reveals that, first, private firms typically deliver correctional services of a caliber at least equal to those provided by government agencies and, second, that they do so at a cost

below--often substantially below---agency costs. The fact that there is such a large body of supportive evidence is not, of course, sufficient cause to recommend the privatization of all correctional facilities. Having had more experience than most with correctional privatization, Thomas would be the first to urge careful assessment of its costs and benefits, carefully and that this alternative be selected only when doing so serves the public interest. The goal is to increase accountability, effectiveness, and efficiency rather than accord preferential treatment either to public or private providers of correctional services. (Thomas: 1996,1)

Study	Cost Savings of Privatizing
Tennessee, 1989	5%
Texas, 1991	14%
Texas, 1995	21%
Florida, 1993	8% to 10%
Kentucky, 1994	9%
Tennessee, 1995	0%
Louisiana, 1996	0% to 2%
Kentucky, 1996-97	14% to 16%
Arizona, 1997	12%

(Privatization Database: 1997,1)

However, despite the claims about cost savings and increased value, in reality there have been no empirical studies documenting innovations in the private sector in the use of labor or the purchasing of goods and services. What is needed are case studies that document the innovations developed by the private sector that produce added value in the use of labor or in purchasing practices. (Camp 1998). There needs to be documentation on how the labor use and purchasing practices of public sector prisons change as a result of the dynamic interplay between public and private sectors. (Abt: 1998, Appendix 2, 32)

The quality of these systems needs to be measured consistently and these measurements must be validated to ensure the measurements are applicable. It is necessary for future studies to equate the quality measurements of the public and private facilities. The 1998 Abt study argues that

publicly and privately operated facilities may not be sufficiently comparable. The basis of this argument is that in some jurisdictions it is difficult to compare prison systems because similar private and public prisons do not exist. The GAO concluded in its 1996 study that the five studies they reviewed offered little generalizable guidance for other jurisdictions about what to expect regarding comparative operational costs and quality of service. (GAO: 1996,4)

The 1998 Abt study was a review of the evaluations for Massachusetts, Kentucky, California, Tennessee, Arizona, Louisiana, New Mexico and Florida, as well as the Washington State review of literature. The Abt study systematically analyzed the different evaluations in terms of the methodology employed. The study looked at whether the evaluations compared institutions on the basis of performance measures and/or an audit/compliance approach. The Abt study examined the equivalence of private and public facilities, determined whether multiple indicators or data sources were utilized for cross validation; and whether the assessments were based on one-shot or multi-year comparisons. The Abt study also reviewed the reports to assess the types of innovations in the quality of services provided to the inmates. (Abt: 1998,Appendix2, 2)

The Abt study was very critical of the studies conducted, and with their criticisms, they built up a proposed optimal design for assessing performance among institutions. They have suggested that the evaluation and experiences of the Federal Bureau of Prisons with the private Federal prison operated by Wackenhut Corrections in Taft, California addresses many of the criticisms of existing evaluations of privatization. A complete discussion of the proposed evaluation can be found elsewhere (Office of Research and Evaluation, 1998). The discussion proceeds by addressing each of the areas covered in the summary table of existing quality evaluations. The Taft study is considered by the Abt Associates to be a model , which they believe, meets the criteria of a sound evaluation. The elements of this study are:

System Impact: In order to ensure that the institutions are compared on measures that are adjusted for features that are unrelated to institutional performance, it is necessary to develop models of the outcome measures that follow the procedures

Innovation: Innovation is touted as one of the reasons that private sector companies can operate prisons more efficiently than the public sector without sacrificing the quality of services provided to inmates and the public. It is necessary to capture this component in an evaluation.

Measures: There needs to be use of many different sources of information. This has to include an audit/compliant component.

Points in Time: An acceptable time frame for an evaluation is a 5-year period. This would reduce atypical data performance collected over short periods of time.

Equivalent Facilities: The Taft facility, as well as the three formal comparison institutions, were all built on almost identical architectural plan at the same time.

Equivalent Inmates: Assignment of inmates to the institutions is not random. All inmates studied are to be received from institutions proscribed by Bureau Of Prison policy. There should be no attempt to send specific types of inmates.

Model Approach: Statistical models will be utilized that are appropriate for the different types of data collected as part of the Taft evaluation.

Statistical Approach: Most of the statistics employed in the Taft evaluation will be used to statistically adjust comparison measures.

Security Level: All of the institutions are designed to house low-security inmates. For the most part, that is the type of inmate that is housed in the facilities.

Type of Facility: All of the institutions in the Taft evaluation house only adult offenders.

Gender of Inmates: All of the inmates are male. (Abt: 1998, Appendix 2, 35)

Most evaluations of the respective strengths and weaknesses of public and private prisons have not relied upon strong theory to guide evaluations. In the Taft evaluation, the theory of what constitutes a “good” prison as outlined by academics is supplemented with the collective practical knowledge of practitioners in the Federal Bureau of Prisons. We have analysis on only a handful of private prison systems. Even if these studies were rigorous and methodologically sound, the private institutions captured in these analyses may, or may not, represent the performance of the industry as a whole. (Abt: 1998, Appendix 2, 35)

My analysis of the current studies available on both cost and performance leads me to believe that more studies need to be conducted to prove whether privatized prison systems are most cost effective and perform better. That is not to say that private prisons should not be allowed to be considered as an alternative in any state’s prison provision plans. The private prisons, even though not proven conclusively to be better, offer public managers alternatives such as flexibility in prison provision choices, and competition which could stimulate the public prisons to operate more cost effectively and improve performance.

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