



Byron Eugene Price and John Charles Morris, Editors

PRISON PRIVATIZATION

The Many Facets of a Controversial Industry

VOLUME I: The Environment of Private Prisons

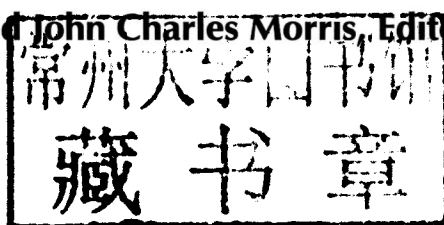


Prison Privatization

THE MANY FACETS OF A CONTROVERSIAL INDUSTRY

VOLUME I: THE ENVIRONMENT OF PRIVATE PRISONS

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AN IMPRINT OF ABC-CLIO, LLC

Santa Barbara, California • Denver, Colorado • Oxford, England

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Library of Congress Cataloging-in-Publication Data

Prison privatization : the many facets of a controversial industry / Byron Eugene Price and John Charles Morris, editors.

v. cm.

Contents: v. 1. The Environment of private prisons —

Includes bibliographical references and index.

ISBN 978-0-313-39571-0 (hbk. : alk. paper) — ISBN 978-0-313-39572-7 (ebook)

1. Prisons—United States. 2. Privatization—United States. 3. Corrections—Contracting out—United States. I. Price, Byron Eugene. II. Morris, John Charles. HV9469.P747 2012

338.4'7365—dc23

2012024729

ISBN: 978-0-313-39571-0

EISBN: 978-0-313-39572-7

16 15 14 13 12 1 2 3 4 5

This book is also available on the World Wide Web as an eBook.

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Praeger

An Imprint of ABC-CLIO, LLC

ABC-CLIO, LLC

130 Cremona Drive, P.O. Box 1911

Santa Barbara, California 93116-1911

This book is printed on acid-free paper ♻

Manufactured in the United States of America

Prison Privatization

Volume I

The Environment of Private Prisons

Volume II

Private Prisons and Private Profit

Volume III

The Political Climate of Prison Privatization

This book is dedicated to my mother, Mabel E. Price, for being my inspiration.

—Byron E. Price

This book is dedicated to my wife, Elizabeth Dashiell Morris, for her love and support.

—John C. Morris

Acknowledgments

Editing a three-volume book series is, without a doubt, a group effort, and the end result is the culmination of the work of many people. We wish to thank Michael Wilt, Valentina Tursini, and Beth Ptalis, our editors at ABC-CLIO, for their help and endless patience in dealing with questions, changes, and technical issues. We are very grateful for their support. We would also like to thank our copyeditor, Betsy Crist, for her tireless work in turning this manuscript into a reality.

We are also very grateful to our many contributors who not only wrote the chapters in this volume but also endured many rounds of edits and changes, and who waited patiently while we brought the project to fruition. We would also like to thank Matt Gable for his wonderful technical support and Katie Neill for her meticulous editing. We also thank Brittni McCrimmon and Casey Smith for their help keeping the many versions of manuscripts organized and available to us along with the team at BookComp, Inc. who put this book into pages. Without the support of all these people, this project would have forever remained an idea in our minds. We are indebted to all of you.

—Byron E. Price and John C. Morris

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Introduction

The Environment of Private Prisons

Byron E. Price and John C. Morris

The past four decades have witnessed a worldwide movement toward the privatization of goods and services traditionally provided, produced, and delivered by government. While privatization is certainly not a new phenomenon, a renewed emphasis on free market capitalism, coupled with ideologically driven desires to make government smaller, less costly, and less intrusive, have led governments at all levels to seek alternative solutions to the delivery of their services. In the United States, these forces were coupled, beginning in the late 1970s, with a grassroots antitax movement. Originating in the form of a property tax revolt in California, this movement quickly spread around the country and produced added pressures for governments to “do more with less.”

E. S. Savas (1987, 3) defines privatization as “the act of reducing the role of government, or increasing the role of the private sector, in an activity or in the ownership of assets.” An early proponent of privatization, Savas identifies four forces underpinning the movement toward privatization. Pragmatic forces are interested in better government and believe privatization will lead to more efficient public services. Ideological forces are concerned with the size and power of government and do not trust the government’s ability to make good decisions. Commercial forces want to expand the size of the private sector by reducing government’s role in the economy. Finally, populist forces believe market choice and community empowerment are superior to choices made via indirect democracy (Savas 1987, 4–10).

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Privatization has been present in the United States since the founding of our nation. George Washington's army purchased ammunition, clothing, food, and shoes from private sector merchants. Roads and bridges were often built by contracted construction workers. As state and local governments began to provide more goods and services to their citizens, many of these services, at least in part, were contracted out to private companies. In 1984, a survey of nearly 1,800 local governments in the United States conducted by the International City Management Association identified nearly 70 categories of services privatized by these governments, including services ranging from public works to parks and recreation to labor relations. A similar picture emerges when one examines the use of privatization at the state government level.

More recently, scholars have begun to turn their attention to both the underpinnings of privatization arguments and the impacts of privatization on citizens and governments alike. Although some scholars have concluded that privatization has fulfilled (or surpassed) its promises (see Savas 1987, 2000), others (Donahue 1989; Kettl 1988, 1993; Sclar 2000) are more cautious. Indeed, the literature has grown to include service areas ranging from infrastructure to environmental management to social services.

Historically, much of the privatization undertaken in the United States has involved goods and services that are generally easy to define and measure. Services such as pothole repair, utility meter reading, building inspection, trash collection, and data processing are generally noncontroversial and are easily specified and monitored in a contractual setting. These services also represent ancillary functions of government, in that they do not rely on core governmental powers to accomplish. On the other hand, prison privatization necessarily involves the use of the coercive power of the state, a core power granted by citizens only to government. Coercive powers—the ability to deprive a person of liberty or life—are embodied in both the Declaration of Independence and the Constitution, and their use by government is tightly controlled. The Bill of Rights, for example, is the embodiment of these principles in the Constitution, and the writings of the Founding Fathers underscore the philosophical limitations on the use of coercive powers. We empower our police forces to exercise coercive powers, but under very tightly controlled circumstances, and with much direct oversight. Any time a police officer fires a weapon, an investigation

is conducted to ensure that such action was justified under the circumstances. The key concept is accountability—we recognize the importance of the exercise of coercive power, but we require direct accountability of those entrusted with these powers.

Prisons also exercise coercive power, in that they restrain the freedom of inmates against their will. Although society incarcerates people as a form of punishment, we also expect inmates to be treated humanely and to be prepared to rejoin civil society at the conclusion of their punishment. We thus have a direct interest in the experiences of inmates while in custody. Like police forces, prisons are subject to extensive oversight, and the use of excessive force or inhumane treatment is carefully investigated. If an investigation finds that the coercive power was improperly used, there is a mechanism in place to hold those responsible directly accountable for their actions.

On the other hand, a significant body of scholarly work questions the effectiveness of accountability mechanisms in privatized arrangements (see, for example, Breau et al. 2002; Donahue 1989; Kettl 1993). The argument generally suggests that lines of accountability are made more tenuous when the enforcement mechanism is a contract; moreover, the ability to hold one's agent accountable for his or her actions is dependent on the ability to monitor effectively the activities of the agent. Government must reorient itself from a producer and deliverer of services to that of a contract monitor. Government must also become skilled at choosing appropriate and capable partners with whom to contract for these services; this requires government to become what Kettl (1993) describes as a "smart buyer." For those interested in democratic accountability, privatization ultimately results in a greater institutional distance between citizens and those producing and delivering services on their behalf, thus rendering effective accountability much more difficult.

Nonetheless, the use of privatization to produce and deliver goods and services to the public is clearly part of our national landscape. Moreover, recent trends have shown a greater willingness to relinquish the coercive power of the state to the private sector, whether in the use of military force (see Rasor and Bauman 2007; Scahill 2007) or through the privatization of prisons and jails. This willingness to relinquish a core power of the state to a private actor cannot go unremarked, and many scholars have begun to look more closely at this trend.

The Environment of Public Prisons

Private prisons have emerged as a result of the continuous growth in the United States prison population and the neoliberal policies of the Reagan era, with its emphasis on free market solutions as the panacea to address government failure. In much of the literature the move to privatize prisons is explained as a response to fiscal stress as a result of increasing correctional costs, mandatory sentencing laws, and revenue shortfalls in some states. For instance, the state of California is a great example of a state with each of the problems mentioned earlier. As a result, California is bankrupt and has had to privatize many of its prisons because it cannot pay its bills—the state has sent creditors IOUs. Because of these pressures, many states have no other choice but to seek an alternative such as privatization, especially those states with fiscal capacity problems and burgeoning correctional expenditures. However, it remains unclear whether states save money as a result of privatization. Some studies show that there are no significant savings when a prison is privatized; but other studies claim that savings are achieved when prisons are privatized. These conflicting studies force us to ask, what is driving the decision to privatize state prisons?

The privatization of prisons began to reemerge in the mid-1980s. Some scholars thought private prisons would never make a comeback after the problems they had in the 19th century, when they were as popular as they are now. However, the war on drugs and get-tough-on-crime campaigns helped accelerate the need to privatize prisons because of the excessive amount of people incarcerated as a result of these campaigns. So many people were locked up during these campaigns that states began to run out of space to house those arrested, convicted, and sentenced, in many cases for nonviolent offenses that previously would not have warranted incarceration. Mass incarceration reached a tipping point, causing courts to find that state prisons were so overcrowded that they violated the Eighth Amendment to the Constitution. Courts mandated that states alleviate their overcrowding problems by passing enabling legislation to allow prisons to be privatized. Coupled with their overcrowding problems and the costs concomitant with housing a burgeoning prison population, many states opted to privatize the prisons instead of building new prisons.

In 1995, the National Council of State Legislatures found that corrections systems were the fastest growing part of state budgets, increasing on

average 13.3 percent. According to the 2008 Pew Center on the States report, 13 states spend upward of \$1 billion a year on corrections systems. In this same study, it was reported that five states spent as much on corrections as they did on higher education (Pew Center 2008, 16).

As states faced the correctional spending crisis head on, many opted to seek alternative solutions such as privatization to address the problems corrections presented. This transition from an unwillingness to privatize functions to an acceptance of, and in some instances a preference for, contracting out for certain public sector functions began with the national elections of 1978 and 1980, which revealed an auspicious change in public attitudes toward a greater role for the private sector in American life. With voter approval of privatization established, states thought this was an acceptable and even desirable solution for dealing with prison overcrowding.

One of the most common rationales for privatizing prisons is that it saves taxpayer money. However, to date, the research that explores this claim is still inconclusive. Some studies show that for-profit prison providers can operate more cheaply (Calabrese 1993; Gorham 1983; Hanke 1987; Morris 1999; Segal and Moore 2002). The argument that private prisons can manage prisons at a lower cost and provide a higher quality of service resonates with policy makers in the current fiscal climate. Legislators and citizens are also attracted to the idea that for-profit prison corporations can finance, construct, and build prisons with private capital. Proponents of privatization tout this as one strength of such an arrangement, although they leave out the fact that the lease payments for the prison construction are paid at a higher interest rate and are riskier than if the construction were paid for with public money. Still, many states are unable to meet additional prison space requirements because of fiscal problems associated with bad budgeting practices, waste, exorbitant correctional costs, and general poverty, especially in the South, and thus believe they have limited options.

In addition to examining the issues related to prison privatization and monetary savings, this volume addresses various aspects of the private prison environment and expands on the debate regarding the motivations behind privatization and whether the private sector is truly superior to the public sector in the operation and management of prisons. Various types of private arrangements are examined in this volume, such as detention centers and community corrections. Lastly, this volume examines such topics as recidivism, Freedom of Information Act (FOIA) request concerns, and

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the more recent phenomenon of the globalization of private prisons, which keep this controversial issue at the forefront of current policy debate.

Chapter 1 provides a history of private prisons, including a discussion of the various periods during which prison privatization has been embraced. King provides an overview of private prisons and connects the beginnings of private prisons to the development of the convict leasing system. He covers many of the standard reasons why prisons should be privatized.

In chapter 2, Kim echoes other scholars in the field when she contends that there is a long history of public-private partnerships in corrections revolving around inmate labor arrangements. The chapter then explores the effectiveness of prison privatization at the local, state, and federal levels. She too finds that the quest for inexpensive labor has been one of the driving forces in the growth of prison privatization.

Barfield-Cottledge, in chapter 3, profiles private prisons and examines the fierce debate surrounding the decision to privatize prisons. She looks at the adult and juvenile populations that private prisons house, and, like Kim, she too finds that inmate labor is an impetus in the drive to privatize prisons. This chapter examines how private prisons are used as an economic development strategy and closes with a discussion on which entity is better suited to manage prisons, public or private.

Jing looks at the United States experience with privatization in chapter 4, and he too finds that the desire to exploit inmate labor is a salient factor regarding the impetus for prison privatization. His chapter also explores the rise of conservatism in social control policy and of neoliberalism in economic restructuring policies and their impact on privatization decisions.

In chapter 5, Kenter and Prior examine whether the private prison model has been effective abroad. They find that many of the same issues that drove prison privatization in the United States led to the adoption of private prisons in other countries. For example, issues such as overcrowding, the desire to reduce the size and scope of government, and a new political conservatism factored prominently in the decision to privatize in many European countries.

Chapter 6 provides an in-depth case study of the decision to allow private prisons in Mississippi. In this chapter, Morris links the outcomes desired by policy makers to the outcomes they actually experienced. By employing a discussion of government failures and market failures as justification for policy change, Morris concludes that attempting to correct one sort of failure may well lead to the creation of other, unintended failures.

In chapter 7, Treadwell explores the use of FOIA requests and the role they may play in increasing private prison accountability to citizens. She then looks at how prisons have become de facto health systems and examines the impact of private prisons' refusal to acknowledge and respond to FOIA requests regarding inmates' health. The chapter closes by showing how the lack of access to health records adversely affects community health.

One issue that private prison corporations do not raise in their bid to take over for the government in prison operations and management is their ability to reduce the recidivism rate. In chapter 8, King explores the recidivism issue and compares public and private prisons to see which is more effective in reducing the rate at which inmates re-offend.

Taylor-Grover, Horent, Cal, and Sterling use chapter 9 to discuss the increasing use of private detention centers in terms of the implications for policy making. They trace the various crackdowns on immigration and the role this has played in increasing the use of private detention centers.

In chapter 10, Berry-James looks at the increasing role of private providers in the management of juvenile facilities. She briefly discusses the distinguishing features of the adult system versus the juvenile system. Furthermore, the chapter examines the racial composition of juvenile facilities and draws attention to evidence that minorities have disproportionate contact with the juvenile system.

Lee discusses private prisons and community corrections in chapter 11 and finds that state budget cuts have been instrumental in increasing private participation in community corrections. She looks at issues such as privatizing probation and parole and using electronic monitoring and how these policy changes will increase private involvement in the correctional system.

Finally, chapter 12 explores the correlation between prison population growth and private prisons. Smith and Hattery find that states sought prison privatization to reduce fiscal burdens brought on by the imprisonment binge. They look at the drivers of the population explosion of prisons, such as the war on drugs and three-strikes laws, and explicate how these factors increased private involvement in prisons.

The works in this volume, and in its two companion volumes, examine our state of knowledge in the realm of prison privatization. Our purpose here is not to proclaim this (or any) form of privatization to be good or bad,

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but rather to provide a fully detailed review of the many issues that arise when we decide to privatize prisons. The decision to privatize any good or service is necessarily a policy decision, and is thus tightly connected to the sets of values that serve to define the different positions on the question. Because values are normative, they cannot be proven true or false; they are simply different. Readers of these volumes will recognize many arguments in the prison privatization debate, but they will likely find other arguments new and unremarked. It is left to the individual reader to conclude whether any specific argument is worthy or not; our task is to present the arguments for thought and discussion. Reasonable people may arrive at opposite positions on an issue, but those positions are always more intellectually honest if they are based on an understanding of both sides of a debate.

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