

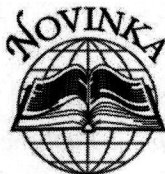
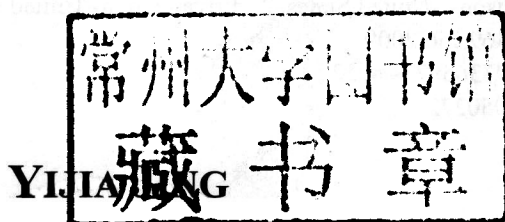
Prison Privatization

A Study of the Causes and Magnitude

YIJIA JING

Novinka

**PRISON PRIVATIZATION: A
STUDY OF THE CAUSES
AND MAGNITUDE**



Nova Science Publishers, Inc.
New York

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LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Jing, Yijia.

Prison privatization : a study of the causes and magnitude / Yijia Jing.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-60692-797-7 (softcover)

1. Prisons--United States. 2. Privatization--United States. I. Title.

HV9469.J56 2009

338.4'7365973--dc22

2008050272

Published by Nova Science Publishers, Inc. ✚ New York

**PRISON PRIVATIZATION: A
STUDY OF THE CAUSES
AND MAGNITUDE**

DEDICATION

To my parents

PREFACE

Dr. Yijia Jing breaks new ground in his sophisticated study of prison privatization in the United States. Jing tackles head-on alternative explanations for the privatization of prisons using American data. He looks at the privatization phenomenon through the prism of the wide variety of practices across the American states. As he notes, the privatization phenomenon is not merely a dichotomous function of yes or no, it also varies in form across the states and those variations may be every bit as important as to whether there is any privatization at all. These variations include, among other things, private ownership of prison facilities, the private contracting of many of the functions of prisons, and the offloading of prisoners to facilities in other states. In sum, privatization is not an "it". Rather, Dr. Jing emphasizes, privatization takes a variety of forms.

Beyond the complexity of the forms privatization can take, Jing's study also identifies what he calls "instrumental" and "political" explanations for privatization. Briefly, instrumental factors refer to those that are economically rational, for example, the higher wages paid to personnel in publicly run institutions than in privately run ones. Labor cost differentials would be expected to provide impetus to the drive toward privatizing prisons. Privatized prisons are less expensive but in part that is because they also have a lower risk share of the prison inmate population. The lower wages in the private sector prisons, however, are to some extent offset by significantly greater turnover and by substantially less pre-service training among their personnel. An alternative explanatory pathway is what Jing identifies as "political". The political explanations have to do with choices made about punitiveness and the consequent higher rate of incarceration in some states more than others owing mainly to ideological differences in methods of crime control. As is often the case, the pathways are not exclusive. Both political explanations and instrumental ones often do well. Measures of state liberalism, for instance,

have significant and inverse influences on prison privatization but cost per inmate (an indicator of support system costs) are also significant and positively related to privatization.

Jing's book demonstrates an extraordinarily acute and sensitive understanding of the variety of cultures across the American states and how these interact with instrumental considerations. He goes beyond his large scale data base to control for states with similar instrumental problems but different politics. Here, the choice to privatize or not seems to be based on the politics of the state despite the similar instrumental problems the states face.

Ironically, Jing notes that the instrumental cost issues that push some of the states toward privatizing their prisons in significant ways are often the result of punitive conservative values aimed at retribution rather than rehabilitation. As Jing emphasizes, explaining the privatization phenomenon in prison systems requires taking "political dynamics as a fundamental beginning point, not vice versa." In sum, the dysfunctions of the various state criminal justice systems in the US are the driving force of the privatization boom in prisons.

This is a book that needs to be read to understand (1) how conservative political values have contributed to a warping of the criminal justice system, and (2) the extent to which privatization (which seems to be recently deceased in view of the collapse of the world economic order) is itself driven by a powerful ideological agenda. This outstanding book reflects the value of modern social science in uncovering the mysteries of differential response in the face of often similar pressures.

Bert A. Rockman
Purdue University

ACKNOWLEDGMENTS

I wish to thank my advisors, Professor Bert Rockman and Professor Trevor Brown, for inspiring my interest in this research and for generously and patiently offering me intellectual support. Their help is indispensable to any success of this research. I thank Professor Anand Desai and Professor Robert Greenbaum for their many insightful critiques and suggestions. I am grateful to Dr. Douglas McDonald and Professor Bayon Price for warmly providing me with their original studies. My gratitude also goes to Professor E.S. Savas for his very insightful suggestions that contributed to the final revisions of the book.

INTRODUCTION

Since the 1970s, the privatization movement has greatly reshaped the provision of governmental services in western industrialized nations; governments have changed from being direct full service providers to the assemblers and overseers of an array of services formerly deemed public monopolies. In the United States (US), the privatization of government services extends from municipal garbage collection to space programs of the National Aeronautics and Space Administration (Kettl, 1993; Behn and Kant, 1999). Gradually, privatization has penetrated areas that are traditionally thought of as core functions of the state, such as the maintenance of law-and-order, the preparation of congressional testimony, and drafting of policy, especially in Anglo-American countries (Bowman, Hakim, and Seidenstat, 1992; General Accounting Office [GAO],¹ 1991; Kettl, 1993).

Compared to peripheral governmental functions whose privatization may be well explained by economic theories, the privatization of core functions fails to sufficiently justify by economic theories. A further puzzle regarding the privatization of core functions is its violation of the Weberian mandate of state monopoly on core governmental functions. It reverses the century-long efforts of modern state building that pursued the concentration of core functions, especially the legitimate use of physical force, to governments. Markets are utilized in producing services that essentially are not evaluated according to economic efficiency but to political and institutional values. These puzzles ask for a new explanatory logic that makes sense of the privatization of core governmental functions.

¹ The General Accounting Office was renamed the Government Accountability Office in July 2004. The abbreviation of GAO remains unchanged.

This research attempts to understand the causes of the privatization of core functions by studying state prison privatization (SPP) in the US. My theoretical framework on the privatization of core functions demonstrates that economic theories may provide incomplete or wrong explanations, while politics are, in general, a driving force of the privatization of core functions. This logic is applied to SPP for empirical verification. Imprisonment is traditionally a core governmental function, and the US is the world leader in prison privatization.² The US practice in prison privatization mainly takes the form of SPP, by which state prisoners are imprisoned by private management firms that contract with state governments. SPP in the US provides an excellent opportunity to comparatively examine why governments decide to privatize core functions, partially due to its clear and easy measurement compared to the privatization of other core functions, such as national defense.³ This research will examine two questions. First, what are the driving forces behind the transfer of the authority to incarcerate prisoners to private for-profit firms in the US? Second, what explains the variation among states in their magnitude of SPP?

AN EXPLANATION OF STATE PRISON PRIVATIZATION IN THE US

Private management of prisons has blossomed into a vibrant industry since January 1986, when the Marion Adjustment Center in St. Marys, Kentucky became the first private prison in the US to receive state prisoners. From 1986 to 2000, an average of 17 new private prisons entered the marketplace annually. In 2003, 73,675 state prisoners were in private correctional facilities, accounting for 5.7 percent of state prisoners in the US (Bureau of Justice Statistics [BJS], 2004a). The prison privatization boom has spurred heated scholarly debates over its historical roots, causes, and various consequences (Donahue, 1988, 1989; Logan, 1990; Shichor, 1995; Thomas et al., 1997; McDonald et al., 1998, 2003; Camp and Gaes, 2001; Price, 2002; Nicholson-Crotty, 2004). Most recently, the 2004 Iraq Abu Ghraib prison scandal, in

² In 1996, the rated capacity of private adult secure correctional facilities in the world is 50,628. The US accounted for 92% of it (Thomas, et al., 1997).

³ State prison systems have state prisoners as direct service recipients and the privatization level can be easily measured by the percentage of prisoners outsourced. For other criminal justice functions, such as policing and sentencing, there are no such data. For national defense, there is no effective way to measure the proportion of war fighting that is outsourced.

which the interrogation of prisoners of war was partially contracted out to private firms, focused public attention on the appropriateness of prison privatization. The case highlights how privatization of core government services raises important accountability questions – both of private contractors and the contracting agency (Mariner, 2004).

SPP refers to the transfer of state prisoners to private correctional facilities operating under contract to state correctional authorities.⁴ While contracting out the incarceration of prisoners has been preceded by a variety of service-contracting in state prisons (e.g., prisoner health care, treatment programs, and food services), the delegation of law enforcement authority to private firms raises more fundamental questions about public governance of core government services. It is theoretically and practically important to measure the actual development of SPP and to explain differences among the states. Although SPP is a nationwide movement and 40 states had adopted one or more SPP contracts at some point between 1986 and 2003, there is considerable variation in the magnitude of SPP across the states. States display different levels of “privateness” (Bozeman, 1987) and varying levels of commitment to and dependence on privatized prisons. For example, in 2003, 30 states outsourced prisoners to private facilities, with a range from 0.2% (South Carolina) to 44.2% (New Mexico) in the percentage of state prisoners outsourced, and from 25 (South Dakota) to 16,570 (Texas) in the number of state prisoners outsourced (BJS, 2004a).

Understanding this *variation* is important in that SPP decisions are not only an issue of yes or no, but also, principally, an issue of degree, especially when 40 states had adopted SPP in 2003. While no state has privatized their entire prison population, states that have elected to privatize commit to the practice in varying degrees. In 2003, the SPP levels of the 50 states ranged from 0 to 44.2%, with 20 states having a value of 0 and 20 states having a value below 10%.⁵ It is possible that the states that adopted SPP are as or more diverse than they are in relation to those states that never have privatized. In other words, there are two state populations with respect to states that have adopted SPP: those that had limited levels of privatization, even a 0 level in some years, and those that significantly privatized. To date, research has focused on SPP as an “on/off” phenomenon: the adoption of SPP or the existence of an SPP contract. This approach fails to provide a complete picture

⁴ Adult state prisoners constitute the overwhelming majority of the state prisoner population. In 2000, state prisoners under age 18 accounted for 0.35% of all state prisoners and accounted for 0.18% of state prisoners in private facilities (BJS, 2003).

⁵ Ten of the 20 states with a 0 level of SPP in 2003 adopted SPP before 2003.

of SPP (ref. Section 1.5). The level of privatization may reveal as much, if not more, information than the threshold decision to privatize. For example, some SPP states made use of SPP as a short-term substitute and they may be more identified with states that never had an SPP contract. By examining the level of “privateness” of state prison systems, I contribute to the stock of knowledge on SPP in particular, and the privatization of core government functions more generally.

This research approaches the privatization of core government functions from multiple disciplines, with an emphasis on the perspective of politics. As the political landscape surrounding government services evolves, the sentiment about the “publicness” of each service changes. Core government functions accrue their status as central to the state’s function and operation because they are politically defined as such. In the case of the core government function of incarceration, prison privatization is first, a result of the rise of conservatism in social control and neoliberalism in economic policies since the 1970s. These political trends have reshaped the environment and tasks, and subsequently the operation, of correctional systems in the US. Conservative social control attributes the cause of crime to individual rational choice rather than adverse social conditions. This philosophy requires a punishment-centered custodial state as a primary form of crime control and resorts to the use of extended criminalization and toughened sentencing and correctional administration. As a result, despite decreasing crime rates, new criminal justice policies directly induce the explosion of prisoner populations, thus the functional dilemmas of correctional systems: unconstitutional overcrowding, increased budgeting pressures, and sky-rocketing per resident burden. While instrumental demands for cheaper and less overcrowded correctional facilities directly challenge the monopoly of public corrections and favor prison privatization, they are fundamentally a byproduct of the politicization of criminal justice policies. Further, functioning of instrumental demands on SPP has to be contingent on states’ attitudes toward the cause of crime, which position the political and moral barriers toward prison privatization.

Meanwhile, the rise of neoliberal economic policies promotes a minimal and an indirect state apparatus. Neoliberal ideology makes it an obligation for the state to transfer correction-related government expenditures spending to the private sector. Governments are also encouraged to seek cost efficiency by going to private markets. Prison privatization reconciles the conflict between the expansive role of government in social control under social conservatism and the minimal, non-intrusive role of the state across policy areas under neoliberalism. Through prison privatization, the state simultaneously enhances its

overall punishing capacity but reduces its role in the direct administration of punishment.

To sum, political factors are the fundamental driving forces behind SPP, while instrumental factors directly influence SPP. A political economy perspective is necessary for explaining the rise of SPP. The punitive inclination in crime control creates the high demand function on corrections, and neoliberal economic ideology favors alternative ways of meeting the demand, mainly through markets. The prison crisis, often reflected by instrumental problems such as overcrowding and financial unhealthiness, is rooted in politics and their solutions are highly conditioned by political contexts.

The above analytical logic is not limited to the “on/off” SPP decision; rather, the influences of political and instrumental factors are better revealed by the incremental changes over time, thus the cumulated development in SPP. This research argues that variation in SPP among the states is not merely a function of the presence or absence of instrumental factors, such as overcrowding and fiscal conditions that oblige cost efficiency, but rather that there is an underlying political explanation to consider as well. The political environment of each state influences the importance of instrumental factors in determining whether states privatize a portion of their prison population and at what level. This may help to explain the seemingly odd facts that states with relatively overcrowded prison systems and high per inmate operating costs tend to have high level of SPP. In Chapter 5, a comparison between New York and New Mexico shows that while they are similar in instrumental aspects, their stark difference regarding SPP can only be explained by politics.

My empirical research design applies this analytical logic to analyzing the variation of the magnitude of SPP among US states in 2003. Political and instrumental factors identified by the theoretical analysis will be tested. The data are cross-sectional. Due to the time lag between the SPP decisions and the actual transfer of prisoners and due to the growth curve of the private prison industry (ref. Section 4.4), data of explanatory variables are mainly collected from 1995 and 1996. Since the dependent variable, the magnitude of SPP, is censored with 20 states having a value of 0 and the other 30 states ranging from 0.2% and 44.2%, the Tobit model will be used for statistical analysis (ref. Sections 4.4 and 4.5). The Tobit analysis can help to disclose the influences of explanatory variables on the magnitude of SPP states that outsource prisoners, and on the probability of outsourcing prisoners for non SPP states that have no prisoners outsourced.

CONTRIBUTIONS TO RESEARCH AND PRACTICE

By identifying and disentangling the underlying causes of SPP, this research brings clarity to the SPP policy debate. The analyses conducted here show that the adoption and magnitude of SPP reflect the underlying political tastes of states for social control and neo-liberalism, rather than simply a rational response to pragmatic conditions like over-crowding. In addition, the research lays out issues that are important in evaluating whether SPP achieves its purported policy goals given its inherently political roots.

This research also makes several important contributions to academic scholarship on the privatization of core government services, notably the privatization of state prisons. First of all, this study redresses the imbalance between instrumental and political factors in the privatization literature. The current privatization literature is dominated by economic theories that assume the economic rationality of governments. While politics is frequently mentioned, its role in driving the privatization process is not well explained, substantiated, and empirically examined. My research on the privatization of prisons demonstrates how economics must be embedded in the political contexts to gain explanatory power. By examining the underlying political economy of SPP, this research provides a vantage point to reconcile the roles of politics and economics in privatization.

Also, this study discloses some fundamental characteristics of privatization in the policy arena of criminal justice. Studies on SPP show that imprisonment, as one major component of criminal justice systems, is not only a core function but also has its specific features such as different regional traditions, internal political logic, a noncompetitive market, and the nature of state coercion. These features are common to the criminal justice arena. While the privatization potential in justice areas is growing and has recently attracted more attention,⁶ it is important to be aware of these characteristics in both theoretical analysis and practical decision making. The analysis of these factors sets a good foundation for future privatization research in criminal justice areas.

Further, by examining the magnitude of SPP, this research builds on the limited "on/off" nature of previous research. Since 1999, the US Bureau of Justice Statistics (BJS) has published annual data that record the percentage of state prisoners under private custody. Using these data adds important information that is not captured by existing research.

⁶ In 1999, criminal justice expenditures accounted for 7.7% of local and state direct expenditures.

Finally, this research examines SPP activities up to 2003. This provides two advantages to my research. One is that the analysis undertaken here utilizes the most recently available data and reflects the most recent conditions of SPP in the US. Another is that my research covers both the growth and stagnation of SPP: the growth rate of SPP has slowed from an annual rate of 45 percent from 1995 to 1999 to 2.25 percent from 1999 to 2003 (BJS, 2003). This abrupt change has not yet been fully analyzed by existing academic literature. As a result, this research is able to examine the unexpected decline in the growth of SPP in recent years and can tentatively predict future trends of SPP.

A ROAD MAP OF THE BOOK

In Chapter 1, I lay out the basic research questions. After reviewing the debate in the privatization literature on the causes of privatization, I analyze the privatization of core governmental functions to set the theoretical rationale for the research. I then provide an overview of SPP (history, definition, patterns, and core concepts), analyze the research questions, and review the literature. In Chapter 2, I analyze the markets, services, and performance of private prisons, with a purpose to examine whether economic incentives can be a fundamental driving force of SPP. In Chapter 3, I demonstrate that prison privatization has been driven by two fundamental transformations in the governing philosophy of the US since the 1970s: the rise of conservatism in social control and the ascendancy of neo-liberalism in restructuring the whole economy and the government. I also employ a path-dependent view on SPP and explore the historical roots of SPP in southern states. In Chapter 4, I discuss the measurement of SPP, make assumptions about the decision rationality of SPP decision-makers, explain the data, and introduce the Tobit statistical model. In Chapter 5, I report the results of the Tobit analysis. The empirical results indicate that both political and instrumental factors influence the magnitude of SPP, with political factors conditioning the influences of instrumental factors. In Chapter 6, I summarize empirical findings, discuss policy implications, and suggest directions for future research.

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