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Topics in Corrections

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Private Sector Management of Prisons

Introduction

Private sector involvement in corrections historically has been limited to the contracting out of certain correctional programs or services such as prison industry, educational programs, or medical services. More recently, contracts have been made with private companies to run halfway houses and similar non-secure, community-based correctional settings. During the 1980's, corrections has seen the advent of private sector involvement in the operation of more secure facilities. The impetus for such involvement comes from two main sources: (1) the courts, which have ordered improvements in prison conditions in numerous jurisdictions; and (2) public concern over the rising cost of government. This paper highlights key issues and research relevant to the private operation of a correctional facility.

The Issues

There are three main categories of issues related to the private management of prisons: legal concerns, economic issues, and operational considerations.

The **legal concerns** focus on determining whether contracting out the operation of a prison is an appropriate delegation of governmental powers. Exploration of this concern requires analysis of statutes, case law, and the administration of government. Most experts agree that where statutory authority exists, there are no legal or constitutional grounds to prevent delegating prison operations to private companies. In *The Legal Dimensions of Private Incarceration*, Ira P. Robbins contends that government agencies need to proceed cautiously when considering delegating imprisonment to private companies due to the lack of a clear precedent. Robbins and others also believe that the symbolism involved in the authority to deprive people of certain liberties dictates that prison operation should remain with government employees. In *The Privatization of American Corrections: An Assessment of Its Legal Implications*, Charles W. Thomas et al. conclude that the critics' predictions of major legal barriers to private prisons are exaggerated. In *Private Prisons: Cons and Pros*, Charles H. Logan observes that the state is artificial and has no authority, powers, or rights of its own other than those transferred to it by individuals. The state administers the right to punish on behalf of the people. Logan concludes that there is no reason why contracted servants cannot be designated to imprison offenders as long as the contractors are ultimately accountable to the people and subject to the same provisions of law that direct the state.

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A related matter is the liability of the government, the private company, and all employees for misconduct or operational dereliction. While government agencies cannot eliminate their risk of legal liability, financial damages in legal matters can be reduced through sound prison operation, accreditation, insurance provisions, and indemnification of the government against legal expenses.

The ***economic issues*** relate to government costs and private company profits. Opponents of private prisons charge that companies will try to maximize profits at the expense of inmates' rights. Advocates claim that a private company's operation will be more efficient and effective due to the flexibility afforded in the private sector.

Many factors lead one to believe that it would be difficult for a private company to take economic advantage of the situation. First, companies are likely to be committed to proving their worth in a new field. Second, private companies are often motivated to have their contracts renewed. To maintain good business relations, a company will want to operate in a manner satisfactory to the government agency. Third, a sound contract would require financial accountability and monitoring of its provisions. Fourth, government agencies can insist that they make the final decision on matters that affect the length or quality of an inmate's incarceration. These are matters that a company could manipulate to increase profits. Fifth, the majority of writers call for the implementation and monitoring of facility operations based on a set of standards.

Operational considerations are more varied and specific. Prominent issues include the use of force by private officers, the effect of labor disputes or strikes in a private prison, and the reaction of government employees to "invasion of their turf." The standards for operating the facility, the implementation of these standards, the private company's responsibilities and accountability, and the monitoring of the contract are also relevant to facility operation. Other operational concerns relate to decisions regarding which inmates are designated to the private prison, how they are classified internally, and how a transfer would be approved. These latter concerns would certainly require ultimate approval or substantial input from the government agency.

Other issues, which are somewhat related to one or more of the above categories, include whether a pro-prison lobby would form, whether increases in space would cause increases in the use of imprisonment, and whether certain financial arrangements for constructing private facilities would remove the public from the decision-making process. Regarding the last issue, some are concerned about a loss of public input if traditional ways of obtaining money for prison construction through public bond referenda are replaced by lease-purchasing agreements using existing funds.

Many of these issues are not resolved to the satisfaction of private prison opponents. However, while critics voice concern, private companies now operate five juvenile facilities, five detention centers for Immigration and Naturalization Service detainees, four low security adult State facilities, and nine adult local detention facilities across the United States. The corporate image is evident in some of their names: Corrections Corporation of America (CCA), Behavioral Systems Southwest, Prisor, U.S. Corrections Corporation, Wackenhut Security Services, Buckingham Securities Ltd., and Eclectic Communications.

Related Research

Research on private management of prisons is scarce due to the recent emergence of the phenomenon. A comparison of the Florida School for Boys at Okeechobee

(operated by the Eckerd Foundation) to a State-run training school of about the same size was conducted by researchers from the American Correctional Association in 1984. The study revealed that positive results of greater flexibility in management and improved conditions were overshadowed by low staff morale and high staff turnover.

An analysis of the Hamilton County Penal Farm (Silverdale Detention Facility) in Tennessee compared the cost to the county of reassuming operation versus continuing to contract with CCA. The results indicated cost savings of at least 3 percent to 8 percent over the previous 3 years. A 1988 survey of 20 inmates at Silverdale asked them to compare conditions under CCA with prior detention or prison experience. The results indicate improvements under CCA in the areas of physical conditions, staff competence, housing assignments, work assignments, and contacts with the outside world.

Finally, an ongoing research project is examining the private management of a facility for the State of New Mexico's female prison population. The research is sponsored by the National Institute of Justice and is scheduled for completion in early 1990.

The Future

The private operation of correctional facilities has been limited to what many call "marginal" populations (e.g., juveniles, deportable aliens, jail detainees, parole violators, and pre-release inmates). However, these are not exclusively low-risk populations. Some of the juvenile and detention facilities house offenders requiring stringent security precautions. In addition to the 23 facilities noted earlier in this paper, construction is underway or contracts are pending in California, New Mexico, Texas, and Tennessee for 10 institutions to hold similar populations. In April 1989, the CCA will open a facility in Grants, New Mexico, and will take responsibility for the State's female inmate population. Clearly, private companies are gradually securing an increasing number of contracts for the management and operation of more secure types of correctional facilities.

Experts agree that if a jurisdiction is considering the private operation of a correctional facility, the following measures are essential:

- There should be statutory authority in the jurisdiction.
- Contracts should be specific and clear, with appropriate insurance and indemnification clauses to cover liability issues.
- Terms of the contract and standards for the operation of the facility need to be monitored.
- Decisions affecting the liberty interests of inmates (e.g., good time, discipline, release, and transfer) should have final review with the governmental agency.
- Evaluations need to include analyses of benefits as well as costs.

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