

PRISONS, PRIVATIZATION, AND PUBLIC VALUES

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Introduction to Prison Privatization

The movement towards the privatization of corrections in the United States is a result of the convergence of two factors: the unprecedented growth of the US prison population since 1970 and the emergence out of the Reagan era of a political environment favorable to free-market solutions. Since the first private prison facility was opened in 1984, the industry has grown rapidly; gross revenues exceeded \$1 billion in 1997. This paper will examine the industry's growth in the US in recent decades, and its current scope. The evidence for and against claims that private prisons can realize gains in efficiency will be weighed, and implications of privatization for other public values including safety, justice, and legitimacy will be examined.

The Evolution and Scope of the Private Prison Industry

The birth of the contemporary American private prison industry may be traced to 1984, when the United States Immigration and Naturalization Service became the first federal agency to contract for private correctional services, with the Corrections Corporation of America. This initial movement toward the federal privatization of corrections was quickly followed by contracts for outsourcing developed by the US Marshals Service and the US Bureau of Prisons in 1986. The first county-level private prison contract was signed in 1984, between Hamilton County, Tennessee and the Corrections Corporation of America. Shortly thereafter, in 1985, the first state-level contract was signed, between the Commonwealth of Kentucky and the United States Corrections Corporation (NCPA 1995).

In 1987, approximately 3,122 inmates out of 3.5 million inmates were confined in private corrections facilities in the United States. By 2001, the total United States inmate population had swelled to a staggering 6.5 million inmates—123,000 of whom were confined in private facilities. This 4,000% increase in the number of prison beds in private hands was fed by the concomitant 90% growth in total inmate populations in the United States as a whole. (BOJS, 2001). Currently, over 32 states and Puerto Rico have formed contracts with corrections corporations. Figure 1, below, illustrates the inmate capacity of private prisons by state as of 1999 (Thomas, 2002).

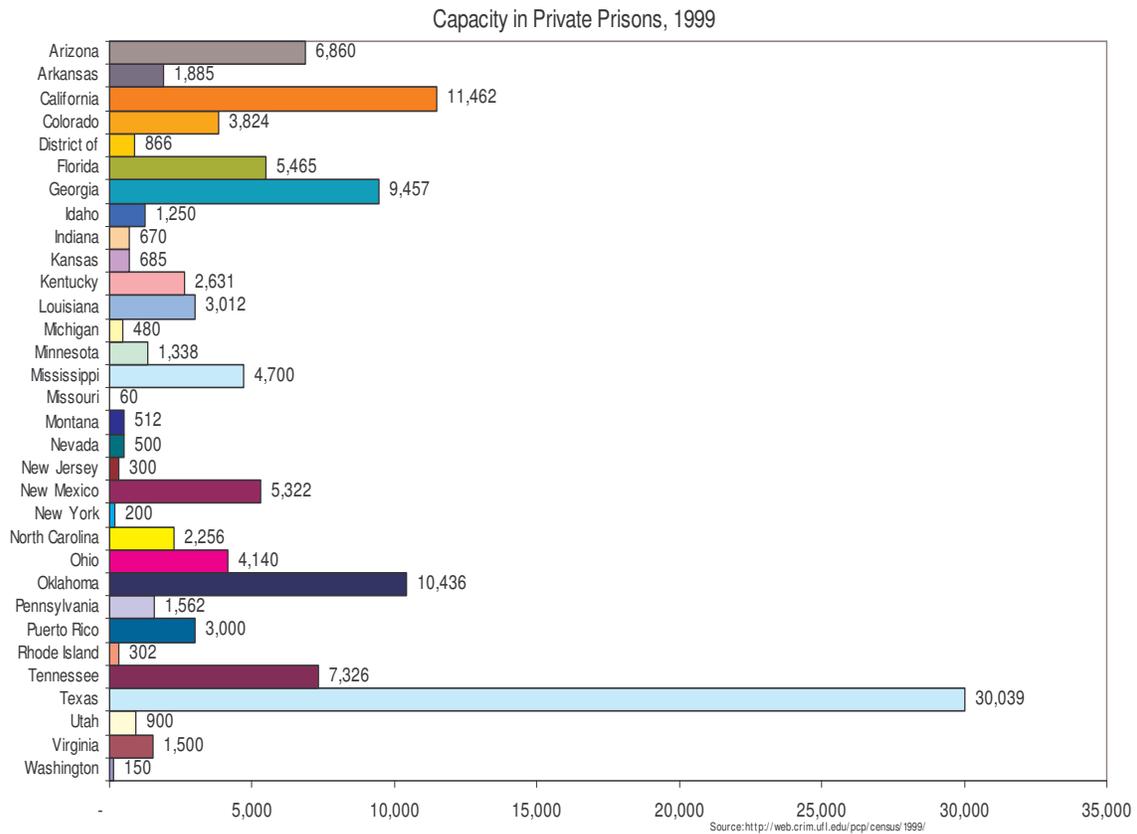


Figure 1

As the above chart shows, per 1999 estimates, Texas, California and Oklahoma exhibit the largest inmate populations incarcerated in private facilities, with populations of 30,000; 11,000; and 10,000 inmates, respectively (Thomas 1999).

Although Texas holds the highest number of our nation’s private prison beds, the proportion of inmates in private facilities to the total Texas inmate population is only 10.1 percent. New Mexico outsources the largest proportion of its inmate population to private corporations (43.8 percent), followed by Alaska (31.7 percent), Montana (32.7 percent), Wyoming (28.3 percent), Hawaii 22.9 percent), Wisconsin (16 percent), Mississippi (16.9 percent), and Tennessee (15.5 percent) (Fig. 2-ok DOC, 2002).

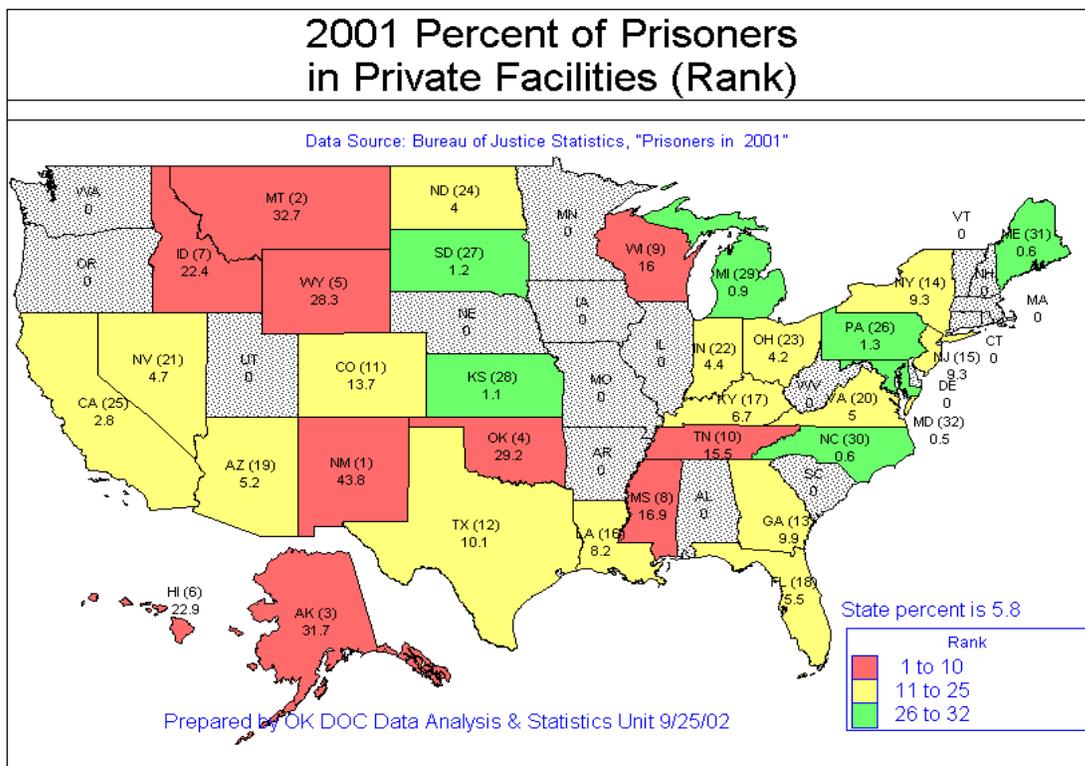


Figure 2

The financing of private corrections facilities varies from state to state, and, concurrently, from facility to facility. The per diem rate formed through a contract in Oklahoma, for example, may be substantially different from that formed in Tennessee. In general, however, there are two broad methods of financing the capital costs incurred through the construction of private corrections facilities – either the corporation undertakes the construction of the private corrections facility without public assistance and rents its services to a contracting jurisdiction, or the jurisdiction issues bonds to finance facility development. When bonding occurs, the private corporation normally administers the prison for an established period of time, after which control is diverted back to the contracting jurisdiction (Leonard, 1990: 71-76).

Operational costs of private corrections facilities vary depending upon both the type of facility and programs offered to assist in incarceration or rehabilitation. A facility's security classification has the greatest impact on its operating cost. In Oklahoma, the average rate for a medium security facility is forty-eight dollars per prisoner per day. This rate is subject to change with each subsequent contract negotiation. Indeed, in 2002 New Mexico was able to renegotiate the contracted per diem rate for one of its maximum security facilities from ninety-three dollars to sixty-five dollars. Rates can also be adjusted upward; corrections companies operating in Oklahoma have realized a forty cent (\$0.40) increase in their per diem rates as a material incentive for the provision of drug and alcohol rehabilitation programs (OK, DOC, 2002).

In 1999 there were 14 private prison corporations operating in the United States, with a total capacity of 122,871. The two largest, Corrections Corporation of America and Wackenhut Corrections Corporation, operated 55.6% and 21.73% of the total market

share, respectively. Table 1 (below) lists the largest private prison firms operating in the United States, with their total capacity and market share, as of 1999 (Thomas, Charles, 1999 Census).

Table 1: Firms Operating in the United States in 1999

| Management Firm | Capacity of Facilities Under Contract in United States | Market Share of United States Contracts |
|------------------------------------|---|--|
| Alternative Programs, Inc. | 340 | 0.3% |
| Avalon Correctional Services, Inc. | 350 | 0.3% |
| The Bobby Ross Group | 464 | 0.4% |
| CiviGenics, Inc. | 2,791 | 2.3% |
| Cornell Corrections, Inc. | 7,138 | 5.8% |
| Correctional Services Corporation | 6,517 | 5.3% |
| Correctional Systems, Inc. | 272 | 0.2% |
| Corrections Corporation of America | 68,256 | 55.6% |
| The GRW Corporation | 362 | 0.3% |
| Management & Training Corporation | 9,177 | 7.5% |
| Maranatha Production Company | 500 | 0.4% |
| Wackenhut Corrections Corporation | 26,704 | 21.7% |
| Totals | 122,871 | 100% |

Private Prisons, the Efficiency and Quality Questions:

Most arguments for the privatization of prisons revolve around one issue: efficiency. The purpose of privatization of any government undertaking is to improve the quality of the

service provided without increasing the costs, or to decrease the costs without decreasing the quality of service. It is mainly on the strength of claims to efficiency that prison privatization expands in scope.

Proponents believe that private prisons not only costs the taxpayer less, but also require the state-run agencies to operate more efficiently themselves. When private companies are allowed to enter into the market for prisons, they argue, state run facilities are forced to operate more efficiently or risk losing their funding. Those who oppose prison privatization point to studies claiming that the superior efficiency of private facilities has not been conclusively demonstrated (GAO, 1996). Few available studies account for both cost and quality, making conclusive judgment about efficiency impossible. Insofar as savings are realized, they argue, it is through making dangerous cuts in labor costs (Greene, 2001). Further, they say, studies comparing costs have not thoroughly accounted for overhead costs and costs of negotiating contracts, thus underestimating the cost of private facilities as compared to public ones.

Whenever a public service becomes privatized a question arises as to whether or not the service quality will be affected, either positively or negatively. But within the realm of prisons though there is a dispute which has arisen over what quality of service actually means. Some argue that the purpose of a correctional facility is to rehabilitate the offender, so upon release s/he can reenter society and become a productive member. Others believe that the purpose of prisons is to lock away those who commit crimes, so that they are not free to commit additional crimes in society. In this view, prisons are meant to be a deterrent, to help persuade people from committing the crimes. Generally speaking, there are three main types of issues when looking at quality.

- Security of the institution; number of escapes, number of deaths, etc
- Rehabilitation efforts; Drug Rehabilitation, Education, etc.
- Quality of life; medical treatment, food, recreational services, etc.

Privatization Proponents

A study of the quality of prisons in New Mexico showed that private facilities had a higher quality of service in all but one category, “care”, as figure 3 (Montague, Erik; August 2001) below shows.

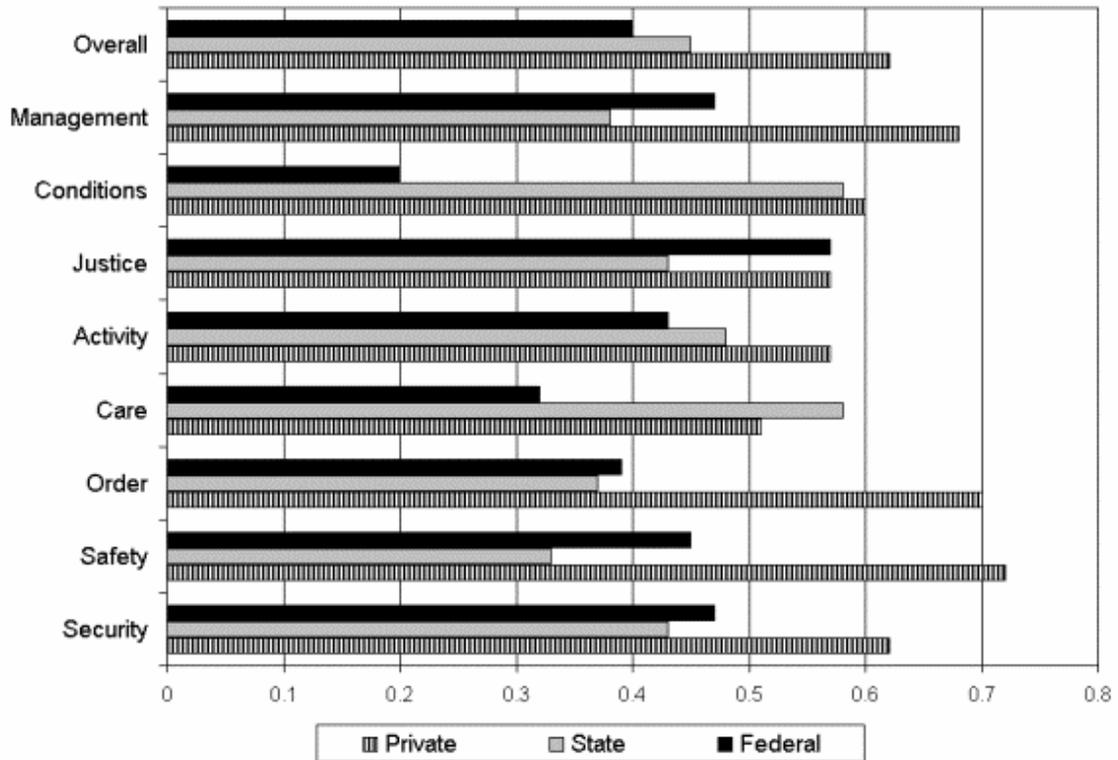


Figure 3

The study was based on a Bureau of Prisons survey and included both prisoners and correctional staff in the respondents. When comparing federal, state and private facilities

within New Mexico, the private prisons were more highly rated by respondents in almost every category. Doubts regarding the quality of the facilities are not supported by this analysis.

Proponents of privatization argue that private prisons, through innovative design and management, and by realizing economies of scale, can lower the overall costs of incarceration:

- Studies in both 1997 and 2000 by the State of Arizona of costs associated with both public and private prisons found evidence of cost savings:
 - The 1997 Study found average costs per inmate per day in government prison was \$43.08, as compared to \$35.90 in the private prison, estimated savings of 17% (Thomas, 1997)
 - The 2000 Study found average costs per inmate per day in government prisons was \$46.72 in 1998 and \$45.85 in 1999, as compared with the average costs of \$40.36 in 1998 and \$40.88 in private facilities, estimated savings, of 13.6% in 1998, and over 10% in 1999. (Dept. of Corrections, Arizona, October 2000)
- Corrections Corporation of America claims that between 1994 and 1998, the states that contracted with them for prison facilities saved a total of \$248 Million in costs. (www.correctionscorp.com)
- 1996, Louisiana conducted a survey of the costs of three identically built prisons, one run by the state and the other two by private corporations. The study found that the average per diem rate of the state facility was \$26.76 while the average cost for the private facilities were \$22.96 and \$23.51, savings of 14 to 16 percent. (Reason Policy Institute, Pg. 4)

Opponents of Privatization:

Critics of privatization claim that there are no true efficiency gains from privatization, arguing that comparative studies of efficiency often ignore a number of key factors, by

looking only at the operational costs (per diem rates). In 1996 the US General Accounting Office brought into question a number of the key assumptions that the proponents of privatization claim. Ultimately, the GAO found that there was no evidence conclusively demonstrating efficiency gains from privatization (GAO Reports, GAO/GGD-96-158). The GAO pointed out flaws in many of the studies touting efficiency gains from prison privatization. They found virtually no reliable multi-year studies. Those that they did find suffered from flaws including: failure to compare similar institutions, failure to account for both cost and quality, or lack of a nuanced account of hidden costs.

The cost of contract negotiation is an example of a cost that is often overlooked. The process of gathering proposals from corporations, analyzing them, and determining who is awarded the contract is an expense that is usually ignored. This is an additional cost that the state must endure in determining whether or not to contract out the service. Another cost that can raise the operation costs of any given contract is excessive health care costs. When a contract is negotiated between a state and a private corporation for the costs of a correctional facility, generally a negotiated health care rate is established, and anything above this amount must be covered by the state. While the rates negotiated will cover a majority of the health care needs of an inmate, in cases of severe disease this is not usually the case, and the additional costs must be borne by the state, which is ultimately responsible for the health of the prison population.

Another possible explanation for the appearance of efficiency gains is the shift in tax burden to local municipalities. In years past, the mentality of “Not In My Back Yard” (NIMBY) arose whenever a new prison facility was to be built. Then, as areas began to

see that there were possible economic gains by the placement of a prison near an economically impoverished town, the mentality began to change. Rural towns began to see prisons as a stable economic source for the area, and municipalities began to offer economic development funds to private prison corporations for the construction of new facilities within their jurisdiction.

Table 2: Subsidies Given to Corporations (Jail Breaks, 2002)

| Operating Company | # of Facilities in Study | % Of Facilities with Subsidies | Total Value of Construction Bonds (in millions) | Total # of Subsidies Found |
|------------------------------------|---------------------------------|---------------------------------------|--|-----------------------------------|
| Corrections Corporation of America | 37 | 78% | \$406.4 | 41 |
| Wackenhut Corrections | 16 | 69% | \$165.5 | 21 |
| Cornell Companies | 2 | 50% | \$0.0 | 1 |
| Five Others | 5 | 60% | \$56.6 | 4 |
| Total | 60 | 73% | \$628.6 | 67 |

What is often overlooked is that there is no clear evidence of prisons being a strong source of economic growth. As in the case of military bases, while the creation of a new prison, or the loss of a former older facility may make people believe that excess economic growth will occur, there is little evidence supporting these statements. (Hooks, Gregory; 2002).

Public Values

Efficiency aside, prison privatization presents some serious dilemmas regarding public values such as safety, justice, rehabilitation, and legitimacy.

- [Safety: Do private prisons pose a threat to the safety of prisoners, prison workers, or the general public?](#)
- [Justice: Are the mechanisms of private prisons liable to distort sentencing?](#)

- Rehabilitation: Can the profit motive be reconciled with the need to prepare inmates for productive lives after prison?
- Legitimacy: Is incarceration an inherently governmental function? Is it right that profits be reaped from human imprisonment?

Safety

Opponents of private prisons argue that their incentive to cut costs to maximize profits presents a threat to the safety of prisoners, prison staff, and the public at large. They argue that private prisons tend to have fewer guards with less experience, which results in an increased rate of violent incidents behind bars. One study found violent incidents to be as much as 50% more frequent in private prisons (Greene, 2001). Also, private prisons may pose an increased risk of prisoner escape; a study cited by the Reason Public Policy Institute, no foe of privatization, found that government-run prisons have fewer escapes, less substance abuse and greater recreational and rehabilitation measures in place (Moore, Adrian 1998).

Further, some critics of privatization claim that the relative ease with which private industry can construct new prison cells leads to an over-reliance by government on incarceration at the expense of preventive social programs-- programs which, they argue, are more effective in preventing violence (Logan, 2002, Currie 1998). A study by Grassroots Leadership found that discretionary funds in the state of Mississippi were being routed from education to private prisons (www.grassrootsleadership.org).

Industry supporters, on the other hand, argue that through innovation in prison design and operation, private prisons are made safer than public facilities. Proponents argue that the profit motive creates incentives for safety, as violent disturbances in facilities leads to greater costs in the long run (Lissner et al, 1998) . A safe prison, they argue, is a profitable prison.

Justice

Those who oppose prison privatization make the case that the industry has the incentive and the wherewithal to extend the amount of time convicts will remain in prison, and that this presents a threat to justice. The industry, they say, can extend sentences in two ways. First, it has thrown its influence, through lobbying and campaign contributions, behind “tougher” laws such as "three strikes", mandatory minimum sentencing, and "truth in sentencing" that increase the duration of sentences. The conservative American Legislative Exchange Council (ALEC) has been extremely active in advocating truth-in-sentencing and three strikes policies throughout the United States. This organization is heavily funded by the corrections industry, and indeed ALEC's Criminal Justice Task Force is co-chaired by Brad Wiggins, a former director of business development for the Corrections Corporation of America (Bender, 2000). The strength of these kinds of political influence, opponents fear, will only increase as the industry grows. As one observer notes, corrections corporations have "paid handsomely to play the public policy game, and will likely do so again"(O'Connell, 2002).

The second way opponents of privatization worry that private firms will distort the administration of justice is by exerting undue influence on parole hearings. Opponents argue that since prison firms are generally paid per prisoner per day, they have an incentive to extend inmate stays as long as possible, and so are liable to reduce prisoner's chances for parole or good time off by exaggerating or fabricating disciplinary infractions (DiIulio, 1990).

Industry supporters point out in response to these concerns that industry campaign contributions are smaller than those made by public sector unions (Moore, 1998). There is no evidence, they say, of private prison officials manipulating parole decisions.

Rehabilitation

The profit motive, opponents of privatization say, distorts the function of prisons towards incapacitation and away from the provision of rehabilitative services that would help prisoners rejoin society productively, and curb recidivism. Corrections firms have no incentive, they say, to provide costly rehabilitative treatment and services. Industry analysts respond that it all depends on the contract. There is much potential for contracts to be structured in ways that provide incentives to firms to provide services such as drug treatment (Lissner, et al, 1998.). Indeed, in Puerto Rico and Australia, pilot programs are being conducted with so called "outcome-based contracting", wherein fees are tied to the impact and measured outcomes of incarceration (Cornell et al, 1998).

Legitimacy

Opponents of privatization argue that it is an illegitimate delegation of government authority to allow private companies to take control of an integral part of the justice system. Proponents of privatization disagree. They make a distinction between the function of the courts and that of the prisons. It is the proper duty of the public sector, they argue, to determine just sentences for violations of the law. But the duty of the prisons, they argue, is merely to carry out the sentence of the courts, and they see no reason why this task ought not be delegated to a private entity. Opponents of privatization claim to the contrary that it is difficult or impossible to distinguish these two functions, given the level of control that prison officials have over the nature (and, potentially, the duration) of an inmate's stay. Prison officials have the prerogative to impose disciplinary measures ranging from revocation of yard privileges to the imposition of solitary confinement, and so have a great deal of control over just how punitive an experience each sentence truly is (DiIulio, 1990).

Shifting Public Values

Champions of the private prison industry justify its continued expansion by pointing to the public will for increased incarceration. Voters have consistently been supportive of harsher sentencing measures that create a demand for more prison beds. And yet there is a growing movement that has come to see increased incarceration in general, and growth of the private prison industry in particular, as a threat to public values. For example, the mission statement of the Grassroots Leadership organization's "Public Safety and Justice Campaign" reads:

For-profit private prisons, jails or detention centers have no place in a democratic society. Profiteering from the incarceration of human beings compromises public safety and corrupts justice. In the spirit of democracy and accountability, we call for an end to all for-profit incarceration(www.stopprivateprisons.org).

Grassroots Leadership has organized religious, labor, student, and community groups to fight private prisons through media advocacy, education, lobbying of government officials at all levels, and pressuring corporations involved in the private prison industry. For example, Sodexo Marriott, the largest single investor in CCA, divested its holdings in the prison firm in response to pressure on college campuses to cancel food service contracts. (www.grassrootsleadership.org)

Many states, such as Louisiana and New York, in response to pressure from labor unions and other groups, have enacted moratoriums on or banned private corrections facilities, while other states, such as Wisconsin, have enacted statutes that prohibit the construction of private prisons on speculation-- that is, without prior contract (AFSCME, 2002). While the growth of this billion dollar industry seems to have slowed at the level of the state prison, the federal government now seems to be contracting for many of its facilities with private firms (www.grassrootsleadership.org). It remains to be seen whether the efficiency gains promised will be realized, and whether the government can, through innovative contracting, reconcile the dilemmas that prison privatization poses with respect to public values.

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A cogent analysis of the moral and ethical questions raised by prison privatization.
- DOC, State of Oklahoma. *Private Prisons*. www.doc.state.ok.us/docs/private_prisons.htm
Contains useful information about private prisons in the state, as well as many good links to articles, studies, charts, and other web-sites.
- Grassroots Leadership Homepage. www.grassrootsleadership.org
This activist organization has devoted itself to organizing labor, religious, and community groups to work together towards abolishing private prisons. The site contains links, press releases, an online newsletter, journalism, and academic studies.
- Greene, Judith. *Prison Privatization: Recent Developments in The United States*. A Paper Presented at the International Conference on Penal Abolition: May 12, 2000.
www.epinet.org/real_media/010111/materials/greene2.pdf
This anti-privatization paper includes troubling anecdotal evidence of abuses of authority in private institutions.
- Hooks, Gregory; Mosher, Clayton; Totolo, Thomas and Lobao, Linda "The Prison

Industry: "Carceral Expansion and Employment in U.S. Counties, 1969-1994" DRAFT, September 2002

This is a draft paper currently being considered for publication in the Social Science Quarterly. The draft was provided by Gregory Hooks, and is a collaboration between sociologists at Washington State University and Ohio State University.

Jail Breaks, "Economic Development Subsidies Given to Private Prisons" Good Jobs First, 2002

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This anti-privatization site looks at the investment by municipalities in prisons as a means of economic development.

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An examination of issues involving contract monitoring in the industry.

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Industry paper makes the case that the corporate profit motive can be reconciled with the demand for rehabilitative treatment of prisoners.

Logan, Charles. "Arguments for and Against Private Prison Contracting" on *The Prison Privatization Research Site*. <http://www.ucc.uconn.edu/~logan/>

A thorough and succinct list of the various arguments for and against, without analysis. This pro-privatization site is maintained by Prof. Charles Logan of UConn, and has many links to studies and other sites.

Douglas C. McDonald, ed. *Private Prisons and the Public Interest*. New Brunswick: Rutgers University Press, 1990.

The data in this collection of articles from a wide range of perspectives are no longer current, yet it contains analysis of many financial, moral, contractual, and political issues that continue to be central to the prison privatization debate.

Moore, Adrian T. "Private Prisons: Quality Corrections at a Lower Cost." Reason Public Policy Institute, 1998. <http://www.rppi.org/privatization/ccrp/pubs.html>

This survey of studies from this right wing/libertarian think tank concludes that private prisons can save 10-15% in costs without sacrificing quality. Few of the studies the survey examines combine analysis of cost and quality together, so conclusions about efficiency gains are questionable.

Moore, Adrian T and Segal, Geoffrey "Weighting the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services" Reason Public Policy Institute, January 2002

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This piece of journalism, illustrated with vivid examples, places prison privatization within the political-economic context of the 30-year history of the 'prison-industrial complex'.

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This pro-privatization site contains some useful information on the number and location of private prisons, as well as links to other sites maintained by private prison supporters. The site's content should be held strongly suspect, as its author, Charles Thomas, was found to be in conflict of interest after accepting a large consulting fee from the Corrections Corporation of America.

Torres, Sam and David Schichor. "Has the Privatization Concept Been Successful?", in *Controversial Issues in Corrections*, Charles B. Fields, ed. Boston: Allyn and Bacon, 1999.

A succinct debate on the merits of prison privatization.

U.S. General Accounting Office, "Private and Public Prison: Studies Comparing Operational Costs and/or Quality of Service," GAO/GGD-96-158, August 1996
This survey of early-1990's research comparing public and private prisons on measures

of cost and quality finds no evidence of efficiency gains from privatization that can be generalized, and makes useful recommendations for designing further research studies.

Eric Montague "Private Prisons: A Sensible Solution" Policy Brief, Washington Policy Center August 2001

This policy brief provides an analysis of several states' attempts at prison privatization and provides some strong evidence in support of privatization. The purpose of the policy brief was the privatization of prisons in Washington State.