
REACTION ESSAY

RECIDIVISM OF PUBLIC AND PRIVATE STATE PRISON INMATES IN FLORIDA: ISSUES AND UNANSWERED QUESTIONS

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The Bales et al. study finds no significant differences in recidivism between offenders after their release from publicly and privately managed prisons in Florida. This finding challenges prior studies that found lower rates of recidivism among one or more categories of offenders released from privately managed prisons (Farabee and Knight, 2002; Lanza-Kaduce and Maggard, 2001; Lanza-Kaduce et al., 1999). Unfortunately, those familiar with the methodology of the Bales et al. research and the studies on which it builds will recognize that major differences between the studies—including how samples were drawn, how recidivism was measured, and the amount of time during which post-release behavior was monitored—make it impossible to reach unambiguous conclusions about whether privatization has any effect on recidivism.

A trite yet truthful assessment of the Bales et al. study as well as the three prior studies is that each only modestly advances our understanding of whether privatization influences either the efficiency or the effectiveness of the nation's correctional systems, which does not mean that the study does not have value. It does. When read within the broader context provided by a growing number of empirical assessments of privatization, the Bales et al. research and the prior recidivism studies support two general conclusions. First, the claims of ideological opponents of privatization that the full-scale privatization of jails and prisons would yield nothing short of abject failure find no support (e.g., Robbins, 1998). Second, the equally biased claims of some proponents of privatization that the innovative approaches of the private sector would bring both major cost savings and substantial quality improvements are unsubstantiated. Instead, the repetitive theme one finds in this literature is that well-conceptualized privatization initiatives typically yield substantial construction cost savings, more modest operational cost savings, and an overall quality of correctional services that is at least the equivalent of what traditional public agencies provide (e.g., Harding, 1997; Logan, 1990; Thomas, 2003a, 2003b). Thus, privatization obviously can be a useful tool by means of which government can achieve its objectives, but equally

obvious is that it is not a revolutionary means by which the many problems that plague our correctional systems can be made to vanish.

The purpose of this brief essay is not to offer an in-depth critique of the Bales et al. article. Instead, it seems more beneficial to use the Bales et al. study as an opportunity to encourage those who have an intellectual or a more policy-oriented interest in criminology to elevate their focus to a closely related but more abstract level. Specifically, Bales et al. believe that Florida is a suitable jurisdiction within which the hypotheses of privatization proponents (or opponents) can reasonably be evaluated, that a fundamental claim of privatization proponents is that private prisons reduce recidivism, and that recidivism is a reasonable means by which the effectiveness of both publicly and privately managed correctional facilities can be measured. More than a little conventional wisdom supports these beliefs, but their acceptance can easily give rise to understandings that are far too simplistic. Hoping to stimulate thoughtful debate rather than to offer criticism of Bales et al., here I will argue that:

- (1) Neither Florida nor any other American jurisdiction with which I am familiar provides a “clean” context within which to evaluate the validity of either the claims of privatization advocates or the counter-claims of their opponents.
- (2) The recidivism experience of those released from private prisons contrasted with that of those released from public prisons is in many ways irrelevant to those who wish to draw meaningful conclusions about privatization.
- (3) Those who imagine a relationship between the effectiveness of either a privately or a publicly managed correctional facility and the incidence of recidivism among those released from either type of facility need to be far more cautious about the meaningfulness of data regarding this relationship than they tend to be.

The constraints of space will preclude me from fully explaining these conclusions. Nonetheless, I can at least convey some sense of their importance to those who are charged with the making or the implementation of public policy as well as to academicians whose positions free them from such heavy yet important burdens. Because my first point has received virtually no discussion in the privatization literature, I will devote the lion’s share of my attention to it.

CORRECTIONAL PRIVATIZATION: OUR MOST UNTESTED INNOVATION?

Rhonda M. Zingraff, a Professor of Sociology at Meredith College who enjoys the perhaps dubious distinction of being my wife, is a feminist who

REACTION ESSAY

91

often finds it necessary to explain to me the great significance of the language we choose to use (e.g., Bem, 1993). She, of course, is right, and the rightness of what she says is of equal relevance when we move beyond the often-contentious context of gender studies. When, for example, we speak about evidence regarding the utility or inutility of correctional privatization, a reasonable person might well draw the inference that there actually is evidence. Bales et al. speak in this manner, and I certainly have spoken in the same way in numerous articles (e.g., Quinlan et al., 2001; Thomas, 1991, 1992; 1997, 2003a, 2003b; Thomas and Calvert Hanson, 1989; Thomas and Logan, 1993).

Methodologically astute readers may already sense where I am going with this line of reasoning. To speak about the benefits and limitations of correctional privatization implies that there is actually something about which to speak. I am not persuaded that there is or, if there is something, that the something is as consequential as many believe it to be. Indeed, there is a closely related problem in the criminological literature that is so ubiquitous that it raises its ugly head virtually everywhere. Each flip of each page confronts us with clashes between our concepts and our imperfect operationalizations of them. If the goodness of fit that exists between the conceptual and the measurement levels is flawed, then so, too, is whatever we may have to say that is shaped by our reliance on the flawed measures. Far too often, however, we comfortably lose ourselves in the pseudo-sophistication of our statistical techniques and treat fairly low-level concepts like recidivism, higher level concepts like crime, and difficult concepts like social class as though our concepts and our measures of them were perfectly correlated with one another. Our sloppy habits hardly make us objects of great envy in the minds of our colleagues who represent such disciplines as physics.

The concept of privatization provides no exception to this awkward reality. The hard although often blissfully ignored fact is that privatization is not akin to a light switch that has been pushed into either an on or an off position because of the presence or the absence of a contract between a government agency and a private corrections management firm. In fact, it is far more analogous to a dimmer switch, the turning of which yields highly variable degrees of illumination—or of darkness.

The reason for this result is simple. When a government agency turns to the private sector for a broad array of goods and services, procurement documents generally will describe the nature of the need with a level of specificity that is highest when the need involves a standardized commodity (e.g., office supplies and equipment) and lowest when the need involves a professional service (e.g., medical services). Regarding professional services, one typically finds the governmental focus being on the depth and breadth of the desired service, on the achievement of desired outcomes,

and not on providing detailed descriptions of how the service is to be delivered.

Correctional privatization has proven to be a significant exception to this general practice (e.g., Quinlan et al., 2001; Thomas, 2003a). Whether to a greater or lesser degree, government agencies have tended to favor or to require that private management firms discharge their contractual obligations in substantially the same way as do the government agencies in traditional correctional facilities. The rigidity of this requirement manifests itself in countless ways: requirements in statutes; requirements in provisions of administrative law that have been promulgated by government correctional agencies; judicial decisions, almost invariably decisions that flowed from successful litigation brought by prisoner plaintiffs confined in publicly managed facilities; requirements that appear in procurement documents; requirements set forth in contracts; requirements imposed by government contract compliance monitors; and requirements for accreditation developed by such groups as the American Correctional Association that are imposed on private management firms either by statutes or by contractual requirements.

However useful this variable degree of bureaucratic standardization may or may not be in some regard, the fact is that all privatization theory urges competition between alternative providers of essential public services. A core assertion of the theory is that governmental monopolies are inherently inefficient and ineffective and, conversely, that fair competition between alternative providers of essential goods and services promotes greater efficiency and effectiveness—doing so at least in part through the adoption of innovative practices that flow from flexible rather than from rigid methods of service delivery. It follows that too much governmental emphasis on private providers handling their responsibilities in essentially the same manner as do their governmental counterparts and that too little governmental emphasis on achieving desired outcomes threaten the existence of privatization. Indeed, the net effect of much, if not most, of what we have witnessed during what is now more than 20 years of experience with the full-scale private management of jails and prisons is what I elsewhere have termed “governmentalization” (Thomas, 2003a:100–102) rather than privatization (also see Harding, 1997). Although governmentalization clearly has trumped privatization to a greater degree in jurisdictions other than Florida (e.g., Arizona, the Federal Bureau of Prisons, and Michigan), what Florida has achieved involves far less than the dimmer switch being dialed up to a full privatization setting. Much more importantly, what we lack altogether is any means whatsoever for sorting through the fairly large privatization literature for the purpose of answering questions regarding how the degree of privatization shapes its utility.

REACTION ESSAY

93

ARE RECIDIVISM OUTCOMES RELEVANT TO
CORRECTIONAL PRIVATIZATION?

The first line of the Bales et al. abstract asserts that, “A fundamental claim made in support of private prisons is that they reduce state inmate recidivism.” Although it is informative that the assertion comes with no citations to the work of any proponent of privatization, equivalent assertions are made in the text of their article. There is no doubt about how the study will be interpreted by privatization opponents. Because Bales et al. find no statistically significant differences between the recidivism rates of those released from public and private facilities, faithful opponents will joyfully claim that a core promise of privatization has not been fulfilled. Little is likely to be said by them regarding the finding that this method of evaluating privatization showed it to be as effective, although not any better, than public facilities.

In point of fact, however, Bales et al. either are wrong or are guilty of overstating their case. What is closer to being accurate is the set of goals identified in the Austin and Conventry (2001) overview of privatization research: bringing new correctional capacity online more quickly and at a lower cost, lowering operational costs, and improving the quality of correctional services. Indeed, most would argue that the appeal of correctional privatization continues to be driven by the various ways in which research has documented cost savings. This argument is as true in Florida (e.g., Office of Program Policy Analysis and Governmental Accountability, 2000) as it is elsewhere in the nation (e.g., Archambeault and Deis, 1996; Blumstein and Cohen, 2003; Brakel, 1988; Logan, 1989, 1991; Logan and McGriff, 1989; Office of the Arizona Auditor General, 2001; Thomas, 1997).

Two important public policy points warrant being made here. First, it is widely known that I have assisted in the drafting of privatization legislation that now appears in the statutes of numerous states, and my interest in the policy-making aspects of privatization has found me testifying before countless legislative groups at the local, state, and federal levels. Both successfully and unsuccessfully, I often have tried to inject language into contracts as well as into statutes that requires private firms to offer programs designed to reduce recidivism. The reality is that such efforts are like trying to carry water uphill in a colander. Far too often elected officials are unconcerned with the long-term effect a policy or a program might have—most particularly an effect that is neither understood nor assigned a meaningful priority by the electorate. They are concerned instead by the effect decisions of today will have when next they stand for

reelection. By sharp contrast, evidence of opportunities to achieve consequential cost savings in corrections with the effect of dollars being available for expenditure elsewhere often presents policy makers with an irresistible temptation. Its utility value is found by them to be in the present and not at some distant point in time—some distant point in time meaning the day after the next election.

The effect of this myopic focus on cost savings has been obvious to all but the most ideologically committed privatization proponents. Private management firms arrived on the scene with “fast track” construction methods that simultaneously decreased construction costs and construction times, facility designs and technological innovations that reduced staffing requirements and thereby operating costs, and fringe benefit and retirement plans that reduced operating costs even further. Sadly, however, the private sector has not been required and generally has not been allowed to develop creative strategies for improving the quality of correctional programs. Some, including me, fault the private sector for this failing. Too many private firms have done too little to push aggressively for higher quality correctional services. That said, correctional privatization in our juvenile and adult correctional systems has become a multi-billion-dollar-per-year business. The stock of most large firms trades on one of our major stock exchanges. Clearly, a major focus of these firms is to make a profit. Government has the ability to harness this profit motive and to use it to stimulate greater creativity, efficiency, and effectiveness. Here and there one finds tangible evidence of efforts to exercise this ability. For example, the efforts of the Federal Bureau of Prisons to devise financial performance incentives and disincentives are laudable. Generally, however, there has been a striking absence of leadership by elected officials and the executives working within public agencies.

Second, one would make a grave error if one were to imagine that there is a high correlation between quality of correctional services promised by the private sector (or, for that matter, by government) and recidivism. Most if not all of us would experience warm and fuzzy feelings if strong evidence of a high correlation existed. I have looked for but have found little evidence. Indeed, it was for want of credible evidence that those on the left as well as on the right side of the political spectrum launched devastating assaults on the quasi-medical model of supporters of the so-called “rehabilitative ideal” during the 1960s and 1970s. That said, failing to find the evidence does not in any way diminish my belief that we owe a duty to confined persons to provide them with safe settings within which they experience fair and humane treatment, full respect for their constitutional rights, and a meaningful array of opportunities by means of which they can

REACTION ESSAY

95

choose to improve themselves (see also Logan, 1989; 1990). Put differently, meeting the ethical, legal, and moral duty we have to confined persons is a goal worthy and necessary of pursuit apart from whether the achievement of that goal facilitates the achievement of such other interconnected purposes as the reduction of recidivism and criminal victimization.

DOES RECIDIVISM MATTER?

The paradoxical answer, of course, is that it does and that it does not. Reasonably defined, recidivism means a formal reaction to the commission of new unlawful acts by persons who already have experienced some form of state-imposed sanction because of their previous unlawful conduct. Thus, events of recidivism obviously are harmful to the general good of society and, more or less by definition, to both the perpetrators and the victims of crimes. I accept these facts without qualification, and I am mindful of the additional fact that the number of adults presently under some form of correctional supervision is approximately 7 million (Glaze and Palla, 2004). If to this number we add those who have prior records but are no longer under correctional supervision, the risk potential of recidivism is truly enormous.

Notwithstanding all of this, what I cannot accept is any general hypothesis that recidivism is a critical means by which we can evaluate the quality of correctional services. This argument makes neither empirical nor logical sense. The nonsense of the conclusion is every bit as nonsensical if applied to assessments of a traditional correctional facility as it is if applied to a privately managed correctional facility. Both types of facilities can and should be held accountable—even though they seldom are in any real sense—for the consequences over which they have some meaningful degree of control. Neither facility, however, can reasonably be held accountable for consequences, including recidivism, that are so obviously shaped by what offenders experienced both prior and subsequent to their confinement. Similarly, there would be no persuasive reason why we should applaud those in the field we, however euphemistically, call corrections were we to witness declining rates of recidivism.

I cannot leave this issue without making an important qualification. My sharp criticism of relying on recidivism as a means of evaluating the quality of correctional services flows largely from how we have tended to design recidivism research rather than how we might design it. Many if not most of us are methodologically sophisticated enough that we could devise experimental or quasi-experimental designs by means of which we could make reasonable conclusions regarding the short- and long-term efficacy of what offenders experience during their periods of confinement. The problem is thus not with our minds but with our behavior. Over many

decades criminologists have produced a mountain of recidivism analyses. Regretfully, in at least some relevant ways, more than one of them carries my fingerprints. Most of those analyses are so conceptually and methodologically simplistic that they lack the ability to inform policy makers about what, if any, kinds of experiences and correctional settings allow us to achieve desired outcomes.

SUMMARY AND CONCLUSIONS

Twenty or more years have passed since the first full-scale jail and prison management contracts were awarded by such jurisdictions as the federal government, Florida, Kentucky, and Texas. Those initial experiments gave rise to privatization initiatives all across the United States as well as elsewhere in the world (e.g., Australia, Canada, Great Britain, and South Africa). A census taken today would find more than 150,000 adult offenders being housed in privately managed facilities. Even if read conservatively, substantially all of the available research evidence suggests that the costs associated with the design, construction, and operation of private facilities are typically at least somewhat lower than that of traditional public facilities and that the quality of services being provided by the private sector is typically at least equivalent to what one finds in public facilities.

It is unfortunate to an extreme that so many of those who have contributed to the privatization literature during these decades became so blinded by the bright light of the ideological and political dimensions of the debate that they became more motivated to prevail against their adversaries than to inform anyone about the objective reality that was unfolding before them. I do not claim to have always avoided succumbing to the temptation to win. Invariably, however, I have argued that our “focus should be on what is done and how well it is done rather than on the public or private identity of those on whom we rely to advance the public interest” in the field of corrections (Thomas, 2003b:298).

Toward that end, what I have suggested here is that we need to be far more precise in our methodology and our theory when we pursue answers for the kinds of important questions that we find being pursued by Bales et al. Specifically, I have argued that it is insufficient to compare public and private facilities as though we were dealing with some naturally occurring dichotomy. There is instead a broad continuum, perhaps a continuum anchored at one end by full privatization and at the other end by full governmentalization. I also have argued that, on the one hand, any recidivism differentials are virtually impossible to interpret given the kinds of data that are available to us and, on the other hand, that policy makers would be disinclined to formulate public policy on the basis of long-term

REACTION ESSAY

97

outcomes even were reasonable data to become available. Finally, I have expressed grave reservations about the wisdom of evaluating either private or public prisons on the basis of the weak quality of the recidivism data we typically have at our disposal. To do so creates a real risk that either blame or credit will be allocated in a way that is fundamentally unfair.

In the final analysis, the sun is likely to come up in the east tomorrow morning without regard to whether the views I have expressed here are judged to be valid. Nonetheless, I am persuaded that the Bales et al. research and the studies on which it is based directly and indirectly raise important intellectual and policy issues that deserve answers we simply cannot provide today. Passionate ideological rhetoric may well give rise to intensified commitment by the faithful. What criminology needs, however, is not more faith-based zealotry. What criminology needs is more well-conceptualized, well-executed research. And what policy makers need is research aimed at informing rather than at shaping public policy.

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REACTION ESSAY

99

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100

THOMAS