

The refutation of early predictions of the critics

These historical statistics alone directly invalidate one of the early claims of privatization critics. In the mid-1980s, it was their contention that few, if any, jurisdictions would implement full-scale privatization plans. They obviously were wrong. Additionally, however, related statistics invalidate many of their other early predictions. Significant illustrations of this include the following.

The critics predicted that privatization experiments, if there were any, would be limited to small facilities designed to house special offender populations (e.g., detainees in the custody of the Immigration and Naturalization Service). The critics were wrong. Privately managed facilities now house a diverse prisoner population. The largest facility now in operation is a 1,704-bed state prison in Texas that is operated by the Management and Training Corporation. The distinction for having the largest facility under private management will soon be transferred to the Corrections Corporation of America when it opens a 2,000-bed Texas prison, and then to the Wackenhut Corrections Corporation, which was recently selected to manage a 2,200-bed state prison in New Mexico.

The critics predicted that few if any jurisdictions would elect to house their prisoners in privately managed facilities. The critics were wrong. In addition to Australia and the United Kingdom, the following jurisdictions in the United States now house prisoners in privately managed facilities: Alaska, Arizona, California, Colorado, Florida, Hawaii, Kentucky, Louisiana, Mississippi, New Mexico, Missouri, Oklahoma, Pennsylvania, Puerto Rico, Tennessee, Texas, Utah, and Virginia. Further, all three federal agencies in the United States that have prisoner-custody responsibilities (i.e., the Federal Bureau of Prisons, the Immigration and Naturalization Service, and the United States Marshals Service) house prisoners in private facilities. Finally, various other American jurisdictions are committed to housing prisoners in private facilities when the capacity becomes available (e.g., Arkansas, Ohio, and Oregon).

The critics predicted that privatization experiments, if there were any, would be limited to facilities housing prisoners with low security classifications. The critics were wrong. The Corrections Corporation of America opened the first privately managed maximum

security facility in Leavenworth, Kansas in June of 1992. Numerous other privately managed facilities house significant numbers of maximum-security prisoners: for example, both the Corrections Corporation of America and the Wackenhut Corrections Corporation manage 1,474-bed state prisons in Louisiana that have maximum-security housing units.

The critics predicted that privatization experiments, if there were any, would fail if for no other reason than that prisoners housed in them would refuse to respect the authority of their private keepers. The critics were wrong. Although maintaining control in detention centers, jails, and prisons is a perpetual problem for both public and private managers, the evidence (e.g., inmate-on-inmate assaults, inmate-on-staff assaults, minor disturbances, riots, and escapes) simply does not support the hypothesis that private correctional employees will be incapable of maintaining effective control in their facilities.¹⁵

In short, the predictions of the critics of privatization that public agencies would not contract for the management of significant numbers of secure adult correctional facilities, that contract awards would not include facilities of diverse size and function, and that contract awards would be invalidated on legal or constitutional grounds were quite uniformly refuted during our first full decade of experience with correctional privatization. This is clearly significant in and of itself. It is also significant that research on different types of facilities in dissimilar jurisdictions both within and outside of the United States consistently fails to substantiate the prediction of the critics that the maintenance of control within private facilities would be made impossible because prisoners would refuse to accept the authority of private management firms and their employees.

Taken alone, however, this evidence fails to undermine the core predictions of the critics that, were they to be substantiated by meaningful research evidence, should persuade reasonable people that correctional privatization is an experiment that failed. More specifically, those not firmly wedded by virtue of self-interest or ideology to a position either for or against privatization will be those who accept the position that I advanced at the beginning of this analysis that a core obligation of elected officials ought to be the delivery of the best possible public services

at the lowest possible cost, with the public or private identity of alternative service providers being irrelevant.

Assessing the cost benefits of correctional privatization

No amount of evidence regarding the number or type of contract awards and no amount of evidence regarding the ability of private management firms to maintain control over those committed to their custody provides a reasonable basis to conclude that correctional privatization has allowed policy makers to meet the obligation of delivering the best possible public services at the lowest possible cost. Instead, such a conclusion requires persuasive evidence that contracting decisions can yield cost savings (i.e., improved efficiency) and quality improvements (i.e., enhanced effectiveness). No reasonable public-policy objective would be achieved by correctional privatization initiatives unless, at a minimum, there was an equivalence between the cost and quality of the correctional services provided by both public and private providers. No progress in this public policy arena would be made unless, at a minimum, private management firms provide either comparable services at a cost below that associated with public agency operations or better services without the increased cost being prohibitively higher than public agency costs.¹⁶ Thus, it is vital that this analysis include a consideration of the cost benefit literature that is beginning to accumulate.

Some preliminary considerations

It is appropriate to begin this portion of the analysis with several caveats and qualifications. First, the waters in this area have been muddied by the ideological rhetoric that has come from both the opponents and the proponents of correctional privatization. Still, absent hard evidence, no thoughtful person would accept either the extreme anti-privatization hypothesis that the profit motive of private management firms will necessarily result in their providing cost savings only by decreasing the quality of the services they provide or the extreme pro-privatization hypothesis that public agencies are so bureaucratized and lacking in incentives to foster cost benefits that they are inherently inefficient and ineffective.

Second, providing meaningful comparisons between public and private facilities on the dimensions of cost and quality is ex-

ceedingly difficult. For example, estimates of the operating costs of public agencies almost always underestimate actual costs,¹⁷ and so reports of cost savings are generally believed to reflect less than the true cost savings.¹⁸

Third, statutes and contracts routinely impose requirements on independent contractors that cause financial burdens that public agencies are not obliged to shoulder. Thus, it is difficult, if not impossible, to create the desired "apple-to-apple" comparisons policy-makers are seeking.¹⁹

Fourth, privatization initiatives are never "pure" in the sense that all benefits or negative consequences flowing from them are attributable exclusively to the public agencies that awarded the contracts or to the private management firms that operate the facilities. Statutes can shape the outcomes of such initiatives in quite a substantial way. Public-agency procurement documents and contracts generally play even more consequential roles, and so, too, does the manner in which public agencies monitor contract compliance. Thus, if the evidence either shows or fails to show cost benefits, it is seldom if ever possible to conclude that the advantages or negative consequences should be allocated only to one of the two parties to privatization contracts. Credit and blame are more properly assigned to both.

Finally, partly but not exclusively because similar statutes and contracts often impose different performance requirements on independent contractors, it is difficult or impossible to identify public facilities with which to compare private facilities when one attempts to make comparisons regarding quality as well as costs of services.²⁰

The net effect of these and other influences is to make it imprudent to base policy conclusions on evidence flowing from research on a single facility, a single jurisdiction, or a single management firm. Instead, it would be far wiser to form those conclusions only after one detects meaningful patterns in research results and thus develops confidence in the probable validity of the generalizations one makes. Although what follows does focus on individual pieces of research, the goal will be to search for the patterns that multiple studies create. Because some of the relevant research focuses on both cost and quality issues, separating the two is somewhat artificial. Nevertheless, the issues are so often dealt with as though they were independent of one another that it is productive to deal with them separately.

Does contracting out yield meaningful cost savings?

The weakest challenge to correctional privatization comes from those who contend that contracting is unlikely to yield significant cost benefits. The are at least three initial reasons why the challenge lacks credibility. First, the very fact that a contract exists strongly suggests the contracting governmental entity was confident that cost savings would be achieved. During a decade of personal experience with contracting, I have yet to encounter a single unit of government that was willing to contract without first having been assured of cost savings. Indeed, it is not uncommon to see tangible evidence of cost savings being cast as a statutory precondition for contract awards.²¹ Second, whether one considers private corrections management firms or some other type of private entity, it is generally acknowledged that private sector fringe benefits—most particularly retirement benefits—are less generous than those made available to public employees.²² Thus, the private sector typically enters the competitive arena with a cost advantage. Third, the private sector is not obliged to comply with a broad array of costly bureaucratic requirements that government agencies confront in such areas as the selection, promotion, and termination of employees and the procurement of goods and services. Again, therefore, the private sector enjoys an advantage over public agencies. In short, one would be surprised only by a contracting initiative that failed to yield at least some cost savings; the real question is how great the cost savings of contracting are likely to be rather than whether there will be any cost savings.

Unfortunately, sound evidence regarding the magnitude of cost savings only recently began to accumulate in a significant way. As late as 1987, for example, a report prepared by The Council of State Governments and The Urban Institute observed that “we have not found available reliable cost information at any of the levels of government studied here” (Hackett, Hatry, Levinson, Allen, Chi, and Feigenbaum 1987: 124). Since then, however, a good deal of evidence has been published about the experience of all levels of government in the United States as well as about recent experience in both Australia and the United Kingdom.²³ Reflecting both the sophistication of the cost comparison methodologies relied upon and various other factors,²⁴ the results of the cost savings analyses vary quite broadly from study to study. Six illustrations will be sufficient for our purposes here.

Early evidence from local-level contracting in Tennessee The first study was conducted by Charles H. Logan and Bill W. McGriff (1989). Logan and McGriff compared the actual contract cost paid to the Corrections Corporation of America for operating the 350-bed, Hamilton County Penal Farm located near Chattanooga, Tennessee between 1985 and 1988 with estimates of what Hamilton County would have paid had it continued to operate the facility itself. The estimates were based on actual 1983/84 expenditures plus annual employee salary increases equal to those actually received by Hamilton County employees and non-salary increases equal to inflation as measured by the Consumer Price Index.

The total estimated costs for continued public management of the facility for the three-year period was \$9,909,717 and the total actually paid to the Corrections Corporation of America during the three-year period was \$9,404,801. Thus, Logan and McGriff concluded that the total cost savings realized by contracting was \$504,917, or an average annual operating cost savings of 5.37 percent. Significantly, this cost savings was possible despite the fact that public operating costs estimated for the three-year period averaged only \$26.08 per prisoner per day, a per-diem cost that was itself well below the reported average per-diem cost of roughly comparable facilities elsewhere in Tennessee. Further, the authors emphasized that the conservative methodology they relied upon almost certainly resulted in their underestimating the true cost savings to Hamilton County.²⁵

Evidence at the state prison level in Texas The second study deserving special attention was published by the Texas Sunset Advisory Commission in 1991 and was designed to determine whether contracts awarded to the Corrections Corporation of America and to the Wackenhut Corrections Corporation by the Texas Department of Criminal Justice in 1988 had achieved the 10 percent cost savings required by applicable Texas law.²⁶ The contracts required each firm to design, construct, and manage two 500-bed minimum security prisons. The cost methodology called for the Sunset Advisory Commission to determine what the cost to Texas would have been in 1990 had the four prisons been operated by the Texas Department of Criminal Justice and to compare that estimate with the actual payments made to the Corrections Corporation of America and to the Wackenhut Corrections Corporation.

The results reveal an average estimated cost for public operation of the facilities of US\$42.92 and an actual payment to the Corrections Corporation of America and to the Wackenhut Corrections Corporation of US\$36.76. The resulting savings of US\$6.16 per prisoner per day or US\$4,496,800 per year for all four facilities yielded an estimated cost savings of 14.35 percent.²⁷

Longitudinal evidence from Queensland, Australia Third, Allan Brown, an economics professor at Griffith University in Brisbane, Australia, has provided an interesting and well-documented examination of whether the American experience is generalizable beyond the United States (Brown 1994). The relevant portion of his research focuses on a two-year cost comparison of a public and a private correctional facility in Queensland.

The Borallon facility is operated by the Corrections Corporation of Australia; the Lotus Glen facility is operated by the government correctional agency. Both facilities were recently constructed, are similar in their design, and are similar in the size and security classification of their prisoners. Importantly, Brown's cost data included various overhead costs that often escape attention when only facility expenditure data are available.

Brown noted that "Borallon [the private facility] provides the highest programme content of any correctional centre in Queensland and employs a much greater number of staff on programmes than does Lotus Glenn [the public facility]" (1994). Still, he found that the gross annual cost per prisoner for 1991/92 at AUS\$39,240 versus AUS\$54,560 for Lotus Glenn. Further, the gross annual cost per prisoner for 1992-93 at Borallon was AUS\$44,200 versus AUS\$49,880 at Lotus Glenn.²⁸

Recent state-level evidence from Florida The fourth illustration comes from Florida. During its special legislative session in 1993, the Florida Legislature enacted what is now Chapter 957 of the Florida Statutes. The new law provided for the creation of the Florida Correctional Privatization Commission and imposed an obligation on the Commission to release a request for proposals providing for the private design, financing, construction, and management of two 750-bed medium security prisons.²⁹ To assure the desired cost savings, the new statute required the Florida Auditor General to determine the total cost Florida would incur for the design, construction, and operation of comparable

state facilities. Significantly, the auditor general was expressly obliged to incorporate a full array of costs in the establishment of the required benchmark figure. Thus, the auditor general's report examined construction and operating costs at multiple comparable facilities being operated by the Florida Department of Corrections, indirect costs associated with central management of the Florida Department of Corrections, and additional indirect costs associated with services provided to the Florida Department of Corrections by various other state agencies (State of Florida, Office of the Auditor General 1993). Further, the statute required that cost proposals submitted by private management firms yield cost savings of no less than 7 percent as a precondition to any contract award.

Eight management firms submitted a total of 12 proposals. All 12 contained legally binding commitments of cost savings that met or exceeded the 7 percent requirement. Two firms were selected at the end of the competitive process: the Corrections Corporation of America and the Wackenhut Corrections Corporation. The Corrections Corporation of America and the Wackenhut Corrections Corporation costs, including debt service obligations associated with facility construction, were, respectively, US\$46.96 and US\$47.05. The comparable cost for the Florida Department of Corrections set by the Correctional Privatization Commission and was based on the report prepared by the Office of the Auditor General was US\$52.40. On average, then, these contracting decisions by the State of Florida will yield an average cost savings of US\$5.39 per prisoner per day. Assuming a conservative occupancy rate of 90 percent during the first year of operation of these facilities, the anticipated first-year cost savings will thus be US\$2,655,923. The executive director of the Correctional Privatization Commission has estimated that these contracts will save Florida taxpayers modestly more than US\$9,000,000 during the first three years of facility operations.

Additional state-level experience in Louisiana and Tennessee Louisiana and Tennessee provide particularly interesting settings within which to measure cost savings even though they also share a common disadvantage. Their evidential value flows from several factors. First, a large state prison has been managed in Tennessee by the Corrections Corporation of America since 1992 and

two similarly large state prisons have been managed in Louisiana since 1990, one by the Corrections Corporation of America and one by the Wackenhut Corrections Corporation. Second, directly comparable facilities are operated by public agencies in both states. Third, the relationship between the private management firms and the public agencies has been cooperative rather than adversarial. Fourth, public-agency operating costs in both jurisdictions are substantially lower than average national costs or even comparable public-agency costs in many of the states in the geographical region within which they fall.

The significant disadvantage is that the design and construction of the facilities in Louisiana and Tennessee was handled by the public agencies rather than the management firms with which they later contracted. Because 65 percent to 75 percent of total operating costs are linked to employee costs and because the number of employees required to operate correctional facilities in a professional manner is very highly correlated with facility designs, much of the opportunity the private management firms would otherwise have had to provide cost savings does not exist in these jurisdictions.

In any event, the experience of these jurisdictions has been examined by several studies (see, e.g., Albright and Harchas 1990; Tennessee Select Oversight Committee on Corrections 1995; State of Washington Legislative Budget Committee 1996). The most recent and perhaps most authoritative of the them, which considers both the Louisiana and the Tennessee experience, was prepared by the staff of the Legislative Budget Committee of the State of Washington (1996: 9-25, A3-1-A3-4). Although the results of the analysis differ from those of the other studies reviewed here, the findings for both jurisdictions are similar.

Specifically, the per-diem costs for the 1995/96 fiscal year based on estimated average daily prisoner populations in the Louisiana facilities showed a virtual equivalence between the public agency (US\$23.66), the Corrections Corporation of America (US\$24.00), and the Wackenhut Corrections Corporation facilities (US\$23.45). The estimated per-diem costs for two public facilities and the Corrections Corporation of America facility in Tennessee for the 1993/94 fiscal year reflect substantially the same narrow difference: the average per-diem cost for the two public facilities was US\$34.29; the per-diem cost for the Corrections Corporation of America was US\$33.63.

Cost-savings reports from the United Kingdom Following the enactment of the Criminal Justice Act of 1991, the British embarked upon one of the most ambitious, carefully planned, and multi-dimensional privatization initiatives any jurisdiction has crafted to date.³⁰ Thus far contracts have been awarded for six facilities of which four presently house prisoners.³¹ The first began receiving prisoners in April, 1992; the most recently opened first received prisoners in July, 1995.³² Clearly, therefore, the British have had enough experience with privatization that their assessments of cost savings should be meaningful.

Tim Wilson, Head, Contracts and Competition Group, Her Majesty's Prison Service, summarized a consulting report prepared by Coopers and Lybrand and published in June of 1996:

The . . . research . . . was a cost analysis for 1994/95 . . . The results, based on a more vigorous analysis than had been achieved before, confirmed that there are significant savings on operating costs, but in the order of 13 percent to 22 percent relative to the average costs of a group of comparable prisons. (Wilson, this volume: 77)

So what patterns do the cost analyses reveal?

A reasonable assessment of the available cost analyses lends at least qualified support to the claims of privatization proponents that meaningful cost savings can be achieved by contracting out. To be sure, there is little one can find in this body of evidence that would support an expectation of massive cost savings. All other things being equal, for example, a typical American jurisdiction could realistically hope that economies in the rough range of 10 percent to 15 percent would be realized by privatization—perhaps at the low end of the range for initiatives focusing on the privatization of existing facilities and at the high end of the range for new projects incorporating design, finance, construction, and management.³³ On the other hand, it would be quite misleading to describe cost savings of this magnitude as trivial.

A bit of simple if speculative arithmetic based on an easily defended hypothetical situation should be sufficient to push this fact into appropriately sharp relief. What if, for instance, one were a policy-maker in an American jurisdiction whose annual operating costs per prisoner were at the average of US\$20,000 that we often encounter in official reports and media accounts

and one wanted to contract out for the design, financing, construction, and management of a medium-sized prison that would provide a prisoner housing capacity of 1,000 beds? Does the cost-savings research suggest that the cost benefits would be sufficient to make the effort worthwhile?

What is worthwhile is subject to broad variation but, if we apply the 10 percent to 15 percent standard to this hypothetical situation, the resulting range of probable cost savings would be between US\$5.48 to US\$8.22 per prisoner per day, US\$2,000,200 to US\$3,000,300 per year, and, assuming a three-year term for the typical contract, US\$6,000,600 to US\$9,000,900 during the base term of the contract award. Regardless of what a group of policy makers might conclude were they to be confronted with this type of evidence, it is safe to assume that ordinary taxpayers would think this a worthwhile saving.

There are at least two additional patterns I suspect one can and should see in this research literature. The first and most obvious of these is that opportunities for significant cost savings from privatization are most strongly influenced by factors over which private corrections management firms have no control whatsoever. For example, the opportunities for cost savings in a jurisdiction committed to nothing more than having its prisoners make little rocks out of big rocks under the supervision of a not particularly well-trained guard carrying a shotgun are few. Similarly, the opportunities for cost savings in a jurisdiction whose public agency is particularly efficient and whose facilities are modern are likely to be few.

Second, and very important, are the bits and pieces of evidence in the research literature that strongly suggest that the long-term and most significant cost savings associated with privatization may come more from the improved performance of public agencies in those jurisdictions that have privatized than from the efforts of private corrections management firms. This is as I believe it should be. Public employees working in the field of corrections are generally quite unlike the uncaring, inefficient, and sometimes brutal people who are depicted in countless usually not very informative or even very good movies. I suspect, however, that decades of working within the context of a non-competitive public monopoly have done little to encourage them to maximize the efficiency with which they allocate their resources and done much to foster habits that encourage,

require, or at least tolerate inefficiency. The injection via privatization of a bit of competition between alternative providers of similar services might well produce the needed encouragement.

In any event, so much experience and so much evidence about correctional privatization supports the hypothesis that privatization is capable of yielding meaningful cost savings that all but the most ideologically blinded privatization critics have tried to shift the debate to other issues and thereby to raise the hurdles privatization proponents are challenged to clear.³⁴ Today they more commonly advance the argument "you get what you pay for" and allege that discounted prices will necessarily yield substandard services. If this claim were proven to be valid, then contracting clearly would fall into the category of decisions that are penny wise but pound foolish. Thus, the available evidence regarding the quality of services provided by private corrections management firms deserves serious consideration.

Does contracting-out result in decreased service quality?

Significant evidence now exists regarding the quality of contract services. It comes to us in at least four forms and, although no one type of evidence is comprehensive enough to be persuasive, once again it is important to look for patterns in attempting to formulate a set of reasoned conclusions.

Contract renewals as a crude performance indicator The first indicator is as broad—and perhaps as crude—as it is pragmatic. It evaluates quality by measuring the willingness of contracting units of government to renew existing contracts. The hypothesis is that contracts would be terminated for cause or not renewed if contracting units of government were dissatisfied with either the cost savings they realized or the calibre of the services they received from independent contractors.

Evaluated in this manner, it appears that the satisfaction of government is considerable. My review of contracts awarded for the management of secure adult facilities since the privatization movement began to gather momentum in the mid-1980s reveals the closing of only one facility—in Zavala County, Texas—for reasons related to the contracting agency's perception of inadequate contract-performance and one contract—in Sweetwater, Texas—being shifted from one private management firm to another for roughly comparable reasons. Not insignificantly, neither of the

management firms involved in these situations are presently involved in the management of adult correctional facilities.³⁵ A third possible item to include in such a list would be a facility in Elizabeth, New Jersey from which all prisoners were removed following a disturbance in 1995 and that, when it reopens toward the end of 1996, will be managed by a different private firm. Additionally, the review reveals only one contract in California that was not renewed because of cost considerations, but in that one situation the cost issue was linked to the terms of a property lease with a third party that were beyond the control of both the private firm and the involved contracting agency.

Notwithstanding the fact that this evidence is of some probative value, taken by itself it is far from persuasive. The reasons are multiple. First, even the genuine satisfaction of a contracting government agency cannot be viewed as proof of high quality performance. Satisfaction is not necessarily linked to careful assessments of contract performance. Second, all of us have had or worked with employees who met our minimum expectations and thus maintained their jobs even though nobody would have placed them high on any performance scale. Government agency responses to independent contractors can be shaped by similar considerations. Finally, I have seen evidence of a few private facilities within which performance was the object of very harsh criticism in audit reports but then seen little or no evidence of the contracting governmental agencies having the good judgment or perhaps simply the political courage to respond forcefully. Despite these and other caveats, however, the pattern established by the strong record of contract renewals is meaningful.

Prisoner litigation as a performance indicator The second indicator, the litigation record of the private corrections-management firms, is similarly broad and equally pragmatic. A recent and reasonably careful review I completed of all privately managed jails and prisons in the United States fails to reveal a single facility that is operating under a consent decree or court order as a consequence of suits brought against it by prisoner plaintiffs.³⁶ When one recognizes that roughly three-quarters of American jurisdictions now have major facilities or their entire systems operating under consent decrees or court orders and that similar intervention by the courts is hardly uncommon in local correc-

tional systems (American Correctional Association 1996: xx), the fact that private facilities remain unblemished by successful prisoner suits is not trivial.

It would be wrong to read too much into the fact that the litigation experience of the private sector is more positive than is the experience of many public agencies. As with the discussion of contract renewals, the reasons for caution are several. First, the experience of the private sector in managing relatively large facilities housing long-term prisoners with high custody classifications, the types of facilities from which prisoner suits are most common, is still relatively brief. Second, very few private facilities are housing a number of prisoners that exceeds their design capacities, and much of the prisoner litigation in the United States raises constitutional questions closely related to facility overcrowding. Third, it often takes a considerable period of time for prisoner suits to reach a stage at which courts issue written opinions that are readily accessible to researchers. It is thus possible that non-frivolous suits are now in the process of being litigated. Finally, many aspects of possible noncompliance with contracts involve issues that either probably would not or absolutely would not provide a sound cause of action for a prisoner plaintiff. Once again, however, the best available evidence forms a pattern that reflects favorably on the quality of private firm performance.

Accreditation as a performance indicator The third indicator is based on independent assessments of compliance with the standards of the Commission on Accreditation for Corrections of the American Correctional Association (ACA). There is much to be said in favor of those correctional facilities that are willing to shoulder the substantial burdens associated with seeking accreditation and that are willing to accept the risks associated with independent professional assessments by ACA audit teams.³⁷ Thus, it is significant that private firms have been accredited far, far more often than have their public sector counterparts (Thomas and Bolinger 1996).

Accreditation by the American Correctional Association or other accrediting agencies is an imperfect performance indicator. The correlation between accreditation status and calibre of services provided is imperfect. There are public and private facilities that have not sought accreditation but within which one finds sound services; there are public and private facilities that

have been accredited but which are far from exemplary on one or more performance dimensions. Still, policy makers, corrections professionals, and the courts are in substantial agreement that the earning of accreditation is a noteworthy achievement for any public or private facility. Thus, while the pattern in this area is not in and of itself persuasive, the inferences a reasonable person would draw are certainly positive.

Objective research as a performance indicator The final indicator comes from the growing body of research literature that has examined the quality of privately provided correctional services in Australia, the United Kingdom, and the United States.³⁸ At least two examples warrant some discussion here.

Perhaps the most sophisticated of these reports is one published by Charles H. Logan (1992). Based on data from institutional records and modified versions of the Prison Social Climate Survey developed by the Federal Bureau of Prisons, Logan gathered detailed data on the quality of confinement in the New Mexico Women's Correctional Facility being operated by the Corrections Corporation of America, the Western New Mexico Correctional Facility that housed New Mexico's female prisoners prior to the opening of the CCA facility in 1989, and the Federal Correctional Institution in Alderson, West Virginia. The study included 333 empirical indicators designed to measure eight different aspects of the quality of confinement. His overall conclusion was simply summarized: "The private prison outperformed the state and federal prisons, often by quite substantial margins, across nearly all dimensions" (Logan 1992: 601).

Logan's general conclusion that private corrections management firms are fully capable of providing high calibre correctional services gains significant support from another longitudinal evaluation research project, the results of which were published recently by the Tennessee Select Oversight Committee on Corrections. The task before the Select Oversight Committee was to determine whether a contract award made to the Corrections Corporation in 1991 met the following statutory renewal preconditions:

After the first two (2) years of operation, but before renewing the initial contract, the performance of the contractor shall be compared to the performance of the state in operating similar facilities . . . The contract may be renewed only

if the contractor is providing at least the same quality of services as the state at a lower cost, or if the contractor is providing services superior in quality to those provided by the state at essentially the same cost. (Tenn. Code Ann. §41-24-105(c) and §41-24-105(d))

To satisfy this statutory requirement the Select Oversight Committee selected two state-operated facilities of comparable design and mission. It then gathered a large volume of data on virtually all aspects of facility operation during the course of the two-year research project. Although the private facility cost per prisoner per day was only modestly lower than the comparable cost for the two state facilities, the private facility received a higher overall performance rating than the two public facilities.³⁹ This, in turn, prompted a renewal of the facility management contract.

Research results, while certainly yielding more quantitative findings than does a consideration of the other performance indicators discussed here, do not answer all of the questions one could and should pose. The sophistication and the predispositions of researchers vary. Their focus is on one or at best a few facilities, so what they see may or may not be fairly generalized. Necessarily based on data collected in the past, research results do not necessarily tell us much about either the present or the future. Yet again, however, if the key is in the general pattern rather than the individual details one finds in the research literature, then the evidence strongly suggests that private corrections management firms are fully capable of performing at a level which is at least equivalent to public agencies despite their obligation to do so at a cost that is equal to or below public agency costs.

Conclusions regarding the issues and the evidence

The patterns created by the evidence should be absolutely clear. The privatization critics who have contended or who do contend that correctional privatization is unlawful, that few or no jurisdictions will take the potentially consequential risks associated with contracting, and that private management firms will be incapable of providing services of reasonable quality at a competitive price are simply wrong. Similarly, the privatization proponents who contend that privatization inexorably leads to both substantial decreases in correctional costs and equally substantial enhancements in the quality of correctional services are simply wrong.

It is hardly startling to discover that those who have adopted extreme positions in the correctional privatization debate have depended more on the power of their rhetoric than on the persuasiveness of hard evidence. What may be surprising is that correctional privatization, despite the fact that it moved beyond its status as an interesting experiment only in the recent past, has now achieved a degree of maturity and recognition that is beyond what even its most ardent advocates would have imagined only a decade ago. Albeit not without some failures and problems, private management firms have demonstrated that there are a broad array of settings within which they can deliver professional correctional services at a competitive price.

Lessons from the evidence for public agencies

There are at least two additional lessons I believe the patterns in the available evidence can teach. One lesson is for public corrections agencies: the most successful privatization experiments are those involving agencies—including agencies whose senior officials would have preferred not to privatize any facilities within their correctional systems—that responded to policy choices made by elected officials in a positive and professional manner. I have seen such responses from, for example, the Arizona Department of Corrections, the Florida Correctional Privatization Commission, the Louisiana Department of Public Safety and Corrections, and the Tennessee Department of Corrections. Conversely, public agencies that adopt an adversarial position in the hope of producing failure rather than success can hardly claim that doing so serves the public interest. They also run the risk of learning, as the Florida Department of Corrections has learned already, that attempts to ignore the policy decisions of elected officials can yield uncomfortable consequences. The Florida Legislature simply pushed the department to the side, passed legislation that created the Florida Correctional Privatization Commission as an independent state agency, and implemented one of the most ambitious and successful privatization any state has attempted to date.⁴⁰

Lessons from the evidence for elected officials

The other lesson is for elected officials: privatization initiatives that are structured in a suitably sophisticated way can create a viable means by which the cost effectiveness of a correctional

system can be enhanced. This is not to say that policy makers should require one or more privatized elements in the correctional systems for which they are responsible and for which they are held accountable; nothing in sound theory or practice recommends such a mandate. Instead, both sound theory and practice recommend that privatization be put forward as nothing more than a potentially useful alternative. Prudent decisions to privatize are to be made only on the basis of fair competition between alternative providers, the winner of the competition being whoever makes a legally binding commitment to providing the best possible services at the lowest possible cost.

This lesson raises very sharp questions about the wisdom of legislators who have yet to make privatization a legal option and even sharper questions about policy-makers who have pre-empted opportunities to select between alternative providers with statutes that preserve the monopoly of public agencies.⁴¹ To be sure, such statutes will be favoured by those whose interests they protect. However, we are living in a time during which ownership by special interest groups can be hazardous to one's political health. And public agencies are not the only ones who can be pushed to the side when it is learned that the public interest is assigned a lower priority than special interests enjoy.

Notes

- 1 It is interesting to note that there is a striking difference between the official policy positions of the three largest and most influential voluntary membership organizations that represent those working in corrections in the United States. The consistent position of the American Jail Association and the National Sheriffs Association has been harshly critical of privatization. By contrast, the official position of the American Correctional Association has long been that the focus should be on the professional caliber of correctional services rather than on the public or private identity of service providers.
- 2 Perhaps the most widely recognized and respected scholar whose writings reflect the views of this category of privatization critics is Professor Ira P. Robbins (see, e.g., Robbins 1988). Despite the publication of Professor Robbins' monograph by the American Bar