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**Prisons of Industry:
The Recent History of American Private Prisons
1978-1985**

 David Guimond

**Submitted to the Department of Criminology, University of Ottawa, in partial fulfillment
of the requirements for the degree of Master of Arts**

1998



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Abstract

The purposes of this thesis is to examine the key factors and events within the immediate political foreground which led to the acceptance of private prisons as a viable policy option on the American correctional agenda in the early to mid-1980s. There has been an evident failure in criminology to provide a proper historical account of the recent origins of private prisons, as the concentration on questions of pragmatism and philosophy left other important issues unexamined. The history of prison privatization is approached from a position that embraces multiplicity and complexity, where it is contextualized within the dynamics of the policy process and the cumulative pressures faced by individual policy-makers. To this end, the work is essentially a literature review, which analyzes the multitude of factors which interacted to produce the necessary conditions favourable to considering the privatization of prisons as a viable policy option, an approach which is critical to assessing the past, present and future developments in their proliferation.

The body of the thesis is comprised of four different categories of factors, differentiated by their nature and proximity of influence to the policy-making process; together they constitute the immediate foreground in which privatization issues were debated, negotiated and implemented. Chapter 3 is concerned with the first category of factors, those that preceded the privatization debate in the early 1980s, such as the fragmentation of correctional authority in the United States, the provision of private peripheral services, the state of privatization in the early 1980s, and conservative criminal justice policy. Chapter 4 discusses factors which have had a tremendous influence upon the entire domain of criminal justice, including, but not exclusive to, privatization, and which affected the majority of decisions on the correctional agenda, and include among others the increase in prison populations, the reduction in budgets, the increase in criminal justice expenditures, hardened attitudes towards crime and punishment. Chapters 5, 6 and 7 examine the third category of factors, which relate to those directly affecting the specific policy discussions surrounding the privatization of prisons, as well as certain key events which established policy precedents within the debate. Chapter 8 looks at the nature and structure of correctional policy-making itself by presenting a set of factors which are inherent to any correctional issue which is brought to the policy level, including the affinity of privatization to the policy process itself. Finally, the thesis concludes with a discussion of the place of private prisons in a variety of hypothetical correctional futures.

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Chapter 1

Introduction

For most Western industrialized nations, the economic difficulties faced in the 1970s were in stark contrast to the prosperity that characterized preceding decades. Technological innovations, telecommunication breakthroughs, the rebellion of the oil-producing nations, the unprecedented advent of stagflation and the decline of the Pax Americana all hailed a new era of global economic restructuring. The novelty of a global marketplace found governments unprepared to draft and initiate economic policy that had as its basis transnational capital. Yet one cross-section of the population was prepared: "The interest groups we now call the new right grasped the historical situation and provided the rationale for a particular kind of change" (Marchak, 1991: 9).

Capitalizing on the void in understanding of global economic restructuring, the New Right offered an ideological explanation for why the world had changed, and, consequent to the increasing globalization of capital and the potential benefits to be reaped from unspoiled markets, what economic policies were needed to take advantage of the precarious situation. In response to the poor economic growth of the 1970s, the New Right began to engage in critical attacks upon the effectiveness of Keynesian governments that struggled with the new economic conditions. They pointed to interventionist strategies and regulation as evidence of Keynesian inability to manage the emerging global marketplace; quoting Ronald Reagan, the American head of the New Right, "Liberalism is no longer the answer – it is the problem" (Carroll, 1988: 530). The ability of the New Right to criticize economic and political philosophy while

simultaneously offering an alternate vision ensured popular appeal with politicians and the public alike, both of whom were exasperated by the cycles of fiscal crises that affected their lives: “The new right... identified the dilemmas and established a strategic plan for dealing with them. This plan was radical in many ways, and it was directly counter to the prevailing social consensus in industrial countries” (Marchak, 1991: 121).

This vision became widespread indeed, where “the same phraseology and the same arguments were promoted throughout the world; the same books were published and distributed; public speeches and media events were mounted everywhere at once...[and] popular magazines spread the message...” (Marchak, 1991: 94). Orchestrated public relations campaigns focused on “publish[ing] extensively, bombard[ing] the media with information and interpretations, and aggressively [seeking] out audiences for their messages” (Marchak, 1991: 9). Business leaders and politicians around the globe began applying an entirely different vocabulary and conceptualization of society to account for the recessions of the 1970s. For this reason, Marchak states that “one would be foolish to dismiss the power of words, especially words that are assiduously propagated and well funded...The messages of the new right became vital carriers for the restructuring of the 1970s and 1980s” (1991: 11). Armed with fiscal policies directed towards the adoption of free-market economies at the expense of Keynesian welfarism and interventionism, the New Right rose to government control in many Western industrialized nations. The most notable and influential of these are undoubtedly the Thatcher government of the United Kingdom, which gained control in 1979, and that of the Reagan Administration in the United States, which coasted to victory in 1980; the attraction of their economic policies “was equaled in both countries by deep dissatisfaction with the incumbents...[who] had presided over

much of the 1970s economic crisis and were associated with these problems by voters” (King, 1987: 140).

According to the New Right, the emerging international markets called for a new conceptualization of the key relationships of society. Central to their economic policies were three interrelated tenets which sought to reshape how the individual citizen, the nature of market forces, and the role of the state should interact in a post-industrial society to create the necessary conditions for the restructuring of economics in a global marketplace (King, 1987). The first element was a near rabid support for the superiority of a free market in driving a prosperous economy and allocating resources. After a decade of poor economic performance, from the late 1960s to the late 1970s, many believed that a return to the invisible hand of the market was needed to reinvigorate both competition and slackening production levels. Concomitant to this was a fierce belief in freedom and individualism, albeit based on economic concepts of human nature. Treatises on *homo economicus* flourished, touting the construction of ideal market societies where entrepreneurial citizens would be free to engage in competition and consumerism, unshackled from the dependent bonds of government assistance which encourages laziness and prevents competition and consumption (King, 1987; Maital, 1982; Margolis, 1982; Reynaud, 1981). Finally, as a consequence of the previous two, the final assumption was that of a limited state whose role should be severely constricted in the areas of economic and social welfare regulation and intervention. To the New Right, the typical Keynesian government had reached “political overload”, described by King as a situation where “modern governments have assumed vastly increased responsibilities...and no longer have sufficient resources to meet this enlarged range of activities” (1987: 63).

The New Right, however, should not be conceived of as a homogeneous group, as it was fractured into a variety of interest groups, some with diverging theoretical tenets. There were definite and noticeable gradations found among the New Right, and one should be aware that some of their ideas did betray an internal inconsistency. The two main strands of the New Right are liberalism and conservatism, which have both similarities and differences in their doctrines and policy implications.

Liberalism is essentially an economic position which is represented by the above three tenets, where proponents believe in a return to capitalism in its purest form. The key principle to effectuate these tenets is “to allow market forces to operate to as great an extent as possible, coupled with the assumption that the social order will be largely self-regulating” (King, 1987: 10). Liberalism accords a minimum role to state in the operation of the economy and the social order, preferring a laissez-faire policy of market self-regulation and the ordering effect of the invisible hand (King, 1987). Thus, liberalism is more a theory of pure economics than a theory of the state, where concern for the latter is found solely in limiting its role in the former.

Conservatism supports very similar economic policies, complete with free-market mechanisms, smaller government and individualism (King, 1987). Conservatives see the role of the state in a similar fashion to liberals, that it should intervene in the economy as little as possible. Where conservatism digresses from liberalism, however, is its belief that the state, though playing a minimal role in the economy, should be responsible for establishing an authoritative social order through the implementation of morally conservative social policies

(Miller, 1973). From this perspective, the present society has degenerated from the effects of a tolerant worldview inherent in liberal policies concerning gender equality, homosexuality, welfare, and drugs, and it is the responsibility of the state to strengthen itself in order to prevent further deterioration (Miller, 1973). Thus, while “extreme individualism, totally free markets, and competition are extolled...law and order and a much more disciplined society, even an authoritarian form of government, are also promoted. The economy is to be absolutely free of government intervention, yet government is to remain the protector of property and the enforcer of law and order” (Marchak, 1991: 95). Therefore, despite the vehemence with which conservatives attack certain forms of government intervention, it is seen as necessary for the state to intervene into the morality of the public and impose social policies in line with their ideological beliefs.

What emerges from diverging theoretical concerns of the New Right movement is quite an apparent contradiction revolving around questions of the role of the state. Whereas liberalism implies a limited government, conservatism envisions a strong state to maintain social order. Liberals have a modest, if not theoretically weak, conception of government which they believe should be radically reduced in its functions; conservatives have a more solidified view of government, which they believe should also be reduced in certain areas, but also strengthened to maintain hierarchical authority and the social order and to enforce certain moral values (King, 1987).

However, in political practice, despite their theoretical differences, the two strands united to accomplish their common goals during the ascent of the New Right in the late 1970s and early

1980s. The contradiction surrounding the role of the state became a unifying asset to both liberals and conservatives, rather than a factor which could split their cause; each benefited from joining with the other. How is this done in political practice? King explains briefly that

Liberalism is the source of New Right economic and political theories and policy objectives; conservatism provides a set of residual claims to cover the consequences of pursuing liberal policies. For example, the liberal objective of reducing public welfare provision implies a traditional role for women and the family; conservatism provides an ideology justifying such outcomes from public policy. Conservatism provides liberals with a coherent theory of the state, absent from their own theories. (1987: 25).

Therefore, while liberalism provided the economic means to achieve the New Right tenets, conservatism provided the moral rationalization of these means, as well as the ideological justifications of any negative consequences that occurred. One can envision the liberal as a rational economist and the conservative as a passionate ideologue, both working in tandem to implement their shared New Right doctrines.

Although the various factions may not have necessarily been closely aligned before or may have drifted apart since, the ideas of both liberals and conservatives did converge under the mantle of the New Right in the early 1980s. Their arguments dovetailed in certain crucial respects, and the various streams of thought offered mutual support. The convergence, however, was not perfect. The New Right itself was not internally consistent, and diverse versions were promoted under that general level. Yet there was enough consistency in their basic assumptions to merit its designation as a social movement, to gain national power and to effectuate policy. The New Right's message provided the ideological explanations for the dismantling of the Keynesian state, and the ideological basis for a significant restructuring of industry and labour. Political conservatism had once been the domain of corporate America and the monied class,

who had denounced high taxes, bloated governments and federal regulation. These issues remained alive, but the New Right democratized conservatism, reaching out to the grass roots not only with economic appeals but with moral themes lamenting the alleged breakdown of values and tradition in American life. Even recognizing these difference, what is of importance to this thesis is that the New Right emerged as a social movement when it did, and that its umbrella provided the protection for a swift restructuring of the American economy, government and society.

As a logical conclusion to the economic premises of the New Right came the privatization of public goods and services. In one swift legerdemain this policy, at least theoretically, is able to encapsulate and execute all three basic tenets of their economic philosophy. By transferring the delivery of services and the production of goods from the public to the private sphere, governments could at once create new and profitable markets that are open to competition and consumption, while simultaneously reducing their own size and inefficiency. In policy terms, privatization "covers the sale of state enterprises, the allocation of public sector services amongst private competitors, eliminating or loosening state monopolies, and the introduction of private companies into public-based or initiated investment projects" (King, 1987: 123). Although the extent of this process has necessarily varied in different civil societies, privatization typically occurs in the following realms: the economy – deregulation and the selling off of public corporations; state services -- the employment of term or contract workers and the partial and/or complete withdrawal of particular services, such as health care; and finally, public space – the expanded use of private policing, the construction of gated communities, and the fortress-like reconstruction of city centres (Taylor, 1995: 419). It thus appears that

privatization, at least at the conceptual level, is the "purest" of New Right economic doctrines, the conclusion to their economic syllogism: "It is a logical implication of New Right economic principles to reverse the post-war trend toward increased public activity in place of private activity" (King, 1987: 16).

The reality of privatization has been very controversial in regards to the recent development of private prisons in the United States. Fueled by conservative rhetoric intended to rationalize a changing global economy, and coupled with the need to resolve immediate pressures, governments of the early 1980s began to consider the viability of privatization in the realm of corrections. Having control of their regional institutions and feeling more acutely the political economic effects of the times, the impetus for growth of the private prison industry, as we shall see, has emerged predominantly from state and local governments. From meagre beginnings rife with legal obstacles, litigation and opposition, within fifteen years roughly 50,000 inmates have come to be held in private prisons. Furthermore, this figure is expected to increase dramatically, where initiatives presently under negotiation could result in a four to eight hundred percent increase within five years (Prison Privatization Report International 1997a; 1997b).

No doubt, prisons have been penetrated to some degree by private interests in the past several decades, for example, in the provision of peripheral or auxiliary services such as food or laundry preparation. However, the recent influx of private interests at the operational and management level represents not only an extension of these practices, but also a radical shift in the foundations of social control. The decision to establish private prisons is indicative of a new

era of corrections in the United States and many other Western democracies. Faced with a variety of immediate policy pressures, elected officials in the United States have come to embrace the involvement of the private sector in managing prisons and their captives. This thesis intends to examine the historical emergence of private prisons in the United States in the early 1980s; the manner in which the topic will be analyzed is to be discussed in the following sections.

1. The Nature of the Policy Process

The implementation of a specific policy represents the final action of a complex and arduous political decision-making process; it is not simply the end result of solving a series of consensually-defined problems through the application of the most effective and efficient means. The view of the policy process as rational and incremental has largely been discredited by the research of political scientists (Hogwood & Gunn, 1984; Kingdon, 1993; Knoke, 1993; Weiss, 1993). This section will reconsider the nature of the policy process, as this will provide a method in which to conceptualize the privatization debate.

At one level, if a problem is to be confronted by policy-makers, the decisions leading to its solutions are rarely arrived at in a social vacuum with no reference to external stimuli, or where the rational equation of effective means and desired ends is the only guiding principle for good policy. Open debate amongst citizens is the presupposition of a representative government. Therefore, in theory, a key assumption to fulfilling the requirements of a democracy is to listen and to weigh the arguments of people who are external to the final decision-making process. In practice, however, decision-makers must also deal with substantive constraints of both time and

resources, which induces competition among different solutions to be the most efficient and effective, and which also prioritizes the urgency with which problems should be attended to. Therefore, the process through which an issue is filtered, defined, debated and eventually initiated as policy must be seen as a bargaining process characterized by conflict. Various political actors compete to have their positions implemented as the solution to the social problem, where the different means must be first noticed then weighed against each other by policy-makers, who are themselves constrained by exigent pressures (Simeon, 1978).

At a more general level, the entire policy process is itself embedded within a broader structural framework of political economy, ideology and structure, which comprise what Simeon (1978: 556) calls the “funnel of causality”. According to Simeon, policy outcomes are best envisioned in terms of a dialectical funnel of causality, moving from the more general and macro indirect background factors of the political economy to meso-level ideological positions and institutional structures to the immediate foreground of political contingencies.

In regards to political economic circumstances, these can be characterized as the intake of the funnel of causality and as such, their influence upon the development of correctional practices is the most distant or indirect. This having been stated, it is crucial not to confound the exertion of an indirect influence with having an insignificant influence. In effect, political economic contingencies are arguably the most significant factors in shaping correctional practices because they constitute the setting in which all other variables that influence these practices operate (Simeon, 1978: 569-570).

According to Miller (1973: 142), the term ideology refers to "a set of general and abstract beliefs or assumptions about the correct or proper state of things, particularly with respect to the moral order and political arrangements, which serve to shape one's positions on specific issues". As ideology is a pre-conceived blueprint, it tends to act as a filter which translates abstract political economic influences into emotionally-charged political options, thereby further narrowing the funnel of causality into varying policy options. Though at times the influence of ideology is obfuscated, it is nonetheless a causal force that shapes policy; to this end, Miller describes ideology in criminal justice policy as "the permanent hidden agenda" (1973: 142).

Institutional structures refer to the formal rules of the political system which establish the regulatory environment in which policy is initiated and discussed. According to Simeon (1978: 573-574), institutional factors include "the way in which government is organized, the degree of centralization or decentralization, the way authority is shared, [and] the formal mechanisms for registering decisions". Meso-level institutional factors such as these further restrict the funnel by delineating what is and what is not possible to achieve within the administrative capacity of the government.

The immediate political foreground of the policy process is the arena in which daily struggles are waged between various interests, to arrive at specific decisions. The policy process comprises "the interaction of formal and informal actors such as politicians, bureaucrats, pressure groups, and the media bargaining with each other" (Simeon, 1978: 556). This level of the funnel exerts the most direct influence on policy; it is where political economic circumstances, ideological positions and institutional structures are distilled through the

interactions of the key political actors involved in the process, who negotiate with each other and around a variety of pressures and constraints. Policy outcomes are thus the product of the conflict present in decision-making, while simultaneously reflecting the broader material, ideational and institutional contexts of society.

Complementing this understanding of policy outcomes is the view that government is a social institution, and as such is situated within the social structure in a position that both influences and is influenced by other social institutions. For this reason, Garland sees social institutions as "only partly self-contained" and discusses their porous nature:

They open up on to other worlds and connect into a social network which extends well beyond their particular domain. Each institution occupies a particular place in the wider social field and routinely relates to its social environment, affecting and being affected by the social forces which surround it. Institutions link up with other institutions and with the world outside. (1990: 283)

Therefore, although the implementation of a policy may seem self-serving or simplistic at face value, it often has gained momentum from a variety of social forces throughout the social structure which have indirectly affected the policy process. Equally, a policy may first appear to be the diluted result of bickering politicians, yet it is always a good deal more, haunted by motivations of those not directly involved in the immediate decision-making. Suffice it to say that the implementation of a policy resonates with influencing factors and events far beyond its *prima facie* stated justification; this is not to slip into conspiratorial conjecture, but simply to be sensitive to the social underpinnings of the policy process.

Returning to the policy process, any problem encountered by policy-makers has its origins in a specific alignment of factors, events and influences at the material, ideational and

institutional levels, and the policy process is a final sieve through which these are filtered to arrive at a specific outcome. Political economic circumstances, ideological positions and institutional structures are distilled through the interactions of key political actors in the process. Thus, the policy process represents the immediate political foreground in which a plethora of conflicting circumstances are resolved into concrete outcomes through means of struggle, action and negotiation, a product of the inherent conflict in decision-making, while simultaneously reflecting the broader contexts of society. Understandably then, it is this level of the funnel that exerts the most direct influence on policy; for this reason, the policy process will be the setting in which I shall examine the key events and factors which comprise the history of the privatization movement.

2. The "Overdetermination" of Punishment

Following a conceptualization similar to that of the policy process, one must be cognizant of and acknowledge the complexity of penalty as a social institution in order to understand the change in the nature of punishment caused by privatization. Theorists from Durkheim to Foucault have argued that punishment exists not within an institutional or social vacuum, but rather within a broad and complex web of social arrangements which influence the specific form that it will take. Nor does penalty simply exist to perform its manifest functions, which continually change with both time and location, but it also has a variety of latent purposes (Box, 1987; Christie, 1993; Colvin, 1986; Garland, 1985; Reiman, 1979).

What determines the form and purpose of punishment has been fodder for decades of academic debate. Causal factors cited include the economy, ideology, the process of

rationalization and morality. However, those who trace the development of penal policy and its effects often forsake a social understanding of the phenomenon for one of simplicity (see Garland, 1990 for a complete discussion). A theorist will often adhere to the explanatory power of a particular cause to the detriment of examining others, thus substantially damaging the potential for a richer and more complete understanding of the phenomenon. Simply, explanations rarely mirror the complexity of punishment itself. As we shall see in the literature review, it is such reductionism which has plagued the understanding of the privatization of prisons and is the impetus for this thesis. The simplicity with which this tremendous shift in the nature of punishment has been explained obfuscates the variety of causes, and is thus an obstacle to a critical understanding of the issue.

As a leading theorist in the sociology of punishment, David Garland elaborates on such causal reductionism, and advocates the academic option of considering the overdetermination of penal events and institutions, which he defines, citing Gay, as: "a sensible recognition that a variety of causes - a variety, not infinity - enters into the making of all historical events, and that each ingredient in historical experience can be counted on to have a variety - not infinity - of functions" (1990: 280). Accordingly, a specific form of punishment should not be construed as a single event or as having a monocausal relationship to a specific determinant, which has the effect of reducing its causal complexities. Rather, penalty should be viewed as a social institution in which a number of forces of varying influence operate simultaneously, and often in conflict, to produce a specific punishment. Garland understands these theoretical difficulties associated with undertaking a study of the causes responsible for shaping penalty in a manner ignored by other sociologists of punishment:

In the shaping of any penal event...a large number of conflicting forces are at work. Broad ideological ambitions run up against immediate financial constraints, political expediency may conflict with established sensibilities, the perceived requirements of security may differ from those of morality, the professional interest of one group may be in tension with those of another, and the pursuit of any one value will generally involve the violation of several others. These swarming circumstances are only ever resolved into particular outcomes by means of the struggles, negotiations, actions, and decisions which are undertaken by those involved in the making and the implementation of policy, and can only be traced by detailed historical work. There is no settled hierarchy of purposes or causal priorities which prevails at every point allowing us to describe, once and for all, the sequence of forces and considerations which "determine", once and for all, the specific forms which penalty displays (1990: 285).

The social nature of this conceptualization of punishment is similar to that of the policy process. Neither the form of punishment nor the outcome of policy can be explained away by a simple reference to one cause, but must be placed within a wider context to grasp the complex and multidimensional nature of their existence. The discussion of both the policy process and the overdetermination of penal events draws the same conclusion, to be applied to the problem under consideration in this thesis: that the history of prison privatization must be approached from a position that embraces multiplicity and complexity, for this is the only way that the study of privatization as both a policy product and a public punishment can avoid reductionism.

3. Thesis Statement, Purpose and Structure

Assuming "overdetermination" - that any event will have a variety of causes and a variety of functions – the purpose of this thesis is to examine the key factors and events within the immediate political foreground which have led to the acceptance of private prisons as a viable policy option in the United States in the early 1980s. These circumstances represent the most direct and proximate pressures that are faced by decision-makers, and are thus often found at a local or regional level where privatization policy has been most often debated. Some of these are

factors common to the execution of the modern policy process itself, for example the presence of interest groups, and exert pressure regardless of the social problem confronted; others are specific events that have occurred in the immediate political sphere of decision-making, for example, a particular court ruling, and have exerted pressure on specific problems and not others. Further, it should be noted that these factors are highly interrelated and tend to continuously influence each other; for example, a fervent law-and-order campaign by a local politician may lead to an increase in a county's prison population which in turn could lead to an increase in a county's overall deficit.

Thus, rather than extract a specific causal sequence, the factors will be discussed as separate entities that are interconnected in some way, sharing the common feature of influencing policy-makers to consider the privatization of prisons as a policy option. Equally, many of these factors either continue to directly influence criminal justice policy with respect to privatization to this day (e.g., prison populations continue to rise) or have had such a dramatic effect on corrections at the time that the criminal justice system is still coping with the consequences (e.g. the War on Drugs imprisoned people much longer), which, in turn, continues to affect the consideration of privatization. Finally, while the set of factors which influenced the policy process saw their origins in roughly the time period of 1978 to 1985, owing to the variety of sources and influences, it is difficult to delineate a precise chronological order. As such, they will be discussed as occurring more or less simultaneously unless otherwise mentioned. The focus will remain most closely on the United States, owing to the accessibility to larger amounts of data and actual events, but will at times also consider historical and recent developments in other Western industrialized countries.

Following this introductory chapter, the thesis will be divided into seven chapters, comprising the body of the work, and a conclusion. Chapter 2 examines the existing literature on the subject of privatization and attempts to contextualize its emergence within the privatization movement specifically and the discipline of criminology generally. Although the absolute amount of material on the subject is lacking, sufficient material was found in books, journals, correctional and business periodicals, newspapers and government reports that spanned a variety of academic disciplines. An essential source at the outset of this thesis was *Privatization of Corrections Facilities*, a bibliography of privatization literature compiled by Tim Watts (1990), which was used both to identify existing literature and to establish the temporal trajectory of privatization literature. Several online searches were also conducted as part of the data gathering, and material was found in the form of: an online journal dedicated to the issue of private prisons from a global perspective (Prison Privatization Report International); a homepage dedicated to the dubious activities of political candidates (Skeleton Closet); and several statistical databases operated by the various departments in the federal government of the United States (National Criminal Justice Research Statistics, Office of Management and Budget, Sourcebook of Criminal Justice Statistics Online, Federal Elections Committee).

Four categories of factors will be examined separately in order to distinguish their nature and proximity of influence to the policy-making process. Chapter 3 is concerned with the first category of factors, those that preceded the privatization debate in the early 1980s; at first glance they may appear irrelevant to the discussion, yet they warrant attention because they have had considerable influence, though indirectly, on the policy process concerning private prisons. Chapter 4 discusses the second category, “indirect correctional factors”; that is, factors which

have had a tremendous influence upon the entire domain of criminal justice, including, but not exclusive to, privatization, such as the explosion of the prison population in the early 1980s which affected all decisions on the correctional agenda. Chapters 5, 6 and 7 examine the third category of factors, which relate to those directly affecting the specific policy discussions surrounding the privatization of prisons, as well as certain key events which established policy precedents within the debate. Chapter 8 looks at the fourth and final set of factors, which concern the nature and structure of correctional policy-making itself. They are inherent to any correctional issue which is brought to the policy level and thus directly influenced the privatization issue. Nonetheless, despite various degrees of proximity to the policy process, together, the factors of all four categories comprise the immediate foreground in which policy issues were debated, negotiated and implemented.

As a summarizing disclaimer, the findings should not be generalized to conclude that privatization will only occur under these circumstances and not others; private prisons have been established in many countries, with backgrounds both similar and dissimilar. Rather, what must be garnered from this schema is that an interaction between various events and existing factors, within the structure of the policy process, produced a specific policy outcome that is unique to its time and space. Finally, one must also be aware that these factors are not mutually exclusive, but operate in a dialectical manner where events can be both shaped by and shape other events and factors. Consequently, though factors may be classified within a particular category, they ultimately resonate with the influence of factors in other categories.

Finally, in my concluding chapter, I shall examine issues concerning the future of privatization. The first issue looks at how the recent past of privatization has effectively laid a

solid foundation for the future health of private corrections. The second issue situates privatization within the emerging master narrative of criminal justice practice, the “new penology”, and looks at what this implies for the future of correctional practice. Finally, the third and final issue discusses the need for future research in the area of private prisons. Having now described the theme, purposes and structure of my thesis, I shall turn to a review of the existing literature on the privatization of prisons in the United States.

Chapter 2

Literature Review

The nature of the available literature on private prisons follows a rather clear historical path. Between 1978 and 1983, before widespread privatization began, academic material speculating about the possibility of privatization did occasionally surface. However, the bulk of the literature began to appear after major policy decisions to privatize prisons had already been implemented (beginning in 1984). The business world and the working correctional environment took note of the emerging trend as well; judging by the literature, this preceded any significant academic interest in private prisons by criminologists, sociologists or legal theorists.

The interest displayed by the correctional world is understandable considering that the people in this line of work were the first to be directly affected by policy decisions to privatize prisons. The content of their expressions usually consisted of editorial opinions and anecdotal information relating to just a few specific institutions or events (see, for example, Bosarge, 1984; *Criminal Justice Newsletter*, June 16, 1986;). Rather than an elaboration of any scientific assessment, their purpose seemed to be exposure of and speculation about the idea of privatization. These pieces appeared in bulletins and journals related specifically to the vocation of the correctional worker, for example *Corrections Digest*, *Criminal Justice Newsletter* and *Federal Probation*. One possible explanation for the nature and type of this literature could be the relatively local nature of the initial privatization movement. Thus, the correctional employee magazines became a forum in which to raise questions concerning individual institutions by relating the immediate experiences of those directly involved in an emergent debate. For

example, we see both *Corrections Digest* (September 25, 1985; March 26, 1986) and *Criminal Justice Newsletter* (October 1, 1985; January 2, 1986) discussing local privatization issues in Pennsylvania and Tennessee. Rather than examine the issue from a broader and more national perspective, the focus remained more local.

Within an environment of falling economic barriers to investing, a resurgence in the economy following the recession of 1980-1981, and the increasing privatization of public goods and services as part of the Reagan Administration's fiscal policies, big business was reeling with investment and profit-making possibilities – and interest eventually turned to the prison. Owing to the novelty of privatizing punishment, coupled with the optimistic economic climate of penetrating new territories of profit, the business media quickly took notice and cast the initial players as "entrepreneurs". Consequently, from 1983 to 1986, the years when the industry was still in its infancy, articles appeared in a variety of business journals and magazines, including such prominent publications as *Venture* (Appleton, 1983; Kravitz, 1986), *Forbes* (Behar, 1985; February 24, 1986), *Dun's Business Monthly* (Seelmeyer, 1984), *Money* (November, 1985; Anrig & McCabe, 1986), *Fortune* (Nielsen & Steibreder, 1986; Seligman, 1983), *Financial World* (Clifford, 1984; Stevens, 1985), and *Barron's* (Duffy, 1984). These pieces stressed the novelty of the idea and the high potential for profits, for both companies and investors. Although ethical concerns with privatization were occasionally addressed, including the profit motive of the industry and the right of the private sector to punish (Adkins, 1984; Krajick, 1984; Seelmeyer, 1984), the coverage overwhelmingly cast the industry in a positive light. The issue was defined as a challenging yet ultimately profitable business venture, generally avoiding references to potential legal or moral concerns. This optimism reveals itself in such article titles as "Tom

Beasley of Correction Corporation of America: In the holding pen" (*Forbes*, February 24, 1986) and "Private Business Goes to Jail" (Seelmeyer, 1984: 64), or remarks such as "We're not a flash-in-the-pan industry. What we're after is long-term, stable growth" (Heller, 1985: 21).

Academic interest in privatization only really surfaced following both policy decisions to privatize prisons and literature originating from the business and correctional fields. A brief glance at *Privatization of Corrections Facilities*, a bibliography of privatization literature compiled by Tim Watts (1990), reveals that in the period 1983-1985 (when privatization had already begun in several states), the number of articles that discussed private prisons in business and correctional literature totalled 33; academics produced only eleven. Again, one could posit that this discrepancy was due to the scattered growth of private prisons at the state and county level, expanding differentially in the various states and much more rapidly than at the federal level. A possible lack of knowledge of the growing industry would have left researchers in a position where accessing a coherent and consistent body of knowledge to conduct a general trend analysis would have been next to impossible, whereas the other media are better structured to present and discuss individual instances of a phenomenon. This claim is supported by the several major academic pieces that were written at the time which failed to grasp the speed with which privatization was expanding across the correctional field (Auerbach, 1982; Cohen, 1985: 62; Mullen, 1985: 91).

Another hypothetical explanation for the academic lag could also be found in the existential crisis faced by criminology during the mid-1970s to the mid-1980s, which was the period where all the factors which would eventually produce a ripe environment for privatization

were falling into place. Having witnessed the critique of the rehabilitative ideal and the co-opting of radical alternatives by the state, combined with the emerging critiques of modernist projects from post-structuralism and post-modernism, criminology of all strains was left with an explanatory hangover amidst its own theoretical rubble. The void was subsequently but slowly filled with more pragmatic approaches to crime and social control on both sides of the political fence. In this time frame of a decade, we notice the rise of right realism (Van den Haag, 1975; Wilson, 1975; Wilson & Kelling, 1982), left realism and practical social change (Lea & Young, 1984; Young, 1981), the rebirth of rational choice theory (Fogel, 1977; Von Hirsch, 1976), all characterized by an increased focus on policy formulation and evaluation. It is this latter trait of policy research which would eventually become the criminological approach most involved in the issue of privatization. By the time policy research had garnered theoretical and practical clout and refined its methodology, private prisons had already been established on a small scale, having gained momentum in the early 1980s. Therefore, it is possible that the crisis of criminology led academics to overlook the issue of privatization, as they were struggling to re-establish the legitimacy of the discipline in a variety of theoretical paradigms.

The first article to appear that briefly touched upon the subject of privatization was Richard Pearson's "On the Case for Private Initiatives in the Field of Criminal Justice" in 1975, but it focused exclusively on the provision of auxiliary services and was rather lacking in the vision of contemporary prisons being operated privately. After a short hiatus, several academic pieces appeared between 1978 and 1982, yet still without sober insight into a burgeoning industry (Auerbach, 1982; Greenwood, 1982; Swart, 1982). The first major academic book to appear on private prisons was Joan Mullen's *The Privatization of Corrections*, written in 1985

for the U.S. Department of Justice. Although this was preceded by J. Scott Rogerson's *Jailspace: Private Assistance with a Public Problem*, written in 1984, its contribution is specious, since it was published by Corinthian Corporation, itself a private prison company. By 1986, private prisons became a viable correctional policy at the state and county level across the United States and was being seriously considered at the federal level. The following three years saw at least 60 academic books and articles written on the subject, compared to 11 for the three previous years (Watts, 1990). Interest will no doubt continue to grow as the industry continues on the path of record profits and growth.

The nature of the sudden proliferation of academic literature on the subject is also quite telling. Having missed the forecasting of privatization before it began to appear in several states, researchers became aware that little literature circulated on the topic in general, let alone any evidence that pointed to its effectiveness as a policy option. Reacting to the rapid rise of the issue on the policy agenda and its lack of academic attention, criminologists immediately focused on technical issues, such as cost-effectiveness, quality and efficiency. This was done through case studies comparing individual private institutions to state-run facilities. Thus began an academic preoccupation with assessing the practical worth of private prisons.

The conclusions that emerged from the works of academics favouring the policy analysis approach tended to approve of privatization and thus gave the movement an initial academic baptism. However, the initial concern with policy left more important legal and humanitarian issues relatively untouched for a number of years. Some researchers began to take these issues as their operating guideline, shucking the rigidity of policy methodology for what they felt were

more fundamental philosophical concerns - for example, questions of the responsibility of the state to punish, public versus private accountability, the coupling of profit and punishment. It is the work that emerged from this approach that seriously questioned the movement on philosophical grounds, and often contested the penetration of private interests into public duties (Borna, 1986; Cody & Bennett, 1987; DiIulio, 1988; Robbins, 1987, 1988c). Since this academic split, the debate has essentially revolved around the philosophical-technical/practical axis. To summarize, the initial focus on practical evaluation could be construed as the result of a late reaction to an unprecedented policy initiative that needed immediate evaluation, whereas the philosophical approach was itself a reaction to the parochial astigmatism of the practical approach. However, to this day, whether private prisons are a progression or a regression for society is a question that has yet to be fully resolved.

After roughly a decade of research and debate, several academics have gained international prominence and acclaim for the depth of their work. The most recognition undoubtedly goes to Charles Logan, an avid supporter of privatization; he has written extensively on the subject (1987; 1988; 1990; 1991; 1996; Logan & McGriff, 1989; Logan & Rausch, 1985; Logan & Thomas, 1993) and is widely quoted in publications both academic and lay. Ira Robbins (1986a; 1986b; 1987; 1988a; 1988b; 1988c; 1989) and John DiIulio (1986; 1987; 1988; 1990a; 1990b; 1991) appear to be Mr. Logan's chief rivals, having also received wide coverage for their anti-privatization position.

The debate surrounding the privatization movement continued unabated with the growth of the private prison industry in the late 1980s and early 1990s. Yet, although acknowledgement

must be given to the wealth of evidence presented by both sides, their preoccupation with advantages/disadvantages and with making judgments has left the understanding of private prisons wading in the same pool of arguments and facts and opinions that rise to the surface time and again – cost-effectiveness, propriety, public responsibility, etc. This is not to discount the importance of these issues, for their analysis is necessary when considering policy options, yet they have occupied academics to the point where the equally important questions of causality are overlooked. All too often the causes for the emergence of private prisons are briefly mentioned in passing or as an introduction to the more traditional technical or philosophical issues (Logan, 1990); or in some cases, the author will focus all attention on one particular cause without stopping to consider the variety of causes that really exist (Welsh, 1995). These methods of inquiry do remain a necessary aspect of a complete understanding, yet the extent of growth in the industry that has occurred begs an analysis of wider trends.

The conclusion to be drawn from this literature review is that there has been an evident failure to provide a proper historical account of the origins of private prisons, and the movement's subsequent trajectory, which accounts for multiple causality in the manner suggested by Garland. Absent from the literature is the analysis of the privatization movement contextualized within the microdynamics of the policy process and the cumulative pressures faced by individual policy-makers. The literature has failed to open the field of inquiry to include Garland's tenet that penalty "should not be seen as a singular kind of event or relationship but rather as a social institution...[that] occupies a particular place in the wider social field...situated within an ensemble of social forces" (Garland, 1990: 282-283). Therefore, a wider understanding of the micro-level processes of decision-making in the realm of correctional

policy, and how these have interacted to produce conditions conducive to considering the privatization of prisons as a viable policy option, is critical to assessing the past, present and future developments in their proliferation. Having surveyed the literature, and its historical emergence, in relation to privatization, I shall now turn to an examination of the first set of factors which comprise this study, namely those preceding the privatization movement.

Chapter 3

Factors Preceding Privatization

1. Peripheral Private Services

The foundation of contemporary prison privatization can be traced to the early 1970s. During these years numerous local and state governments began to hire private-sector firms to manage a wide range of the newly adopted community-based alternatives to incarceration. For-profit private companies and non-profit organizations began to establish thousands of halfway houses, group homes, and drug treatment programs (Krajick, 1984: 22). Although the return on profits was minimal to nil, these community alternatives to prison began to be widely implemented, and were most often aimed at diverting juveniles from secure state-run facilities and their consequences. For example, according to Taft, "almost one-quarter of the juvenile delinquents who were diverted from institutions between 1970 and 1974 were sent to private agencies" (1982: 29). By 1988, roughly two-thirds of the 3,000 minimum security juvenile detention centres and correctional facilities were privately owned and operated. However, the impact of private services on corrections is also directly related to private prisons.

The problems associated with these quasi-official agencies, most dramatically seen in the extension and blurring of state powers throughout society, have been well documented (Chan & Ericson, 1981; Cohen, 1985; Scull, 1977), and therefore need not be focused upon in the present discussion. Rather, these agencies must be seen as the opening through which private companies entered into the criminal justice system and began offering a variety of specialized services to correctional organizations faced with shrinking resources and higher demand. With the initial

entry into the softer end of the criminal justice system solidified in community alternatives, companies saw the vast potential for profit and, in some states, soon became involved in the daily operations of prisons through the provision of peripheral or auxiliary services such as laundry and food preparation.

Within a few years, companies were involved in the daily operations of juvenile and adult detention centres and correctional facilities at all levels of security, providing a range of diverse services. The National Institute of Corrections published a study in 1984 which found that almost 80 percent of all states contracted out auxiliary correctional services to the private sector (Camp & Camp, 1985: 15). By 1986, a sample of 52 correctional agencies revealed that contracts with private firms worth over \$200 million for 32 different types of services existed in 38 states (Lilly & Knepper, 1992: 177). Understandably then, "while widescale potential for private ownership and management of secure adult facilities exist, it is clear that the private sector is already massively involved in many other profitable aspects of punishment" (Lilly & Knepper, 1992: 176-177). This relatively rapid penetration into the criminal justice system by private enterprise effectively laid the foundation for the eventual wholesale privatization of entire prisons by legitimizing their presence within the correctional domain.

2. Fragmentation of correctional authority

A predominant reason for the growth of private service delivery in the United States can be found in the fragmented structure of authority which characterizes the American correctional system, which is divided between federal, state and local levels. These levels of authority have little or no coordination in their philosophy and practice; each level has its own organizational agenda to promote, its own jurisdiction to control, and its own pressures to deal with.

Furthermore, agencies at the state and local level, not being centrally controlled, differ on these aspects from one state to the next. This fragmentation pressures state and local governments to solve the problem through more creative means and thus expands the range of policy options willing to be considered, thus opening a window of opportunity through which private interests have been able to penetrate the realm of corrections

In the first instance, private companies providing auxiliary correctional services have been able to flourish in areas where governments face greater funding difficulties than those which do not. Facing budgetary constraints, most local and state governments understandably decided to invest in a specialized service which they cannot provide: "...the headway which the private sector has made at the county, and to a lesser extent, state levels is largely attributable to the difficulties of funding and management which state and local governments have encountered" (Ryan & Ward, 1989b: 62). The federal level, proximate to important funding circles, does not encounter the difficulties experienced by the state or local jurisdiction which have come to bear the brunt of increasing prison costs and declining budgets. Therefore, the proliferation of services contracted out to private companies is in part the result of the fragmentation of correctional authority in the United States, which has financially burdened local and state authorities to such an extent that the private sector and regional governments are left with "plenty of room to manoeuvre" contracts for a diversity of specialized services (Ryan & Ward, 1989a: 38).

Similar effects of this fragmentation can be found in the growth of private prisons as well. The industry's expansion since the early 1980s has been concentrated in regions that are subject to more pressures. In particular, the Southern states have faced the highest increase in prison populations and correctional expenditures and the least economic growth (Sparks, 1994: 25). Consequently, these pressures forced many local and state correctional authorities of the South to turn to the private sector in an effort to alleviate economic strain. Without a centralized

federal decision-making process for correctional issues, the number of policy options available to these states increased, where governments had both the justification and the initiative for considering private prisons as a viable policy option.

3. From the periphery to the center

Although the correctional system has now long contracted with the private sector for a diversity of peripheral services, often achieving the desired results of both government authorities and private companies, contracting for facility ownership and management has been described as a "departure from traditional reliance on private support services" (Durham, 1993: 264), and "more recent, less familiar, and more controversial [than private service delivery]" (President's Commission on Privatization, 1988: 148). It is true that the advent of privately owned and managed prisons is a significant departure from services historically provided by the private sector, and that questions of propriety and effectiveness are more easily raised for this aspect of privatization than service delivery. Yet we neglect an important factor if we dismiss the close links between service delivery and wholesale privatization.

Just as the private non-profit management of juveniles in the early 1970s contributed to decisions to privately provide auxiliary services for profit (Matthews, 1989: 2), so the latter has provided an impetus for the privatization of whole institutions by laying the anecdotal and empirical foundation proving that private interests and government can both benefit from privatization. It is true that private service delivery has been advantageous to authorities concerned with both efficiency and cost-effectiveness (Camp & Camp, 1985: 20); the private sector has shown substantive economic results in this area. With this legitimacy solidified, private interests have been able to justify their presence within the correctional domain; it was only a matter of time before private companies began to consider the possibility of privatizing entire institutions for profit. Furthermore, considering the political economic circumstances and

ideological climate of the late 1970s and early 1980s, it is not surprising that policy-makers began envisioning this possibility as well.

Once the seed of privatization was planted in the area of service delivery, political actors involved in the policy process who were facing a myriad of pressures to be described, thought they could acquire the same potential gains by transposing this seed in the area of secure adult confinement. This is also commonly known as "function creep", where if one solution is applied to a problem with legitimate success, then its effectiveness is assumed across a spectrum of similar policy problems. The solution is then applied to a related problem, even if it is ultimately dissimilar from the initial problem. This process allows one solution to creep through a variety of problems as a functional solution, even though its effectiveness was only demonstrated with the initial problem. More specifically, "the movement towards privatization within criminal justice also includes an extension of localized and limited forms of contracting out of specialist services to the wholesale transfer of prisons to private profit-making and non-profit-making agencies" (Matthews, 1989: 3). Therefore, to summarize, the American government structure is partially responsible for driving local and state governments to contract out correctional services to private companies, whose success in this endeavour then allowed the possibility of privatizing entire institutions to gain acceptance in the policy process.

4. The state of privatization

It is no wonder that Ronald Moe of the Library of Congress concluded in the later 1980s that "when administrative historians some years hence study the 1980s, they are likely to conclude that 'privatization' was the single most influential concept of the decade. (Hirsch, 1991: 1)

Before beginning the discussion of those factors which more closely influenced the emergence of private prisons, it would be helpful to examine the state of privatization (as a general policy, not strictly for prisons) during the Reagan Administration in order to establish the contours of the private prison debate. Although several of the following factors were alluded to in the introduction, the purpose of their reappraisal here is to further describe the atmosphere which was sweeping the nation in the early 1980s at all levels of government, where privatization was seen as a panacea to the problems faced by policy-makers. Finally, although this discussion is related to factors which preceded privatization, it must be kept in mind that as a policy, privatizing state services had already been implemented in certain areas. In the 1970s, the idea gained increasing momentum and viability as governments came under the sway of the Right and saw such groundbreaking efforts as those of the Thatcher Administration in the United Kingdom. Thus, although the actual implementation of privatization policy in the United States occurred more or less simultaneously with other factors in this thesis, the strategy of privatization will be considered as a factor preceding private prisons as its central place in New Right economic policies predates any actual executed policy.

We have already seen the importance attributed to privatization by the New Right. Theoretically, by privatizing public services, conservatives are able to effectuate into policy the main tenets of their ideological doctrine: downsizing government to allow free market forces to regulate and order the individual interactions of society. The enthusiasm which met privatization in the early 1980s and carried it through the Reagan years cannot be underestimated, where by the beginning of Reagan's second term "officials took to joking that virtually any proposal could become administration policy if it carried the label of privatization" (Donahue, 1989: 5). The

efforts of the federal government to implement privatization, as well as to provoke local and state governments to do the same, are numerous. With hindsight, we can detect the commitment to this policy option, in addition to the atmosphere it created for policy-makers at the time, as one of overwhelming political and ideological pressure to consider privatization as an option. A decision-maker at the local or state level was exposed to studies, commissions, speeches, statistics, inquiries – all espousing the virtues of privatization, and supported by the godhead of politics, the President himself. In addition to this pressure, when one considers that privatization is already perfectly at home in New Right economic policy, a conservative decision-maker would have had little resistance to evaluating privatization as a policy option.

In the drive to roll back the state, it was the federal government which took the initiative to privatize. The Reagan Administration commissioned several committees to examine the issue of privatization in general, as well as which specific areas of public life could be privatized, including corrections: “the public landscape was combed in the United States in search of targets for privatization of assets or contracting, and prisons were sighted by those advocating broader private sector involvement in the delivery of public services” (McDonald, 1994: 36). The following are four of the most in-depth and influential studies into the issue, denoting the breadth and depth of the government’s desire to implement a variety of privatization policies.

In his first year of office, Reagan created and commissioned the President’s Private Sector Survey on Cost Control, headed by Peter Grace. The goal of the Grace Commission, as it came to be known, was to “determine which government services could be better and more efficiently produced by the private sector, and to determine the feasibility of the privatization of

a host of services” (Sellers, 1993: 20). Following the publication of the Commission’s report, its final recommendations were used by the Reagan Administration to justify transferring the production and/or provision of a variety government services to the private sector. Sellers claims that these recommendations represented “one of the strongest initiatives ever taken by an administration toward reaching the goals of privatization” (1993: 21).

In 1982, on the heels of the conclusions of the Grace Commission, Reagan assembled The President’s Task Force on Private Sector Initiatives. Similar to the Grace Commission, the Task Force was specifically intended to “involve the private sector more directly in the delivery of hitherto public services” (Ryan & Ward, 1989b: 53). This federal initiative, publishing its conclusions in 1983, was well received by the private sector, spurring entrepreneurs “to come forward with their own schemes to diminish ‘big government’ and augment their corporate profits” (Ryan & Ward, 1989b: 53).

Not satisfied with two thorough studies lauding the virtues of privatization, in 1987 the Reagan Administration created The President’s Commission on Privatization. Like the inquiries before it, the Commission was created to “assess the range of activities that might properly be transferred to the private sector and to investigate methods by which such shift could be accomplished” (1988: 1). Convened by an executive order in 1987, its report was issued in March of 1988 and solidly endorsed privatization. With reference to prisons, it concluded that “contracting should be regarded as an effective and appropriate form for the administration of prisons and jails at the federal, state and local levels” and that “proposals to contract for the administration of entire facilities at the federal, state or local level ought to be seriously

considered” (1988: 149-150). Finally, President Reagan’s Reform 88 initiative was especially designed to bring public management practices more into line with those employed in business.

Despite high expectations and fiery rhetoric, privatization did not culminate in many substantial events at the federal level for one simple reason: The federal government of America has never had many federal enterprises and assets to privatize (Donahue, 1989: 8). Accordingly, most federal privatization efforts were instead directed towards contracting out various social services. However, what is important in Reagan’s actions is that all of these federal initiatives had the cumulative effect of creating an ideological atmosphere for decision-makers at all levels of government in which privatization was considered a viable and effective policy option. By taking the first step in the form of studies and inquiries, the federal government gave the explicit approval to privatization; and when the federal government gives such overwhelming approval to a policy, “states tend to follow the lead, which helps states in prioritizing their goals” (Sellers, 1993: 39). From here, policy-makers could extrapolate from the conclusions of these inquiries and restructure state finances according to the privatization impetus, thus affecting the budgets of local governments, which in turn begin to privatize their services. We thus notice a trickle-down effect, most aggressively seen in the Republican-dominated South, where positions and policies of the federal government seep into the decision-making processes of lower levels of authority. Once legitimated ideologically from above, privatization came to be reinforced from below: Owing to diminished federal aid and a number of tax protests, both of which constricted state finances, the major privatization initiatives were undertaken with more prevalence and less visibility at the state level (Donahue, 1989: 131; Hirsch, 1991: 15). Therefore, “while federal privatization initiatives have been driven largely by ideology, at the state and local levels they have more often been spurred by expediency” (Donahue, 1989: 131). When considering the following set of factors which more directly concern privatization, this atmosphere and this pressure to privatize should be kept in mind, for it was surely on the minds of those involved in

the policy process, where “few politicians wished themselves to be labeled as advocates either of high spending programs in the field of social welfare or of an enhanced role for the federal government” (Peele, 1988: 551).

5. Conservative social policy and crime

What must be considered as a factor preceding privatization is how the conservatism of the New Right is translated into social policy, and specifically criminal justice policy, for it was their ideological beliefs which helped structure the contours of correctional debate and eventually seeped into the operations of the criminal justice system. Levels of crime in society are seen as both the result of this permissiveness, induced by individual freedoms accrued from the liberal social movements and governments of the 1960s, and as a reflection of the degeneration of the moral order. Conservative ideologues argue that crime and disorderly conduct such as “public drunkenness, street prostitution, and pornographic displays can destroy a community” (Wilson & Kelling, 1982: 38); therefore, for the right, “the paramount value is order -- an ordered society based on a pervasive and binding morality -- and the paramount danger is disorder -- social, moral and political” (Miller, 1973: 148). As a result, they place foremost importance on the preservation or maintenance of law and order, even if this comes at the expense of some personal freedom (Young, 1981: 278).

According to the New Right, a coercive criminal justice system is an integral element in the establishment and preservation of a law-abiding society; thus, the criminal justice system becomes the ultimate authority to order social life. Characteristic of conservative ideology is a law-and-order mentality and a belief in retributive punishment, where repressive correctional and

police practices are the most effective means for responding to, and ultimately controlling, crime (Bartollas, 1985; Miller, 1973; Newman, 1983; Wilson, 1975). This is evinced by Republican-initiated crime control strategies such as the return of the death penalty, mandatory minimum sentences, the War on Drugs and three-strikes legislation (Christie, 1993: 195). Such an ideological framework dictates that expanding the powers, scope, and efficiency of the various criminal justice institutions is the most logical response to increasing levels of crime and victimization regardless of whether they are genuine or perceived (Caringella-MacDonald, 1990; Miller, 1973). Furthermore, since policies with respect to offenders revolve around retribution, rational choice theory and incapacitation, prison is then an integral element in achieving this moral order.

Therefore, in contrast to their position on public welfare provision, governments of the New Right are willing to invest enormous quantities of resources into the state social control apparatus because they perceive this to be a necessary measure in the establishment and preservation of an orderly society (Bartollas, 1985; Miller, 1973; Otterbein, 1986). A prominent Republican leader mirrored this philosophy when he was quoted as saying: "The city welfare state must be replaced with a society of conservative values, including strong support of police, prosecutors and prisons" (Clymer, cited in Miller, 1996: 125). These assumptions were characteristic of Reagan's electoral platform and criminal justice policies, and created the ideological context of the correctional agenda in which the privatization movement was considered (Caringella-MacDonald, 1990). Therefore, even before privatization emerged onto the policy agenda, the conservative social policy of the New Right had an ideological investment in the use of imprisonment as a method to impose a moral order and was thus more enthusiastic

to incarcerate larger numbers of persons. Combining this with their adoration of privatization in the early 1980s, the ideological barriers to stop privatization were few and far between.

One can attempt to criticize this position as conspiratorial. However, the power of ideology cannot be underestimated, as it often resides in its amorphous emotional conviction and its ability to blur the lines between fact and value, rather than as a concrete power in the hands of a few politicians; to quote Miller, “it is the capacity of these positions to evoke the most passionate kinds of reactions and to become infused with deeply felt, quasi-religious significance that constitutes the most crucial element in the difference between testable assumptions and ideological tenets” (1973: 151). This is not to say that all of the key decision-makers in the prison privatization debate were morally supportive and personally defensive of the issue itself, but they were supportive and defensive of the wider forces it was associated with – that of conservative morality, punishment, free market economies, denunciation of welfare – all which came to interact in the decision to privatize prisons. Therefore, although the possibility of privatizing prisons may have led some conservative politicians to voice opposition, its fundamental characteristics were so aligned with the ideological convictions of many policy-makers that such opposition was stifled.

“Ideology”, says Miller, “has the power to transform plausibility into ironclad certainty, conditional belief into ardent conviction, the reasoned advocate into the implacable zealot” (1973: 152). That is, when dealing with people who have such strong beliefs in the necessity of a strong moral order and a free market, even using empirical arguments to persuade is very difficult; and this is what we have seen, as prisons were initially privatized with barely an ounce

of empirical inquiry into questions of efficiency and effectiveness (see Chapter 2). This overemphasis on values as opposed to facts, characteristic of ideology, was clearly seen in the privatization movement if we look at the actual trends which were occurring while key prison privatization policies were initiated during the 1980s:

- although incarceration rates were hitting record levels every year since the late 1970s, both crime and victimization rates were going down before privatization rose to the policy agenda (Christie, 1993: 92-93);
- the advantages of privatization offered by its proponents had little empirical foundation on which to justify their claims in the early to mid-1980s, yet the support for privatization was overwhelming and it was implemented as correctional policy in many states and counties (Shichor, 1995: 229-230);
- despite the ideological rhetoric to downsize government and reduce federal expenditures, spending never did go down; the percentage of domestic spending continually increased, but not in the area of social services that contradicted with the establishment of a conservative moral order. Thus, areas such as welfare and unemployment assistance were cut and their funds simply siphoned to more ideologically correct areas such as the criminal justice system and the military (Caringella-MacDonald, 1990).

With this in mind, states still continued to lock up people in record numbers, apparently on the basis of ideological conviction; all the while, other approaches to alleviate the causes of crime were ignored, and for what reason? Again, we can quote Miller: “Ideology plays a paramount but largely unrecognized role in the policy process, to the detriment of other ways of determining priorities. Ideologized selectivity exerts a constant influence in determining which problem areas are granted greatest significance, which projects are supported, what kinds of information are gathered and how research results are analyzed and interpreted” (1973: 152). That is, the ideological tenets of conservatism dictated that the crime problem was best solved by incarcerating individuals, rather than by less repressive means, as it better achieved the desire for an authoritative state and a moral social order. With the economic philosophy of the New Right,

the privatization of prisons can be seen as a profoundly important ideological policy, which encapsulates the spectrum of their moral and economic doctrines.

Chapter 4

Indirect Correctional Factors

The set of factors to be discussed in this chapter emerged as major influences in the privatization debate between 1978 and 1985. These forces fall under the rubric of indirect correctional factors as they represent events that were not specifically unique to the privatization debate, but together, formed the context in which correctional issues of the time were discussed within the policy process.

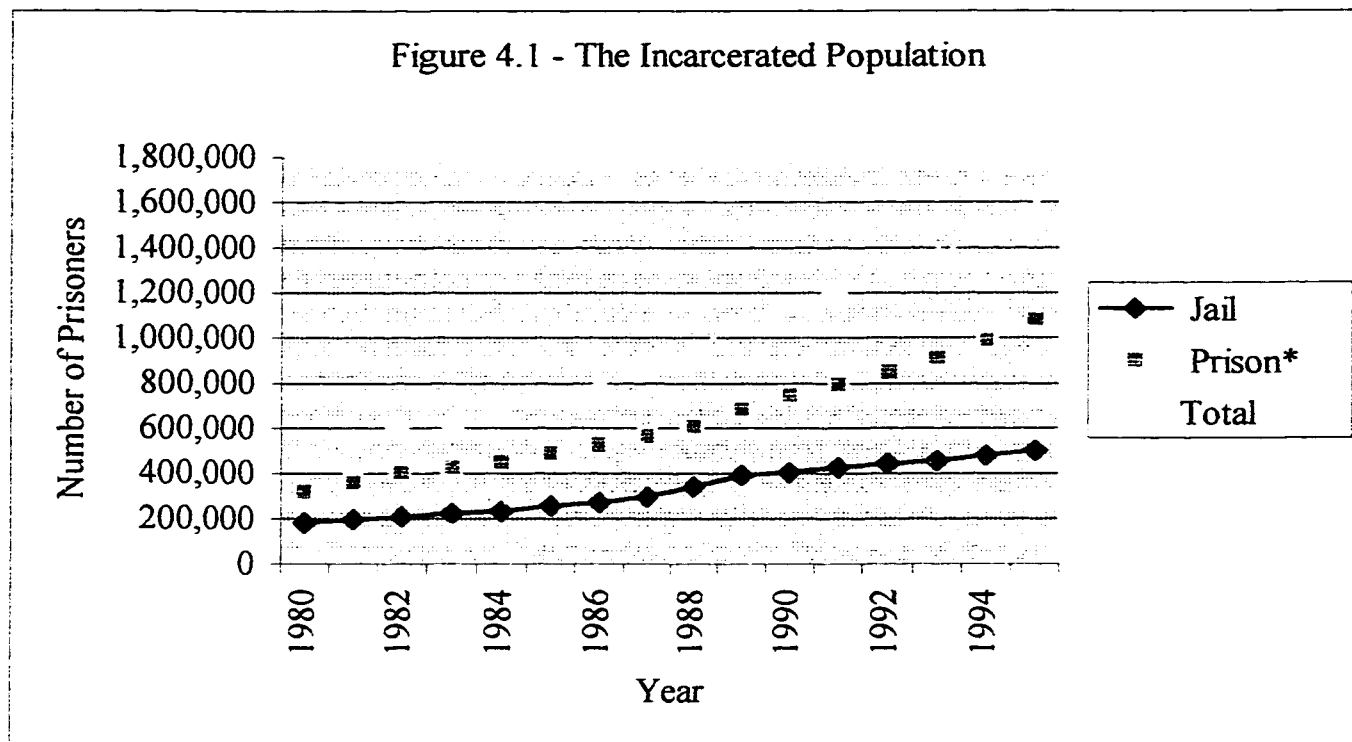
1. Increase in prison populations

The most influential factor to affect the policy process with respect to privatization would undoubtedly have to be the dramatic rise of the imprisoned population at all levels of correctional authority. The United States prison population has been rising in both absolute numbers and as an imprisonment rate per 100,000 population since 1970 (Sourcebook of Criminal Justice Statistics Online, 1998). Every year since 1975 these figures have reached record highs and show little signs of abating. The figures below represent the correctional populations in the United States from 1980 to 1995.

	Jail	Prison*	Total
1980	182,288	319,598	501,886
1981	195,085	360,029	555,114
1982	207,853	402,914	610,767
1983	221,815	423,898	645,713
1984	233,018	448,264	681,282
1985	254,986	487,593	742,579
1986	272,736	526,436	799,172
1987	294,092	562,814	856,906
1988	341,893	606,810	948,703
1989	393,303	683,382	1,076,685
1990	403,019	743,382	1,146,401
1991	424,129	792,535	1,216,664
1992	441,781	850,566	1,292,347
1993	455,500	909,381	1,364,881
1994	479,800	990,147	1,469,947
1995	499,300	1,078,545	1,577,845

Table 4.1 Prisoner Populations

*It should be noted that the figures under this heading represent inmates imprisoned at both federal and state levels (Source: Bureau of Justice Statistics Correctional Surveys, cited in Sourcebook of Criminal Justice Statistics Online, 1998)



The following is a summary of various tables and charts compiled by the Bureau of Justice Statistics and based on the above figures, as cited in the Sourcebook of Criminal Justice Statistics Online (1998). They demonstrate the exponential increase in prison populations.

- From 1980 to 1985, we see a 40% increase in the number of persons incarcerated at the county level, a 53% increase at the state and a 50% increase at the federal level.
- The rate of incarceration also rose significantly from 1980 to 1985:
 - at the county level from 73/100,000 to 112/100,000
 - at the state level from 130/100,000 to 187/100,000
 - at the federal level from 9/100,000 to 13/100,000
- The combined state and federal imprisonment rate increased from 139/100,000 in 1980 to 179/100,000 in 1983, whereas in the four years prior the rate only increased by 10/100,000.

➤ From the years 1980 to 1983, North Carolina was the only state to show a decrease in the rate of imprisonment, from 244/100,000 to 233/100,000. States that showed a dramatic increase in the rate per 100,000 during this period include:

*Alabama: 149 to 243	*District of Columbia: 426 to 558	*Nevada: 230 to 354
*Louisiana: 211 to 290	*Maryland: 183 to 277	*Arizona: 160 to 223
*Mississippi: 133 to 211	*Maine: 68 to 114	

From these figures, it can be easily seen how the prison population skyrocketed at all levels in the early 1980s, where the combined figure representing all persons incarcerated in the United States rose 48%, from 501,886 to 742,574 between 1980-85, and most significantly at the state and county level. Understandably, the immediate pressure to resolve the emerging crisis was acute to policy-makers of the time. When a phenomenon like this presents itself to decision-makers who still abide by their ideological leanings, the option of privatization begins to appear particularly attractive. This option did become seriously considered in the early 1980s, especially when considering the combined influence of the factors to be described below.

2. Reduced budgets

We have already discussed the basic economic principles of the New Right, but they beg further examination for their impact upon the policy process within the realm of immediate political decision-making. To reiterate, a guiding principle of this ideological faction is a reduction of government activities at most levels; state downsizing takes the form of reduced budgets and expenditures, less involvement in service delivery and goods production, a minimal role in the regulation of the economy, and a reduced public workforce. Efforts to "roll back the state" are justified by the supposed ability of the invisible hand of the market to more effectively regulate areas of society previously under control of the state, as well as by how efficient and effective a government could become if it were smaller.

Despite the rhetoric of downsizing which was central to the economic policies of Reagan's electoral platform, by 1982-83 the national budget had never been so large, nor had

government spending been such a high proportion of the GNP: in four fiscal years, the Administration managed to increase federal spending from 22.1% of the GNP to 24.3%, while total government expenditures increased from 30.7% of the GNP to 33% (Sellers, 1993: 15). While the difference may seem insignificant, we are dealing with a GNP that is in the trillions of dollars, as well as with a government that was elected on promises to greatly reduce government spending. However, these increases in government spending posed little contradiction for the New Right; rather than using collected revenues on social programs or social assistance, it appears that the increases were mainly used to cover the costs of Reagan's penchant for defense and military, whose budgets hit astronomical levels (Caringella-MacDonald, 1990: 105; Saul, 1992: 142-143).

However, the call from the public had been to hold the Administration to its promises of reduced spending. Therefore, rather than cut the defense budget during the competition of the Cold War, "the federal government responded by providing states with less: Federal grant dollars to the states have been on the decline since the Reagan era" (Sellers, 1993: 15). Another key element in Reagan's domestic economic strategy was "the policy of reducing the growth of federal expenditures by transferring responsibility for many programs to the states" (Peele, 1988: 547). Thus, states were burdened with more federal programs to execute but with even less federal funds than before the divestment. The effect of this policy was that it "unilaterally forced states to adjust to the new economic environment and signaled an intention to withdraw federal aid from a number of areas" (Peele, 1988: 548). A brief summary of some major economic indicators during this time period should show the drastic decline in the economic resources available to individual states and counties to effectuate their functions and duties.

- While total federal outlays increased by 37% from 1980 to 1983 (from \$590.9 billion to \$808.4 billion), total outlays allocated to state and local governments only increased by .012% (from \$91.4 billion to \$92.4 billion) (Office of Management and Budget, 1997).

- If held in constant 1992 dollars to account for the effects of inflation, the total outlays to state and local governments actually decreased by 15% from 1980 to 1983 (from \$157.4 billion to \$127.7 billion) (Office of Management and Budget, 1997).
- This cut in federal funding represents a decrease of federal outlays from 15.5% to 11.4% of all outlays given from 1980 to 1983 if held constant in 1992 dollars (Office of Management and Budget, 1997).
- Now, despite the diminishing of federally-allocated resources, state and local government continued to spend a higher proportion of total government expenditures, rising from 8.2% of the GDP in 1979 to 9.3% of the GDP in 1983 (Office of Management and Budget, 1997); comparatively, the reduction in federal outlays to these governments represented a decrease from 3.4% of the GDP in 1980 to 2.7% of the GDP in 1983 (Office of Management and Budget, 1997).
- Thus, they were getting less from the federal government, while spending more. In actual dollars, state and local governments increased their spending from \$204.8 billion to \$318 billion, a 35% increase from 1979 to 1983 (Office of Management and Budget, 1997).

In addition to the above cuts, which affected all jurisdictions and activities of state and local governments, there were dramatic reductions in federal funds specifically allocated for the sole purpose of administering criminal justice agencies. In 1979, the federal government transferred \$517 million dollars to state and local governments for the administration of justice, which was .62% of the total outlays given to these governments (Office of Management and Budget, 1997). By 1984, this had dropped to a mere \$69 million, representing only .07% of all outlays. Furthermore, these figures are not controlled for inflation; as funding was dropping, costs were also increasing - thus, the figures amount to less actual money than what we have seen.

In the final result, the burden of a federal economic platform of downsizing fell upon the shoulders of state governments, who in turn shared this reality with their own local governments. The immediate and overwhelming pressure faced by state and local governments during the early 1980s is easily seen: "how to spend limited amounts of revenue on a growing agenda of services

and programs" (Sellers, 1993: 27). The movement to regroup government spending in innovative ways was embodied in such language as "cutback management" and "coping strategies". The tension between dwindling supply and increasing demand caused by a loss of federal funding and a lingering recession "required local managers to redesign methods of management that had been originally designed during times of growth" (Sellers, 1993: 30), and included such practices as hiring freezes, re-evaluating productivity criteria, and fixing seniority. The range of economy-based strategies which a government could implement included: raising taxes, reducing the level of services, producing services with lower costs, tightening the link between those who benefit and those who pay, and changing the nature of the service demanded so as to produce less of it (Sellers, 1993: 31). We can therefore see the appeal of privatization to policy-makers caught within the deadlock of diminishing resources and increasing service demand, as it purports to both reduce the level of services and produce services with lower costs:

it is a concrete method that can be used for redirecting production to the private sector while at the same time maintaining services, bypassing slow bureaucratic lag problems, and securing scarce technological talent that is usually located in the private sector. (Sellers, 1993: 32)

However, it must not be forgotten that concomitant with the fiscal crises faced by state and local officials was the dramatic surge in the prisoner population at which we have looked, as well as the costs to control this increase, which will be the focus in the next sub-section. The economic pressures faced by policy-makers to reduce spending merged with the social pressures to contain the prisoner population. In many states, the crux of the pressure to privatize lay in the struggle between conflicting public and political interests. When large capital expenditures are transferred to correctional departments to fund the construction and management of prisons, which are believed by the public to be largely ineffective at reducing crime, this is frustrating to the citizen who believes that funds could be used on something more useful and concrete - public education, school construction, road repairs. Although crime is an important national priority for most citizens, the efforts to combat it appear largely ineffective. Therefore, compared to more

proximate and visible problems, "in an environment of competing resources, corrections can become an inevitable and unpopular drain on limited resources" (Anderson et al., 1985: 32). Such economic realities first introduce the policy-maker to the possibility of offers from the private sector to help operate correctional services; this appeal is enhanced considering the poor record of governments in the operation of prisons, who are drawn by the private sector with the promise of efficiency. Finally, considering the importance of prisons to the social agenda of the New Right, the temptation to privatize is almost too great:

Privatization is also prompted by hard-line conservatives who believe that it offers the possibility of achieving the twin aims of expanding the control apparatus while reducing the level of State expenditure. The possibilities of a more comprehensive system of crime control at reduced cost has also, no doubt, a broad popular appeal. (Matthews, 1989: 4)

3. Increased expenditures on criminal justice

A conservative law-and-order approach calls for increased expenditures for activities involved in controlling crime (Miller, 1973: 159-160). In the early 1980s, with conservative politicians holding office across governmental divisions and levels, the prison population rose drastically. To effectively control the rising imprisonment rate and to satisfy a conservative crime control mandate, the amount of resources devoted to criminal justice agencies obviously had to increase. The rise in expenditures was seen at all levels of government, and for all types of criminal justice activities; however, it was expenditures for corrections, as we shall see, which accounted for the highest increases in the various criminal justice agencies. Again, the following data represent a summary of the data from the charts and tables compiled by the Bureau of Justice Statistics, cited in the Sourcebook of Criminal Justice Statistics Online (1998).

The first immediate resource needed to cope with a rising prison population is labour power. The data compiled in Table 4.2 compare the increases in the number of persons employed in corrections from 1982 to 1987 with the increases in those employed in other criminal

justice activities (judicial/legal and police). What we find is that although all areas of criminal justice have shown significant increases in personnel, it is the correctional agencies which have had a more notable increase. Moreover, the increase in correctional personnel is significantly higher at the state and local level than at the federal level.

Table 4.2 - Personnel Increases in Criminal Justice Activities
(figures representing percentage increase)

Personnel – 1982 - 1987	Corrections	Judicial/Legal	Police
Federal	28	24.8	30.2
State	43.7	25.4	13
Local	36.2	26.8	7
<i>Total State and Local</i>	41	26.3	7.8
<i>Total All Levels</i>	40.5	26.1	9.5

With such a rise in the number of employees, one could posit that expenditures should increase concomitantly to provide wages. Thus, changes in the justice system payroll are indicative of the amount spent on employing personnel to effectuate the duties of the criminal justice system. Again we see that in Table 4.3, from 1982 to 1987, payroll expenditures increased most at the state level.

Table 4.3 - Payroll Increases in Corrections
(figures representing percentage increase)

Payroll – 1982 - 1987	Corrections
Federal	65.7
State	72.3
Local	49.2
<i>Total State and Local</i>	56.4
<i>Total All Levels</i>	57.3

Examining the total expenditures by all levels of government *for correctional activities only*, which includes payroll, construction, maintenance, etc., from 1982 to 1987, we find more dramatic increases such as:

- at the local level, total expenditures rose from \$3,010,964,000 to \$5,946,752,000;
- at the state level, total expenditures rose from \$5,559,792,000 to \$10,732,880,000;
- at the federal level, total expenditures rose from \$541,000,000 to \$994,000,000.

Now to compare these increases with those of other criminal justice activities, we find that the increase in correctional expenditures is far greater than for police protection or for judicial and legal services during the same time period:

Table 4.4 - Total Expenditure Increases for Criminal Justice Activities
(figures representing percentage increase)

Total Expenditures – 1982 -1987	Corrections	Judicial/Legal	Police
Federal	83.7	63.4	67.4
State	93	57.9	43.5
Local	97.5	64.6	48.8
<i>Total State and Local</i>	94.8	61.2	48.5
<i>Total All Levels</i>	93.9	61.6	51.2

What these figures demonstrate is simply that in a very short period of time, there was a massive investment in criminal justice efforts, mostly directed at correctional agencies rather than judicial, legal or police services, and that it was state and local governments who showed the highest increases. Therefore, these figures reflect both the ideological preference of the New Right to incarcerate, as well as the swelling budgets of state and local correctional agencies at a time of downsizing. Taken together, this amounted to a substantial pressure upon policy-makers to accommodate both ideological and economic principles.

4. Taxpayers' Revolt

The 1970s were uniquely characterized by the advent of stagflation - that of a stagnant economy combined with increasing inflation. One documented consequence of inflation is that the public's political sentiment often shifts to the right, and is expressed in anti-public-sector and anti-institutional attitudes (Muscgrave, cited in Sellers, 1993: 26). A longitudinal Gallup poll demonstrated this distaste when it examined the public's reported confidence in selected institutions. Every second year, a poll would ask a sample of American citizens how much confidence they had in certain institutions of society. From 1973 to 1981, confidence in all represented institutions, including Congress, banks, business, and the military, continually dropped until they reached their lowest point ever in 1981; only organized religion remained unscathed (Sourcebook of Criminal Justice Statistics Online, 1998).

This anti-public-sector sentiment is another factor that had an indirect influence on the policy process concerning privatization, particularly at the county and state level, and manifested in what is known as the Taxpayers' Revolt. Essentially, to cope with the lagging economy of the 1970s, taxes had been pushed to such an extent that they reached an unacceptable level for the populations of various states. Dissent was first seen in California, where realtor Howard Jarvis led a grassroots movement to initiate tax relief under Proposition 13; it passed in June of 1978, which "cut overnight the single most important source of revenue source of local governments by more than half" (Hirsch, 1991: 15). California's initiative was deeply felt across the nation and became "a harbinger of more states' tax limitation laws to follow" (Sellers, 1993: 24). Soon the citizens of Michigan and Massachusetts had their will pushed through the legislature, with Proposition E and Proposition 2 1/2 respectively. Sellers finds the origins of such revolts in "the combined effects of recession and inflation, coupled with lower federal support" (1993: 25).

By 1982, more than twenty states had enacted spending caps (Sellers, 1993: 25), most starting from a grassroots level, and all included one element which was of direct consequence to

the correctional policy-makers: if a state wished to raise the funds necessary for large capital expenditures, for projects which were over their spending limit, then a referendum had to be held and the initiative had to win by a substantial margin to obtain the approval of the citizens. Considering that "rolling back the state" was a main platform which propelled the New Right to power in 1980, it appears that their enthusiastic dislike of governmental authority later backfired; with a stronghold on state legislatures, they became victims of their own agenda when citizens lost confidence and patience with them and refused tax increases.

State policy-makers suddenly found themselves in a difficult situation: besides being forced to assume "greater financial responsibilities at a time when taxpayers have shown themselves unwilling to increase the governments' receipts" (Hirsch, 1991: 15), they were also caught between a skyrocketing prison population and the equally astronomical costs to deal with the problem on one hand, and an unforgiving citizenry who would not approve the funding needed to build prisons on the other. It also must not be forgotten that these immediate pressures upon the policy process were exacerbated by a continual decrease in federal funding; thus, policy-makers were being pressured from above by the federal government to alleviate worsening conditions in prisons and to accommodate rising imprisonment rates, and from the citizenry below. Matters need not have gotten worse, but they did.

5. Hardened public attitudes

The components of the law-and-order platform of the New Right, as we have seen in Chapter 3, essentially revolve around the use of retributive sanctions to impose social order on society (Miller, 1973: 155-162). The attitudes of elected right-leaning politicians towards criminals in the early 1980s was characterized by moral repugnance, the criminal justice policies by harshness and retribution, and the theoretical underpinnings by rational choice (Christie, 1993; Cohen, 1985: 113-114). Yet what was the relationship between such harsh correctional

platforms and the public's attitude towards crime? Were politicians simply responding to and voicing the concerns of the electorate, or did their views seep into and influence the public's?

Although there are difficulties with deconstructing the factors which shape public opinion, it is well accepted in criminology that the mass media play an important role in influencing attitudes towards crime and criminal justice (Cohen & Young, 1981; Ericson, Baranek & Chan, 1987; 1991; Hall et al., 1978). The prevalence of mass media in the lives of people has meant that it has become an important source of information for crime:

For most people, knowledge about organizations, events, or phenomena with which they have no direct experience comes from the news media. This is certainly the case for knowledge about crime and the administration of crime control. For example, 95 per cent of the panel respondents interviewed in Chicago by Graber designated the mass media as their primary sources of information about crime and crime control. (Ericson, Baranek & Chan, 1987:46)

Through various journalistic techniques and organizational demands, the mass media construct an image of crime and of criminals that is not entirely reflective of reality; rather, the images presented tend to "define, and help legitimize the official version of the crime problem, its seriousness, and its cure" (Elias, 1993: 8). Essentially, the media look to official authority as sources for information about crime, be it judges, police, politicians or policy-makers; by offering authorities a platform on which their definitions of the crime problem can be expressed, the media reproduce the official world view within the public (Ericson, Baranek, & Chan, 1987, 1991: 15). More often than not, this view is conservative in nature, and fits predominantly within a conservative law-and-order mentality.

Therefore, one would expect that during Reagan's tenure as president, given his conservative position on crime, the media would frame the issue within the parameters of the political right. This is no doubt true, but detailed evidence also suggests the relationship between the media and the government went far beyond mere affinities between the authority structure

and the organizational demands and structures of journalism. Rather, the media were carefully and strategically manipulated by the Reagan Administration, where "controlling news content was essential to governing, to making policy and implementing it" (Livingston, 1994: 88). Upon election, Reagan established a sophisticated media management team in an attempt to shape news content and public opinion through a variety of techniques, including coordinating and repeating responses, suppressing information, blacklisting reporters, and undertaking an abundance of public opinion polls. By exploiting the media's reliance on official sources, the administration orchestrated selective publicity campaigns that ensured the popularity of the government's policies (Livingston, 1994: 95-97).

Realizing the influence of mass media in shaping public opinion, combined with Reagan's efforts to shape the media itself, to conclude that public opinion towards crime was instrumentally shaped by the administration to fit a conservative social agenda is not that unbelievable. Thus, the hardening of public attitudes towards crime and criminals reached its crystallization in 1982, after Reagan's election to office, without showing signs of dramatic increase prior to his rise to power. The following sample of longitudinal surveys, if examined individually, would not necessarily support this conclusion; however, taken together, they reveal enough to delineate a toughening of public opinion.

Surveying the attitudes towards the severity of courts in the respondents' own area, it was found that, for the years 1982 and 1983, 86% of respondents answered that the courts did not deal with criminals harshly enough. As a national average, this is the highest recorded percentage ever to date. Interestingly, these years also show the highest recorded percentage for Republicans, at 89% in 1982 and 90% in 1983, partially revealing the ideology which they

subscribe to. (National Opinion Research Center, cited in Sourcebook of Criminal Justice Statistics Online, 1998).

Given a list of social problems facing the country, respondents were asked if too little money, the right amount of money or too much money was being spent to help solve the problem. "Halting the rising crime rate" was such a problem: in 1982, 72% of respondents felt that too little money was spent to stop this rise in crime (National Opinion Research Center, cited in Sourcebook of Criminal Justice Statistics Online, 1998). At the time, this was the highest recorded percentage ever for this category, and remained so until 1994. Also of special interest is the presupposition that crime was on the increase, although evidence points to it cumulatively dropping since 1979 (Christie, 1993: 92-93). Whether people assumed this was true because of the emphasis placed on the prevalence of crime by the New Right is unknown but possible.

Assessing attitudes towards the level of crime in their own area, respondents were asked if they felt there was more or less crime than there had been a year ago. In 1981, 54% believed that there was more crime in their area than the previous year; again, this was the highest percentage recorded up until that time, and is still the highest ever (The Gallup Poll Monthly, no.371, cited in Sourcebook of Criminal Justice Statistics Online, 1998).

Examining whether people were afraid to walk alone at night in their own neighbourhood, respondents were asked if there was any area within a mile of their homes in which they would not venture alone at night. The highest recorded percentage between 1973 and 1996 who expressed this fear was in 1982, when 47% of respondents agreed that they would not

walk in an area close to their home (National Opinion Research Center, cited in Sourcebook of Criminal Justice Statistics Online, 1998).

The death penalty is consistently a good indicator of people's political ideologies and, asked whether they believed in capital punishment or opposed it, 68% of respondents in 1983 answered the former, which was the highest recorded up until that time (Louis Harris & Associates, cited in Sourcebook of Criminal Justice Statistics Online, 1998).

Interestingly, besides anti-public-sector sentiment, it seems that a right-leaning political sentiment also expresses itself in public attitudes towards crime. Surveying this factor, people believed that the criminal justice system was not harsh enough (Caringella-MacDonald, 1990: 103; Sourcebook of Criminal Justice Statistics Online, 1998) - another platform of the New Right that bit back once they were in positions of power. Without proper funds at the state and local levels to effectuate their desired policies, by 1982 the problem of crime and crime control was not solely an economic one because of the Taxpayers' Revolt, but a political and moral one as well, characterized by "an increasing belief that the government [was] not capable of meeting the challenges of contemporary institutional corrections" (Travis et al, 1985: 11). Thus, while the nation's lawmakers gave "lip service... to the notion that prison space is a scarce resource that needs to be wisely allocated", states Mullen in her article that examines the political and economic climate of rising prison rates, they "clearly believe[d] that the public [was] fed up with crime and want[ed] nothing more than to 'lock those bastards up'" (1987: 80). This belief in the hardened attitude of the citizenry represented an additional pressure to be considered by policy-makers treading a political minefield.

State governments could not realistically back down from their election promises in the face of an increasingly demanding and impatient electorate; they had pledged economic reform through downsizing and social reform through increased crime control – both of which the public now held them to. And considering the personal moral obligations to political ideologies and its conservative manifestation in retributive policies towards criminals, they could rarely see what other alternatives existed to imprisonment. Policy-makers were trapped between their own economic and moral agendas. Therefore, the solution required a method to raise the necessary capital without obstruction from citizens and without a plunge into state coffers, to satisfy a conservative crime agenda demanded by the legislature and the public, as well as a federal government that was becoming increasingly alarmed at the deterioration of prison conditions. Ryan and Ward express the same underlying view when they state that:

The rationale for involving the private sector in the delivery of punishment is therefore both ideological and pragmatic; it is urged on governments as a solution to the existing penal crisis in a form which appeals to their basic political instincts about limiting the role of the state. (1989a: 3)

Finally, to jump ahead slightly to the following factor influencing the immediate political foreground, that of overcrowding, with the massive increase in prison populations, certain states in the early 1980s found themselves in the peculiar position of having to release inmates early in order to make room for new admissions. The details will be delved into later, but it is enough to say that in addition to the public pressure regarding economic policies and a rising incarcerated population, releasing inmates before their time had been served did not generate much public enthusiasm. The magnitude of this policy is easily translated into a factor which could have further hardened public attitudes towards crime and criminals at the time.

6. Overcrowding and Court Intervention

The exponential increase in the prison population in the early 1980s far surpassed the capacity of detention facilities at all levels of government to contain this increase. Costs were increasing, funding was being cut, and prison space was disappearing before it was even built. The obvious result of these circumstances was massive overcrowding in jails and prisons across the United States, which in turn led to a deterioration of prison conditions, living standards and services for inmates across the nation. The pressure accumulated from this factor was overwhelming for policy-makers, and the consequences of delaying immediate action at the time were dire. Summarizing the general atmosphere surrounding the issue in the early to mid-1980s, Logan & Rausch write:

It appears that the corrections system is now between a rock and a hard place. Crime rates and current conceptions of justice combine to create a demand for prison space that simply cannot be matched by present supply. Because we have more convicted criminals than can be dealt with in a humane fashion, it is the responsibility of the justice system to upgrade and expand its correctional facilities. However, this will be an extremely expensive, and hence unpopular, undertaking at a time when the public is demanding cutbacks in government spending. The challenge facing the justice system is how to meet an increasing demand for prison facilities, given few prospects of corresponding increases in funding (1985: 306)

Understandably, the increases in the number of prisoners at all levels of correctional authority placed the entire American prison system under severe strain in the early to mid-1980s. According to Logan & Rausch, it is difficult to measure exactly the amount of overcrowding, because the capacity of facilities can be measured in a number of ways (1985: 304). The variable that is examined most often is the operation of facilities over and above their normal lowest and highest possible capacities, in percentages. For these two measurements, the Bureau of Justice Statistics analyzes both federal and state facilities. It was reported that in 1983, state

and federal prisons operated, on the average, at about 110% of their capacity (Logan & Rausch, 1985: 304). According to the President's Commission on Privatization, when it was examining the possibility of privatizing prisons in 1986, state prisons as a group operated at 106% of their lowest capacity and at 124% of their highest capacity (1988: 146). These figures cause little wonder considering that state prisons, just to accommodate the influx of new admissions, required on average 1000 additional beds per week (Weiss, 1989: 26). Similarly, federal prisons were averaging operations at 127% of their lowest capacity and 159% of their highest capacity (President's Commission on Privatization, 1988: 146).

The material and social effects of a prison system bursting at the seams upon the daily lives of inmates does not require a stretch of the imagination. To contain the volume of new admissions, prison administrators with an understandable penchant for fiscal frugality realized that corners had to be cut; the deterioration of prison conditions and living standards for inmates accelerated thereafter. The first and most immediate problem for administrators was obviously one of space; where to put all these new prisoners? Thus, we saw the advent of double-bunking, which later turned into triple-bunking, and then adding floor mattresses to cells; "since corrections departments cannot control intake, their most immediate response has been to double-cell and to house the overflow in tents, gymnasiums, corridors, recreational rooms and basements" (Logan & Rausch, 1985: 305).

With prisoners abounding, essential services such as medical treatment and sanitation could not be wholly guaranteed, and less essential services revolving around rehabilitation, such as educational, vocational or drug treatment programs, were either severely abridged or thrown

to the wayside in a cost-cutting effort. Describing other deteriorating conditions of the time, Gottfredson and McConville state that prisons were often inadequately staffed, and routine medical care, adequate nutritional requirements, and protection from physical abuse were often lacking (1987: 3). Issues of capacity and resources clashed with prison conditions, and it is obvious that the former became the guiding criteria of containment. However, to exacerbate an already volatile situation, many prisons and jails were very old and in an advanced state of decay, in addition to being overcrowded. The President's Commission on Privatization found that the average prison cell in 1986 was 40 years old, and that 10% of all inmates across the country are housed in prisons that were built before 1875 (1988: 146).

With conditions degenerating from the late 1970s onwards, it was only a matter of time before the situation reached a breaking point. Inmates across the country, with the aid of civil liberties groups, began to initiate massive litigation suits against the states which imprisoned them. The American Civil Liberties Union, an adamant supporter of prisoners' rights, states "that the root causes for most prison disturbances, as well as the current crises in corrections, are overcrowded conditions and inhumane treatment of prisoners" (Sellers, 1993: 46). Therefore, often citing the ill-effects of overcrowding for the drastic state of the prison system and its subsequent effect upon the inmate populations, these suits became the impetus for the judicial branch of states to curtail the effects of overcrowding.

Preceding this however, was the slow movement of the judiciary to actually become involved in penal reform, going through periods of differential intervention into the daily affairs of correctional departments; thus "while the 1950s and 1960s have been characterized as decades

of the ‘hands-off’ doctrine, the early 1970s were characterized by an increasing willingness on the part of the Supreme Court to become involved in issues concerning the fundamental rights of prison inmates” (Gottfredson & McConville, 1987: 6). Indeed, as a result of this interest expressed by the courts, inmates and their allies seized the opportunity to hold the prison system accountable for its deplorable state. Litigation concerning prisoners’ rights flourished in the 1970s; as one measure of this, consider that petitions brought by prisoners increased from an annual number of 218 in 1966 to over 11,000 by the end of fiscal year 1979 (Gottfredson & McConville, 1987: 6).

In 1979, one of these petitions rose to a Federal District Court and was to have a significant impact on correctional administrators, especially at the state and local level, as well as being an additional pressure faced by policy-makers of the early 1980s. In the case of *Bell v. Wolfish*, a Federal District Court heard the complaint that several conditions and administrative practices of the prison in question were unconstitutional, among them being issues of overcrowding, insufficient staff and inadequate program provision (Ingraham & Wellford, 1987: 20; Sellers, 1993: 46). The court decided in favour of the complainants, and substantiated in case law that overcrowded conditions, when exacerbated by the presence of other negative conditions, constituted a breach of the Eighth Amendment of the U.S. Constitution, which provides protection against cruel and unusual punishment.

Therefore, although practices such as double-bunking do not strictly constitute cruel and unusual punishment, overcrowding combined with insufferable conditions together may amount to a failure to provide the inmate with a basic need of shelter, thus breaching the constitution.

Despite this realization, the case was eventually overturned by the U.S. Supreme Court but it remains significant in that “the lower courts’ activist posture toward prison treatment of inmates and the issue of overcrowding had become more blatant” (Sellers, 1993: 46). The lower courts at the state and local level had taken the initiative from the Bell decision to begin condemning the prison system for its deplorable state. They were most particularly damning of overcrowding, where it was treated as “if it were the source of all evil, instead of being merely a contributing factor aggravating other sources of violence and deprivation” (Ingraham & Wellford, 1987: 24). From this heightened awareness of the prison crisis in the judiciary, overcrowding has been said to contribute to a variety of conditions in prisons, many of which have been found to be unconstitutional by lower courts, including (Ingraham & Wellford, 1987: 13):

- continual and abnormal violence, including sexual assaults;
- poor health and the spread of diseases among inmates;
- the increasing idleness and stagnation of prison life, as recreational, vocational and educational programs have to be cut back;
- total loss of privacy and inhuman suffering as more and more inmates are forced to share cells designed for the occupancy of fewer people or dormitories in which almost every inch of available space is occupied by a bunk or mattress.

Citing overcrowding as this “source of all evil” then led many judges to impose court orders on states and counties in the form of population limits for jails and prisons, “on the assumption that nothing would improve unless something were done to alleviate the pressure of overpopulation” (Ingraham & Wellford, 1987: 24). As a result of the prison conditions and the lower courts’ view that they breached the Eighth Amendment, a Bureau of Justice Statistics bulletin reported that “at the local level, 22 percent (134) of America’s largest jails (those with a capacity of over 100) were under court order in 1984 to expand capacity or reduce the number of

inmates held, and 24 per cent (150) were under court order to improve one or more conditions of their confinement” (Ryan & Ward, 1989a: 2). Regarding states where orders were imposed, by 1983, 41 states and the District of Columbia were either under court order to improve conditions or were subject to litigation challenging their administrative practices and operations (President’s Commission on Privatization, 1988: 146). As of February 1986, this figure had risen to 46 states and territories (Gottfredson & McConville, 1987: 3). Describing the slew of prison litigation at the time, Gottfredson and McConville state that:

The issue of crowding and other atrocious conditions is central to the overwhelming majority of these suits, and under present interpretation, the U.S. Constitution forbids the kind of treatment prison inmates in almost all states presently receive. Most of these states have been unable to meet the terms of the court orders, and despite periodic drastic actions (such as refusals to accept new prison admissions or wholesale release of inmates), the situation in most jurisdictions is daily getting worse. (1987: 3)

By December 1986, conditions had barely improved, and the prison population was still increasing exponentially. Federal courts reacted to the continual deterioration and jumped back into the debate, placing thirty-eight states and three territories under federal court order for the issue of overcrowding alone, notwithstanding its relation to other conditions (Sellers, 1993: 46). The renewed federal involvement was due to several riots that had occurred in overcrowded facilities across the United States; facilities that had been under state court order already, but failed to take action. The issue of overcrowding and deteriorating prison conditions was even covered by the elite international political and business magazine, *The Economist*, here describing one such riot and the conditions which led to it – conditions often found at a majority of facilities under court order:

On New Year’s Day, in West Virginia, the men at the state penitentiary staged a spontaneous riot; a dozen guards were taken hostage and two inmates died. This

prison had been under court orders to reduce the number of its inmates and improve conditions since 1983. But on January 1 [1985], it still held 750 men instead of the prescribed 650; virtually nothing had been done to modernize the 112 year old Tudor building, which still had its Tudor-style plumbing. A spokesman for the prisoners complained of sub-zero temperatures in the winter and 110 degree heat in the summer, of the lack of hot food, and 15 days in a single month of a menu of beans; of the ban on long hair, even on beards and moustaches. He ended with a plea to treat them as grown-up human beings, with a right to some dignity. (January 11, 1986: 24)

Conducting a study on the factors contributing to prison litigation, Welsh found, unsurprisingly, that the states which had the lowest rates of prisoner expenditures (amount spent per diem to house inmates) and the highest rates of incarceration were most likely to be taken to court and have an order imposed to control overcrowding (1995: 44). The same contributing factors can be found for county jails, where “counties under court order had larger jail populations, spent less on jail operations, and filled jails to a greater proportion of their capacity than did counties not under court order” (Welsh, 1995: 42). Therefore, areas which demonstrated these factors were essentially predisposed to litigation once conservative criminal justice policies were initiated in the early 1980s.

Further complicating the issue at the time for policy-makers was the structure of correctional authority, previously described in Chapter 3. Having different levels of corrections which were all exceeding prison capacity, coupled with the policy of placing persons accused of federal crimes in state prisons and all other accused in county jails as they awaited trials, the prison system was also pressured by the structure of their own bureaucratic policies. Mullen describes the irony that emerges from the “intergovernmental dimensions of the corrections function” (1987: 92) when it was placed under extreme strain:

Local authorities – who make the decisions to send offenders to state prisons or to local sentencing options – are given strong incentives to place offenders in state custody where they both are removed from the community and become a state rather than local financial burden. When those local decisions begin to clog state facilities, a variety of shell games are played to shift the burden back to the local level, which typically remains ill-equipped to handle offenders under local jurisdiction, let alone absorb state prisoner overflows.

Unfortunately, only a few quantifiable examples of this problem were found, but they are telling enough to assess the urgency and immediacy of the problem which was encountered by policy-makers:

- Federal court pressure on state departments of correction caused a displacement of crowding from state to local lock-ups, with over 11,500 serious offenders in 18 states lodged in local jails at the end of 1984 (Skovron, 1988: 184). Extreme examples of this trend can be found in Louisiana and Mississippi, where more than 20% of state prisoners were backed-up in local jails;
- In 1983, 15 states reported 21,420 prisoners released early because of overcrowding. Over 8,000 other prisoners in 18 states were held in local jails because of prison crowding (Logan & Rausch, 1985: 305);
- In 1987, the state of Texas had been threatened by a Federal judge with an \$800,000-a-day fine until it took action to alleviate prison overcrowding (Weiss, 1989: 45).

At the time, several scholars believed that the overcrowding factor was the “most visible and most plausible candidate for the ills of prison existence” but that the continual attack upon it “has led to simplistic thinking on the part of judges intervening in the administration of prisons and jails, caus[ing] them to defer other remedies until the crowding problem is ‘solved’ – which may never happen” (Ingraham & Wellford, 1987: 24). Others, however, claimed that “it is likely that court orders restrained growth in overcrowding and incarceration rates” (Welsh, 1995: 44). Regardless of the impact of these court orders in actually improving the overcrowding problem, the simple imposition of such decrees represented an overwhelming pressure for policy-makers of the time. To the deadly concoction of a lack of money, resources and manpower, rising prison

rates, conservative law-and-order platforms, hardening public attitudes, and the increasing costs of incarceration was added even more volatile pressures in deteriorating conditions, court orders, and massive overcrowding.

7. The War On Drugs

The War on Drugs initiated in the 1980s is arguably the most influential factor to affect the rise in prison populations and the subsequent overcrowding of prisons, thus warranting attention for its indirect influence on the privatization of prisons. The force with which this war was waged cannot be underestimated; the amount of resources invested, the galvanization of public opinion, the coverage devoted by the media – whether real or apparent, drug abuse and drug enforcement was a major political and social concern of the 1980s, if not the most predominant social concern.

Although drug enforcement efforts reached their apex between the years of 1986 and 1989, being temporally dislocated with the time period of prison privatization discussed thus far (1980-1985), the War on Drugs is important to the issue for several reasons: firstly, the roots of the drug control movement is to be found in the early 1980s, where its growth to a national concern parallels the growth in prison populations, and thus the growth in interest in private prisons; secondly, the ideological context of conservatism from which the war emerged is the same point of origin as that of privatization, where both trends are policy expressions of this ideology; finally, the effects of the drug war continue to be felt upon the nation's prison systems, and it was the enforcement efforts of this war which continue to allow privatization to be considered as a policy option.

The fight against drugs in the 1980s was anything but new. This century has been characterized by numerous wars on drugs, varying in degrees of intensity, populations targeted and drugs demonized. Opium from the Chinese in the 1910s, Prohibition and newly-arrived immigrants in the 1920s, marijuana from Mexicans in the 1930s and subversive hippies in the 1960s, and coke-crazed black men in the 1940s (Szasz, 1985). The War on Drugs in the 1980s was no different: inner city minorities and crack cocaine were the targets of massive government interdiction. However, the reasons behind this particular war were more suspect than those of previous decades. Returning to the control exercised by the Reagan Administration over the nation's media, we are able to flesh out a point of origin.

Part of Reagan's agenda-setting operation in the media was to incessantly conduct public opinion polls, as "shaping and directing the content of the public issue agenda required extensive monitoring of public opinion" (Livingston, 1994: 91). The man in charge was Richard Wirthlin, who during Reagan's eight-year tenure as President, conducted over 500 surveys, probing "just about every aspect of public affairs on a scale unmatched in U.S. history", and whose polls "were also unmatched in detail" (Livingston, 1994: 91). Towards the end of 1981, Wirthlin's polls observed rising public indignation which perceived Reagan's policies as benefiting the rich to the detriment of the poor. This was supposedly exacerbated by his wife Nancy's penchant for all things expensive and stylish. Michael Deaver, core member of the media management team, reflects upon a situation that was beginning to sour: "We had all those negative stories on Nancy Reagan at that time. You take the budget cut stories and pair them with the stories about the new (White House) china and the refurbishing of the dresses and all that, and it was beginning to hurt.

We could see it in our polls” (cited in Livingston, 1994: 92). Something had to be done to effectively counter the image of Nancy Reagan as shallow spendthrift, which was quickly becoming the expression of the public perception that Reagan was friend of the powerful and enemy of the powerless.

The public relations machine was set in motion when the media team selected drug abuse as a potential issue to divert national attention away from Nancy’s image and Reagan’s policies. A series of media spectacles were planned in which Nancy began touring the schools of the United States decrying the horrors of drug abuse. In a series of media legerdemains, Nancy’s image was transformed from “a cold and insensitive person” to a “compassionate and concerned human being” (Goode & Ben-Yahuda, 1994: 215). With such a humanitarian mission, the press had difficulty in attacking her image: “It suddenly became clear to us that we were not to take swipes at Nancy Reagan”, said Lee Lescaze of The Washington Post (Livingston, 1994: 92). Through subtle media manipulation of one person’s image, the Reagan Administration effectively countered the public’s concern with their rich-friendly policies.

Although the substance of her campaign against drugs in the early 1980s was mere words, it was the initial action in an increasing concern with drugs which helped establish the parameters of the drug war before it had even begun. Discussing the importance of her role in the drug war, Goode & Ben-Yahuda remark:

... her campaign... bore fruit some five years after it was launched. The drug crisis of the later 1980s has to be set in the context of Mrs. Reagan’s immensely publicized campaign. It was she who took the first steps toward galvanizing public concern and media attention. While other spokespersons, before and since, have “spoken out against drugs”, she, possibly more than any single individual, is responsible for the success of the drug panic. (1994: 215)

In addition to this, the ideological climate was ripe to exploit such an issue. The social conservatism of the Reagan years meant that the liberal advances in areas such as abortion, homosexuality, feminism, and civil liberties, which were made in the 1960s and 1970s, became objects of attack and the proverbial source of all evils for the right. With the paramount imperative of social and moral order, it was these issues which were held responsible by the right for the degeneration of American society. To include drug use was simply in keeping with the ideological line, where “it was in this general setting of conservatism that drugs could emerge as the leading social problem” (Goode & Ben-Yahuda, 1994: 214). Thus, morally as well as politically, the idea of a drug war appealed to law-and-order-minded conservatives. Being well aware of the economic frugality of the right, a crusade against drugs also diverts attention away from real substantive inequality and from the massive economic resources and investments needed to alleviate it. A war on drugs has an immense political appeal to politicians by allowing them “to give the appearance of caring about social ills without committing them to do or spend very much to help people” (Levine & Reinerman, cited in Goode & Ben-Yahuda, 1994: 212). Therefore, theoretically, a drug war was a near-perfect crystallization of an ideological position in the form of a national policy.

The implementation of drug war policy reached its initial fever pitch in 1986, taking perhaps some time for conservative politicians to grasp the profundity of imposing conservative policies through a single issue. In that year, Reagan took the reins from his wife, who had continued her tirade against drugs for the four previous years, and turned her words into his actions. From June to September, Reagan delivered a series of speeches (actually, the very same

speech many times over – repetition was a guiding principle in agenda setting for the media management team), calling for “a nationwide crusade against drugs, a sustained, relentless effort to rid America of this scourge” (Goode & Ben-Yahuda, 1994: 209). He whipped up the nation, including the most influential politicians of the day, into a fervour; in September 1986, the House of Representatives voted on a criminal justice package focused exclusively on drug control policy, comprised of increased drug enforcement and harsher federal sentences – the bill was approved by a vote of 393 to 16 (Goode & Ben-Yahuda, 1994: 209). By the end of 1986, “the drug question preoccupied numerous politicians and lawmakers at the municipal, state and federal levels, all scrambling to put their imprint on the issue” (Goode & Ben-Yahuda, 1994: 209).

It is difficult to qualitatively describe the enormity of the war and the depth with which it penetrated the public consciousness. However, what is tangible is the effect of the War on Drugs in the form of arrest, conviction and incarceration rates; drug-related offences accounted for the majority of the prison population explosion in the 1980s, and for this reason deepened the crisis in corrections of which privatization was and continues to be propagated as a solution.

Examining the War on Drugs from a national perspective, combining federal, state and local statistics on drug law violations, the numbers are nothing but shocking. In June 1995, drug law violators accounted for approximately 25% (388,000) of adults in holding facilities. In contrast, in 1980 only 8% (51,950 out of 502,000) were incarcerated for drug violations (Sourcebook of Criminal Justice Statistics Online, 1998). This translates into drug offenders accounting for one-third of the prison population increases since 1980. Furthermore, the

proportion of persons imprisoned for drug offenses increased while those imprisoned for violent crime decreased. The number of prosecutions for drug offenses increased by 153% between 1980 and 1987, with the number of convictions increasing by 161% as compared to a 49% increase in all U.S. court convictions for other federal crimes (Stimmel, 1996: 105). Convictions for drug offenses as a percentage of all criminal defendants increased from 17% in 1980 to 51% in 1987 (Stimmel, 1996: 105). By 1990, drug cases accounted for 44% of all criminal trials and 50% of all criminal appeals (Bertram, 1996: 132). The harshness of drug sentences in terms of length also increased significantly. Between 1982 and 1990, while the average sentence imposed for violent crimes, including the standard murder, robbery, rape and kidnapping, fell from 133.3 years to 89.2 years (a 33% decrease), the average drug sentence rose from 54.6 years to 80.9 years (a 48% increase) (Sourcebook of Criminal Justice Statistics Online, 1998).

Looking solely at the federal level, 6,120 people were serving time in federal prisons for drug violations in 1980, where by 1994, this had jumped to 58,260, a 850% increase (Sourcebook of Criminal Justice Statistics Online, 1998). In 1979, those incarcerated for drug offenses comprised 25% of the federal inmate population – by 1994, drug law violators made up 59% of this population (Sourcebook of Criminal Justice Statistics Online, 1998). The number of new commitments to federal prisons for drug violations was 3,765 in 1980; in 1992, 16,401 were committed in that year alone for drug offences (Sourcebook of Criminal Justice Statistics Online, 1998).

Turning to the state and local level, we see that, in absolute numbers and increases, it is these correctional systems that bore the brunt of the drug war's tendency to incapacitate. An

estimated 220,000 drug law violators were in state facilities across the country by the end of 1995, a 1070% increase from 19,000 in 1980 (Sourcebook of Criminal Justice Statistics Online, 1998). Additionally, the number of new commitments to state facilities totaled 101,600 in 1992, whereas in 1980 this figure was 8,800, representing an increase of 1055% (Sourcebook of Criminal Justice Statistics Online, 1998). Put differently, in 1980 approximately one of every 15 court commitments to state prisons was a drug law offender. By 1990, drug offenders represented one of every three new commitments (Nadelmann, 1992: 303). An estimated 118,000 drug law violators were in local jails on June 30, 1995, a 340% increase from 26,826 in 1983.

Undoubtedly, the strain that the War on Drugs placed on prison systems at all levels was crushing. However, it must be remembered that the people involved in containing the supposed threat were entrenched in a movement that had all the characteristics and definitions of a war (Alexander, 1990: 3). Violence condoned and endorsed in the form of legal intervention, war-like language, the use of *agents provocateurs* and informers, propaganda and misinformation, the suspension of civil liberties, the imposition of exaggerated penalties, the uncontrolled consumption of resources: all of these factors converged into a very real “war mentality” which “justifies any measures necessary to prevail” (Alexander, 1990: 3). Dogmatically cleaving the world into noble allies and despicable enemies, those involved had no doubt in their minds that they were doing the just, moral and decent thing. Warren G. Woodfork, superintendent of the New Orleans police force, upheld the moral propriety of this mission despite certain unfortunate consequences, when he stated before a congressional committee that: “We cannot help but recognize the strain we are placing on corrections with our increased enforcement effort. The

simple answer to this question is an expensive one. More facilities must be built for both adults and juveniles” (Bertram, 1996: 133).

Chapter 5

Direct Privatization Factors I: Establishing Precedents

This chapter examines the influence of various factors which had a direct impact on the privatization debate, and which specifically concerned private prisons. Included are several key events which transpired in the early 1980s and represented watersheds in the area of prison privatization, establishing significant precedents which must be seen as influencing later policy decisions.

1. Initial Contracts

Of prime importance to the privatization debate were the initial contracts tended to the private sector to run entire facilities. Many of these contracts represent historical events in the realm of privatization literature, the effects of which are still being discussed. It is interesting to note that prior to many of these events, it was believed that they would never occur. For example, once private juvenile detention centres and illegal alien holding facilities had been established, the move into adult corrections was regarded as unrealistic. Similarly, once several minimum security adult prisons were privatized, the belief that privatization would then work its way into maximum security was seen as equally impossible. Thus, the following events established precedents within the privatization debate, shucking the criticism which came before them and changing the parameters of the privatization debate after them. Because of their novelty in the field of corrections and the lack of sufficient documented evidence on which to judge the claims of privatization, the facilities themselves came to be used as proof for both sides of the argument, that privatization works or does not. Citing them as evidence of success or

failure, these events thus contained a negotiating power that was applied as pressure within the policy process.

The first privately operated penal institutions originated in the realm of juvenile corrections. Although community-based alternatives had been contracted out to the private sector for some years, for both juveniles and adults, these facilities were essentially considered non-secure; the decision to establish a private detention centre that was secure was a monumental precedent in the area of private corrections. The first such facility, the Weaversville Intensive Treatment Unit in North Hampton, Pennsylvania, was established in 1975 by the Radio Corporation of America (RCA), which had previously operated a number of private treatment programs for the state (Logan, 1990: 17). The decision to create Weaversville occurred after the Attorney General of Pennsylvania ruled that even the most serious juvenile offenders could no longer, under any circumstances, be confined in adult institutions. Thus, faced with the need to establish a new facility that could house young offenders found in adult facilities, correctional officials turned to RCA for assistance. In a mere ten days, "RCA renovated a state-owned building to establish Weaversville and [were] given a contract to run it" (Logan, 1990: 17). Weaversville was given charge of twenty-two juvenile delinquents, most being considered serious offenders. Twenty years later, the institution remains fully operational, housing a maximum of twenty-two boys, aged fifteen to eighteen, who have committed any number of violent or serious property or drug offenses.

In the years following Weaversville, numerous other for-profit juvenile institutions were opened, often following Weaversville's example by holding a very small number of offenders.

However, this pattern of development dramatically changed in 1982. During the summer months, contract negotiations began in order to establish a private juvenile facility in Florida, with the intention of housing a large number of inmates. In the fall of 1982, the Florida School for Boys at Okeechobee was privatized and was responsible for 400 to 450 inmates. As far as can be gathered from the available literature, this was the first move into the large-scale privatization of detention centres. Although the state retained ownership of the institution, its management and operation was turned over to the Eckerd Foundation, "a non-profit arm of the Eckerd Corporation, a major drug manufacturer and drug store chain" (Logan, 1990: 18).

The move into the privatization of adult correctional facilities actually began in 1980 and revolves around the influence of the Immigration and Naturalization Services (INS) of the American federal government. As a result of increasing poverty and political instability in Central and South America during the 1970s and 1980s, the influx of illegal immigrants from these areas increased substantially. The American government found it difficult to cope with this inpouring and the INS, responsible for matters of immigration, turned to the private sector to provide assistance in detaining illegal immigrants before deportation.

The reasons for the federal government to allocate its powers of detaining illegal immigrants to the private sector can easily be seen. As deportation facilities represent the "soft end" of the carceral continuum, the reluctance to give up state control over punishment was minimal. Discussing the absence of the usual barriers or criticisms to privatize, Ryan and Ward state that:

In the first place, most illegal immigrants are normally jailed for only relatively short periods before they are deported. What is involved is basically a

warehousing operation with little or no counseling or effort to rehabilitate. And, of course, the fact that most, though not all, immigrants have not transgressed the criminal law as such makes it easier for the state to step back without being accused of giving up one of its most important functions. (1989a: 13)

In 1980, through a competitive bidding, the INS awarded its first facility management contract process ever to a for-profit company, Behavioral Systems Southwest. Based out of California, Behavioral Systems Southwest was awarded the contract to construct and manage the Pasadena Immigration Holding Facility for housing 125 male illegal aliens who were awaiting deportation hearings (Logan, 1990: 21-22). In the course of the next six years, the INS would contract out for an additional six holding facilities, which made them responsible for the largest number of private facilities in the country during this time. Of historical importance involving these contracts were those given to the Corrections Corporation of America (CCA) and Wackenhut Corrections Corporation (WCC). The former was given its first contract ever by the INS in 1984 to construct and manage an immigrant holding facility - the Houston Processing Center in Texas. The latter was given its first contract ever by the INS in 1986 for the Aurora Women's Detention Center in Aurora, Colorado. As McDonald (1994: 30) points out, "[immigrant detention centres were] an important market for the emerging private imprisonment firms".

Therefore, the move into the private operation of immigrant detention facilities was eased by what was perceived as the relatively harmless nature of containing such populations. However, it represented something more than a simple decision to privatize "soft" institutions. The contracts awarded to the private sector by the INS must be seen as transition events, moving from the private detention of juveniles in small facilities to the full-scale privatization of prisons

for large numbers of adults, where the private facilities of the INS represent the mid-point – privatizing medium-sized facilities for non-criminal adults. Furthermore, by providing CCA and WCC with their first contracts, the INS not only helped to establish the legitimacy of privatization, *per se*, but also that of these particular companies within the realm of private corrections. Since their initial contracts with the INS, these companies have gone on to become the world's two largest private prison operators.

Following the precedent set in juvenile corrections and in the detainment of illegal aliens, in late 1983 and continuing throughout 1984, numerous southern states passed legislation authorizing counties to contract for private jails (Sellers, 1993: 47). By the end of 1984, the first privately-managed adult correctional facilities were established. However, it was not until late 1985 that privatization initially emerged as a serious policy option in state, and eventually, the federal prison systems. Of the growing number of contracts at the time, several represent key events in the history of private prisons for their unprecedented nature. In 1984, the CCA was awarded the contract to construct and operate the Silverdale Correctional Center in Chattanooga, Tennessee, which became the first adult local jail to be privatized. Following this coup, CCA was given the contract to operate the Bay County Jail, the first private adult local jail to house maximum security offenders in Bay County Florida. At the state level, the Marion Adjustment Center was constructed by the United States Corrections Corporation; operations began in 1985, becoming the first state facility to combine private ownership, private management and private operation in the incarceration of adults sentenced by a state to at least minimum security. The New Mexico Women's Correctional Center opened in 1986 under the management of CCA and was the first minimum through maximum security state prison run by a private company.

Taken together, from juvenile facilities through to the INS to privately operated adult facilities, these key events comprise the historical privatization continuum, where each event became one step from a softer end towards a harder end: beginning with small juvenile facilities, the movement gradually became involved in housing larger populations who were older and considered more dangerous, thus increasingly dealing with higher security levels. Each event, though separate in its decision-making processes and justifications, were part of a movement towards privatization which has come to affect all levels of corrections.

2. Litigation and jurisprudence

Owing to the novelty of private prisons in the early to mid 1980s, little existed in the form of jurisprudence or statutes which established the proper conditions of liability and responsibility for running a private prison. The sudden rise of private prisons onto the correctional agenda left more fundamental questions relatively unanswered in case law, the most pressing being who has the final responsibility, public right and power to punish, and does the delivery of private punishment equal an affront to the constitution. At the beginning of the privatization movement, policy-makers faced the pressure of these unresolved issues: if the decision was made to privatize, and was later found to be unconstitutional in some way, litigation suits against correctional authorities could potentially multiply quickly; equally, if the operators of private prisons acted in some way which was contrary to the terms stipulated in the contract, the determination of final responsibility for such actions could also involve costly and lengthy court processes. With the number of litigation suits facing states and counties, usually concerning overcrowding and poor conditions, there was no desire to see more. Furthermore, the

political consequences of having one's solution to the overcrowding problem be deemed unconstitutional could be disastrous, quickly leading to the demise of one's political ambitions. Therefore, the legal and constitutional parameters of private prisons in the early 1980s were essentially at least ambiguous and mostly non-existent, which left policy-makers in a position where their decisions could potentially backfire. However, the following two events helped demarcate these boundaries surrounding the propriety of private punishment, and as a result, comprised additional factors to be considered by policy-makers when considering the decision to privatize.

The first event was a landmark case in the area of assigning the final responsibility of the operation of a private prison. In 1981, 26 Colombians were found stowed away on a vessel which arrived in the Port of Houston. The Immigration and Naturalization Service was alerted and ordinarily would have detained the illegal immigrants on their vessel if not for the lack of adequate detention space. Sixteen of the aliens were handed over to Danner Incorporated, a private security company, and confined to a windowless 12 by 20 foot cell designed to hold six people, which was already filled to capacity. After two days, the Colombians tried to escape and in the process, "a private security guard, who had no training in the use of firearms, killed one of the Colombians and seriously injured another because his shotgun went off accidentally while he was using it as a cattle prod" (Lichenstein & Kroll, 1996: 33). The detainees sued the INS for violations of their constitutional and statutory rights. The INS, in turn, sought to evade liability for the events by arguing that the victims were in the custody of a private agency operating the detention centre and that the abuses suffered were the sole responsibility of this agency. In the decision *Medina vs. O'Neill*, a Federal District Court ruled against the INS, claiming that "the

contractual delegation of state authority to private firms does not relieve the state of liability” (Durham, 1993: 267) and that “government bodies cannot contract out their legal accountability for what happens to people they imprison” (Lichenstein & Kroll, 1996: 33). Therefore, the contracting out of corrections to a private firm still constituted state action, where the government was legally liable for the actions of private prisons. The importance of this decision to the privatization movement can be seen in its challenge to the “sometimes unstated premise of the privatization lobby that the private operations of prisons might limit government liability and so reduce its costs” (Ryan & Ward, 1989a: 14), an argument that was often presented to policy-makers of the early 1980s in an effort to decide in favour of a policy of privatization. Being generally concerned about the number and costs of lawsuits facing the state, by knowing the legal position and responsibility of the state in the operation of private prisons, this case assisted policy-makers in assessing the potential risks of contracting out correctional facilities, thus affecting the decisions of the policy process.

As individual states are responsible for all criminal justice matters (except federal offenses), the decision to privatize state and local institutions is dependent upon their own particular agendas. At the beginning of the privatization movement, several state governments examined the issue and legislated the possibility of privatizing prisons. However, at the federal level, constructing an authority to privatize prisons through legislative processes never took place. Despite Reagan’s rhetorical vehemence to privatize, no concrete authority mandated privatization nor drafted legislation to make it possible. This posed a critical difficulty for federal correctional authorities, as overcrowded prisons continued to worsen with the massive influx of federal drug offenders. Without the proper legislation to authorize private prisons and

alleviate the pressure, a tactic that was used in several states, correctional policy-makers experienced a great deal of pressure from a situation that was growing more disastrous by the day.

Desperate for a solution, federal corrections experts dug deep into prison legislation and emerged with a legal coup through a series of flexible, semantic legerdemains. 18 U.S.C. Section 4082 of the federal law commits convicted federal offenders “to the custody of the Attorney General of the United States” who “shall designate the place of confinement where the sentence shall be served”, and who may “designate as a place of confinement any available, suitable and appropriate institution or facility whether maintained by the federal government or otherwise” (President’s Commission on Privatization, 1988:147). Therefore, the authority to contract with private prisons was found in the Attorney General’s power to designate a place of confinement. Drawing upon the legislative history of this section, the General Counsel to the Federal Bureau of Prisons concluded in 1985 that “there is authority to contract with private facilities, both halfway houses and traditional prisons and detention facilities” (President’s Commission on Privatization, 1988: 147). With the legislative authority now in place, an important legal barrier to privatization was removed, thus changing the policy context in which federal correctional policy-makers were attempting to solve the prison crisis through privatization.

3. Major events

Despite a tremendous increase in the interest shown for private prisons in the early 1980s, accompanied by standard conservative lip-service to the issue, the number of private adult prison

facilities at the state and county levels was relatively small by mid-decade (13 according to Sellers (1993)). The companies involved in the industry had several contracts, but the substantial growth that they had envisioned failed to materialize. It took the bold efforts of the Corrections Corporation of America to change the playing field of private corrections forever. In the fall of 1985, CCA proposed to the state of Tennessee, in which it was based, to take over the entire adult correctional system for a period of 99 years. The magnitude of not just this proposal, but its ramifications upon the privatization movement as a whole, cannot be underestimated. It was a landmark event which embodied the arguments both for and against privatization, provided burgeoning companies with a horizon of possibilities, and retrospectively, has allowed insight into the political dealings of the policy process. For these reasons, it is worth examining what transpired on those days in Nashville, Tennessee.

Following the precedent set by *Bell vs. Wolfish* (the case that established the precedent that overcrowded conditions, when exacerbated by the presence of other negative conditions, constituted a breach of the U.S. Constitution), the state of Tennessee was taken to court in November and December of 1981 for violations of the Eighth and Fourteenth Amendments of the U.S. Constitution, stemming from complaints of overcrowding and inhumane living conditions. With over 20,000 pages of evidentiary material, in August 1982, Federal Judge Thomas A. Higgins declared that the Tennessee prison system was grossly overcrowded and represented an affront to the constitution (Press, 1990: 28). The state did not appeal the decision, but went along with the court's decision to appoint a special master to oversee the programs to remedy the host of problems.

The next three years saw the state submit a variety of proposals which addressed the inadequacies of the prison system. Despite this effort, conditions of overcrowding and violence failed to subside. One reason for this can be found in a platform implemented by Governor Lamar Alexander following his re-election in 1982: "During his campaign, he had appealed to the law-and-order vote with a scheme called 'Class X', which essentially lengthened the amount of mandatory time served for a wide variety of felonies" (Ireland, 1995: 518). Unfortunately, Alexander also failed to provide additional funds to accommodate the increase in the prisoner populations which Class X ensured. The strain that Class X placed on the state and local prison systems can be seen in this quote by a representative of the Tennessee Legal Aid Society:

Prisoners were backing up jails in counties all over the state. Not only did his Class X proposal not do a thing to control crime, the inhuman overcrowding that it caused gave us the most violent prison system in the country, measured by the number of homicides. The crisis hit when there were simultaneous riots in a half-dozen institutions. (Ireland, 1995: 518).

As a result, a court order issued in April 1984 threatened to release 3,000 inmates if steps were not taken to quell the escalating violence in the prisons. By June of 1985, the court also ordered that the state's prison population be reduced to 7,019 inmates by December 31, 1985. The riots continued throughout the summer and into the fall, which "brought Tennessee's prison problems to the public's attention in a way few courts could" (Cody & Bennett, 1987: 841).

Considering the urgency of the situation for which a solution was required, an opportunity was created where the standard range of policy options could be expanded to include privatization. Thus, on September 12, 1985, CCA acted upon this crisis and proposed the complete takeover of Tennessee's prison system for the next 99 years (Shichor, 1995: 240). The offer entailed \$250 million in capital investments, which included the construction and

management of two 500-bed facilities. In exchange, the company wanted to assume full control over the state's entire \$200 million annual prison budget (*Forbes*, February 24, 1986: 12).

With no sign that any of the demands to reduce the prison population were being met, on October 25, Judge Higgins finally lost patience with the state's inaction and barred the state from incarcerating any more inmates without special permission, until the population was reduced to the system's total designated capacity (Press, 1990: 28). Moreover, he also threatened to begin releasing inmates if steps were not taken by the state to alleviate the problem by the end of the year.

Initially, Governor Alexander was interested in the proposal tabled by CCA, and planned to convene a special legislative session to ask for the authority to negotiate a deal with the company, as well as to discuss a strategy for responding to the order handed down by Judge Higgins concerning overcrowding (*New York Times*, October 25, 1985). With this special session scheduled for early November, CCA lobbyists flooded Nashville in hopes of convincing legislators that the proposal was beneficial to the state. Though hyperbolic in nature, yet still capturing the intensity of the efforts of CCA, a legislative aide was quoted as saying "they had every lobbyist in America up here" (*Forbes*, February 26, 1986: 12). Yet the company's proposal was not without its opponents. Some legislators felt that the bid was overly lucrative for CCA, while civil service unions that represented prison employees saw it as a threat to their self-interest (*Forbes*, February 24, 1986: 12). For example, one of the most outspoken unions was the American Federation of State, County and Municipal Employees; although it represented only 150 prison guards throughout the state, it took the position that what happened in the CCA's

home state was of great import to the rest of the country (Press, 1990: 28). With mounting opposition to the proposal, and plagued by criticisms of patronage, Alexander cancelled the scheduled legislative session knowing that he could not win support for the plan.

The legislature spent the next month discussing a more modest submission from CCA, but could not resolve the issue before Christmas, 1985 (*The Economist*, January 11, 1986). When the legislature reconvened in 1986, "the private prison plan had been scaled back to a transfer of just two prisons, one medium security and one workfarm, to a private firm" (Press, 1990: 28-29). When the situation was resolved, from its initial proposal, the CCA was awarded only one contract, that of the management of the workfarm.

In terms of analyzing the event which transpired, such a dramatic proposal had effectively overwhelmed those who both supported and opposed privatization; never had something akin to taking over an entire state's correctional system been done before in the grand scheme of privatizing government services (Press, 1990: 30). Proponents saw an opportunity to achieve the twin aims of maximizing efficiency and meeting the demand for incarcerating an escalating number of offenders; opponents saw the proposal as a threat to the state's monopoly over punishment, one of its basic functions, and for some, a tangible threat to their employment (Matthews, 1989: 4). The magnitude of the proposal forced those on either side to crystallize their arguments, and these have formed the scope of the debate ever since. Its suddenness and amplitude left decision-makers in a position of political vulnerability; despite offering some possible benefits, the unprecedented nature of the motion contained an inherent potential risk to backfire. To turn over an entire state's correctional system to a private company, at a time when

there was little evaluative evidence supporting the claims of the privatization lobby, ran the danger of political suicide if expectations were not met. CCA's head, Thomas Beasley, reflected upon this possibility when he said: "I think we may have overwhelmed them... The proposal was an awesome document" (*Forbes*, February 24, 1986: 12). Therefore, taken together, these factors converged to produce enough opposition to quash CCA's bid for the entire system.

Although CCA was unsuccessful in its bid to run Tennessee's correctional system, its efforts will stand out in the history of private prisons. It is considered by many to be a turning point for the private prison industry, an event that "brought the issue [of privatization] to public attention and ignited a public policy debate" (McDonald, 1994: 30); that CCA came that close to having control over an entire state's prison system, that they were being seriously considered as a policy option, gave the privatization movement a glowing example of what it could potentially achieve. Call it hope, ambition, aspiration; it proved to proponents and skeptics alike that the demand was there. Possibly as a consequence of the prematurity of the proposal, the arguments on both sides following the proposal became more refined, the lines between the supporters and the dissenters drawn more clearly, as both knew that similar proposals could emerge on future correctional agendas. Equally, as we shall see in the next chapter, it has become a standard illustration of the oft-suspect nature of negotiations between the political and business worlds; the relations between both spheres in Tennessee convinced many that their fears of corrupt business practices in the private sector had been realized. Finally, the significance of the proposal and the intensity of the ensuing negotiations demanded a public scrutiny of the policy process that had never been seen in the privatization movement, thus providing a window of

opportunity to examine the myriad of pressures, constraints, and options which were facing correctional policy-makers at the time.

Despite this initial setback, CCA has grown to prosper at both the national and international levels. At the time of the proposal in 1985, CCA was contracted to manage four institutions; today, it runs 59 facilities worldwide and is expected to enjoy tremendous growth in the years to come (Corrections Corporation of America, 1997).

Chapter 6

Direct Privatization Factors II: Private Sector Facilitators

1. Financing prison construction

With the crisis in prisons reaching new heights annually since the early 1980s, governments have been hard-pressed to build new prisons to alleviate the overcrowded conditions of existing facilities and to manage the increasing number of people being incarcerated. The funding of a few extra spaces can usually be found in a government's current revenues, and preferably so, as it avoids the payment of interest charges. However, this is not an option for funding large capital projects, such as the construction of numerous prisons, which can amount to hundreds or even thousands of extra beds. The conventional method for states and counties to raise funds for such projects is by issuing general obligation bonds and raising money through their sale on the bond market. The advantage of general obligation bonds is that they spread the burden of capital expenditure over a number of years, and governments can generally borrow at slightly lower interest rates than private enterprise.

However, one obstacle in funding prison construction through bonds is that, as taxpayers eventually pay for these projects through incremental tax increases to cover interest payments, their issuance is subject to voter approval. The option of simply raising taxes without public consent had largely evaporated by 1982 as many states enacted legislation which required that virtually any proposed tax increase be subjected to voter approval (Sellers, 1993: 25). With the anti-public-sector sentiments culminating in the Taxpayers' Revolt discussed in Chapter 4, by the early 1980s, the citizenry of most states was reluctant to approve large capital expenditures,

despite their hardening of attitudes towards crime. Travis, Latessa and Vito summarize this pressure felt by policy-makers at the time, where “added to the problems created by the growing demand for institutional services is the lack of public confidence in the quality of services provided. The general perception is that prisons and jails are not successful solutions to the problem of crime” (1985: 11).

However, even if voters were ready to approve prison bonds, governments may have been in such a fiscal crisis that borrowing was impossible. Many states and jurisdictions had borrowed so much that their credit ratings were lowered, which either increased the risks to financial institutions lending the money or increased the interest to be paid on the bonds (Shichor, 1995 142). Furthermore, because of overindulgent spending habits, many jurisdictions became subject to debt limitations, imposed by the electorate, and could not borrow money beyond that ceiling. With a public resistant to deficit spending, limitations on spending were not only put in place to protect the taxpayer but also to ensure that public officials did not secure a debt that exceeded available resources. Finally, all of this was compacted by the rapidly decreasing amounts of federal transfer payments to states, being a further constraint upon budgets and the allocation of funds.

Therefore, confronted by the diametrically opposed factors of needing to reduce overcrowding and the reluctance of the electorate to ratify proposals to borrow the money for new prison construction from the marketplace, many states were effectively in a condition of paralysis. One means by which states sought to maximize the cost effectiveness of their correctional system was to privatize existing facilities; we see the transfer of numerous

institutions from the public to the private sector at this time, where companies assumed complete control of a government-run prison. However, a transfer such as this did nothing to alleviate the overcrowding problem because the capacity of prisons remained fixed while prison populations continued to grow. The intention of governments was to expand the prison system, not to tweak existing costs for improved efficiency; thus, they were forced to develop creative financing schemes: “In practical terms, state or local governments under court orders not to increase their existing inmate population may see no other option but that of trying to find alternatives to public funding for the expansion of their correctional system” (Shichor, 1993: 146).

The onus of responsibility placed upon policy-makers at the time to effectively create a supply of funds from practically nothing must surely have been staggering. It was enough, along with the myriad of pressures previously discussed, for policy-makers to turn to the private sector, which seemed to have an answer to the various financial problems faced in the form of lease-purchase agreements. Essentially, the capital to construct new prisons would be raised through private sources such as the stock market, investments and private loans, and accumulated through brokerage houses and investment firms. The money would then be transferred to a government-run “paper” agency which would design and construct the prison, which would then be leased to the government. The title of the property would belong to the private company, and the government would in all respects be a tenant making payments to the company, the amount dependent on the number of years the property is leased for. The contract negotiated in this type of arrangement typically stipulates that after a period of years, the title would be transferred to the government; they are in essence purchasing property through an installment plan.

The advantages of the lease-purchase method of financing are numerous, and appear to overcome the finance difficulties discussed above. Initially, it offers governments the opportunity to pay for new prison space out of their appropriate correctional budget because the total of lease payments would be far less than the total for construction and ownership. Thus, payments under this arrangement are not considered to be debt payments but rather a part of the operating costs of the facility; a government can acquire capital and prisons without going into further debt. Consequently, “because the financial obligation of the government is renewable each year, the amount borrowed is usually not defined as an ongoing debt; thus it does not count against the legal debt capacity of the government” (Shichor, 1995: 143-144). Because payments can be made from a government’s regular appropriation, there is no fear that the debt limitation will be surpassed, which implies that there is no need to raise debt ceilings. As a result, there is no need to acquire voter approval to raise the capital, thus bypassing the necessity for any form of public referendum. The final major advantage of this financing option, compared to the traditional general obligation bond option, is the speed with which capital can be raised for the construction of a new prison, which can avoid the costs of a referendum and save months’ worth of inflation.

Whether lease-purchase agreements are in actuality cheaper than general obligation bonds is a question that is open to debate. Regardless of the price tag ten or twenty years in the future, for state and local governments of the early 1980s, the appearance of lease-purchase agreements to finance prisons was an apparent godsend: avoid balance-sheet debt and public referenda and quickly acquire the necessary capital to construct new prisons to alleviate the overcrowding problem:

The option of lease-purchase, when exercised through private financing, can be seen as a necessary step to handle the contradictory problems of high crime rates and high incarceration rates that result in overcrowding, on the one hand, and the public's reluctance for spending on corrections construction, on the other. (Shichor, 1995: 145).

2. Economic realities: unionization and the economic benefits of prisons

The main selling point of private prison operators, and proponents of privatization in general, is that they will be able to effectuate greater cost savings in carrying out their functions. This is what made the option of privatizing prisons so attractive to policy-makers, as governments facing financial problems found it increasingly difficult to cope with an overcrowded prison system showing little signs of slowing. Given that corrections is a labour-intensive industry – an estimated sixty to eighty percent of total correctional cost is for labour (Shichor, 1993: 126) - it seems reasonable to assume that private companies would attempt to suppress the costs and cut corners in this area. Shichor notes that this can be done in several ways: "cutting salaries or the pay scale of employees...providing less or no fringe benefits and pension funds... economizing on the screening procedure...hiring fewer employees...providing less training" (1993: 126).

Understandably, with the cost-saving mentality laid as the cornerstone of their existence, private prison companies are adamantly opposed to the unionization of their employees. If a company did allow their employees to unionize, the workers would obviously be most affected by the main cost-saving tactic of the private prison company: the suppression of labour costs in the form of cut wages, pensions, positions and benefits. Labour unrest could easily follow, and would represent a major impediment to accumulating profit: "Dissatisfaction with low pay and

difficult working conditions may lead to employee strikes in private prisons, if and when employees unionize, although private correctional corporations make every effort not to employ unionized workers and not to let their workforce join any unions” (Shichor, 1995: 198).

Furthermore, the political clout of unions can pose serious problems to companies wishing to secure contracts with various states and counties: “Unions can supply formidable organization, campaign money, workers, and direct influence over some members’ votes. Public employees participate in elections at substantially higher rates than the general citizenry does, thereby forming a more potent voting bloc than their share of the work force might suggest” (Logan, 1990: 157). If a union opposes privatization, campaigns can be driven to vote against politicians who are in support of privatization. This clout is especially wielded in the Northeastern and Midwestern states, where “state politicians keep an ear to correctional workers as voters... where correctional workers and their relatives constitute a formidable constituency” (Weiss, 1989: 45). The solution for the private sector is two-fold – operate in areas with little or no tendency to unionize and/or vie for a contract in an economically-depressed area where any jobs are welcomed – and this is exactly what they did.

Going back to 1978, Robert Montilla studied the state of prison employee unionism across the United States. At this time, correctional employees at either the state or county level in thirty-three states were represented by some form of collective bargaining agreement; in total, more than half of all state correctional workers were subsumed under these agreements (Montilla, 1978: 6). Comparing the states that did have some degree of collective bargaining, we

find that union strength is especially cogent in the Midwest and the Northeast states and weakest in the southern tier of the United States (Montilla, 1978):

- All twelve states that are considered part of the Midwest region had a degree of collective bargaining, and ten of these had a comprehensive agreement covering all employee matters;
- All nine states that are considered part of the Northeast region had a degree of collective bargaining, and only one state did not have a comprehensive agreement;
- Correctional employees in six out of thirteen states in the West region were represented by collective bargaining agreements, whereas four of these had a comprehensive agreement;
- Of the seventeen states which comprise the Southern region, only three states had a comprehensive collective bargaining agreement, and an additional three had lesser degrees of representation.

Furthermore, the southern states were, and continue to be, in more dire circumstances than other areas: they have the highest incarceration rates in the country, its institutions are the oldest and most overcrowded, and they are more economically depressed (Lichenstein & Kroll, 1996: 23; Sparks, 1994: 25). For these reasons, this is where the private prison industry has concentrated most of its efforts and has made the greatest impact.

Of the 17 states that are considered to be part of the South, 15 have private prisons now in operation, which equals the total number of states for the rest of the country who also have operating private prisons. The rated capacity of all the private prisons in the United States as of December 1996 was 74, 584 – divided among national areas, the Northeastern region's capacity was 2002, the Midwest's was 4553, the West's was 15,783 and the South's private prison capacity was 52, 246 (National Criminal Justice Research Statistics, 1998). Of the thirteen major private prison companies in existence in the United States, nine are based in the Southern states, including four of the world's five largest - CCA, Wackenhut, U.S. Corrections Corporation and

Cornell Corrections. The South is the area that has seen the grandest of privatization proposals, and has taken the movement to new heights: companies in Texas now lease beds in private prisons to other states so they can deal with overcrowding, creating a new tier of privatization by brokering prisons from states as far away as Hawaii (*New York Times*, November 24, 1995).

How does one account for the success of privatization in the South? The lack of unionization and the boost to the local economy do seem to play a role. Savings through labour cuts was discussed in *Management Review*, which lauded CCA for its techniques: “CCA also trims costs because it is not faced with civil service or union rules. Thus, it hires part-time employees to meet peak-capacity hours at those facilities where inmates hold jobs or go to school (August, 1986: 44). One of the heads of CCA, T. Don Hutto, discussing the importance of these techniques during the infancy of the company, pointed out that “CCA is free to rapidly expand or reduce the number of its employees without being restricted by Civil Service rules, and...it can pay less than government agencies do by hiring nonunion help – practices that characterize the existing private institutions” (Krajick, 1984: 24). Practicing the techniques of good management, the major companies are strongly opposed to unions, and will strive not to employ unionized workers nor allow them to bargain collectively. As of May 1997, Wackenhut employs roughly 3,500 people, where less than 400 are unionized, and CCA has a workforce of roughly 6,000 and less than one hundred are unionized (Prison Privatization Report International, 1997b).

In terms of targeting economically depressed areas, prisons, whether privatized or not, “have been touted as a solution to economic decline, especially in rural areas” (Lichenstein &

Kroll, 1996: 23). Prisons are being sold with promises of jobs for the unemployed and profits for lagging businesses. William Choquette, a senior vice-president of Gilbane Building Company, an architectural firm specializing in prison construction, echoes this belief that “a new corrections center can be a real economic boost to a rural community, especially if the community lacks a major local industry” (Lichenstein & Kroll, 1996: 23). Politicians also realize the potential boost a prison can bring to a downtrodden community; researchers from the University of Georgia’s Carl Vinson Institute of Government found that “local leaders around the country recognized the economic benefits of having a prison in their community, particularly when the community had experienced an erosion of its tax base or had suffered job losses” (Miller, 1996: 229). For example, in 1984, Buckingham Security Limited was vying for a contract to run a prison in the North Sewickley township 40 miles outside of Pittsburgh. Although some people opposed the construction of the facility, “most citizens of this depressed area welcome the 200-to-300 jobs Buckingham would create and the \$10 million-to-\$12 million the company plans to spend annually on salaries and supplies” (Adkins, 1984: 66). This belief has even been endorsed by the Federal Bureau of Prisons, who issued a statement on the value of new prisons to lagging rural economies, urging the local leaders of ailing economies to “see a potential federal prison as a recession-proof economic base” (Lichenstein & Kroll, 1996: 23). In fact, in 1983, a year characterized by a sluggish economy due to recessions of the early 1980s, the Bureau of Labor Statistics acknowledged that corrections was the twelfth fastest growing occupation in the States.

Acting upon these potential economic benefits of a prison, politicians and citizens alike are eager to have prisons built in their constituencies, especially ones that need the economic

boost. David Feldman, upon his appointment to the chair of the New York State Assembly's Committee on Corrections, found "a stream of letters, telegrams, and resolutions to my office, from numerous upstate rural communities enthusiastically requesting prisons in their districts" (Miller, 1996: 229). Delving into this strange request, Feldman found that

... low-density Republican districts accounted for 89% of state prison employees, housed over 89% of state inmates, and accounted for over 89% of Department of Corrections expenditures although Republicans accounted for only 57% of the membership of the Senate. He concluded that "When Republican legislators cry 'Lock 'em up!' they often mean 'Lock 'em up in my district'" (Miller, 1996: 229).

One must also consider that this finding is restricted to the state of New York; one can assume higher figures in the South, where the Republicans are more dominant than in the Northeast and the area is substantially more economically depressed.

With these conditions, the fact that private prison companies directed their efforts to the South is easily understood. A weak history of unionization translates into cost savings and political benefits (e.g., privatization-friendly politicians would not face union opposition and would support private sector initiatives), which was combined with the perceived positive economic benefits of prison construction (drawing much support from citizens and politicians alike), and in the final result, created a strong case for private prison companies. Presenting this case to a Republican policy-maker in the Southern United States in the early 1980s who understood the harsh economic realities of the government and the populace, as well as the intricacies of incumbency, the viability of privatization emerged as a prominent option on the correctional agenda.

3. Private sector pressure

Advocates of prison privatization claim that one of its major advantages is that, with the presence of numerous private companies in competition with each other, the correctional forum will be opened to innovative and original programs and policies: “Adding new parties with incentives to participate in the formulation of social policy, as well as incentives to innovate and experiment in the details of policy implementation, offers at least an opportunity to shake up a generally stagnant enterprise” (Logan, 1990: 154). This may be the case, but this position only sees one half of the situation; privatization allocates a certain degree of political power to private companies in which they may indeed innovate, but it also creates a space where this power can be used to influence criminal justice policy to further their own ends. The ability of private corporations to effectuate decisive lobbying efforts is a major facilitator for the private sector’s entry into the sphere of corrections, and must be considered as an important factor which can influence the policy process.

There is seldom academic doubt that incarceration rates have little direct correlation with actual crime rates, but are influenced by a variety of political and economic factors (Christie, 1993). Of greatest concern is that private prison companies will maximize their political power and attempt to influence government to implement policy which will ensure that prison populations remain at a constant high, thus providing an ever-growing source of profit: “corporations are likely to continue to support and even accelerate incapacitation-oriented legislation and policies by which more people will spend longer periods of time in correctional institutions” (Shichor, 1995: 236). Private organizations with a vested interest and a large source of funds can lobby in ways that government personnel in the public sector cannot; these can

include “political action committees, honorariums, weekends in the country, dinners and other inducements to legislators that are denied to public servants” (Weiss, 1989: 41). Large corporations that are involved in lobbying often form political action committees (PACs) with the intent of neutralizing government regulation of business practices and/or to obtain the assistance of governments to increase business profits. The main avenue to such favourable treatment by the government is to “make substantial contributions to political candidates with the intent to influence legislation favorable to the PAC’s contributors” (Shichor, 1995: 235).

Although the early stages of privatization did not evince the highly organized and mobilized efforts of PACs, attempts by companies to meddle in state and local politics to secure contracts were definitely made. For example, in September 1983, the legislature in the state of Texas passed a law which authorized counties to contract for private jails if need be. It was later found that the legislation was strictly a private-interest bill which was “put through by former lawmen interested in getting into business” (Krajick, 1984: 27), who had garnered the support of the Texas Sheriffs’ Association, an organization of their former colleagues. Similarly, in 1984, the state of New Mexico considered a similar bill which was put forth and lobbied for by a Colorado oilman and cattle magnate, O. Wesley Box, who admitted that “he is lobbying because he foresees a growth in the counties’ jail population, which will mean profits for him” (Krajick, 1984: 27).

Returning to CCA’s proposal to take over Tennessee’s entire prison system, we find that the interconnectedness of politicians and business people is so entrenched as to be a perfect realization of the fear of corruption displayed by critics. In 1985, the Governor of Tennessee

was Lamar Alexander, a Republican who had been in office since 1978. CCA was formed and incorporated in 1983, with \$10 million in venture capital provided by the Massey Burch Investment Group, whose co-founder, Jack Massey, was a close personal friend of Governor Alexander (Ireland, 1995: 518; Ryan & Ward, 1989a: 13). The venture capital was controlled by Thomas W. Beasley, founder of the CCA, who was not only the former Chairman of the Tennessee Republican Party, but also ran Alexander's 1978 gubernatorial campaign (*Forbes*, February, 24, 1986: 12). Though never stated in the literature, it seems likely that Beasley and Massey knew each other through their close mutual relations with Alexander. The wife of the Governor, Honey Alexander, became a major stockholder when she invested \$8900 in the company during its infancy; in 1985, she traded her stocks in CCA for shares in South Life to avoid the possibility of a conflict of interest. In 1989, she sold the South Life shares for a gain of \$133,000 (Ireland, 1995: 518). Ned McWherter, also a major investor of an undisclosed sum, was the Speaker of the House in Tennessee and was also a Republican (Press, 1990: 28).

Since 1985, Corrections Corporation of America has grown significantly, and has become a major corporate donor in the State of Tennessee. The company itself has contributed \$15,000 to the Republican cause, including Alexander's bid for President (Federal Elections Commission, 1997). Its founder, Thomas W. Beasley, personally forwarded \$32,500 to these same funds (Federal Elections Commission, 1997). His wife, Wendy Beasley, corralled \$14,500 for similar donations, despite her status as a homemaker (Federal Elections Commission, 1997). Other high-level employees of CCA who have donated to the Republican Party and the Alexander for President campaign include T. Don Hutto (\$2,000) and Doctor R. Crants (\$20,500), who became Chairman of CCA in 1995 (Federal Elections Commission, 1997).

This “friendship” displayed by CCA to the state of Tennessee, in the form of donating substantial campaign and party contributions, as well as assisting present and former decision-makers with investments and jobs, appears to have paid off, despite their setback in 1985. In the summer of 1997, CCA once again put forth the proposal to take over Tennessee’s entire prison system, as it did in 1985. As this is being written, the legislature is discussing the option, yet this time around, it appears that CCA will win the decision. According to *The Chattanooga Times*, CCA “has put thousands into the campaigns of top legislators and the governor, House Speaker Jimmy Naifeh is married to a CCA lobbyist, and there have been unfounded reports that some lawmakers pushing the deal own stock in the Nashville-based CCA” (Hicks, 1997). Commenting on the general impropriety of the situation, Republican representative Tommie Brown stated that “Everybody who has stock needs to ‘fess up right now before we start looking at this...I don't like this. We might as well privatize the General Assembly and go home” (Hicks, 1997).

In the first important work on privatization, *The Privatization of Corrections*, Joan Mullen believed that if the privatization movement gained sufficient momentum to operate secure adult correctional facilities, “one might expect – even hope – to see any number of corrections professionals joining the ranks of private organizations to provide a more knowledgeable perspective on the nature of the corrections business” (1985: 71). Understandably, this was said in light of the inexperience of business leaders in dealing with correctional issues, where government personnel could help the industry overcome unforeseen obstacles. However, the darker side to engaging former correctional officials is that they will

also use their connections from government to influence policy decisions. Although the preceding facts illustrate how CCA is attempting to influence government through political contributions, they are also pursuing this goal by hiring people with the government liaisons necessary to impose pressure on the policy process. This strategy has been employed since the company's inception and continues to this day unabated.

The first important government figure that was hired by CCA's Beasley was T. Don Hutto, who had once been Commissioner of Corrections in both Virginia and Arkansas (Logan, 1990: 23). In 1984, while still an employee of the CCA, Hutto became the president of the American Correctional Association (ACA) (Logan, 1990: 23). This association is responsible for determining whether prisons meet the minimum standards of safe and humane living conditions (Reed & Denisovich, 1996: 21). Involvement in both of these organizations undoubtedly represents a conflict of interest, for essentially he would be charged with accrediting the prisons of his employer. Company lobbyists include a former manager of Alexander's gubernatorial campaign, one of Alexander's former chiefs of staff, and a former state senator (Logan, 1990: 158). Administrators for the company are partially comprised of former Tennessee Republican Party chairpersons (Logan, 1990: 158). Michael Quinlan, who was the former director of the Federal Bureau of Prisons from 1988-1992, has recently become CCA's director of strategic planning (*New York Times*, November 24, 1995). Other employees who were drawn from government positions include Craig Dobson, a facility administrator who was a former employee of the Federal Bureau of Prisons, and Bobby Brantley, a facility marketing representative who was then lieutenant governor of Florida. Members of the Board of Directors came from both the government and private sectors, including Maurice Sigler, a former chairman

of the U.S. Parole Commission, and General Peter Dawkins, who was then also on the Board of Directors of both Shearson Lehman and American Express (Adkins, 1984: 67).

By hiring these people within their organization, CCA is ensuring that they will always be well connected to the government in ways other than direct financial contributions. Such prominent former officials no doubt either still have important connections to key decision-makers or understand the intricacies of the policy process itself, so as to place CCA in a position to dramatically affect the outcome of policy. Their ability to conduct a highly effective lobbying campaign is necessarily amplified, especially in comparison to the groups that oppose privatization and lack this caliber of influence. Although most dramatically seen in Tennessee, this strategy necessarily constitutes a factor which facilitates the entry of private prison companies into the correctional sphere, and enhances their presence in the policy process.

Chapter 7

Direct Privatization Factors III: Outside Pressure

The eventual success or failure of a policy event fight depends on which side of the controversy can bring enough influence and domination resources to overcome the advantages on the other side. (Knoke, 1993: 176)

As with most policy debates, the issue of privatization has divided policy-makers and interests groups into two opposing camps. With the inherent polemics of the debate, surrounding fundamental notions such as the role of the state, the role of the free market, and the capacity to punish, it is not surprising that almost every jurisdiction that has considered privatizing the secure adult aspects of their correctional system, be it local, regional or national, has been met by a coalescence of resistance; and this, with further counter-resistance. The reasons for which these players support or oppose privatization vary for each group, but all have been entrenched in the fight, at one location or another, since its inception. For the study at hand, the following discussion will provide a general overview of the major players – identified in their respective positions in Table 7.1 - that are involved in the privatization debate, compiled from the various struggles that have occurred throughout the United States. Each category will be discussed in turn.

Table 7.1 – Major Players in the Privatization Movement

For Privatization

- A. Republicans
- B. Big Business
- C. Academics
- D. Federal / State / Local Government
- E. Political Action Committees
- F. Think Tanks

Against Privatization

- A. Democrats
- B. Unions
- C. Academics
- D. Federal Government
- E. Civil Liberties Groups
- F. Interest Associations

Media

I. For Privatization

A. If a politician is in support of privatization, s/he is more than likely to be a Republican. As instrumental players, whether as key decision-makers or simple supporters, members of the Republican Party appear to be the major figures in terms of being able to implement policy, especially at the state level. With their conservative views concerning private business, privatization and crime and imprisonment, it is surprising that the idea did not achieve such broad approval sooner. Moreover, Republican politicians are especially supportive of an expanding prison system, regardless of whether or not it is privatized; a simple look at who is asking for new prisons in their states and constituencies reveals they are overwhelmingly Republican (Miller, 1996: 229). Thus, the possibility of privatization is seen as simply an added bonus to cut costs and improve efficiency of service delivery. Finally, the political climate of the southern states, most of them having a Republican majority, seems to be ripe for privatization: they are leading the world in prison rates (Christie, 1993: 86), the most extreme penal measures seem to originate from this area (e.g. the return of the chain gang) and it is known for its lack of unionization (Montilla, 1978). These factors converge with the Republicans' conservative ideas of laissez-faire economics and downsizing of government, all of which facilitate the privatization of prisons being considered as a policy option.

B. The astounding growth of private prison operators in the United States reflects the potential profits to be made in corrections, and as such has made big business an influential player outside the immediate decision-making process, in terms of shaping policy decisions. The ideological and political-economic climate for their growth is ideal, but with their sheer economic size, they

are often aided in this growth either through massive lobbying efforts or, as we have seen in Tennessee, of knowing the right people and reciprocating favours to them. And although trying to appear philanthropic, as well as simply meeting the demands of a society bent on incarceration, big business still has at its core the profit-seeking motive which is averse to slowing down the rates of incarceration. Even the major academic supporter of privatization, Charles Logan, has said that the economic interests of private prison companies will always be on the side of oversupply (Logan, 1990: 151). The following are quotes from a recent conference on privatization in Toronto, sponsored by Wackenhut Corrections Corporation and Youth Services International, and resonate with the philosophy of expansion (Prison Privatization Report International, 1996a):

“a contract must be tightly written so inmates can't be pulled out easily, leaving a prison without revenue...”

“while arrests and convictions are steadily on the rise, profits are to be made - profits from crime. Get in on the ground floor of this booming industry now...”

“Build...and they will come.”

Therefore, private contractors always have an interest, that of profit, to lobby as intensely as possible. Adding to their political clout is the strategy of many private prison companies to lure prominent government officials away from the public realm and into the private sector. With established government connections, these employees are able to facilitate the influencing of the policy process.

C. Academics are important players in policy making, owing to their ability to "scientifically" legitimize special interests. With society showing increasing tendencies of technocratic imperatives, where the moral appropriateness of policy is replaced by the technical criteria of

cost-effectiveness and efficiency, the scientific expert has come to occupy a central role in policy decision-making and evaluation (Berger & Kellner, 1981). Those academics who support privatization are often drawn from the political right, and arrive with the requisite belief in the superiority of a free market. It also appears that many academics of this shade are often funded by right-wing think tanks (see below), putting the objectivity of their research into question. As stated in Chapter 2, the work of Charles Logan and his colleagues has appeared most often as evidence in support of privatization, in everything from newspapers to government commissions.

D. It was obvious that the Reagan Administration wanted to privatize as many government services as possible, as evinced by the number of inquiries into the issue undertaken during his tenure – Reform 88, the President’s Commission on Privatization, the Grace Commission and the President’s Task Force on the Private Sector were all major initiatives to expound the benefits of privatization and to provide policy direction. However, despite both Reagan’s and Bush’s advocacy of the privatization of public services and their conservative stances on economics and politics, the privatization of prisons never became a comprehensive policy at the federal level until several years ago, under the direction of Democratic President Bill Clinton. Instead, policies were being initiated at the state and county levels, or if at the federal level, they solely involved various individual institutions rather than a mandate or platform. With the New Right gaining control of Congress in 1994, Clinton has had to change his strategy of enacting policy to conduct it within the frames of reference of the Republicans, especially with the power of Congress to quash policy. This is combined with the vehement fever of downsizing the government that was initially spread by both the Reagan and Bush administrations. American politics of the 1990s have been characterized by both parties and their representatives trying to

dazzle the public with the size of their axes that they would use to cut through government and civil service if elected. Therefore, we have Vice-President Gore's manifesto of the millennium, *Common Sense Government: Works Better and Costs Less* (1995) which advocates privatization to both downsize government and quell the tax anxiety of the populace (*New York Times*, November 24, 1995); desperate for both public and Congressional support, Clinton came to embrace such strategies and is now supporting the privatization of correctional services.

At the state level, the support for privatization has a longer history. With all the various factors discussed thus far having the greatest impact upon state and local governments, it is at these levels that correctional authorities, policy-makers and legislatures have felt the most pressure to alleviate the prison crisis. As early as 1985, the National Governors' Association adopted a resolution declaring that "States may wish to explore the option of contracting out the operation of prisons or other correctional programs. Private enterprise would be expected to run prisons in an approach similar to the way it now operates hospitals, drug and alcohol treatment programs or job training programs for government" (*New York Times*, March 3, 1985).

E. In a landmark case in 1973, the Supreme Court ruled that Congress could not limit political expenditures and contributions because they were considered a form of free and public speech; as such, corporations, being legal entities, were entitled to share these constitutional rights with private citizens. Business groups responded to the beneficial decision "by organizing ever larger numbers of independent political action committees – from 84 in 1974 to 821 in 1978 to more than 1300 in 1979 – to support candidates and causes" (Carroll, 1988: 538). Although Political Action Committees (PACs) are a recent political phenomenon, they have come to acquire great

influence in policy making: "PACs are well organized and are using the most modern management skills to raise money and the latest computer methods to evaluate political candidates' standings on issues of interest to them" (Shichor, 1993: 123). Essentially, a PAC is an interest group that has become highly organized and able to effectuate decisive mobilizing and campaigning through their ability to raise and donate funds to desired politicians. Moreover, they are often driven by single-issue politics corresponding to their interests, and can enhance their abilities by pooling their resources into one cause. Furthermore, the presence of PACs within the spectrum of interest groups should be seen in the light "that there are no comparable PACs or lobbying organizations dedicated for the sole purpose of representing the inmates" (Shichor, 1993: 124). Civil liberties groups that advocate inmates' rights do not expend all of their efforts and resources on the one issue of privatization, but spread their concern over a variety of policy issues which purportedly violate rights and freedoms. Thus, the financial generosity of the PACs has given them an explicit approval to engage in policy; rather than the shady palm-greasing of ages ago, PACs are highly visible proof that money is easily translated into political power. However, it should be noted that only one major private prison PAC was found, acting on behalf of the Wackenhut Corrections Corporation; yet the benefits accrued by this PAC foreshadow the future potential efforts of other company PACs in the lobbying arena.

F. One aspect of the debate that is worth noticing is the questionable nature of some of the data, emanating primarily from the works of pro-privatization researchers. It seems that a fair part of the research extolling this position is funded by think tanks whose objectivity is suspect. A think tank is essentially an academic political action committee; yet owing to the credibility of academics as scientists who work for a think tank, it is able to legitimize policy options with

more salience than PACs. Moreover, being highly organized and motivated, they are able to further their interests beyond the abilities of the individual researcher. Although characteristically their indestructible rigidity in following ideological lines and producing conclusions accordingly occurs on both sides of the political continuum, those think tanks of the right are more immersed in the privatization debate (Ryan & Ward, 1989a: 45). Starting from a belief in the privatization of all government services and functions *in toto*, groups such as the Fraser Institute and the Adam Smith Institute have been influential in the social policy debates of privatization by producing "scientific" evidence and organizing "conferences" that somehow avoid the moral and political dilemmas of private prisons, but rather tend to be reduced to the technocratic imperatives of cost-efficiency and effectiveness (Prison Privatization Report International, 1996a). The most extreme example of this is the work of Peter Young called *The Prison Cell* (1987). At the time of publication, Young was chair of the Adam Smith Institute, renowned for its conservative, free-market policy recommendations to the British Parliament under Thatcher (Ryan & Ward, 1989a: 47). His report became the basis for England's prison privatization platform, despite the continued assaults upon the validity of his work.

Notwithstanding the inherent politicality of all knowledge, a criticism offered by the dismissing barrages of postmodernists, there are definitely degrees of ideology. Thus, owing to the continual discovery of blatant connections between the political right and certain researchers, obvious evidence of the ideological malleability of the issue, the objectivity of such works should be consistently questioned; unfortunately, in the privatization debate, it rarely is.

2. Against Privatization

A. If you are to find any politicians in this age of fiscal crises who are against privatization, it is more than likely they will be Democrats. Although traditionally against private prisons at the inception of the movement in the early 1980s, the rise of the New Right and its recent concentration in Congress has forced Democrats into a conservative frame of reference, and they are scrambling not to be outdone. Therefore, Democrats are seeking political appeal with like conservatism, where privatization is increasingly becoming a popular policy option among them. As mentioned above, Democratic President Bill Clinton is increasingly coming to support such strategies, including the privatization of prisons (Prison Privatization Report International, 1996a).

B. As has been discussed in the previous chapter, one strategy of large private prison operators to reduce costs is to suppress the wages and benefits of their employees and to take measures to ensure that unionization does not occur (Shichor, 1993: 126-127). Therefore, unions have consistently been a strong opponent of privatization, at both the regional and federal level. One of the most powerful unions in the United States, the American Federation of State, County and Municipal Employees (AFSCME) has been outspoken in its opposition (Logan, 1990: 11). By 1989, AFSCME had 1.4 million members, 40,000 of whom were directly involved in corrections (Ryan & Ward, 1989a: 32). Having the strength and resources to enter the foray, AFSCME has supported its members in the fight against privatization, and have been joined by smaller regional and state unions that have publicly protested privatization. The American Federation of Government Employees has also staked its position against privatization. However, the

privatization of existing government facilities has rare. Institutions are becoming privatized from the initial construction of the prison, which allows the company to set earnings to their desire and avoid widespread opposition from unions (Shichor, 1993: 127); thus, the influence of unions in the policy process appears to be dwindling.

C. The absolute number of academics appears to be somewhat lacking on this side of the privatization debate, seemingly less organized and more individualistic than the supporters of privatization who are often thinly-disguised representatives for the conservative think tanks. One possible reason is that these researchers are often involved with civil liberties groups and are accorded less legitimacy, visibility or money than their counterparts, publishing information in the name of these groups. The most cited critic is John DiIulio, whose arguments appear across the spectrum of debate, from newspapers to academic journals, yet these are often concentrated geographically within North America, followed by Ira Robbins, who specializes in constitutional issues surrounding privatization.

D. The Federal Bureau of Prisons (FBP) is in the position of opposing privatization, although it has had dealings with private corrections in the past, most notably in the area of juvenile corrections and renting out space at local jails (Logan, 1990: 21). However, the FBP appears to have withdrawn from these efforts, and its reasons for this stance have less to do with questioning the moral dilemmas that surround the issue than with coming to question the cost-effectiveness and efficiency rationales held up by supporters (Prison Privatization Report International, 1996b). Despite its opposition, it was overruled by Congress which, in 1995, had mandated that the FBP begin privatizing the majority of small and medium-sized facilities that

were being constructed (Prison Privatization Report International, 1996b). The plans were temporarily halted due to an intensive study conducted by the FBP in reaction to the decree set forth by Congress. The essence of the final report concluded that privatization would not be as beneficial as originally thought. Congress momentarily considered the piece, but proceeded to reissue the mandate in October 1996, and the FBP is undertaking the privatization of several institutions in California (Prison Privatization Report International, 1997a).

E. Civil liberties groups were some of the first organized associations outside of the immediate political decision-making spheres to oppose privatization, citing a variety of reasons for their position, including their concern over both the lack of accountability and the profit motive that could lead to unsafe prison conditions (Logan, 1990: 12; Ryan & Ward, 1989a: 34). The most prominent of these groups is the American Civil Liberties Union (ACLU), which has a long history of involvement in the policy process for a vast array of issues. Concerning privatization, the ACLU has played an interesting role. We saw in the discussion of court orders to reduce overcrowding that it was involved in numerous litigation suits against the correctional systems of various states and counties for their unsafe prison conditions stemming from overcrowding; in 1984, it was participating in twenty-five such litigations (Sellers, 1993: 46). However, it must be remembered that these court orders were instrumental in placing pressure upon policy-makers to consider privatization as a correctional option. Therefore, the ACLU is indirectly responsible for creating a movement towards privatization which it now opposes on grounds of moral impropriety. For example, it was instrumental in the placement of a moratorium on the construction of private prisons in Pennsylvania (Ryan & Ward, 1989a: 37). The state government was going ahead with restructuring plans, and the ACLU was able to delay their

implementation to allow further study into the costs and benefits of private prisons once it had reported that the private contractor had purchased the land to be used for the prison for one dollar, as it had previously been used as a toxic waste dump.

F. The category of associations includes a number of diverse coalitions that are either opposed to privatization or have voiced concern about the issue. Two of the most prominent associations to have stated their positions are the American Bar Association (ABA) and the National Sheriffs' Association (NSA). However, though coalescing to oppose privatization to a certain extent, they do so for a variety of reasons. For example, the ABA consistently questions the ethics of privatizing the delivery of punishment, especially in what it calls the "symbolic issue" and its practical consequences: "to give up to the private sector what is traditionally taken to be a state function could seriously undermine the legitimacy and authority of those exercising that function" (Ryan & Ward, 1989a: 36); despite this concern, the ABA believes that privatization should be implemented only if all the relevant issues have been examined. The NSA was among the first interest groups to voice its opposition to privatization, passing a resolution against the policy option at its annual conference in 1984 (Ryan & Ward, 1989a: 32). The NSA is chiefly concerned with issues of accountability; sheriffs are elected officials and fear that having the private sector assume control of local jails without being accountable to the ballot box could lead to decreasing standards of imprisonment (Ryan & Ward, 1989a: 32). Other associations that have also questioned the moral propriety of private prisons are the National Association of Criminal Justice Planners and the National Coalition for Jail Reform. Although most of these associations are less organized and politically influential than unions or PACs, possibly because

they subscribe to a variety of causes and efforts rather than single-issue politics, they nonetheless are able to provide a loud voice in the policy making process.

3. The media

The news media is a critical player in the policy process for at least three basic reasons. First, by virtue of reporting on certain issues and not others, the media performs a filtration function; it indicates to a general audience, which frequently includes policy-makers, the most important issues facing our nation, province and/or community. In so doing, the media may either legitimize as important topics which are of concern to claims-makers simply by providing them with access to their audience, or it may identify completely new issues through the practices of incident and investigative reporting (Ericson, Baranek & Chan, 1987: 360). Therefore, the media plays an important role in setting the public policy agenda through the identification of social problems. Second, the media frequently helps to define an issue. Essentially, the way in which an issue is defined in the mainstream media, whether defined from within or appropriated from a source agency, often becomes its dominant cultural definition. Finally, the mass media also frequently helps shape public opinion by implicitly if not explicitly taking a stance (Ericson, Baranek & Chan, 1987: 361). In this sense, the media may be limiting the range of policy options which are available to the government.

Before examining the role of the media in helping to shape policies regarding the privatization of prisons, it should be noted that the media search of daily newspapers was confined to the *New York Times*. In light of various constraining factors – the lack of access to local papers, the absence of sufficient time and resources, and the fact that this thesis is not

specifically devoted to the media - the media analysis will be somewhat limited. If there had been access to daily newspapers from various states, a more detailed summary of how the events were constructed in the media could have been provided. On the other hand, the *New York Times* is an elite newspaper that has a national readership and, as such, is a good source to determine if issues have penetrated the national policy process, since purely local issues are unlikely to be covered by an elite national paper. As such, the media search was comprised of examining all of the headlines of articles that appeared in the *New York Times* between 1984 and 1995 under the subject categories of “prisons” and “privatization”, and selecting those which discussed private prisons specifically.

Over the course of the past ten years, the *New York Times* has provided limited coverage of the privatization issue, despite the fact that the privatization of prisons is a new and dramatic change in the method of imprisonment. Thirty-five articles devoted to this topic were found between 1984 and 1995, where 1985 was the peak coverage year having a total of fourteen, a majority of which (seven) focused on the events which transpired in Tennessee. The content of the articles was primarily factual in nature, generally reporting on the awarding of contracts and the minor political happenings that were occurring, such as Lamar Alexander's decision to hold a special legislative session to consider CCA's proposal (*New York Times*, October 25, 1985). Sources most often accessed by the newspaper include such authorized knowers as politicians (e.g. Tennessee Governor Lamar Alexander, New York City mayor Rudolph Guiliani), private prison industry officials (e.g. Doctor R. Crants and Richard Crane, both of CCA), high-ranking civil servants (e.g. Deputy-Attorney General Jamie Gorelick, Minnesota Commissioner of Corrections Kenneth Schoen), union officials (AFSCME president Gerald McEntee), and various

interest groups (ACLU, Council of Churches, ABA, Adam Smith Institute). From the sparse number of articles devoted to this issue, it is likely that the influence of the media was negligible, particularly at the national level, in terms of both agenda setting and defining and framing the topic, because no clear or consistent evaluative position was forwarded in an elite national paper.

4. Absence of public debate

One of the major facilitators for those companies who wished to expand the role of the private sector in the delivery of punishment has been the ambiguity surrounding the actual demand for this service. That is, the interest of the general public has not been particularly well articulated as to whether privatization is supported or not. The lack of a clear voice has allowed both the supporters and critics of privatization to dictate what these interests are, instrumentally molding them to their own positions. Critics charge that the public interest is “conspicuously absent from the debate” (Matthews, 1989: 8); proponents claim that a demand for harsher sanctions and increased use of imprisonment is an implicit claim to supporting privatization (Logan, 1990: 244). Without direct empirical studies into public opinions concerning privatization, what exactly constitutes the “general interests” of the public will remain unclear.

The closest measure that has been used to quantify public opinion with regards to privatization, and usually applied by its proponents, has been the public demands for harsher sentences, increased use of incarceration for convicted offenders and support for the construction of additional detention facilities (Jacobs, cited in Logan, 1990: 79). It is also claimed that the public does not particularly care how these demands are met, as long as people are locked up and taxes are not raised to finance the initiatives (Jacobs, cited in Logan, 1990: 79). With this,

supporters believe that the citizenry has given its implicit approval to privatization. However, the difficulties associated with criminal justice surveys of public opinion are widespread, and are rarely addressed by those who use them to advance the privatization option. Sherman (1981) discusses the tenuous nature of implementing a criminal justice policy based on the findings of such polls:

Attempting to speak for “the public” has always been an uncertain business at best. Quantitative knowledge of public opinion in most fields is extremely shallow. Sample surveys are necessarily limited to interviews of a few minutes duration, in which it is practically impossible to explore deeply held views. Our knowledge of public opinion about breakfast food is far deeper than our knowledge of public opinion about criminal justice. (47)

Additionally, evidence has been found suggesting that policy-makers who claim the motivation behind criminal justice policy has been the public will often overestimate the punitiveness of the public’s attitude toward crime and punishment (Welsh, 1995: 29). As a result, “claims by legislators that they enact tougher laws in response to the public will are questionable” (Welsh, 1995: 29). Therefore, to forward the privatization option based upon the public demand for harsher policies can also be considered questionable.

Because of these problems, critics of privatization charge that employing such public surveys constitutes a manipulation of empirical data to implement a policy without founded support. Conversely, they point to the numerous examples where the public has voted down the issuance of bonds for the construction of new prisons as evidence that people do not want an increased use of imprisonment. However, this rebuttal is also not without questionable origins. Corrections has a very limited constituency in the realm of public concerns: “typical citizens spend little or no time thinking about correctional policy” (Jacobs, 1983: 130). One can equally posit that the results of such referenda had more to do with the public’s opposition to increased

taxes than their disapproval of expanding prison construction; for example, given the anti-public-sector attitudes of the early 1980s, the Taxpayers' Revolt had more weight in deciding the final count. In a certain documented instance, even the issue of taxes did not play a significant role in the disapproval of a bond issue: Logan describes a 1978 study by Jacobs of one referendum in the state of New York and found that "relatively few voters bother to cast ballots on these issues, often allowing a well-organized and financed opposition campaign to prevail" (Jacobs, cited in Logan, 1990: 79). In a later book on similar topic, Jacobs concludes that

The citizenry rarely gets to express its opinion on correctional policy. And when it does have such an opportunity, as in the case of the New York State prison bond referendum, it reveals itself to be confused and apathetic. This is not...a feature peculiar to the public's attitude toward crime and punishment, but a general characteristic of a mass democracy in which citizens and voters are overwhelmed with scores, even hundreds, of highly significant issues competing for their limited time and attention. (1983:132)

Therefore, the exact nature of the public's opinion of privatizing prisons, at least in the mid-1980s, is generally unclear, and attempts to clarify this position by both proponents and critics have not been successful in clarifying matters. However, regardless of whether this opinion was one of support, apathy or dissent, the fact remained that the populace was not willing to have their taxes raised to finance a correctional policy of prison expansion; and this is where the absence of public debate has come to be seen. Advocates of private corrections "tout the entrepreneur's ability to circumvent such 'complicating factors' as voter approval on bond issues and regulations concerning public hearings and legislative policy review" (Weiss, 1989: 41). Assuming that a portion of the public does not support increased prison construction, that the empirical results showing that public demand for prison expansion is fundamentally flawed, and that policy-makers overestimate the public's punitiveness, one can posit that the results of an in-depth survey would reveal a significant opposition to prison expansion. Lease-purchase

agreements remove from the public sphere *any* opportunity for potential opposition to coalesce, organize and campaign. Even if in the final result its position supports the issuance of bonds, expansion and privatization, the public is not even given the initial chance to have its voice heard when lease-purchase agreements are used. By offering the circumvention of any public debate, the private sector is in an advantageous position in which to influence policy in ways serving their specific interests, rather than those of the public. The employment of these financing maneuvers are a manifestation of one of the greatest fears of privatization critics: “the preoccupation with fiscal efficiency deflects attention from political issues and further removes corrections from democratic control” (Weiss, 1989: 42), and that, ultimately, “where privatization is linked directly to the pursuit of profit the politicization of decision-making through democratic processes may be viewed as a disposable impediment to profit maximization... [which] may indeed serve to reduce accountability and restrict democratic debate” (Matthews, 1989: 16).

Chapter 8

Inherent Policy Process Factors

The impetus for privatization, as we have seen, has emerged from a multitude of factors, ranging from the direct and proximate to the indirect and distant. All have been able to exert differential degrees of influence upon the policy process, and the cumulative pressure was enough to allow privatization to be considered as a viable policy option by decision-makers. However, it should be noted that all of these factors were existing outside the structure and organization of the correctional policy process, externally shaping policy considerations to a point where their combined effect narrowed the range of policy possibilities and pushed privatization to the correctional options. What exacerbated this pressure were certain factors, present in the internal organizational and structural dynamics of the policy process, and inherent to the process of policy-making in general, and correctional policy specifically. This chapter will examine this set of internal factors, their interconnectedness and their relation to privatization.

1. Social problems, resource distribution and organizational competition

When an action or behaviour manifests itself in a series of observable events, it may become interpreted as a social problem and efforts may be made to deal with the situation. When the problem is seen to have reached a widespread scale that affects a large proportion of the citizenry, it is often the government of a society which organizes these efforts through a centralized and bureaucratized system. Once these government structures are in place to combat the problem, they often become entrenched and embedded within the daily operation of society; so much so in fact that “government organizations tend to utilize social problems as resources for

their own preservation” (Welsh, 1995: 34). Whether it is the inherent structural rationality of an organization, or the cumulative effect of individual utilitarian perceptions of those working within the organization, it is rare that any effort made would be self-effacing; that is, few individuals within the organization, and few structural elements of the organization, would support policy efforts or options which would dismantle their own *raison d'être*. Professionals have a personal stake, whether economic or psychological, in the existence of the social problem to which they devote their work; organizations have an existential stake, for without the problem it would cease to exist. In either respect, there are deeply ingrained vested interests in the presence of social problems which exert pressure to keep the problem alive, or resuscitate it in a variety of forms if need be, so as to assure its continued existence and ensure that interests are continually met.

However, on rare occasions in the history of social control, we see that internal efforts are made to dismantle an organization. The clearest case is undoubtedly the deconstructing movement of the late 1960s and early 1970s. Drawing upon and coexisting with numerous radical ideas which had entered the intellectual sphere and constituted the counterculture of the time, attacks against the crime control system “emerged not just from the margins but from the actual centre of the crime control establishment itself” (Cohen, 1985: 31). The causes of the deconstructing movement, and its subsequent effects, have been mulled over for the past two decades by a host of prominent criminologists, including Cohen (1985), Garland (1985; 1990), Chan and Ericson (1981), and Scull (1977), as well as one work by Cohen and Scull (1983). What is of import to the present analysis is the effect that was most apparent: the delegitimation of the prison system. This is not to say that imprisonment was no longer used, but rather that there was a fundamental

questioning of imprisonment as a method of punishment. Whether the expression of this critique had hidden agendas, misplaced intentions or was unrealistic, the fact remains that the prison suffered an enormous blow to its existential justifications throughout the entire political spectrum: “the whole ideological consensus about the desirability and necessity of the segregative social-control institution appeared to break” (Cohen, 1985: 32). Furthermore, judging from Cohen’s comprehensive account of destructuring (1985), it appears that, as imprisonment represents the locus of social control and thus the epicentral focus of the entire attack, the prison system suffered a significantly higher level of delegitimation than did other elements of the crime control system. Though it remains true that destructuring proposals did address the institutions of the police and the courts, seen in such efforts as decriminalization and delegitimation, it was the prison system, being the final stop in the processing of offenders, which was affected by all elements of destructuring.

Within the context of destructuring, any governmental organization responsible for the prison system had little chance to use social problems as a resource for its own preservation, as even its own professionals were mounting an attack internally against its very structures. One possible effect of this situation upon the policy process is that it created a state of “domain dissensus” within criminal justice policy, which refers to “the degree to which an organization’s claim to a specific domain is disputed or recognized by other organizations within the environment” (Welsh, 1995: 34). Hypothetically applying this concept of “domain dissensus”, while any claims made by the criminal justice system were in dispute in the realm of government policy because of the destructuring movement of the 1970s, it was the claims of the prison system at the time that were undermined most, to an extent far beyond other aspects of the

criminal justice system. Shattered as it was, the prison system was not able to organize its interests to effectively present the incarceration of offenders as a social problem which needed attention from policy-makers; difficulties keeping this problem alive within the policy process meant continual questioning as to the social necessity and fundamental existence of the correctional system.

As new social problems continually emerge onto the policy agenda, and given the tendency of existing organizations to self-perpetuate, it is clear that a government will have a variety of different organizations to deal with a multiplicity of identified social problems. Thus, not only must an organization maximize the importance of its particular problem to ensure its survival, as seen above, it must do so within an environment where numerous organizations are competing for financial attention and policy consideration. And although the prison was still used as a method of punishment during the 1970s, the existential crisis it suffered left it at a political disadvantage when competing with other aspects of the criminal justice system, thus increasing the levels of domain dissensus. Furthermore, as the decade witnessed massive cuts in federal funding of a variety of public services, the competition between agencies of the criminal justice system intensified as each scrambled for their share of a dwindling pool of finances. With the prison system completely undermined, it was not able to compete as effectively as before for these funds.

Welsh notes that when agencies with highly related functions, like those that comprise the criminal justice system, “compete with differential success for scarce...resources”, the presence of domain dissensus between agencies “may lead to an imbalance of resources and a

lack of cooperation among the various components” (1995: 35). Finally, if this imbalance between agencies is great enough, it “may contribute to inadequate processing of their clientele” (Welsh, 1995: 35). And this is exactly what happened with the penal system. With greater legitimacy assigned to the police and the courts, when it came time to compete for resources, the prison system, experiencing a high level of domain dissensus, was at a great disadvantage; by the late 1970s and early 1980s, it was under-funded and unequipped to deal with the intake of offenders who had been processed by the other agencies of the criminal justice system with proportionately greater resources at their disposal to effectuate their duties. The result was the beginning of overcrowded conditions in prisons, which, as we have seen, was a major factor in the decision to privatize. As time went on, the disjuncture of funding from the 1970s left the prison continually lagging behind the actual processing of offenders, and when the law-and-order politics of the New Right began to affect the criminal justice system, it increased the speed with which prisons became overcrowded and their conditions became worse.

The self-perpetuation of agencies through investments in social problems and the competition between agencies for limited resources are factors in to the policy process. Their effect upon corrections, culminating in the prison crisis of the 1980s, is undoubtedly related to the rise of privatization upon the correctional agenda. The destructuring movement created a situation of domain dissensus for the prison system, which led to its weakened ability to compete for resources, and consequently, handle the output of other components of the justice system which were operating under better financial conditions. A solution was needed which would control the flow, without demanding an excess of limited resources which could have made competition with other agencies even more difficult. At least theoretically, privatization was

indeed an option which could alleviate some of the financial strain induced from domain dissensus and competition.

2. The volatility and unpredictability of correctional issues

A further impetus for privatization can partially be found in the nature of correctional issues within the political sphere, and how this affects the policy process. We have already discussed the antipathy displayed by the public when it comes to most correctional policy. When the limited constituency of corrections is combined with the fact that corrections is not often driven by the zealotry of single-issue politics, the ability of politicians to campaign on correctional issues alone is extremely constrained. Therefore, when correctional issues must be considered at the policy level, "even the most conscientious political tactician who addresses corrections issues faces a fruitless situation, no matter whether the issue is capital punishment, flat-time and mandatory sentences, or prison construction" (Anderson et al., 1985: 32). However, correctional issues have also been heavily invested with deeply conservative moral and emotional connotations since the rise of the New Right; its preoccupation with the moral degeneration of society places crime at the top of a long list of manifestations and causes of this deterioration (Miller, 1973: 155-156). The Willie Horton incident of the 1988 Presidential elections is a perfect example of the strong emotional undercurrent which can potentially characterize correctional policy if the proper emotive buttons are pushed. Because of this volatility and unpredictability, where a public normally complacent about correctional issues can be turned into a vengeful mob, the correctional arena is often a pitfall for politicians along the entirety of the ideological continuum; "corrections programs won't win any votes, but can lose an election for you" (Anderson et al., 1985: 33); as it did for Mr. Dukakis, Bush's Democratic

opponent for the presidency. For these reasons, politicians will attempt to bypass potentially explosive correctional issues.

This frustrating no-win situation is exacerbated by the lack of consensus concerning the potential benefits of different correctional programs. When policy-makers are pressured to do something about a problem in the correctional field, the range of possible correctional options and the variation of opinion in their worth often leaves them in a position of not knowing what to do, and owing to the emotional volatility of these issues, what the public reaction is going to be. Therefore, when the private sector offers to assume responsibility for the burden of corrections, politicians will often consider the possibility of removing this problem from the public arena. Furthermore, questions concerning the cost-effectiveness and efficiency of penal practices seem to surface most often during periods of high political activity and debate, such as election campaigns or budget sessions (Anderson et al., 1985: 32). When correctional issues arise during these periods, they become coupled with the population's anxiety about increased taxes, which increases the potential volatility of the issue. Therefore, since "diminished resources cause the struggle of conflicting public and political interests to intensify... [where,] in an environment of competing priorities, corrections can become an inevitable and unpopular drain on limited resources" (Anderson et al., 1985: 33), the decision to privatize is facilitated by the current economic constraints faced by elected officials. The privatization of prisons is one strategy for maximizing the efficient use of public resources, which avoids the potentially explosive issue of budgets, a subject which could easily cost correctional officials their positions.

3. The malleability of privatization

Public policy studies have found that key decision-makers will, in times of crisis, “pay particular attention to outside ideas that offer possible solutions” (Weiss, 1993: 35). If a policy-maker is being pressured from a variety of directions to quickly implement a policy, or pressured from a multiplicity of positions to adopt one policy to the detriment of others, policy actors will become “willing to listen because of the significance of the issues and the extent of uncertainty or confusion about what to do” (Weiss, 1993: 35). This opening of the policy process to various opinions creates a window of opportunity for interest groups to present their solution to the problem at hand, as well as present it as the best of all competing solutions that have jumped through the window. The prison crisis of the early to mid 1980s displayed these characteristics. The main problem was that prison overcrowding had reached critical levels but that funding for new prison construction was vanishing rapidly. Pressure came from the electorate below to not raise taxes but deal with the crime problem, and from the federal government above to handle overcrowding with reduced federal aid. Interest groups saw an opportunity to have their positions heard, and their solutions, including such diverse propositions as legalizing drugs, placing a moratorium on prison construction, diversionary programs, and of course privatization (Cohen, 1985). Therefore, given the crisis situation, one can posit that policy-makers were open to hear a variety of possible solutions to the existing prison problems.

The study of the different styles of policy-making reveals that sharply different views exist about what is considered the most appropriate. Hogwood and Gunn describe both ends of this continuum:

At one extreme there are attempts to approximate to the ideal type of ‘rational’ or ‘synoptic’ policy-making which emphasizes the need for issues to be subjected to comprehensive analysis of values, objectives, positions, and consequences. At the other extreme there is ‘muddling through’ with its emphasis upon the desirability

as well as inevitability of pluralism, mutual adjustment, consensus-seeking, and incrementalism. (1984: 88)

The authors point out that “the confrontation of these extremes involves... too simple a dichotomy” (1984: 88), and that only very rarely will one extreme be employed. Rather, a policy will reflect some combination of both extremes. What will be the best method to decide policy will obviously be dependent upon the immediate problem; different problems will call for different problem-solving processes which will cover the range from both extremes. Considering that a variety of criteria from elements of both extremes will inform the style of decision-making that will be applied, one can assume that policy will be drafted in order to meet more than one objective. This is affirmed by Kingdon, who sees the policy process as “separate streams of problems, solutions, participants and choice opportunities [which] run through... large, multipurpose, fragmented entities” (1993: 41). Given this complexity, rarely will a policy be drafted to satisfy only one participant, but will be implemented with a degree of utilitarianism. A solution will be chosen not only to satisfy the greatest number of citizens, but also to satisfy the greatest number of interested parties and the greatest number of political objectives.

Examining these policy factors in the context of the privatization movement helps us understand why privatization became an attractive option for policy-makers. Having the window of opportunity open to be heard by decision-makers who were facing crisis situations, as discussed above, interest groups presented their solutions. The complexity of the crisis, manifested in all the various factors that have been examined thus far, required a solution that was malleable enough to confront as many of these factors as possible and achieve as many objectives as possible; given the utilitarian nature of policy, these criteria were even more

necessary. One reason privatization became a policy consideration is that its nature was indeed malleable enough to be presented as a solution to a host of problems, thus being able to satisfy a maximum number of participants and decision-makers, as well as a maximum number of objectives. Kay and Thompson have argued that the justifications and advantages of privatization are continuously changing and adapting to individual policies, with various objectives replacing those which are discarded.

However, the fact that a policy has a variety of objectives, and that many of these at times conflict, is not in itself criticism of that policy. But the reality behind the apparent multiplicity of objectives is not that the policy has a rather sophisticated rationale, but rather that it is lacking any clear analysis of purpose or effects, and hence any objective which seems achievable is seized as justification. The outcome is that no objectives are effectively attained, and that in particular economic efficiency... which is at once the most important of these and the most difficult to attain... has systematically been subordinated to other goals (cited in Matthews, 1989: 5).

The presentation of privatization as a solution to policy actors has had a similar life. One of the original and overriding justifications of privatization which appealed to policy actors was the supposed cost-effectiveness of private sector operations. However, as evaluations of private prisons slowly appeared, this objective was put in question (Matthews, 1989; Ryan & Ward, 1989a; Shichor, 1995). Therefore, "the uncertainty of the cost-effectiveness of privatization has forced its advocates to stress other possible advantages" (Matthews, 1989: 5). Owing to the general malleability of privatization, advocates increasingly came to stress other objectives that privatization could achieve. Advantages claimed have been the flexibility of the private sector to adapt to rapid change or crises, the potential for innovation and circumvention of "red tape" as it is not hassled by a stagnant public sector bureaucracy, and the benefits for the economy in terms of dismantling a monopoly and encouraging competition. Charles Logan, the most prominent of advocates, arrived at a list of the major advantages of privatization, including: increased cost-

efficiency, accountability, security, flexibility and quality of service; levels of corruption and liability lower government; and a propriety that is at least as justified as that of the public sector (1990: 41). According to Logan, within each advantage there are a host of policy objectives that could supposedly be achieved. Furthermore, this list says nothing of the ideological benefits of privatization; how as a policy it is able to satisfy the New Right's agenda of implementing free-market principles, increasing the use of imprisonment, reducing the power of unions, adopting law-and-order policies, and so on. Therefore, the absolute range of supposed advantages of privatization is amenable to a policy process that is often utilitarian and multipurpose, where this option is able to satisfy numerous objectives and interest groups.

Chapter 9

Conclusion

All the various factors presented in this thesis had some degree of influence upon the decision to privatize prisons. Although it is difficult to quantify the differences in influence, we have seen that their combined effect was enough to push privatization onto the correctional agenda, and to have it executed as policy. Emerging within a political economic and ideological context ripe for privatization, these factors converged and became the proximate pressures that policy-makers had to consider when confronting the prison crisis. Therefore, it was their influence which had the most direct effect on the decision to privatize.

For any number of reasons, it is true that fifteen to twenty years after the surfacing of these factors which influenced privatization, some have ceased to exist, or have had their influence curtailed, or have slowly faded from the political landscape. However, one should not make the mistake of assuming that the move to privatize prisons will necessarily abate as well. The events that took place in the 1980s, now seemingly far away in our world of political sound bites, have dramatically changed the manner in which public policy will be conducted for some time to come. Furthermore, this shift in the policy process is very conducive to considering privatization. The following sections will discuss the future of privatization and its place within the changing correctional landscape of the late twentieth century.

1. The Solidification of Private Prisons

The most obvious evidence of this lasting effect on policy by a factor which is no longer present is the decline of New Right as it was known in the 1980s. Following a decade of conservative rule, most Western industrialized nations began turning to more liberal party leaders; beginning in the early 1990s, we see the replacement of the Republicans by the Democrats in the United States and the Progressive Conservatives by the Liberals in Canada, and the resurgent popularity of Labour in the United Kingdom. However, the economic policies left as their legacy have profoundly solidified, and have become the basis for the neo-liberal economic policies of their successors in the 1990s.

Peruse any newspaper and one can easily see that the New Right's efforts to downsize government, privatize the public sector, and deregulate the economy have been carried into present-day politics as the norm of public policy and have been adopted by most of the political spectrum. The New Right has succeeded in shifting the centre of politics to the right; accordingly, the various parties have followed suit, where failure to do so could expose them to criticisms of overspending, which is tantamount to political suicide in an age of debts and deficits: "[The New Right] have forced budget-cutting rather than spending on to the political agenda to a degree which dictates how oppositional parties formulate their strategies" (King, 1987: 163). Therefore, a major consequence of the New Right in the United States was the narrowing of the political spectrum and the parameters in which policy is conducted, where, despite the ousting of traditionally conservative parties, their economic policies are still actively being pursued in the form of further deregulation of the economy, further cuts to social services and further investment in the criminal justice system. Echoing this, King (1987: 161) states that

“the Reagan Administration will have a long legacy in domestic American politics, and its liberally-inspired welfare cuts and deregulation will not easily be overturned because of the structural deficit which its policies has generated”. Owing to the centrality of privatization to the economic philosophy of the New Right, implementation of these policies will very likely affect the future privatization of state services, including that of prisons.

Within the correctional sphere itself, the practices of the 1980s have also created a context for the continued privatization of prisons. To begin with, we have seen that the number of people incarcerated in the United States during this time increased exponentially. In addition to the growth in absolute numbers of prisoners, we have seen that the length of average sentences imposed during the 1980s also increased dramatically, mostly due to the vehemence with which the criminal justice system confronted the War on Drugs. The situation came to be further exacerbated by other sentencing practices, including mandatory minimum sentencing (which emerged in the 1970s but whose effects were acutely felt during the prison crisis of the 1980s) and three-strikes legislation.

The consequence of these practices was that the United States was incarcerating, and continues to do so with little sign of abatement, an increasing number of people for longer periods of time. However, this trend has not been countered by diversionary efforts which have significantly decreased the number of those sentenced. Therefore, with the absolute number of people being incarcerated ever increasing, the rate of imprisonment is reaching unprecedented heights every year. Policy-makers now find themselves dealing with the consequences of correctional practices initiated a decade ago and, to avoid further crises, they are caught in the

situation of having to build an increasing number of prisons: the influx of prisoners has been maintained at high levels, while the number of those already in prison has not been reduced.

However, as abolitionists have argued, a mandate to perpetually construct new prisons ignores the “irreversible character of prison building... [that] once a prison is erected it will not be torn down again quickly” (Mathiesen, 1986: 91). Thus, when a prison is built it not only tends to be used to capacity, but it will likely always be used as a prison. The prison-building mentality of the 1980s, which continues to this day, represents a long-term investment in incarceration with few avenues of détente, where policy-makers have little choice but to continually build more prisons. If they do not, they run the risk of either an unprecedented prison crisis or a short career as a politician seen as too soft on crime. Even those alternatives that do come to the fore often become additions to the criminal justice system, rather than real alternatives (Cohen, 1985). Clearly, as governments continue to lock people up under these conditions, the expansion of the prison system seems assured.

The effect of this approach to crime control, implemented during the 1980s and still heavily relied upon, is that a sprawling criminal justice infrastructure has been entrenched as one of the only solutions to the crime problem. As the various agencies of this leviathan are competing for scarce resources in order to avoid having their respective budgets cut, coupled with the precarious prison-building dilemma that U.S. policy-makers must abide by, the infrastructure has developed into an inherently expansionary system with few opportunities to decelerate. “The brakes are gone”, says Nils Christie, referring to the voracious appetite to incarcerate which has taken over the prison-hungry United States (1993: 198). There appears to

be no end to the expansion of the prison system, and this is even prior to a discussion of the privatization of prisons, which has in itself an additional drive to expand.

The expansive nature of private prisons is even more apparent. The introduction of the profit motive into corrections in and of itself should be seen as building a growth factor into the system. To begin with, the operator of a private prison is a company whose bottom line is profit. Despite the focus of either the government contracting out or the private company operating the prison on technical questions of efficiency and effectiveness, it remains that private prisons provide choice opportunities for large profits. Add to this competition of businesses vying for an increased market share to avoid being swallowed up by competitors. As the realities of profit and competition, so dear to the business world, are applied to corrections, “the economic interests of the industry... will all the time be on the side of oversupply” (Christie, 1993: 112); oversupply here is meant to be an oversupply of prisoners, where the expansion of the system is seen as necessary for the maintenance of profit.

However, the probability of continued expansion of private prisons in the future is also increased through other, less visible means. This is shown by the events in the 1980s which have come to link the maintenance or expansion of the prison system to positive economic growth for depressed regions. Prisons in certain areas have been and continue to be constructed with the express purpose of job creation for the unemployed and as an impetus for economic growth. As this trend exists on a national scale, the creation of a correctional-industrial complex has emerged, where billions of dollars are invested in the punishment industry annually, from the paycheck of the prison guard to government expenditures to company profits.

By contracting the management of prisoners to private companies, governments are following trickle-down economic principles used with the military of the 1970s and 1980s (Saul, 1992). With the belief that growth in the private prison industry will have a variety of positive indirect effects in other areas of the economy, the economy effectively becomes dependent on the industry's expansion. As the correctional-industrial complex becomes more heavily invested in, more diversified, and simply larger, both local and national economies become increasingly dependent on prison construction and operation for stimulation. If it should fail to expand, the entire American economy suffers as a whole.

With this in mind, we can see how economics distorts the traditional political field where opposition to expansion must form. One who opposes the expansion of state-run prisons is likely to be considered soft on crime, which could spell the end of a political career in the United States. When economic necessity becomes linked with prisons, the possibility of making persuasive arguments against the expansion of prisons becomes seriously undermined. That is, if you oppose expansion of the correctional-industrial complex now that local and national economies are believed to be dependent on it for growth, not only are you soft on crime, but you are also seen as opposing the expansion of the economy. As a politician in an age of recurring fiscal crises, to even allude to being against positive economic growth is political suicide. However, the opposition to private prisons becomes even more stifled: if you oppose the expansion of private prisons, not only are you soft on crime, opposing economic growth, but you are also dismissing the entrepreneurial spirit upon which the United States and the free market principles it so cherishes are built.

Therefore, one of the major consequences of correctional practices during the 1980s was the solidification of explicit links between the economy and punishment. Once these connections were solidified, the expansion of the correctional-industrial complex, especially the proliferation of private prisons, has become resistant to serious criticism in policy fora. It is now difficult for political actors to voice any opposition to expansion because the traditional justifications for the construction of prisons have been so completely perverted by economic principles that the very existence of private prisons is completely detached from any social responsibility, where they are able to exist in a self-contained vacuum devoid of serious questioning. Coupling these political realities, the future of prison privatization looks bright indeed.

2. Privatization and the New Penology

Despite its humble beginnings and numerous setbacks, the trend towards prison privatization appears to be gaining momentum and, given the current political economic and ideological context, shows little sign of slowing down. In the short span of fifteen years, private corrections has become a highly diversified and profitable industry which is increasingly helping to shape correctional policy. However, privatization is also indicative of broader changes occurring within the domain of criminal justice.

An important factor to be considered is the place of private prisons in an emerging master narrative in the field of criminal justice, which has had a significant influence in legitimizing privatization as an acceptable policy option and crime control technique. The “new penology”,

as it has come to be known, first became apparent in American criminal justice discourse and practice in and around the mid- to late 1970s, and continued to coalesce into a coherent paradigm until its initial description in a series of articles by Feeley and Simon in the early 1990s (1992; 1994).

According to these authors, the new penology is increasingly dominating correctional practice in the United States. Although “it certainly has not (yet) emerged as a hegemonic strategy for crime and crime policy...[the new penology] competes with crime control and other options as a master narrative for the system” (Feeley and Simon, 1992: 451). It is the cumulative product of a variety of political-economic, ideological, theoretical and practical factors; factors which are both external to the criminal justice system (e.g. demographics, political climate) and internal (e.g. evaluative research, bureaucratic imperatives). To elucidate what the authors mean by the “new penology”, it would be useful to examine its central features in contrast to the “old penology”. Essentially, the new penology is characterized by a new conceptualization and understanding of crime, new objectives for the criminal justice system, and new techniques of crime control. Moreover, these elements are interlinked, and “while none can be assigned priority as the cause of the others, each entails and facilitates the others” (Feeley and Simon, 1992: 459).

The defining characteristic of the emerging discourse of the new penology is the increased use of an actuarial language of probability and risk that is replacing both the clinical and retributive conceptualizations of earlier penological discourses. Employing a language of social utility and management, this new discourse “rest[s] upon actuarial ways of thinking about

how to 'manage' public safety" (Feeley and Simon, 1992: 453). Because actuarial discourse visualizes populations in quantifiable terms, the new penology shifts its focal concern from individual offenders to aggregate populations. The actuarial emphasis on risk and populations converge to focus upon the classification and management of those classified into broad at-risk categories such as "dangerous offender" and "career criminal", a process which "has come increasingly to define the correctional enterprise itself" (Feeley and Simon, 1992: 454). Therefore, more concerned with the statistical management of risk than the attribution of responsibility or guilt, moral and/or clinical diagnoses of individual offenders have been replaced by "an actuarial language of probabilistic calculations and statistical distributions applied to populations...concerned with techniques to identify, classify and manage groupings sorted by dangerousness" (Feeley and Simon, 1992: 452).

The emerging objectives of the new penology have been alluded to above; ascriptions of responsibility coupled with either retribution or rehabilitation have been replaced in favour of identifying, classifying and managing at-risk groups. Being engrossed with the rationality not of the individual offender, but of the process of managing such offenders in the aggregate, the clear objective of the new penology is not to eradicate crime, "but to make it tolerable through systemic coordination" (Feeley and Simon, 1992: 455). These objectives are evinced by the changing nature of evaluating the success of corrections, where the new penology assesses programs "in terms of aggregate control and system management rather than individual success and failure" (Feeley and Simon, 1992: 455). Evaluating the performance of criminal justice agencies has become detached from external social objectives (e.g. reduction of crime) and replaced by the internal criteria of technocratic rationalization (e.g cost-effectiveness and

efficiency). This is most dramatically seen in the declining significance of recidivism. Rather than view a high recidivism rate as a measure of failure, it is now “offered as evidence of efficiency and effectiveness of parole as a control apparatus...[in providing] ways of imposing long-term management on the dangerous” (Feeley and Simon, 1992: 455-456). Thus, standards of measuring success have become self-referential; when criminals are no longer the organizing referent of corrections, deviance is assumed as a routine risk to be managed according to the expectations of the internal criteria of systems management.

In accordance with these features, the techniques of crime control for the new penology revolve around their ability to either provide cost-effective and efficient incapacitation and control or incorporate the identification and classification of populations according to risk. The lofty ideal of rehabilitation has been discarded as a justification for new forms of control, to be replaced by cost-effective and efficient “variable detention depending upon risk assessment” (Feeley and Simon, 1992: 457). It is within such a pragmatic climate that the theory of incapacitation has emerged as the new penology’s preferred method of punishment. By identifying and then incarcerating large segments of statistically at-risk populations, this theory posits that one can reduce the levels of crime in society, “not by altering either offender or social context, but by rearranging the distribution of offenders in society” (Feeley and Simon, 1992: 458). When those that match high-risk profiles can be selectively warehoused for a substantial period of time, this technique is able to exercise extended control over those most likely to offend while diversifying control into less costly and less lengthy methods for low-risk populations, thus widening the net through innovations in technological surveillance.

Feeley and Simon warn that this approach should not be considered a theory of crime or criminology; rather, “its uniqueness lies less in conceptual integration than in a common focus on certain problems and a shared way of framing issues” (Feeley and Simon, 1992: 452). Moreover, although aspects of its central features can be found within the history of criminological and penological narratives, recently these “have come to the fore, and their functions have coalesced and expanded to form a new strategic approach” (Feeley and Simon, 1992: 459). Thus, the new penology represents a particular strategic convergence of knowledge and power that orders the various problems faced by criminal justice practitioners into a common coherent and logical structure, complete with conforming solutions.

Feeley and Simon state that although the new penology influences our understanding about crime and involves the application of specific practices, it cannot be reduced to either an ideology which dictates behaviour or a specific technique: “Indeed it is powerful and significant precisely because it lacks a well-articulated ideology and identification with a specific technology. Its very amorphousness contributes to its power” (Feeley and Simon, 1994: 174). Although this narrative is affected by particular theories, ideologies or politics, it does not remain loyal to them; rather, lacking such distinct shape or form, it is driven more by a bureaucratic and technocratic ethos of rationality and pragmatism. One can conceptualize it as a filter of practicality and efficiency that is inherent to a bureaucracy, which translates external factors (ideology, technology, theory, political economy) into a set of divergent penal practices. And though lacking in theoretical consistency and coherence, these practices nonetheless have their rationality, practicality and efficiency in common. As a result, it produces practices which are highly malleable, and which not only form new approaches to justice, but are also able to attach

themselves and infiltrate more venerable practices in criminal justice. Moreover, they can be employed by any number of positions on the political spectrum to serve their particular bureaucratic or administrative interests in the area of criminal justice: "...actuarial thinking represents deeper 'pre-political' thought that cannot be easily associated with conventional political labels" (Feeley and Simon, 1994: 190).

On the basis of these characteristics of the new penology and of the current political economic circumstances in which the penal justice system is operating, five major trends in American correctional practice have been identified:

- An increased reliance on technological innovations, particularly for the purposes of increasing surveillance capabilities and maximizing efficiency (Cohen, 1994). Technological devices not only make it easier to gather intelligence information on unruly groups, but they are also a means for effectuating cost savings, namely through the replacement of labour provided by groups such as prison guards. Thus, the American war on crime is rapidly becoming a technological war, largely fueled by the military-industrial complex which in the absence of a distinct external enemy, has shifted its attention to domestic populations (Miller, 1996: 231);
- The development of supermaximum correctional facilities, modeled after the one in Marion, Illinois (Miller, 1996: 227). Ironically, the institutions are not reserved for the containment of individuals who commit the most serious and/or heinous crimes, but rather are used as a management tool for controlling potentially disruptive inmates -- those who threaten to upset the efficient functioning of the system;
- An increasing reliance on the practice of incapacitation as a principle strategy in the prevention of crime (Feeley & Simon, 1994: 458). Prisons are gradually becoming warehouses or internment camps which offer little or no services and few amenities (Miller, 1996: 233);
- A shift towards crime prevention initiatives which stress such opportunity reduction strategies as target hardening, risk management, and the manipulation of environmental design (Cohen, 1994). The widescale development of such strategies indicates an increasing acceptance amongst private citizens and government officials that there is little which can be done to influence offender motivation. Moreover, given that many of these situational crime prevention strategies are introduced by private citizens using their own resources, their growth suggests that the American populace is losing faith in the ability of their governments to protect them.

The final trend that has been identified as characteristic of the new penology relates to the privatization of prisons. The new penology does not concern itself, as we have seen, with efforts to control crime by attacking its root causes, but rather approaches crime control through a variety of preventative and detentive measures. Given this pre-existing support for the use of imprisonment, a correctional agenda directed by objectives of the new penology would look only to expand, rather than shrink, the prison system. That private prisons emerged as an addition to a correctional system that was already the largest in the Western world can be related to the new penology's inherent drive to both expand the system and to rely on imprisonment as a method of crime control. Further demonstrating the relationship between privatization and the new penology is that the justifying arguments for the former often revolve around the ability to provide low-cost and effective variable detention; as issues of cost-effectiveness and efficiency are of primary concern to the new penology, private prisons were and continue to be an attractive means through which to effectuate its objectives of control through incarceration. Due to the profitability of the private prison industry, an escalating number of companies were willing and able to construct prisons quickly, thus meeting the demands stemming from the warehousing practices characteristic of the theory of incapacitation. Therefore, the employment of private prisons is one mechanism which fits the logic of the new penology to make the correctional crisis tolerable through systemic coordination rather than more fundamental restructuring.

Furthermore, one way that private prisons are able to effectuate the savings that make it amenable to the purposes of the new penology has been the deliberate absence of any programs of a rehabilitative nature. The prisons are built and the imprisoned simply occupy the space provided for them, with little effort made to either attribute guilt and responsibility or to assist

the offender in any rehabilitative way. As such programs could affect individual and aggregate recidivism rates, their absence in private prisons supports the position that privatization is complying to the demands of a new penology which stresses internal criteria of success (efficiency and costs) at the expense of more external, meaningful measures (recidivism). The private prison offers no substantive social ends against which its success can be measured, only a set of performance indicators which “judge criminal justice agencies by self-referential measures that have nothing to do with reducing crime” (Cohen, 1994: 10). As in the new penology, the individual history of prisoners is stripped of its complexity in the realm of private prisons, strategically forgotten so that management can focus on internal concerns of systems coordination; that is, ensuring that there is enough prison space to meet the demands of the new penology. This is also seen in how private prisons have developed as a consequence of the statistical distribution of at-risk populations, a major preoccupation of the new penology: the history of the private prison industry reveals that efforts were directed to areas of the country that probabilistically had the highest incarceration rates, and therefore represented a statistical concern for managing public safety. Thus, their emergence had little to do with rehabilitation or moral duties, but was rather an effective means of providing a service to a correctional authority infiltrated by the demands of a new penology, concerned primarily with efforts to manage an increasing number of people.

The presence of the new penology in the privatization movement is equally discerned in the preoccupation of both proponents and critics of private prisons with the technical criteria of success (cost-effectiveness and efficiency). As discussed in the literature review (see Chapter 2), the vast majority of contentious issues concerning private prisons at the time of their emergence,

and which established the parameters of the debate in the policy arena, were centred around management issues. The moral appropriateness of private prisons was rarely questioned at the outset of privatization research, forgotten in the actuarial nature of the new penology, to be replaced by systems management concerns. Sparks summarizes this relationship between private prisons and the new penology (1994:24):

... the construction of complex input-output models of correctional efficiency and the construction of refined actuarial techniques of risk management in criminal justice all bespeak a dominant form of managerialism identified by some as a 'new penalty' which tends to displace older normative concerns and anxieties.

The emergence of private prisons reveals that their main function is that of effectuating the new penology's theory of incapacitation: with its inherent drive to over-incarcerate as a means to control crime, the new penology must expand through detentive measures, where private prisons are designed simply to warehouse, not rehabilitate, the influx in a cheap and effective manner, and are directed towards populations that have statistically been deemed at-risk and in need of control. In fact, one private prison company designs its prisons to be easily converted into warehouses should their contracts with the government fail to be renewed (Weiss, 1989). Therefore, although the growth of private prisons, as we have seen, is related to a handful of political economic, ideological and policy process factors, it is also attributable to their ability to accommodate the above trends.

3. Privatization and the Future of Corrections

Despite the momentum displayed by the privatization movement at mid-decade of the 1980s, it is true that private prisons have not been as widely implemented as its proponents would have wanted them to be. According to recent statistics, the number of prisoners in private

institutions is roughly 75,000, being housed in around 130 facilities. When compared to the nearly two million people incarcerated in the thousands of prisons and jails across the United States, the numbers appear insignificant. This suggests that the privatization policy was not as consequential as its proponents had imagined it would be. Also, the low figures denote the complexity of the policy process. Even if an issue enjoys popularity as a viable policy option, as did privatization, this does not necessarily mean that it will be implemented as a policy of significant consequence. Returning to the concepts of overdetermination and the funnel of causality, the policy process is constantly being influenced by a variety of ever-changing factors which shape the trajectory of a specific policy. The landscape of correctional policy in the early to mid-1980s was favourable to considering privatization, but, due to the shifting nature of the policy process, it was not as favourable to its implementation.

However, certain factors that brought privatization to the fore are still present over a decade later. One should be wary of dismissing the future of private prisons in the United States. Although the number of private prisons, and the number of prisoners held in them, may be considerably small, recent figures and projections display the growth potential of the privatization industry.

- Thirty-six new facilities are to open in the next 12 to 18 months, with the capacity to hold a total of over 35, 000 new inmates (*Private Prisons*, June 2, 1998).
- From December 1996 to mid-1998, the industry expanded by a capacity of over 21,000 inmates (*Private Prisons*, June 2, 1998).
- The capacity of adult private institutions has grown by more than 2000% percent in the last ten years (*Private Prisons*, June 2, 1998).
- Projections establish that by the year 2002, over 320,000 people will be housed in private prisons world wide, where over 240,000 will be in institutions in the United States (*Private Prisons*, June 2, 1998).

The need for further research in this area is needed if private prisons are to become an integral part of the American correctional agenda. The lack of objective, comparative research into the issue has been a problem in the past, but the time is ripe for such analyses. Private prisons have been in operation for over a decade, yet they have not reached their full potential. There is a definite growth factor in the privatization movement, and a thorough understanding of the issue would help prevent any impulsive, and possibly irrevocable, decisions from being made.

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