

BOOK REVIEWS

Changing the Guard: Private Prisons and the Control of Crime.
Edited by Alexander Tabarrok. Oakland, Calif.: Independent
Institute, 2003.

THE PRISON PRIVATIZATION DEBATE has been raging since the mid-1970s. Is the government the only sector capable of providing justice and correctional services legitimately and efficiently? The question of how to allocate resources to efficiently provide society with institutions of justice has become ever more pressing. Resource shortages afflict all of the government-provided elements of justice: police, courts, and prisons. A reconsideration of the typical methods of providing these institutions is essential to protect the ideals of justice.

Changing the Guard: Private Prisons and the Control of Crime is a collection of articles in general support of private prison models. Each author offers his own thesis and distinct material pertinent to privatizing prisons. Together these articles serve as a glimpse into today's market-oriented research surrounding prison privatization leading up to the book's most notably radical contribution: Bruce Benson's chapter which closes the text. This review draws attention to his crucial normative concern: what is the appropriate role of government? Benson's chapter is a change of pace from the typical proponents of government contracting. Benson looks at the deeper issue of legitimate law-making as a precursor to effective prison policy.

This perspective takes the research away from its assumptions of social contract theory and pushes the dispute into a public choice arena of markets v. politics. Social contract theory is the belief that society has come together with a desire for peace. It further implies a need to deal with those who would violate peace and proposes the state as the only available take-charge solution. Benson's thesis moves toward the alternative direction of a micro-foundational analysis entrenched in total free-market competition. Benson's chapter demonstrates that choosing a stance on the prison privatization debate for any governmental involvement or initially rests upon an acceptance of social contract theory. In doing so the policy conclusion for these earlier works was cast in stone before they had begun;

they were forced to ignore the deeper issue of legislative legitimacy and the role it plays in shaping the prison system.

In its second chapter, before the book delves into the wealth of material for privatization support, Kenneth Avio, professor of economics at the University of Victoria in Canada, offers summaries of the economic studies of prisons that have been presented from the early 1970s until today. Mainstream economists have developed mathematical models to demonstrate the effects prison policy has on crime rates. Deterrence, rehabilitation, criminal ability, and removal effects all interrelate and affect crime rates to some degree of significance. Avio critiques the mainstream economic proposals one by one. He argues that they focus too narrowly on specific variables and ignore negative effects caused by manipulation. He exposes their limitations and the hazards of tweaking incentive structures in this highly complicated web of bureaucracy. Each regression surveyed seems to carry with it its own policy implication.

Avio limits his proposal to calling for a prison model that provides the best conditions at the lowest possible cost. How might we do so? Avio suggests further research regarding the efficiency of prisons compared to their opportunity costs of alternative government spending. For example, money spent on preschool education may have a greater effect on deterring crime than prisons. This suggestion would retain assumptions of the social contract but shift the state's responsibility from punitive to provisionary methods.

The social contract theory assumes that there is a legitimate and necessary governmental role to provide justice—legitimate in that it has authority to do so and necessary in that it has the responsibility to do so. From this assumption many additional principles are inferred. Society must attempt to operate at a maximum level of efficiency. As a participant in this contract, the government is responsible for a debt to victims it is unable to protect. Society as a whole is affected by crimes committed against individual victims. It is society which claims restitution from criminals in today's system of justice. With these assumptions made, the question of operating prisons efficiently becomes less an issue of justice and more an issue of social benefit and social cost. With these assumptions in place, the shape of legislation has drifted away from property rights and restitution and toward interventionism and regulation.

Inherent reliance on social contract theory has dominated the debate on prison privatization. Any proponent of privatization, according to its current usage, relies upon a social contract theory of state legitimacy. The term privatization is used today as a confusion with the contracting out of government services. Governments do

not fully privatize services such as prisons, as Tabarrok's definition explains. They purchase contracts from private firms to provide the services which have grown too costly for them to produce themselves. This model retains the government's authority in regulation and authority over the industry.

Alexander Tabarrok, associate professor of economics at George Mason University, edits and introduces the text by drawing attention to this crucial distinction, the semantic differences between the terms "contracting out" and "privatization."

If government is inefficient at producing the output of prisons, why should we expect it to be any more efficient at producing prison contracts? This point surely has merit, which is one reason to maintain a distinction between the terms contracting out (in which the government remains as buyer of privately produced goods and services) and privatization (in which the government exits the industry as both buyer and seller). (p. 2)

Tabarrok's distinction is another key analysis of the prison issue beyond "efficiency" and away from the reliance upon social contract theory that gives novelty to *Changing the Guard*. The argument over privatization has for too long been fought from the opposing sides of yea or nay, without attempts to understand whether prison is a legitimate, necessary, or appropriately socialized institution.

Samuel Jan Brakel, vice president of administration, legal affairs development, at the Isaac Ray Center in Chicago, and Kimberly Ingersoll Gaylord, freelance researcher and legal writer, present a "modest proposal to 'privatize' parts of the correctional machinery (p. 125)." They marginalize libertarian theories of justice as radical and impractical. They go on to claim that decriminalizing proposals to solving crime are unlikely because they lack public support. Then they describe what is necessary in order for the mechanism of privatization (ignoring the distinction offered in Tabarrok's Introduction) to work. This process is twofold: "(1) a philosophical component that the government should not manage what it does poorly, and (2) recognition that the private sector is better (p. 130)." They present their own definition of privatization as "the transfer of ownership, operation, and responsibility from the public sector (i.e., the government) to the private sector" (p. 130). Then their model appears to accept a more moderate version of the previous definition. It "involves the management, sometimes construction, and occasionally the financing of entire prison facilities by private correctional companies under contract to federal, state, and local governments" (p. 132).

Rather than offering an analysis that legitimizes the government's involvement in the provision of justice, these authors deny

the existence of sufficient proof otherwise. “There is no compelling philosophic argument for government to divest itself of this responsibility and its burdens. The issue is pragmatic” (p. 133). Rather than address the philosophical idea of justice they concentrate on issues of cost such as construction, management, and financing. But money is not the only indicator of cost. Could such a theory stand up to a *reductio ad absurdum*? Suppose a ruling state could finance the most efficient incarceration machine, so that it was actually less expensive to imprison people than let them run free. Pragmatically this model would call for enslavement.

Brakel and Gaylord not only rely upon the social contract but insist upon it. They claim the state’s authority to contract out prison services stems from its unquestioned authority to provide them. This article merits inclusion in the collection for a key insight exposed by its contrasting assertion from the other pieces. When viewing it in conjunction with its fellow articles the reader can’t help but question whose interests are of greater concern when questioning justice, the state’s, or the citizenry’s?

Charles W. Thomas, vice president for quality assurance at the Homeland Security Corporation, walks us through a brief history of prison privatization in America. Private prisons had a hostile welcome by state operated facilities, officers, and unionists. Prison policy has a profound and lasting effect on the incentives of criminals, citizens, state employees, and powerful interest groups. After the initial hostility subsided for reasons of financial logistics, theorists proposed that there was no universal right or wrong between private and state operated prisons but rather a coexistence of public and private prisons such as a “ten percent optimum ratio of private run facilities so as to encourage efficiency in the public sector through competition” (p. 59). As time passed this mutual existence of public and private prisons became unstable. State-mandated operations turned private prisons into clones of the initial state-run counterparts, in need of further efficiency reform.

This history has muddled the distinction between private and public services. Only the market can claim to be efficient through autonomous profit, and competitive incentives. Public policy advocates recognize these incentives and claim their job is to manipulate and control them. Thomas’s position and analysis are clearly presented:

The day has passed when the dominant view was that the proper role of government involved both the making of public policy and the delivery of policy-mandated services. The day has arrived when it is altogether common to see government agencies actively

involved in shaping public policy regarding the content of essential public services but contracting with the private sector for service delivery. (p. 72)

Thomas leads the reader to question the abstract notion addressed later by Benson. Why are these services deemed essentially public? How does government operation lend itself efficiently to policy making? And is this new setup of policy-reigning government plus private constructing, operating, and abiding business feasible, sustainable, and efficient? We still have no analysis as to the legitimate function and existence of prisons in a free-market economy, and no sufficient justification for state-sponsored justice or the social contract, but thankfully we have opened a door to an area of debate and surveyed its breadth and scope. From here planning a research agenda to fill in missing pieces of the privatization puzzle can't be far off.

Thomas demonstrates repeatedly that specific methods of superior prison-managing functions are achieved privately rather than publicly. "Suitable programs, adequate medical services, and properly qualified staff" (p. 106) are achieved through the specifications and stringency of contracts. With contracts between states and private companies a prison facility can be held to clearly defined quality standards. The only ambiguity which remains is in the incentives ruling over the production of such contracts from the purchaser's side.

Changing the Guard's most distinctive contribution comes from its closing author, Bruce Benson of Florida State University. Tabarrok prepares the reader for Benson's radical claims.

Benson argues that precisely because private prisons reduce costs, they should be avoided—so long as they are embedded within a criminal justice system that wastes lives and resources on imprisoning people for victimless crimes. Not everyone will accept Benson's conclusion, but his warning is well taken. . . . Even if we accept Benson's normative foundations, we may nevertheless favor private prisons over public prisons if the political pressure to expand public prisons is greater than the pressure to expand private prisons. (p. 5)

Unlike Benson's previous publications *The Enterprise of Law: Justice Without the State* and *To Serve and Protect: Privatization and Community in Criminal Justice*, which cover privatization issues throughout all justice industries, this chapter exposes a more radical critique of privatization specifically focused on the prison industry. When viewed with his earlier work, Benson shows a glaring difference between the police, court, legal, and security industries on one

hand and the prison industry on the other hand. While all of the former services are succeeding in efficient privatization as defined in Tabarrok's introduction, prisons are merely being contracted out by the state. The individual citizen or victim has no opting-out mechanism for prison services as he does with police, courts, legal counsel, or security services because of the social contract theory which perpetuates the state's authority as a legislative entity over its citizenry.

Benson distinguishes between two types of efficiency, allocative and technological. While contracting out prison services achieves technological efficiency by lowering costs and increasing productive qualities, those decisions are stipulated by a centralized authority incapable of representing real individuals' preference scales. We have no means of determining the true opportunity costs associated with producing a more efficient prison system as we as individuals do not make up the purchasing population of their contracts.

The greatest cost felt by society for these political implications is the loss of individual liberty. Benson performs an in-depth analysis of the war on drugs to demonstrate misconceptions of justice and crime. These misconceptions drive public policy and have served to the detriment of individual liberties, millions of tax dollars, and the safety and security of American citizens. Benson characterizes the state as the true aggressor against its citizenry and questions whether its operating efficiency is truly needed or desired.

This collection demonstrates that private companies guided by the free market and competition produce more services, at higher quality standards, and lower costs than their governmental counterparts even in the realm of justice. Exposing this truth gives value to the text as these are rarely accepted facts in today's discourse. The government is known for its managerial and productive inefficiencies and its political injustices as well. The modern prison system is the product of the state's own interests and motivations and is therefore not to be trusted as impartial or in accordance with the goal of justice as it is held in the minds of the citizenry. Though individual contributors within the volume—apart from Benson—may not be willing to take the implications to such radical conclusions the greater research seems to be pointing straight toward libertarianism nonetheless.

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