

CHAPTER FOURTEEN

Prison Privatization in the United Kingdom

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It is ten years since the first privately managed prison opened in the United Kingdom. This article provides a brief overview of how the UK has progressed from implementing one experimental prison management contract to having Europe's most privatized criminal justice system. Along the way it has contributed to the expansion of a multi-million dollar industry which is developing a long term stake in criminal justice systems throughout the world. The article also briefly profiles the role of one of the pioneering American prison companies, Corrections Corporation of America and its former British joint venture, UK Detention Services Ltd.

Introduction

Since the 1970s, there had been privately managed immigration detention centers in England, and an even longer modern history of private companies as well as not for profit agencies providing services within the criminal justice system. These experiences had proved largely non-controversial.

The implementation of prison privatization¹ in the UK, however, was an ideological step rather than anything to do with best criminal justice practice. The policy was revived and promoted in 1984 by the right-wing think tank, the Adam Smith Institute (ASI), which based its arguments on free market theory and the recent developments in the United States. The ASI suggested that the UK should privatize the building and running of prisons on the grounds that

it would overcome both the spiralling costs of the prison system and the shortage of places by using innovative managerial and technological methods and by concentrating resources on capital investment rather than increased labour costs.²

Although shunned initially by the then Conservative government, the policy soon found favor. As one former cabinet minister in the Thatcher government confirms:

[M]ost Thatcherites and many others in the Conservative party became as blindly dogmatic in their zeal to privatize everything in sight—even prisons—as had been the left wing socialists

of old to sweep all the major private industries into the state sector.³

There is no question that by 1986/87 the prison system in England and Wales was in need of an overhaul, not least since the prisoner population had reached record levels at nearly 51,000. Nevertheless, the former minister's analysis is not wholly correct: the reason for the state's nationalization of regional and local prisons over 100 years before was due to the abject failure of private provision.⁴

The Early Years

In 1986, the parliamentary Select Committee on Home Affairs examined the state and use of prisons in England and Wales. Its terms of reference included the ability to visit other countries as "we have been concerned with the possible applications to England and Wales of the penal reforms of other countries."⁵ Although the committee had every country of the world at its disposal, the only trip they made was to the United States in October 1986. Their remit did not specifically include the examination of privatization yet the itinerary included "visits to two establishments run by the Corrections Corporation of America (CCA)." The committee did not report "how CCA came to have the necessary contacts to arrange this with the clerks who service the committee..."⁶

Members of the committee also visited two facilities run by the Radio Corporation of America, but it was CCA that impressed to the extent that, in its subsequent report, the committee relied heavily on what CCA had told them about privatization, taking at face value the assertion that this system of provision in the United States was now "a proven concept"⁷ The committee stated that the principal advantages of contract provision of penal establishments were: 1) that it relieves the taxpayer of the immediate burden of having to pay for their initial capital cost; 2) it dramatically accelerates their building; and 3) it produces greatly enhanced architectural efficiency and excellence. The committee concluded that

...the Home Office should, as an experiment, enable private sector companies to tender for the construction and management of custodial institutions. Such contracts should contain standards and requirements and failure to meet them would be grounds for the Government's terminating a contract. The standards should be made legally enforceable against contractors. We also recommend that tenders should be invited in particular for the construction and management of new remand centers, because it is there that the worst overcrowding in the prison system is concentrated.⁸

It is important to note that, although the policy was deemed an experiment, no recommendations were made as to how extensive that experiment might be, no time frame was set, and no evaluation process was prescribed. Nor were any of these conditions found in the eventual enabling legislation, the Criminal Justice Act, 1991, but Angela Rumbold, then prisons minister, said that "[i]f, and only if, the contracted-out remand centre proves to be a success might we move towards privatization of other parts of the prison service."⁹ In January 1992, she told the *Financial Times* that she was "going to take it step by step so that we can test it properly."¹⁰ Both of these statements turned out to be false.

Following a tendering process in which the public sector was barred from participating, a European security firm, Group 4, was awarded a contract to manage Wolds, a newly constructed 320-bed prison for unsentenced male prisoners. The prison had previously been earmarked for public management. Wolds opened on 6 April 1992, and even before it had taken its first prisoners, the government had made plans to contract out the management of two more facilities which would hold sentenced prisoners.¹¹

On 3 February 1993, as if to signal the government's long term intentions, the application of the Criminal Justice Act, 1991, was extended from new prisons to existing facilities. The 'step by step' strategy was ignored even though there were indicators that all was not well at Wolds. In April 1993, a report by the Prison Reform Trust on Wolds' first year of operation concluded the following:

We discovered many things which were positive but others which were not. We must therefore conclude that rather than the unqualified success that the government and the company are claiming, there is genuine cause for concern about aspects of the regime at Wolds.¹²

This was followed up by critical reports from the then chief inspector of prisons and the National Audit Office.¹³ However, this did not get in the way of the government announcing in 1993 that all new prisons would be privately built and operated. By 1994, two further private prison contracts had been awarded and facilities opened: Blakenhurst, at Redditch in the West Midlands and Doncaster in the north of England.

It was not until 1996 that academic research which evaluated Wolds was published by the Home Office. This found that

...similar and, some might argue, better achievements are to be found in some new public sector prisons, showing that the private sector has no exclusive claim on innovation or imaginative management able to deliver high quality regimes to its prisoners.¹⁴

By then, any notion that prison privatization was simply an experiment, if that had ever been the case, had been long forgotten. The role of the emerging private prison industry in ensuring that state of affairs should not be underestimated.

As stated earlier, Corrections Corporation of America (CCA) influenced the Home Affairs Committee. In 1987, CCA formed a British company, UK Detention Services Ltd. (UKDS) as a joint venture with two long established British construction companies, Sir Robert McAlpine & Sons Ltd. and John Mowlem & Co. Both of these companies were regular contributors to the then ruling Conservative Party.

One of UKDS's stated aims was lobbying the government to implement prison privatization. In a memorandum signed on 19 January 1988, the parties agreed to "promote the private design, financing, construction and management by private contractors of prisons and remand facilities in the United Kingdom (including the acquisition of land and/or other property in connection therewith)."¹⁵

The company subsequently admitted that "it took us two or three years to finally convince government that this was indeed the right course of action ..." and that with regard to the enabling legislation "UKDS was very much involved in bringing forward the arguments in favour of the case."¹⁶

For example, Mowlem notepaper was used to lobby members of parliament to support enabling legislation for privatizing prisons. A letter to members of the House of Lords dated 7 March 1991, trying to drum up support, stated:

We have actively promoted the introduction of private sector management of our prisons for four years ... the present UK public sector prison service is rightly under attack. UKDS wants the opportunity to show just how much better the best of the private sector can do the job ... I do hope for your support and I would welcome the opportunity to discuss the matter further if you so wished.¹⁷

The company had not been alone in its endeavors. As the *Guardian* pointed out:

On September 15 [1988] the private prisons network came together at a dinner for more than 150 given by the Carlton Club political committee. All the various players were there: representatives of the ASI [Adam Smith Institute] and other right wing policy units, civil servants, John Wheeler and his colleagues, architects and people from the consortia ... a mood of satisfied expectation was beginning to emerge.¹⁸

It is ironic, however, that given CCA's role in influencing the Home Affairs Committee in 1986/97 and the fact that it provided the technical expertise to UKDS, the company did not win a prison contract in the United Kingdom until 1992. This was to manage Blakenhurst prison at Redditch, in the West Midlands. The 649-bed medium-security prison opened in May 1993.

Ten Years On

Since the opening of the first privately managed prison, the UK has developed the most privatized criminal justice system in Europe. As at the end of October 2001, there were more than 6,000 adults and young offenders held in private prisons in England and Wales.¹⁹ This represents around eight per cent of the total prisoner population. In Scotland, which has a separate prison service, one private prison holds 600 prisoners, around ten per cent of the total prisoner population.

No other European nation has commissioned privately financed, designed, built and operated prisons or contracted out the custodial functions in a prison.²⁰ In terms of the number of private prisons, the UK is second only to the United States. In addition to private prisons, the UK has privately operated secure training centers for young offenders, immigration detention centers, prisoner escort services, electronic monitoring programs, provision of a wide range of non-custodial services in publicly run prisons, as well as major programs for privately financed, designed, built and operated court complexes, police complexes and probation hostels.

In addition to Wolds, in this period three other prison management contracts have been awarded, but after tendering exercises at the end of the initial contract period, two have since been taken over by the prison service (see Table 1).

Central to the Conservative government's long term strategy of privatization was the implementation in 1992 of the Private Finance Initiative (PFI). The PFI is a

financial mechanism to obtain private finance which could satisfy the political need to increase investment in infrastructure without affecting public borrowing, guarantee large contracts for construction companies and new investment opportunities for finance capital.²¹

The PFI was inherited by the incoming Labour government in 1997 and is still the only option for procuring new prisons. Seven privately financed, designed, built and operated prisons, each with 25-year contracts, have been commissioned and opened in England and Wales with two more due to open in 2003 and 2004 (see Table 2 notes). Meanwhile, the Scottish Executive is planning three more private prisons to replace antiquated facilities. The combined capital value of the contracts for the privately financed, designed, built and operated prisons in England and Wales is £312 million.²² This figure excludes annual revenue payments for the provision of the buildings and services.

For an indicator of the growth in operations, one does not need to look any further than the UK's largest private prison services operator, Premier Custodial Group Ltd. Until May 2002, this was a joint venture between the American private prison operator Wackenhut Corrections Corporation and a British facilities management firm, Serco plc. Formed as Premier Prison Services in 1992, the company's revenue for the year ended 31 December 1994 was £7.52 million.²³ For the period ended 31 December 2000, Premier's empire had extended to some 16 companies with combined revenues of £160.9 million and pre-tax profits of £12.4 million.²⁴ The companies provide a range of services including prisons, a secure training center, an immigration reception center, prisoner escort services and electronic monitoring.

UKDS, however, did not win another prison contract until 1998. The 25-year contract to finance, design, build and operate Forest Bank prison in Salford, northwest England, was signed with the government on 6 July 1998. The prison, which holds 1,100 prisoners opened in January 2000. But the company's early lobbying and subsequent commitment to the UK market was rewarded at the end of 2001 by its being chosen as preferred bidder for two new prison contracts with a combined value of more than £478 million.

TABLE 1: UKDS - revenues and profits 1995 - 2000

	Revenues (£m)	Pre-tax profit (£m)
1995	10.9	0.54
1996	11.25	0.50
1997	10.9	0.48
1998	11.6	0.33
1999	11.9	0.75
2000	23.12	1.89
2001	17.96	0.25

NB: 2001 figures are for eight months ended 31 August 2001.

The United Kingdom has its own private prison industrial complex. The prison contracts are shared among the same companies that are marketing their services across the world: Group 4 Falck, Wackenhut Corrections Corporation/Serco, Sodexho and Securicor.

TABLE 2: Private prison contracts in the UK - July 2002

Prison/YOI	Opened	Contractor	Population
<i>Contractually managed</i>			
Wolds	1992	Group 4	390
Doncaster	1994	PPS	1,050
<i>PFI (contracts to design, construct, finance and manage)</i>			
Parc	1997	Securicor	800
Altcourse	1997	Group 4	800
Lowdham Grange	1998	PPS	500
Ashfield	1999	PPS	340
Kilmarnock	1999	PPS	506
Forest Bank	2000	UKDS	1,100
Rye Hill	2001	Group 4	600
Dovegate	2001	PPS	800
Ashford	2003*	UKDS	460
Peterborough	2004*	UKDS	840
<i>Secure Training Centers (STCs, also DCMF)</i>			
Medway	1998	Group 4	72
Hassockfield	1999	PPS	40
Rainsbrook	1999	Group 4	76

Notes:

- UKDS is UK Detention Services Ltd. In 1996, CCA bought out its original partners and immediately sold 50 percent of UKDS to Sodexho, a Paris-based multinational corporation. Sodexho was a logical partner since, in 1994, the two companies had signed an international joint venture agreement in countries outside of the US, UK, Australia, France and Belgium. In September 2000, Sodexho bought out CCA's share in UKDS, making it the 100 percent owner.
- UKDS is the preferred bidder for the contracts for a 450-place women's prison at Ashford, Middlesex and an 840-bed prison for men and women at Peterborough, Cambridgeshire. Peterborough will be the first private facility in England and Wales to hold men and women. There will be 480 places for men and 360 for women including a 12-place mother and baby unit. Financing for both prisons will be provided by Royal Bank Project Investments Ltd. and the construction partner is Interserve Project Services. The prisons were scheduled to open in 2003 and 2004 but contract signing has been delayed due to difficulties with obtaining insurance.
- From 1992, UK Detention Services Ltd held a contract to operate HMP Blakenhurst. The company lost its contract after a market testing exercise in 2000. From August 2001 the prison has been run by the Prison Service.

- PPS is Premier Prison Services Ltd, part of Premier Custodial Group Ltd.
- Premier Prison Services was a joint venture between Wackenhut Corrections Corporation of the US and Serco plc. Premier companies and their subsidiaries now form the Premier Custodial Group Ltd. In May 2002, The Wackenhut Corporation was acquired by Group 4 Falck. Group 4 is due to sell off the 57 percent interest that it acquired in Wackenhut Corrections Corporation. Premier is currently owned jointly by Group 4 and Serco. However, Serco believes it has the right to now own Premier and the dispute is in the hands of lawyers.
- The contract for Doncaster was retendered in 1999 and Premier Prison Services won a further ten year contract.
- Group 4's contract for Wolds was recently renewed for a further ten years.
- Group 4 opened HMP Buckley Hall in 1994. It lost the contract after retendering in 1999. The prison has been run by the Prison Service since June 2000.
- In 2000 the private sector also bid against the Prison Service for a contract to run HMP Manchester. In January 2001, it was announced that the Prison Service had retained its contract.
- Kilmarnock is in Scotland. The Scottish Executive is considering a further three private prisons.
- Rainsbrook STC originally had 40 beds. It has now been expanded to 76. Medway is being extended from 40 to 72 beds, with the new unit opening in November 2002.
- Five further STCs are planned for Essex, Nottinghamshire, Buckinghamshire, northwest England and Wales. In July 2002 Securicor was chosen as preferred bidder for a new 80 bed STC at Milton Keynes, Buckinghamshire. This is due to open in December 2003.
- By mid 2002 the prison population in England and Wales reached 71,000: Scotland has some 6,000 prisoners.
- As at 31 March 2001, there were 137 prison establishments in England and Wales.
- This list excludes contracts for immigration detention centers, court and police complexes and services such as electronic monitoring and prisoner escort services.

Labour's U-turn

Prison privatization may have been ideologically imposed by the Thatcher government and continued by successive conservative administrations. But the policy has not just survived the election of a Labour government; it has thrived.

In opposition, Labour Party leaders asserted that the policy was morally repugnant. For example, in 1994, John Prescott, now deputy prime minister, pledged that "Labour will take back private prisons into public ownership—it is the only safe way forward."²⁵ This position was endorsed in March 1995 by the then shadow home secretary, Jack Straw. He stated that "[i]t is not appropriate for people to profit out of incarceration. This is surely one area where a free market certainly does not exist..." and that "at the expiry of their contracts a Labour government will bring these prisons into proper public control and run them directly as public services."²⁶

Labour's backtracking started soon after the general election on 1 May 1997. On 8 May, Jack Straw, by then the home secretary, said "...if there are contracts in the pipeline and the only way of getting the [new prison] accommodation in place very quickly is by signing those contracts, then I will sign those contracts." On 19 June, Mr. Straw announced that he had renewed UK Detention Services Ltd.'s management contract for Blakenhurst and agreed to two new privately financed, designed,

built and run prisons. He also said that the recommendations of the Home Affairs Select Committee, which reported in March 1997,²⁷ were “still to be fully considered” and announced that he had ordered two reviews.

The full policy U-turn was announced in a speech to the Prison Officers’ Association (POA) annual conference on 19 May 1998 when Mr. Straw revealed that he had reviewed the recommendations of the Home Affairs Committee and decided that all new prisons in England and Wales would both be privately built and privately run. The prison service review that he had commissioned found the option of using private finance to build new prisons while retaining the management function in the public sector was not affordable and did not offer value for money.²⁸

Straw also endorsed another review, which concluded that “the immediate transfer of existing private prisons to the public sector is not affordable and cannot be justified on value for money grounds.”²⁹ However, he said that “the prison service will be allowed to bid for the chance to take over the management of existing privately managed prisons on the next occasions that the contracts expire.”

Despite the findings about costs and value for money, within two years, contracts for two privately managed prisons, Buckley Hall and Blakenhurst, had been won by the prison service by submitting bids which were lower on cost and higher on quality (see table).³⁰ Further, a market testing exercise for one public sector prison, Manchester, resulted in the prison service successfully beating off bids from the private sector and retaining the service level agreement (SLA), the public sector equivalent of a contract. Meanwhile, in 2001, an attempt to contract out the management of a so-called underperforming public sector prison, Brixton, failed when none of the companies submitted a bid.

In October 2001, the prisons minister, Beverley Hughes, answered a parliamentary question with the information that by 2005, she expected eight percent of the prison estate to be privately operated—11 of 138 facilities for adults and young offenders.³¹ In the same month, there was a hint that a mixed management model might be considered for some new prisons when the director general of the prison service for England and Wales said that “it is now very possible that, at some point, we will have a prison designed, financed and built by the private sector but run by the public sector.”³² Although still a long way from their stated aspirations of operating at least 25 percent of the prison estate,³³ the prison companies’ directors and shareholders will have afforded themselves a wry smile following a more recent revelation.

In January 2002, the prisons minister said that she was considering the closure of up to 28 English prisons built in the Victorian era. The land and buildings would be sold off and these facilities would be replaced by a program of regional super-jails.³⁴

In February 2002, the prison service published the source of these ideas, a report commissioned some time earlier and completed as long ago as January 2001 to “consider how best to develop the contribution of the private sector, particularly PFI, to achieving the objectives of the prison service; and to make recommendations.”³⁵ The author, Patrick Carter, also argued that ‘new for old’ schemes appeared affordable and that existing public sector prisons which cannot achieve appropriate standards should be contracted out.

As well as advocating continuing with privately financed, designed, built and operated prisons, Carter suggested that the prison service move beyond the traditional choice of public or private prisons and explore the mixed management approach adopted successfully in France.

France has 21 semi-private prisons to date, publicly financed and with the prison officers remaining state employees while the private sector builds the

facilities and operates non-custodial services. The French government is also commissioning at least six more. If this model is implemented in England and Wales, there will be at least one difference: it is unlikely that the prisons will be publicly financed. The irony with adopting this model is that, like the American model imported into the UK before it, there is a dearth of independent research to prove that it is as successful as is being claimed.³⁶

Costs, Fines, Failures and Secrecy

The original arguments for contracting out the management of prisons included cost savings. It has been shown, however, in at least three of the recent tendering exercises for prison management contracts that the public sector can be as cost effective and even more so than the private sector. In terms of privately financed, designed, built and operated prisons (PFI), there is no doubt that new facilities have been constructed more quickly than before. But the public sector has not been allowed the opportunity to prove whether it can now commission and construct more efficiently. As for the cost savings of the PFI prisons, due to the use of 'commercial confidentiality' by the government and the companies, and the lack of political will of the parliamentary Select Committee on Public Accounts, it has not been possible to fully scrutinize the claims.³⁷ However, there is a growing body of evidence from other PFI schemes in the criminal justice system that cost comparisons with hypothetical public sector projects are flawed and cost savings have been overstated.³⁸

The National Audit Office (NAO) provided another example of how the claimed benefits of the PFI prisons have recently been promoted without independent substantiation. The NAO released a report stating that most public bodies involved in PFI projects believe that they are achieving satisfactory or better value for money from these projects.³⁹ The NAO also reported that there was generally positive feedback from service users. Included in the survey were the contractors that run Dovegate, Rye Hill, Forest Bank, Ashfield, and Lowdham Grange prisons in England and Parc prison in Wales. The NAO also canvassed the prison service's views.

The NAO used an external reference panel "comprising representatives from the Office of Government Commerce (treasury), departmental PFI units and the private sector ... to discuss and agree [on] the overall direction of the study; the proposed questionnaires ... the interpretation of the results of the surveys and the presentation of the information in this report."

The panel included the prison service's contracts and competition group and, from the private sector, WS Atkins (involved in Parc prison in Wales and private prison consultancy), Carillion (Group 4's prison construction partner), the CBI (Confederation of British Industry), the Business Service Association, the Major Contractors Group and the Construction Industry Council.

In short, the NAO provided a one-sided view. Notably absent from its survey and reference panel were the views of prisoners, prisoners' families, prisoners' advocates, criminologists, prison reform organizations, trade unions, NGOs working in the field, probation services and others who provide services to private prisons.

Another of the original claims for privatization was that it would help ease prison overcrowding. However, since the prison population has leaped from 51,000 in 1986/7 to some 71,000 in mid 2002, the number of new available places has not kept pace with the number of offenders committed to prison. Even the private prisons have been overcrowded. For example, the average number of prisoners held two to a cell designed for one in private prisons between April

1999 and February 2000 were as follows: Doncaster 589 (626 in 1998/99, 588 in 1997/98, 399 in 1996/97), Blakenhurst 371 (360 in 1998/99, 309 in 1997/98, 134 in 1996/97), and Altcourse 416 (203 in 1998/99, 309 in 1997/98). Lowdham Grange had 15 between April 1999 and February 2000.⁴⁰ As at January 2002, Altcourse and Doncaster were overcrowded by 212 and 303 prisoners respectively.

The companies are very quick to advertise their successes in the United Kingdom through press releases and other material used to promote their services around the world. Not surprisingly, their fines, failures and controversies do not find their way into the public domain through the same channels.

Yet there is much evidence that the private sector is no panacea.⁴¹ First, the last ten years has seen Wackenhut (UK) Ltd. withdraw from a contract to operate the prison industries at a publicly run prison after failing to provide adequate services.⁴² Second, between 1998 and 2000, companies incurred over £2.7 million in financial penalties for prison contract failures in England and Wales.⁴³ Third, Group 4 and its construction partner, Carillion, made a windfall profit of an extra £10.7 million after refinancing the loan for the construction of its Altcourse prison in Liverpool, northwest England.⁴⁴ Interestingly, the same prison had the distinction of being named “the jewel in the crown” of the English prison service by the chief inspector of prisons while, at the same time his report noted that

a great number of ... cells have been fitted with an extra steel bunk bed reached by a vertical steel ladder and then used for two prisoners ... the additional bunk bed in the cells provided obvious convenient and substantial ligature points ... it could be held that the provision of such ligature points rendered the cells unfit for use at all.⁴⁵

Fourth, despite topping the prison service's league tables for having the most incidents of prisoner self-harm between 1996 and 1999,⁴⁶ Premier Prison Services managed to retain its contract to manage Doncaster prison in 1999. Leaked tender evaluation documents relating to that contract led to allegations and, of course, a denial of a political fix.⁴⁷ Since then, the chief inspector of prisons has remarked that at Doncaster,

Purposeful activity was mainly based on education programs with some skill training and employment. These activities were tightly controlled by contractual arrangements laid down by the prison service which demanded that each prisoner was given 20 hours purposeful activity each week. The total weekly hours (a multiplication of prisoners in the establishment x 20 hours) was, in fact, achieved. This came about by simply using an arithmetical figure to assess contractual compliance. The number of purposeful activity hours achieved by those prisoners who did participate equaled what was contractually required for all. In effect there were many prisoners receiving virtually no purposeful activity. There was a clear need for more training courses or work.

The chief inspector also noted “the many examples of good practice” and that at “this time it was still a good prison, not so well able to cater for the 1,100 prisoners for which it now has to cater, not least because of the continued lack of sufficient activity places.”⁴⁸

As for the idea that private prisons reduce recidivism rates, that was scotched in March 2000 when the then prisons minister admitted that comparative re-offending rates of former prisoners of public and private prisons did not exist: "...since prisoners may move between privately owned and publicly owned prisons on a number of occasions during their sentence, it is not possible to calculate the reoffending rates."⁴⁹

Even the director general of the prison service for England and Wales, who has not been short of praise for the private sector, has remarked on the private sector's complacency. He said recently that companies have achieved a "massive step forward" in the flexible use of staff but

they have become, in running prisons, a bit complacent. They have not been as imaginative as this [prison] service has had to become in terms of utilizing staff—and, of course, they have to take a profit out of this. It may be that one or two of them are looking backwards to the days of very much higher profit margins.⁵⁰

Meanwhile, sweeping statements included in the Carter report of February 2002 such as "the results of recent market tests demonstrate beyond doubt the value of the competitive process..." and "... it is widely accepted, by management and unions alike, that the competition offered by new private prisons ... has made the prison system more efficient and effective ..." are supposed to add weight to the argument that competition from the private sector has driven down costs and stimulated performance in the public sector.

While it is a moot point whether the public sector could have improved without such competition, there is no independent academic research to prove 'beyond doubt' how far the private sector has influenced improvements or to assess the negative impact caused by competition.

In May 2002, the prison service took the unprecedented step of removing a company's prison director and installing public sector management at the Premier Prisons-run Ashfield, a prison for young offenders near Bristol, south west England. The action was taken because of concerns over the safety of staff and anxieties that Premier might lose effective control. On 23 May 2002, the director general of the prison service said: "I found that standards of care and control of prisoners were not as high as I would expect them to be. I considered that the prison was unsafe for both staff and the young people detained there and that urgent action was required ... my aim is that the prison should be made safe and constructive and that in due course we are able to hand management back to a director appointed by Premier."⁵¹

In Scotland, which has a separate prison administration, the first private prison has also proved controversial. In 2000, Kilmarnock prison was described by the chief inspector of prisons for Scotland as having made a promising start, but it was also "Scotland's most violent prison." He also set out a range of other concerns.⁵² There was also an incident which epitomizes how 'commercial confidentiality', extensively used by government and the industry to keep fundamental information from scrutiny, overrides the public interest. After pressure from both the Scottish Executive and Premier Prison Services Ltd., the chief inspector was forced to have his first inspection report pulped at the printers because it included the company's staffing levels at the prison.

Kilmarnock has since received two further critical reports from the chief inspector. And following an investigation into a Scottish Executive review of the

prison estate (which recommended that three new private prisons be commissioned), a parliamentary committee found that "... major questions exist about HMP Kilmarnock ... which mean it cannot be used as a point of comparison. In particular, the committee has serious concerns about the low level of staffing at HMP Kilmarnock."⁵³

HMP Blakenhurst: A 'Snapshot' of Fines and Failures

UK Detention Services Ltd. (UKDS) was the first private prison operator to be penalized by the prison service when it was fined £41,167 after losing control of Blakenhurst during a disturbance in February 1994. In May 1995, the then Chief Inspector of Prisons, Judge Stephen Tumim, published a report of his team's inspection of the prison eight months earlier. Acknowledging that 12 months is a "relatively short time for any establishment to develop a balanced culture," he said that "the most impressive feature was the quality, enthusiasm and potential of staff: the most disappointing feature was the comparative shortage of innovation." His 109-page report also included over 100 recommendations for improvement.

Also in May 1995, Jeffrey Titmarsh, a UKDS prisoner custody officer was jailed for 18 months for scheming to have two prisoners beaten up after he suspected they put drugs in his coffee.

But perhaps one of the most serious incidents to have taken place at the prison was when Alton Manning, a 33-year old black remand prisoner, was 'unlawfully killed' by prison staff in December 1995. On 24 March 1998, a Coroner's court jury returned its unanimous verdict of unlawful killing even though the company, supported by the government, had applied to the High Court to deny the jury this option. Seven UKDS staff were suspended on full pay although those allegedly involved in the incident have never been prosecuted. A Home Office pathologist who carried out a post-mortem examination reported that Mr. Manning's case fell "into the category of death resulting from respiratory impairment and restriction during restraint." A second independent examination concluded: "The appearance is definitely that of an asphyxial death. In my opinion death was due to the way he was handled."⁵⁴

On 7 August 1996, when 25-year old prisoner John Cowley was found hanging in his cell, his was the fourth death at the prison within ten months.

According to the prison service, in 1997-98 Blakenhurst failed to meet its performance targets in respect of: assaults as a percentage of the prisoner population 14.2 (target 13.1), hours of purposeful activity per week 19.9 (target 22.2), percentage of prison population tested for drugs 9.6 (target 10.0), and percentage of positive drug tests 46.3 (40.9). The number of assaults was more than double either of the prison's comparators. In terms of education, Blakenhurst offered no accredited courses. In November 1998, the company received its second penalty when it was fined £25,000 for allowing a prisoner to escape from escort.

In January 2001, the government announced that UKDS had failed in its attempt to retain its contract bidding against the prison service, which won the contract. UKDS was reported to have been 12 percent more expensive and 13 per cent worse on quality than the prison service bid.⁵⁵

Then, in a report published in May 2001, the chief inspector of prisons noted that "... of more immediate concern is the clear evidence that treatment of and conditions for prisoners at Blakenhurst had, at best, stood still since our previous inspection, and in some respects have become worse. It was disappointing to find so many previous recommendations still not actioned, and so many promising innovations stalled until it had become clear whether the contract had been won or lost."⁵⁶

In August 2001, the prison service assumed control of the prison.

Conclusion

Although the overall claims for private prisons remain unproven, the government remains committed to private sector provision. According to Sir David Ramsbotham, the former chief inspector of prisons for England and Wales:

... private prisons have been delivering, by and large, a far higher standard of treatment for prisoners than the public sector. Each private prison has a compliance monitor who ensures that the terms of a contract are met and, if they are not, can levy hefty fines. In fact, these terms are often far more demanding than those that apply in the public sector. For example, all private prisons have to provide at least 30 hours of purposeful activity per prisoner each week as opposed to the public sector's target of 24 hours, which in reality is often less and has been progressively lowered over the past three years.

As a result, several of our nine private prisons have been doing remarkably well. Over the past two years, neither Altcourse, Liverpool, nor Lowdham Grange, Nottingham, have cancelled a single lesson or evening activity. Altcourse so impressed Merseyside's chief constable, Norman Bettison, that he declared, 'this is the first time in my career I've left a prison feeling optimistic.'⁵⁷

Yet despite his above mentioned assertion, Sir David Ramsbotham also has reservations about the use of the private sector. In his words,

[I] can accept the private sector looking after unsentenced prisoners because they are still innocent in the eyes of the law. But I do have questions about the sentenced. The state has awarded that punishment and the state should deliver it.⁵⁸

On the other hand, Mike Newall, president of the prison governors' association (PGA),⁵⁹ wrote in his organization's magazine recently that

Almost ten years on the private sector provides the most expensive prison places and its performance, in most areas, is well below what the best of the public sector can provide. Change has taken place in the public sector. Perhaps this is the legacy the experiment leaves behind but it has no more to offer in its current shape. The PFI projects are proving so expensive that, quite simply, we cannot afford any more privately run prisons. The long term debt already built up is crippling the [prison] service and it would be foolhardy and irresponsible to burden our successors with yet more debt.⁶⁰

Early in 2001, the general public was brought into the equation for the first time and it seems that the majority sides with the prison governors. An ICM poll for the *Guardian* in March 2001 found, when asked if they thought prisons should be brought back into the public sector, that 60 percent of respondents said yes, 24 percent said no, and 16 percent were undecided.⁶¹

Clearly, the debate about what the private sector has achieved so far and what it can contribute to the United Kingdom's prison system is not yet over. But for the foreseeable future, the public is not going to get its way.

As ever, it appears that the industry sets the agenda. In evidence to the Home Affairs Committee's inquiry into the management of the prison service in England and Wales in 1996, representatives from Group 4, Premier Prison Services Ltd and UKDS had all said that they would like to see between 20 and 25 per cent of the entire prison estate shared among three to five companies.⁶²

In its submission, UKDS stated that

the prison service needs to have three to four healthy suppliers so that it has choice, competition and reliability. For these suppliers to be healthy, they need to have a minimum number of establishments to ensure there is scope for staff development and exchange in a demanding job and efficiencies of scale so that operational and overhead costs are minimized. A minimum of four establishments per supplier or an average of eight is necessary for this. Thus, assuming four suppliers, that leads to a total of 32 which is around a quarter of the estate.⁶³

The company also proposed that:

- the private sector should be invited to tender for the management of prisons on existing sites which are performing less well than average;
- the public sector should not compete in market testing procedures until independent mechanisms are in place to measure contract performance and the same accountability can be applied ...
- ... as part of the drive to improve value for money, the very old and inherently inefficient prisons should be closed and demolished and the private sector invited to tender for new design, build, finance and operate contracts on the same sites.

These recommendations were broadly incorporated into the Carter report's strategy for the future of the prison service in England and Wales. Carter also included the suggestion that the prison service should guarantee a continued and expanding role for a competitive private sector and that all new prisons should be privately designed and built.

Endnotes

1. This has taken the form of contracting out the management of prisons to the private sector as well as private finance, design, construction and management. In the first case, a company manages a prison commissioned and designed by the public sector; the original contracts lasted up to five years but, where contracts have been renewed, these are for ten years. In the latter, under the Private Finance Initiative, it is envisaged the facility will be handed back to the public sector at the end of a 25-year contract to provide the prison and all services. The prison industry does not regard this as privatization since accountability with the government is maintained.

2. Omega Report on Justice Policy, Adam Smith Institute (1984).

3. I. Gilmour, *Dancing With Dogma, Britain Under Thatcherism* (1993).

4. See M. Ryan & T. Ward, *Privatization and the penal system, The American experience and the debate in Britain* (1989).

5. House of Commons, Fourth Report from the Home Affairs Committee, Contract Provision of Prisons, 6 May 1987.

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6. M. Ryan & T. Ward, *Privatization and the penal system*, *supra* note 4.
7. House of Commons, *Contract Provision of Prisons*, *supra* note 5.
8. *Id.*
9. Hansard, 25 February 1991.
10. "Tories plan to extend private prisons," *Financial Times*, 28 January 1992.
11. "Second prison to be privatized," *The Guardian*, 4 December 1991 and "Baker wants third sell-off before election," *The Guardian*, 13 January 1992.
12. Prison Reform Trust *Wolds remand Prison, Contracting Out: A First Year Report* (1993).
13. The chief inspector of prisons at the time was Judge Tumim.
14. Research Findings No.32, "Wolds remand Prison - An Evaluation," Bottomley, James, Clare and Liebling, April 1996. The research compared Wolds remand prison with public sector prisons, in particular, Her Majesty's Prison Woodhill.
15. Memorandum between the registrant [Corrections Corporation of America] and CCA International Inc, Sir Robert McAlpine & Sons Ltd and John Mowlem & company PLC, 19 January 1988.
16. RDN Hopkins, "The Formation of UK Detention Services" (1993).
17. Correspondence dated 7 March 1991, signed by Nicholas Hopkins, director of corporate communications. Mr. Hopkins is now a director of UKDS. In financial year 2000, UKDS paid Nicholas Hopkins Associates £80,000 (£77,000 in 1999) for public relations services. Source: UKDS Directors Report and Accounts for the Year Ended 31 December 2000.
18. D. Rose, "Big Money Turns The Key," *The Guardian*, 11 January 1989; John Wheeler was the chairman of the Home Affairs Committee in 1986/87. He was also chairman of the British Security Industry Association, whose members included Group 4 and Securicor, both of which subsequently won prison contracts. The Carlton Club is a Conservative political and social club.
19. Hansard, 6 December 2001.
20. France has a number of semi-private prisons which have been privately built. Belgium has one and the German state of Hesse is developing another. In these facilities, prison officers are state employees but maintenance and all other non-custodial services are privately provided. For a recent overview of the international development of prison privatization see S. Nathan, "Private prisons, an international overview," *Prison Review International*, Issue 2, January 2002, www.prisonreview.com.
21. D. Whitfield, *Public Services or Corporate Welfare* (2001).
22. Hansard, 18 December 2001.
23. S. Nathan, "Premier's loss," *Privatization Factfile #11, Prison Report #32, Autumn 1995*, Prison Reform Trust, London.
24. Premier Custodial Group Ltd, *Directors Report and Accounts*, 31 December 2000.
For details of other British companies' revenues and profits see "Money Go Round," *Prison Privatisation Report International # 44*, November 2001 <www.psiru.org/justice>.
25. Speaking to the Prison Officers Association Annual Conference, 1994, reported in *Gatelodge*, June 1994.
26. "Labour gives pledge to end prison privatization," *The Times*, 8 March 1995.
27. While still under a Conservative government, the Home Affairs Committee held an inquiry and subsequently reported on the management of the prison service in England and Wales. See House of Commons, Home Affairs Committee, *The Management of the Prison Service (Public and Private)*, 19 March 1997. Within the debate on the principle of contracting out (para. 47, conclusions and recommendations), the Committee concluded: "While we accept that contracting out is not universally welcome, we consider that the fears hitherto expressed over the principle of contracting out - that it would mean the abdication of state responsibility for public safety and the deprivation of freedom - have not proved justified and that the idea of privately managed prisons is undoubtedly now more generally accepted and should be allowed to develop further." *Second Report*, Volume 1 at para 162. In December 1997, seven months after the general election, the Labour government responded to the Committee's recommendations by stating that it wished to "give further and careful consideration to this issue." There were also comments on commercial confidentiality, the quality of provision in privately managed prisons, comparative costs, the effects of competition and the further development of the contracted out sector. The Government Reply to the *Second Report from the Home Affairs Committee, Session 1996-97 HC57, The Management of the Prison Service (Public and Private)*, CM 3810, December 1997.
28. Prison Service, "Review of Private Financing of New Prison Procurement," unpublished document (1998).
29. Prison Service, "Public and Private Prison Management, Considerations on returning privately managed prisons to the public sector," unpublished document, April 1998.
30. Group 4 opened HMP Buckley Hall in 1994. It lost the contract after re-tendering in 1999. The prison has been run by the Prison Service since June 2000, see *Prison Privatisation Report International #31*, October 1999 <www.psiru.org/justice>. From 1992, UK Detention Services Ltd held a contract to operate HMP Blakenhurst. The company lost its contract after a market testing exercise in 2000. From August 2001, Blakenhurst has been run by the Prison Service, see *Prison Privatisation Report International #38*, January/February 2001 <www.psiru.org/justice>.

31. Hansard, 17 October 2001.
32. *Financial Times*, 2 October 2001.
33. In evidence to the Home Affairs Committee, 1996.
34. "Sale of Victorian jails to pay for 'super prisons'," *Daily Telegraph*, 19 January 2002.
35. P. Carter, "Review of PFI and Market Testing in the Prison Service" (2002). For a brief critique of the Carter report see S. Nathan, "Carter's wish list for industry?, The PFI Report, April 2002, <www.publicprivatefinance.com>.
36. In 1987, France introduced a program of 21 semi-private prisons. The government has recently re-tendered the contracts and is also commissioning at least six more of these facilities. Although a program of 30 new prisons has been announced, it has not yet been decided how all of these will be procured.
37. In 1998, the Select Committee on Public Accounts investigated, to a limited degree, the extent of claimed savings at Parc and Altcourse prisons. See "The PFI Contracts For Bridgend [Parc] and Fazakerley prisons [Altcourse], Select Committee on Public Accounts," Fifty Seventh Report <www.publications.parliament.uk/pa/cm1997/98/cmselect/cmpublicacc/499/49903.htm>.
- For a critique of that Committee's investigation see Centre for Public Services, Justice Forum, "Privatising Justice, the Impact of the Private Finance Initiative in the Criminal Justice System," London, 2002 <www.centre.public.org.uk>.
38. See, for example, Centre for Public Services, Justice Forum, "Privatising Justice, The Impact of the Private Finance Initiative in the Criminal Justice System," London, 2002 <www.centre.public.org.uk>.
39. Managing the Relationship to Secure A Successful Partnership in PFI Projects, Report by the Comptroller & Auditor General, HC 375, Session 2001-2002:29 November 2001.
40. Hansard, 22 and 27 March 2000.
41. There are too many examples to include in this article.
42. "UK: Audit slams Wackenhut contract," Prison Privatisation Report International #27, February 1999 <www.psir.org/justice>; see also Prison Privatisation Report International #26, #25 and #23.
43. A table of financial penalties incurred by private prisons in England and Wales appeared in an answer to a parliamentary question, see Hansard 15 October 2001. However, the figures provided were incomplete and, in a couple of instances, miscalculated. For a short article discussing these figures, see S. Nathan, Privatisation Factfile 35, Prison Report 57, Spring 2002, Prison Reform Trust, London.
44. See "Cashing in on PFI prisons," Prison Privatisation Report International #36, July 2000 <www.psir.org/justice>.
45. See "UK: ligature points in Group 4's 'jewel'," Prison Privatisation Report International #35, May/June 2000 <www.psir.org/justice>.
46. S. Nathan, "Doncaster's self harm figures," Privatisation Factfile #30, Prison Report #51, Prison Reform Trust, June 2000.
47. See "UK: competition shrouded in secrecy," Prison Privatisation Report International #31, October 1999 and "Documents reveal tender facts," Prison Privatisation Report International #32, November 1999, both at <www.psir.org/justice>.
48. "Report of an Announced Inspection of HMP& YOI Doncaster," 17-20 April 2001 by Chief Inspector of Prisons <www.homeoffice.gov.uk/hmipris/insrep.htm>.
49. Hansard, 20 March 2001.
50. *Financial Times*, 2 October 2001.
51. Public sector manages Premier's Ashfield, Prison Privatization Report International #47, May 2002 <www.psir.org/justice>.
52. "Scotland's first is most violent," Prison Privatisation Report International #36, July 2000. For the chief inspector's follow up, see "Kilmarnock's second inspection," Prison Privatisation Report International #40, April/May 2001 <www.psir.org/justice>.
53. The Scottish parliament, Committee News Release CJUSTI 08/2002, 2 July 2002.
54. For a full briefing on this case contact: INQUEST, email: inquest@compuserve.com.
55. "UK: firms lose two but market is safe," Prison Privatisation Report International #38, Jan/Feb 2001 <www.psir.org/justice>.
56. "Report on a full announced inspection of HM Prison Blakenhurst," 22-26 January 2001 by HM Chief Inspector of Prisons.
57. *Readers Digest* <<http://www.readersdigest.co.uk/magazine/CHAY-4TAQ9L.htm>>.
58. "The government ignored my warnings about prisons," *Daily Telegraph*, 17 December 2001.
59. PGA is the trade union that represents public sector prison governors. Most, if not all, of the directors and senior managers working for the private prison companies have been drawn from the governor grades within the public sector and are no longer PGA members. If, however, a former governor returns to the public sector, he or she can rejoin the PGA.
60. *The Key*, Issue 56, Autumn 2000.
61. *The Guardian*, 21 March 2001.
62. "Fresh evidence," Prison Privatisation Report International, #5, November 1996 <www.psir.org/justice>.

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63. UK Detention Services Ltd, Memorandum to the Home Affairs Committee Inquiry into the Management of the Prison Service, 14 May 1996.