

Kim Richard Nossal and Phillip J. Wood, "The Raggedness of Prison Privatization: Australia, Britain, Canada, New Zealand and the United States Compared," Conference on Prisons and Penal Policy: International Perspectives, City University, London, 23-25 June 2004

### **Abstract**

This article investigates the evolution of prison privatization in five countries from the mid-1980s to 2002. We show that the pattern across these 73 jurisdictions has been ragged and uneven, with some governments embracing private prisons with enthusiasm, others privatizing prisons tentatively or experimentally, and others still eschewing them altogether. We review four common explanations that have been put forward to account for prison privatization and demonstrate that none can easily account for the empirical findings. We conclude that this suggests the need for multi-level theorizing that is sensitive to the impact of conjuncture, contingency and agency on policy outcomes.

Privatization has been one of the most significant political movements of the last three decades: since the late 1970s, there has been a global push to impose the putative "discipline of the market" on a range of services hitherto considered to be paradigmatic collective goods, including health-care, water, electricity, transportation, and even the military (Feigenbaum et al., 1999). However, privatization proceeds unevenly in both time and space, differing from jurisdiction to jurisdiction, from one policy sector to another, and from one era to another.

There is perhaps no better example of the essentially ragged (in all meanings of that word) pattern of privatization than the adult prison sector (Matthews, 1989; McDonald, 1998; Shichor, 1999).<sup>1</sup> First, the geographic pattern of privatization has been uneven. After nearly two decades of privatization, private prisons are for the most part operating only in a handful of countries — Australia, Britain, Canada, New Zealand, South Africa, the United States, and a few others. Numerically, the vast majority are in the United States, and most of those, in turn, are to be found in the South, but even here privatization has been uneven. Second, there has been uneven development over time. Thought at one time to be virtually recession-proof, the private prison industry experienced a deep downturn in the early 2000s, and its largest firm was on the verge of bankruptcy. Even in the US, new prison contracts have been few and far between in recent years, and during the same period several contracts have been lost and prisons de-privatized.

The purpose of this paper is to explore the utility of the explanations offered for the rise of prison privatization. We examine five countries that have roughly comparable legal and penal systems and share a common liberal heritage — Australia, Britain, Canada, New Zealand, and the United States—and demonstrate that the pattern of prison privatization has been ragged and uneven. We then examine a number of conventional explanations for prison privatization, and argue that none of these can easily account for this raggedness. Indeed, we conclude that no generalized explanation of the pattern of prison privatization emerges beyond the rather obvious observation that the election of a party with a commitment to trying out the putative benefits of privatization is a necessary (but not sufficient) condition for the introduction of private prisons. On the contrary, our examination of these five jurisdictions suggests the appropriateness of Pierson’s (2000) argument about path dependency and policy: in some jurisdictions in which theory suggests a high likelihood of prison privatization, public corrections regimes persist nevertheless; the emergence of private prisons in similar cases thus appears to be a more contingent and conjuncturally-dependent process than is suggested in theory.

### **Prison Privatization in Five Countries**

Since the early 1980s, with and the emergence and spread of the neoliberal idea that the private sector can provide some services more effectively and efficiently than the state, prison privatization has been embraced in a number of jurisdictions in the United States and Australia, by the British and New Zealand governments, and by one provincial government in Canada. This section provides an overview of the pattern of privatization in the 1990s, when private prisons enjoyed their greatest popularity.

#### ***The United States***

Prison privatization in the US can be dated to the early 1980s, and the dramatic restructuring associated with Ronald Reagan’s experiment with monetarism. High interest rates, tax and social spending cuts, the diversion of resources to the military, deregulation, increasing budget deficits and long-term government debt all produced a large industrial shakeout. Unemployment increased, real average weekly wages fell, and state government revenues declined. Over the same period, prison populations expanded. Prior to 1970, the prison population in the US had varied between 100,000 and 200,000 inmates, usually fluctuating with the business cycle. After 1970, the social consequences of a low-wage accumulation strategy, law-and-order politics and an expanding “war on drugs” moved the trajectory upwards: by the early 1980s, the prison population had doubled, continuing upward even more rapidly thereafter (U.S. Department of Justice 2002, Table 6.22; Wood 2003).

Economic crisis, social marginalization, rising prison populations, overcrowding, the need for more space, and middle class tax resistance formed the context in which prison privatization began to emerge. In 1982 Tennessee's prisons were so overcrowded that they were found to be in violation of constitutional prohibitions against cruel and unusual punishment. In 1983, Thomas Beasley, a former Republican chair, founded Corrections Corporation of America (CCA) in Nashville. The company won its first contract in 1984 to run an immigrant detention centre in Texas and proposed taking over the management of the entire Tennessee system (Schlosser, 1998; Bates, 1998; Hallett, 2001). While the state legislature rejected the plan as too risky, the proposal established CCA as a serious player and the privatization idea as a policy option. By 1985, Tennessee was under court order to reduce overcrowding, a change that would have cost \$400 million and created a \$231 million budget deficit (Schneider, 1999). CCA soon won its first contract to operate an adult work farm near Chattanooga. In the same year, Wackenhut, a Florida corporation with three decades of experience in the security industry, won a contract to build a detention centre in Denver, Colorado (Bates, 1998).

The legislation authorizing privatization in Tennessee made it clear that the change was to be experimental, with contracts no longer than three years, to determine if savings were possible (Cody and Bennett, 1987). However, such caution was soon abandoned. By 1986, the prison population had passed half a million, and 38 states were operating at or above rated prison capacity, seven by more than 50 per cent. Court orders to remedy overcrowding and other constitutional violations soon covered all these, together with the systems of the District of Columbia, Puerto Rico and the Virgin Islands.

Many states had reached their debt limits and could no longer issue the bonds needed to finance construction. Privatization came to be seen as a politically painless way to respond to overcrowding, relative to the other less thinkable options, such as decarceration. Moreover, the costs could be charged to operating rather than capital budgets, thus avoiding the problem of debt ceilings. Florida and New Mexico soon contracted with CCA to run private prisons (McDonald, 1998). In 1986 the Texas legislature passed a law giving itself the power to contract out without holding a public vote, which, according to Schneider (1999), accounts for the clustering of private prisons in that state.

By 2001, the total prison and jail population in the US had topped two million; the number of private inmates rose to 94,948, about 6.8 per cent of all prisoners (Harrison and Karberg, 2003). Southern states used private contractors more than other states, with 7.2 per cent of their prisoners in private custody. Texas, with over 16,000 private inmates, had by far the largest private population in absolute terms. The rated capacity of private facilities peaked in 1999 at 122,871. Corrections Corporation of America

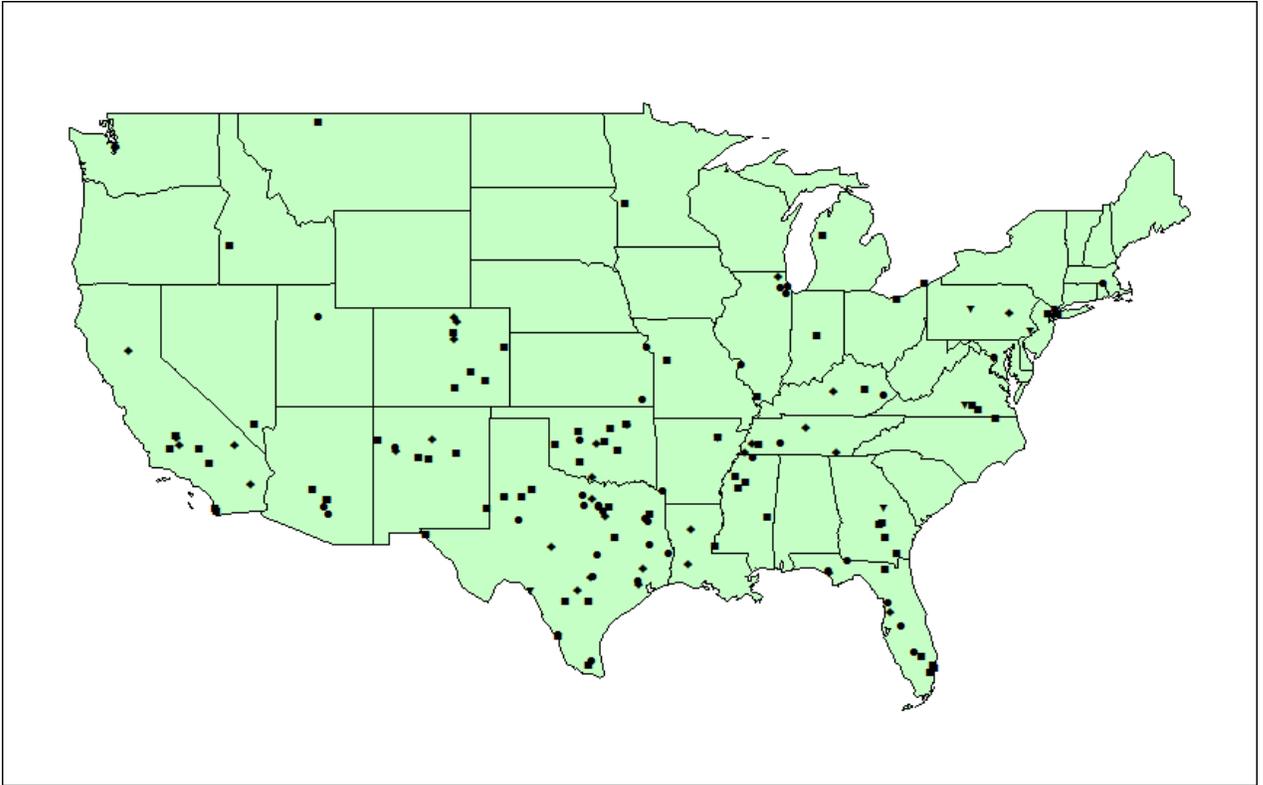
(CCA), with a capacity of about 68,000 in that year, was the largest supplier of private prison capacity (U.S. Department of Justice, 2002: Table 1.102).

The growth of private prisons spiked in the late 1990s, as Figure 1 below shows. In 1990, there were 35 adult for-profit facilities (marked by diamonds), mostly in a band stretching across the “sunbelt” —south and southwest from Virginia to southern California. Only six of these were located elsewhere: three in Washington, and one each in Illinois, New York and Pennsylvania. Forty-one facilities opened from 1991 to 1995 (marked by bullets), and are distributed in a roughly similar pattern. Six were outside the southern and south-western core: four more in Illinois, one more in New York and one in Rhode Island.

The heyday of privatization occurred from 1996 to 2000: 72 new private adult facilities were opened (squares). The sunbelt continued to dominate, but in this period for-profit institutions were opened in eight non-sunbelt states: one each in Idaho, Wisconsin, Michigan, Indiana, Missouri, Montana and New Jersey, and two in Ohio. In addition, Illinois and New York each gained an additional contract. By contrast, there was a significant downturn in prison privatization after 2000. In 2001 and 2002, only seven new facilities (triangles) were opened, four in the sunbelt, two more in Pennsylvania and one more in Washington.

Figure 1 demonstrates both the degree to which prison privatization is a sunbelt phenomenon and the timing of the limited penetration of other regions. But the South is itself interesting in terms of its internal distribution. By 2002, there were still no adult for-profit state institutions in Alabama or South Carolina. North Carolina flirted briefly in two private facilities in the late 1990s, but abandoned the experiment in 2000. No adult contract facilities were opened in Mississippi or Virginia until 1996, nor in Georgia until 1997. Louisiana contracted two facilities by 1990, but none since. The real enthusiasm for prison privatization appears to be in Florida, Tennessee, Texas and Oklahoma, with perhaps Georgia and Mississippi jumping on the bandwagon as latecomers.

**Figure 1: The Expansion of Adult For-Profit Prisons in the United States, 1984-2002**



**Legend: Private Prisons opened: ◆ up to and including 1990; ●1991-1995 inclusive; ■ 1996-2000 inclusive; ▼ 2001 and after**

### *Australia*

Prison privatization arrived in Australia soon after it made its appearance in the United States, but its subsequent spread was slow and limited. The first private prison opened in 1990 in Queensland; over the next eleven years, eight more were privatized, the latest—Acacia Prison in Western Australia—opening in 2001. By 2001, there were nine private prisons in five of Australia's six states: one of 18 correctional centres in New South Wales; two of 12 prisons in Queensland; one of 10 in South Australia; three of 14 in Victoria; and one of 15 in Western Australia. There were no private prisons in Tasmania, Northern Territory or the Australian Capital Territory.<sup>2</sup>

The first to embrace privatization was Queensland. In October 1988 the conservative National Party government of Mike Ahern announced that, in keeping with the recommendation of a commission on the corrective service in the state, one prison should be run by the private sector in order to provide some measure against which to assess the public sector's efficiency. The government decided that it would privatize a new prison scheduled to be built at Borallon. Although this decision was

vociferously opposed by both the Queensland State Service Union and the opposition Labor Party, a contract was signed with Corrections Corporation of Australia in November, 1989, one month before the state elections. During the election campaign, Wayne Goss, the Labor leader, promised that a Labor government would end privatization. However, after he won the December 1989 elections, Goss decided not to reverse the contract; Borallon opened on schedule in 1990 (Brown, 1994). Indeed, the Labor government decided to expand prison privatization and contracted Australasian Correctional Management to run a remand and reception centre at Wacol. The first phase of the Arthur Gorrie Correctional Centre opened in 1992 (phase 2 was completed in 1994 and phase 3 in 1996).

The prison privatization movement spread to New South Wales after a conservative National/Liberal coalition government under Nick Greiner was elected in March 1988. The Greiner government came to power dedicated to “small government” and a law-and-order platform that featured minimum sentencing. The NSW prison system was in the process of implementing changes that had been suggested by a commission of inquiry and was in need of expansion. The Greiner government decided to locate a new prison in a rural part of the state and in May 1989 selected Junee township, five hours’ travelling time from Sydney. In 1991, a contract was awarded to Australian Correctional Services, a consortium that included Wackenhut Corrections Corporation. Junee opened in March 1993. Thereafter, however, prison privatization in New South Wales stalled. In the March 1995 state elections, the Australian Labor Party (ALP) under Bob Carr was elected. The Carr government decided that three new jails planned for Kempsey, Dillwynia and Wellington would remain publicly run, and in March 2004 it was confirmed that the Mid-North Coast Correctional Centre, which had been bruted to be privatized, was to remain in the hands of the NSW Department of Corrective Services.

In October 1992, the Victoria state elections were won by Jeff Kennett and the Liberal Party. Committed to a neoliberal agenda of sharp reductions in government spending, Kennett moved to privatize a number of services, including water, gas, electricity, transportation, government laboratories, and prisons. It abolished the Office of Corrections and placed a reconstituted Correctional Services Division in the Department of Justice. In 1993, the government announced plans for a New Prisons Project, and called for expressions of interest for the financing, construction and management of three new prisons to replace the Coburg prison complex and Fairlea Women’s Prison. The first contract was signed in December 1994 with Corrections Corporation of Australia to design, build and operate a 125-bed institution for women, the Metropolitan Women’s Correctional Centre at Deer Park. Deer Park opened in August 1996 (George, 2003). Two further prisons were contracted to private firms:

Fulham Correctional Centre, which opened in April 1997, and Port Phillip Prison, which opened in September 1997. By that time, the 13 prisons in Victoria accommodated approximately 2900 prisoners, 1300 (45%) of whom were in the three private prisons (Harding, 1998).

The 1999 state elections changed the course of prison privatization in Victoria. The ALP under Steve Bracks was elected, and in May 2000, issued contract default notices to Corrections Corporation of Australia over problems at Deer Park; in October, the government stepped in, terminated the contract, purchased the facility from CCA, and turned it over to the Public Correctional Enterprise, a corporatized government agency that runs the public prisons.

In South Australia, an Audit Commission report published in 1994 found that on average, prisons in South Australia were approximately 25 per cent more expensive than those in other Australian jurisdictions. The government decided to try to lower costs by introducing competition. A competition to contract out the management of a new facility, Mount Gambier Prison, was bid on by Group 4 Correction Services and the state corrective service. The government selected the Group 4 bid, and signed a fixed-price contract for five years. Mount Gambier prison opened in 1995.

Prison privatization in Western Australia was delayed by a 1994 agreement with the Prison Officers Union that involved a straight trade: the union agreed to changes in working conditions which would result in substantial savings; in return, the National/Liberal coalition government of Richard Court agreed that it would not privatize existing prisons. But in 1998, when a new prison was being considered, the government's request for proposals noted that it was seeking to increase the quality of life for prisoners while reducing the unit cost per prisoner. The need for facilities was highlighted when a riot broke out in Casuarina prison in 1998; the Smith inquiry into the riot recommended the involvement of the private sector in a new prison. A contract was signed with Australian Integrated Management Systems Corporation; construction was completed in April 2001, and the first prisoners arrived in May.

### ***Britain***

Though the Thatcher government that took power in 1979 was in some sense the pioneer of the contemporary privatization movement, prison privatization was not initially part of the government's agenda. It was not until after the Adam Smith Institute pressed the idea in 1984 that it was taken up by a select parliamentary committee appointed to investigate the prison system. After visiting the United States in 1986, the committee proposed in its 1987 report that the government should, "as an experiment," allow private firms to tender for custodial facilities, particularly remand centres, which were severely overcrowded (Nathan, 2003: 166; James and Bottomley, 1998: 224). It took until

1989 when the Home Secretary, Douglas Hurd, changed his mind about private prisons, for the policy agenda to shift (James et al., 1997). Even so, the government of John Major only accepted privatization in the remand (pre-sentencing) system, and then only for new facilities. As the minister for prisons, Angela Rumbold, put it in February 1991, only if the contracted-out remand centre was a success would the government consider privatizing other aspects of the system (quoted in Nathan, 2003: 166-67). A contract was given to Group 4 to manage Her Majesty's Prison (HMP) Wolds, a newly-constructed remand centre; it opened in April 1992.

But what had started as an experiment soon turned into routine policy. In December 1992 a management contract was awarded to UK Detention Services to manage HMP Blakenhurst. In 1993, the government changed policy again: the Home Secretary, Michael Howard, articulated his "prison works" philosophy at the Conservative Party conference, and announced that all new prisons—not just remand centres—would be privately built and managed (Genders, 2002). In 1994, private contracts were awarded to operate HMP Doncaster, and HMP Buckley Hall.

While in opposition, the Labour Party had publicly opposed prison privatization. In May 1995 the shadow Home Secretary, Jack Straw had promised to "bring these prisons into proper public control" (Nathan, 2003: 171). But once elected to power in May 1997, the Blair government reversed course. As Nathan (2003: 171) succinctly put it, prison privatization "has not just survived the election of a Labour government; it has thrived." In May 1998, Straw, by then the Home Secretary, announced that as a matter of policy all new prisons in England and Wales would be privately built and run; as Downes and Morgan have argued (2001: 90), by the late 1990s, Labour's agenda had converged with Conservative policy on crime and punishment.

Between 1997 and 2003, fully eight private prisons were opened, some of which are also young offender institutions (YOI): HMP/YOI Parc and HMP Altcourse in 1997, HMP Lowdham Grange in 1998, HMP Ashfield and HMP Kilmarnock (for the Scottish Prison Service) in 1999, HMP/YOI Forest Bank in 2000, HMP Rye Hill and HMP Dovegate in 2001. In addition, HMP Bronzefield at Ashford was due to open in June 2004 and HMP Peterborough in 2005. And while in the same period two private prisons had returned to public management,<sup>3</sup> by 2004, Britain held about eight percent of its prison population in private facilities, and was second only to the United States in the number of private prisons (Nathan, 2003).

### *Canada*

In contrast to the pattern in the United States, Australia, and Britain, prison privatization in Canada has been minimal. Although in the mid-1990s there was discussion of prison

privatization in Nova Scotia, Alberta, and Ontario, these discussions did not result in the kind of embrace of private prisons that we have seen in the United States, Australia, or Britain. On the contrary: by 2004 there was only one private prison in Canada—out of the approximately 150 adult correctional facilities operated by the Canadian federal, provincial and territorial governments.<sup>4</sup> The Central North Correctional Centre (CNCC) is a facility in Penetanguishene operated and maintained by Management and Training Corporation of Utah for the Ontario government.

Colloquially known as the “super-jail” —its 1200 beds were intended to allow the province to close down smaller regional jails—the CNCC had its roots in the Ontario election of 8 June 1995 which brought the Progressive Conservatives under Mike Harris to power. Harris’s campaign platform, the “Common Sense Revolution,” was modelled on the “Contract with America” of the Republican Party, calling for spending cuts, tax cuts, the rationalization of government services, and privatization (Progressive Conservative Party of Ontario, 2004).

The Harris government set in motion plans to privatize a number of services, including jails. Initial plans —revealed in a leaked document in August 1996—called for the creation of twelve “super-jails” that would replace all 45 prisons in Ontario. By the time that the government made its official announcement, the number of super-jails had been trimmed to five, designed to replace fourteen existing prisons. The super-jails were designed to achieve efficiency by concentrating offenders, and to achieve savings by ensuring that the prisons were austere “no frills” facilities with narrow slits for windows, tiny stainless-steel toilets and concrete stools and steel beds. As the minister of correctional services, Bob Runciman, explicitly noted, “I don’t think that our goal in the correctional system ... is to necessarily increase the quality of life for people convicted of crimes” (*Globe and Mail*, 13 September 1996, A1).

When the super-jails were first announced, it was not anticipated that the private sector would be involved. However, after the re-election of the Conservatives in June 1999, Rob Sampson, the minister for privatization from 1996 to 1999, was appointed as minister of corrections. Sampson announced that he would consider privatizing one of the two identical super-jails then under construction in order to be able to compare the private and the public sector. In May 2001, Management and Training Corporation (MTC) was awarded a five-year \$170.8 million contract to manage the CNCC; the other identical super-jail, the Central East Correctional Centre in Kawartha Lakes, opened in 2002 and is managed by the Department of Community Safety and Correctional Services.

In the October 2003 provincial elections, the Conservatives were replaced by the Liberals under Dalton McGuinty. There was speculation that the new government would not renew the MTC contract, since in opposition the Liberals had argued against

prison privatization. Once in power, the McGuinty government chose not to buy out the CNCC contract, but indicated that the contract could be terminated early if MTC failed to meet its contractual performance standards (PPRI #58, November 2003).

### **New Zealand**

As in Canada, prison privatization in New Zealand only extended to a single prison before being brought to a halt by a change in government. The decision to privatize was taken by the conservative National Party government under Jenny Shipley, who continued the policy of privatization of state assets that had been a staple of New Zealand politics since the 1980s, but which had never extended to prisons. In June 1998, the government announced that the management of three new prisons would be put out to tender, starting with the new Auckland Central Remand Prison. The prison opened in July 2000; the five-year contract was awarded to Australasian Correctional Management. By this time, however, the National Party had been defeated in the 1999 elections. The new Labour government of Helen Clark decided that it would not terminate the ACM contract immediately, but would halt the rest of the prison privatization program introduced by the Shipley government leaving the Department of Corrections to run New Zealand's other 17 prisons.

### **Explaining Prison Privatization**

The survey above reveals the uneven spread of prison privatization during the 1990s, with some jurisdictions clearly more receptive than others to the privatization of corrections. The commonest explanations of the spread of prison privatization are: overcrowding; globalization; the rise of the new right; and policy convergence. We examine each of these in turn.

*Overcrowding* Perhaps the most popular explanation for the growth of private prisons in the 1990s is the overcrowding that occurred as the result of dramatic increases in prison populations (Brown, 1998; Beyens and Snacken, 1996). Since the 1980s, this has been a chronic problem in the UK, especially in the remand system. In the late 1980s, many American states and the US federal system were operating at or above capacity, and seven were at more than 50 per cent over capacity. Thirty eight states, the District of Columbia, Puerto Rico and the Virgin Islands were all operating under federal court order to remedy a variety of conditions, including overcrowding, found by the Supreme Court to constitute "cruel and unusual punishment" (McDonald, 1998).

According to this explanation, we can best understand prison privatization as an efficient solution to the overcrowding problem. Private companies, operating in competitive markets, can add capacity more quickly than public agencies. Moreover,

they provide operational flexibility and improve the quality of services while saving money and avoiding the problem of periodic state budget shortfalls, balanced budget requirements and increasing public unwillingness to fund expansion (Cody and Bennett, 1987; Brister, 1996; Freyman, 1998; Sparks, 1994; DiPiano, 1995; James et al., 1997: 44; Duitsman, 1998).

The main analytical problem with this perspective, which in large part reflects the public relations campaigns of the private prison companies themselves (Hallett, 2001: 374), is that it confuses clusters of symptoms with causal mechanisms and their effects, and obscures the distinction between explanation and justification. As critics argue, overcrowding is itself a result of a series of other factors—racial politics, correctional policy changes, the changing form and role of the state, macroeconomic policy shifts, new conceptions of social order, and so on.

The overcrowding thesis also fits poorly with the empirical evidence. Anne Schneider (1999) found a negative, rather than a positive, relationship between larger US state budget shortfalls and privatization. Moreover, her work revealed that there was no statistically-significant relationship between privatization and overcrowding. Our own analysis of state-level data from the US Department of Justice (2002) confirmed this finding. Higher prison populations relative to capacity are not a statistically-significant predictor of the size of private prison populations. Or to put it slightly differently, states with private prisons are not significantly statistically different from those without private prisons in terms of the ratios of prison population to capacity. On 30 June 2002, the 18 states without inmates in contract prisons had an average prison population equal to 115 per cent of capacity, with a range from 79 per cent to 162 per cent. For states with inmates in private facilities on that date, the mean ratio of inmates to capacity was also 115 per cent, and the range 84 to 194. In short, overcrowding may put pressure to privatize on state governments, but it does not appear to explain the decisions they take on the issue.

*Globalization* Until recently, one of the standard presumptions of political science was that politics was an autonomous sphere of activity, and that states could make “national” decisions about economic management, the size and form of the public sector and so on. This view has been called into question by two decades of globalization, which created, for the first time in history, global markets for labour-power, natural resources and capital in all the forms in which it circulates. This, coupled with the communications revolution, has increased the power of global financial markets, transnational corporations and global political institutions such as the World Trade Organization. While predictions about the demise of the state are often exaggerated (Weiss, 1998; Wood 2005a), there can be little doubt that international capital mobility

has dramatically altered the payoffs associated with particular kinds of state action. National governments can try to “manage” their economies by controlling inflation and engaging in competitive taxation and regulatory policy to create a better business climate. However, if they are to remain competitive capitalist platforms in a world of transient capital, national governments cannot protect their populations against markets fluctuations with traditional Keynesian social security and full employment policies. In the words of Leys (2001: 1), “politics everywhere are now market-driven.”

Since the late 1970s, state institutions and policy regimes have been radically restructured in the name of international competitiveness (Panitch, 1994): public sector activities have been out-sourced to private contractors; social safety nets have been weakened; welfare policy has been transformed, behind the rhetoric of personal responsibility, into a safety net for low wage employers rather than for individuals in need (Piven and Cloward, 1997; Burtless, 1999); regulatory systems in work safety, environmental health, labour relations, food safety, consumer protection and other areas have been relaxed or dismantled; and tax regimes (and along with them the distributions of income and wealth) have been restructured in favour of the propertied, and public subsidies and tax expenditures for corporations have expanded. In this view, prison privatization is a natural outgrowth of globalizing processes.

There is, however, a clear paradox at work here. If the processes of globalization were at work in the area of penal policy, prison privatization should be ubiquitous, which it clearly is not. Paradoxically, it is most clearly entrenched in the United States, which in some important dimensions is far less exposed to global pressures than most of its partners in the advanced capitalist world.

*The “New Right”* If adaptation to the tendencies at work in a global capitalist economy is the main force that has reconfigured states and policy regimes in recent decades, “new right” movements in a number of jurisdictions have been the main instruments of that adaptation, including the privatization of prisons. Broadly speaking, these movements had their roots in the twin crises of authority and profitability that emerged at the end of the long postwar boom. Moreover, the strategies they developed to try to deal with those crises—neo-liberal economic policies to reassert the discipline of markets and a reactionary populism aimed at rebuilding authority relations fractured by the civil rights and women’s movements and the New Left—are also thought to be broadly similar in scope. Reflecting these similarities of purpose, some criminologists have suggested the emergence of a “global trading language of penology” built around the politicization of crime, a politics of exclusion, managerialism, privatization and the toughening of penal regimes (Worrall, 2000: 393). Certainly the pattern of prison privatization in the five

countries we examine in this paper suggests that the election of new right parties is a necessary condition for prison privatization.

Again, however, the empirical pattern of prison privatization, dominated numerically and organizationally by the United States, should give us pause. The fact that we use a single label to describe new right movements around the world ought not delude us into thinking they are all moulded in the same way. In the first place, as we noted above, in some countries, especially the US and Britain, the new right played a major role in unleashing global markets (Gowan, 1999). They *chose* exposure to global competition and strict financial discipline as ways to deal with domestic crises, and have pioneered prison privatization. In contrast, new right movements in other countries appear historically to be followers rather than leaders, were forced to cope with global markets that had already been established, and seem more reluctant to leave the path of public corrections.

Second, although the political economy of the new right had its roots in a specific set of conjunctural crisis conditions that were international in scope and affected all western industrial capitalist societies to a greater or lesser extent, the way that these conditions produced crisis and adaptation in each country varied considerably. As Stuart Hall (1988) has argued, the way crises are “lived” and the strategies that were selected to deal with them were shaped not just by crisis itself, but by the historical, cultural and other conditions in which that crisis occurs. Political choices in these settings draw on pre-existing political and ideological repertoires that are specific to particular nations and regions as much as on the abstract strategic preferences of the political actors themselves. From this perspective (as well as that of the historical institutionalists), the politico-historical framework in which decisions are made provides important clues about the patterns of prison privatization described above.

*The Prison Industrial Complex: Global Policy Convergence?* In contrast with the approaches discussed above, theorists of a “prison industrial complex” argue that the key to prison privatization is to be found in the evolving pattern of business government-relations in the corrections sector. This policy complex, (sometimes referred to as the corrections “sub-government”), which includes companies that provide in-prison services and construction, financial and other kinds of companies as well as the prison management companies that are the focus here, is the result of almost three decades of rapid growth and by the increasing importance of private interests in criminal justice policy (Lilly and Knepper, 1993; Davis, 1995; Donziger, 1996; Lilly and Deflem, 1996; Lotke, 1996; Stolz, 1997; Schlosser, 1998; Parenti, 1999; Ladipo, 2001).

The term originates from critical perspectives on the capitalist state, which see corporate colonization of decision-making as the key to understanding of public policy.

By using their resources to serve the needs of state and local politicians and bureaucrats, private companies and allied academics, professional organizations and political interest groups are able to develop stable long-term influence over policy decisions and contribute to the development of a sectoral corporate welfare state. The “revolving door” between government service and the private sector, substantial bureaucratic autonomy and the domination of electoral politics by corporate money all contribute to relative immunity from democratic accountability and recent attempts at “downsizing.” Public funds thus continue to be diverted into activities that swell corporate coffers in the absence of any compelling public purpose, or long after the purpose of the original policy decision has been overtaken by events. The classic cases are the military industrial and agricultural policy complexes, but scholars have pointed to similar systems in transportation, health and elsewhere (Beardsley, 1973; Lowi, 1979; Bellon and Niosi, 1988; Perelman, 1996).

The corrections industrial complex seems to satisfy most of the general criteria, especially in the US and Britain. Corrections corporations have well-established links to the legislative and executive bodies responsible for corrections policy, the major political parties and “independent” sources of expert opinion. They are also part of extensive political networks, operating in a number of different countries, dedicated to the commodification of state services of all kinds, and to the financial institutions that specialize in this area (James et al., 1997: ch. 3; Bates, 1998; Strick, 1998; Geis et al., 1999; Sarabi and Bender, 2000; Bender, 2002; Mattera et al., 2003; PPRI, Nos. 27, 1999, 38, 2001 and 53, 2003). From this perspective, what ultimately matters is not economic efficiency, historical precedent, global pressures or shifts in the prevailing political and ideological wisdom, but rather the ability of the private prison companies to organize and wield political influence and insert themselves directly into the corrections policy-making process.

It could be argued that the existence of the US-based prison industrial complex also made the spread of the prison privatization idea somewhat easier, particularly in English-speaking markets. At the international level, the two companies (CCA and the Geo Group, formerly WCC) that dominate the private prison business in the American South both participated in an array of joint ventures that gave them footholds in Britain and elsewhere in the 1990s. On the other hand, expansion outside the US has been limited, suggesting that the historical, political and geographic roots of the prison multinationals in that region might make them poorly-equipped to operate in jurisdictions whose expectations about the treatment of prisoners are different.. Both CCA and Geo experienced difficulties with stricter regulatory regimes outside the US, have lost contracts and, in the recent slump in the corrections market, have withdrawn from Britain. CCA, seriously in debt, refocused its energies in the US, and especially in

the South and southwest where it sees the possibility for growth (Greene, 2001). Geo still has contracts in Australia, but is likely to lose its single New Zealand contract when it expires in 2005. However, in general it appears to be a much more southern company than it was a few years ago.

### **Assessing the Conventional Explanations**

These various explanations account for the rise of private prisons at a fairly high level of abstraction. What they do not explain is the raggedness of the spread of prison privatization since its origins in the mid-1980s. While the new right explanation may account for the rise of prison privatization in many jurisdictions, that explanation must be nuanced. The election of new right parties might have been a necessary condition for prison privatization, but it was not a sufficient condition: there were numerous new right jurisdictions that did not embrace prison privatization. Moreover, when new right governments lost power, as they did in Queensland (1989), New South Wales (1995), Britain (1997), Victoria (1999), New Zealand (1999), and Ontario (2003), it did not lead to a wholesale reversal of prison privatization. Indeed, in both Queensland and Britain, the replacement of new right parties by labour parties actually led to the expansion of private prisons.

Nor do these factors explain why in so many jurisdictions the privatization of prisons was embraced so tentatively. In both Britain and New Zealand, privatization started (though in Britain it did not end) as an experiment with the remand system, allowing private firms to handle only those citizens who had not yet been sentenced, and reserving public punishment to be meted out by public authorities (Larner and Waters, 2000). In many jurisdictions—including a number of American and Australian states and the one Canadian province—only one or two institutions were put (or left) in private hands. Indeed, in at least two jurisdictions—Queensland and Ontario—prison privatization was adopted as an explicit experiment to try and compare the performance of the public and private sectors in the area of penal policy.

Most importantly given the nature of the private prison universe, these explanations do not provide an adequate account for the ragged American pattern. In the first place, the new right political agenda and the pressures of globalization and prison overcrowding have dominated the country for at least the last generation, while the prison privatization movement is an overwhelmingly southern phenomenon, with only a limited presence elsewhere (Beck and Harrison, 2001; Ziedenberg, 2003).

In the second place, the southern situation is itself more complex than these general arguments suggest. The South is clearly a region in which prison privatization is theoretically and historically overdetermined. The political agenda of the contemporary American new right has deep roots in the political economy of the South,

where it has been only infrequently challenged since the end of Reconstruction. In a context dominated by capital shortage and a history of racism, southern capitalists built an export-oriented industrial strategy that competed for transient capital on the basis of racially-structured labour markets and labour-intensive, low wage, high exploitation production (Wood 1986; Lyson, 1989). The success of this strategy depended in turn on the development of a specifically southern politics, designed to resist, at both regional and national levels, unionization, civil rights, progressive taxation and public spending to meet the needs of the region's black and white poor and anything else that might undermine the regional accumulation strategy. As Cummings (1998), Lind (1995, 1996) and others point out, the new right agenda that has dominated American national politics for a generation is in large measure a nationalized version of the southern regional development agenda, adapted to the era of globalization.

In such a context, where chronic economic insecurity undermines social and political order, imprisonment almost inevitably comes to play a major role in controlling marginalized populations. In addition, private exploitation of unfree labour, the essence of slavery, persisted in the southern prison system after emancipation in a variety of forms—the convict lease, the chain gang and prison labour generally—and the public takeover of state and local correctional systems occurred much later than in the rest of the country (Lichtenstein, 1993; 1994; 1996; Oshinsky, 1997).

The southern path to prison privatization thus differs greatly from that in the rest of the US, relatively uninterrupted by Fordism, dominated in the long term by a political agenda appropriate to an externally-oriented low-wage economy, and reliant on prisons for capital accumulation and political control. In 2001, nearly ten percent of all the prisoners in the world were to be found in the region. At 526 per 100,000 inhabitants, the incarceration rate in the South is a third higher than that of the American West, the region with the next highest rate, and Mississippi (715), Texas (711) and Louisiana (800) make the southern average appear modest (Ziedenberg, 2003: 5; Table 2). And in a national prison system that is in general highly racialized (Wood 2005b), the South again leads the way. At the end of 2000, about two thirds of the inmates of southern state prisons were black (U.S. Bureau of Justice Statistics, 2000: Table 5.6). Attracted by this “market,” and steeped in the political, economic and racial traditions of the region, powerful coalitions of vested interests converge, dedicated to the expansion and privatization of prison systems: “a political bazaar with prisoners as the prize” (Wood and Dunaway, 2003: 150).

As compelling as this overdetermined theoretical argument is, however, it has only limited empirical purchase in terms of what we know about the spatial structure of the private prison industry. As we have seen, by 2002 almost two decades after privatization began, Alabama, North Carolina and South Carolina had no adult private

state facilities; Texas, Florida, Tennessee and Oklahoma had numerous private prisons. Mississippi, Georgia and Virginia, latecomers to the game, were in between. If the South is exceptional in the American context, it clearly has its own exceptions that cannot easily be explained on the basis of the available general theories.

### **Conclusion**

In this article we examined the rise of private prisons in five countries, comprising some seventy jurisdictions, between 1984 and early 2002. The rise and spread of private prisons across these jurisdictions was ragged, with little predictability. The only clear explanatory variable for prison privatization was the rather unremarkable observation of the necessary condition of the election of a “new right” movement—and even then this was not a sufficient condition.

In Britain, a high degree of political centralization concentrated the power of the new right and its Third Way successor, providing an institutional framework in which ideologically-motivated governments were able to push the privatization envelope as far as politically feasible. But centralization concentrated accountability as well as power, and the relatively stringent regulatory regime that emerged in Britain re-energized the public prison service, driving away, for the moment at least, the two largest US private prison companies.

In the US, the politics of the new right are clearly closely related, from a historical point of view, with many of the correlates of prison privatization—the urge to find scapegoats for social disorder and economic crisis, a preference for market solutions to social problems and a radical emphasis on individual responsibility for crime, which permits dramatic increases in prison populations and a “just deserts” philosophy in the treatment of offenders. But there seems to be no direct connection with specific decisions to privatize. Even in the South, where the politicization and racialization of prisons is an abiding fact of life, where reliance on markets and insistence on personal responsibility are articles of civil and religious faith and where the American new right finds many of its longest roots—in other words where prison privatization is clearly theoretically over-determined—several jurisdictions, by no means the most politically liberal in the region, have embraced prison privatization hesitantly, in very limited ways, or not at all.

The case of the US is in some sense unique, dominated as it is by the South, where some of the companies established to exploit the market for private prisons are headquartered and where the political and historical setting seems most conducive to the private exploitation of prison populations. Without downplaying the importance of race in the other cases we have examined, the scale of the incarceration boom and the degree to which it is a racial phenomenon clearly set the American case apart.

In short, our overall conclusion is one of caution. The task of theory is to articulate plausible explanations for complex phenomena, and the theoretical approaches reviewed above do seem, to one degree or another, to increase our understanding of prison privatization as a general phenomenon. Yet in the five countries we have examined, governments with similar ideological propensities behaved very differently, even though they were all operating in a market-driven world, all with prisons that were generally overcrowded and ageing, and all grappling with budget shortfalls. Some signed contracts with private prison companies, while others, in very similar situations, did not. None of the theories available to us was able to explain this basic difference in outcome. What students of prison privatization need to develop is more robust comparative theorizing on the decision-making process in otherwise similar jurisdictions that leads to prison privatization in some jurisdictions and to the retention of prisons in public hands in others.

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## ENDNOTES

<sup>1</sup> This paper focuses only on the adult prison sector. We do not examine the juvenile corrections system, which in many jurisdictions is run by private actors, particularly not-for-profit organizations, or other parts of the corrections sector, such as immigration detention systems, custodial drug treatment programs, or prisoner escort services, which are often operated by for-profit firms.

<sup>2</sup> In July 1991 the Northern Territory government called for proposals for a new prison at Alice Springs. When none of the tenders met the requirements, the government decided to keep the new prison public (Harding, 1992).

<sup>3</sup> The contract for HMP Buckley Hall was retendered in 1999-2000; Group 4 lost the contract to the Prison Service; HMP Blakenhurst was taken over from UK Detention Services by the Prison Service in 2001 after UKDS failed a market testing exercise. In 2000-2001, the private sector lost a bid to take over HMP Manchester from the Prison Service. In May 2002, the Prison Service removed the Premier Prisons director of YOI Ashfield and installed public management.

<sup>4</sup> This does not include custodial healing lodges for Aboriginal federal offenders which are funded by the Correctional Service of Canada but operated by First Nations (Rashid, 2004).