I. The Rise and Decline of Private Prisons in the United States

The Olympic Motel in Houston used to be a favorite spot for streetwalkers to ply their trade, but in January 1984 the establishment underwent a transformation. Twelve-foot high cyclone fences topped with barbed wire were erected around its perimeter, iron bars were put on the windows, and soon the motel was filled with young Latino men. The Olympic had been leased by a recently formed company called Corrections Corporation of America (CCA) to serve as a detention center for undocumented immigrants. This was a temporary arrangement while CCA finished building a new facility that was part of its construction and management contract with the U.S. Immigration and Naturalization Service. Before CCA could make the move, a number of detainees escaped by pushing out the motel's air conditioners, climbing through the holes and scaling the fence.

Such were the modest origins of a company that has been at the center of one of the most controversial industries ever inspired by the American spirit of entrepreneurship: the business of imprisoning human beings for a profit. Over the next two decades, the industry overcame considerable skepticism – and outright hostility – to become a billion-dollar business that for a time was the darling of Wall Street. But the private prison business has suffered a dramatic reversal of fortune over the past few years due to declining demand for its services and a series of scandals that have raised serious doubts about the competence of CCA and its competitors. Today the industry still houses approximately 100,000 local, state and federal prison inmates, or about 5 percent of the total adult incarcerated population,[1] but its future is an open question.

1984-1997: The Rise

The contemporary private prison business had its origins in the mid-1980s amid the anti-government, pro-free enterprise sentiments of the Reagan era. Much of the impetus for the industry came from the efforts of Tennessee Republican activist Thomas Beasley, who founded CCA in 1983 with backing from venture capitalist Jack Massey, who also helped build Kentucky Fried Chicken (now known as KFC) and Hospital Corporation of America.

CCA and other companies that jumped into the field – including established firms such as security services leader Wackenhut Corp., well-funded start-ups such as Pricor Inc. and a slew of less substantial operations –

attempted to take advantage of a unique opportunity. Across the country, prisons were bulging as a result of harsher drug laws and stricter sentencing rules, yet taxpayers were resisting paying for more correctional facilities. At the same time, about three dozen states were under court orders to reduce overcrowding in public prisons.

The contractors claimed to have the solution: they would house some of the inmates and do it at a lower cost than government-operated prisons. Some of the private operators offered to build new facilities and to do so on a much faster timetable than government agencies could. Others bid to operate existing public facilities, claiming they could do it more efficiently. In selling themselves, contractors were often openly contemptuous of government's prison record: "The work done in the public sector in the last 30 years has been a dismal failure," asserted Ted Nissen, president of Behavioral Systems Southwest, in 1985.[2]

Officials in a number of states, particularly in the South, were enchanted by the lure of cheaper incarceration costs. State legislatures began enacting laws permitting private parties to perform what had previously been considered a function that should be performed exclusively by government.

Hamilton County, Tennessee, became the first county in the country to contract out its jail when it brought in CCA in 1984. The following year CCA made an audacious proposal to take over the entire prison system of Tennessee, but the state legislature, faced with strong opposition from public employee groups and others, declined to act on the offer. CCA did, however, succeed in its effort to win a contract to operate a 400-bed jail in Bay County, Florida. The very first state contract was awarded to U.S. Corrections Corp. in 1986 to operate a prison at an abandoned college campus in Marion, Kentucky. In 1987 CCA got its first state-level contracts – for a regional juvenile facility in Tennessee and two minimum-security, pre-release facilities in Texas.

Growth over the next few years was uneven, but by the early 1990s the private prison business was expanding by leaps and bounds. Annual revenues at CCA, the industry leader, climbed from about $14 million in 1986 (the year it became a publicly-traded company) to more than $55 million in 1990 and then soared to $120 million in 1994 (the year it moved up to the New York Stock Exchange). Wackenhut Corrections, which was created as a subsidiary of Wackenhut Corp. in 1988, saw its revenues grow from about $19 million in 1989 to $84 million in 1994, when it made an initial public offering of stock.

At the same time, the total capacity of secure adult facilities under private management climbed from about 3,000 beds in 1987 to more than 20,000 in 1992. Over the next few years the rate of growth was rapid. The annual increase was more than 50 percent from 1992 to 1994, and more than 25 percent during the next few years.[3] The U.S. economic slump in the early 1990s did not make a dent on the industry. "We are recession-proof," CCA Chairman Thomas Beasley crowed to the *Chicago Tribune* in 1991. "It's an unfortunate comment on society, but the worse economic circumstances become, the better we will probably do."[4]

CCA and Wackenhut enjoyed the lion's share of the industry. At the end of 1996 CCA had a U.S. market share (based on the number of adult beds under contract) of 52 percent, while Wackenhut Corrections had 25 percent. U.S. Corrections Corp. was a distant third with just over 5 percent.[5] CCA increased its dominance by acquiring some of its smaller competitors, including Concept Inc. and Corrections Partners Inc. in 1995 and U.S. Corrections Corp. in 1998.

For a time it appeared that the industry's growth would never slow down. By 1995 the country's total inmate population – local, state and federal – had reached more than 1.5 million, which was three times the number in 1980. The incarceration rate – the number of inmates per 100,000 U.S. residents – jumped in that 15-year period from 221 to 601.[6] Governments at all levels were having difficulty figuring out how to house this ballooning population, and in many cases they turned to privatization as the solution. At the federal level the Clinton Administration created an opening for private firms to begin operating Federal Bureau of Prison facilities. At the local level, many officials saw the inmate crunch as an opportunity to create jobs in economically depressed areas. A county commissioner in New Mexico put it this way to a newspaper reporter: "It's terrible to say, but prisoners and trash are big business."[7]

CCA felt confident enough about the future that it made another attempt in the mid-1990s to take over Tennessee's prison system, but again it was rebuffed. The company went on to create a real estate investment trust (REIT) in 1997 as a means of expanding its borrowing capacity (see Part II for more on the financial evolution of the industry). It also started building prisons on spec (i.e., without getting an operating contract first), assuming that there would be sufficient demand for the facilities once they were completed. Wackenhut, meanwhile, won a series of big contracts, including one in New Mexico for a total of 3,400 beds that was the largest private prison deal ever signed up to that point. It was also the winner of the Federal Bureau of Prisons contract for a major facility in Taft, California. At that time a Wall Street analyst told the *New York Times* that the private prison industry's prospects "have never been better."[8]

1997 – Present: The Decline

While privatization proponents continued to predict a bountiful future for the industry, a steady stream of bad omens started getting more attention in the late 1990s:

- The industry's claims about the cost-saving benefits it could provide for governments were put into question by a widely publicized 1996 General Accounting Office survey that concluded there was little if any solid evidence that private prisons were significantly less expensive than public ones.[9]

- The industry's ability to estimate costs came into question when U.S. Corrections announced in April 1997 that it had to back out of a contract it had been awarded to build and run two 500-bed prisons in Georgia. The company admitted that its winning bid of $13.4 million was $5.3 million below what it should have been in order for the project to be financially feasible.[10] This vindicated critics of the deal who had described the U.S. Corrections bid as implausibly low and who had questioned the suitability of a company whose chairman, J. Clifford Todd, had pleaded guilty in 1994 to a federal mail-fraud charge in connection with making illegal payments to a public official in Kentucky. Todd, incidentally, served his sentence at a public prison.[11]

- The reputation of the leading academic analyst favoring prison privatization was seriously tarnished. For much of the 1990s, Charles Thomas, a professor at the University of Florida and founder of the Private Corrections Project, was frequently quoted in the media as an authoritative voice on prison privatization. His status as an independent observer came into question in 1997, when Thomas was named to the board of the CCA Prison Realty Trust, the REIT set up by the leading private prison company.[12] The Florida Police Benevolent Association, which had already been questioning Thomas's role as a consultant to the Florida Correctional Privatization Commission because his university research was being financed in part by the industry, stepped up its challenge with complaints to the Florida Commission on Ethics. Thomas ended up retiring from his university post, and in 1999 he was fined $20,000 by the ethics commission.[13] The entire episode cast a shadow on Thomas's work, especially research that purported to demonstrate the superiority of private correctional management.

The private prison industry's reputation was also tarnished by a series of high-profile scandals about substandard conditions, poor management and brutality in facilities under its control.

- In June 1995 there was an uprising by inmates at an immigration detention center operated by Esmor Correctional Services in Elizabeth, New Jersey. Most of the guards, described by one local official as "unarmed and undertrained, " fled once the disturbances began. Police in riot gear reclaimed control of the facility, which previously had been the subject of press reports about inhumane treatment and substandard conditions.[14] In the wake of the uprising, the INS issued a scathing report on mismanagement at the Esmor facility. The INS found that poorly trained and abusive guards terrorized the immigrant inmates, while supervisors did little to monitor the situation.[15] The problems in New Jersey were part of a string of managerial shortcomings demonstrated by Esmor – whose founders got their start operating a "welfare hotel" in Brooklyn – at several of its halfway houses, boot camps and detention centers. The Union County (New Jersey) Prosecutor, Andrew K. Ruotolo Jr., described Esmor's operations as "privatization at its worst."[16] Esmor, which was removed as the contractor for the Elizabeth facility (now run by CCA), changed its name to Correctional Services Corporation and is still active in the field.

- There were red faces in Texas in 1996 after two convicted sex offenders from Oregon broke out of a CCA facility near Houston and traveled nearly 200 miles before they were caught. State officials, who had not been informed by CCA that out-of-state inmates had been imported, realized they had no authority to prosecute the convicts for the escape. The reason: there was no law against escaping from a private correctional facility (a situation that was later changed in Texas and elsewhere).[17]

- In August 1997, another private prison scandal erupted in Texas when a videotape showing abuses by guards at the Brazoria County Detention Center was made public in the course of a lawsuit brought by one of the inmates at the facility, run by Capital Correctional Resources Inc. The video, originally shot as footage for a training film, showed guards kicking inmates, coaxing guard dogs to attack them, and shocking at least one prisoner with a stun gun.[18] The abuses depicted on the tape especially disturbed officials in Missouri, given that inmates from that state were being housed at the Brazoria facility. In the wake of the revelation, Missouri removed its inmates.

- In 1998 a series of fatal inmate stabbings and a six-person escape put a national spotlight on the prison in Youngstown, Ohio that CCA had built to house inmates from the District of Columbia. In March 1999, the company agreed to pay $1.6 million to settle a class action lawsuit brought on behalf of prisoners at the facility who claimed they were abused, denied medical care and not properly segregated from more dangerous inmates.[19]

- In April 2000 authorities in Louisiana, acting under pressure from the federal government, took control of the Jena Juvenile Justice Center away from Wackenhut Corrections. The move came in the wake of revelations of widespread brutality at the facility, some of it carried out by guards or encouraged by them. Conditions at Jena were so severe that some youths took to mutilating themselves so they would be transferred to the medical unit, where they could more easily avoid beatings and rapes.[20]

These incidents were the ones that got the most public attention, but they were not anomalies. Countless instances of escapes, riots, brutality and other sorts of operational problems came to light in connection with the growing universe of privately-owned correctional facilities.

Problems such as these, along with economic considerations, helped to persuade some jurisdictions that had experimented with private management to conclude it was not worth the trouble. In June 2000 North Carolina terminated its two prison management contracts (both with CCA) and banned the import of out-of-state prisoners. In August 2000 state officials in Utah abandoned a plan for that state's first fully-privatized prison after concluding that it would be cheaper to rent space in county lockups. At about the same time, corrections officials in Georgia decided they didn't need a 1,500-bed prison that CCA was building on spec in Stewart County, prompting the company to halt construction. CCA did complete another spec prison in McRae, Georgia, but it has not received a contract to fill it up (though it reportedly is about to get a federal contract).

Things for the industry got so bad that in September 2000, *Business Week* published an article headlined "'Private Prisons Don't Work': For-profit facilities face a barrage of criticism – and overbuilding has cut into profits and hurt stock prices."[21] The article, which noted that the CCA real estate investment trust had 12,000 unfilled prison beds, concluded by suggesting that "the industry's heyday may already be history."

Over the past year the situation for the industry has, for the most part, remained cheerless. New contracts for private correctional management at the state and local level have all but disappeared. Some states are even taking back control of facilities that had been put under private management. Two prisons in Arkansas with some 1,200 beds that had been operated by Wackenhut returned to the public sector this year. In October 2001 voters in the Kenai Peninsula of Alaska voted overwhelmingly against a plan by Cornell to build the state's first private prison.

The one bright spot for CCA, Wackenhut et al. has been the federal market. A couple of years after awarding the Taft contract, the Federal Bureau of Prisons began to embrace privatization in a big way.[22] The federal inmate population has burgeoned as a result of both harsher drug sentencing guidelines and a crackdown on illegal activities, including many minor offenses, committed by non-citizens. The latter has prompted the Bureau of Prisons to turn to private companies to house thousands of so-called criminal aliens. In June 2000, CCA won two of these contracts, allowing the company to fill its empty spec prison in California City, California and to add to the population of its facility in Milan, New Mexico. According to analyst Judith Greene, these contracts, which could be worth $760 million over 10 years, were the only thing that prevented CCA from going bankrupt last year.[23] (See Part II for a history of CCA's financial travails.)

The feds gave another boost to CCA in May of this year, when the Immigration and Naturalization Service and the U.S. Marshals Service renewed a total of five contracts with the company worth more than $50 million a year. According to an article in the *Wall Street Journal* last May, the Justice Department now allows its agencies (which include the Bureau of Prisons and the INS) to enter into much longer contracts – perhaps as long as 20 years – with private prison companies.[24]

Twenty-year federal contracts would certainly warm the hearts of the prison industry's shareholders and creditors, but it remains to be seen whether the private prison operators can deal with a more fundamental problem. The industry grew up during a time when it was assumed that crime rates – and consequently prison needs – would rise indefinitely. Now the explosive growth has come to an end. As a result, the number of inmates in state prisons has begun to drop. Although the decline is still tiny, the mere fact the inmate population is not rising was significant enough to prompt the *New York Times* to put the story on its front page.[25] The *Times* followed this up with another front-page story a few weeks later noting a growing tendency among states to shorten mandatory sentences, allow for earlier parole and to explore alternatives to incarceration – all of which will accelerate the decline in the prison population.[26] Less crime and fewer people behind bars are good news for America, but for the private prison industry these developments raise questions about its very reason for existence.

Notes

1. For state and federal inmates, the total as of the end of 2000 was 87,369, according to: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Prisoners in 2000, August 2001, p.7. The publication can be found online at <www.ojp.usdoj.gov/bjs/prisons.htm>. The Justice Department source does not indicate how many inmates were held at privately-operated local jails. An estimate covering all levels of government is given in the most recent edition of the Private Adult Correctional Facility Census, prepared by Charles W. Thomas, former Director of the Private Corrections Project at the University of Florida, Gainesville; it can be found on the web at <www.crim.ufl.edu/pcp/>. This Census, however, measures capacity of facilities (i.e., the number of people they are designed to house) rather than the actual number of inmates present. Thomas puts the total U.S. private capacity at the end of 2000 at 119,023 (see Table 1). Given reports of empty beds in many private prisons, an estimate of 100,000 for the number of actual inmates seems reasonable. The 5 percent figure was obtained by dividing 100,000 by the number of incarcerated persons (2,071,686) reported by the Justice Department.

2. Quoted in Martin Tolchin, "As Privately Owned Prisons Increase, So Do Their Critics," New York Times, February 11, 1985, p.B6. Behavioral Systems Southwest also had the distinction of being the first private prison company to advertise on television. See Lenore Skenazy, "Ads That Will Put You Away," Advertising Age, August 11, 1986, p.64. CCA began running image ads on television in 1998. See Tim Chavez, "CCA's Ads Put Reality on a Shelf," The Tennessean, December 22, 1998, p.1B.

3. The capacity figures come from various editions of the Private Adult Correctional Facility Census, prepared by Charles W. Thomas, former Director of the Private Corrections Project at the University of Florida, Gainesville. The past five editions of the Census can be found on the web at <www.crim.ufl.edu/pcp/>. Note that the Census includes the capacity not only of facilities in operation but also those under construction and in some cases those that are merely in a planning stage. Also note that the cited capacity figures before 1996 relate to the United Kingdom and Australia as well as the United States.

4. Quoted in Bruce Buursma, "Social Woes Fuel Prison Firm's Growth," Chicago Tribune, January 28, 1991, p.3.

5. Private Adult Correctional Facility Census (1996), op.cit., Table 2.

6. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Prisoners in 1994, p.2 and Prisoners in 2000, p. 2. Both can be found online at: <http://www.ojp.usdoj.gov/bjs/prisons.htm>.

7. Cibola County Manager Joe Murrietta as quoted in Mark Oswald, "Cibola County: Transfers Might Doom Jail," The Santa Fe New Mexican, January 27, 1996, p.B-3.

8. Jennifer Childe of Wasserstein Perella Securities, quoted in Nzong Xiong, "Investing It: Private Prisons – A Question of Savings," New York Times, July 13, 1997, Section 3, p.5.

9. U.S. General Accounting Office, Private and Public Prisons: Studies Comparing Operational Cost and/or Quality of Service, GAO/GGD-96-158, August 1996.

10. Rhonda Cook, "Prison Privatization: Sometimes Less is Less; Low Bidder Backs Out of Contract to Run 2 Facilities When Million-Dollar Underestimate Comes to Light," The Atlanta Journal and Constitution, May 2, 1997, p.4E.

11. Cynthia Eagles, "Convicted Felon Rides Bike to Federal Prison for Charity," The Courier-Journal (Louisville, KY), July 18, 1997, p.04B.

12. Rick Brooks and Karen L. Tippett, "Leading Expert on Private Prisons Criticized for Taking REIT Seat," Wall Street Journal (Southeast Journal), April 30, 1997, p.S2.

13. "Ethics fine $20,000 for UF Professor," Florida Times-Union, October 22, 1999, p.B3. Thomas was later appointed to the board of directors of Avalon Correctional Services.

14. "Tinderbox Explodes in Elizabeth; Immigrants Riot; Detention Center Now Uninhabitable," The Record (Bergen County, NJ), June 19, 1995, p.A01.

15. Ashley Dunn, "U.S. Inquiry Finds Detention Center was Poorly Run," New York Times, July 22, 1995, p.1.

16. John Sullivan, "Operator of Immigration Jails Has a History of Problems," New York Times, June 20, 1995, p.A1; John Sullivan and Matthew Purdy, "In Corrections Business, Shrewdness Pays," New York Times, July 23, 1995, p.1.

17. Joan Thompson, "Laws Lag Behind Booming Private Prison Industry," Associated Press, November 5, 1996.

18. Sam Howe Verhovek, "Video Puts a Harsh New Spotlight on Texas Jails," New York Times, August 22, 1997, p.A1.

19 . Cheryl W. Thompson, "Prison Firm Settles Suit by D.C. Inmates in Ohio," Washington Post, March 2, 1999, p.B1.

20 . Steve Ritea, "Louisiana Takes Over Youth Jail in Jena," The Times-Picayune (New Orleans), April 6, 2000, p.A1.

21. Charles H. Haddad, "'Private Prisons Don't Work': For-profit facilities face a barrage of criticism, and overbuilding has cut into profits and hurt stock prices," Business Week, September 11, 2000, p.95.

22. On the rise of the federal private prison market, see Judith Greene, "Bailing Out Private Jails, " The American Prospect, September 10, 2001, p.23.

23. ibid. p.27.

24. Evan Perez, "Can For-Profit Prison Industry Break Shackles to Growth?" Wall Street Journal, May 9, 2001, p.B4.

25. Fox Butterfield, "Number of People in State Prisons Declines Slightly," New York Times, August 13, 2001, p.A1.

26. Fox Butterfield, "States Ease Laws on Time in Prison," New York Times, September 2, 2001, p.1.