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which in turn, hires longshore labor based on the terms of its contract with the longshore union — the International Longshoremen's Association for ports on the Atlantic, Gulf, and Great Lakes Coast and the International Longshoremen's and Warehouseman's Union for ports on the West Coast. These labor agreements historically have been concluded between the unions and local terminal operator and/or steamship associations. Port authorities traditionally have been excluded from these negotiations, except in an observer status. This arms-length relationship with longshore labor negotiations appears to have been dictated by political sensitivities and in some cases by state laws that flatly forbid such involvement by state agencies (such as port authorities). Non-union terminals or terminals operated by unions other than the ILA or ILWU exist in some U.S. ports.

What is more, the U.S. public port system is vast and highly competitive, presenting shippers with an array of routing alternatives that include ports in neighboring countries. East coast ports, for example, compete with their West Coast counterparts and their Canadian counterparts for market share in the U.S. midwest. Terminal operators and other port service providers frequently compete with one another locally as well as with ports elsewhere. Thus the port monopolies that are often the target of port privatization in other areas of the world, particularly in the developing countries, simply do not exist in the United States.

As to the issue of subsidy, while it may occur, many port authorities no longer enjoy ready access to public funds, but are instead being forced to rely on what they generate from earnings to cover their costs and satisfy the exacting demands of private capital markets. In fact, what we are seeing, is growing instances of "reverse subsidy" such as in the recent case of California, with port authorities being called upon to bail out financially strapped state and municipal governments.

It is important to remember that port authorities were established in the United States to end private sector monopoly and abuse (particularly by railroads), to ensure equal harbor access, and to provide essential facilities and services that the private sector was unable or unwilling to provide. Public access to the waterfront and the discriminatory practices of port facility owning railroads were recurring issues at AAPA conventions in the years immediately following its founding in 1912.[23] While railroads monopolies are no longer at issue, there nevertheless remains an abiding public interest in the management of waterfront development.

Port activities create substantial economic and international trade benefits for the nation, as well as local and regional economies. According to the U.S. Department of Transportation, in 1992 commercial port activities generated 1.5 million jobs, contributed $73.7 billion to the Gross Domestic Product, provided personal income of $52 billion, generated federal taxes of $14.5 billion, state and local taxes of $5.5 billion.[24]

Facilities owned by public port agencies also serve nation's strategic interests as staging points for the deployment of U.S. Armed Forces in the event of war or other international military contingency. During the Persian Gulf conflict of 1990/91, for example, more than 3.0 million measurement tons of military cargo was loaded out of U.S. commercial ports in support of Operation Desert Shield/Desert Storm.[25]

The shoreside infrastructure requirements of waterborne commerce face growing competition for suitable waterfront land from commercial real

estate developers, residential housing, recreation boating, historic preservationists, and other interests. Striking a fair and equitable balance that best serves the public economic growth and the quality of life as it related to harbor development is an ongoing challenge to ports and local government as well as those whose livelihood depends on maritime activity. A viable port authority helps assure that the requirements of trade do not go unheeded.

In brief, the private sector is already well entrenched in the U.S. port system. Furthermore, the highly competitive nature of the system obviates any danger from monopoly to the flow of U.S. waterborne trade. Further privatization of public ports is most likely to be selective — security, pilotage and other discrete functions, along the lines of what is being contemplated in Los Angeles — or the conversion to landlord status by operating ports.

Whatever the case, care must taken to protect and preserve the overriding public interest in the flow of waterborne commerce so vital to the nation's economy and security.

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Privatizing Vehicle Registrations, Driver's Licenses and Auto Insurance

It is conceivable that all of the functions of MVD could be privatized. Issuing registrations and driver's licenses are the major tasks performed by MVD. Other tasks (like issuing titles and collecting taxes) could be contracted out. The Ports-of-Entry could be consolidated into the Department of Public Safety. Arizona's innovation in this area could serve as a model for other states.

by John Semmens

In Arizona, the law requires owners of vehicles to carry liability insurance in order to register their vehicles. The idea is that vehicle owners be made responsible for any damage they may create in operating their vehicles. Yet, a considerable portion of the vehicles on the roads are without this required insurance. The All-Industry Research Advisory Council's survey of 1989 found that an estimated 8 percent of households in the nation admitted to operating at least one vehicle without insurance.[1] The Arizona Department of Transportation's Motor Vehicle Division also estimates that about 8 percent of the vehicles operating on Arizona's roads do not have the required insurance.[2] This survey, though, relied upon the self-reported assertions of individuals. Since most states require liability coverage, many individuals may have been reluctant to admit breaking the law. Obviously, statistics on the number of persons breaking the law are prone to data collection difficulties. Aware of this, some observers have asserted that at any given time, up to 30 percent of the vehicles on the streets may be operated without insurance.

Uninsured vehicles are only half the problem. Other vehicles are grossly underinsured. Arizona state law permits vehicles to be operated with liability coverages as low as $15,000/$30,000/$10,000. What this means is that the insurer will cover bodily injury damages up to $15,000 for a single victim, up to $30,000 total for multiple victims, and up to $10,000 for property damage. It doesn't take much of a wreck to total a car. Replacing one totalled car could easily cost more than $10,000. Considering that about 75 percent of the traffic accidents in Arizona involve more than one vehicle,[3] it should be readily apparent that many crashes will produce property damage in excess of the minimum mandated liability coverage. As it is, the *average* cost of a "property damage only" accident in Arizona is $6,500.[4] Next to this, the $15,000 to $30,000 coverage for

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injuring or killing someone is ludicrously inadequate. Minor injury accidents result in costs *averaging* over $10,000 per accident. Major injury accidents generate an *average* cost of over $32,000. Fatal accidents produce damages in the $880,000 range.[5]

When the damage caused by a driver is not covered by his liability insurance (either because he has none or is underinsured) it is borne by the victim. In terms of what the insurance industry pays for claims by its policy holders who have purchased "uninsured" and "underinsured" coverage this amounted to around $30 million per year in the mid-1980s in Arizona.[6] Even though the accident rate has declined since the mid-1980s (from 3.2 per million vehicle miles of travel to 2.6 per million miles)[7] the cost of each accident has risen. This would give us an estimate of around $80 million per year as the current amount paid by insurers to cover damages done to their policy holders.[8]

These payments made by insurers understate the actual damages for several reasons. First, the "uninsured" and "underinsured" coverages offered by insurers cover only bodily injury medical expenses. They do not cover damage to property. Neither do they cover lost wages, pain and suffering or other tort-related damages. Second, not everyone who is insured purchases these coverages. Medical expenses charged to a person's medical insurance rather than to his auto insurance under his "uninsured" or "underinsured" coverage would not be counted in this calculation. Finally, the uninsured losses borne by individuals are also not captured by this estimate (for example, if one uninsured driver causes damages to another uninsured driver). So, in terms of the order of magnitude of the problem, we are probably talking about $100 million per year in costs imposed on the victims of accidents or their insurers.

Modeling a Solution

There are two models useful in analyzing this situation. On the one hand, we could view roads as falling into the "ballpark" model. In the ballpark customers are warned that the management assumes no responsibility for any injuries or damages suffered by its customers in the event that they are harmed by baseballs, bats, or players in the normal course of the game. If this model was applied to the roads, anyone who paid the price of admission to the roadways (i.e., purchased the necessary licenses and vehicle registrations) would have access. Road agencies would assume no responsibility for any injuries or damages. Users would determine whether to buy insurance or not. Anyone venturing onto the roads would do so at his own risk and with the explicit warning that he might be harmed by others who would not be able to compensate for any damage done

The chief advantage of the "ballpark" model is that it would remove the ambiguity regarding who should bear the responsibility of insurance. No one could venture onto the roadways under the impression that the state has guaranteed him that the other drivers are insured. The knowledge that there are no insurance requirements would inspire those who desire to be indemnified against damages that may be caused by other drivers to purchase their own adequate levels of insurance coverage. Those willing to bear the risks of going without insurance would be permitted to do so. Since the accident rate in Arizona is about one per 400,000 vehicle miles of travel, the odds of any one driver being in a crash are very small. Given a typical annual 12,000 miles of travel for each automobile, there is a 97 percent chance that the vehicle won't be involved in an accident in any one year. When we fac-

tor in the possibility that one can significantly reduce the chances of accident involvement by adopting safer driving habits (i.e., obeying traffic rules, keeping the vehicle in good running order, and not consuming alcohol), the decision to go without insurance may not be entirely unreasonable. In fact, on an actuarial basis, the estimated annual cost of Arizona traffic accidents averages around $600 per vehicle.[9] If the cost to obtain insurance for a vehicle is greater than this amount, going without insurance becomes a logical economic decision.

The chief disadvantage of the "ballpark" model is that driving might become more financially risky. Even though the reduction of the impact of "moral hazard" (i.e., the tendency for humans to exert less care in preventing events that are covered by insurance) on driving behavior in the "ballpark" model would tend to reduce the frequency of traffic accidents, the financial impact on those unfortunate enough to experience them could be substantial. Those without insurance could easily sustain major losses. Those who do purchase insurance might well have to buy larger amounts of coverage since there would likely be larger numbers of uninsured drivers. So, even though the aggregate social cost of traffic accidents would likely be lower if the "ballpark" model was implemented, the redistribution of financial burdens to those risk-averse enough to purchase insurance might be viewed as undesirable by many.

An alternative to the "ballpark" model is the "Disneyland" model. In Disneyland, customers are covered by the business' liability insurance. Consequently, the management sets its own risk reducing restrictions on who may use various facilities. Customers may be barred from some rides or attractions for being too small, too big, too frail, too pregnant, etc. Since the business is held strictly liable for any damages suffered by those entering the park, management will undertake a substantial effort to enforce its rules in order to avoid having to compensate injured parties for any harm done to visitors while in the park.

Enforcement of the insurance requirement would be achieved by having the insurers issue the licenses and vehicle registrations.

Like the "ballpark" model, the "Disneyland" model would also reduce the ambiguity concerning who will be responsible for damages. In this case, obtaining insurance would be a prerequisite of venturing out onto the roadways. Enforcement of the insurance requirement would be achieved by having the insurers issue the licenses and vehicle registrations. This differs from the current system wherein the mandatory insurance is sold by private vendors, but is enforced by the public sector. The State of Arizona does not assume liability for damages done by drivers that fail to comply with the insurance requirement. There is no significant financial consequence to the State for failure to enforce the insurance requirement. Hence, we must rely upon the bureaucracy's devotion to duty as the main motivation for enforcement of the mandatory auto insurance law. As dedicated to duty as many individual bureaucrats may be, bureaucracy itself is not noted for efficiency or effectiveness.

Meanwhile, private insurance companies have very weak incentives to guard against persons buying inadequate insurance or cancelling coverage once their vehicle obtains the desired

registration tags from the Motor Vehicle Division. Inasmuch as insurance premiums are directly related to amount of coverage and the risk of having to pay, rates will vary. Some of the worst drivers - those most likely to inflict substantial damages on others - buy only the minimum amount of coverage allowed by law. These drivers form the pool of "underinsured" risks on our roadways.

Keeping these high risk drivers off the roads, then, could create some hardship for them by greatly reducing their mobility.

The insurance industry knowingly sells these inadequate policies because the insurer's liability is capped by the low amounts of coverage provided. So, while the premiums paid by these high risk drivers are sufficient to cover the losses of the insurers, they are not sufficient to cover the full actuarial cost of the damage that is the likely result of their driving behavior. These costs will be shifted to the victims of these drivers.

In addition to buying an inadequate amount of coverage, another way of flouting the mandatory auto insurance law is to buy a policy in order to obtain the vehicle registration tags, but cancel the coverage after the tags are received. When the policy is cancelled, the insurer is required to notify the Motor Vehicle Division. On average, there will be about two weeks elapsed time between the termination of a policy and the notification of the Motor Vehicle Division. Once notified the Motor Vehicle Division sends a letter to the vehicle owner to let him know that the State is now aware that he has cancelled his insurance. If there is no response from the vehicle owner, this failure to carry insurance will be entered into a computerized database accessible by law enforcement officers. Then, if these officers have occasion to call for information on the vehicle, the lack of insurance will be one of the pieces of information they will be given. Obviously, an individual could drive around for a considerable period with no insurance. If, during this period, there is an accident, the victim or victims will have no assurance that they will be compensate for any damages caused by this uninsured individual.

The chief advantage of the "Disneyland" model is that it would provide a much stronger incentive to keep bad drivers off the roads. If insurers had to accept full liability for whoever they issued a license and registration to the problem of "underinsureds" would vanish. By definition, there would be no limit to the liability assumed by the insurer. The insurer would, in fact, be insuring that whatever damage was caused by one of its policy holders would be covered. Bad drivers would not have the option of buying a woefully inadequate policy. They would be forced to pay the full cost of their actuarial risk in order to obtain a driver's license and vehicle registration. The insurance company would see to this as a matter of business survival.

The chief advantage of the "Disneyland" model is also, in many people's view, its chief disadvantage. Many high risk drivers would not be able to purchase insurance. Either the price to cover the likely damages they would cause would be higher than they would be willing or able to pay, or they may be unable to find an insurer willing to sell them coverage at any price. This would effectively deny them the legal right to drive on the state's roads. Keeping these high risk drivers off the roads, then, could create some hardship for them by

greatly reducing their mobility.

As we can see, each of the above models has its advantages and disadvantages. Either could work because the responsibility is clearly assigned. The current mandatory auto insurance law fits into neither model. The idea that users of the roads should be responsible for the damages they may cause is not a bad one! However, the enforcement of the current mandatory auto insurance law has proven troublesome. The fine for failure to carry liability insurance is only $250 for a first offense. The amount of this fine is less than the typical six month insurance premium on most vehicles. Even then, the fine may be waived if the cited individual purchases insurance prior to his court appearance.[10] Many financially irresponsible drivers may choose to go without insurance when facing these cost trade-offs. So, even though the state nominally requires users to be insured, since the state is not held liable for allowing uninsured vehicles onto the roads the incentives to enforce the mandatory insurance law are weak. As a result, victims of high risk underinsured or uninsured drivers must suffer an estimated $100 million per year (or more) in uncompensated costs.[11]

Outline for Restructuring this Activity

Given the problem of a significant annual burden due to uncompensated costs that are being inflicted on victims of underinsured and uninsured drivers a coherent solution is needed. The contrasting "ballpark" and "Disneyland" models each offer a coherent solution. However, it is my opinion that the "Disneyland" model provides a solution that most people would find more satisfactory. While each model is likely to make the roads safer, the "ballpark" model does this by imposing more of the burden on the cautious drivers. The "Disneyland" model, in contrast, would make the roads safer by removing more of the high risk drivers.

Assuming that we'd like to explore the "Disneyland" model in more detail before deciding whether to implement it, let's take a look at how it might work. Conceivably, one might assert that the same entity that issues the licenses and registrations ought to supply the insurance. This would entail the State of Arizona getting into the insurance business. While plausible on paper, government insurance schemes have not fared well in practice. The Old Age, Survivers' and Disability Insurance (i.e., Social Security) program has had repeated financial problems. Government medical insurance (i.e., Medicare and Medicaid) has seen expenses soar beyond the government's planned outlays on a regular basis. Government insured student loans have an extraordinary non-payment percentage. So, if having the State run an auto insurance program is a bad means of consolidating the insurance and licensing/registration functions, the alternative of having the insurers issue the licenses and registrations merits examination.

Having insurers issue licenses and registrations amounts to a "privatization" of this activity. Nominally, a privatization law would state that vehicle registrations and drivers' licenses would be issued by those willing and able to assume full responsibility for any damage caused by the vehicle and its driver. Normally, we would expect that this would mean that insurance companies would issue the registrations and driver's licenses. Since it would be absolutely clear who was responsible for a particular vehicle being on the road, insurers would have a strong incentive to make sure that every vehicle and driver is adequately insured. Insurers would also have a strong incentive to make sure that uninsured vehicles and drivers did not use the roadways.

To clarify financial responsibility for potential damages done on the roadways, the privatization law would state that as long as a vehicle bore the license plate of an insurer, that insurer would be held liable for any damages caused by that vehicle. It is likely that insurers would only issue plates after investigating the driving record of who they are insuring and receiving an adequate premium from the insured individual. Insurers could not escape liability by later showing that the insured lied on his application to purchase the insurance. This may seem hard on the insurers, but consider the alternative. When an insurer can bail out of a policy, this means that the victims of the erstwhile insured party are apt to be left without any recourse for ameliorating the damages they have suffered. Potential victims have no reasonable means of investigating all potential high risk drivers prior to an accident. On the other hand, insurers do have a reasonable means of conducting such an investigation prior to issuing a policy. If an insurer is not satisfied that a prospective customer is truthful or a good risk, it can refuse to issue a policy. Under the proposed privatization scheme, suspect applicants will not be able to legally use the roads until they can find an insurer willing to issue them a policy.

Since issuing an auto insurance policy and issuing license plates would be simultaneous events, those without insurance would be easier to spot on the roads. They would be operating vehicles without plates. This would be a more obvious sign of lack of insurance than is currently the case. In fact, given the greater degree of responsibility placed on each insurer, it seems likely that steps to improve the "visibility" of license plates would be undertaken. For example the, much-tested but little deployed, "electronic license plate" would be a likely innovation under a privatized licensing system. Under this scenario, plateless vehicles would be even more conspicuous.

The dodge of buying insurance just to obtain a vehicle registration tag and then cancelling the insurance once the tags are received would become much more difficult. Since the insurer is responsible for damages done by vehicles bearing the insurer's plates, there is a very strong incentive to require a substantial insurance payment or deposit that will only be refunded when the plates are turned back to the issuer. While this return-for-refund process may be less convenient than cancelling one's insurance by phone, it should virtually eliminate the problem of uninsured vehicles resulting from cancelled policies. Given the many insurance sales locations and the interconnection of these offices via computer networks, obtaining or returning plates ought to be a lot more convenient than it is to deal with the Motor Vehicle Division on these issues in the current environment.

Each insurer would be free to establish its own criteria for issuing policies and license plates.

Individuals would be free to shop for the best registration/insurance deal they could find. Each insurer would be free to establish its own criteria for issuing policies and license plates. Some insurers may opt to cover only low risk drivers. Other insurers may opt to cover high risk drivers at correspondingly higher premiums. Insurers may wish to give written and/ or road tests to prospective customers. Insurers may wish to encourage or require some or all ve-

hicles they insure to be equipped with safety-enhancing devices (for example, an ignition that can only be activated after the driver passes an automated, on-board breathalizer test). Customers may choose to accept some limitations on their driving in exchange for reductions in premiums. Other may prefer to pay more in order to escape restrictions. In short, there is likely to be a wide variety of payment/license options available. Nevertheless, those who could not meet the minimum requirements of *any* insurer would not be issued vehicle plates. Insurers would have no incentive to assist individuals in "beating" the system. Vehicles without license plates would be easier for police to spot and remove from the roads.

Privatizing the issuance of licenses and registrations in this fashion would also do away with underinsured vehicles. Since the issuer of the vehicle plates would be responsible for whatever damage is caused by one of its policyholders, there would be no motive for selling low dollar coverage. The current policy of allowing "judgment proof" drivers (i.e., those who do not fear the financial consequences of the damage they may do because they are unable to pay) to buy insurance that may fall far short of compensating victims for any harm they suffer at the hands of these "judgment proof" drivers is irresponsible and, in many instances, inhumane.

Estimate of Potential Savings

The potential savings would occur in two areas. We have already estimated that the current system causes the victims of uninsured and underinsured drivers to be burdened by $100 million per year in uncompensated costs. The proposed reform would shift these costs off of the innocent victims of bad driving and back onto those who cause the accidents. In one sense, this is not so much an elimination of costs as a displacement of costs. Nevertheless, as the perpetrators of damage were forced to bear a larger share of the consequences of their actions we could expect some modifications in their behavior. Insurers, in order to make a profit and stay in business, would have to do a good job of matching premiums to risk. This would motivate them to take actions that would reduce risk. A price structure that accurately reflected risk would push drivers toward safer behavior. A refusal to insure the worst risks would take many of the really dangerous drivers off the roads entirely. So, over the long run, not only would the $100 million of uncompensated losses be shifted, it is also likely to be reduced in total as driving behavior improves and the worst risks are taken off the roads.

A price structure that accurately reflected risk would push drivers toward safer behavior.

The other source of potential savings would come from eliminating functions of the Arizona Department of Transportation. Currently, the Motor Vehicle Division of ADOT is budgeted for an annual expenditure of around $30 million.12 While the costs of specific activities are not published, I estimate that about half of this outlay is the result of vehicle registration activity. Of the remaining activities (issuing driver's licenses, recording vehicle titles, collecting highway user taxes, and manning the ports-of-entry) issuing driver's licenses is probably the most expensive. So, if we privatize the

registration and driver's license functions we could probably reduce public sector spending by about $20 million per year.

Some may argue that the $20 million per year saving of public expenditure will be offset by an increase of private sector spending as insurers undertake the effort to issue registrations and driver's licenses. This apparent offsetting expense, though, may be exaggerated. As it now stands, auto dealers must compile all the data necessary to register newly sold vehicles. This data is then forwarded to the Motor Vehicle Division for entry on the state's database. Selling insurance and issuing registrations on the spot might actually be easier than the current process. The perception that this might be the case inspired the Linda Brock dealership to volunteer to pilot test a program wherein the dealership would issue the registration.13 ADOT estimates that this "third party" registration could save up to $1 million a year if adopted statewide. One third of the savings are in postage alone.14 The law now permits the Director of the Motor Vehicle Division to authorize "third parties" to issue vehicle registrations.15 The potential for "one-stop-shopping" convenience under privatization would appear substantial. One could buy a car, get it registered, and insured all at one location. The insurers and auto dealers would have an incentive to make the process as expeditious as possible. In fact, competition among insurers and dealers would help promote efficiency and convenience.

Consider a typical transaction with the current Motor Vehicle Division. It's your lunch hour. You have chosen this opportunity to take care of some business down at the Motor Vehicle Division office. Maybe you need to renew a driver's license, register a vehicle, or obtain a title. Your first task is to find the local MVD office. They're not always conveniently located. They're certainly scarcer than any other related business location you might have need of. As your search for the MVD office drags on you pass numerous gasoline stations, a half-dozen auto parts stores, several auto insurance sales offices, and a few auto dealerships.

Finally, you locate the MVD branch office. You walk in and join the line of people waiting for service. Your advance to the head of the line is not hastened by the fact that a goodly percentage of MVD personnel have also chosen this time to take their lunch hour. When your turn finally arrives you are greeted by an employee whose occupation was ranked last in a survey of civility published by the *Wall Street Journal*. That is, on a scale of zero to ten (with zero being bad and ten being good), MVD employees have been rated 0.2. This is below ratings received for comparable customer contact employees like sales clerks (7.5), grocery checkout cashiers (7.0), gas station attendants (6.2), bank tellers (6.0), stadium ticket sellers (3.5), city bus drivers (1.6), and utility company employees (0.8).16

You think the service could be more convenient, expeditious, and courteous, but it isn't and won't be likely to get that way. The monopoly position of the state agency authorized to handle matters relating to the operation of vehicles on public roads pretty much assures that it won't. After all, it is not as if you could take your "business" elsewhere. Reducing the incidence of the above mentioned type of transactions would be another benefit of privatizing the vehicle registration and driver's license functions of the Motor Vehicle Division.

Possible Legal, Political, and Other Obstacles

Shifting the issuance of vehicle registrations and driver's licenses to the private sector would require legislation. Any prospective legislation must overcome the normal obstacles of the legis-

lative process. A bill privatizing registrations and driver's licenses would have to clear committees in both Houses of the Legislature, get a majority vote in each House, and be signed by the Governor. This is an arduous process that trips up many a bill.

This proposal will likely be resisted by the MVD bureaucracy. After all, if the Motor Vehicle Division is no longer needed to register motor vehicles some may well question whether it is needed at all. At the very least, MVD may be talking about a 50 percent cutback in its budget. Hundreds of people would see their public sector jobs eliminated. These prospective impacts will inspire those affected to object to the proposed reform.

We may also expect some initial opposition from the auto insurance industry. At the outset, the increased responsibility thrust upon the insurance industry will provoke uncertainty. Businesses generally do not like uncertainty. Uncertainty increases risk. New means of coping and making a profit would have to be learned. However, once the insurers understand that they will be compensated by their customers for the costs of issuing registrations and licenses they should be more receptive to the idea. The opportunity to play a more direct role in controlling the risk of the roadway environment should be perceived as a means of reducing underwriting losses over the long term. As the environment becomes safer, insurer's losses will fall (ultimately, premium rates would be expected to fall, as well, but not as rapidly as underwriting losses). This should improve profitability. Then, too, many of those currently evading the mandatory insurance law will become the reluctant customers of the insurance industry. This also should increase profitability.

The general public may be apprehensive about letting the private sector insurers decide who gets onto the roads. As it now stands, though, private sector businesses decide who can and can't obtain credit and at what price. Obtaining a loan to buy a house or a car must pass private sector scrutiny. We have learned to live with this system. We expect the decisions to be made on rational criteria. And they are. Reflection upon how the private sector has handled this vital segment of contemporary life combined with the greater convenience of the hours kept by insurers and the assurance that responsible drivers would not have to pay high premiums to cover damage done by uninsured or underinsured drivers should help to alleviate some of the general public's apprehension.

Of course, that segment of the population that is currently flouting the mandatory insurance law or exploiting it by underinsuring their vehicles would be expected to raise quite a fuss over this reform proposal. While we should not be persuaded by the objections of those who wish to continue passing the burdens of their own actions on to others, we can envision some means of addressing their legitimate concerns.

The cast most deserving of sympathy is that of the individual whose past driving behavior has taught him a lesson. It is unfortunate for such individuals that many more proclaim to have learned lessons that actually have. Consequently, individuals with bad driving records would undoubtedly have trouble obtaining insurance and permission to use the roads. I would expect insurers to establish methods of serving this market niche. One method would be to require the vehicle of such a person to be equipped with devices that enhance the safe operation of the vehicle. We already mentioned the possibility of a "breathalyzer-ignition" link. Other options could include vehicles that could only run during daylight hours (perhaps having a solar collector connection to the engine or transmission) or ve-

hicles whose maximum speed could not exceed a low setting (perhaps having "speed governors" placed on the engine). Insurers might see fit to require regular safety inspections of the vehicle as a condition of issuing a registration. Insurers might see fit to require regular driving tests for individuals whose driving behavior has been demonstrated to be more hazardous than normal.

It may then be feasible for some high risk, but repentant, drivers to work toward a full reinstatement of driving privileges by demonstrating meritorious performance under limited driving privileges. For others, though, the outlook will be less sanguine. There are some people who should not be behind the wheel of a car. Stopping them from driving not only helps to preserve the health and lives of others, but also may save the driving-deprived individual from killing himself. Incompetent drivers must find other means of meeting their transportation needs. Carpooling is one obvious option. Living or working closer to the places one needs to travel is another option. Riding the bus is another, albeit inconvenient, option. Society is not obliged to bear the risk of allowing persons who cannot cover the costs of any damage they are likely to cause to drive vehicles on the roadways.

It may be preferable to try this reform in a pilot project in one country prior to full scale statewide implementation. This would enable insurers to gain some experience with the process before having to rely on it for three million vehicles registered in Arizona. The selection of a specific county should be made jointly by the insurance industry and the Arizona Department of Transportation. This will enable ADOT to better anticipate any transitional difficulties and prevent them from taking on a crisis proportion.

Endnotes

1. *Uninsured Motorists* (All-Industry Research Advisory Council, 1200 Harger Road, Suite 310, Oak Brook, Il 60521, 1989), p. 3.

2. Estimate provided by Charles Ramsey, Administrative Service Officer, Mandatory Insurance Section, Motor Vehicle Division, Arizona Department of Transportation, June 10, 1994.

3. *Arizona Traffic Accident Summary for 1992* (Arizona Department of Transportation, Traffic Engineering Section, Traffic Records Branch, 206 S. 17th Ave., Room 064R, Phoenix, Az 85007), p. 22.

4. *Ibid.*, p. 5.

5. *Ibid.*

6. *Uninsured Motorists, op cit.*, p. 33 and *1993 Arizona Transportation Factbook* (Arizona Department of Transportation, Transportation Planning Division, 206 S. 17th Ave., Room 300B, Phoenix, Az 85007), p. 13.

7. *Arizona Traffic Accident Summary for 1992, op cit*, pp. 4 & 6; and *Arizona Traffic Accident Summary for 1986* (Arizona Department of Transportation, Traffic Engineering Section, Traffic Records Branch, 206 S. 17th Ave., Room 064R, Phoenix, Az 85007), p. 4.

8. In 1986 the average cost per accident was about $7,200 (*Arizona Traffic Accident Summary for 1986, op cit.*, pp. 4 & 5). In 1992 the average cost per accident was about $29,500 (*Arizona Traffic Summary for 1992, op cit.*, pp. 5 & 6). The ratio of these two figures (19,800/7,200 x $30 million = $80 million.

9. Using figures from Arizona Traffic Accident Summary for 1992, op cit., pp. 5 & 6: $1,776,900,000 in accident costs, divided by 89,862 accidents, multiplied by the 3 percent probability that any one vehicle would be in an accident in a given year, yields a figure of around $600.

10. Arizona Revised Statues Title 28, Section 1251

11. See footnote #8 and the paragraph of text following it.

12. Arizona Department of Transportation budget summary prepared in accordance with Arizona Revised Statues, Title 28, Section 101, p. 439

13. Mark j. Scarp, "Brock Auto Mall Tests License Plate Program," *Scottsdale Progress/Tribune* (October 15, 1993), p. A-1

14. Ibid

15. Arizona Revised Statutes, Title 28, Section 1471

16. Donald G. Smith, "Rating Occupations on a Civility Scale," *Wall Street Journal*(1986)

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Privatization and the Emergence of For-profit Prisons

Privatization and the Emergence of For-Profit Prisons

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Abstract

This paper demonstrates that the for-profit prison is almost exclusively a Southern phenomenon, formed and shaped by the unique social and especially economic characteristics of that region. Unionization rates and wages of correctional employees provide a statistically significant and theoretically sound basis for privatization in the southern states. The authors conclude that, when comparing the American South to the Northeast and Mid Atlantic, states with the lowest inmate increases have privatized while states with the largest increases have not privatized.

Introduction

The growth of the American criminal justice system, particularly its correctional component, has been truly phenomenal in the past 20 years. In 1992, 743,984 inmates were held in state correctional institutions, and another 12,688 adjudicated state inmates were held in private prisons. With the addition of the approximately 336,000 inmates held in jails and detention facilities (*Vital Statistics in Corrections*, 1991, p. 66), and inmates in Federal institutions, the number of incarcerated individuals in the United States is well over one million.

As prison populations grow, so does the emergence of the for-profit prison. This paper is about for-profit prisons and seeks to explain the socioeconomic reasons why contemporary for-profit prisons are located, for the most part, in the American South as opposed to the Northeast and Mid-Atlantic regions.

Private Sector Involvement

From Lilly and Knepper's perspective (1992), the private prison sector consists of three parts: (1) private prison financing and construction; (2) private prison ownership and/or management; and (3) corporations under contract with governmental units and private management firms to provide goods and services, such as lavatory units. They conclude that, "The ownership and operation of secure facilities for adults constitute, in actual numbers alone, the *least* significant area of private sector involvement in corrections" (p.176). When considering sheer numbers and their corollary, the expenditure of funds, this statement is probably accurate. The totality of the corrections commercial complex greatly transcends the singular effort of private sector involvement in the management and ownership of prisons. However, when one considers the growth pattern of private state facilities in relation to state inmate growth, private sector involvement no longer seems "least significant." The authors estimate from 1991 to 1992 total public sector state inmates grew by 5.4% while those in the private sector grew by nearly 41%. In other words, state private inmate populations outpaced public sector state populations by over 750%. In a recent business article for The New York Times, Ramirez (1994) proclaimed that, "Despite a checkered past the future is looking brighter for the private prison industry" (p. 5).

The growth and proliferation of a privatization ideal in the corrections market is embodied in the philosophy, management style, and budgetary practices of the for-profit prison. The for-profit prison is unrestrained by competitive bids, union contracts, direct government oversight, and the countless regulations unrelated to inmates to which government units must adhere. The private for-profit prison represents the quintessential ideal of the corrections commercial complex. It can tap into, acquire, and develop a market at lightning speed, while the ponderous state apparatus crawls along at a snail's pace. Philosophically, the private prison's *raison d'etre* corresponds to the contemporary popular punitive concept of incarceration. The authors agree with

McShane and Williams (1989) as well as Lilly and Knepper (1992,1993) when they suggest that private for-profit prison interests have actually contributed to a retributive warehousing approach to correction.

As of December 31, 1992, over 80% of all privatized state inmates were held in four southern states: Kentucky, Louisiana, Tennessee and Texas (Table 1). The corporate headquarters of the three largest corrections corporations are located in the South: Corrections Corporations of America (CCA), Nashville, Tennessee; United States Corrections Corporation (USCC), Louisville, Kentucky; and Wachenhut Corrections Corporation (WCC), Coral Gables, Florida. Of the 21 corrections corporations listed in Thomas and Foard's directory (1992), 13 (62%) are located in the South and most of the others are located in far western states; those in the North are nonprofit corporations, such as Volunteers of America.

Southern Industrial Growth and Northern Decline--Their Link to Prison Privatization

The pattern of southern industrial growth and northeastern decline is well documented in the literature of the 1970s and 1980s We believe that the same economic forces which contributed to the "Third Wave of Corporate Migration" are also shaping the formation of for-profit prisons. Prison privatization is, in addition, facilitated by the conservative crime control philosophy and practice of the southern region. Labor intensive firms, of which private prisons are an example, will view areas of the country where unions are strong as the least desirable location for investment.

All of the southern states in our analysis (Tennessee, Texas, Louisiana) except one (Kentucky) have some form of "right to work law" in place; in contrast, no state in the Northeast or Mid-Atlantic regions has such laws. Right to work laws are the product of a long standing alliance between political and business elites (Ichniowski & Zax, 1991). Miller and Canak (1988) document, in their quantitative analysis, the significance of opposition to unions in the American South. Business also lobbied against public sector unions by advocating legal limits on collective bargaining rights of civil servants and stiffer laws against public employees' strikes. In Miller and Canak's words, "the statistical evidence indicates rather persuasively that business influenced policy makers against collective bargaining in the public sector" (p. 275).

Virtually all prisons, whether public or private, locate in rural, economically depressed regions. Consequently, private prisons must rely on the reserve of rural labor (Wenger and Bonomo, 1993). Marginality is a key feature of the low wage labor process and is readily utilized by capital. In developed societies capital expands principally within the service sector, of which prisons are a component. All research indicates that service workers on average receive less pay and benefits and have less job security than industrial workers. Workers who move into service jobs from some other sector are much more likely to be marginalized. Based on the authors' interviews with corporate administrators in both CCA and USCC, wages in private prisons are lower than for comparable positions in state facilities, and wages in Southern facilities, as noted in the paper data, are considerably lower than those of Northeastern states.

Privatization and Geographic Region: Method of Analysis

As noted in the above, four southern states (Kentucky, Louisiana, Tennessee, and Texas) account for 80.6% of all privatized state inmates. These states were compared to seven northeastern states (Connecticut, Delaware, Maryland, New Jersey, New York, Pennsylvania, Vermont) and the District of Columbia which comprise the member states of the Mid-Atlantic States Correctional Association. The

Table 1:
Percentage of State Inmates Privatized by Correctional Employees Unionized or in Employee Associations (1992)

State	% Private Inmates	Private	Public	TOTAL	% Private	% State Corr Employee Union
KY	8.6	1,095	8,531	9,626	11.4	0
LA	17.6	2,262	14,576	16,838	13.4	10[1]
TN	11.3	1,438	9,677	11,115	12.9	55[2]
TX	42.6	5,436	51,214	56,650	9.5	0

[1] Includes staff in both adult and juvenile facilities, represented by American Federation of State, County and Municipal Employees (AFSCME) [American Federation of Labor (AFL) - Congress of Industrial Organization(CIO)]

[2] Career employees are represented by the Tennessee State Employees Association and only the non-supervised employees at Brushy Mt. are represented by AFSCME (AFL-CIO).

northeastern states have no privatized state inmates in secure facilities. The central tenets in Rusche and Kirchheimer's thesis (1939) regarding the significance of economic and fiscal variables are analyzed with data derived from the American Correctional Association's (ACA) publications *Vital Statistics* (1991) and the ACA's *Directory of Adult Facilities* (1992,1993) as well as the *Statistical Abstract of the United States* (1993). The most consistent, comparable data are available for states rather than counties and of course the Federal Bureau of Prisons system does not distinguish among regions.

If in fact these regions are distinct, significant statistical differences should manifest themselves with respect to some or all of the following social, economic, and fiscal variables: (1) unionization rates of correctional employees, (2) starting salaries of correctional officers, (3) percentage increase of state inmate populations, (4) percent change per capita debt, (5) percent increase in state revenues, and (6) percent increase in operating budget (Table 2). The two regions, Northeastern and Southern, are the explanatory X variables which are compared by an analysis of variance. The hypothesis is that there is no significant statistical difference (p=.05) between the regions in relationship to the five criterion-dependent variables.

Presentation of Data

(1) *Unionization rates.* Table 2, column 1, compares unionization rates between correctional employees in each region for 1991. There is a significant statistical difference between regions in correctional employees' unionization rates.

(2) *Correctional officers' starting salaries.* Column two examines the starting salaries of correctional officers as of December 31, 1990. There is a significant statistical difference between regions in correctional officers' starting salary.

(3) *Increase in state inmate population.* Column three presents growth patterns in inmate populations over a ten year period, 1983-1992. Mean imprisonment rates have grown at a much faster pace in the Mid-Atlantic region than the South: 99.3% in the former and 40.8% in the latter. These differences cannot be explained by a corresponding growth in private inmate populations in the South since the percentage of private inmates within these states ranges only between 9.5% in Texas and 13.45% in Louisiana. In other words, the percentage increase in the private sector is too low to reduce the growth rate in the South's public sector prisons (See Table 1). There is a significant statistical difference between regions in increases in state inmate populations.

Table 2:
Relationship Between Regions and Dependent Variables

Mid-Atlantic States (MAS) X_1 / South States (SS) X_2	% Adult Corr. Employees Unionized 1991 Y_1	Starting Salary C.O. 12/31/90 Y_2	% Increase State Inmate Population 1983-1992 Y_3	Per Capita Debt 1983-1990 % Change Y_4	% Increase State Revenue 1983-1990 Y_5	Operating Budget % Increase 1983-1992 Y_6
CT	90%	$22,958	113.6%	40.7%	43.8%	310.8%
DC	72%	$22,055 [1]	138.3%	—	—	146.7%
DE	85%	$17,702	83.8%	17.7%	57.0%	88.0%
MD	66%	$20,772	65.0%	-43.8%	25.0%	185.6%
NJ	90%	$26,045	121.0%	2.4%	35.7%	303.0%
NY	91%	$21,338	102.0%	-15.7%	24.5%	168.1%
PA	80%	$17,734	124.0%	-48.7%	19.0%	265.4%
VT	85%	$16,661	46.4%	11.6%	46.7%	115.3%
MAS MEAN =	82.4%	$20,658	99.3%	-5.1%	36.0%	198.0%
KT	0%	$13,668	92.3%	-43.1%	47.5%	214.1%
LA	10% [2]	$13,776	23.3%	14.2%	11.0%	88.9%
TN	55%	$13,560	8.3%	-66.5%	23.4%	132.4%
TX	0%	$15,576	39.2%	-76.9%	11.0%	417.8%
SS MEAN =	16.25% [3]	$14,145	40.8%	-42.83%	23.2%	215.8%
SIG. DIFF. BETWEEN MID-ATLANTIC AND SOUTH ANOVA p=	.0001	.0028	.0166	.1248	.2109	.7894

[1] Information obtained from contact with Department of Corrections, Personnel Division.

[2] Include staff in both adult and juvenile facilities, Department of Corrections, represented by AFSCME.

[3] The 16.25% is inflated because of qualifications.

(4) *Per capita state debt reduction.* Column four examinos trends in per capita state debt reduction within both regions. Debt reduction from 1983-1990 is greater in southern states than in the Mid-Atlantic corrections region. Even though there is a difference of over 37% between these regions, we fail to reject the hypothesis. There is not a significant statistical difference between regions in per capita state debt reductions.

(5) *Increase is state revenues.* Column five compares the increase in state revenues from 1983-1990. Revenue differences between the two regions are similar. The Mid-Atlantic region increased its revenues on average 36% while the South increased its amount on average by 23.2%. Given this similarity, it is to be expected that we fail to reject the hypothesis. There is not a significant statistical difference between regions in their respective increase in state revenues.

(6) *Operating budget for department of corrections.* Column six examines the department of corrections operating budget increases from 1983-1992. The two regions are very similar; operating budgets on average increased 198% in the Mid-Atlantic region and 215.8% in the South. As expected, we fail to reject the null hypothesis; there is not a significant statistical difference between regions in department of corrections operating budget increases.

Discussion of Data

A researcher would expect states with a larger *per capita state debt* relative to other states to be inclined to privatize since private prison corporations maintain that they can provide a comparable or superior service at a lower cost, thus reducing state expenditures. However, the authors' cost benefit analysis indicates numerous hidden costs in privatization (Haririan and Bonomo,1994). The southern states have reduced their debt by over 800% in comparison to northeastern states (-42.83% in the South versus -5.1% in the Northeast), whereas one would expect the reverse trend. The degree of state debt does not appear to impact the decision to privatize, although a non-statistically significant trend is apparent in which states with the greatest amount of debt reduction have chosen to privatize and states with continuing higher amounts of per capita debt have not privatized.

In a similar vein, *increase in state revenue* between the two regions demonstrates no significant statistical difference. State revenues increased only 12.8% more in the Mid-Atlantic states (36.0% versus 23.2% in the southern region). If this gap were larger, one could argue that a lack of revenues contributed to privatization.

When *department of corrections' operating budgets* are compared, virtually no statistical difference is demonstrated. One cannot argue that states which have privatized have significantly larger corrections' budget increases. Logic seems to dictate that a motive behind private prison formation is the more rapid growth in corrections' budgets, hence the need to turn to a more cost effective solution. The authors indicate that this is not the case. Likewise, debt reduction and revenue increases cannot explain the motives behind privatization.

A significant statistical relationship is observed when examining the *increase in state inmate populations*. A researcher would expect those states where inmate populations have increased the most to be more inclined to privatize. The authors indicate the reverse trend. The Northeast, where incarceration rates have grown over two times faster than the South, 99.3% versus 40.8%, has not privatized; while the South, with much lower growth rates, has chosen to privatize. This fact is startling since private corrections corporations maintain that their speed of coming on line with less cost is a major advantage over public facilities managing rising inmate populations. It can be said with reasonable certainty of these regions, that states with the lowest inmate increases have privatized while states with the largest increases have not privatized.

Summary and Conclusions

It is appropriate to examine the structural conditions in the American South which predispose the formation of private prisons. Larger labor and capital relations provide significant theoretical insights to private prison formation in the South. The authors conclude that *unionization rates* and *correctional officers' starting salary* explain why private prisons have chosen to locate where they have. Within the southern region, wages are lower and greater corporate top-down control is exercised over employees. Private prisons would find it difficult to offer a competitive salary in the northeast region. Although actual wage rates are difficult to obtain for the private sector, it is generally recognized that starting correctional officers' salary as well as the salary for any comparable year of service in a particular state is lower in the private than in the public sector. Democratically oriented unions, which participate in work place issues under the umbrella of collective bargaining and the right to strike, are not compatible with southern management styles. Oligarchical management practices tie easily into low unionization rates and larger social policy issues, such as "right to work" laws, which exist in most of these southern states. Furthermore, this study shows that, when comparing the American South to the Northeast and Mid Atlantic, states with the lowest inmate increases have privatized while states with the largest increases have not privatized.

Endnotes

[1] I am dedicating this article to the memory of my dear friend and collaborator, Thomas Bonomo.

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Buyer Beware: State Control over Privatization

Buyer Beware
State Controls over Privatization

By Dr. Charles J. Russo and Dr. J. John Harris, III

THE RECENT infatuation with the privatization of educational services has supporters who seem to present it as a panacea for all that ails public education. Yet, two recent developments have cast dramatically differing perspectives on this controversial practice. In *School District of Wilkinsburg v. Wilkinsburg Education Association* (1995) the Supreme Court of Pennsylvania affirmed the denial of a request by the teachers' union to enjoin the local board from entering into a contract with Alternative Public Schools Incorporated (APSI) from Nashville, TN, a private firm, for the operation and management of one of its elementary schools. The teachers were concerned because if the board followed through on the contract, then APSI would be free to hire its own faculty and staff at the school, a move that could cost 30 teachers their jobs. The ruling in *Wilkinsburg* cleared the way for the board to enter into the contract with APSI. Conversely, shortly after the decision in *Wilkinsburg*, Educational Alternatives Incorporated (EAI), one of the leading firms in the move toward privatization, lost its contracts to operate schools in Baltimore (Walsh, 1995) and Hartford (Walsh, 1996).

In light of these very different results, this article examines state oversight, or rather, the lack thereof, and legal controls over the new breed of educational organizations such as EAI and the Edison Project, perhaps the two best known private contractors for instructional services. The article begins by briefly examining background issues on privatization along with reviewing arguments regarding its adoption. The second section notes the virtual lack of governmental controls and regulation of privatization. The final portion raises lingering legal questions that remain in the apparently head-long rush to privatization.

Overview of Privatization

Privatization, coined after the concept introduced by Peter Drucker in 1968 (Bast & Walberg, 1994), refers to the practice whereby public school districts enter into contracts with private, for-profit organizations to deliver a variety of educational goods and services. The range of contracts stretches from managing entire school systems, to providing instructional media such as Channel One, to contracting out student transportation, food services, maintenance and custodial services and photo copiers.

Advocates of privatization offer at least three related arguments to bolster their position. Perhaps the major point raised in support of privatization is that it brings the efficiency of the marketplace to public education. A closely related view is that since public schools have failed to keep pace with international standards, they must respond to the competitive demands of the marketplace. A third set of arguments maintains that privatized schools would be more accountable, would be cost effective and would promote innovation as educators are forced to become more entrepreneurial.

Opponents respond that privatization in the form of for-profit schools and deregulation is influenced by social Darwinism and the survival-of-the-fittest concept and may simply allow for the rich to get richer and the poor to get poorer. Such a result has been evident in other realms of public service including education and health care as privatization has, ac-

cording to Brown and Contreras (1991), done little more than "create economically, socially and racially stratified communities, and there is no evidence that this stratification is the direct result of competition between communities to offer superior public services" (p. 145). The legitimate fear of critics is that to offer privatization without creating an accompanying mechanism to regulate its spread or considering its impact on communities most in need risks further stratification of schools-and society.

The move toward privatization is compounded by the fact that although many use the term almost interchangeably with charter school, there is no universal agreement on its meaning. An example of the differences between these two types of schools can be seen by comparing legislation in Minnesota and California. Charter schools in Minnesota, identified as outcome-based schools (Minnesota Statutes, § 120.064, 1994), are legally autonomous, while in California (California Education Code, §§ 47600-47615, 1994), the board negotiates not only a charter but also who may hire or dismiss personnel.

Howard Fuller, the superintendent of Milwaukee Public Schools, offers another interesting perspective. Fuller maintains that Wisconsin's statute is not a charter school law since staff members in these schools would be employed by the local board rather than a private contractor; as such, they would be subject to existing collective bargaining agreements and state laws.

Privatization has received mixed support at best. That is, in response to a question about whether private, for-profit corporations should be permitted to enter into contracts to operate public schools, a national poll of attitudes toward the schools revealed that 45 percent of respondents favored the idea, 47 percent opposed it, and 8 percent did not know what to think (Elam, Roser, & Gallup, 1994). This poll also indicates that 54 percent of respondents are of the opinion that charter schools are a positive development, while 39 percent disagree and seven percent did not know what to think (pp. 53-54).

The competition between private contractors has continued to intensify. In other words, while EAI's efforts at privatization remain underway in Dade County, FL, it has been ousted in Baltimore and Hartford, and its proposals have been rejected by school systems in Arkansas, Florida, Minnesota, New Jersey, and New York.

Further, the Edison Project has gained contracts in Kansas and Massachusetts (Schmidt, 1994; Walsh, 1994), and local firms are negotiating agreements in Nashville, TN, and Osceola County, FL (Schmidt, 1994). Even so, as these developments gather momentum, plans for legal oversight have not kept pace.

State Regulation Of Privatization

The related concept of autonomous publicly-supported charter schools, which have been adopted by 19 states with 10 more states likely to do the same later this year (Toch, 1996), has been accompanied by appropriate oversights. The same is not true about privatization. In fact, with the exception of guidelines created by the Minnesota Department of Education (Randall, 1992), these agreements are apparently a matter of a private contract between entrepreneurs and school systems.

Clearly, public schools have had long-standing business relationships with private vendors for such "hard" goods as books and supplies that are closely monitored by state statutes (Kentucky Revised Statutes, § 45A.33 et seq., 1992). This kind of business relationship is a mixed blessing. On the one hand, schools are protected if the cost of an item increases during the life of a contract as the supplier is bound to provide the good(s) at the agreed upon price. Conversely, if a price declines during the term of a contract, the schools are bound to pay the higher price.

The current wave of privatization on instructional services began in 1990 when EAI entered into a contract with Dade County, FL, the fourth largest school system in the nation (David, 1992). The relationships being created by firms such as EAI differ from the roles of suppliers of hard goods in two significant ways. First, they are seeking to provide the "soft" professional service of instruction.

Second, unlike laws regulating competitive bidding and quality control, there are virtually no state controls, explicit or implicit, to oversee the critical process of assuring that the delivery of educational services will meet the needs of the students being served. Moreover, one of EAI's strongest selling points is its stated concern with saving school systems money. Yet, as witnessed by its difficulties in Baltimore it is not clear how EAI can accomplish this goal if it is locked into a pre-existing contract for hard goods or soft services should some external factor change the cost of doing business.

At the same time, unlike the non-public schools, which his-

torically have been largely exempt from the same degree of state oversight as public schools, it is not clear whether private contractors will enjoy the same degree of freedom. Thus, although private contractors are not likely to be operating under recognized statutory exceptions from compulsory attendance, as public schools they will be acting "under color of state law." As such, they will fall under the full regulatory umbrella of federal laws and regulations.

Along with federal law, privateers are likely to be bound by a wide array of state laws ranging from procurement codes, to teacher certification, to class size, to the length of the school year. Moreover, not the least of the areas where potential conflict looms is labor relations as both the American Federation of Teachers and National Education Association are wary of privatization efforts (Schmidt, 1994). The effect of potential labor strife in California, Minnesota or Maryland (Diegmueller, 1992), all of which have moved toward privatization while explicitly recognizing the right of school employees to organize and bargain collectively, could be telling.

The growing tension between management and labor in the face of privatization can give rise to a whole new set of legal problems. Just as *Wilkinsburg* illustrated how tempers can flare between a board and its teachers, a recent lawsuit in Minnesota (*Independent School District No. 88, New Ulm, Minnesota v. School Service Employees Union Local 284*, 1993), the home of EAI, illustrates another type of dilemma that can present itself in a move toward privatization.

At issue in *New Ulm* was the school board's decision to contract out its food services operation. The Supreme Court of Minnesota affirmed that although the collective bargaining agreement between the parties recognized contracting out as an inherently managerial right, the board was required to submit to binding arbitration over the impact of its action. The court was concerned over the rights of the school personnel who would be affected during the remainder of the contract period. The court concluded that arbitration was especially appropriate because the board's actions effectively eliminated the entire bargaining unit while the contract remained in effect. Consequently, where privatization seeks to suspend a bargaining agreement or leads to labor strife upon the expiration of a contract, one can only wonder what such a disruption would mean in the lives of the students whose rights virtually have been ignored in this discussion.

Other potential trouble areas loom. For example, to the extent that contracts between private vendors and school districts are public business, they are subject to state disclosure laws. Where an EAI or Edison Project enters into a contract to operate a school district, it is unclear whether all of a state's bidding laws will apply or whether contracts and other legal agreements will be subject to disclosure provisions, sunshine laws and freedom of information acts.

Lingering Legal Questions

The rush towards privatization has been unaccompanied by adequate legal analysis. Consequently, as districts head into previously uncharted legal waters, the following issues are raised in order to help school business officials and other educational leaders gain a clearer understanding of whether private, for-profit organizations can deliver on their promise to reverse the declining fortunes of the public schools.

First, public education in this country cannot jump at simplistic solutions to the multifaceted problems they face. By merely tinkering with the system, effective long-term benefit is unlikely to occur. While the need to improve the delivery of educational services is evident, the dramatic shift in resources that privatization suggests should be well-reasoned and supported by research rather than changing simply for the sake of change.

Accordingly, privatization must be accompanied by appropriate legislative and administrative enactments as a means of providing legal guidance.

Insofar as public education is a function of the State, law makers would be foolish to allow local school systems to delegate their responsibility without first considering what is taking place and determining responsibility in advance. Legal concerns in this regard include day to day matters such as contracts; compliance with state and federal mandates; school safety in terms of student supervision and hiring of personnel; and the constitutional rights of students, teachers, parents and taxpayers.

A second, and closely related issue is that just as the performance of school personnel is subject to legal scrutiny, an appropriate measure must be developed to effectively evaluate moves toward privatization. Unfortunately, few, if any, of the privatization contracts seem to include systematic, reliable provisions for its evaluation.

Thus, as reform-minded states such as Kentucky have enacted elaborate statutory and regulatory mechanisms to ensure accountability, privatized schools would be wise to follow their lead. For example, these schools can help to ensure that they will meet appropriate levels of performance either by including explicit statements that they will comply with state requirements or by voluntarily holding themselves to higher standards of student achievement.

Third, those most directly associated with public educa-

tion—students, teachers, parents and taxpayers—must be empowered to realize that they are the true owners of the system. These stakeholders must be aware of what is being purchased in their names. As such, any move toward privatization should include meaningful input from its key stakeholders. In an era of entitlement, it is at best unwise to not seek as broad a base as possible for ensuring educational improvement.

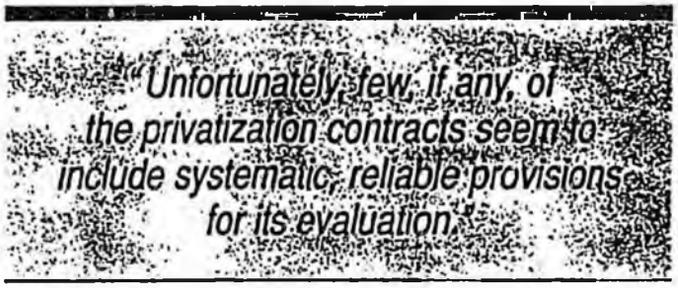
For example, where privatized schools attempt to eliminate programs such as extracurricular academic activities or interscholastic sports, their contracts should include mechanisms such as public hearings to afford stakeholders with the opportunity to voice their input. Hearings may not guarantee that all participants will accept, or even be happy with, a decision, but at least they can be satisfied in knowing that their concerns will have been considered.

Fourth, the impact of privatization must be looked at in terms of cost-benefit analysis. In other words, rhetoric aside, there are little, if any, data on the financial costs associated with a move to privatization or on how such a change might disrupt the orderly operation of school districts.

Consequently, even if private corporations are able to conserve some financial resources, in light of the monetary difficulties that EAI experienced in Hartford, it is unclear how savings can, or will, be accomplished.

Moreover, should privateers be able to save a few dollars, it does not appear that any serious thought has been given to how non-financial costs such as labor strife and lost school days to students are factored into the equation. The hidden costs associated with squandered or misused human capital may wind up costing the schools, and the country, much more in the long run as students are shortchanged in their educational experiences.

In sum, despite ample evidence suggesting the need for caution, proponents of privatization seem to present it as the cure-all for public education. However, before acting in haste, school business officials and other educational leaders should keep the old adage in mind—if something is too good to be true, then it probably is. Let the buyers beware!□



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Buyer Beware
State Controls over Privatization

By Dr. Charles J. Russo and Dr. J. John Harris, III

THE RECENT infatuation with the privatization of educational services has supporters who seem to present it as a panacea for all that ails public education. Yet, two recent developments have cast dramatically differing perspectives on this controversial practice. In *School District of Wilkinsburg v. Wilkinsburg Education Association* (1995) the Supreme Court of Pennsylvania affirmed the denial of a request by the teachers' union to enjoin the local board from entering into a contract with Alternative Public Schools Incorporated (APSI) from Nashville, TN, a private firm, for the operation and management of one of its elementary schools. The teachers were concerned because if the board followed through on the contract, then APSI would be free to hire its own faculty and staff at the school, a move that could cost 30 teachers their jobs. The ruling in *Wilkinsburg* cleared the way for the board to enter into the contract with APSI. Conversely, shortly after the decision in *Wilkinsburg*, Educational Alternatives Incorporated (EAI), one of the leading firms in the move toward privatization, lost its contracts to operate schools in Baltimore (Walsh, 1995) and Hartford (Walsh, 1996).

In light of these very different results, this article examines state oversight, or rather, the lack thereof, and legal controls over the new breed of educational organizations such as EAI and the Edison Project, perhaps the two best known private contractors for instructional services. The article begins by briefly examining background issues on privatization along with reviewing arguments regarding its adoption. The second section notes the virtual lack of governmental controls and regulation of privatization. The final portion raises lingering legal questions that remain in the apparently head-long rush to privatization.

Overview of Privatization

Privatization, coined after the concept introduced by Peter Drucker in 1968 (Bast & Walberg, 1994), refers to the practice whereby public school districts enter into contracts with private, for-profit organizations to deliver a variety of educational goods and services. The range of contracts stretches from managing entire school systems, to providing instructional media such as Channel One, to contracting out student transportation, food services, maintenance and custodial services and photo copiers.

Advocates of privatization offer at least three related arguments to bolster their position. Perhaps the major point raised in support of privatization is that it brings the efficiency of the marketplace to public education. A closely related view is that since public schools have failed to keep pace with international standards, they must respond to the competitive demands of the marketplace. A third set of arguments maintains that privatized schools would be more accountable, would be cost effective and would promote innovation as educators are forced to become more entrepreneurial.

Opponents respond that privatization in the form of for-profit schools and deregulation is influenced by social Darwinism and the survival-of-the-fittest concept and may simply allow for the rich to get richer and the poor to get poorer. Such a result has been evident in other realms of public service including education and health care as privatization has, ac-

tion—students, teachers, parents and taxpayers—must be empowered to realize that they are the true owners of the system. These stakeholders must be aware of what is being purchased in their names. As such, any move toward privatization should include meaningful input from its key stakeholders. In an era of entitlement, it is at best unwise to not seek as broad a base as possible for ensuring educational improvement.

For example, where privatized schools attempt to eliminate programs such as extracurricular academic activities or interscholastic sports, their contracts should include mechanisms such as public hearings to afford stakeholders with the opportunity to voice their input. Hearings may not guarantee that all participants will accept, or even be happy with, a decision, but at least they can be satisfied in knowing that their concerns will have been considered.

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A State Action Doctrine For An Age of Privatization

A STATE ACTION DOCTRINE FOR AN AGE OF PRIVATIZATION

Daphne Barak-Erez†

CONTENTS

† Lecturer, Faculty of Law, Tel-Aviv University. LL.B., LL.M., J.S.D., Tel-Aviv University. The article was written during the time I spent as a Visiting Researcher at Harvard Law School (1993-94). I want to thank especially Prof. Laurence Tribe for his helpful comments.

State (in the broad sense of the notion, either at the state or the federal level) is responsible for the infringement.[8]

However, the Supreme Court has acknowledged that there are circumstances in which a seemingly "private" action should be considered a State Action. When the State is deeply involved in a private activity, this activity is perceived as being (substantively) a state action, despite its private appearance. It is this application of the doctrine that is of interest in the context of privatized enterprises and services. Privatization usually stands for substitution of public services by private actors - resulting in the government being only "involved" in them (usually by operating the regulatory process).[9] And the question is, whether privatized services should be considered as completely private, or rather, also as public to a certain degree, and therefore as state actions (at least, in some circumstances).

II. Private Actions as State Actions According to Current Doctrine

The Supreme Court has accepted the view that, in special circumstances, private actions should be viewed as state actions. However, it has applied this view very narrowly, considering most actions as private despite clear traces of government involvement. I will first review this approach, and then evaluate it. Considering the purpose of the discussion, it will not be a complete review of the state action doctrine. It is aimed only at the possible application of the doctrine to private enterprises facing state action claims.[10]

8. This statement of the law is subject, of course, to changes originating from state constitutional law. *See* PruneYard Shopping Ctr. v. Rubins, 447 U.S. 74 (1980); *see also* Jennifer Friesen, *Should California's Constitutional Guarantees of Individual Rights Apply Against Private Actors?*, 17 HASTINGS CONST. L.Q. 111 (1989).

9. For the interchangeability of public-ownership and regulation, see STEPHEN BREYER, REGULATION AND ITS REFORM 181-83 (1982).

10. The state action doctrine has long been criticized for its lack of clarity and indefinitive scope. For broader discussions of the doctrine, see Harold W. Horowitz, *The Misleading Search for "State Action" Under the Fourteenth Amendment*, 30 S. CAL. L. REV. 208 (1957); Charles L. Black, Jr., *The Supreme Court 1966 Term - Foreword: "State" Action, Equal Protection, and California's Proposition 14*, 81 HARV. L. REV. 69 (1967); Ira Nerken, *A New Deal for the Protection of Fourteenth Amendment Rights: Challenging the Doctrinal Bases of the Civil Rights Cases and State Action Theory*, 12 HARV. C.R.-C.L. L. REV. 297 (1977); Erwin Chemerinsky, *Rethinking State Action*, 80 NW. U. L. REV. 603 (1985); LAURENCE H. TRIBE, REFOCUSING THE "STATE ACTION" INQUIRY: SEPARATING STATE ACTS FROM STATE ACTORS IN CONSTITUTIONAL CHOICES (1985); *see also* Barbara Rook Snyder, *Private Motivation, State Action and the Allocation of Responsibility for Fourteenth Amendment Violations*, 75 CORNELL L. REV. 1053 (1990), and the list of articles compiled there in note. For a general survey of the current doctrine, see LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 1688-1720 (chapter 18) (2d ed. 1988).

A. *Easy Cases of State Action*

1. *Coercion and Authorization*

There are some obvious cases of state action, i.e., when private activity is coerced by law or specifically authorized by an official exercising statutory authority. In these examples, the private action derives its validity from a real state action, and therefore is substantively a state action. This form of state action is exemplified by the decision in *Public Utilities Commission v. Pollak*.[11] In this case, the proceedings followed a decision of a street railway company operating in the District of Columbia to amplify radio programs in its streetcars and buses, allegedly depriving passengers of liberty without due process of law.[12] The Court was willing to discuss this state action complaint because the relevant state authority - the Public Utilities Commission of the District of Columbia - investigated the decision of the company and approved it.[13] From the Court's perspective, it was important that the official approval was explicit and addressed the current complaint.[14] In *Jackson v. Metropolitan Edison Co.*,[15] the Court did not deem sufficient an implicit authorization.[16] This case addressed a consumer's complaint that her electric services were terminated without affording for a hearing, and therefore allegedly without due process of law.[17] The company's right to terminate sevices for nonpayment appeared in its general tariff filed with the Public Utility Commission, and was never disapproved.[18] However, the implicit authorization was not considered a sound basis for a state action claim.[19]

However, the obvious case of a specific authorization is not the right prototype for the current discussion. Privatization initiatives are

11. 343 U.S. 451 (1952).

12. *Id.* at 456-57.

13. *Id.* at 462-63.

14. According to the Court: "We rely particularly upon the fact that that agency, pursuant to protests against the radio program, ordered an investigation of it and, after formal public hearings, ordered its investigation dismissed on the ground that the public safety, comfort and convenience were not impaired thereby." *Id.* at 462.

15. 419 U.S. 345 (1974).

16. *Id.* at 354.

17. *Id.* at 347-48.

18. *Id.* at 355.

19. *Id.* at 354-57.

company] operates a public utility on the streets of the District of Columbia."[32]

The significant curtailment of the public function theory started in the seventies, when Justice Renquist ruled that it is limited to activities traditionally and exclusively identified with the state,[33] a reservation first introduced in *Jackson*.[34] As mentioned before, the case addressed electricity services, and the plaintiff contended that their supply should be regarded as fulfilment of a public function.[35] The contention was flatly rejected by Justice Renquist, who wrote for the majority. In his view, a state action may be found only when the function operated is one that was "traditionally the exclusive prerogative of the state,"[36] or "traditionally associated with sovereignty."[37] This narrowing theory prevailed in later cases, although its basis was never fully explained. It allowed a differentiation between the company-owned town and modern activities like electricity services, but the appropriateness of this differentiation was far from self-evident.

The *Flagg Bros.* case was the next to raise the public function issue.[38] Due to an unpaid debt to a warehouse, the plaintiff's property stored there was about to be sold in accordance with a state law authorizing satisfaction of a lien without prior recourse to the courts.[39] The plaintiff argued that her due process rights were infringed, the creditor being in these circumstances a state actor - acting in the public sphere of dispute resolution.[40] Justice Rehnquist, who delivered the opinion of the court, dismissed the public function argument once again. He explained that "the settlement of disputes between debtors and creditors is not traditionally an exclusive public function."[41] Later in

32. *Id.*

33. Another line of narrowing interpretation of *Marsh* discussed in its First Amendment context. The application of the precedent to speech in shopping centers, in Food Employees Local 590 v. Logan Valley Plaza, 391 U.S. 308 (1968), was overruled in Hudgens v. NLRB, 424 U.S. 507 (1976). I chose not to concentrate on this line of cases, because it also entangles considerations specific to the free speech debate. However, the judicial tendency to limit the significance of *Marsh* is also evident here. For a discussion of these cases, see Frederick Schauer, *Hudgens v. NLRB and the Problem of State Action in First Amendment Adjudication*, 61 MINN. L. REV. 433 (1977).

34. 419 U.S. 345.

35. *Id.* at 352.

36. *Id.* at 353.

37. *Id.*

38. 436 U.S. 149.

39. *Id.* at 153.

40. *Id.* at 157.

41. *Id.* at 161.

the opinion, Justice Rehnquist made it clear that the current doctrine does not apply even to "a number of state and municipal functions. . . which have been administered with a greater degree of exclusivity by states and municipalities than has the function of so-called 'dispute resolution.' Among these are such functions as education, fire and police protection, and tax collection."[42] Not even police protection! However, in regard to these relatively exclusive functions, words of reservation were added: "we express no view as to the extent, if any, to which a city or State might be free to delegate to private parties the performance of such functions and thereby avoid the the strictures of the Fourteenth Amendment."[43] From the context, it is not clear whether these words were meant to be confined to intentional circumvention of constitutional duties through the delegation of functions. However, the narrow understanding is supported by the fact that the reservation was never mentioned again in the Chief Justice's opinions. For example, in *Rendell-Baker v. Kohn*,[44] he rejected the suggestion to apply public function theory in regard to a school that served as a de-facto substitute to a public school. Most of the students were both referred to it and financed by government authorities.[45] In the Court's view, the decisive fact was that education was not "traditionally the exclusive prerogative of the State"[46] while ignoring the reservation in *Flagg Bros* which specifically addressed semi-exclusive public functions like education.[47] The same can be said about *Blum v. Yaretsky*,[48] in which the Court denied an application of the public function theory in regard to nursing homes attending Medicaid patients. Again, the ruling precedent was the "traditionally the exclusive prerogative of the state" formula.[49] A more recent precedent is *San Francisco Arts & Athletics v. United States Olympic Committee*.[50] Here, the state action claim concerned the United States Olympic Committee (USOC), a corporation endowed by law with the sole authority to represent the United States in the Olympic Games. The USOC had refused to allow the use of the word "Olympic" for a sport event organized by the petitioner as the "Gay Olympic

42. *Id.* at 163.

43. 463 U.S. at 163-64.

44. 457 U.S. 830 (1982).

45. *Id.* at 832.

46. *Id.* at 842 (quoting *Jackson*, 419 U.S. at 353).

47. 436 U.S. at 63-64.

48. 457 U.S. 991 (1982).

49. *Id.* at 1011.

50. 483 U.S. 522 (1987).

monopoly of local public transportation, and was operating under an elaborate regulatory scheme.[68] However, the Court was not willing to draw a state action conclusion from these factors alone.[69] This conclusion was based upon a specific authorization of the private decision, pursuant to an official investigation of it. *Pollak* preceded *Burton*, but later cases prove that the narrow view expressed by it outlived *Burton*.

An important case subsequent to *Burton* was *Moose Lodge No. 107 v. Irvis*.[70] Here, the plaintiff was a black person discriminated against in a private club because of his race.[71] The state action claim was based on the fact that the club got a liquor license and was regulated as a liquor licensee.[72] The license was partially exclusive in nature (though not monoplistic in the strict sense) due to a quota system administered in liquor licensing.[73] However, according to the majority's opinion, "here there is nothing approaching the symbiotic relationship between lessor and lessee that was present in *Burton*."[74] The description of the relationship in *Burton* as "symbiotic" limited the potential of this precedent. Symbiosis infers reciprocity, and therefore is not established even by substantial governmental involvement.

There may be good reasons for the denial of a state action claim in the circumstances of *Moose Lodge*.[75] The background of the case was a relatively standard scheme of licensing. It would be exaggerated to argue that in the modern administrative state almost every licensee is a state actor. However, the question remains whether, and in what sense, reciprocity should be part of the test, i.e., is it essential that the government will have a pecuniary interest in the private action, as in *Burton*?

Later, the narrow application of *Burton* was not limited to such relatively standard licensing situations as the one discussed in *Moose Lodge*. *Jackson*[76] is a representative example. Here, a much deeper governmental involvement with the private actor was still short of state

68. *Id.* at 462.
69. *Id.*
70. 407 U.S. 163 (1972).
71. *Id.* at 164-65.
72. *Id.* at 165.
73. *Id.* at 177.
74. *Id.* at 175.
75. 407 U.S. 163.
76. 419 U.S. 345.

action.[77] As previously noted, the Court declined to acknowledge the provision of electricity services as state action under the public function theory.[78] But, this was not the only line of argument. Under the circumstances of the case, the petitioner based her argument also on other factors: extensive regulation and the monopolistic status of the utility.[79] These were the same factors discussed in *Moose Lodge*, but more intensified - heavy regulation (rather than standard regulation) and a clearer monopolistic status. However, the majority of the Court still thought that this was insufficient to constitute state action:

> All the petitioner's arguments taken together show no more than that [the utility] was a heavily regulated, privately owned utility, enjoying at least a partial monopoly in the providing of electrical service within its territory . . . . Under our decision this is not sufficient to connect the State of Pennsylvania with the respondent's action so as to make the latter's conduct attributable to the State for purposes of the Fourteenth Amendment.[80]

b. Financial Support and Financial Dependence

The licensing and regulation cases discussed previously lacked a trait that had significant influence on the *Burton* decision - the pecuniary aspect. It is therefore important to evaluate to what extent a financial relationship with the government may have bearing on the willingness of the Court to recognize state action. It was already noted that the Court invalidated subsidies to racist organizations.[81] However, it seems that these precedents were confined to ex-gratia government support, excluding payments for services the government buys from private entities. The latter did not suffice the Court when applying the nexus test.

This distinction was drawn by two later cases decided on the same day, *Blum*[82] and *Rendell-Baker*[83] In *Blum*, the plaintiffs were residents of private nursing homes that were paid by the government, via Medicaid benefits, for the plaintiffs' treatment.[84] The plaintiffs challenged the decisions of the institutions' doctors reassessing the level

77. *Id.* at 352.
78. *Id.* at 353.
79. *Id.* at 351, 357.
80. *Id.* at 358.
81. See *supra* notes 20-23 and accompanying text.
82. 457 U.S. 991.
83. 457 U.S. 830.
84. *Blum*, 457 U.S. at 993.

context, the initiatives of privatization in the corrections system may serve as a representative example.[103]

The state action doctrine, as it has been shaped in the majority decisions of the Supreme Court, does not constitute a sound enough basis for arguments of state action in regard to privatized services. Generally speaking, both the public function theory and the nexus theory seem applicable. However, they were fatally impaired. From the perspective of the public function theory, most of these services were not "traditionally and exclusively" reserved to the state. After all, the concept of a state that supplies services like education and health is a modern one. From the perspective of the nexus theory, privatization will usually not result in a financially symbiotic relationship between the state and the private actor. The government will probably license and regulate it and even buy its services, but not gain a pecuniary profit (as in *Burton*).[104]

Are the results of the current doctrine satisfactory? I venture to say that they are not. What this means is that once services are privatized, the citizens who are in need of them (for example, Medicaid residents) or subjected to them (prisoners or troubled children attending special schools) may be stripped of the constitutional guarantees awarded to them before by not being entitled to due process and by being treated in a discriminatory way (in the absence of a specific statutory or regulatory limitations).

It is probable that the deficiencies in the current doctrine will be less likely to circumvent constitutional rights in the context of privatization of corrections. Confinement of prisoners is part of the enforcement of criminal law, which is a traditional characteristic of sovereignty.[105]

Contracting Out: For What? With Whom?, 46 PUB. ADMIN. REV. 332 (1986). For statistics of privatization of public services in the United States, see E.S. Savas, *Privatization and Prisons*, 40 VAND. L. REV. 889, 890-93 (1987).

103. For a Symposium dedicated to the privatization of prisons, see 40 VAND. L. REV. 813-1024 (1989) (number 4).

104. 365 U.S. 715.

105. For a discussion of the state action doctrine in the context of privatization of prisons, see Susan L. Kay, *The Implications of Prison Privatization on the Conduct of Prisoner Litigation Under 42 U.S.C. Section 1983*, 40 VAND. L. REV. 867 (1987); Ira P. Robbins, *Privatization of Prisons: An Analysis of the State Action Requirement of the Fourteenth Amendment and 42 U.S.C. Section 1983*, 20 CONN. L. REV. 835 (1988); Harold J. Sullivan, *Privatization of Corrections and the Constitutional Rights of Prisoners*, FED. PROBATION 36 (1989); Charles W. Thomas & Linda S. Calvert Hanson, *The Implications of 42 U.S.C. Section 1983 for the Privatization of Prisons*, 16 FLA. ST. U. L. REV. 933 (1989).

In *West v. Atkins*,[106] the Supreme Court accepted a state action claim in regard to the actions of a private physician under a contract with the state to provide medical services for inmates at a state prison (a "mini privatization"). The case for the state action claim in regard to a broader policy of privatization in the correction system is supported also by the decision of the Texas District Court in *Medina v. O'Neill*.[107] In this case, inmates attacked the practices of a privately run facility for confinement of illegal immigrants. The Court accepted the state action claim, stating that both immigration and detention are powers "traditionally and exclusively" reserved to the state.[108]

In practice, the results of the present doctrine are more likely to threaten constitutional norms already established in social services. Let us consider the example of the celebrated due process rights of welfare recipients as recognized in *Goldberg v. Kelly*.[109] Should these rights disappear if the operation of the welfare process is administered by a private agency having a contract with the state? The intensiveness of official supervision of the private agency may have some influence, but not necessarily, taking into consideration the low significance attributed by the court to intensive regulation. Moreover, it seems that the form of supervision is not the right test. Should constitutional guarantees depend on the details of the contract? It is important to emphasize that the question of privatization of social services is not limited to circumstances in which the state is motivated by an illegal motive (to evade constitutional duties, as in the case of *Evans v. Newton*).[110] Putting aside the problematic question of the significance of motive in constitutional law,[111] it is possible to accept the economic reasons for the privatization of welfare services (by contracting them out), and still recognize the importance of safeguarding the due process rights of welfare recipients.

The case for the present doctrine (as applied by the court) is based on the interest of preserving freedom in the private domain, the basic idea underlying the *Civil Rights Cases*[112] (as well as federalism concerns). Looked at more closely, however, the argument regarding

106. 487 U.S. 42 (1988).

107. 589 F. Supp. 1028 (1984).

108. *Id.* at 1038.

109. 397 U.S. 254 (1970). The argument in the text is valid even when the curtailment of the precedent, in Mathews v. Eldridge, 424 U.S. 319 (1976), is taken into consideration.

110. 382 U.S. 296 (1966).

111. This is a controversial issue, see Washington v. Davis, 426 U.S. 229 (1976).

112. 109 U.S. 3.

for editorials as an infringement of the First Amendment.[122] The Court had to confront the claim that policies of broadcast licensees are state actions.[123] The Court dismissed the claim.[124] Formally, it involved a narrow application of the "symbiotic relationship" test of the *Burton* decision.[125] However, substantively, it declined to recognize state action because it was aware of the vital independence of the media.[126] Viewing the same question from the public function perspective, it is possible to support the decision by recognizing that in the United States editorializing is certainly not a function of the state.

V. A State Action Doctrine for an Age of Privatization

The current challenge is how to update the state action doctrine in a way that preserves the distinction between state and private actions and is still capable of recognizing new forms of activity in the public sphere. This is not an argument against the basic premise of the American Constitution that the government carries a special burden of Constitutional duties, which is not applicable to private actors.[127] It is an argument against the premise that the definitions of government action can be detached from the changes in real life.

Having mentioned *Brown*,[128] I will try to explain the constitutional challenge posed by privatization in regard to alternative methods to fulfill the responsibility of the state for the education of children. Usually, the states guarantee basic education by the operation of public schools. In these circumstances, the schools are owned by public authorities (the "state"), and there is no doubt as to their constitutional accountability. Let us assume that as an alternative method of operation (for economic reasons), the state chooses to close its public schools and pay for the services of privately-owned institutions (by financing the enrollment of students). Now, the question is whether there should be a difference in the scope of the constitutional rights of the students in these two modes of operation. Even if private schools participating in

122. *Id.* at 97.
123. *Id.* at 114-15.
124. *Id.* at 120
125. *Id.* at 119.
126. *Columbia Broadcasting Sys.*, 412 U.S. at 121.
127. For the public-private distinction in American law and its curtailment, see Morton J. Horwitz, The Transformation of American Law 1870-1960, 10-11, 206-08 (1982). The future of the distinction was discussed in a Symposium published in 130 U. Pa. L. Rev. 1289-1609 (1982) (Number 6).
128. 347 U.S. 483.

privatization projects are not likely to adopt racist policies,[129] there are still other constitutional concerns, i.e., what will be the scope of First Amendment rights of the students (regarding both freedom of speech and freedom of religion); will they have due process rights? Obviously, the total disappearance of the public schools system is not likely to happen.[130] However, similar changes do and will happen, even in the field of education.[131] Although education for the average child is still administered by the public schools system, significant numbers of troubled children are now educated in private institutions, financed and supervised by the state (as in *Rendell-Baker*).[132] These children should not have lesser constitutional rights while in school, simply because the government chooses not to form a special school for them. In *Rendell-Baker*, the Court could avoid the question of the rights of the enrolled students, because the petitioners were employees of the institution.[133] However, it did not form a theory of state action that is capable of distinguishing between the two. In the same year, in *Milonas v. Williams*,[134] The Court of Appeals of the Tenth Circuit recognized the existence of state action, in a case similar to *Rendell-Baker*, in all respects, except that the plaintiffs were students claiming infringments of their constitutional rights (refering to use of a polygraph machine, monitoring and censoring mail, use of isolation rooms and use of excessive physical force).[135] The circuit court explained that the *Rendell-Baker* decision was not ruling, because of the difference in the identity of the plaintiffs.[136] For reasons already given, the recognition of a state action in the above circumstances was justified. However, it is doubtful, whether it is founded on the precedents of the Supreme Court.

129. Title IV of the Civil Rights Act of 1964 prohibits racial discrimination in any program receiving federal assistance.
130. A pathologic example of a decision to close all public schools was discussed in Griffin v. County School Board, 377 U.S. 218 (1964). In this famous case, all public schools in Prince Edward County, Virginia, were closed for four years, in order to avoid desegregation. Here, the racist motive of the "privatization" policy was clear, and the Supreme Court overruled it on equal protection grounds.
131. For privatization experiments in the public education system, see Julie Huston Vallarelli, *State Constitutional Restraints on the the Privatization of Education*, 72 B.U. L.Rev. 381 (1992).
132. 457 U.S. 830.
133. *Id.* at 836.
134. 691 F.2d 931 (10th Cir. 1982).
135. *Id.* at 935.
136. *Id.* at 940.

application. In particular, it is limited to old notions regarding the functions of the state. In an age of privatization, the consequences of these limitations may be the inadequate protection of constitutional rights in operation of state services and activities, administered by or with the cooperation of private bodies. It is suggested that the application of the current doctrine be updated by developing the theories already ingrained in it. More specifically, it is suggested that a seemingly "private" activity should be considered as a state action if: (i) it is public in nature (according to present understanding of the responsibilities of the state); and (ii) the state refrains from operating an equivalent service (and thereby renders citizens to be dependent on the public services supplied by the private entities). This two-prong test is capable of securing constitutional standards in services the state chooses to contract out, without infringing upon the liberties of voluntary organizations operating community services independent of the state.

THE RISE OF THE LIMITED LIABILITY COMPANY: EVIDENCE OF A RACE BETWEEN THE STATES, BUT HEADING WHERE?

Carol R. Goforth†

CONTENTS

INTRODUCTION

It is widely acknowledged that states compete for corporate charters.[1] Any state which induces a significant number of businesses

† Associate Professor of Law, University of Arkansas School of Law; J.D. 1984, University of Arkansas School of Law. Many of the citations in this article were added by the editors of the SYRACUSE LAW REVIEW in an attempt to conform with the *The Bluebook, A Uniform System of Citation (Fifteenth Edition)*.

1. Professor William Cary is credited with initiating much of the current debate over the competition for corporate charters. *See* William Cary, *Corporate Law and Federalism: Reflections Upon Delaware*, 83 YALE L.J. 663 (1974). Cary argued that modern corporate law trends reflect a "movement toward the least common denominator." *Id.* at 663. According to Cary, Delaware, motivated by a desire to increase state revenues, adopts rules which appeal to the self-interests of corporate directors who generally make the decision of where to incorporate. *Id.* at 668. Other states, aware of the potential loss of future revenues if they fail to respond, are pressured to adopt similarly biased legislation. *See infra* Section III.

Even those who disagree with this vision of corporate law, however, generally concede that there is a real competition among the states. *See, e.g.*, Herzel & Richman, *Delaware's Preeminence by Design*, *in* R. BALOTTI & J. FINKELSTEIN, THE DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS ix (Supp. 1989); Roberta Romano, *The State Competition Debate in Corporate Law*, 8 CARDOZO L. REV. 709 (1987); Peter Dodd & Richard Leftwich, *The Market for Corporate Charters: "Unhealthy Competition" versus Federal Regulation*, 53 J. BUS. 259 (1980).

State Agency Transfers of Personal Services Funds

Legislative Audit Committee

State of Montana

Report to the Legislature

December 1990

State Agency Transfers of Personal Services Funds

Analysis of Privatization Proposals

House Bill 100 of the 51st Legislature

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

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December 1990

The 52nd Montana State Legislature:

This report is in response to Section 7 (1) of House Bill 100. House Bill 100 requires the Legislative Audit Committee to review and report to the 52nd Legislature on long-term budget impacts resulting from agency transfers from personal services to other categories. This report presents information on transfers made from personal services to other categories, our analysis of privatization proposals, and projected cost savings.

We wish to express our appreciation to the Office of Budget and Program Planning and the departments involved for their cooperation.

Respectfully submitted,

Representative John Cobb, Chairman
Legislative Audit Committee

Senator Greg Jergeson, Vice-Chairman
Legislative Audit Committee

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Chapter I
Introduction

Purpose of Study

The Legislative Audit Committee is required, by House Bill 100 of the 51st Legislature, to review and report on transfers made from personal services to any other expenditure category. The purpose of the review is to determine and report the long-term budget impacts of such transfers. HB 100 of the 51st Legislative Session contained language on transfers of personal services funds. This language is paraphrased below:

-- No funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may be expended under any other category. Except, an agency may request a transfer of funds from the approving authority if it is based on documented cost savings.

-- In addition, if an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any vacancy savings requirement. The agency director shall certify that the agency is unable to fill the position and that the services performed by that position are necessary.

-- The approving authority shall submit its analysis of the documented cost savings to the Legislative Auditor. Wages and fringe benefits must be separately documented from other cost savings. The Legislative Audit Committee shall review the approving authority's analysis and report to the 52nd Legislature on potential long-term budget impacts.

The approving authority for executive branch agencies is the Office of Budget and Program Planning (OBPP). OBPP issued Management Memo 2-90-1 which discusses transfers from personal services to other categories and the required documentation for making transfers. Executive Branch agencies are required to provide OBPP with information on salaries, benefits, and operating expenses associated with all transfers from personal services. We received transfer information from OBPP

throughout the last year. We received transfer documentation after the transfers were approved by OBPP. We received no transfer information from other approving authorities (Supreme Court, legislative committees, and Board of Regents).

State Payments for Contracts For Services

Contracting for services is a common method for state agencies to accomplish goals. Some of the transfers discussed above increase expenditures for contracts with private vendors. In fiscal year 1989-90, state agencies spent almost $195 million on contracts for services with vendors outside of state government. Approximately $134 million of these contracts were Department of Highways contracts for road construction. State agencies also spent $18.5 million on services from other state agencies.

The following table lists expenditures on contracts for state agencies which made transfers with long-term impact. The amounts shown are all contracts for services with private vendors, and do not include services from other state agencies.

Table 1

Expenditures on Contracts for Services
with Private Vendors
For Fiscal Year 1989-90

Agency	Expenditure
Department of Administration	$4,284,422
Department of Commerce	6,634,757
Department of Institutions	2,233,190
MT Developmental Center	119,167
Department of Social and Rehabilitation Services	8,122,192

Source: Compiled by the Office of the Legislative Auditor from the Statewide Budgeting and Accounting System.

Chapter II
Temporary Transfers

Introduction

We reviewed each transfer and determined whether it had a long-term budget impact. Some transfers were made to alleviate a temporary problem; for example, hiring a temporary employee to fill in for an ill employee. We performed a limited review of temporary transfers because there is no long-term budget impact. We mention them here for informational purposes only.

Temporary Transfers

-- The Department of Fish, Wildlife and Parks transferred $46,825 to contracted services for a study of the Little Missouri River Basin Water Reservation study. The department granted the money to MSU's Cooperative Fisheries Unit. This eliminated the need for 1.5 temporary FTE and achieved a cost savings of approximately $7,500. Since this was for a single study, there is no long-term budget impact.

-- The Department of Natural Resources and Conservation transferred $477 to contracted services to hire a work study student during the extended absence of an employee. The department estimated a one-time cost savings of $1,257.

-- The Department of Revenue transferred funds to contract with the private sector for mail handling during receipt of income tax returns. The department estimates fiscal year 1989-90 savings at $1,170. The department will contract with the private sector in future years only if favorable bids are received.

Chapter III
Transfers with Long-Term Impact

Introduction

There are several different types of transfers an agency can make. Transfers to contracted services can involve contracting a service with the private sector or with another state agency or state program. Some contracts with private sector businesses were necessary because the state agency was unable to fill a position with a qualified applicant. Agencies have also transferred personal services funds to equipment. Cost savings occur because updated equipment can increase efficiency and lower FTE requirements.

We projected costs for future years using a 2.5 percent inflationary factor. We used 2.5 percent because it was the amount of increase provided to state employees in the past two fiscal years and personal services are the major share of costs for services reviewed. We also used a 2.5 percent inflationary increase for contract costs, unless the contract was established for the entire period (i.e., fiscal years 1990-91, 1991-92 and 1992-93).

This chapter details agency transfers which impacted expenditures in this biennium and should impact budgets for the next biennium.

Department of Administration

The Department of Administration contracted with the private sector for janitorial, security, and data entry services.

Janitorial Services

The department contracted all janitorial services as of July 1, 1989. The department estimates actual savings of approximately $120,000 for fiscal year 1989-90. Contracts for years with legislative sessions will generally have less cost savings, so the contracts for fiscal year 1990-91 were more expensive than previous contracts. We projected cost savings from contracting janitorial services of $92,102, $97,644, and $98,500 for fiscal years 1990-91, 1991-92, and 1992-93, respectively.

Chapter III
Transfers with Long-Term Impact

Security Services

The department contracted for capitol security services as of November 1, 1990. The department entered into a three-year contract with a private vendor. As a result, costs should stay the same over the three-year period. We projected cost savings of $31,546, $49,454, and $56,891 for fiscal years 1990-91, 1991-92, and 1992-93, respectively. The first year of the contract is only a partial year; therefore, first year cost savings are lower. According to department officials, the actual costs of the contract will be $3,000 less than expected due to negotiations with the contractor.

Data Entry Services

The department contracted for data entry services as of October 12, 1990. The department entered into a three-year contract with a private vendor at a set rate. Contract costs should remain steady over the three-year period. We projected cost savings from contracting at approximately $100,000 less over the three-year period than the department's projections because we believe the department will realize the $100,000 in cost savings from lower keystroke volumes rather than from contracting. Keystroke volumes are lower because state agencies are now keying in their own payroll and accounting data. We projected the department's total cost savings (from contracting and from lower volume) at $72,831, $103,659, and $110,374 for fiscal years 1990-91, 1991-92, and 1992-93, respectively. The first year of the contract is only a partial year; therefore, first year cost savings are lower.

In addition to analysis required by HB 100, we completed legislative requests for specific information on each of DofA's requests for transfers. Information gathered for legislative requests varied depending on information requested by legislators. Copies of request information are available from the Office of the Legislative Auditor.

Department of Commerce

The Department of Commerce contracted for services for various functions within the department.

Weights and Measures Bureau

The bureau eliminated a full-time position and contracted for temporary services during peak season for issuing licenses. The bureau determined a full-time permanent position was no longer needed. We projected the department's cost savings for Weights and Measures at $29,674, $30,416, and $31,176 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Health Facilities Authority

The authority was relocated to the Board of Investments in June of 1989. The relocation allowed the authority to eliminate two FTE and receive administrative support and professional consultation from board staff. In September of 1990 the Board of Investments requested and was granted an additional FTE, partially because of work related to the authority. The authority will pay for one-half of the new position. As a result, the department's overall cost savings through relocating the authority will not be as high as projected initially. We projected the department's cost savings at $24,324, $20,991, and $21,575 for fiscal years 1990-91, 1991-92 and 1992-93, respectively. Cost savings go down in fiscal year 1990-91 because the authority will then be paying for a full year's costs for the new position at Board of Investments.

Office of Research and Information Services

The department had an economist position which had been vacant since 1989. The department chose to contract for economic analysis rather than hire for the position because of current needs for several economic studies. The department determined the change will be permanent. Assuming the position had been filled and subsequently privatized, we projected cost savings for the department of $10,008, $10,258, and $10,514 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Chapter III
Transfers with Long-Term Impact

Department of Family Services, Pine Hills School

The Department of Family Services, Pine Hills School, contracted with a private chemical dependency service to provide treatment for residents at Pine Hills School. Treatment was previously provided by a state employed counselor. The contract will provide a wider range of services and resources. Projected cost savings are $2,050, $2,101, and $2,153 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Department of Institutions, Montana Developmental Center

The Department of Institutions, Montana Developmental Center, purchased a new food service system to meet Department of Health and federal Health Care Financing Administration standards. The new system requires less manpower and less weekend work for food preparation. The department eliminated 10 FTE as a direct result of the new system. In addition, habilitation staff now are able to devote more time to habilitation training rather than serving food. In addition to cost savings from personal services, department officials believe cost savings will be achieved through less food waste and food savings, however the system has not been in place long enough to estimate food cost savings yet. Projected cost savings are $168,062, $172,687 and $182,160 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

Department of Social and Rehabilitation Services

The Department of Social and Rehabilitation Services eliminated a clerical position and purchased word processing equipment for quality control field staff. The clerical position would have involved several part time positions to provide assistance to field staff. Prior to this change quality control field staff were hand writing correspondence. The equipment purchase was a one time expense; therefore, there were no cost savings in fiscal year 1989-90. Projected cost savings are $16,462, $16,874, and $17,296 for fiscal years 1990-91, 1991-92 and 1992-93, respectively.

OBPP Budget Process

OBPP officials indicated the Executive Budget for fiscal years 1991-92 and 1992-93 will contain recommendations for decreases in agency budgets where agencies indicated there will be long-term impact.

Chapter IV
Summary

Summary

We projected cost savings for each agency based on actual costs for fiscal year 1989-90. We added an inflationary factor of 2.5 percent to all state costs, and to contract costs if contracts were not in place through 1992-93. We also determined which funds cost savings will affect. OBPP officials indicate the Executive Budget will include recommendations for decreases in agency budgets for agencies achieving cost savings.

The following table summarizes total projected cost savings and funds affected, by agency, by project.

Chapter IV
Summary

Table 2

Total Projected Cost Savings
Personal Services Transfers
For Fiscal Years 1990-91, 1991-92, and 1992-93

Agency/Program	Fund	FY 1990-91	FY 1991-92	FY 1992-93
Department of Administration				
Janitorial	Proprietary*	$ 92,102	$ 97,644	$ 98,500
Security	Proprietary*	31,546	49,454	56,891
Data Entry**	Proprietary*	72,831	103,659	110,374
Department of Commerce				
Weights & Measures	General	$ 29,674	$ 30,416	$ 31,176
Health Facilities	Proprietary	24,324	20,991	21,575
Research & Information	General	10,008	10,258	10,514
Department of Family Services	State Special			
Pine Hills School	Revenue	$ 2,050	$ 2,101	$ 2,153
Department of Institutions				
MT Developmental Center	General	$168,062	$172,687	$182,160
Department of Social and	50% General			
Rehabilitation Services	50% Federal	$ 16,462	$ 16,874	$ 17,296
Total For All Agencies		$447,059	$504,084	$530,639

*State agencies pay for janitorial and security services through rental assessments. Actual cost savings may affect various agencies and funds. Data entry fees are assessed to agencies using services by the department.

**Includes totals from contracting and from lower keystroke volume.

Source: Compiled by the Office of the Legislative Auditor

Cost Savings of Privatization

PRIVATIZATION CENTER

MARCH 1993

HOW-TO GUIDE NO. 6

COST SAVINGS FROM PRIVATIZATION:

A COMPILATION OF STUDY FINDINGS

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How-To Guide #6
March 1993

COST SAVINGS FROM PRIVATIZATION:
A Compilation of Study Findings

by
John Hilke

EXECUTIVE SUMMARY

Opponents of privatization and other methods of increasing competition in government-financed services frequently claim that privatization/competition rarely results in cost savings for government or society at large. In fact, some argue that privatization increases costs to the taxpayer.

These claims are refuted by a substantial body of research that has documented significant savings from privatization/competition. More than 100 studies over the course of the last 20 years have demonstrated privatization/competition cost savings in service areas from airport operation to weather forecasting.

The wide variety of reasons for the cost savings include, for example: 1) better management techniques; 2) better and more productive equipment; 3) greater incentives to innovate; 4) incentive pay structures; 5) more efficient deployment of workers; 6) greater use of part-time and temporary employees; 7) utilization of comparative-cost information; and 8) more work scheduled for off-peak hours. All these benefits stem primarily from the introduction of competition into the bidding process to perform the service.

Insulated from competition, most government units have lower incentives to—or are even prohibited from—adopting the productivity-increasing techniques of private firms. When government units compete against private bidders to provide a service, cost savings are significant regardless of who wins the contract because the government unit typically responds by cutting its costs greatly.

The following service-by-service table is a compilation of cost studies that compare the costs of in-house (sole-source) government agencies versus alternative—and mostly private-sector providers. It is derived from my book, *Competition in Government Financed Services*, published by Quorum Books in 1992. The over 100 independent studies typically found cost reductions of 20 percent to 50 percent that resulted from privatization and, more importantly, increased competition.

UPDATED COST SAVINGS RESEARCH FINDINGS

Table of Contents

Privatization Cost Savings

INTRODUCTION

This table updates and expands an earlier 1982 compilation of studies on the effect of competition on the costs of government services.[1] It references over one hundred independent studies of increased competition in specific government services and the cost discrepancies observed. Studies that collected quantitative results usually demonstrated cost savings of 20 percent to 50 percent as a result of increased competition.

The primary method of increasing competition is contracting out public services to private firms. However, this is not the only method of increasing competition examined in the studies presented in the table. Findings from two other methods of increasing competition are also detailed.

One alternative is allowing management and workers of the in-house government unit to bid against private firms. The other method is termed intergovernmental contracting and refers to agreements between two or more government jurisdictions to purchase service from another government. Competition takes place between in-house units in all the jurisdictions that might contract with each other.

RESEARCH FINDINGS

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
1. AIRLINE OPERATION AND AIRPLANE MAINTENANCE		
Savas 1987	In-House versus contract maintenance support for air force bases.	Contract maintenance reduced costs by 13% while improving availability of parts and planes. Cost savings were primarily attributable to use of 25% fewer personnel by contractors.
Davies 1971, 1977	Australia/sole private airline versus its lone public counterpart.	Efficiency indices of private airline were 12% to 100% higher.
Domberger and Piggott 1986	Survey article dealing with many services. Focus on Australian Airlines.	Concludes that private firms are generally more efficient, unless the public firms are faced with equivalent competition.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
2. AIRPORTS		
Auditor General of Canada 1985	Tax-supported Canadian airport operations versus comparable U.S. airport authorities that must borrow in capital markets to finance their facilities.	Airports subject to capital market discipline are much more efficient. Work-year requirements are 30% to 40% lower. Canadian government workers have inflexible work assignments and procedures. Canadian airports are overbuilt and neglect many commercial opportunities. Fail to monitor trends in operating costs. Overall savings rate is 40%.
Moore 1987	In-house versus contract air-traffic control.	Government pricing policies for landing rights and other airport services lead to inefficient congestion and inability to finance expansion of facilities.
Roth 1987	Government-managed versus private-managed airports.	Government pricing policies for landing rights and other airport services lead to inefficient congestion and inability to finance expansion of facilities.
3. ALL SERVICES		
Deacon 1979	In-house versus intergovernmental production of all services.	Intergovernmental contracting saved 14% relative to in-house production.
David 1987	In-house versus private contracted services.	Surveyed local administrators reported that cost savings were achieved in 98% of contracting efforts. The range of operating-cost savings was large: 10% reported more than 40% savings. The weighted average cost saving was 19%.
Savas 1987	Los Angeles county in-house services versus contracted services from 1979 to 1984.	Cost of contracted services averaged 30% less than in-house services.
Moore 1987	In-house versus contract in Mirada, California.	Contracting has 30% lower costs.
4. ASSESSING PROPERTY TAX (financial administration) also see Payroll and Data Processing (service category 28)		
Stocker 1973	In-house versus private contractors in Ohio.	Private assessments provided 50% cost savings and were found to be more accurate.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
5. BANKS		
Davies 1982	Australia/one public versus one private bank.	Sign and magnitude of all indices of productivity, responsiveness to risk, and profitability favor private banks.
6. BUS SERVICE (Utilities) also see Electric Utilities and Water Utilities (service categories 10 and 43).		
Morlok and Moseley 1986	Municipal in-house agency versus competitive contracts.	Contract winners supplied services at 28% lower costs.
Morlok and Viton 1985	Municipal in-house agency versus contracts awarded in competitive bidding versus noncompetitive contracts.	Contract providers had cost 50% to 60% lower than municipal agencies they replaced. Noncompetitive contracts were similar to municipal agency costs.
Oelert 1976	Municipal in-house versus private bus service in W. Germany.	Public bus services have 160% higher costs per kilometer than private equivalents.
Walters 1987	Municipal in-house versus private bus service in various cities.	Private bus services typically charge similar prices, but have 50% to 65% lower costs.
Perry and Babitsky 1986	Private versus cost-plus contract versus municipal in-house versus regional in-house authority bus operators.	Private operators are significantly more efficient. Cost-plus contractors and municipal bus lines are less efficient. Inefficient private operators are sold to government.
Prommerehne and Schneider 1985	In-house versus private firms in West Germany.	Private costs were 60% lower than public costs for commercial bus operations.
Talley and Anderson 1986	In-house motor bus versus contracted dial-a-ride service.	Substituting dial-a-ride for scheduled service decreased costs by reducing overtime and idle time and utilizing less costly vehicles. It also reduced costs indirectly by encouraging competition with traditional services of the agency.
Teal, Guiliano, and Morlok 1986	In-house versus competitive contract operators.	Competitive contract operations provided cost savings from 10% to 50% (larger fleets). Cost savings are due both to less overhead/greater productivity and lower wages.
Rice Center 1985	In-house versus contract express commuter services.	Contract operators have 30% to 60% lower costs.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
7. CLEANING SERVICES (General maintenance of public buildings; also see Security Services, service category 37)		
Bundesrechnung-shoff 1972	In-house versus private contracting of cleaning services in West German post offices.	In-house service 40% to 60% more costly.
Hamburger Senat 1974, Fischer-Menshausen 1975	In-house versus private contracting out in West German public buildings.	Public service 50% more costly than private alternative.
Kaiser 1977	In-house versus contract services in schools.	Contracting saved 13.4% of costs.
Pommerehne and Schneider 1985	In-house versus private-sector costs of services in West Germany.	Private costs were 33% lower than public costs for commercial cleaning services.
U.S. GAO 1981b	In-house staff versus GSA contractors versus private landlords.	Private window cleaning costs averaged 47% lower than GSA staff while contractor costs were 38% lower. Higher costs were due to higher wages as well as more workers.
Stevens 1984	In-house versus contract janitorial services.	Contract service had 42% lower costs even after accounting for quality, service levels, and economies of scale.
U.S. GAO 1982b, Fixler and Poole 1987	In-house versus contracted janitorial services in post offices.	Contracted janitorial services were 50% less costly than in-house services.
8. DAY CARE CENTERS		
Bennett and DiLorenzo 1983	In-house versus private providers of equivalent services. Article is based on GAO studies.	Private day care was found to be 45% less costly because of fewer teachers, lower wages, and fewer nonteaching staff.
9. DEBT COLLECTION		
Bennett and DiLorenzo 1983	In-house versus private providers of equivalent services.	Private debt collection procedures were faster and 60% less costly.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
Bennett and Johnson 1980	In-house versus privately contracted equivalent services.	Government 200% more costly per dollar of debt pursued.
10. ELECTRIC UTILITIES (Utilities) also see Bus Services and Water Utilities (service categories 6 and 43).		
Bennett and DiLorenzo 1983	In-house federal agencies versus private hydroelectric plants.	Private utility costs averaged 17% lower due primarily to federal overstaffing.
Hellman 1972	In-house versus electric utilities that compete versus regulated private monopolies.	Competition produced lower rates than regulation. Government production produced the lowest rates due to tax exemptions.
Meyer 1975	In-house versus private firms, sample of sixty to ninety U.S. utilities.	Slightly higher costs of private production. Threat of competition improved cost efficiency somewhat.
Moore 1970	In-house versus private U.S. utilities.	Overcapitalization greater in public firms. Total operating costs of public firms higher.
Primeaux 1975	In-house versus private U.S. utilities.	Municipal utilities facing competition have 11% lower cost on average. Economies of scale offset X-inefficiency at big firms.
Spann 1977	In-house versus private firms in Texas and California.	Private firms, adjusted for scale, are as or more efficient in operating cost and investment.
Atkinson and Halvorsen 1986	U.S. public utilities.	Public Utilities are as efficient as private utilities.
Wallace and Junck 1970	In-house versus private firms by region of the U.S.	Operating costs 40% to 75% higher in public mode. Investment is 40% higher (per kilowatt) in public mode.
Bellamy 1981	Monopoly versus competing utilities.	Competing utilities had 20% lower prices.
FINANCIAL ADMINISTRATION See Assessment, Property Tax (service category 4), and Payroll and Data Processing (service category 28).		
11. FIRE PROTECTION		
Ahlbrandt 1973, 1974 Moore 1988	In-house (Seattle) versus private (Scottsdale, Arizona).	Municipal fire departments 39% to 88% higher per capita.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
Hilke 1986	In-house versus varying degrees of use of volunteers in New York, and Pennsylvania cities (not suburbs) with populations between 10,000 and 50,000.	Use of volunteers reduced firefighting costs. Cities in New York with all-volunteer departments had 62% lower costs per capita. Pennsylvania's all-volunteer cities saved an average of 79% per capita. A 10% increase in use of volunteers provides a 2.8% decrease in costs.
Kristensen 1983	In-house versus major private provider in Denmark.	The principal private firm provided services at 65% lower costs. Differences in costs due to economies of scale, lower input costs, and especially part-time reservists and lower X-inefficiencies.
McDavid and Butler 1984	In-house versus major private provider in Denmark.	Mixed fire departments averaged 33% lower costs than purely municipal departments.
Poole 1976, Smith 1983	Private versus contract fire fighting.	Switching to private contract fire fighting reduces costs by 20% to 50%.
12. FORESTRY		
Bundesregierung Deutschland 1976	In-house versus private in West Germany.	Annual operating revenues 45 DM peer hectare higher in private forests (approximately $6 per acre).
Pfister 1976	In-house versus private in the state of Baden-Wurttemberg, Germany.	Labor input twice as high per unit of output in public as compared with private firms.
GENERAL MAINTENANCE OF PUBLIC BUILDINGS See Cleaning Services (service category 7) and Security Services (service category 37).		
13. HEALTH SERVICES Also see Nursing Homes (service category 25).		
Schlesing, Dorwart, and Pulice 1986	In-house versus contract mental health services.	Nominally competitive-contracting procedures resulted in sole-source supply with little increase in efficiency.
Valente and Manchester 1984	In-house supply of substance abuse programs versus volunteer-based program.	Systematic volunteer program allowed service expansion with cost savings to the community.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
14. HIGHWAYS		
Deacon 1979	In-house (local) versus intergovernmental provision of street repair.	Intergovernmental contracting saved 30%.
Stevens 1984	In-house versus contract provision of asphalt overlay and traffic light maintenance.	Contracting out was half as costly with equivalent quality. Contractors used more experienced staff and more equipment. Cost savings in the traffic light maintenance averaged 36%.
15. HOSPITALS		
Lindsay 1975	In-house Veterans Administration (VA) versus private.	VA hospitals have lower costs and lower quality. Resource use is distorted towards outputs that are easily monitored by Congress. Actual costs per medically necessary hospital stay may be higher in VA hospitals after controlling for length of stay.
Robinson and Luft 1988	Investor-owned versus public hospitals using a sample of 5,490 hospitals.	Cost increases at public hospitals were 15% lower than those in investor-owned hospitals from 1982 to 1986 after controlling for various demand and cost factors.
Becker and Sloan 1985	Investor-owned versus nonfederal government hospitals.	Government hospitals had no higher costs per admission.
Shortell and Hughes 1988	Investor-owned versus nonfederal government versus nonprofit private hospitals.	No differences in quality, measured in death rates between different types of hospitals.
Register and Bruning 1987	Investor-owned versus thirty-six nonfederal state and local government owned and operated hospitals.	No significant efficiency differences between types after controlling for size and other factors that should effect efficiency.
Grannemann, Brown, and Pauly 1986	Investor-owned versus nonfederal government hospitals using a national sample of short-term hospitals.	Investor-owned hospitals had 24% higher costs than nonfederal government hospitals.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
Noether 1987	Investor-owned versus nonprofit hospitals including nonfederal government hospitals sampled from 223 metropolitan areas.	Investor-owned hospitals are significantly more efficient once tax payments are taken into consideration.
Lindsay 1976	In-house Veterans Administration versus private.	Cost per patient day less in VA hospital, unadjusted for type of care and quality. Less "serious" cases and longer patient stays were observed in the VA facilities. The VA had a higher proportion of minority group professionals compared to proprietary hospitals.
Benton 1979	In-house versus private home care.	Government had 43% lower cost. No controls for quality were made in the study.
Wilson and Jadlow 1978	In-house versus private in 1,200 U.S. hospitals providing nuclear medicine services.	Proprietary hospitals more efficient than public hospitals.
Hatry 1983	In-house managements versus contract management.	Experience with contract managements has varied. Seven out of fifteen large California public hospitals signing new management contracts with private management firms between 1973 and 1980 terminated the contracts. The hospitals noted small savings, service problems, and the hospital's ability to learn and then duplicate the cost-saving management techniques of private contractors.
16. HOUSING AND COMMUNITY DEVELOPMENT		
Muth 1973	In-house versus private construction costs in U.S. cities.	Public agencies 20% more costly per constant quality housing unit.
Rechnungshof Rheinland Pfalz 1972	In-house versus private cost of supplying large public projects in West Germany.	Public agencies 20% more costly than private contracting.
Schneider and Schuppener 1971	In-house versus private construction in West Germany.	Public firms significantly more expensive suppliers.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
Pommerehne and Schneider 1985	In-house versus private costs in West Germany.	Private costs were lower than public costs for commercial services generally, 17% for construction.
President's Commission on Privatization 1988	Publicly constructed versus various privatization alternatives.	Public housing costs per unit over twenty years total $69,863 versus $27,892 to obtain private units through housing subsidies to individual need families.
Weicher 1980	Government-financed construction versus private.	Government-financed construction 25% more costly. Government management is also more costly.
17. INSURANCE CLAIMS PROCESSING		
Hsiao 1978	In-house versus private.	Equivalent claims processing costs of private insurers were between 15% and 26% lower. Most of the differences were attributable to compensation and organizational differences. Some cost difference were attributable to efforts by public insurance programs to control medical costs generally.
18. INSURANCE SALES AND SERVICING		
Finsinger 1981	In-house (five firms) versus private (seventy-seven firms) liability and life coverage in West Germany.	Competition between public and private firms prompted equivalent efficiency.
Kennedy and Mehr 1977	In-house (in Manitoba) versus private (in Alberta).	Private insurance quality and service higher than those of the public insurance with equivalent costs.
19. LAUNDRY SERVICE		
Pommerehne and Schneider 1985	In-house versus private in West Germany.	Private costs were 46% lower than public costs for commercial services in laundry services.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
20. LEGAL SERVICES		
Houlden and Balkin 1985	Ordered assigned counsel versus contract counsel for indigents.	Contract counsel had at least 50% lower costs. Contract counsel processed cases in half the time of assigned counsel. The authors note that since fees per hour are roughly equal, the primary difference is due to less attorney time per case under the contract system. This may imply a lower quality of service with contracts, but this does not affect the average jail term.
21. LIBRARIES		
White 1983	In-house libraries before and after federal aid.	After federal aid started in 1960s, productivity slowed as libraries added federally sponsored programs with lower marginal impact on output and fewer volunteers. Total factor productivity was at least 27% lower as a result.
22. LIQUOR STORES		
Simon and Simon 1987	In-house versus private.	State stores have higher compensation rates, but higher sales per hour. If hours of operation (quality) are considered, private stores have lower costs.
23. MILITARY SUPPORT SERVICES		
Bennett and Dilorenzo 1983	In-house versus private providers of equivalent services.	Average cost savings in base support services were 15%.
U.S. GAO 1985b	Precontract bids versus post-contract costs for competitive Department of Defense contracts.	Most post-contract prices were in accord with bids. Some unsatisfactory performance seen in 33% of the contracts. Personnel turnover and low staffing were main problems. Contract prices increases due largely to contract changes and Davis-Bacon wage regulations.
U.S. GAO 1981a	In-house versus contract.	Savings from both higher employee productivity and lower wages.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
U.S. GAO 1985b	Contract bids versus actual contract experience.	Contract costs increased over time in 95% of sample. In 89%, increases were too small to eliminate the net savings from contracting. (Contracts were rebid in 35% of the cases due to failures of the initial contractor.) Main causes of the cost increases were general wage increases, rebidding of contracts, contract errors, or additional requirements not originally included.
24. MOTOR VEHICLE MAINTENANCE		
Campbell 1988	In-house versus contract services.	Contractor costs are 1% to 38% below municipal costs for equivalent or higher levels of service. In conversions to contracting, wage levels generally remain similar, but the number of operating and overhead employees is reduced because of greater productivity.
Pommerehne and Schneider 1985	In-house versus private costs in West Germany.	Private costs were 50% lower than public costs for automobile motor maintenance repairs.
Stolzenberg and Berry 1985	Noncompetitive in-house versus competitive contract versus competitive in-house.	Competition resulted in lower costs through large reductions in personnel. Contracting saved approximately 17%. The lowest costs occurred where an in-house operator won competitive contracts. Costs averaged over 40% lower at these bases. Quality of maintenance was similar, but slightly better in government operations operating under competitive conditions. Higher government costs came from staffing for peak-load demand, higher government fringe benefits and difficulties in hiring and firing.
25. NURSING HOMES (health services) also See Health Services (service category 7-3).		
Lindsay 1975	In-house (VA) versus contract.	Contract operated homes had 45% lower per day costs.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
26. PARKING		
Caponiti and Booher 1986	In-house versus contract parking meter and parking restrictions enforcement.	Contracting is less costly, primarily because of lower fringe benefits and greater flexibility in meeting staffing requirements. Productivity (violations ticketed) improves as much as 10%, averaging 5%.
27. PARKS AND RECREATION		
Stevens 1984	In-house versus contract park turf maintenance.	Contract service had 28% lower costs and equivalent quality of service.
Savas 1987	Government versus privately constructed sports facilities.	Costs of privately constructed sports arenas averaged 31% less than those of public arenas.
Holmes 1985	In-house versus contract recreation program.	Cost savings of 20% obtained by privatizing. Savings come from more use of volunteers and better use of employees.
Poole 1980	In-house versus private facilities operations and programs.	Cost savings of 20% obtained by privatizing. Savings come from more use of volunteers and better use of employees.
Fixler and Poole 1987 Valente and Manchester 1984	In-house versus contracted profit and nonprofit organizations.	Contracting allowed maintenance of quality recreation services, even though budgets were reduced under California's Proposition 13 by as much as 50%.
28. PAYROLL AND DATA PROCESSING (financial administration) also see Assessment, Property Tax (service category 4).		
Valente and Manchester 1984	In-house versus private competitive contractors.	Contractor performed higher quality data processing service with cost savings of 15%.
Stevens 1984	In-house versus private contractors.	No cost differences found after accounting for quality and other factors.
29. POLICE		
Deacon 1979	In-house (local) versus intergovernmental.	Intergovernmental contracting saved 42%.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
Mehay 1979	In-house (local) versus contract with county (Lakewood Plan).	Contract costs were lower due to fewer police officers per capita. However, contract cities experienced higher rates of violent and property crime. Net effects were probably negative for contract cities. Problem attributable to inability of contract cities to specify quality of service and monitor performance.
Mehay and Gonzalez 1985	In-house monopoly versus in-house production with competition to serve additional jurisdictions.	Costs in counties that sell their police services to other jurisdictions are estimated to be 9% to 20% lower. The authors conclude that competition encourages police departments to keep their costs down.
30. POSTAL SERVICE		
U.S. GAO 1982a	In-house versus contracted routes.	Contracted delivery routes save up to 60% on delivery costs.
Hanke 1985a	In-house versus contracted window service.	Contractors (retail stores with postal services) provided window service at 88% lower cost than USPS operated.
Savas 1987	In-house versus private parcel delivery services.	Private firms have lower rates, faster delivery, lower losses from damage, better tracking systems, wider variety of services, and lower costs.
31. PRINTING		
Pommerehne and Schneider 1985	In-house versus private in West Germany.	Private costs were 33% lower than public costs for commercial printing services.
32. PRISONS		
Grant and Bast 1987	In-house versus contract facilities and services.	Contractor prison construction costs are at least 45% lower than government averages. Service contracts for prison operations are at least 35% below average per prisoner costs in recent cases.
33. PUBLIC WELFARE		
Poole 1980	In-house versus private variety of welfare services.	Privately supplied programs operating under competitive bidding saved 20% to over 60%.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
Hatry 1983, Wedel, Katz, and Weick 1979	In-house versus private contracting for vocational rehabilitation, childrens' protective services, and programs for the elderly.	Competitive contracting efforts have often devolved into single source contracting with little evidence of efficiency gains. Nonprofit firms are the predominate suppliers. Improved program characteristics are the primary objective of contracting, but no quantifiable quality information is available.
34. RAILROADS		
Bennett and DiLorenzo 1983	In-house versus private providers of equivalent tract repair. Article is based on GAO studies.	Private railroads repaired ties, replaced track, and surfaced rails at least 70% more efficiently.
Caves and Christensen 1980	In-house (Canadian National) versus private (Canadian Pacific) costs and productivity differences.	No current productivity differences. The public firm substantially increased its efficiency after competition increased in 1965.
35. REFUSE COLLECTION (Sanitation other than Sewerage) also see Street Cleaning (service category 47).		
Collins and Downes 1977	In-house versus private contracting-out in St. Louis area.	No significant cost differences. Private firms lost density economies because several firms served the same areas. Public suppliers had monopoly status.
Savas 1974, 1977a,b, 1980; Stevens and Savas 1978; Edwards and Stevens 1979	In-house versus private monopoly franchise versus private nonfranchise firms.	Public supply was 40% to 60% more expensive than private. Private monopoly price was only slightly 5% higher than price of private non-franchised collectors. Density economies offset otherwise higher costs.
Stevens 1984	In-house versus competitive contract.	Cost savings of 22% were found, controlling for quality.
Hirsch 1965	In-house (St. Louis City-County area) versus private firms.	No significant cost differences. Private competing suppliers lost density economies.
Kemper and Quigley 1976	In-house versus private monopoly contract versus private nonfranchise versus municipal firms in Connecticut.	Municipal collection costs were 14% to 43% higher, but private nonfranchise costs were 25% to 36% higher than municipal collection. Loss of density economies increased costs of nonfranchise suppliers.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS
Arranged Alphabetically by Service Category

SOURCE	COMPARISON	FINDINGS
Kitchen 1976	In-house versus private firms in forty-eight Canadian cities.	Municipal suppliers were more costly than proprietary firms.
Petrovic and Jaffee 1977	In-house versus private contracting in midwestern cities.	Cost of city collection was 15% higher than the price of private contract collectors.
Pier, Vernon, and Wicks 1974	In-house versus private firms in Montana.	Municipal suppliers appear to be more efficient, not controlling for quality and community characteristics.
Savas 1977a	In-house versus private firms in Minneapolis.	No significant cost differences if suppliers compete through tight control of municipal costs imposed by legislature using private costs as a comparison.
Savas 1981	In-house and franchise contractors in a single district jurisdiction versus contractors and in-house in a multidistrict setting.	The average number of bids per area increases when cities are divided into small districts. Competitive bidding leads to lower costs for contractor service. Cities that actively monitor municipal agencies using private contractor costs have lower average costs. No benefits are obtained without these policies.
Spann 1977	In-house versus private firms. (Survey of literature.)	Public firms were 45% more costly.
36. SCHOOLS		
Peterson 1981	In-house versus private contractor-operated public schools.	Private contracting prompted small gains in math and reading and losses in other subjects. No cost savings.
37. SECURITY SERVICES (general maintenance of public buildings) also see Cleaning Services (service category 7).		
Hanke 1985a	In-house versus private security guards.	Private security services save 50% or more.
38. SEWERAGE/WASTEWATER TREATMENT		
Hanke 1985a	In-house versus contractor-built and operated treatment facilities.	Contractor costs averaged 20% to 50% less due to shorter construction lags and lower construction costs. Competition also reduces operating costs 20% to 50%.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
Savas 1987, Moore 1988	In-house versus outside contracts	Contracted wastewater service is 20% to 50% less costly because federally financed projects involve higher construction (Davis-Bacon Act) and design costs.
39. SHIP REPAIR AND MAINTENANCE		
Bennett and Johnson 1980	In-house versus commercial tankers and oilers.	U.S. GAO reports that the private ship repair costs averaged 80% less than the U.S. Navy's costs.
40. SLAUGHTERHOUSES		
Pausch 1976	In-house versus private firms in 5 major West German cities.	Public firms were significantly more costly because of overcapacity and overstaffing.
41. STREET CLEANING (refuse collection) also see Refuse Collection (service category 35).		
Stevens 1984	In-house versus competitively contracted.	Contract cities have 43% lower costs after accounting for quality and other factors.
42. TOWING		
Kaiser 1976	In-house versus contractors in New York.	Contract towing bids provided cost savings of more than 40%.
TRANSIT see Bus Service (service category 6).		
UTILITIES see Bus Service (service category 6), Electric Utilities service category 10), and Water Utilities (service category 43).		
43. WATER UTILITIES (utilities) also see Bus Services and Electric Utilities (service categories 6 and 10).		
Crain and Zardkoohi 1978	In-house versus private suppliers; comparisons of 112 firms and detailed case study of 2 firms that switched type of ownership.	Public firms were 40% less productive. Private firms had 25% lower costs. Public firms going private had 25% increase in output per employee. Private firm going public had an output per employee decrease of 40%.
Feigenbaum and Teeples 1982	In-house versus private water companies.	No cost differences were found after controlling for other cost factors.
Mann and Mikesell 1976	In-house versus private suppliers.	Found public modes were 20% more expensive after adjusting for input prices.
Morgan 1977	In-house versus private suppliers covering 143 firms in six states.	Costs 15% higher for public firms.

Privatization Cost Savings *(Continued)*

UPDATED COST SAVINGS RESEARCH FINDINGS Arranged Alphabetically by Service Category		
SOURCE	**COMPARISON**	**FINDINGS**
44. WEATHER FORECASTING		
Bennett and DiLorenzo 1983	In-house versus private. Based on U.S. GAO studies.	Private weather forecasting contractors provided equivalent weather forecasting with 35% lower cost.

SOURCE: John Hilke, *Competition in Government-Financed Services*, 69-94.

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ENDNOTE

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