

sector must also be able to predict, if it wishes to make a profit, but it can make better use of short-term (and therefore more accurate) predictions because it can generally respond more quickly to changes in information.

A market in corrections would share in the general advantages of markets over all forms of central planning. The advantage most relevant here is that competition isolates and minimizes the consequences of erroneous predictions, while central planning magnifies them. If a state launches a major prison construction plan and hires an army of civil servants on the basis of a long-term projected trend that does not materialize, or that unexpectedly reverses itself after a few years, the cost will be monumental. If several competing contractors are responding continually to projected needs, it is unlikely that they will all make the same mistakes at once.

Some contractors will predict better than others, or be able to respond more quickly to altered predictions. These companies will survive and prosper by being able to meet the changing needs of the state more effectively. The less successful companies will have to absorb and thereby contain the cost of their inaccurate predictions. In contrast, when the state has a monopoly on the prison business, it can simply pass on to taxpayers the full cost of

its errors. Thus, the state has less incentive to avoid errors in the first place.

Speedy Response

This presumption of flexibility and speed of response on the part of private prison contractors is not just a matter of faith; concrete examples can be cited. In 1975, the Attorney General of Pennsylvania ruled that even hard-core delinquents could not be incarcerated in facilities with adult offenders. Faced with the need to immediately relocate all affected juveniles, and having no suitable facilities available, the state turned to RCA, with whom they already had a contract for educational programs for delinquents. In ten days, RCA set up the Weaversville Intensive Treatment Unit, a heavy security facility with 20 beds and 30 staff members. In this case, RCA was able to convert buildings already owned by the state; other contractors have built their own or remodeled existing private structures, such as motels, to make them secure.

While a spokesman for the Federal Bureau of Prisons reports that it takes two or three years to site and build⁶ and other sources report that it takes five years or more to build secure facilities, private contractors claim to be able to design, finance, and build a prison in as little as six months. Corrections Corporation of America financed, built, and opened

its 350-bed detention facility for the INS in just seven months.

Contracts allow government agencies to experiment with new programs without long-term commitment of funds or of tenured civil service staff. Thus, vested interests in these programs do not accumulate inside the agencies. This avoids the tendency toward bureaucratic self-perpetuation that ordinarily makes public programs difficult even to alter, let alone to eliminate. Of course, advantages of flexibility for the public agency translate into insecurity for the private contractor.

If the vulnerability of a contract is an advantage to one side, it is a disadvantage to the other. However, this problem is intrinsic to all private contracting. To survive and succeed, a contractor must be able to solve this problem in a variety of ways: by providing service that is too good to give up; by accurately anticipating and being ready to meet the shifting needs of different clients; by holding down the administrative cost of hustling from one contract to another; by cultivating multiple clients; or by other techniques that must be the stock-in-trade of any competitive contractor.

Flexibility Promotes Justice

The flexibility of private prison contracts can also enhance justice. Public concerns over justice and punishment have led to reforms in

many components of the justice system. Abolishing parole, limiting judicial discretion, banning or restricting plea bargaining, and other such reforms, are supposed to curb abuses and to make punishment more uniform and just. One objection to these reforms is the fear that they will produce further and more dangerous overcrowding of prisons. Therefore, attempts have been made to reintroduce discretion through mechanisms for diversion, sentence reduction, emergency release, and "early community reintegration."

The search for these new discretionary mechanisms, which are designed to forestall or to relieve the pressures of overcrowding, rests on a faulty assumption: that prison flow can and should be fine-tuned by the state, while prison capacity remains virtually fixed. A penal system primarily concerned with doing justice, however, makes just the opposite assumption: prison flow should respond to crime rates, which are largely beyond the control of the state; therefore, prison capacity must be flexible.

At least at the margins, then, the prison system should be able to expand and contract as the shifting demands of justice require. Flexibility at the margins will tend to maximize the supply and minimize the cost of imprisonment. Commercial prisons, with efficient management, multiple vendors, and renewable, adjust-