Control As Enterprise: Reflections On Privatization And Criminal Justice Essay, Research Paper

Thank you very much for the welcome, and for giving my talk. When the Fraser Institute called me last year, they rang up and said they were having a conference and we would like to invite you, and I thought I think you have the wrong person. Basically, everybody else there, except myself and one person from Nova Scotia, were in favour of privatization and very strongly in favour of it, especially with respect to prisons. It was actually very educational and interesting to engage in that debate.

First of all I would like to thank you very much for the invitation and to wish you all the best with your new programme. I am glad that you have asked me to speak about privatization and criminal justice because I am sure that nobody here needs me to remind you that privatization is one of the issues of our time. We see this in Canada in the context of budget cuts and trying to reduce the deficit, where privatization is often posed as a solution to problems we are faced with fiscally. We also see it in the West generally. You only look at the labour party in Britain, the new government, to see that they are far more open now to at least some aspects of privatization then would have been the case twenty years ago. I think if we look around the globe in general we see that privatization is an issue in many other places also, and I am thinking here in particular of Russia and other Central and Eastern European countries where there has been massive privatization in the 1990s. I spent 1993\94 in Lithuania and saw what was going on there, and the scale was phenomenal. I think that made me sensitive to just how big the changes are that can take place, and also sensitized me to how once privatization is set in motion, it can take on an impotice of its own, one that might surprise even the very people that initiated it. That is one reason why even with private prisons, that right now are very minuscule proportionately to prisons in general, that we should take this issue very seriously because it can accelerate and develop in the future.

I am also glad that you have invited me to speak about privatization here because although we are surrounded by privatization, including in criminal justice, this phenomenon is relatively little researched. The one exception here might be private police, there has been a fair bit written on private police. But beyond that there is many aspects of privatization in criminal justice that have not received adequate attention.

So on the one hand we are surrounded by the phenomenon and on the other hand we don’t know as much about it as we should. Even my own work, I might add, privatization is more or less a tangent for me as I do other areas of research. I think it is indication that very few people in Canada, criminologists, are systematically focussing on this but I keep getting roped back into this. I just wish I had three lives at once so that I could pursue it the way I really want to.

Privatization is an area that really needs attention, and lets hope that students here at St. Thomas are going to take this up. Let me just mention one or two topics that need attention. Many people talk about privatization in criminal justice, including myself, mention that it is likely that private companies will try and influence criminal justice policy in various places. Yet when you look for the empirical support for this there is very little factual information there. Or we talk a bit about the decline of the military in industrial conflicts, the end of the Cold War, and new markets opening up for these companies internationally and we see some of the companies moving from the United States into Britain, Australia and now also Canada, and we hear things about them moving into Latin American countries and East European countries, but again this international dimension is one that there has been very little systematic research on. So the whole area is just begging for attention.

In discussing privatization there are numerous approaches that I could take. For example we could talk about the history of privatization and how what is happening now is similar or different to what has gone before. Or we could talk about what I think of as positive forms of privatization. Here I am thinking, as any of you who study criminology knows, there are many kinds of troubles that people experience but never comes to the attention of the criminal justice system. People find their own other/alternative ways of dealing with them, and sometimes these are very constructive and positive ways. For example, if somebody you know well steals from you, are you going to call the police? It is likely that you won’t and that you have some other way of dealing with that. So that is one positive form of privatization. Not all forms of privatization that are of the private sector are negative.

Another positive form of privatization is the involvement of non-profit community groups in criminal justice, and I am thinking here of groups such as the Elizabeth Fry Society and the John Howard Society. I think that much of their work is very positive but they are also part of the private sector. I do think though that their role right now needs a lot of attention in the context of more recent “for-profit” forms of privatization and the challenges that is posing to these traditional non-profit groups. Again another area in need of attention and unfortunately I don’t have time to address that particular topic tonight.

So this topic of privatization in criminal justice is potentially very broad. Tonight my focus is very specific. I want to talk about corporate and commercial forms of privatization. That is the “for-profit” sector in criminal justice. More specifically, as Dr. MacDonald allude to, my focus is on the entrepreneurial aspect of privatization and this is reflected in my title “Control as Enterprise”. As mentioned earlier, my sensitivity to this particular issue has been raised by Niels Christie’s book Crime Control As Industry: Towards Goulags Western Style, and as some of you may have noticed that in the first addition of this book that is followed by a question mark, and in the second edition, he dropped the question mark.

My sensitivity to the issue has also been sharpened by my experience with the government of Ontario in the early 90s when I served as a Policy Advisor and Executive Assistant to the Minister of Correctional Services and the Solicitor General of Ontario. There I had an opportunity to observe some of the politics of privatization and some of the action that were taken by corporate companies in this area.

I think that two basic questions underlie my thoughts in this area. First is, given that privatization of control systems implies profit from control systems, we must ask who profits and at whose expense? And while there cannot be a definitive answer to this question it does seem to me that recent trends in privatization primarily benefit those who are already powerful and especially people in the upper echelons of these companies. It seems that the people who are primarily benefiting are those that are already powerful in these companies and mean while it is the traditionally less powerful, and specifically many poorer people and members of some visible minority groups, who have long been the focus of policing and criminal justice surveillance who start to lose the most through privatization.

The second question that underlies my thoughts is, given the profit-making impotice of the private sector, is it likely to try and generate or create demands for various services and also for products which go beyond any demonstrated need? So is it likely that these companies are going to try and generate or create a demand for what they offer, a demand that goes beyond any real demonstrated need. Here I think the answer is yes, and I should I should be trying to give you a few examples.

In my presentation I should first briefly identify some recent trends in privatization. I will then discuss some related developments in Ontario and following the paper that I am going to leave here, I will be talking about electronic monitoring in corrections in Ontario. After that I will identify some other new trends involving the sale of products to individuals. Then I shall draw some general conclusions about context and consequences of privatization, and finally if I have the time I would like to make some remarks on the specific issue of privatization of prisons.

Recent trends in Privatization – I don’t need to dwell on them as I am sure they are familiar to you. First of all, we have seen a huge growth of private police and security to the point that this is more numerous now than public police. We have also seen an increase in the sale of products to the police in prisons including weapons, bullet proof vests, furniture, and many technological products including phone systems, computer systems, identification and monitoring devices, and drug testing kits. In addition, we see the provision of food, laundry and other services to prisons. We also see prison construction and we see the marketing of many technological products in society more generally, products relevant to crime prevention including burglar alarms, library cards, bank cards, security labelling for clothing, cameras in banks, and so on. And perhaps lastly we see the private sector moving into the actual running of prisons. Overall the scale of this activity is enormous. As Niels Christie describes it, it is the crime control industry. Just to give one or two examples. By the early 90s in the USA, prison construction already amounted to six billion dollars a year, that is quite a lot. And just for prison food was over one billion a year and roughly growing.

Let me raise the question again – why should this expansion of commercialization be of concern? No doubt some people, like the Fraser Institute for example, feel that this involvement of the corporate sector in criminal justice should give little cause for concern. After all it can be argued that crime is really a problem and resources must be devoted to dealing with it. Whether the public or private sector deals with it is not an issue as long as it starts with wealth, so why not let the private sector do it especially when the private sector argues that they can do it more cheaply, more efficiently than the public sector. Well I agree that crime is a problem and that resources are needed to respond to it, and to generally help people feel and be safe, I think it is highly questionable as to whether the increased provision of police, prisons and security devices are desirable responses. However here it is not specifically my aim, nor do I have the time to elaborate on more positive responses, but to rather focus on the commercial responses and identify concerns. To raise a concern again, we have to ask, given the primary motivation of profit-making in the corporate sector as opposed to any humanitarian concern, are they likely to try and supply resources which go beyond any demonstrated need or demand. And as I alluded to earlier, I think the answer is yes, that they may be trying to create demands.

This applies throughout the criminal justice system. Let me give you a couple of specific examples. First, about the marketing of electronic monitoring in corrections. I know I am going to ruffle a few feathers here, and I am sorry about that. In the early 90s I took a few leaves from the university to work in government. I was on the minister’s political staff, just so nobody thinks I was in the civil service. I worked with two successive Ministers of Corrections and Solicitor Generals of Ontario, so I was really able to operate at a senior level of the ministry, and this was a great opportunity for me having done research on that very ministry to be able to be there in the Minister’s office and to communicate with civil servants to get the view from the inside.

When this new government came into power, and the new government of course was the NDP in Ontario, they realized that when they got into power they did have policies in many areas but there were other areas where their policies were not so clear, including I think criminal justice. One of the first things that happened after they got into power at the Correctional Ministry was that approaches were made to sell electronic monitoring to the Ministry. Now as people know, electronic monitoring involves attaching a bracelet to offenders and tracking their movements. Companies argued that electronic monitoring provided a cheaper, effective and humane alternative to prison. The image was that rather than keeping offenders in prison they could now be at home or at work and be constructive and productive in the community. The logic of this argument is difficult to resist, it seems that the offender can still be confined, albeit in an inexpensive way and one which enables him or her to maintain their family and other community corrections. So it seems at first glance that electronic monitoring can provide an effective alternative to prison.

However, when one looks at the criminological literature on this, this is very debatable. What is the problem? Well specifically and similarly to many other community corrections programs in Western jurisdictions, the clientele for electronic monitoring appear to be primarily low-risk offenders. These are people that would have been released into the community anyway through probation or parole. Now because of this, electronic monitoring is not cheaper because the ministries concerned get the gains expense of purchasing this equipment. Nor is it more humanitarian arguably because rather than moving people from prisons it adds another control onto people who would have been in the community anyway.

It is also questionable as to whether electronic monitoring is more effective than other approaches in the reducing recidivism. There is little evidence that those released into the community under highly intensive forms of surveillance are less likely to re-offend than those with lesser forms of surveillance. I am thinking in particular, as can happen today, that people are released on probation with so many conditions that it is almost impossible for them all to be fulfilled. The basic point is that the more conditions that are imposed on people, the more difficult it is for them to keep them and not violate them.

In short, while I think that electronic monitoring is beneficial for the companies that profit from its sales, this appears to be at the cost of low risk offenders being subject to additional control measures, and there is no evidence that a contribution has been made to public safety. Meanwhile, none of this addresses fundamental ethical issues about electronic monitoring and attaching such devises to individuals. Some researchers on privatization, myself included, feel rather uncomfortable with advocating such potentially intrusive forms of surveillance. One could ask, where will this end? It was not reassuring for me to read in one journal concerned with electronic monitoring that “in some eyes a true electronic incarceration would involve active restraints such as a remotely applied zap of electricity for better control over an offenders behaviour. Like a lot of other things in privatization, there is a continuum that goes from soft and seems ok to look at where it might lead us and one begins to get a bit worried.

As it happens, the minister I was working with and the government in Ontario decided that they were opposed in principle to electronic monitoring, so nothing happened at that moment. But when a new government came in the mid 90s, a Progressive Conservative government, they were quick to respond to approaches made to them and to commit themselves to electronic monitoring. Moreover I think it is important to note that their perspective on this is not primarily humanitarian, rather it is a fiscal and a punitive perspective. The minister that welcomed this approach has also referred to halfway houses as a form of “subsidized housing” which he has no intention of providing to offenders. So on the one hand the government is increasing its commitment to electronic monitoring and on the other decreasing it to halfway houses.

The closure of some halfway houses in Ontario and the implementation of electronic monitoring marks an important transition. First, marks the government’s move away from doing business with non-profit community groups that ran many of the halfway houses and towards corporate, commercial, and “for-profit” groups. Second, I think this decision signals a move away from humane or at least human forms of supervision in favour of a move toward technological forms of supervision, a move from human to technological control.

Let me know talk a little bit about capsicum. A more difficult scenario arose when the Ministry of the Solicitor General was approached by the private sector to try and market capsicum for use by police officers. Capsicum is a form of pepper which when packaged in a can and sprayed has the effect of totally immobilising its human target. Now given that capsicum is based on a natural product rather than a chemical product, and given that its use leaves no trace on the person after a little while, one might facetiously describe it as an environmentally friendly form of mace. In Ontario efforts to market capsicum were made at a politically, volatile moment. In the late 80s and early 90s there had been a series of police shootings, people had been injured and killed and the startling pattern that seemed to be emerging that many of the victims were young, back males and who were unarmed or at least not armed with a firearms. So it was a time of very strong tensions between police and minority groups. The argument was made that if the police were to use capsicum it would be a non-lethal weapon which would reduce their use of guns, so the argument was made at a very opportune moment. Not surprisingly, many people were in favour of this. Meanwhile, one of the barriers to reform, which was cost, was removed as an offer was made to the government to supply capsicum for free during the trail period.

While the arguments in favour of police using capsicum are compelling, I have some concerns about it and had at the time. In the first place, there is a long history of claims that problems of crime fighting and control over police can be solved by one or another technology. I am thinking here of the history given in Rubbenstein’s book City Police. I also thought that it was problematic that the product was being sold on the argument that it would reduce the police use of firearms because there was no evidence given that this would be the case. So although capsicum had been used for a while in the United States, we were not presented with any hard evidence of any specific place where the use of capsicum was associated with a reduced use of firearms.

Now some people might argue that the advantages of capsicum are so obvious that one does not need any research to demonstrate this. But if you think for example in the case of Rodney King – capsicum was used on him. So it is difficult to claim definitively that the use of capsicum is going to preclude other problems in police behaviour.

Overall I think one can draw a parallel between the use of capsicum and electronic monitoring. Where electronic monitoring can become an add on to community programs, capsicum can become an add on to the non-lethal weapons already used by police. I think I was the only person in Ontario who thought all of this. Everybody was in favour of it, and it was adopted. Subsequent to this police in Ontario carried capsicum and overall I think the 1990s have been a period where the non-lethal weaponry of the police has greatly extended. But meanwhile the problems with injuries and fatalities continue to occur. And again, research is needed in this area. For example, in Ottawa in early 1995 a man drowned after he had been sprayed with capsicum and ran away from the police. Just recently I read a claim that in California at least 26 people have died since 1993 following the use of capsicum.

However, let me immediately say that from the point of view of politicians and civil servants, I can very well understand that when confronted with an issue like this or when approached by companies, its very understandable that they will be open to accepting such a product. This is one of the difficulties in this area. It very often seems easier to argue in favour of the product then it is to argue against it. So I think one could sound like a killjoy when these companies come in and say “if police shootings is a problem, give them capsicum”, you can sound like a real pessimist or negative person, which I don’t like to think I am at heart, when you say that maybe there is a few problems or potential problems here that we should be looking at. So as I say, this is one of the difficulties in this area, that some how it seems much easier to argue in favour of electronic monitoring or argue in favour of capsicum then it is to argue against it.

Another trend or area that these companies are working in is in relation to individuals. Perhaps the most obvious example of this, that is long with us, is the selling of alarms, which are now a taken for granted feature of life at least in a city. Meanwhile whether you go into apartment buildings in Toronto or go in to visit people who live in buildings with courtyards in Paris or where ever it might be, there can be a bewildering array of security checks or codes and so on that one has to get through in order to just go and visit somebody you know. In North America you are now seeing whole neighbourhoods being surrounded and permeated with these security devices, some people refer to these as “gated communities”.

As these burglar alarms and security devices are becoming more taken for granted features, I think that the private companies are looking continuously for new markets and doing quite well. They are looking at various groups of individuals and one case in point here, which again needs research, is that of women. Women are being targeted by a range of products, I will just give you one or two examples. The first one is again capsicum. We see ads in women’s magazines which urge women to buy a capsicum gun, the image being that if somebody attacks you, you are going to pull this out and spray them and that is the end of your problem. What these ads don’t mention, obviously, is that if a woman can carry one of these things and acquire it, then so can her potential attacker. So now we have a situation where the potential attackers have them, and the women have them, the police have them, and everybody have them, and who is safer at the end of the day? I think far from easing crime and the fear of crime, this growing availability of capsicum may exacerbate both.

In recent years the private sector has even managed to use fear of crime as a way of selling cellular phones to women. So women are told, buy a cellular phone and you need never be alone. You have got an image of yourself alone driving along the highway and something happens, and you whip out the phone. I am not going to say that that can never ever happen, but just pointing this out as a strategy for marketing a product that at first glance has nothing to do with crime. I really do think that this marketing of goods to women deserves more research because it represents par excellence the length to which the private sector will go and capitalize on and profit from people’s fear of crime. A recent article has succinctly expressed that the private sector “what one might call a vested interest in fear”, and I think that this is something that we should think about and that is really what I am trying to get out in my presentation.

Some words on the general context and consequence of privatization. As these examples illustrate the corporate and commercial sector is greatly expanding its involvement in criminal justice. Economically it is able to capitalize on profit from public fears of crime and desires for security. In the enterprise culture of justice the phenomenon of crime appears to be a never ending resource for which corporations can profit in material ways. Let me quote Niels Christie here: “Compared to most other industries, the crime control industry is in a most privileged position. There is no lack of raw material, crime seems to be an endless supply”. But while the corporate and commercial sector is benefiting from privatization, its benefits for the public are far less clear. I think that many peoples’ fears of crime can be disproportionately increased by relentless emphasis on the risks and dangers they face. Meanwhile marginalised individuals and groups including the poor, homeless, and those subject to the criminal justice system experience more insidious control and more extensive control. Both those who are supposedly threatened and those who represent a threat suffer through privatization.

At a more theoretical level, at which I won’t get into at great detail due to time, I think that we can see privatization as a core component of what can be described as “the risk” society. As Richard Erickson for example has noted “one logic of the risk society is a negative one. Threats and dangers and fears about them are dealt with by the construction of suitable enemies. There is a tended labelling, denial, avoidance and exclusion – solidarity is based on the commonality of fear”. I think we have to look at the rise of privatization as going hand in hand with the rise of risk society. Perhaps I will mention that Richard Erickson and Kevin Haggerty’s book has just come out Policing the Risk Society and this is the most extensive empirical documentation of it so far.

Just a little tangent as well, if I had more time I would talk about it, I also see these trends as going hand in hand what George Ritzer in the United States has calls the “McDonaldization” of society. So we have the risk society and privatization going hand in hand, and as Jean-Paul Bras D’or at the University of Montreal has pointed out that within this technological forms of risk management which are becoming prominent, electronic monitoring is just one form of that and capsicum is another, and we ought to see other technological forms of surveillance including bank cards, library cards, tags for clothing, food, and so on, and by extension as we are seen talking about now tagging people and using their finger prints to check them in and out of work or to potentially protect against welfare fraud. So I think that we are in a situation where it is not only risks themselves but also the means to control these risks which are both omnipresent and intangible.

Let me move on with some final words about private prisons. What about private prisons, how should one view them? Debates about privatization and criminal justice often focus on the specific issue of private prisons, but as I hope my presentation has made clear the issue should be seen in a much broader way and it is in fact these broader issues which get too little attention. However, seen as private prisons are a flash point and seen as it is particularly relevant in New Brunswick, I would like to make a few reflections on this particular phenomenon.

Overall I think that concerns over private prisons fall into two major types or two sets of issues. The first set of issues we might describe as practical issues, and here we are talking about legal issues – can private prisons be legal; cost issues – how much will private prisons cost compared to public ones; and similarly quality issues, management issues and effectiveness issues. That whole set of issues are very practical or policy issues.

The second set of issues are moral, political and social issues, and especially questions about whether the profit oriented private sector can and will provide services which are humanitarian, just and supportive of prisoners and the public’s good. So we are asking in the sphere of prisons, can the private sector support public good? It is my position that the second set of issues – the moral, political and social issues – should take precedence over the first or more practical set of issues. One reason for this is that it is highly questionable as to whether private prisons are cheaper, more effective, more efficient, ect. than public prisons. I think this fact has been very well documented in a recent book entitled Punishment for Profit: Private Prisons, Public Concerns. This book provides good evidence that one can not definitively argue that private prisons are all the things that they are claimed to be. But even more importantly than that I think, moral, political and social issues should precedence because prisons are distinctively different to other social institutions. Arguably, political and governmental responsibility with respect to prisons is not just an administrative responsibility, its not just an economic responsibility. Rather it is a moral and ethical responsibility and because of this the privatization of prisons can not be discussed for example in the same way as the privatization of phones, bus companies and so on.

One might ask how are prisons different to these other institutions? Firstly, I think the prisons are different because they are literally hidden from public view, and this means that prisoners and people that work in prisons are vulnerable in a variety of ways. Secondly, prisons are different to other institutions in that their purpose is punishment, the infliction of meta-physical pain and the deprivation of liberty. Prisoners are a captive human population, prisoners are powerless in many ways, they are not customers or clients in the usual sense of those words. So it is that the hidden nature of prisons and the relatively powerless nature of prisoners that makes privatization in this area even more problematic than in other ones.

It is also difficult to see how the profit and expansionist orientation of the crime control industry is compatible with humanitarian ideas of limiting use of imprisonment and expanding rehabilitation programs, or with the development of meaningful alternatives to prison. When you think about it, it is in the interest of the private profit sector that the prison system and profit-making should grow. I think the private sector has a number of interest here and I want to list them off to you. Firstly as I say, that profit-making should grow and thereby through the growth of the imprisonment sector itself. It is in the interest of the private sector that sentencing be more punitive and parole diminished. It is in the interest of the private sector that correctional employees be de-unionized and that salary, benefits and promotional opportunities be cut to a minimum. It is in the interest of the private, for-profit sector that accountability to the government and the public should be kept to a minimum. And finally, should savings result from privatization of prisons, it is in the interest of the private sector that as much as possible of these savings should become their profit rather than be returned to government and save the government money. So if there is any savings to be made, obviously it is in the interest of the private sector to keep as much as possible of that for themselves rather than handing it back to government.

Overall, while private prisons may be desirable from the point of view of the private sector, their consequences for prisoners, for correctional employees, for tax payers and for government may well be negative.

Let me make a few concluding statements. Private prisons must be seen in the broader context of privatization of criminal justice and control. As I have tried to describe the profit impotice and the expansion of control can go hand in hand. Put bluntly, increases in the fear of crime and related demands for security even beyond any demonstrated need serve the interest of the private sector. As Niels Christie puts it: “only rarely will those working in or for any industry say now, just now, the size is about right. Now we are big enough, we are well established, we do not want any further growth. An urge for expansion is built into industrial thinking. The crime control industry is no exception”. I think that in face of the ideology and practices of privatization basic questions about values, human rights and justice get left behind. Privatization deflects attention from and distorts perceptions of real social problems. Perhaps the greatest challenge facing not only researchers and policy makers but also entrepreneurs themselves is to maintain a humanitarian focus on the consequences of privatization and despite its own rational, utilitarian and managerial discourses. I wish colleagues and students at St. Thomas University good luck as they continue to meet this challenge. Thank you.