

Identifying Solutions to Research Issues in Comparative
Recidivism Analyses between Private and Public State Prisons

by

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Abstract

Private prisons have been a highly-discussed topic in the past few decades. A common question that emerges from an often-chaotic debate is “Are private prisons better or worse than their public counterparts?” Academics have had varied opinions and have written many papers ranging from comparing costs, prison conditions, and recidivism rates. One question that has not been discussed as often is the arduous and complicated research methodology that is used. This paper identifies common difficulties that researchers face in writing comparative recidivism papers on private versus public prisons and suggests solutions. The first issue focuses on the difficulty of obtaining necessary data. The second issue focuses on external validity: how state differences such as differing prison contracts, government corruption, population validity, and sample bias affect a researcher’s ability to generalize results to all private prisons. For the third issue, I consider the threats to internal validity, including how differing control factors in the current literature impact results, the limits of statistical regression, and the difficulties of controlling for third party variables. Finally, I consider how politics can result in not only the unwillingness to provide data for third party research, but in the tendency to dismiss concerns about quality raised by existing research. I conclude that it is very difficult, if not impossible to conduct an objective, scientifically sound, third party study comparing private and public prison recidivism. Research in the field of comparative recidivism (even the general field of private prison research) has hit a roadblock, and there is a need for a creative way to capture the impact of private prisons on the U.S. prison system. Some suggestions provided are: doing state-specific recidivism research, using qualitative data to better explain the results of comparative recidivism studies, and conducting institutional-level research on quality performance measures more directly correlated with prison operations such as deaths, escapes, and violent incidents.

Background Information

History of Private Prisons in the United States

The modern private prison industry started in the mid 1980's when the Tennessee-based Corrections Corporation of America (CCA) offered to contract with the Tennessee State Department of Corrections (DOC). At that time, a federal judge had found the state's correctional system to be in violation of the U.S. Constitution because of the conditions of overcrowded prisons. The state was to sign a \$250 million, 99-year lease. In exchange, CCA would take over the operations of the state's prison system for a negotiated per diem payment¹. The state refused the bid, but CCA began to purchase and build individual facilities and increase its market share. The private prison industry began to draw attention from the public with several state governments, including Florida, New Mexico, Kentucky, and Washington D.C.. These states began to use private prison corporations to hold some of their prisoners.

By 1997, the number of adults in privately operating institutions reached about 64,000, and industry revenues had reached approximately \$1 billion.² The growth of the industry can be attributed to several factors.

i. Significant Increases in State and Federal Prison Population

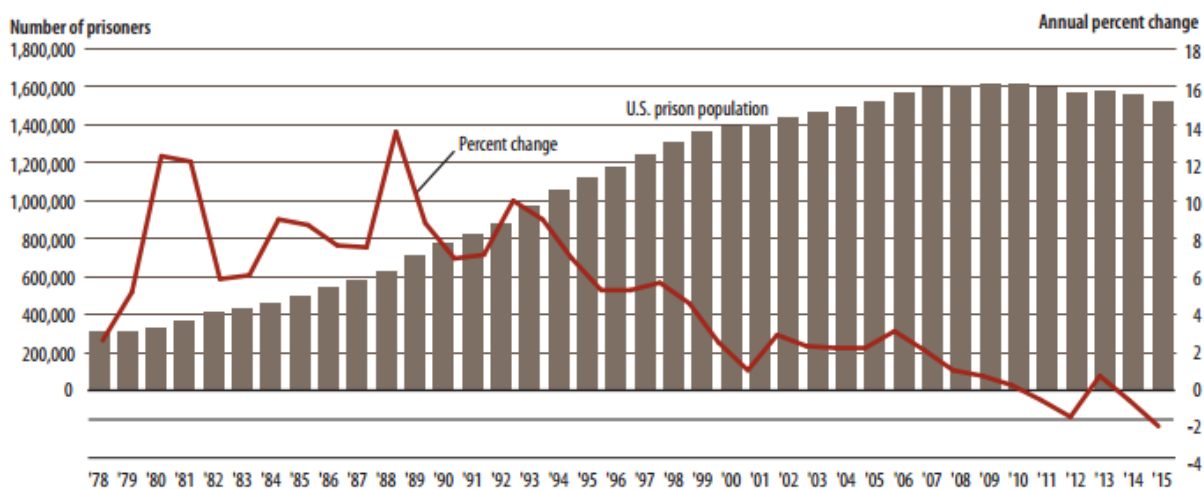
Starting in the mid-1970's, the nation's prison population grew significantly. In just 20 years, from the end of the 70s to the end of the 90's the population almost quintupled.³

¹ McDonald, D. C., Fournier, E., Russell-Einhorn, M., & Crawford, S. (1998). *Private Prisons in the United States: An Assessment of Current Practice*. Boston, MA: Abt Associates Inc., 4

² McDonald et al., iii

³ Carson, E. Ann, and Elizabeth Anderson. *Prisoners in 2015*. Rep. no. NCJ 250229. *Bureau of Justice Statistics*, U.S. Department of Justice. Dec. 2016., 3

Prisoners under the jurisdiction of state or federal correctional authorities, December 31, 1978–2015



Note: Jurisdiction refers to the legal authority of state or federal correctional officials over a prisoner, regardless of where the prisoner is held.
Source: Bureau of Justice Statistics, National Prisoner Statistics, 1978–2015.

Several factors contributed to these increases: rising crime rates, decisions by police to increase street-level arrest of drug dealers in the “War on Drugs,” and changing attitudes towards crime and criminals encourages judges and corrections to increase the severity of punishments for people convicted of crimes.⁴ Governments were not able to build enough new facilities to handle this large increase in prices. By 1986, 43 state prison systems were operating over 95% capacity, and the federal government was also operating at approximately 20+% over capacity.⁵

ii. Overcrowded Prisons⁶

This increase in prison population caused a lot of overcrowding issues. A large portion of the U.S. prison facilities were old and outdated; a government survey found that half were over 35 years old, and 10% were over 100 years old. The old prisons were

⁴ Committee on Causes and Consequences of High Rates of Incarceration. *The Growth of Incarceration in the United States : Exploring Causes and Consequences*. Washington, D.C., US: National Academies Press, 2014. ProQuest ebrary. Web. 16 April 2017., 70

⁵ McDonald et al., 8

⁶ McDonald et al., 8

expensive for the government, requiring more maintenance, renovation, and replacement.⁷

iii. Inhibitions on Government Spending⁸

The U.S. prison system was in dire straits- it was overcrowded, the prisons themselves were old and required expensive maintenance, and to add more pressure to corrections departments, there was also a movement amongst voters to get “more services for less tax.” State governments were reaching their debt ceilings, which meant that infrastructure projects (such as prison building and maintenance) could only be funded through state-issued bonds, with voter approval. That time also coincided with the public disillusionment with the idea of rehabilitation, and there were calls for tougher penalties, increased fear of crime, and the “dehumanization and demonization of offenders.” A way out of this budget crisis was to contract a private operator to operate the prisons, thus moving the capital expenditure to the operational state budget, which did not have a constitutional limit.

iv. Belief that the Private Industry was Superior to Government

Another opportunity for private prison corporations to expand was the public perspective that the private sector could almost always carry out services more cost-effectively than the public sector. Competition increased private sector efficiency, while the public sector was seen as a mired with red tape.

⁷ Bureau of Justice Statistics, Prisoners in State and Federal Institutions on December 31, 1983 (Washington, DC: Department of Justice, 1986), Table 16.

⁸ Harding, Richard. "Private Prisons." *Crime and Justice* 28 (2001): 265-346. *JStor.*, 270

Academic Debates surrounding Private Prisons

The above beliefs also spawned many academic papers and opinions on the private prison industry. But despite the large range of papers from a variety of organizations about prison privatization, the general theories for both pro and con arguments are simple. For the advocates of privatization, privatization adds competition, and competition will encourage private prisons to operate more efficiently (decreasing prison costs) and force them to innovate (increasing prison quality). For critics of privatization, privatization represents the opportunities for corporations to profit off prisoners, cutting corners and infringing on essential human rights.⁹

Current State of Private Prisons in America

Since the reemergence of the private prison industry, over 30 states have used private prisons to house inmates¹⁰. As of 2015, 27 states use private prisons in some capacity, with 91,338 private prison inmates.¹¹ There are three large private prison corporations operating in the United States- CCA (now CoreCivic), GEO Group, and Management and Training Corporation, controlling 182 facilities. Due to recent negative media focus on private prisons, private prison corporations have begun to rethink their outreach strategies. CCA rebranded into CoreCivic, and all companies have been placing a focus on prisoner re-entry programs and funding¹².

On August 18th, 2016, the U.S. Department of Justice sent out a memorandum stating that the Bureau of Prisons should decline to renew or significantly reduce the contracts of private prisons for the federal prison system. The memo referenced reports released by the Department of Justice earlier that month, "Review of the Federal Bureau of Prisons' Monitoring of Contract

⁹ "Private Prisons." American Civil Liberties Union. Web.

¹⁰ Oppel, Richard A., Jr. "Private Prisons Found to Offer Little in Savings." *The New York Times* 18 May 2011.

¹¹ Carson and Anderson, 28

¹² McGee, Jamie. "CCA Looks to Re-entry Program Growth as Federal Contracts Shrink." *The Tennessean*. 22 Sept. 2016..

Prisons.” This report stated two major reasons motivations. Firstly, there was a decline in federal prison inmates due to an increased effort to better sentencing procedures. Secondly, the federal government contends that private prisons “simply do not provide the same level of correctional services, programs, and resources...do not save on costs...do not maintain the same level of safety and security.”¹³ The government believes that the educational and job training programs offered by the federal prisons that are hard to replicate are crucial to reducing recidivism. But despite the federal government deciding to do this on a national level for federal prisons, this does not affect privately run state prisons, where the majority of private prisons are contracted. At the time that the Department of Justice (DOJ) report was released, the major private prison companies responded aggressively to the report, noting that private prisons did save on costs and arguing that the report did not accurately account for the differences between the prisons analyzed.

Despite the current movement for states to end their contracts with private prisons¹⁴, many states still utilize prisons run by the three big private prison corporations, the Corrections Corporation of America (CCA), the GEO Group, and Management and Training Services. As of 2012, private prisons house 7.8% of state prisoners¹⁵. Private prisons have been previously accused of having bad living conditions, and for cutting costs by cutting necessary programs¹⁶.

¹³ U.S. Department of Justice. Office of the Deputy Attorney General. PHASING OUT OUR USE OF PRIVATE PRISONS. U.S. DOJ., 18 Aug. 2016.

¹⁴ Boucher, Dave. "State Employees' Group: No More Private Prisons in Tennessee." *The Tennessean*. The Tennessean, 22 Aug. 2016. Web. 19 Oct. 2016.

¹⁵ Barrett, Paul. "Private Prisons Have a Problem: Not Enough Inmates." *Bloomberg.com*. Bloomberg, 08 Sept. 2016. Web. 22 Oct. 2016.

¹⁶ Smith, Clint. "Why the U.S. Is Right to Move Away from Private Prisons." *The New Yorker*. 25 Aug. 2016. Web.

On February 17th, 2017, U.S. Attorney General Jeff Sessions released a subsequent memo which repealed the Yates memo, emphasizing the importance of private prisons helping the federal prison system function¹⁷. These two memos have sparked a lot of debate in the media and with advocacy groups, and represent a significant turn of events that have reignited the debate on prison privatization.

Evaluating Private Prisons

The public is clearly interested in private prison performance- but measuring it is much easier said than done. Many studies have focused on comparing costs, attempting to confirm or disapprove the claim that private prisons can operate on less than their public counterparts. Despite numerous studies, a consensus has not been reached¹⁸. But costs are only part of the question, as it is only address one of two major topics surrounding private prisons. The quality of prisons is much harder to measure, and what exactly constitutes quality has been a big question. Should quality of prisons be measured upon its ability to rehabilitate prisoners or the standard of living of a prisoner in the system? The former is generally more widely accepted as a measure of a prison on society overall, and as a result, one of the most commonly used performance measures for prison quality is recidivism.

What is Recidivism and How is It Calculated?

According to the National Institute of Justice, “Recidivism is one of the most fundamental concepts in criminal justice. It refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”¹⁹ The relapse into

¹⁷ U.S. Department of Justice. Office of the Attorney General. Rescission of Memorandum on Use of Private Prisons. U.S. DOJ., 21 Feb. 2017.

¹⁸ Harding, 283

¹⁹ "Recidivism." *National Institute of Justice*. Office of Justice Programs, 17 June 2014. Web.

crime can be defined in four ways: rearrest, reconviction, reincarceration for a new sentence, or revocation for a technical violation. The first three measures new criminal offenses. Revocation for a technical violation can encompass activities that are not a crime, but may violate conditions of an ex-inmate's supervised release (e.g. drinking alcohol, failing a drug treatment program, missing curfew).²⁰

Recidivism rates can be determined in several ways:²¹

- 1) Interviewing offenders to determine whether they have committed crimes since entering or exiting a program or sanction.
- 2) Analyzing officially recorded criminal justice events such as arrests, convictions, supervision violations and commitments to jail or prison.
- 3) Charting a new offense over an elapsed time frame (e.g., Has the person been arrested since entering community-based drug treatment? Has the person been arrested within three years of his or her release from prison?).
- 4) Measuring time elapsed until the next crime (e.g., number of days passed until someone was rearrested after his or her release from prison).

The measure that this paper will be focusing on is the second method, as it is the most common method used by state DOCs, and the method used by comparative recidivism studies.

To calculate the rate, one needs to take a group of prisoners released in a time period, and look at the following 2-5 years to see how many have re-entered the system. In comparative recidivism studies, the researchers do the same thing, but focus on how that rate differs depending on inmate exposure to private prison.

²⁰ Duwe, Grant, and Valerie Clark. "The Effects of Private Prison Confinement in Minnesota on Offender Recidivism." *Minnesota Department of Corrections*. Mar. 2013. Web.,11

²¹ "Measuring Recidivism." *National Institute of Justice*. Office of Justice Programs, 20 Feb. 2008. Web.

Summary of Current Comparative Recidivism Literature

If one is looking to read through all of the literature regarding comparative recidivism studies between private and public state prisons, they would not need to set aside much time for it, as there are currently only seven studies on this subject, covering only four states.

Florida Papers

So far, there have been four papers in Florida, compared to just one in the other states mentioned below. In fact, the data necessary for recidivism studies is so scarce that before 2008, Florida was the sole state where any comparative recidivism analysis had been done.

The first study comparing recidivism rates between private and public prisons was conducted by Lanza-Kaduce, Parker, and Thomas in 1999. Their study matched 198 pairs of male private and public prisoners based on age, race, offence, and prior offense. Analyzing the matched pairs, Lanza-Kaduce et al. concluded that within one year of release, 10% of private prison inmates were rearrested compared to 19% of public, and 10% of private prison inmates committed new offenses compared to 14% of public inmates. However, subsequent authors noted several important flaws with the study such as the small sample size, the limited window (1 year) of follow up, and limited matching criteria²².

The second study was a follow-up to the first done in 2001. Lanza-Kaduce and Maggard reexamined the data with a narrower subset of pairs, a relaxed standard of significance ($p < .10$), and a follow up period of four years. Their conclusions were similar to their previous results; inmates released from private prisons tended to recidivate less.

²² Bales, William D., Laura E. Bedard, Susan T. Quinn, David T. Ensley, and Glen P. Holley. "Recidivism Of Public And Private State Prison Inmates In Florida*." *Criminology & Public Policy* 4.1 (2005): 57-82., 3-4.

In 2002, Farabee and Knight improved on the work of Lanza-Kaduce et al. by using a larger sample size of 8,848 prisoners and expanding the population to include female offenders and youthful offenders. They also increased the number of matching criteria (time served, offense type, education, and custody level). They did not find significant differences in recidivism rates in adult males, but found that women released from private prisons were 25% less likely to reoffend and 34% less likely to be incarcerated than females released from public prisons. Farabee and Knight were also the only ones to look at program enrollment in prison, noting that 98% of private prison inmates attend any sort of correctional program compared to 75% of their public counterparts.²³

Bales improved on the three previous studies in several ways. Firstly, he devised a more accurate way to measure private prison exposure. The previous papers by Lanza-Kaduce et al. and Farabee and Knight defined whether an inmate was categorized as public or private based on their release facility or if they had spent at least 6 months at their release facility respectively. Bales divided the population into 6 categories, depending on how long an inmate spent at a private facility. Bales also increased the follow up time to 5 years. The study found no significant difference between private and public prison recidivism rates for adult male, female, and youthful offenders.²⁴

*Oklahoma*²⁵

Spivak and Sharp replicated and expanded on the Bales study by using data from Oklahoma. They also examined an inmate's proportion of time served in either public or private prison by

²³ Farabee, David, and Kevin Knight. "A Comparison of Public and Private Prisons in Florida." Query Research (2002).

²⁴ Bales *et al.*

²⁵ Spivak, A. L., and S. F. Sharp. "Inmate Recidivism as a Measure of Private Prison Performance." *Crime & Delinquency* 54.3 (2008): 482-508. Web.

adding them as continuous variables. This allows for a confirmation of the exposure and comparison method by permitting the use of all records without limiting conditions. Spivak and Sharp's analysis was very different from any of the previous studies, finding that there was a significantly greater hazard of recidivism amongst private prison inmates in six of the eight models tested, and found that a greater proportion of time served in private prisons increased chances of recidivism by 11.8%.

*Minnesota*²⁶

The 2013 study done by Duwe and Clark was unique in several ways. Firstly, the study was the first done in a state where they examine the performance of a private prison in a state that has not historically relied on private prisons. Duwe and Clark also extended the definition of recidivism, separating any return to prison with returning due to a technical violation. Finally, it is the only study released directly by the state Department of Corrections, without collaborating with an outside institution or scholar. The study examined 3,532 offenders released from prison between 2007 and 2009. The results showing that offenders who had been incarcerated in a private prison had a greater risk of recidivism in all 20 Cox regression models. However, the association was statistically significant in 8 of the 20 models. Duwe and Clark also suggest some causes of the high recidivism risk, like fewer visitation and rehabilitative programming opportunities for offenders incarcerated at private facilities.

*Mississippi*²⁷

The latest study was submitted in 2016 by Anita Mukherjee, and has not yet been through the peer review process. Her study did not focus as much on comparing recidivism rates as the

²⁶ Duwe and Clark. 2013, 1

²⁷ Mukherjee, Anita. "Does Prison Privatization Distort Justice? Evidence on Time Served and Recidivism." SSRN Electronic Journal (2016).

relationship between time served and recidivism in private and public prisons. She examined prisoners in Mississippi, and found that private prison inmates in Mississippi between 1996 and 2004 serve an additional 4 -7% of their sentences. This is linked to the widespread use of conduct violations in private prisons. However, Mukherjee was not able to find a difference in recidivism rates, despite the longer incarceration times.

Data Challenges in Doing a Comparative Recidivism Analysis

On the surface, it seems like an easy question to answer: do publicly or privately run prisons have higher recidivism rates? It seems like an aspiring researcher can simply take some sample populations from across the 30 or so states that have or have had private prison populations and compare the two using a statistical regression, but the situation is much more complicated than at first glance.

When I started my research, hoping to do a comparative recidivism analysis by using data from a state not represented. If there are 30 or so states in the U.S. that have used private prisons at some point, why, then, have only four states been represented in the literature so far?

To run a comparative recidivism analysis, one needs data with an inmate-specific level of detail. This is because there are many factors that can contribute to an inmate recidivating that are not directly related to the actions a prison takes. For example, older inmates tend to recidivate less than younger inmates, and inmates who have prior incarcerations are also more likely to recidivate. Therefore, for each data point, it is necessary to know as many relevant factors as possible. Most states publicly release recidivism data on a state-wide level and are able to give basic inmate information, such as release date and time incarcerated. However, getting data on certain factors on the inmate-level is much more complicated.

I previously mentioned the difficulties of getting data on relevant factors that influence recidivism. However, even before considering what control variables to put into a statistical regression, there is another difficulty in getting data. To calculate recidivism, one needs the release date of the inmate as well as the date they recidivate, and to calculate the differences in recidivism rates between private and public, one needs information on where the inmate resided during the period of his incarceration, and any movement history. While this may seem like basic, simple data requests, in practice, it is rarely so. The release date, the facility from which the prisoner is released (release facility), and the dates the inmate is in the system are sometimes available after data request, but movement history and the particular facilities a prisoner stayed during his incarceration is hard to find. One reason is that many states that have big private prison populations, in my experience Arizona, Tennessee, and Florida, have refused to give out movement history, citing protection of inmate privacy as a concern. Inmates also could be released from different facilities than those in which they spent the most time, which doesn't allow outside scholars to determine how long or even if a prisoner was ever in a private institution using just release facility. Therefore, getting a release facility (which is what most of these states are willing to release as part of their inmate database) is not enough to adequately determine prison impact on recidivism. Anything that requires more detail and is not searchable in a DOC's inmate database on their website usually requires a strenuous data request process and a not insignificant amount of time and resources.

Furthermore, some states simply do not entertain requests for offender information such as Louisiana, of which 8.7% of prisoners are in private prisons²⁸. Kentucky, for example, in its policy and procedures for research only gives guidelines for cooperative research that the

²⁸ Carson and Anderson, Appendix Table 2

department is interested in. Arizona and Tennessee (15.1% and 18.4% respectively²⁹) only have official guidelines for media response procedures, not data requests. When in an email exchange with the department of Arizona, I referenced a page on the website that allowed researchers to purchase the database, but was told that the option to purchase was no longer available. That link now reads “the Arizona Department of Corrections no longer makes available copies of the inmate information contained on the ADC Website Inmate Datasearch.”³⁰ The two alternatives listed on the page are to request information on a specific inmate or other public available records. If one wishes to do research using Kentucky DOC information, it must be done with the approval and participation of the department.³¹

The process that a researcher needs to go through to obtain the necessary information can be quite complicated. One only needs to look at the studies that have succeeded as proof. Except for one state, Mississippi, all papers published have been in cooperation with the Department of Corrections themselves. Furthermore, independent third parties need the data that the study is based on to reanalyze and reaffirm conclusions. For several reasons outlined below, none of the data from three states that currently possess private prison populations (meaning with the exception of Minnesota) are available in this manner:

Florida - The Florida papers were a result of a requirement in Chapter 957 of the Florida Statutes, enacted in 1993 and later renewed in 2003. These statutes detailed the creation of the five-person volunteer group, the Florida Correctional Privatization Commission (CPC). This commission was tasked with the objectives detailed in Section 957.03(4)(c).

²⁹ Carson and Anderson, Appendix Table 2

³⁰ "Request Copy of Inmate Data Search Database." Arizona Department of Corrections. Web.

³¹ "5-1 Research and Survey Projects." *Policy and Procedures*. Kentucky Department of Corrections. Web.

The Florida Correctional Privatization Commission was required to submit an annual report to the speaker of the Florida House of Representatives and the President of the Senate, “on the status and effectiveness of the facilities under its management. Each report must also include a comparison of recidivism rates for inmates of private correctional facilities to the recidivism rates for inmates of comparable facilities managed by the department.”³² After the CPC was disbanded (the details of which I will describe later on in the paper), the reports, and the data required for those reports were no longer necessary.

Oklahoma - The Oklahoma paper used information provided by Spivak during his time as an analyst in the Oklahoma Criminal Justice Resource Center. When I asked Spivak directly for the information, he explained that all he was allowed to take after he left the job was a de-identified version, but the data was never public. In addition, since there is no codebook, much of the data was reliant upon Spivak to identify data labels, and it would take a long time and a lot of effort to recreate the data again from the code. Data requests from the original agency that provided the information are also no longer a possibility, as the entity is now part of another branch in the Oklahoma DOC, after much controversy.³³

Mississippi - Professor Mukherjee was not allowed to share inmate data under an IRB agreement, and had to personally visit the department in Mississippi to extract certain data. Therefore, she does not possess the full dataset. In an email exchange, Professor

³²The 2003 Florida Statutes, §§ 957-1-4 (2003).

³³ "Embattled Director of State Criminal Justice Resource Center Resigns." *NewsOK.com*. N.p., 19 Feb. 2008. Web.

Mukherjee also warned that “[the DOC] are a bit sensitive about sharing the data now because the most recent Commissioner had to step down because it turned out he was taking bribes from the private prison corporations.”

In order to run a good analysis, one needs a good database. Sometimes, inmate databases (usually the only information that states will give out) are missing crucial information. For example, some datasets may have the release date for the prisoner but fail to consider movement history, therefore inaccurately estimating the impact of private prisons on the prisoner’s risk of recidivating³⁴. In addition, in many data request scenarios, like my own with Arizona and Florida, important predictors in recidivism are not publicly available, such as inmate disciplinary violations or marital status³⁵. Instead, further research proposals are needed, with a draft proposal submission justifying why the study would be useful to the state.

But sometimes it isn’t just inmate-specific information that is not available for data requests. One of the main arguments for private prisons is that they are better equipped to reduce recidivism because inmates will get more exposure to better quality vocational and educational programs. But none of the current studies take a deep enough look at what programs, if any, each inmate went through during their time incarcerated, or noted anything about the quality of the programs available at each prison. This lack of an in-depth program analysis has been repeatedly noted by the authors of current comparative recidivism analysis as a crucial, yet missing part of recidivism literature.³⁶ Furthermore, much of the methodology behind how a private prison operates is

³⁴ Volokh, Alexander. "Prison Accountability and Performance Measures." *Emory Law Journal* 63 (2013): 339-73. Web, 358

³⁵ Spivak and Sharp, 5-4.

³⁶ Bales et al, 79.

considered proprietary information, especially in terms of how they run their programs and how they train their employees, and if only a few states require private prisons to release inmate information as part of the Public Records Act, then almost none require them to release information about programming.³⁷

Finally, states simply do not have incentive to give out data, especially data surrounding private prisons. States, and the politicians that run them, never derive benefit from such an arrangement. At best, the study confirms a policy that has already been agreed upon, but there is also the possibility that the report that results from third party use of the data will undermine private prisons, drawing negative publicity for the department.

By limiting access to public data, the sharing of data that is obtained, and limiting access to private prison data, states are effectively limiting the amount of third party analyses that can be done.

The Assumptions of a Distinct Private Prison Population – The Texas Example

In my conversations with the Texas Department of Criminal Justice (TDCJ), I realized another issue with comparative analyses in general: all the current studies assume a distinct private prison population -- but can we make that assumption? In the case of Texas, the TCDJ doesn't consider private prisons to be a separate part of its prison system. Texas moves their inmates from facility to facility, and inmates often have multiple locations they stay at throughout their sentence. According to a conversation with the head of the department, TDCJ offenders are housed in multiple units during their incarceration for a variety of reasons (custody, treatment,

³⁷ Tartaglia, Mike. "PRIVATE PRISONS, PRIVATE RECORDS." BOSTON UNIVERSITY LAW REVIEW 94 (2014): 1690-743. *Boston University*, 1723

testing, intake, release, processing, hardships, etc.). Furthermore, in addition to staying at multiple prisons during their sentence, inmates are sent to a different location to be released. As of 4-5 years ago, Texas began releasing prisoners from regional facilities near their place of residence, but before, almost all prisoners were sent to two public facilities (Huntsville or Gatesville) to be released. Therefore, all the release facilities for inmates released before 2012 in the database were just these two facilities. This complicates recidivism analysis in two ways: firstly, the release facility is no longer at all relevant to the analysis, and the varied movement history of inmates has essentially created a homogenous data set. In essence, it is impossible to compare two distinct private and public prison populations because there *are* no distinct private and public prison populations.

Threats to External Validity

In all of these papers, the authors state that their findings indicate something about private prison recidivism rates compared to public prison recidivism rates. However, the implicit assumption that their results, based on data from only one state, can be generalized to all private prisons is very misleading. There are multiple problems with external validity in comparative recidivism studies. External validity is defined as “the extent of whether the results of a study can be generalized to other situations and to other people.”³⁸ If we consider this in the context of comparative recidivism analyses, we can extrapolate that the “generalization of situation” to be whether or not the results from the data used can be generalized to other states, and the “generalization of people” to be whether or not the results from the data can be generalized to other populations of prisoners. Unfortunately, there are many issues with external validity in comparative recidivism studies between private and public state prisons.

³⁸ Aronson, E., Wilson, T. D., Akert, R. M., & Fehr, B.. Social psychology. (4 ed.). Toronto, ON: Pearson Education. 2007.

Differences in Prison Contracts

Firstly, we must address the numbers issue: states that use private prisons use them to different degrees. For example, consider a system such as Minnesota's. Duwe and Clark did their analysis after the system's lone private prison was closed down in 2010. Private prisons are historically not a big part of the Minnesota prison system. Contrast Minnesota to Florida and Mississippi whose 2015 private prison populations made up 12.3% and 20.9% respectively of their total prison population. Oklahoma ranks fourth in incarceration population and has 26.1% of its total inmate population in private prisons^{39,40}. In contrast, 8% was the national average that year.

The differences also exist in terms of what states want from private prisons. Both Minnesota and Mississippi began to use private prisons to address overcrowding issues. Florida began using private prisons at the urging of prominent politicians, promising taxpayers that private prisons would address budget issues and save the state 7% in their corrections budget.⁴¹ Furthermore, private prison contracts differ between states. Depending on the state, there might be difference in personnel requirements, different standards for security, bed occupancies clauses, and management and programming requirements.

The Problem of Corruption⁴²

In Oliver Hart's Nobel Prize-winning work on contracts, specifically regarding the issue of private prisons, he uses an important assumption in his model - that the government always serves the needs of society. If this happens, the entity (whether it be the government or the private prison) will always save on costs, therefore, it is the government that must make the

³⁹ Carson and Anderson, Appendix Table 2

⁴⁰ Spivak and Sharp, 490

⁴¹ Lanza-Kaduce, L., K. F. Parker, and C. W. Thomas. "A Comparative Recidivism Analysis of Releasees from Private and Public Prisons." *Crime & Delinquency* 45.1 (1999): 28-47., 30

⁴² Fausset, Richard. "Indictment of Ex-Official Raises Questions on Mississippi's Private Prisons." *The New York Times*. The New York Times, 16 Nov. 2014. Web.

decision to privatize based on whether the reductions in costs will result in a comparatively large decrease in quality. Hart then considers the distortions to his model if the government were to instead be corrupt. In the basic case, a major power of the government is the right to contract renegotiation, basically the right to “fire” the manager (the private prison company) of the prison, or the right to replace the manager in a public prison. However, in the corruption case, Hart demonstrates that the politician acting on behalf of the government will always choose to privatize due to the personal benefits gained. In this case, the government loses the ability to fire the company and replace with either another contractor or a public facility if the company does not manage the prison properly. Therefore, without any guidance, the cost reduction will be the only focus of the private contractor, and the quality will almost certainly decrease as a result. Thus, we can conclude that corruption plays a big factor in evaluating quality, which is measured by recidivism rates.

In Mississippi, it was revealed that their former Commissioner of their Department of Corrections, Christopher Epps, and a state lawmaker, Cecil McCrory, had accepted over \$1 million in bribes in exchange for “lucrative state contracts” for private prisons⁴³. Epps was a 20-year Mississippi DOC employee, who started his commission job in 2002. 2002 just overlaps part of Mukherjee’s inmate sample which examines inmates admitted from 1996 until 2004. A key point made in Murkherjee’s paper is that if private prisons are bribing officials, then the level of monitoring goes down, resulting in lower standards of quality. A bribery scandal could potentially make states wary of private prison-related data requests, as it did in Mississippi.

This widespread bias does not only present troubling implications for potential influence on private prison performance data, but also brings into question the impartiality of previous

⁴³ Blinder, Alan. "2 Former Mississippi Officials Plead Guilty in a Graft Case Involving Private Prisons." *The New York Times*. The New York Times, 25 Feb. 2015.

reports. In the Florida papers alone, there are many issues with impartiality. Charles Thomas, one of the sponsors of the first Florida paper, was implicated in an investigation, along with the CPC mentioned earlier for having a conflict of interest.⁴⁴ Dr. Thomas was fined \$20,000, the highest fine in the Commission of Ethics history, for “contractual relationships he had with four companies related to the private corrections industry. These relationships conflicted with his duty to objectively evaluate the corrections industry.”⁴⁵ In addition, to Dr. Thomas, the executive director of the CPC, ex-Commissioner Mark Hodges, was also publicly censured for “having a conflicting contractual relationship with [Thomas]... failing to disclose sources on income related to his private consulting practices.”⁴⁶

This was only the beginning of the CPC’s troubles. Hodges was replaced by Alan Duffee, whose commission sponsored the Bales paper in 2003. In 2005, the CPC was officially disbanded, for “consistently failing to safeguard the state's interests...costing the state over \$13 million dollars.”⁴⁷ The disbandment of the CPC resulted in the end of recidivism studies in Florida.

Population Validity

Of course, even if a state has distinct prison populations, it doesn’t mean that the populations are similar enough with other states to be compared. An important aspect of external validity is the extent to which the test population can be extracted to the general population. Population validity is a concern, because since all the studies so far only examine one state at a time, the criminal population is hard to replication in another. Gaes also notes that “it is easy to think of a host of reasons why the Florida results do not apply to other jurisdictions...other states may have

⁴⁴ Spivak and Sharp, 489

⁴⁵ Correctional Privatization Commission Investigative Summary. Rep. no. EI-14-0084. Florida Office of Executive Investigations, 2007, 77

⁴⁶ Correctional Privatization Commission Investigative Summary, 20

⁴⁷ Hiaasen, Scott. "Effort to Privatize Florida Prisons Raises Questions of Cost." Tampa Bay Times. Tampa Bay Times, 24 Apr. 2011. Web.

different economic, management, and social/cultural circumstances.”⁴⁸ Oklahoma and Mississippi only uses private prisons for medium security prisoners, while Florida uses prisons for both minimum and medium security prisoners, respectively. In addition, the homogenous population of a state like Texas (explored above) cannot be compared with a state that does have a more distinct private prison population, like Minnesota or even Florida. In addition, it is well known in the corrections community that prison assignment is not random. Still, no one knows exactly what the process is, and it can be different for each state.

Sampling Bias

In Campbell and Stanley’s *Experimental and Quasi-Experimental Designs for Research*, they use an teaching experiment in which the researcher has been turned down for data by nine school systems, and is accepted by the tenth. The authors note that “this tenth is almost certainly differs from the other nine, and from the universe of schools to which we would like to generalize... Almost certainly its staff has higher morale, less fear of being inspected, more zeal for improvement than does that of the average school.”⁴⁹ This example can be easily extrapolated to private prisons. The systems that have been studied so far could be the metaphorical “tenth school,” where the states were more willingly to offer data and partner with academics because their prisons were more ready for inspection and generally “better” than the average prison. It is the states that refuse to give out data that might be more protective for a reason – consider, for example, Mississippi’s sudden attitude change towards data requests after its bribery scandal.

⁴⁸ Gaes, Gerald G. "Prison Privatization In Florida: Promise, Premise, And Performance*." *Criminology & Public Policy* 4.1 (2005): 83-88. Web, 85

⁴⁹ Campbell, Donald T., Julian C. Stanley, and N. L. Gage. *Experimental and Quasi-experimental Designs for Research*. Chicago: R. McNally, 1972. Print.

Threats to Internal Validity

In the current literature, there are three papers that found that private prison exposure reduces recidivism, two that found the exact opposite, and two that found no difference. Some of this could be explained using difference states during different time periods as datasets, which I covered in the section on external validity. The difference could also be explained by the studies' lack of internal validity. A study with high internal validity is one where the "causal relation between two variables is properly demonstrated,"⁵⁰ or where the experimental can claim correction between an effect and its cause with a high degree of confidence. In this section, I explain why the current papers cannot make that claim.

Important Differences in Design in the Current Literature

It is important to note that the papers covering recidivism all have differences in design, which may lead to different conclusions on the impact of private prisons. For example, several factors differ amongst the papers such as length of monitoring, marital status, disciplinary violations, isolation of certain minority groups, accounting for mental and medical health, and types of crimes accounted for. The studies also differ in number of factors used: Spivak (Oklahoma) uses 16 factors in his regression, Bales (Florida) uses 18, while Mukherjee (Mississippi) only accounts for 6. The choice in factors affects the conclusions that the authors make. For example, Mukherjee concludes that private prisons distort prison release times by increasing the number of disciplinary violations an inmate gets. As a result, she attributes number of disciplinary reports as a during prison outcome measure, and not as a control factor independent of the private prison independent variable. Other authors did not see it that way, as the Mississippi time distortion and increased disciplinary violations were either not looked at or not present in other states.

⁵⁰ Brewer, M. Research Design and Issues of Validity. In Reis, H. and Judd, C. (eds.) Handbook of Research Methods in Social and Personality Psychology. Cambridge: Cambridge University Press. (2000).

According to the Bales, on average, private prison inmates had less fewer disciplinary problems compared to their public counterparts.⁵¹

Causality and Possible Third Party Variables

Another important problem with evaluating performance using recidivism is that it is hard to draw a link between the dependent variable, recidivism risk, and the independent variable, whether a prison is publicly or privately run.

This difficulty can be explained by two reasons: firstly, that no one can truly know or predict why exactly a prisoner recidivates and might simply generalize based on statistical trends of observed factors, and secondly that because there is no random assignment of the prison population to prisons, it is hard to argue that it is the prison itself that is responsible for increasing recidivism risk and not the fault of the individual prisoner. There are also many unknown factors that are impossible to measure and include in statistical regression. We assume that the factors that affect recidivism can be condensed into descriptors of the inmate and some basic information about their stay in a facility. However, some characteristics simply cannot be put into a model. Do private prisons generally get better behaved prisoners, a phenomenon called “cream-skimming” or do they intentionally get sent the problematic ones? It depends on the state.⁵² In Minnesota, the authors explicitly note that that “overall, Minnesota prisoners confined at [the private facility] were relatively healthy, mentally and physically, well-behaved inmates with limited criminal histories.”⁵³ In Florida, Bales notes that private prisoners are less likely to have prior recidivism events.⁵⁴ In Arizona, the Department of Corrections made “an effort to refrain from assigning prisoners to the [private Marana Community Correctional Facility] if they

⁵¹ Bales et al, 20

⁵² Volokh, 359

⁵³ Duwe and Clark, 9

⁵⁴ Bales, 20

[had] serious or chronic medical problem, serious psychiatric problems, or [were] deemed to be unlikely to benefit from the substance abuse program that [was] provided.”⁵⁵

Spivak’s Oklahoma paper mentions some more of these limitations. In his paper, Spivak recounts an experience while he was a case manager at a medium security prison in Oklahoma in 1998. He observed a trend of passing troubled prisoners to private prisons, where the inmates tended to “be younger, had fewer years in prisons, were often minority and drug offenders who were reputed to be associated with, and often appeared to be seeking social status through violent confrontations...and often favored transfers [to private prisons].”⁵⁶ Spivak also notes that these offenders were qualitatively different than less troublesome inmates, and these differences were hard to capture in the regression control variables.

Limits of Statistical Regression

Due to the Bales paper improving the methodology, the widely-accepted method of controlling for third party factors is through using the Cox regression. Because the regression determines the impact of the treatment factor while all other factors are held constant, researchers are able to more clearly evaluate whether there are differences in recidivism probabilities between private and public prisons. But there are some clear limits to using statistical regression to compare private vs. public prisons.

The biggest limit in the regression, is that it attributes impact on hazard of recidivism only to the factors the researcher decides to put in the regression. Omitted variable bias is a big concern for researchers, because recidivism is a complex topic. Even in the Bales paper, which included 18 factors that were backed by the Florida DOC, there are important data points missing, such as

⁵⁵ Volokh, 360

⁵⁶ Spivak and Sharp, 504

marital status. In an issue like recidivism, the potential for unobserved variables or variables for which there is insufficient data is very high.

Finally, as Gaes points out in his reaction essay to the Bales study, there is one big limitation of statistical recidivism studies, and many statistical studies in general: one can conclude from statistics that private prisons increase, decrease, or have no effect on recidivism risk, but the numbers offer no explanations of why or in what context. The Bales papers found no effect on recidivism rates, but it is impossible to deduce from that conclusion whether this conclusion is good or bad. Is it that Florida private prisons, while (presumably, since cost studies have also inconclusive) operating at 7% less cost than public prisons, have managed to keep similar recidivism rates, or is it that these private prisons have been provided with extra rehabilitation resources and given more leeway for innovation, all to no avail?⁵⁷ Or are the similarities in recidivism due to Richard Harding's "paradox of successful cross-fertilization,"⁵⁸ as cited in Volokh's paper? Cross-fertilization happens where the two types of prisons become more similar than dissimilar to each other. In essence, public prisons could either adopt private prison innovations or shortcuts, thus creating a system that is improved or negatively impacted as a whole. This is a case where private prison impact can't be measured using regression, instead requiring empirical before-and-after studies that examines system-wide effects.

The Importance of Political Influences on Third Party Research

Another similarity in all the previous comparative recidivism reports is that none of those considers the possible implications of their research on policy or politics' influence in their conclusions.

⁵⁷ Gaes, 84-85

⁵⁸ Volokh 363

The Assumption of a Government that Values Both Cost and Quality

In private prison literature, especially papers centered around contracts and law, there is an assumption that the government will take the lead in making changes. After all, it is the government that contracts out these private prisons and the government that will ultimately be responsible for monitoring its private prisons to ensure that the conditions of the contract is being met. Oliver Hart, in his previously mentioned work, makes an important assumption in his model - that the interests of society are represented by the government. He later considers a situation where the government is self-interested, and thus will always choose to privatize for his own personal profit or when the government is influenced by the patronage of labor unions. But with the exception of a few, most state governments are not completely aligned with the interests of society or completely self-interested. It is important to realize that prison privatization isn't simply to save on costs or to reduce recidivism. Prison privatization just isn't a concern for most politicians, and can even be beneficial, making them seem to be both tough on crime and saving taxpayer money.⁵⁹

Many private prison contracts also require states to fill a certain percentage of beds in private prisons. This is known as a bed occupancy requirement. Some states' prisons, like Oklahoma and Arizona's, guarantee an occupancy rate of 98% and 100% respectively, while states like Texas do not have a bed occupancy requirement^{60,61}. Bed occupancy requirements often incentivize states to utilize private prisons regardless of quality. Consider a case in Arizona's Kingman prison, where three inmates escaped from the prison. In reaction to the lax security, the state was

⁵⁹ Schiller, Dane. "Closure of Private Prisons Could Hit Texas in Pocketbook." *Houston Chronicle*. 05 Sept. 2016. Web.

⁶⁰ "How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits for Private Prison Corporations." *In the Public Interest* (2013) Sept. 2013, 2

⁶¹ Wilson, Reid. "Are Governments Incentivizing Longer Prison Terms?" *The Washington Post*. WP Company, 19 Sept. 2013.

forced to pull 238 high-risk prisoners out of the facility. Despite the security concerns, Management and Training Corporation (MTC) threatened to sue the state, because removing the prisoners caused Arizona to violate the bed occupancy requirement. Arizona paid more than \$3 million for empty beds. Here, Arizona incurred the costs because the lax security of the prison posed a real danger to the public. On an issue like recidivism, it is hard to imagine that states would be willing to incur such costs even if recidivism rates were a bit higher in private prisons.

In addition, while many emphasize the need to monitor quality, it is not clear that state governments are interested in quality as a performance measure as much as cost. For example, consider Florida governor Rick Scott, whose justification for private prisons is the 7% savings compared to the cost of running a public alternative⁶². In addition, further evidence of states' apathy toward quality and their emphasis on cost can be seen in an article about a 2015 Arizona contract with GEO Group. The GEO Group, a major donor to campaigns that helped elect Governor Doug Ducey, was going to assume an existing contract for a riot-damaged prison in Golden Valley after the governor terminated the contract with MTC. They won the contract, beating out four other bidders, by "offering its services at the lowest price."⁶³ This focus on cost brings into question whether or not quality can even be used as a performance measure to evaluate a system that is clearly not built for it.

In Jeff Sessions' recent memo, he justified his reversal of Sally Yates' earlier directive to reduce private prison use by pointing out that doing so would impair "the Bureau's ability to meet the future needs of the federal correction system."⁶⁴ This is concerning because the literature

⁶² See minute 13:00-13:24, Prisons. Perf. John Oliver. Last Week Tonight. Youtube, 20 July 2014. Web. 18 Oct. 2016.

⁶³ Harris, Craig. "Private Prison Company Facing Sex Harassment Suit Wins State Contract." Azcentral. N.p., 28 Oct. 2015. Web.

⁶⁴ Office of the Attorney General. Rescission of Memorandum on Use of Private Prisons. U.S. DOJ., 21 Feb. 2017.

comparing private and public has assumed that the government has the choice between running a prison with public resources or contracting it out to a private prison corporation. If the government says that it is not able to adequately house prisoners without the use of private prisons, then there is no longer a choice -- private prisons have become a necessity.

Implications for Performance-Based Contracts and Monitoring

Performance-based contracts are something of a buzzword within the private prison research community. There are many models of how the contracts should look: most involve rewarding prisons for increases in quality performance measures and fining them for decreases in quality. Pennsylvania is an example of a successful story. In 2013, former governor Tom Corbett's administration announced plans to cancel all of the state's existing community corrections contracts and rebid them, with private prison companies evaluated on and paid according to their ability to reduce recidivism levels of their populations. In August 2015, the Pennsylvania DOC reported that "overall recidivism for [the state's] contracted community corrections centers is down 11.3%."⁶⁵ Many people, academics and journalists alike, see performance-based contracts as an alternative way to enforce quality in private prison contracts. However, there is a big issue with performance based contracts: the issue of enforcement.

Private prison contracts often require companies to comply with standards set by organizations like the American Correctional Association or the National Commission on Correctional Healthcare. These organizations are supposed to oversee inspections of the government and private prisons to ensure compliance with each organization's standards regarding facility conditions, treatment of prisoners, etc. However, the objectivity of these organizations has been questioned, as the private prison industry has spent thousands of dollars sponsoring each

⁶⁵ "Performance-Based Contracts Continue to Positively Affect Recidivism." PR Newswire. Pennsylvania Department of Corrections, 25 Aug. 2015. Web.

organization's conferences. But it is not only the independent outside organizations that have failed to ensure prison quality, states struggle with it too. In the Florida CPC case mentioned earlier, conflicts of interest were not the only problems noted by the report. The report also noted that due to the CPC's improper administration and oversight on the private prison contracts, the state of Florida was forced to pay \$12.7 million in excessive costs to CCA and the GEO Group. In Idaho, despite the state being aware of contract violations "years before those problems resulted in litigation from prisoners whose constitutional rights were violated by extreme violence," nothing was done, and resulted in over \$1 million spent on private prison staff that did not exist. In New Mexico, the Secretary of Corrections (a former warden at a GEO Group facility) at the time declined to collect nearly \$20 million in fines from GEO Group and CCA for contract violations. Many other states, such as Ohio, Vermont, and Arizona have faced similar situations.⁶⁶

It is clear that states sometimes cannot (or will not) enforce contracts until forced to do so. Therefore, the best alternative to direct monitoring by the state is research from public third parties. However, this paper has made it abundantly clear that states make it difficult for neutral third parties to conduct research and are not incentivized to release data to them. Therefore, how can performances based contracts be used if there is not a good system in place for monitoring? Considering this, Pennsylvania may have been the exception rather than the rule.

Alternative Methodology for Private Prison Recidivism Analysis

Until now, I have spent the majority of this thesis criticizing the work of my seniors, but it is important to note that this paper is not meant to simply criticize previous literature. In fact, simply the effort it took to get workable data and a methodology that attempts to eliminate third

⁶⁶ Tartaglia, 1701-1706

party factors in the analysis is a significant contribution to the private prison debate. But the problem of external validity mentioned earlier significantly prevents researchers from making general conclusions about private prison recidivism in the United States. However, a lot of the validity problems come when one tries to draw conclusions based on data from one state and apply those conclusions different states. Therefore, the simplest solution is to limit private prison recidivism research to the state-level.

Pairing Recidivism Measures with State Contracting Goals for Private Prisons

It is not clear why it is necessary to do an empirical analysis of private prison performances. While it is certainly more media-friendly to be able to say, “private prisons increase recidivism,” it is an impossible statement to support if one examines the current research. In addition, it is safe to assume that the governor of Arizona will not accept the suggestions of academics that are not familiar with the situation in his own state, suggestions that are based on data from another state. Perhaps the question should be state-specific. After all, since each state uses private prisons to a different extent and for different purposes, the only possible solution is to do a multi-state analysis. If one is able to get enough states in their data sample, the sample size will be big enough and varied enough to decrease state-specific influence. But if finding data for one state is difficult, then getting information from a majority of states that use will be much, much harder, if not impossible.

If we consider what research will be more directly impactful, it is state-specific research, targeted towards obtaining statistically significant evidence in a particular state. It is also no coincidence that the majority of recidivism literature is from Florida during the time period that mandated Florida submit a yearly report comparing recidivism rates, further emphasizing the importance of departmental cooperation. I think it is abundantly clear that the strongest reforms for private

prisons come not from a federal level (despite all the news focus on federal prisons), but from state prisons. For example, even before the August announcement in 2016 (that was quickly reversed), certain states have been making headway into promises of better data management or even alternative solutions. Pennsylvania's commitment to decreasing recidivism after realizing an increase in their recidivism rates, especially in halfway houses, lead them to begin to reward their private prisons to help reduce that rate.⁶⁷

Furthermore, state-focused research will lead to a lesser need for comparative studies. If a state wants to reduce recidivism rates overall, it simply needs to see if recidivism rates of certain prison populations go down over time, instead of trying to compare the rates. Volokh brought up an important point in my conversations with him, in that one cannot get so focused on comparing public vs. private prisons as to forget the issues with comparison studies. Comparing private prisons to public prisons is like "comparing rotten apples to more rotten apples." Comparing them to already-bad public prisons can tell us only that they are similarly bad.

The Potential for Cooperation Between Researchers, Media and Advocacy Groups

If the government has minimal interest in quality overall, then its willingness to provide data for a third party to analyze is also low. Some of the data necessary to paint an accurate and compelling picture of the effects that private prisons have on the prison system is under the control of private prisons. Data on personnel costs, something private prisons have long suggested was proprietary information, have been done through lawsuits initiated or aided by advocacy groups and the media.

⁶⁷ Donald Gilliland "Corbett's New Prison Reform: Tying Contractors' Profits to Public Safety." PennLive.com. 28 Feb. 2013. Web.

To illustrate the importance that media and advocacy groups play in the private prison research space, we only need to look at Florida and Tennessee. Florida was the first state to apply its public record laws to private prisons. This came from three court decisions, *Times Publishing Company v. Corrections Corporation of America*, *Prison Health Services, Inc v. Lakeland Ledger*, *Panno v. Liberty Behavior Health Corporation*.⁶⁸ In all three cases, the plaintiffs were news organizations attempting to obtain important information that private prisons claimed were trade secrets. In Tennessee, the *Friedman v. CCA* case, allowing the editor of Prison Legal News to obtain records of staffing levels and settlement agreements. Of course, this isn't a perfect solution, as a researcher could compromise his unbiased stance by working with organizations that have a clear anti-private prison agenda. Additionally, much of private prison information can still be claimed as a trade secret⁶⁹. Finally, even if private prisons were forced to give up information under public records laws, there is the original problem explored earlier in the paper: many records are simply not public.

Qualitative Data Research

Another method of research that helps add to statistical regression results is qualitative research that does not rely on official database research. As mentioned before, state records limit the control factors that can be used in a regression. A method of original data research could be conducting interviews with prisoners, both those currently incarcerated/have a history of repeated incarceration and those who have successfully left the system and asked their opinions on why they are where they are. This offers up reasons for observed trends and conclusions seen in statistical analysis. Original data can also provide an interesting contrast to official state data. For example, Charles Logan observed in his paper, "Well Kept: Comparing Quality of

⁶⁸ Tarteglia, 1724-1725

⁶⁹ Tarteglia, 1726

Confinement in Private and Public Prisons,” that while private prisons performed well relative to public when looking at official records and staff surveys, state prisons moderately outscored private prisons in almost all categories when looking at inmate surveys. The qualitative feedback from inmate surveys can also result in more actionable recommendations instead of a simple observation (e.g. issues with how the drug treatment program is run, how the skills learned in prison are/are not useful after the incarceration period).

Of course, this solution is imperfect as well when considering a researcher’s ability to collect adequate data, but it is an interesting alternative for explaining recidivism. It might also be something states looking to reduce overall recidivism may benefit from, which makes the inmate interview request process easier for the researcher.

Other Options for Research

Issues with Recidivism as an Evaluation Measure for Quality of Prison Performance

Finally, it is important to consider that, like cost analysis, maybe recidivism simply isn’t the most productive way to go about informing the public and politicians about private prisons. It is not a coincidence that in talks about private prisons in the media, on both sides of the argument, recidivism is rarely mentioned as a talking point. This is partly due to the lack of recidivism research compared to the multitude of research on private prison costs, and partly because recidivism research has been inconclusive. Richard Harding, the author of *Private Prisons and Public Accountability* said that that “an enormous amount of time and energy has gone into essentially accountancy arguments. Protagonists on both sides (but especially on the anti-privatization side) seem to think that if they can demonstrate that private prisons are more

expensive/cheaper, then ipso facto they have won/lost the debate.”⁷⁰ I believe this can also be a potential risk to recidivism research, that there is such a concern to prove the other side wrong, researchers do not think about alternative ways to think about private prison impact.

I have made clear in this paper that there needs to be a more absolute, less individually-orientated way of evaluating private prison performance. There is a need for a performance indicator that can be statistically measured and that directly measures the impact of private prisons. Researchers need to get more creative with their methods of expressing the impact of private prisons apart from recidivism and cost, and that is not as reliant on difficult-to-obtain state data. Gaes suggests studies done in other jurisdictions with large private prison populations, or studying how the introduction of private prisons has affected the prisons system over time.⁷¹

Institutional Level Analysis

Recidivism analysis is highly dependent on individual-level data, which results in several of the problems mentioned earlier: firstly, due to its sensitive and private nature, the data is less likely to be available, and secondly, individuals that do recidivate could recidivate for hundreds of varied reasons, make statistical regression much less effective. Evaluating performance measures on an institutional level can solve both of the issues. By not focusing recidivism, and instead focusing on measures that are directly in the institution’s control, we reduce the need for control variables in statistical regression. Volokh mentions alternatives to recidivism such as floor space per inmate, escapes, deaths, or violent incidents. These measures are useful because they do not focus on the possible actions of the inmate, but on the reaction and preparation of the prison.

⁷⁰ Harding, 283

⁷¹ Gaes, 87

Floor space is an irrefutable measure of cost and quality of life for prisoners. Escapes are directly correlated with the security of the prison. Deaths and violent incidents are important surface-level indicators of something more serious. Logically, since private prisons are usually minimum and medium security prisons and house lower risk prisoners, they should typically have fewer violent incidents than their public counterparts. If the rates are higher, then there is a deeper problem, most likely relating to the lack of trained personnel overseeing prisoners and enforcing order in the prison like in Idaho. If private prisons argue that they are assigned more problematic prisoners than their public counterparts (like Spivak noted in Oklahoma), unlike recidivism, the government could simply point out that the prison has much more control on whether a prisoner could start a riot than whether a prisoner recidivates. It simply indicates that the private prison is incapable of handling prisoners at that level, and should have requested a more expensive contract to account for that risk. Deaths are another important measure of quality rarely studied: the medical care of prisoners. Historically, unless a tragic incident has happened or the media has covered a sensationalist interview, the difficulty of obtaining information from private prisons about their medical care has discouraged significant investigation into patient healthcare. A pattern of unusually high deaths could indicate that inmates are not receiving the healthcare they need due to cost cutting. Furthermore, seeing these measures over time could be a better indicator of long term effects of private prisons on quality.

Conclusion

In this paper, I have sought to explore issues commonly encountered in conducting a comparative recidivism analysis. The current state of recidivism research could use many improvements. Firstly, researchers need to overcome the lack of data availability. To do this, they either need to pursue more aggressive channels of data request through media and advocacy

group partners, or conduct their own qualitative data research. In addition, while one can argue that there is always going to be a degree of separation between academia and policy, I encourage future research on recidivism to become more target towards specific changes in state policy. I also address the possibility of using alternative performance measures, such as floor space per inmate and violent incidents, to measure private prison impact on a state's prison system. Research comparing private and public prisons has stalled, and it is more important now than ever.

At the beginning of this paper, I outlined some of the reasons why the private prison industry was able to become so big. They involved an increase in fear of crime, a reluctance for the government to spend money, especially on prisoners, and the belief that businesses are more efficient than the government. It seems like these factors are here again in America. Pew Institute research shows the 57% of American voters believe that crime has increased since 2008, when it has done the exact opposite.⁷² Donald Trump was elected in part because there was a disillusionment with politicians and in part because voters believed that he would run America like a business.⁷³ Republicans are pushing agendas that decrease government spending, as can be seen with the healthcare plan proposed earlier this year.⁷⁴ On Nov. 9th, 2016, the day after President Trump won, the Corrections Corporation of America the nation's biggest operator of private prisons, saw its stock price jump 43 percent, and its biggest competitor, the GEO Group, rose 21 percent. President Trump during his rallies has also called the nation's prison system "a disaster" and said: "I do think we can do a lot of privatizations and private prisons. It seems to

⁷² Gramlich, John. "Voters' Perceptions of Crime Continue to Conflict with Reality." *Pew Research Center*. 16 Nov. 2016. Web.

⁷³ Schneider, Jorden. "Donald Trump: It's Impossible to Run Country as a Business." *Time*. Time, 16 Nov. 2016. Web.

⁷⁴ Ehrenfreund, Max. "Republicans' Obamacare Replacement Would Cut \$337 Billion from the Budget. Here's Who'd Pay for It." *The Washington Post*. WP Company, 13 Mar. 2017. Web.

work a lot better.”⁷⁵ As this paper has demonstrated, President Trump’s claims are hard to prove. Private prisons are set to benefit from the results of the election, and this time, they have a lot more influence and lobbying power. Finding better methods and creative ways to monitor and measure private prisons has never been more important. Politics and policies will not change, so research must.

⁷⁵ "Under Mr. Trump, Private Prisons Thrive Again." The New York Times. The New York Times, 24 Feb. 2017. Web.