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Organizing prisons through public-private partnerships:
Evidence from France, Brazil and the United States

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ORGANIZING PRISONS THROUGH PUBLIC-PRIVATE PARTNERSHIPS: EVIDENCE FROM BRAZIL, FRANCE AND THE UNITED STATES.

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Abstract

In this paper, we analyze the private participation in prison services in three countries: Brazil, France and the United States. We highlight striking differences between these countries and argue that the explanation for these differences requires an understanding of the incentives provided by the distribution of property rights as well as the incentives resulting from other factors like decision and revenue rights distribution and institutions. The theoretical literature normally analyzes these blocks separately. We argue that the main driving factors for efficient arrangements do not rely on one particular element but rather on the way these elements are combined, giving rise to a superior governance structure.

Keywords: Public-private partnerships, prisons, incentives, institutions

JEL: H11; L33; H41

1- Introduction

In the last twenty years, several governments throughout the world have promoted reforms as a means to increase the private sector participation in the provision of public service utilities (Estache 2006). The water (Shirley and Ménard, 2002; Saussier and Ménard, 2000; Chong & al, 2006), electricity (Glachant and Finon, 2003), infrastructures (Engel & al 2006; Athias and Saussier 2007) and telecommunications sectors (Levy and Spiller, 1996) have been analyzed. However, little is known about the public and private governance of prisons. Researchers seldom focus their studies on the correctional sector, probably because the process of obtaining relevant information is not an easy task: non-consolidated data and confidentiality are factors that often disturb and frequently impede the execution of research in this sector. In this way, the issues related to prison performance remains a sort of “black-box” compared to other public service utilities.

Yet, on the other hand, prisons are often used as an example to illustrate theoretical models concerned by the proper scope of government (Hart-Shleifer-Vishny, 1997; Hart, 2003; Bennett & Iossa 2006). This type of public service implies several tasks that might be split between public and private authorities and that may differ depending on the kind of prisoners concerned. In addition, the management of prison services is quite complex due to the diversity of such tasks. In fact, in order to prevent escapes, riots, and so on, prison managers must provide prisoners with food as well as health, judicial and

reinsertion services, which require the coordination of different institutions and organizations. Of course, this interaction is not conflict free; frictions may arise and create inefficient arrangements. This is why prisons constitute a good theoretical example and a potential interesting empirical case to study.

In this paper, we analyzed some partial results of the private participation in prison services in three countries: Brazil, France and the United States in a public versus private perspective. This made it possible to partially fill this empirical gap and assess how the empirical facts are connected to the theoretical developments concerning Public-Private Partnerships (PPPs).¹ Interestingly, the results are contrasted. In Brazil we observed that public-private agreements resulted in certain cost reductions and an increase in the quality of services provided (Cabral and Azevedo, 2005; Cabral, Lazzarini and Azevedo, 2007), while in France, the first empirical studies suggested an increase in both cost and quality (Cour des Comptes, 2006). In the US, we observed reductions in both cost and quality (Bayer and Pozen, 2005).

These empirical results do not correspond to the theoretical predictions focusing on property right distribution (Hart-Shleifer-Vishny 1997). We suggest that several contractual and extra-contractual dimensions may explain these results. The incentives schemes proposed by governments to reward the private operator in charge of the good or service provision, the allocation of revenues and decision rights and the institutional environment are also important factors in PPPs outcomes. The theoretical literature focusing on PPPs normally analyzes all these blocks separately. The effects of their interaction are seldom taken into account. We argue that the relationship between the attributes mentioned above on the outcomes of PPPs cannot be ignored as it can explain the relative success of PPPs in Brazil compared to France and the United States.

We believe this paper contributes to the existing empirical literature on public-private partnerships by providing an empirical analysis of prisons in three countries. As we already mentioned, prisons are often cited as an example in theoretical papers but few empirical studies exist. Furthermore, we are not aware of any papers that attempt to compare several countries. On the theoretical side, we believe our paper highlights crucial dimensions that should be analyzed in order to understand the observed performance differences in the way public services are organized. The strength of the property rights view is that it articulates the role of market incentives and how they can be altered by shifts in asset ownership (i.e. a change in governance structure). However, it says little about the incentives that can be created within each governance structure, for a given distribution of property rights. We therefore suggest mixing incentives resulting from the distribution of property rights and incentives resulting from other factors like decision and revenue rights and institutions in PPPs. We stress the fact that the real challenge is to understand how the two forms of incentives complement each other.

We divide the paper as follows. The next section considers how property rights could have an impact on efficiency, based on Hart-Shleifer-Vishny's 1997 classical paper. In

¹ In this paper, PPP refers to different modes of private participation (privatizations, concessions, outsourcing) in the provision of public utilities.

the third section, we present the cases of PPP's in prisons in three different institutional contexts (Brazil, France and the United States). The peculiarities of the sector and the main results obtained are shown. The fourth section discusses why the empirical results differ from one country to another. We show that the main driving factors do not rely on one particular element – like property rights themselves – but on how elements like decision rights, revenue rights and property rights are combined and aligned, giving rise to a coherent governance structure. We argue that the effect of privatization is dependent on this proper alignment. This may explain why private participation in prison services has very different results from one place to another. The last section concludes.

2- Which governance structure is for prisons? The impact of property rights

The development of Public-Private Partnerships (PPPs) is a recent phenomenon.² Under a scenario of fiscal constraints, PPPs have been used by several governments in order to make the supply of services possible, which were publicly provided in the past. However, if PPPs may have been seen as a perfect solution to avoid public and market failures (Demsetz, 1968), some doubts have been raised concerning its efficiency (Williamson 1976). The question can be studied using several theoretical approaches that focus on different dimensions of PPPs.

One obvious important dimension to consider is the property rights distribution (i.e. privatization). One of the most prominent contributions for understanding the public versus private dilemma is the seminal paper of Hart, Shleifer and Vishny (1997), which focused on the comparison between public and private participation in the provision of prison services. The authors adopted an incomplete contract view, where the private operator's residual control rights would contribute to reduce production costs at the expense of the quality of the provided services. In order to improve quality, the private operator must incur both the costs of quality provision and the costs of influencing the government to accept changes (the government must agree to pay for improvements through a Nash bargaining). Consequently, the private operators have incentives to under-provide quality and to over-reduce costs compared to the first best situation, which is socially inefficient. Therefore, a public governance structure will be preferred when the adverse effects of cost reductions have a significant impact on quality levels and also in the case where there is limited room for quality innovations by private actors.³

The impact of property rights distribution is linked to the incompleteness of contractual agreements between the government and the private operators, which generate residual rights of control over the assets. Since it would be very difficult to contractually delineate certain specific tasks, like for example, the use of force to be employed by the private operator or the exact capabilities of the workers, the authors are skeptical about privately

² Researchers' interest in PPPs and their development is very recent. Nevertheless, arrangements involving private investors and public officials have existed for several hundred years in France.

³ This is because, even if there is an adverse effect on quality when reducing costs, incentives to innovate on quality are also greater under private management compared to public management. Thus, quality that depends both on adverse effects and incentives to innovate to improve quality might be higher under private management even when adverse effects exist.

run prisons, especially where high-security prisons are concerned, because of the important adverse effect on quality when reduced costs strategies occur (i.e. under-skilled workers would lead to a higher rate of escapes).

Hart (2003) completed the HSV picture by considering the question of bundling (i.e. one single contract for building and operating) in prisons when a PPP is concerned. He concluded that *unbundled* modes of contracting (two contracts: one for building and other for operating the prison) are suitable if the quality of the construction could be well-specified *ex-ante*. On the other side, PPP would be recommended when the quality of the service can be well defined. In this case, private companies would avoid reducing their building costs, when that could disturb the normal operations of the correctional facility in the future. Nevertheless, in the case of prisons, it is very difficult to specify the service requirement in the contract, therefore the author concludes that services should be made under the unbundling regime.

Such approach suggests two clear hypotheses. The first concerns when private management should be used. The second concerns the kind of contract that should be signed (bundling or unbundling). Property rights distribution is at the core of the analysis.

3- Property rights and performances in Prisons: Evidence

Focusing on prisons and their alternative governance structures, there are few empirical studies that compare the performance obtained. One possible reason for such a lack of interest relates to the difficulty in obtaining the necessary data for valid and robust tests. Frequently, the data simply is not available due to the absence of registrations. There are few systematic procedures for collecting the data regarding prison-related events, such as: assaults among inmates or aggressions from correctional officers against prisoners. Nevertheless, sometimes inmates can be constrained in reporting what really happens behind bars as a result of moral taboos – it is rare, for instance, that a victim of rape will talk about it with other people. Even when data exists, it is frequently poorly consolidated, which impedes the execution of studies on a regular basis. On the other hand, there are also cases where the information exists but it is not made available by government bureaucrats. The explanation for the non-disclosure almost always relies on confidentiality aspects. Thus, almost as a rule, the “Pandoras-box” remains unopened in several countries or regions. In this way, we must admit that economists and other social scientists do not have strong incentives to investigate prison-related topics, like the public and private partnerships in the correctional activities.

Despite the above-mentioned difficulties, in order to tackle this subject, we discuss some evidences of the private participation in prison services in Brazil, France and the United States. There are some differences in the contractual arrangements between government and private companies in each country, which leads to different outcomes as can be seen hereinafter.

3.1 Performance indicators in prisons: Costs and quality dimensions

Before we compare the outcomes obtained in the experiences of the three countries, we believe it is necessary to define the basis for comparison, i.e. which performance indicators we take into account.

For this, it is important to set the prisons' objectives in modern societies. We assume that prison plays certain leading roles, such as: to protect society from individuals that do not observe the formal rules; to punish criminals in order to discourage people from breaking the law, where the threat of constraining one's freedom is a credible one. And, most importantly, to provide the conditions that make the inmate's future social reinsertion possible. Furthermore, a prisoner's human rights must be respected during the period he is incarcerated.

In order to accomplish these objectives, prison managers must manage both the cost and quality aspects. The first dimension is important because of the budgetary constraints governments have been experiencing in recent years. In fact, cost reductions are one of the main objectives of the new organizational arrangements in the provision of public services. In theory, the measurement of cost indicators is not complicated. Usually, it involves the amount spent during the period of an inmate's incarceration, which requires the consideration of certain cost dimensions, such as labor, materials and energy among others.

Quality-oriented performance indicators must be aligned with the prison's goals mentioned above. In this way, it is essential that the correctional facility be able to provide the proper services that generate such an internal environment and preserve the physical and the moral integrity of the inmates, employees and visitors, as well as facilitate the criminal's rehabilitation process. In this perspective, quality aspects can be grouped into three dimensions: a) recidivism rates; b) safety and order indicators (deaths, assaults, escapes, riots, etc); c) services offered to inmates (food, medical and legal assistance, rehabilitation services, etc).

Of course, the process of measuring these indicators may present certain problems. Besides the procedural issues for collecting and consolidating the relevant information, some aspects are very subjective. In fact, it is hard to assess the quality of the meals provided to inmates. For these reasons, we will set our sights on quality indicators that can be assessed through quantitative aspects. We begin with the US experience in the private participation in prison services.

3.2 Prisons' privatization in the United States.

In the 80's, certain local governments in United States (e.g. Texas, Louisiana, and Tennessee) found, in the private sector, an alternative to the increase in the inmate population and the corresponding costs of operation and maintenance. The first experience of the private participation took place in Tennessee in 1983. Today, more than 30 states have adopted private solutions (Cabral, 2007). There are roughly 264 privately-operated correctional facilities. At the end of 2004, they were housing almost 100,000 inmates, which represents 6,6 % of the inmate population of the state and federal

correctional systems. In some states, such as New Mexico, around 42% of inmates are held on private facilities (US Department of Justice, 2005).⁴

There are few studies in the United States that focus on the comparative aspects of public and private governance. In general, they are driven to cost-benefit analysis. They are almost unanimous in concluding of the superiority of private governance in terms of cost-reduction (Archeoembeault and Deis 1996; Mitchell, 2003; Blustein and Cohen, 2003; Guppy, 2003; Bayer and Pozen, 2005).

The work of Archeoembeault and Deis (1996) concerns three similar prisons located in the state of Louisiana. Two of them were managed by private companies and the other by state government. In order to assure the validity of the conclusions the authors utilized descriptive statistics tools. The authors concluded that private prisons present better performance in terms of cost reduction as compared to the publicly operated unit. On the other hand, public prisons seemed more efficient in preventing escapes and providing a broader range of treatment, recreation, social services and other services to inmates.

Blustein and Cohen (2003) found that states that had some of their prisoners in privately owned or operated prisons experienced lower growth in the cost of housing their prisoners compared to those held in public prisons. The authors are not assertive in explaining if this fact is related to the competition generated or to the reduction of the levels of investment from the government. By comparing the cost performance indicators in 46 states, Mitchell (2003) concludes in a superiority of private companies in terms of cost reduction. Guppy (2003) obtained a similar conclusion.

A more robust econometrical test concerning the performance of for-profit (private companies) and non-profit (public management and NGO's) juvenile correctional facilities can be found in Bayer and Pozen (2005). Using the state of Florida as a reference, the authors corroborated the findings of HSV (1997) by concluding that for-profit facilities led to cost reduction and a statistically significant increase in recidivism.⁵ Thus, the short-run savings offered by for-profit over non-profit management are negated in the long run due to increased recidivism rates. Given the many legal, ethical and political complications associated with profit-seeking correctional facilities, the authors concluded that it seemed easy to recommend a movement away from for-profit facilities in Florida's juvenile justice system.

⁴ The incarceration rates in the US are ranked highest in the world. At the end of 2004, there were 2,135 million people behind bars. This number represents 724 inmates per 100,000 inhabitants (U.S. Department of Justice, 2005). In Brazil, this rate is 195 (Brasil, 2006) and in France the incarceration rate is 96 inmates / 100,000 inhabitants (Cour des Comptes, 2006).

⁵ Studies that take into account the effects of recidivism are rare. Although recidivism is one of the key performance indicators in prison management, it is very difficult to find data about it. Two factors can explain this. First, the information may not be properly recorded. Second, even with criminologists, it is not an easy task to establish a consensus about the signification of a recidivist. For some people, an individual can be considered a recidivist if he/she is sent back to jail after committing a new crime. For others, a criminal can be labeled a recidivist if he (she) commits a new crime before a certain period after his (her) release from the correctional facility. For example, in Brazil, under the legal perspective an individual is not considered a recidivist if he (she) commits a new crime after five years following his (her) release.

Lukemeyer and McCorkle (2006), in a extensive study covering 873 correctional facilities in US (762 state facilities, 93 federal prisons and 18 privately operated facilities), observed that even though, as a group, private prisons were less likely to experience violence, private prisons with violence exhibited the highest rate of violence. This suggests that among private prisons in the US there may be two groups: one group that is very effective in controlling violence and one that is much less effective. This result is not in line with what could be expected looking back at the model of Hart et al (1997). Nevertheless, this conclusion must be viewed with caution, given the small number of private prisons in the sample.

The findings above shed some light on the public versus private debates in the correctional sector as it shows certain facts that are not highlighted by the other studies and the advocates of private participation.⁶ Considering the incentives structure and the types of contractual arrangements between private operators and public authorities, one might observe a trade-off between cost-reduction and quality deterioration in the private provision of prison services in the United States.

3.3 The delegation of non-core activities in the France correctional service.

The foundations for the private participation in the French correctional services were built in 1987, when the “*Programme 13,000*” was announced. The original proposal was to adopt the US model in France, i.e., 13,000 new beds would be created and operated by private companies, in order to deal with the prison overcrowding problem at a time of budget constraints.

However, after several political discussions, the original idea changed and an intermediate solution was found: hybrid management (*gestion mixte*). Through a competitive bidding process, private companies were contracted to build the prisons. However, the responsibility for managing and controlling the correctional facilities and most importantly punishing the inmates in the prisons remained with the civil servants. Several services were originally delegated to private companies like hostelry (food, hygiene and cleaning services), medical assistance, reinsertion services and the exploitation of labor activities. Civil servants perform the activities of management (warden), external vigilance and some administrative duties (*greffe*). Correctional officers – responsible for performing routine duties within the prisons – are also civil servants. Thus, the private participation is very limited in France, as non-civil servant employees in prisons represent only around 20 % of staff (Lazerges, 1997).

The first prison to use hybrid management was in 1990. Additionally, another 4000 places were created – all with some type of private participation. Today, there are 27 prisons of this type in France, housing 14,505 of the 58,231 inmates in France, which represents roughly 25% of the total inmate population. In addition, the Ministry of Justice has announced its plan to build 13,200 new beds, all to be under the hybrid management system and/or PPP (Direction de L’Administration Penitentiaire, 2006).

⁶ In fact, the assumptions and conclusions of Guppy (2003) and Mitchell (2003) demonstrate a bias toward private participation in correctional facilities. Their studies were published by think tanks, which promote free-market solutions with limited government activities.

Surprisingly, there are almost no studies that compare the relative performance of prisons under hybrid management and the facilities with traditional provisions.⁷ At this time, the only available source is a recent report from the French government (Cour des Comptes, 2006). Although the report is not extensive – as it does not concern all French prisons and thus does not provide data suitable for an econometric test – its main findings are useful in understanding what is going on in the sector.

In France, three companies specializing in facilities management provide prison services. They are geographically distributed throughout the hexagon.⁸ Despite the fact that the participation of private companies is not so extensive, it is possible to identify certain positive spillovers. They were able to adapt certain techniques in the prisons before they were utilized with other private clients. As a result, the private operator presented superior performance standards in terms of asset maintenance, the quality of the food provided to inmates (essential for cooling internal tensions), cleaning and health care.⁹ Regarding the exploitation of labor activities, the results obtained by private operators did not significantly differ from those of traditional public provision.

Although private operators present better quality performance indicators than entirely public-operated prisons, the hybrid-managed prisons are roughly 15% more costly. The reasons for such disparities rely on three aspects: a) additional fiscal taxes; b) increased quality in response to more severe contractual obligations; c) profit margin of the private operator. The French authorities were not able to identify the contribution of each topic above in the gap observed.

Thus, differing from the US, in France we observe that private provision of prison services leads to an increase in both the cost and quality aspects.

3.4 The Brazilian experience: between the French and the US models.

The third case we will present is the Brazilian case. With an inmate population of roughly 360,000 prisoners and an incarceration rate of 196 inmates per 100,000 inhabitants (Brasil, 2006), the Brazilian correctional system is known for its riots, escapes, corruption and high recidivism rates. Furthermore, the increase in the correctional population is also a problem when an increase in the criminal rates in the country is observed.

In order to deal with such constraints, local governments have decided to utilize the private sector for correctional activities. After numerous discussions, Brazil has adopted a model where the government retains the ultimate responsibility for an inmate's custody, remaining in charge of the external security and the management of the facility (i.e,

⁷ Probably the main reason for the lack of studies is due to the difficulty in obtaining data. We have tried for almost one year to collect from the French Ministry of Justice the information necessary for a comparative econometric test. In addition to the difficulties imposed by the governments, we have also observed (through successive interviews with public representatives) that the databases with the relevant information are not available because the data is not consolidated.

⁸ As of January 2007, the companies are: GEPSA (SUEZ); SIGES (Sodehxo); and IDEX.

⁹ Despite the superior results in the medical assistance aspects, the French government recently reassumed this activity.

warden and security coordinator). Although inspired by the French experience, the Brazilian example is placed somewhere between the U.S. experience – where full privatization is possible – and the French one – where few activities are delegated. Certain activities not delegated to private operators in France, can be outsourced in Brazil, such as internal vigilance (executed by private correctional officers) and legal assistance to inmates. The first experience of outsourcing in Brazil was in 1999. Today, there are 14 correctional facilities operated by private companies in 5 different states. They house around 1.5% of the Brazilian inmate population.

In order to illustrate the situation in the country, Cabral and Azevedo (2005) performed a comparative case study of the two facilities, one publicly managed and the other outsourced to a private company (also a hybrid form), both located in the same region. Although the facilities are similar in physical structure (same design), in terms of capacity (both were designed to hold 268 prisoners) and concerning the inmates' criminal profiles, it is possible to observe some differences, which could be associated with the different governance structures. In terms of costs, , a publicly managed prison, as compared to the outsourced prison, employs 20% more people, reports absenteeism rates that are three times higher and pays 60% more in salaries to correctional officers (75% of the staff personnel). It also spent 3 times more in water and electricity costs than the private company. Therefore, a publicly operated facility is less cost-effective, which is consistent with facts and the theories previously observed. However, when we look at the services provided to inmates, which are a quality indicator, the results observed go against the theoretical hypothesis of Hart and al (1997), as the privately operated facility presented superior results. Outsourced prisons provided 10 times more medical assistance to inmates and 20 times more legal advisors. No escapes or escape attempts were recorded in the privately operated facility, whereas in the public there were 8 and 25 respectively. We observe that the internal environment is less safe in the publicly operated facility, by checking the indicators of assaults against other inmates and against visitors and employees, which is 15 times higher.

Similar conclusions are obtained by Cabral, Lazzarini and Azevedo (2007). By using a panel data analysis with 65 observations, the authors compare 13 publicly and privately operated prisons in the state of Paraná. The study concludes that outsourced prisons present lower costs (10% less) and superior quality indicators (less escapes, deaths and a greater number of medical appointments).

Thus, in comparison to the two other cases, the Brazilian case suggests that the private participation might lead to lower costs and superior quality performance indicators.

The three cases presented above illustrate interesting points concerning property rights distribution. In France, like in Brazil and the US, the governments decided to transfer property rights to the private sector. Indeed, what varies in the three cases is the degree of allocation of property and decision rights. Furthermore, other dimensions vary from one country to another as we observe below.

4- Incentives and property rights: which alignment for which performance?

In the last section, we observed some differences in the behavior of private companies when providing prison services in different institutional settings. We believe that the

reasons for superior or inferior performance standards are not based on a particular aspect, but are related to the combination of several elements, which together can lead to a superior governance structure. From this perspective, the incomplete contract theory (Hart et al 1997) only gives a *narrow* picture of what is happening.

The table below summarizes the main characteristics of the private participation in prison services in each country discussed above. The aggregated information can be useful to our analysis.

Table 1: Effects of participation of private actors in prison services

Country	USA	Brazil	France
Beginning of private participation	1983	1999	1990
Number of facilities under private operation and/or management	264	14	27
% of inmates in privately operated facilities	6,6 %	1,5%	25%
Mode of participation	Privatization	Services Outsourcing	Services Outsourcing
Type of Contract	Bundling and Unbundling	Unbundling	Unbundling
Activities kept with the government	None	Warden and external vigilance.	Warden, External and internal security, administrative controls, judicial assistance and health care.
Private companies decision rights level	High	Medium	Low
Costs effects	Decreasing (-)	Decreasing (-)	Increasing (+)
Quality effects	Decreasing (-)	Increasing (+)	Increasing (+)

Source: Elaborated by the authors

After analyzing the table above, we can divide the reasons for the differences into three main axes: incentives schemes and contractual design, institutional setting and decision rights assigned to private operators, as we will discuss in the next section.

4.1 Incentives schemes and contractual design

As we have seen in section 2, the incentives schemes proposed by governments to reward the private operators influence the performance of the service provided. In prison services, specifically, the contract specification must also incorporate the proper incentives for the private operator and also include elements that to preserve the wider interests of the society.

In general, in the US, private operators charge the governments a daily-based rate for each inmate under their supervision. In this way, their financial performance is dependent on the number of "man-days" they can clock up so the incentives to keep prisons at full

occupancy rates are strong. In order to assure their profit margins, they are keen to reduce quality issues (hiring people who are less qualified and paying lower salaries, reducing the quality of the food, etc). From the government's side, it is not an easy task to check such actions and enforce corrections to eventual quality problems.

In France, the private operators (that have a reduced role in the prison operation) earn a fixed amount that covers the costs and provides an expected profit margin according to the prison capacity. Furthermore, if for some reason the agreed numbers of inmates to be held is exceeded, the private operators receive additional compensation based on statements previously foreseen in the contract. Since there are no performance clauses in the contracts, the private operators' earnings do not depend on the results obtained, so the incentives to spend less and promote investments that lead to cost reductions are low. The consequence of this contractual scheme is reflected in the cost indicators: prisons with privately provided services are more costly. In the French case, the superiority from the private companies in terms of quality seems to be related to the fact that these firms have strong experience in facilities management. All they had to do was adapt their practices to the correctional sector and take advantage of scale and scope economies.

The type of contract signed between the French government and private operators generates negative externalities, which affect some public prisons. Once the contracts foresee additional payments to the private company when the prison is above its capacity, the government avoids sending more inmates to the hybridly operated prisons. Consequently, public prisons present higher levels of overcrowding and this factor contributes to a more turbulent internal environment, which increases the uncertainty and poses additional problems to the managers of public prisons a disciplinary and logistic point of view. On the other hand, the reduction of uncertain events within prisons with hybrid operation allows private operators (and civil servants working in this kind of facility) to focus on the facilities priorities, moving the necessary resources to assure the provision of services. These aspects cannot be ignored when one analyzes the reasons for the differences between the public and hybrid modes of prison service provision in France.

In the Brazilian case, the contracts signed foresee a payment to private operators for holding inmates in a price cap contract. When no additional payment is offered in case of overcrowding, there are two possible situations that can contribute to increasing the profit margins of the private operator: a) a reduced number of inmates under its responsibility; and, b) the implementation of optimization efforts. Naturally, the price cap contract mode stimulates efforts for cost reduction at the expense of quality, however as we will observe in the sub-section dedicated to the decision rights issues, the presence of civil servants in the prisons can constrain socially undesired investments by private actors.

Regarding the reduction of the number of inmates, we can observe another interesting aspect. In addition to providing savings in some direct expenses (less food, lower consumption of energy, etc), a lower number of prisoners in a prison can also generate another positive externality: a peaceful internal environment. As with the reduction of prisoners, it is expected that the amount of eventual internal conflicts among inmates will decrease. According to the type of contract signed in Brazil, in the case of undesired events, like riots, the private company is responsible for repairing the damages in the

facility. In this way, the operator also has a strong economic motivation for maintaining a calm and peaceful internal environment.

Therefore, it is also evident that a non-turbulent internal environment allows prison managers to concentrate their attention on the resolution of other internal problems. Lastly, whatever the country or contractual mode, the ability of a prison manager in maintaining a calm atmosphere inside the prison can bring dividends for him/her in the future. If he/she is a civil servant, job promotions and other benefits related to his/her reputation might be realized. If he/she is an employee of a private operator, in addition to the effects mentioned above, the reputation of the private company plays a decisive role. Since the correctional market for private companies in Brazil is growing, private operators have incentives to do their best in order to obtain additional contracts in the future.

Within certain limits, prison managers (public or private) can deploy certain actions to reduce the number of prisoners under their custody. These actions are dependent on the ability of the prison managers to bypass certain institutional constraints as we address next.

4.2 Institutional constraints

Prison services are constrained by several formal institutions: political, regulatory, external, and judicial (Cabral, 2007). Normally, it is up to the courts to determine who must go to prison or get out prison or which prisoner has the right to alternative sanctions other than incarceration. Thus, the reduction of the number of inmates in the prisons is dependent on the efficiency of legal matters and also on the social choices shared by the local judicial community (for example judges in certain regions or countries are more keen to hand down harder sentences than others).

However, the slowness of justice is a stylized fact in many countries, mainly in those where institutions are not mature. We can identify several causes for the slowness in justice, including behavioral and cultural, but above all, slowness is the result of interests in delaying and in some, deficient preparation, as well as, in the common non-existence of the appropriate human and material means.¹⁰ Such institutional problems signal precaution to prison managers as the slowness in delivering judgments might generate internal conflicts inside the correctional facility, mainly when those judgments are related to benefits to be conceded to inmates, like appeals, probation, parole and other prisoner rights assured by law.

In order to bypass such institutional constraints, private operators have both, economical motivations (or incentives) and alternative mechanisms for dealing with judicial constraints. In the Brazilian case, some private operators provide rewards to its lawyers according the release order obtained. At their own expense, one company also hires administrative assistants to support the operational tasks of the local court. Overcrowding

¹⁰ This sentence was inspired in the speech of the Head of Portugal' Supreme Court, which is available in Justice in the world web site (<http://www.richtervereinigung.at/international/justice3/justice317a.htm>). Retrieved in June, 28th 2006.

still is a concern for private operator as courts can issue new warrants for more prisoners, superior to a prison's capacity, which might generate operational deficits for the private company. The company's collaborative approach with the local court can be a way of avoiding overcrowding in the privately operated prison. On the other hand, for the prison under public management, there are few chances of bypassing local judicial restrictions, and consequently a warden of a publicly managed prison has fewer instruments to control undesired effects, which might originate from courts' inefficiencies (Cabral and Azevedo, 2005).

Therefore, the analysis of the institutional environment matters (both formally and informally) as institutions influence the incentives provided, restricting the margins for manoeuvres by the people in charge of prison operations. The actions to be implemented must take into account the effects of institutions and also the mechanisms to avoid its negative impacts. Once the correctional sector is embedded in a "nexus of institutions" (Cabral, 2007) it is clear that the choices aimed at the most suitable governance structures relies on the characteristics of the local institutional environment and on the capabilities of public and private actors for dealing with them.

The relative success of the Brazilian case (of course as compared to the performance observed in the local prisons that are publicly managed) can tell us something about how the combination of different factors can be a key element for the choice of governance structure. Nevertheless, considering the existence of a weak institutional setting such configuration is not stable. The possibilities of abrupt changes in certain institutional components are plausible. In this way, contractual performance is likely to be affected in response to shifts in political and regulatory institutions.¹¹

4.3 Decision rights

Recent theoretical developments highlight the fact that property rights can be thought of as a bundle of decision and revenue rights that can be partly transferable through contractual agreements. The proprietor of an asset (or the proprietor of the decision rights over the asset) has the right to decide what to do with the asset, since his actions are not forbidden by the regulations of the contract or by the law. This stresses the fact that alternative governance structures are not only an alternative distribution of property rights. This gives rise to more possible combinations (not only property rights, but also decision rights may be finely tuned) leading to complex hybrid forms of organization (Ménard, 2004).

For our purpose, what is interesting here is that PPPs are clearly hybrid organizational choices (Ménard, 2004). Such hybrid choices may vary greatly from one form to another, depending on the way the contractual parties decide to share decision and revenue rights.

¹¹ Most departments of the local state governments in Brazil are known for not paying well. State authorities frequently delay the payment to their suppliers generating cash flow problems for the suppliers. Payment interruptions can lead to worse performance indicators in privately operated prisons. For the time being, as we observed in Brazil, it seems that private operators are accepting the delays in payment (and of course, avoid arguing with local governments) in order to preserve a good reputation and obtain good references from their customers, which is essential for getting new contracts in the future.

Property rights are pushed to the background and the picture is completed by the way decision rights are contractually split. According to the contractual design chosen – which vary from one region/country to another – certain changes may be observed in the level of decision rights assigned to private operators, in the structures of rewards and sanctions to be applied in the case of inappropriate actions, in the limits for government intervention and so on.¹² Of course, these factors have a direct impact on the PPP's performance indicators and, as a consequence, on the social welfare.

These developments suggest then that the two clear hypotheses that might be found in the Hart et al (1997) and Hart (2003) models might be blurred by the way decision and revenue rights are attributed and affect the parties' incentives. Indeed, considering the three countries we studied in this paper, they clearly differ regarding the way decision rights are distributed to private operators.

In the US private model, all decision rights are allocated to the private operators. The companies are able to set the details related to building the correctional facility and also issues related to details in the operations, such as: allocation of prisoners in the cells, education and reinsertion activities' policies. It is difficult for the government to monitor the behavior of the private operator. Some of the delegated services are non-perfectly contractible because they are not verifiable (e.g. use of violence, skills and level of employees), so that in this contract framework, the private companies have superior degrees of freedom. When their movements are more difficult to control, we can observe the emersion of stronger incentives for profit maximization-oriented actions.

In the French and Brazilian outsourced models, the decision rights are split between government officials and private operators. What notably varies from one contract type to another is the degree of tasks delegated to non-governmental operators. As we have seen before, private operators are keen to be more flexible to manage and coordinate the effort of different suppliers as compared to the traditional provision. In addition, an important characteristic of hybrid forms relies on the presence of civil servants inside the prison, once they are able to verify the quality of the services provided and eventually enforce sanctions in the case of certain contractual non-conformities (Cabral, Lazzarini and Azevedo, 2007). Possibly, that is the mechanism through which we observe an increase in quality standards in Brazil and France in opposition to the United States, where quality decreases.

The level of delegation is also responsible for the cost differences between the two hybrid models. In France, fewer activities are delegated as compared to Brazil, where civil servants represent a small portion of the employees in privately operated facilities. The maintenance of the *status quo* helps to crystallize the current practices in France, which can impede the adoption of managerial innovations, as we have seen in the Brazilian example regarding private lawyers and heterodox actions for dealing with courts' inefficiencies. In addition, from the financial point of view, civil servants normally

¹² In this sense, Desrieux (2006) compares the PPP models adopted in France (public services delegation) and in the Anglo-Saxonian countries (private management). She identified some differences between the two models. In the same vein of HSV (1997), she observed that privatization is preferred when the cost reduction efforts of private companies have a weak effect on quality indicators. If such efforts bring an intermediate level of adverse effects on quality the French mode is more efficient.

receive better salaries and have benefits that are not available in private companies. All of these factors lead to an increase in costs when public management is concerned (Laffont, 2000).

Although the delegation of authority to inferior administrative levels can be positive in prison services, it is limited once a meaningful part of the knowledge is tacit and specific and cannot be easily transferred to the managerial superior levels. Monitoring mechanisms are essential to avoid misalignment between the different administrative levels. Considering the existence of a given structure, which may mitigate of collusion (along these lines see Cabral, Lazzarini and Azevedo, 2007), again the presence of civil servants within the prisons plays a leading role in avoiding opportunistic and non-ethical behavior by private companies and civil servants as well.

The analysis of the topics demonstrated above allows us to highlight that the achievement of a proper governance structure does not rely on one single aspect, but rather on the way incentives, contractual design, decision rights and the nexus of institutions are combined. The combination of all these factors might represent a strong impact on performance indicators, in a positive or negative sense. The ability of public or private managers for dealing and eventually bypassing the constraints imposed is essential in the choice of the contractual mode.

5- Conclusions

Despite the fact that private participation in prison services is mentioned in certain important theoretical economic models, there are few studies that compare distinct available governance structures. However, when one analyzes the few works produced about the subject and tries to establish a cross-country comparative perspective – as we did in this paper – striking differences in the outcomes may be observed. In the United States, private participation leads to a decrease in costs at the expense of a reduction in quality. In France, we observe an increase in both dimensions, and in Brazil cost reductions with an improvement in quality is observed. It is natural to ask why such differences occur.

In this paper, we argue that achieving an efficient governance structure does not rely on one single aspect, the distribution of property rights. In fact, superior performance indicators seems to be the result of the combination of several other factors that shape incentives for private operators to provide the services with low costs and high quality levels. The strength of the property rights view is that it articulates the role of market incentives and how they can be altered by shifts in asset ownership. On the other hand, it says little about the incentives that can be created within each governance structure, for a given distribution of property rights. We therefore suggest mixing incentives resulting from the distribution of property rights and incentives resulting from decision and revenue rights and institutions in PPPs. The real challenge is to understand how the two forms of incentives complement each other.

6 - References

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