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Markets, Privatization, and Corruption

IN RECENT DECADES, MARKET PROVISION HAS REPLACED OR partially substituted for government provision in many arenas. During the 1970s and 1980s in the United States and in some European countries, many publicly owned enterprises involved in telecommunications, electricity, transportation, and water were contracted out or sold to private parties. The governments of these countries, especially the United States, also “outsourced” some of their core functions: welfare provision, prisons, and military services have been increasingly passed to private hands and today involve some degree of market competition. The rationale for this outsourcing has usually rested on claims about efficiency, although sometimes it has been rooted in the desires of governments to take costs off the public budget or to weaken and/or circumvent the power of public sector unions.

Let me give three striking examples of core government functions that have been partially transferred to the private sector.

First, consider military commitments. A large percentage of the United States military commitment in Iraq and Afghanistan has been comprised of private contractors. A 2007 estimate had 180,000 private contractors supporting roughly 160,000 official troops in Iraq so that the number of private contractors actually outnumbered US military personnel (T. C. Miller 2007).

Second, consider prisons. Nearly half of all immigrant detainees in America are now held in privately run prisons. According to

the Bureau of Justice Statistics, of the 1.6 million state and federal prisoners in the United States as of 2008, about 16 percent were housed in private facilities (<http://www.bjs.gov/index.cfm?ty=tp&tid=141>).

Third, consider security. In the United States, as of 1999, the private security industry employed 1.5 million people against 828,000 for the public police (De Waard 1999, 155). The number of private guards in America is now almost twice as large as the number of public police officers.

What should we think about the private provision of goods such as military service, security, and prisons? Each of these cases of privatization brings with it possible benefits and costs. Private provision might be more efficient but it might make decisionmakers less accountable in ways that actually harm productivity (Minow 2003). It might diminish governmental capacity but it might also augment the government's powers in troubling ways—for example, by enabling the government to do things that the public might not have much appetite for, such as costly interventions in other countries (Michaels 2010).

While many people do not object to privatization in the cases of electricity and postal services, provided there are efficiency gains, these very same people are often uncomfortable with the privatization of prisons and the military—even when there are efficiency gains. In this paper, I consider three reasons to be concerned about the market-based privatization of these services that are somewhat independent of considerations like efficiency or government capacity. (For concerns about privatization more broadly, even in the case of nonprofits, see Cordelli 2011.) Each of these objections to privatization appeals to the idea of corruption but they understand this concept in very different ways. My aim will be to demonstrate that these three ways of understanding corruption are distinct, and that although they all have a role to play in our thinking about privatization decisions, they may lead to different conclusions in the cases I am concerned with.

THREE CONCEPTS OF CORRUPTION

Individual Corruption

The most basic and common idea of corruption is individual corruption: the pursuit of private gain or private benefit by a public official or by any person in a public role in exchange for promoting their private interests (Thompson 1995). Individual corruption encompasses a variety of actions including bribes, gifts, sexual favors, and nepotism. These are all cases in which an individual or his designee benefits, but which are not justified by the demands of his public role and do not serve the purposes of the institution. In these cases, illicit individual interests pollute the public realm in some way.

Of course, the private interests in question may be varied: a police officer who enlists others to fabricate evidence may be motivated by a misplaced sense of justice rather than by individual material gain (S. Miller 2011). Academic researchers are also rightly considered corrupt when they falsify their data to win honors and prestige. Nevertheless, the core idea of individual corruption remains: private interests inappropriately invading the public domain under conditions that usually reveal some kind of quid pro quo benefit but may also reveal more subtle and noneconomic benefits accruing to a person in ways that subvert her public role or responsibility.

Intrinsic Corruption

A second kind of corruption, which I will refer to as “intrinsic corruption,” is involved when a good is treated in an inappropriate way. Consider friendship. As Michael Sandel points out, friendship is a kind of good that is distorted and undermined if it is treated as a market good:

Suppose you want more friends than you have. Would you try to buy some? Not likely. A moment’s reflection would lead you to realize that it wouldn’t work. A hired friend is not the same as a real one. You could hire people to do some of the things that friends typically do—picking up

your mail when you're out of town, looking after your children in a pinch, or, in the case of a therapist, listening to your woes and offering sympathetic advice. Until recently, you could even bolster your online popularity by hiring some good-looking "friends" for your Facebook page—for \$0.99 per friend per month. (The phony-friend website was shut down after it emerged that the photos being used, mostly of models, were unauthorized.) Although all of these services can be bought, you can't actually buy a friend. Somehow, the money that buys the friendship dissolves it, or turns it into something else (Sandel 2012).

Some cases of intrinsic corruption, relevant to my topic, occur when a good that is essentially a public good is treated as a private good. For example, it is essential to the proper workings of the criminal justice system that officers of the court not be motivated by financial considerations when they consider punishments. Privatization of the system wouldn't work—not because competitive markets in judicial opinions couldn't be developed but because the buying and selling of judicial services is (automatically, as it were) a corruption of the process of dispensing justice.

In a similar vein, consider the example of legislation, which is the prerogative of Congress. An attempt to delegate Congress's legislative powers to private parties would be considered by many to involve intrinsic corruption. The origins of this idea can be traced back to at least 1690, when John Locke wrote:

The Legislative cannot transfer the Power of Making Laws to any other hands. For it being but a delegated Power from the People, they, who have it, cannot pass it over to others. . . . And when the people have said, We will submit to rules, and be govern'd by Laws made by such Men, and in such Forms, no Body else can say other Men shall make Laws

for them; nor can the people be bound by any Laws but such as are Enacted by those, whom they have Chosen, and Authorised to make Laws for them (1690 [1988], section 141).

Political legitimacy, at least in a democracy, has been widely understood as precluding the possibility of delegating such lawmaking powers to private parties, although cases of this kind of delegation do in fact exist.¹

INSTITUTIONAL CORRUPTION

A third kind of corruption involves cases where the purposes of an institution are undermined over time. I will call this institutional corruption, to distinguish it from both individual corruption and intrinsic corruption. Institutional corruption need not involve quid pro quo exchanges, nor does it automatically lead to the extinguishing of a valued good or a change in its value. In the case of institutional corruption, some activity that may be harmless in itself tends over time and when it is adopted as a widespread practice to undermine the purposes and goals of the institution. For example, accepting a campaign contribution, assuming that it is not given as a bribe, may not involve either individual corruption or intrinsic corruption. In some cases such contributions enhance or at least do not damage the goods of political competition and citizen representation. But contributions are rightly viewed as corrupt when they are of a type—a size or frequency—that tends to undermine such processes and thereby damage the core purposes and nature of our institution of representative democracy (Thompson 1995).

So we have three senses of corruption: individual corruption, intrinsic corruption, and institutional corruption. Although these ideas are sometimes hard to distinguish in practice, and can often be found together, they are importantly different. For one thing, they may point us in different directions for reform in particular cases.

CORRUPTION AND THE PRIVATIZATION OF PRISONS AND MILITARY SERVICE

Individual corruption

Often lying behind the discomfort with private prisons and private military contractors is the concern that market incentives corrupt individual character. While Mandeville (1714) praised private vice as the source of public virtue, we know that much private vice simply leads to public vice.

From the perspective of individual corruption, the problem with mercenaries is that they are essentially soldiers who accept a bribe to fight. This can, of course, be seen as a case of the intrinsic corruption of motivation, but it is also a case of individual corruption. Moreover, having accepted one such bribe, it may seem reasonable to worry that the individual's private interest will continue to invade public interest. Along these lines, Machiavelli worried that private mercenaries were unlikely to fight hard in battles because they were not closely identified with the cause of the wars they participated in. In this example, we can see the core meaning of individual corruption at work: private interests polluting public interests.

Notice, however, that if our concern is the corrupting effects of financial motivations on individual participants in war, we will have trouble in distinguishing mercenaries from regular soldiers. After all, regular soldiers are paid for their services, and with today's volunteer army the military markets itself as a "career option." Many people enlist in the military because it is their best employment option. And while many soldiers do identify with the cause of their country, studies show that they are more likely to be identified with the men with whom they fight. Finally, it is at least possible that some private contractors identify with the causes that they are employed to support.

At the very least, then, advocates of the individual corruption view should extend their arguments against Blackwater (now known as Academi) to volunteer soldiers. Some theorists have been willing to bite this bullet and advocate a draft, but many people want to draw a sharp line between mercenaries and volunteer soldiers that is actually

blurry in practice. Indeed, on a purely descriptive level, the actions of private and public military employees are not always easy to distinguish. To cite a related example: it is hard to see how, in the ordinary course of things, a police officer patrolling the streets is doing something fundamentally different than a private security guard sitting at the front desk of an office tower (Heath 2009). In cases involving private security forces like Blackwater, it seems critically important to know whether contractors are simply supporting the state's military units or whether they are conducting battles with their own rules aimed at private gain.

Another concern with privatization in the context of the military and prisons focuses on the longer term effects of introducing market incentives. In many contexts introducing market incentives can crowd out altruistic behavior. Thus, in a well-known experiment, faced with parents who habitually arrived late to pick up their children at the end of the day, researchers had six Haifa day-care centers impose a fine for such parental lateness (Gneezy and Rustichini 2000). They hoped that the fines would give these parents a self-interested reason to arrive on time. The parents responded to the fine by *doubling* the amount of time they were late. Even when the fine was revoked three months later, the increased lateness continued. The most plausible interpretation of this result is that the fine undermined the parents' sense that they were morally obligated not to take advantage of the day care's workers; instead they now saw their lateness as a commodity that could be purchased.

Studies such as this one show that in some circumstances, *intrinsic motivation* can be partially destroyed when price incentives are introduced. In the case of timely day-care pickup, altruistic concern for the teachers may have been crowded out by self-interested calculation about the worth of avoiding the fine. Private incentives can thus undermine public values, and the risk of private hoarding of benefits surely escalates when public dollars previously subject to public scrutiny (national military spending) move into private accounts more easily hidden from public view (Blackwater's financial accounts).

Are private employees more corrupt than public employees? It is of course reasonable to worry about the role that monetary incentives play in the private sector. Monetary incentives can motivate people to act in different ways than they would if they were simply acting on the basis of altruism or loyalty. But we have to be careful not simply to assume that public employees display more pro-social altruistic behavior than private sector employees. In both private corporations and in large bureaucracies, employees are motivated by a mixture of altruism and self-interest. No large-scale organization could survive if everyone only acted on narrowly selfish reasons: cooperation would be too impaired (Buchanan 1996). Additionally, individual corruption seems to thrive in both public and private settings; colossal examples of individual corruption are found across all sectors of society: government, as well as the private and nonprofit sectors. To take some recent high-profile examples: off-the-books transactions of Enron; the diversion of funds by executives of the United Way; and the awarding of defense contracts at outrageous prices to private companies—which has been estimated to cost the United States at least \$31 billion, and possibly as much as \$60 billion in Iraq and Afghanistan.

Two points are worth noting about the concern regarding individual corruption as it is applied to the cases of the privatization of military and prison services.

First, the concern that market-based privatization corrupts individual motivation doesn't apply uniquely to cases like prisons and armies: presumably electricity markets could be as corrupting of pro-social motivations as paying people to fight in wars. It may well be that we have reason to worry most where selfish motives could generate the most harm to others—as in cases where violence is at issue, that is, of war, security and prisons—but this type of concern is everywhere that markets are in use and entities are oriented to profit-making.

Second, if the problem is the propensity of markets to promote private interests over social interests, regulations that increase transparency and public oversight and therefore accountability might be enough to fix, or at least contain, the problem. Of course, the account-

ability mechanisms may have to be fairly sophisticated to be up to the task. As the government involves increasing numbers of contractors and subcontractors in its operations, the possibilities for individual abuse and lining corporate coffers grows. In Iraq, projects handed over to Bechtel, Blackwater, and other agencies often forged ahead with almost no accountability. It is not surprising that so much waste and corruption was found by the Senate Subcommittee on Wartime Contracting in Iraq and Afghanistan (US Government Printing Office 2011).

Intrinsic Corruption

Some people object to private armies and prisons as intrinsically wrong, regardless of effects. If we define a mercenary as someone who hires himself to the highest bidder, such a person is not likely to be pursuing war for the right reasons (although, as I noted above, it is an interesting question as to how many soldiers are). In that case, there is intrinsic corruption of motivation. It is an open question whether individuals in private security forces are mercenaries in this sense.

But there is another important argument against privatization from the perspective of intrinsic corruption. According to this argument, privatization of some important goods must fail to deliver these goods because privatization necessarily turns these public goods into private goods (Dorfman and Harel 2013).

I showed earlier that this argument could be applied to questions of judicial and legislative decisions. But this application becomes less clear with respect to the choice to contract out to private parties to execute these decisions after they have been announced. Although the decision to go to war is undeniably a public one—in the United States, war must be declared by the president, and no one thinks that private parties have the right to declare war on behalf of the nation—some may believe that executing a war can be better performed by private bodies and that, if it can be done better by such bodies, it ought to be done by them. Similarly, why not allow for private prisons if these are more efficient, have better outcomes for prisoners, and can function with proper oversight by the government?

Can the nature of an agent's relationship to a good she is tasked with executing itself determine the nature of a good? Can a good be corrupted if a transacting agent stands in the wrong relationship to the recipient of that good?

Consider two examples. First, in cases of gift giving, there is a real difference between buying a gift for someone you love and having your secretary take on the task for you. This is true even when your secretary is a better and more creative shopper. The case of the exchange of goods between intimates often makes such substitution inappropriate, or at least in questionable taste. Second, in so-called blood feuds (like that between the Capulets and the Montagues depicted in *Romeo and Juliet*) it is the responsibility of family members to punish those who have violated their honor. The morality of their act of revenge depends on the fact that the party executing the punishment is a member of the family; otherwise, the retaliatory act would change from an "honor killing" to a simple case of murder. This is true even if those third parties would be better at killing, and indeed even if they would be better at minimizing harm to innocent bystanders (Harel 2008 discusses this case).

The intrinsic corruption argument in the cases I am considering is roughly analogous: it hinges on the idea that for something to count as an act of official punishment or an act of war, the executing agent has to stand in the right relationship to the state that issues the decision. Outside that relational context, the actions of private parties are held to become something else: in the case of private prisons we get private disciplining, not justice; in the case of private security forces we get homicide, not acts of national self-defense.

Since both public and private actors have some discretion in determining how to execute the state's commands, this argument ultimately depends on showing that the relationship between the state's own bureaucracy is tighter and of a very different quality than the state's relationship to private actors. In a recent article, Dorfman and Harel (2013) have argued that state functionaries are tied in more closely to the state's aims through institutional practices that lead

them to defer to the state out of loyalty. By contrast, because private employees have an organization of their own to attend to, which has its own aims, their deference has more of a cost-benefit cast. This has the consequence of placing the private contractors in a different relationship to the state than bureaucratic functionaries: they are outsiders.

Intrinsic corruption provides an interesting perspective on privatization. In considering it, we should note that this perspective brackets off questions of welfare and efficiency in the privatization decision. Contrast a private prison in Massachusetts today with a state-run prison in Alabama in 1962. I suspect that, in many circumstances, the private prison would be an improvement with respect to prisoner welfare, especially if the prisoner happened to be black.

Public prisons are notoriously ineffective at preventing recidivism, educating prisoners, maintaining minimal standards of safety, providing essential medical care, shelter, and nourishment, and treating prisoners with respect. If—an admittedly big if—privatization led to better results along these dimensions, wouldn't that constitute a very weighty reason in its favor? And if private prisons could serve social goals at reduced costs, wouldn't that be an important factor to consider? Of course, the point of the intrinsic corruption argument is to block such tradeoffs. So I just want to flag this cost to accepting the intrinsic corruption argument.

If Dorfman and Harel are right about the slippage in the motivational ties between the state and its agents, the intrinsic corruption argument can perhaps best be seen as posing a powerful regulatory challenge. The link between individual action and the state's commands is complex regardless of the identity of the agent, but it is likely to be more complex as we involve many disparate organizations and multiple subcontracting parties. Private prisons and private military providers often subcontract with many agents and that can make waste and individual corruption hard to see. They can also make it hard to see where an agent is making self-serving decisions, even when these do not violate the law or are not motivated solely by greed. In cases with

high stakes—punishment and war—the intrinsic corruption argument raises the concern that the regulatory and monitoring institutions will not be adequate to prevent abuse with multiple and far-flung actors working for many kinds of organizations. And they will not be able to manage drift from the state's aims. This leads then to the third idea of corruption: institutional corruption.

Institutional Corruption

Recall, this is the idea that the public purpose of an institution can be undermined by certain practices. Unlike the cases of individual and intrinsic corruption that can obtain in a single case, institutional corruption involves an ongoing series of relationships or practices that undermine the central purposes of an institution.

How would this concern show up in the privatization of the military and prisons?

While society has a strong interest in reducing the amount of crime, and consequently the number of people in prison, the interests of the private prison industry can press in a different direction. To give two telling examples: recently, the private prison industry was secretly involved in drafting Arizona's harsh anti-immigrant law—a law that (by the way) would boost demand for its immigrant detention centers. And the Corrections Corporation of America has offered to relieve the fiscal crises of 48 states by buying their prisons—but only provided the states agree to keep the prisons 90 percent full for the next 20 years!

Similarly, we might worry about the effects of a widespread regime of relying on private security. Security companies can only survive if there is a demand for their services. One way to ensure demand is to change consumers' perceptions about threats by engaging in deliberate efforts to increase feelings of anxiety, fear, and insecurity (Claasen 2011). But this preference manipulation interferes with society's interest, which is in the attainment of an optimal level of security. So the private provision of security through a market might corrupt the goal of providing optimal levels of protection to people (assuming that the state would be able to supply this).

In each of these cases private actors, oriented to their own goals and not doing anything illegal, threaten to subvert public purposes. Of course, in assessing the best policy with respect to privatization, we also need to be careful not to idealize the government's role in prisons (or security) by contrast. Politicians sometimes seek to manipulate fear for their own purposes, states rush to build new prisons to secure jobs for their citizens, and the state-provided prison system is rife with practices that do not serve important social goals.

Sometimes privatization threatens to corrupt a public institution or purpose because by allowing some people to opt out of a commonly provided good, it threatens the provision of that good to those who cannot opt out. For example: in the United States, more and more communities are erecting literal gates and supplying trash collection, security, and street lighting. These communities are pressing for—and in some cases have won—rebates of some amount of their property taxes (Stark 1998). This may lead to bad third-party effects.

Why, these communities ask, should we contribute to the public coffer for services we are providing for ourselves? The basis for state security is weakened as soon as particular groups in society no longer profit—or perceive they no longer profit—from it and start to request exemptions from their obligation to contribute in the form of taxes. This points to an important way that privatization can lead to the corruption of a public purpose: by undermining support for the minimum level of security that the state ought to provide. Sometimes the best way to ensure the minimum level of a good may be to give everyone the same good.

CONCLUSIONS

Each of these three kinds of corruption is important to consider in evaluating the government privatization of military services and prisons. Individual corruption is best addressed through accountability and transparency mechanisms. While individual corruption is an important factor to consider in the privatization issue, it is likely to be a more limited problem—composed of isolated acts of malfeasance whose effects can be contained.

The challenges to privatization posed in terms of intrinsic corruption and institutional corruption are different. The perspective of intrinsic corruption in the case of government services points to the ways that private actors can fail to make their actions count as the state's actions—even when they are under contract by the state—and prompts us to ask whether any regulatory schemes might help address that gap.

Finally, it is possible to see the privatization of security forces and prisons through the lens of institutional corruption. In these cases, we face different regulatory questions. Most important, we need to identify what the core purposes of an institution are and then think through the diverse mechanisms that we have to prevent their corruption—including transparency and accountability but also contract specification and in some cases making sure that the institution is cordoned off from market pressures. While I focused here on privatization in the context of military and prisons, the institutional corruption argument actually has potentially a much wider range of application than the intrinsic corruption argument: it can be applied to campaign financing, the privatization of education, and the organization of the financial sector. This latter kind of corruption has not received the attention it deserves, given its serious consequences for society.

NOTES

1. There is, in the United States, a law of condominium that permits a private contractor to build a town (for example, the towns of Columbia, Maryland, or Reston, Virginia, which are both functioning little cities) and set up a system of legislation (usually laws would require supermajorities) and regulation and taxation. When someone buys a unit they have to agree to the whole thing. Thanks to John Ferejohn for this example.

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