

## **The Privatization of Prisons and its Impact on Transparency and Accountability in Relation to Maladministration**

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**Abstract:** *The privatization of government services has been a means by which to increase efficiency, quality, and save money. Given this, much research has delved into the potential negative side affects of privatization, which include loss of transparency and accountability. Further, research points to the need for transparency and accountability as it relates to fighting maladministration. Thus, this paper applies this framework to the context of privatized prisons, to provide an exploration and theoretical approach to the question “are private prisons more susceptible to maladministration than public prisons?” The paper also identifies three main structural factors, in regards to transparency and accountability that are associated with private prisons, which can lead to maladministration. These factors are the vagueness of contracts, the agency problem, and the lack of open access laws, specifically the Freedom of Information Act, which further promote incentives to conceal information.*

**Keywords:** *Accountability, contracting-out, corruption, governance, maladministration, prison-industrial complex, private prisons, privatization.*

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### **1. INTRODUCTION**

Governance has been associated with transparency and accountability by academicians as well as public administrators, therefore it has been established that these two factors are necessary ingredients needed in the governance pot. However, practices within government have not always followed ideals associated with governance. Good governance can be seen as anything that perfects and promotes optimal governance relationships. Therefore, good governance practices would entail optimal transparency and accountability efforts. Nonetheless, as government has attempted to increase efficiency and save money, privatization has become a default solution.

Unfortunately, privatization has led to government agencies relinquishing some of their rights, accountability, and transparency standards, while freeing themselves of the constitutional constraints associated with certain public functions and service provisions. This lack thereof has led to questioning the extent of which the privatization of certain governmental functions is in actuality good governance. Therefore, this paper takes an exploratory and theoretical approach to examine issues of maladministration as it relates to the lack of transparency and accountability within the privatized setting of prisons.

Moreover, the paper utilizes secondary methods in conducting a literature review to answer the question, ‘Are private prisons more susceptible to maladministration than public prisons?’ In answering this question, the paper broadly focuses on the lack of transparency and accountability in privatized settings, which contribute to maladministration. There have been numerous studies that highlight transparency in government administration as a means to prevent corruption within contractual relationships (see for example Otenyo& Lind, 2006). However, there is only a limited amount of scholarly research on transparency and accountability within private prisons as it relates to maladministration (see for example Casarez, 1995) and such information presented is dated. Moreover, there are claims that support transparency as a method to counteract maladministration and specifically corruption, as seen by various non-profit reports, advocacy groups, newspapers and so forth, but an extensive theoretical foundation is missing.

As far as history repeats itself, the privatization of prisons has traditionally been associated with maladministration problems. Ogle (2006) stated,

The history of private prisons in the United States, reflects a misconception that the competitive market would create compliance and competitiveness without disturbing the institutional environment. This approach led to corruption, abuse, political and contractual manipulation, and ultimately failure because these organizations were not passive entities...According to Ethridge and Marquart (1993), the reasons for prison privatization are the same today as in the 1860s: increasing prison populations, cost containment, and economic difficulties for governments. The goals of privatization are the same in both periods; so are the problems. (p. 590)

The remainder of this paper is broken up into sections, beginning with the concept of governance as it relates to transparency and accountability, a brief history of private prisons, and a discussion of two key issues that are associated with privatization. Following this there is a section devoted to the context of prison specifically, briefly comparing public prisons to private prisons in regards to open access laws. Furthermore, this paper identifies three structural factors that relate to the private prison system, which work to promote maladministration. These elements are classified in regards to the vague nature of contracts, the agency problem, and the lack of open access laws, specifically the Freedom of Information Act. Finally, a discussion is presented to conclude this theoretical and exploratory analysis.

## **2. GOVERNANCE: TRANSPARENCY & ACCOUNTABILITY**

While various ideals and concepts related to governance have been focused on throughout time, recently there has been a renewed interest on governance, specifically 'good' governance and defining such terms. Additionally, efforts have been directed towards identifying practices and values that enhance the effectiveness of governance. Many international organizations, such as the World Bank, the International Monetary Fund, the United Nations, The U.S. Agency for International Development, The Department for International Development, The European Union, and The Organization of Economic Co-operation and Development, have all defined the concept 'governance' and/or 'good governance' in different manners (Grindle, 2007; Jørgensen & Sørensen, 2012; Weiss, 2000). However, for the purposes of this paper, governance will be broadly defined as any processes and institutions of which information is gathered and disseminated, decisions are made publicly, and operations are implemented with public input, by the authority of which derives power from the people in order to act on behalf of the country, all of which impact public well-being.

Many public values fall under the concept of good governance, however two key terms that are apparent throughout the literature, and that will be the focus of this paper, are transparency and accountability. These two values were found to be amongst the 8 core global public values that Jørgensen & Sørensen, (2012) found to be important keys to good governance. A government that is transparent, thus operating under openness to the public, acts as a reinforcement of accountability, which portrays good governance (Rodríguez Bolívar, Alcaide Muñoz, & López Hernández, 2013). While scholars may debate the conditions of which transparency and accountability co-exist, it is nonetheless recognized that they influence and promote one another (Florini, 2002; Geraghty & Velez, 2011; Hood, 2010; McDermott, 2010; Mitchell, 2011; Otenyo & Lind, 2004; Piotrowski & Van Ryzin, 2007).

### **2.1. Transparency**

The term transparency is not a new concept. It has had a long root in American History dating back to the framers of the Constitution, who emphasized the importance of openness through government information and documentation being published (Florini, 2002; Jaeger & Bertot, 2010). Moreover, transparency has been an important aim historically, as seen by the public access various laws and regulations that have been established such as the Administrative Procedure Act (1946), Freedom of Information Act (1966), and Presidential Records Act (1978). Despite these efforts, the government has continued to operate between various levels on the transparency-secrecy continuum (Ball, 2009; Florini, 2002, 2004). None the less, in more recent times, there has been a robust emphasis on much higher levels of transparency and open government as a means to gain the citizen's trust while fostering an effectual government (White House, 2009).

Transparency operates through various mechanisms in order to promote good governance (Florini, 2002; Grimmelikhuijsen, Porumbescu, Hong, & Im, 2013; Hood, 2010), such as acting as a barrier to corruption (Apaza, 2012; Ball, 2009; Etzioni, 2010; Florini, 2004; Jaeger & Bertot, 2010), enhancing efficiency (Florini, 2008; Grimmelikhuijsen et al., 2013; Hirsch & Osborne, 2000; Otenyo & Lind, 2004), improving performance (Etzioni, 2010; Hirsch & Osborne, 2000; Vogelgesang & Lester, 2009), and promoting trust (Ball, 2009; Etzioni, 2010; Jaeger & Bertot, 2010; Meijer, 2009) which all increase the legitimacy of government (Grimmelikhuijsen et al., 2013; Mitchell, 2011; Otenyo & Lind, 2004).

Therefore, transparency can be viewed as a process to fight maladministration, promote effectiveness, and essentially to improve the accountability of an agency, specifically private prisons. Furthermore, transparency “is (the public) availability of information about an organization or actor that allows external actors to monitor the internal workings for performance of that organization” (Grimmelikhuijsen et al., 2013, p.576). Whereas, maladministration can be seen as an “administrative action (or inaction) based on or influenced by improper consideration or conduct” (Wheare, 1973), and for the purposes of this paper maladministration is further operationalized to include maltreatment and any form of misconduct that allows for corruption. Additionally, corruption is as any form of behavior that seeks to maximize private gain at the expense of the public interest (Fombad, 2013), and thus the term maladministration will be used to encompass corruption.

## **2.2. Accountability**

While there are multiple forms of accountability, this paper will look at accountability as “the duty of an individual or organization to answer in some way about how [and why] they have conducted their affairs” (Hood, 2010, p.989). Specifically, this paper is guided under the assumption that transparency promotes accountability, and in conjunction they lead to good governance. Additionally, this paper will look at how the lack thereof within the private prison system leaves an open window for maladministration, and thus is not a practice of good governance.

Due to the increased muddling of the public, private, and non-profit sectors, the focus of governance has changed to concentrating on management practices and methods of handling this blurring of sectors. The contracting out of public services depicts the importance of understanding governance as it relates to the private and non-profit sector in providing public goods (Pettai & Illing, 2004). Furthermore, it is essential to look at the key issues of transparency and accountability as it relates to privatization. Privatization refers to government outsourcing of ownership, functions, or services by the public sector to the private sector, thus it includes any form of contracting-out and partnership between sectors.

Seeing as individual public servant behavior was found to be essential to good governance (Jørgensen & Sørensen, 2012), it is important to understand individual behavior as it relates to the impact of privatization on the public sector ecosystem. Thus, this paper will theorize how the lack of transparency in individual level behavior within private agencies that are providing public goods (specifically private prison actors) can promote maladministration.

## **3. HISTORY OF PRIVATE PRISONS**

Although the roots of prison privatization in America date back to the 1600s, this movement regained its momentum in the late 1900s. Moreover, the specific mechanisms by which America employs privatization since the 17<sup>th</sup> century have since changed. Prison privatization was reintroduced under the Reagan administration (King, 2012) and further expanded during Clinton Administration (Culp, 2011). The push towards more privatization was influenced by a broader shift in organizational theory to New Public Management (NPM) and Reinventing Government ideals. New Public Management principles were aligned with public choice theory in that it viewed human behavior as essentially being self-interested (Culp, 2011; Kamensky, 1996). Furthermore, NPM was centered on downsizing government (Culp, 2011; Denhardt & Denhardt, 2000), while increasing competition and privatization within the public sector in efforts to achieve efficiency in service delivery (Amagoh, 2009; Flynn, 2007).

Similarly, Osborne and Gaebler's Reinventing Government approach aligned with these same ideals of making the government more business-like. Consequently, this approach viewed the government's role as an overseer or director rather than an actual worker or provider of services (Culp, 2011). Moreover, this shift emphasized the transformation of the role of government all together, in efforts to save money through innovative and entrepreneurial techniques (Denhardt & Denhardt, 2000; Weiss, 1995).

Coupled with the downsizing government movement, there was an increase in crime that resulted in new laws and harsher sentences, which led to increases in prison populations. As prisons began to overcrowd, this allowed for further incentives for private agencies to enter the prison industry. Therefore, the move to privatization was seen as a way to reduce costs while dealing with prison overcrowding and management issues (King, 2012).

As the trend for privatization increased, the values of efficiency, associated with the private sphere, replaced values of accountability and transparency within the public sector. Consequently, due to the lack of transparency and oversight that came with contracting-out, concerns across various other public administration areas for accountability arose. Therefore, many calls have been made for more oversight and regulation in areas where privatization took root, such as education (see DiMartino & Scott, 2012), healthcare (see Johnston & Romzek, 1999), and even childcare (see Vancoppenolle & Verschuere, 2011). The next section will discuss two issues that relate to transparency and accountability, that most, if not all, private agencies face: hidden information and corruption.

#### **4. HIDDEN INFORMATION AND CORRUPTION**

Private agencies that are providing public goods tend to utilize confidentiality clauses as an attempt to hide information that should be shared with the government and public, which in turn reduces transparency and dampens accountability. Even when problems arise in regards to the lack of adherence to the terms of a contract, these confidentiality clauses and issues relating to trade secrets allow private agencies to limit the amount of public scrutiny available, which further hinders accountability and opens the door to corruption (Sands, 2006).

Many scholars note the apparent threats associated with loss of transparency and accountability as well as the opportunities for corruption and fraud within privatized relationships (see Bloomfield, 2006; Fombad, 2013; Gilmour & Jensen, 1998; Watson, 2003). While corruption can and does happen in regular public agencies, it occurs more frequently when dealing with private agencies providing public services, partly due to the amount of transactions taking place within contractual relationships. Additionally, scholars have identified the need for reinventing accountability measures to accompany the reinventing of government through privatization in order to shield against maladministration (see Gilmour & Jensen, 1998).

Price & Morris (2012) highlight the concerns of many scholars in regards to accountability in privatized contexts in that accountability becomes dependent upon contract monitoring. Moreover, the chance of achieving "democratic accountability" is reduced because of the "greater institutional distance between citizens and those producing and delivering services on their behalf" (p.3).

Nevertheless, in some instances of privatization, scholars argue that transparency and accountability actually increase (Beerman, 2001) due to increased competition, enhanced efficiency, and more advantageous employment opportunities (Mulgan, 1997), but unfortunately this has not been the case with private prisons. Within the prison-industrial complex (Neill & Gable, 2012), there is a lack of competition, a lack of advantageous employment opportunities due to the absence of benefits, and usually lower wages paid to employees in comparison with the public sector. Likewise, some scholars, such as Rose-Ackerman (1996), have argued that privatization can decrease corruption through increased competition. Unfortunately, the lack of transparency, which Rose-Ackerman mentions as a way to decrease corruption, that comes with prison privatization negates this claim. Additionally, Bjorvatn & Soreide (2005) highlight the many studies that contradict the assumption that privatization increases competition and efficiency. Seeing as the private prison industry currently has market concentration and is undergoing an oligopoly (Culp, 2011), decreased corruption as a result of increased competition is not likely to happen.

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Following Beer man's suggestion (2001) to not bundle all efforts of 'privatization' together, but look at each case by case in an attempt to really understand the impact on accountability, the remainder of this paper will focus specifically on private prisons. Specifically, this paper will address how transparency and accountability efforts are diminished within such contexts, consequently giving way to maladministration. While maladministration, and specifically corruption, can happen anywhere, there is an increased chance of occurrence where contractual relationships bind government and private firms (Maravic & Reichard, 2003). Thus, privatization poses a unique opportunity for corruption to exist. Furthermore, many scholars have acknowledged that transparent and open procedures are usually associated with decreased opportunities for corruption (Bac, 2001; Rose-Ackerman, 1996), all things being equal.

### **5. PRISONS**

This section will apply the above theoretical developments on transparency and accountability as it relates to prison privatization specifically. This section begins by addressing the current issues faced within public prisons and highlights the specific statutes that govern public but not private prisons. Subsequently, the section will outline the specific context of privatized prisons, which make them more susceptible to maladministration due to the lack of transparency and accountability thereof. Thus, it looks at the lack of transparency and accountability within privatized prisons in association with vague contracts and discretion, the agency problem, and the private prison information act and incentives to conceal information.

#### **5.1. Current Issues in Public Prisons**

There are many problems surrounding public prisons associated with transparency, accountability and maladministration, which cannot be neglected. Issues regarding prisoner's rights and maltreatment of prisoners have been seen through the works of scholars, national news reports and prisoner's rights advocates, amongst others. Furthermore, prison violence is widespread and takes place in all prisons alike.

Byrne & Hummer (2007) argue that applying strategies that focus on all inmates, staff, and management will decrease prison violence. Thus, they acknowledge the importance of conflict resolution for inmates, developing a positive staff culture, and the situational context of prison. In order to solve the violence in prisons, Byrne & Hummer suggest increased transparency on prison experiences and the implementation of new performance and quality measures.

Similarly, many scholars argue the need for more effective oversight and monitoring (Hefetz & Warner, 2004) in government-operated prisons and jails in order to be more transparent to the public, while they offer practical solutions to establish better oversight (see Byrne & Hummer, 2007; Coyle, 2010; Dietch, 2010; Gennaco, 2006; Mushlin & Dietch, 2010). Additionally, prison oversight ensures transparency and accountability of prisons to both legal and moral standards (Stojkovic, 2010). Therefore, while it is important to note that there are problems within our correctional system as it stands, which can result in maladministration and corruption, it is even more necessary to address the possibility and realities of what more is being hidden from public view with the privatization of prisons. Whereas, we cannot ignore the need for transparency and accountability in public jails and prisons, more attention should be drawn to how this need is exacerbated when prisons are privately operated.

#### **5.2. Statutes Regulating Public Information**

Notwithstanding the aforementioned issues within the public prison environment, there have been measures in place to ensure that publicly operated facilities are accountable and that information is accessible. For instance, there is the Freedom of Information Act (FOIA), the Administrative Procedures Act (APA), the Government in the Sunshine Act, and various other state stipulations on public access and public records laws. These acts have all been established to provide better and more efficient access to information.

In addition to these public access laws, the Civil Rights of Institutionalized Persons Act (CRIPA) was implemented to protect the civil rights of those imprisoned in state and local institutions and allow intervention when necessary if any institutionalized individual's rights are exploited. Unfortunately, private prisons are not subject to or covered under any of these acts. This means

that private prisons housing federal prisoners are neither required to report on what goes on inside the facilities in regards to inmate incidences (such as inmate violence, rape, assault, death, escapes, etc.), nor are ex-offenders given public access to their own records while detained within private facilities (Treadwell, 2012). Moreover, under the Whistleblower Protection Act government employees are afforded the right to report any form of misconduct or violation, without having to deal with any repercussions from their employer, whereas private sector employees do not have such protections.

### **5.3. Private Prisons: Vague Contracts and Discretionary Decisions**

Frederickson (1999) stated that in order “to insure quality and to guarantee against kickbacks, skimming and fraud it is essential to have very tightly drawn contracts and careful, close oversight, preferably by experienced government contract managers (*Kettl, 1993*)” (p.306). However, contractual relationships cannot account for all of the possible situations that are likely to arise when administering services, thus contracts are always incomplete (Williamson, 1981), rather than being “tightly drawn.” Due to the ambiguity of the contractual agreements binding these partnerships, there is a lack of transparency and accountability associated with private prisons. One of the reasons associated with the vagueness of contracts is the need to account for discretionary decisions. Consequently, private actors are given the power to make daily decisions that are neither subject to accountability statutes nor to public spotlight, which, if subjected to, would have served as a check against unacceptable behavior.

Take for example, the Florida Department of Management Services, in which the contracts are so vague that they do not specify any standards of performance in relation to “private prisons’ inmate education, vocation, and treatment programs” nor does they outline any specified policy for “inmate visitation and telephone costs that are comparable to those provided by the state’s public prisons” (Treadwell, 2012, p. 144). This one example portrays the vagueness of contracts, which can lead to maladministration in that one of the goals of incarceration is rehabilitation. This goal can be forfeited if the performance measures and standards are not detailed enough to match the quality of services within the public prison environment. The sensitive nature of prison entails that scrutiny be given to any and all minute factors in that they can hinder or facilitate rehabilitative aims and thus affect recidivism.

As mentioned above, due to the vagueness of contracts there is a lack of defining various daily activities, thus private actors are ultimately responsible for daily management decisions (Mörth, 2007) in regards to the provision of public goods and services, which poses management problems in itself (see Pozen, 2003). Further, these private actors are neither required to disclose their actions and decisions nor the reasons for acting in such a way. While the government is accountable to the extent in which it ensures that prison services are being provided, the daily operational procedures are forfeited. Therefore, there is a level of accountability that is diminished, because of the lack of control that government officials and the public have over controlling the daily activities that are not defined within the contract (Mulgan, 1997). Additionally, without the mere knowledge of what is going on within the private agencies, accountability is further weakened due to the lack of transparency. Moreover, studies have shown that the incomplete nature of contracts gives way to sacrificing the quality of private prison operations, especially as it relates to prison violence and the quality of personnel (Hart, Shleifer, & Vishny, 1997).

Furthermore, contracts cannot account for all types of potentially self-seeking opportunistic behavior (Rubin, 1990). So, if people are naturally self-interested and seek to maximize personal benefits at the expense of others, then how much more will this occur when profit is involved in combination with a lack of accountability? While the public sector generally focuses on promoting selflessness and constraining self-interestedness through various structures (Finer, 1941), laws, and regulations (Frederickson, 1999), the private sector lacks this. Thus, there is an increased opportunity for maladministration due to the egocentric nature of the private sector. More importantly, private prisons are subject to two environments: the correctional institutional environment and the competitive market environment (Ogle, 2006). These two contexts demand different adaptations and behavioral implications. A private prison company cannot conform to the latter without sacrificing the principles, values, and procedural duties of the former, and vice versa (Ogle, 2006). So, when the opportunity presents itself for discretion to be utilized, private

prison companies will most likely seek to benefit themselves in the pursuit of profit at the expense of the nature of corrections.

The only way to ensure accountability is not reduced is by allowing the government to maintain ultimate control over private prisons and by implementing mechanisms that allow in-depth analysis of daily prison operations (Beerman, 2001) that are subject to public viewing. The more vague and incomplete a contract is, the harder for governmental agencies to enforce such contracts, especially when private prisons, which seek to maximize profits, are operating under policies that hinder oversight functions of government agencies (Hart, Shleifer, & Vishny, 1997). This begins to touch the surface of issues relating to the agency problem in relation to contracts.

#### **5.4. Private Prisons: The Agency Problem**

The principal-agent theory centers on the ideal that agents are self-interested and seek to maximize their own utility. So, while they are supposed to act on behalf of their principals, often times they do not due to their drive for opportunism. Additionally, agents typically have an advantage over their principal because of information asymmetry, thus principals do not know everything that is going on. This leaves principals with the need to employ additional mechanisms to ensure that the agent will act on behalf of their interests, which is known as agency costs (Jensen & Meckling, 1976).

Furthermore, as it relates to private prisons, principal-agent problems can deal with moral hazards or hidden information (Gailmard, 2012). Moral hazard issues have to do with discrepancies between agents and principals about what actions to take. The principal can only control the agent's actions indirectly through sanctions if the principal finds out any pertinent information signaling the agent's actions. When the principal has no way of finding out, the action is completely hidden and likely to continue. Furthermore, when dealing with an issue of asymmetric information, the agent has information that can be used by the principal to make a decision to further the principal's interest, but because the agent has different interests the information is hidden from the principal.

The dilemma that exists when it comes to private agencies providing public services is delineated here. In the public realm, the government, also known as the agent, is to act on behalf of the citizens, who are the principals. Government employees and agencies are not supposed to be fulfilling their own desires. On the other hand, in the private realm, managers are agents and the principals are the corporate stockholders (Florini, 2002). So, when contracts and partnerships come into play between the public and private spheres, there are two incompatible and often competing goals: to act on behalf of the citizenry and to act on behalf of stakeholders. Unfortunately, the latter tends to win, and private agencies seek to increase profit even if it means risking the government's goals and forfeiting the public good (Amagoh, 2009; Ogle, 2006).

Nonetheless, in theory at least, private prison firms should represent the agent, while citizens represent the principal. Thus, private prison firms are ultimately responsible to the public, seeing as public monies facilitate these contractual arrangements between government actors and private agencies. From this perspective, private prison firms and the public prison firms are seen as one in the same. In practice however, they are not one in the same, (as seen by the mere fact that they are not subject to the same laws), thus private prison companies not only report to their shareholders (Treadwell, 2012), but act in behalf of the interest of their shareholders. If the interest of the shareholders is to increase profit, the question deems worthy to ask: at what costs to the public and at what cost to those incarcerated? Without appropriate transparency and accountability measures in place, it is impossible to know these costs.

More importantly, although this may not always happen, agents are commissioned to serve the interest of principals and thus are obligated to provide information to the principal (Florini, 2002). Thus, without appropriately establishing and mandating by law to whom these private prison firms are accountable (Acar, Guo, Yang, 2011), merely employing strategies to enhance transparency will be a pointless attempt at benefiting the public, because private agencies will be more transparent to who they think they are supposed to report to (i.e. the shareholders). Moreover, if the agency problem is one that will be present no matter what, then at

least transparent operations can serve to counteract such a problem by means of disclosing information that depict the agent's actions and the principal's desires.

### **5.5. Private Prison Information Act & Incentives to Conceal Information**

As it stands, if the contracts deem it so, a private prison may be subject to providing information to the government, but they are not mandated to provide information to the public by any means. Additionally, even if the government is requesting information, due to the vagueness of contracts, there is usually a lack of enforcement for private prisons to partake in extensive record keeping initiatives like that of public prisons. Since private prison firms are not subject to the Freedom of Information Act (FOIA), there have been 5 attempts since 2005, to pass the Private Prison Information Act (PPIA). PPIA offers an extension of the FOIA to include private correction companies that house federal prisoners (Treadwell, 2012). Sadly, each attempt has failed. Additionally, while there are arguments that private prisons are subject to state open records statutes, this alone does not assure access to information (Treadwell, 2012), and there have been cases that portray this dilemma.

Moreover, within the context of government and privatization there are various incentives to conceal information (Florini, 2002; Mitchell, 2011) from the public view. Thus, more efforts are needed to promote transparency and initiate government oversight in order to decrease secrecy. Within the prison context specifically, potential reasons to conceal information center around the pursuit of profit. This can lead to the misuse and abuse of power associated with human rights implications, fraud, bribery, and ethical violations. The prison environment, moreover the Criminal Justice system as a whole, is unique (in terms of opportunities for maladministration) in regards to the association between discretion, power, authority and due process that is inherent within the correctional environment (see Banks, 2004; Klienig, 2008; Pollock, 2012).

Additionally, the fear of being terminated can impact lower level employees from revealing pertinent information about private prison operations. Conversely, the government has incentives to not subject private prisons to the same standards as government-led prisons as well as to withhold information, in that monitoring, performing oversight, and responding to FOIA request, will heighten the cost of private prison operations. Also, the government has incentives to conceal information in that prisoners are seen as the undesirables, deserving of the punishment, not worthy of equal rights, criminals and so forth. However, this ideology neglects the population of vulnerable youth, individuals who are falsely accused, and immigrants that are held within private correctional facilities. Moreover, due to the lack of sufficient demand by the public at large for increased transparency as a result of the stigmas associated with incarcerated individuals, the government has further incentives not to subject private prison companies to such standards.

## **6. DISCUSSION**

Despite efforts at contracting out the government does not relinquish its obligations to be accountable to and operate transparently for the public (Sands, 2006). So, private prisons that lack accountability and transparency open the door to maladministration, which can include corruption, manipulation, and maltreatment. Moreover, seeing the close ties that the private companies have with various influential actors, this makes increased opportunities for corruption possible. Additionally, corruption is plausible when political activism takes place by private prison firms and actors (Hart, Shleifer, & Vishny, 1997). Likewise, manipulation occurs when private companies use their power and/or money to produce changes that would benefit the company rather than the welfare of the community at-large or the prisoners. For example, lobbying for increased incarceration sentences or supporting bills that upsurge the company's chance of survival, are both forms of manipulation (Ogle, 2006).

The same standards of behavior that are demanded from public servants should also be required from public actors, thus what is deemed unethical remains constant when private agencies are performing public functions, because they are using public monies to provide such services. The private actor is acting on behalf of the public servant, so it becomes crucial to be able to monitor the behavior of such actors. Unfortunately, due to the lack of transparency and accountability within private prisons, it is impossible to hold private actors to such standards, but rather this expectation becomes a mere hope.



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Transparency is a means to reveal truth, regardless if it is good or bad (Grimmelikhuijsen et al., 2013), and at the lowest the type transparency that is needed in private prisons is equal to that of public prisons. Thus, there is a need for constitutional and administrative laws to govern the operations of such agencies in similar manners. Specifically, private prisons should be subject to the Freedom of Information Act or the Private Prison Information Act.

The issue here also ties into issues of morals and ethics in that inmates are respected as human beings, and subject to the same fair and equal treatment as their fellow inmates. Moreover, due to the vulnerability of inmate populations as it relates to inmate's loss of civil liberties, it is important to safeguard such populations against potential abuses. This paper does not intend to suggest that this is definitely the case, rather to highlight the increased opportunities for this to happen as a result of lack of public scrutiny.

Likewise, this paper is not an attempt to address the quality, efficiency, or performance of private prisons over their counterpart, rather to assess the extent to which the lack of transparency and accountability leads to maladministration in such contexts. Correspondingly, this paper asserts that private prisons are more susceptible to maladministration because the same standards of transparency and accountability that are applied to public prisons are not applied to private prison companies. Three main structural factors in relation to the prison-industrial complex are presented here which open doors to maladministration. These factors include, but are not limited to, the vagueness of contracts, the principal-agent dilemma, and the lack of open access laws, specifically the Freedom of Information Act, which further promote incentives to conceal information.

Transparency and accountability have been defined as means to a greater end in the pursuit of governance, moreover good governance. As mentioned, scholars have identified these terms as key pillars in the governance platform, thus this paper suggests that in the absence of pillars, there is the absence of the platform. More specifically, without transparency and accountability in private prison and the increase of privatization it is difficult to believe that good governance is being practiced within the environment of corrections, maybe good politics or, for lack of better words, good economics, but it is certainly not good governance. This paper defines governance as it relates to *public* input and dissemination, therefore where the *public* component is lacking so is governance. It is a hard case to argue that good governance is governance that leads to maladministration. This is not intended to suggest that maladministration cannot happen when employing governance strategies, but rather it is intended to assert that where central ideals associated with good governance have decreased, opportunities for maladministration will naturally increase.

Overall, correction, in general, serves as a means to offer punishment for wrong behavior. Moreover, individuals know that a certain behavior is wrong when they are corrected, whether formally or informally. People are able to correct others only after they have either observed behavior or have been told about such behaviors. Also, the people who are offering correction must know right from wrong themselves and have some authority to reprimand. Similarly, if there is no one checking for errors in prisons and jails, no one observing behavior, and no one ensuring that these correctional facilities are operating effectively, then there will be no way to identify and rectify maladministration.

In closing, the theoretical and exploratory nature of this paper subjects it to many limitations, thus supplementary empirical research is warranted. Future research should look empirically at the various forms of maladministration that have already been identified within private prison contexts, such as corruption, maltreatment, human rights abuses, falsifying and misconstruing information, fraud and so forth, while further assessing the extent to which transparency and accountability could have prevented such maladministration. Essentially, this paper suggests an empirical test of whether the "lack of information is the critical and proximate cause of (such) behavior" (Mitchell, 2011, p.1884). Since Hood (2007; 2010) noted the various forms of transparency that exist, such as general versus social, direct versus indirect, in real time versus after the event, relating to process or events, and open mutual scrutiny versus general surveillance, future studies can build on this as it relates to private prisons. Specifically potential studies can define mechanisms of how to establish transparency within private prison contexts, identify which

forms of transparency would be best for these environments, and then assess the effectiveness of each. Since it is argued that physical, intellectual, and social access are all needed in order for government information to be completely open (Jaeger & Bertot, 2010), other avenues of research include the accessibility and usability of information that is made transparent within the private prison context.

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