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Ethics in the Hollow State: Distinguishing Between Nonprofit and For-Profit Agents of Prisoner Reentry

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New public management, a reform movement that shifted the provision of public goods and services towards private institutions, is firmly entrenched in the United States. The Hollow State, a metaphor often used synonymously with contracting out, reflects the growing trend of using non-governmental networks—often nonprofits but also for-profit organizations—to deliver social services to vulnerable groups. This article, which draws from the author’s dissertation, examines differences in nonprofit and for-profit prisoner reentry agencies. The findings suggest that nonprofit/for-profit differences are eroding as the nonprofit sector becomes more competitive with the private sector for government contracts.

Keywords: New Public Management, Hollow State, Nonprofit, For-Profit Organizations

Years of decentralization and outsourcing have caused contracting out to become one of the most prevalent mechanisms of alternative service delivery for making government more efficient and less costly (Amirkhanyan, Kim, & Lambright, 2007; Kettl, 2005; Provan, & Milward, 2001; Prager, 1994). The Hollow State, a metaphor often used synonymously with contracting out, has been used to depict the degrees of separation between a government and the services it funds (Milward, 1996). Carried to the extreme, the Hollow State refers to a government that, as a matter of policy, has chosen to contract out all of its production capability to third parties, retaining only the functions of negotiating, monitoring, and evaluating contracts (Milward, 1996). Recently, the Hollow State has been used to characterize the growing trend whereby government has turned extensively to the use of third party networks, often nonprofits but also for-profit agencies, to take a leading role in solving pressing societal problems, such as the more than 750,000 individuals released from prisons and jails each year (Langan, & Bureau of Justice Statistics [BJS], 2002).

This article examines key distinctions between private nonprofit and private for-profit organizations that contract with federal and state corrections to facilitate prisoner reintegration to society. That a growing number of states allow both nonprofit and for-profit organizations to bid for reentry contracts tests the question by Graham Allison (1979) as to whether the two private sectors are fundamentally alike “in all unimportant respects” (p. 39). In other words, have the lines between sectors blurred to the point of being indistinguishable? The purpose of this study is to determine whether there are key differences between the private nonprofit and private for-profit sectors, and if so, what the ethical implications of those differences are for the field of corrections and more generally

for democratic institutions that increasingly contract out traditionally governmental functions.

There is an abundance of literature discussing the distinctions between public entities and private entities. However, there is a scarcity of information discussing the distinctions between the private nonprofit and private for-profit sectors. This paper seeks to fill that gap by using semi-structured interviews with leaders of nonprofit and for-profit organizations that help former inmates transition back to society. The paper begins with a review of the literature, including a New Public Management theoretical framework and context of prisoner reentry. Next, the methodology for seeking the perceptions of nonprofit and for-profit leaders is discussed. Finally, the results and concluding remarks identify the differences between the nonprofit and for-profit reentry agencies and address implications of the diminishing differences between the two private sectors.

Literature

Theoretical Framework: New Public Management

New Public Management (NPM) is a paradigm shift that emerged in the 1980s to modernize the public sector (Frederickson & Ghere, 2005; Hodge, 2000; Savas, 1987, 2000). The fundamental premise of NPM was that more market orientation in the public sector would lead to greater cost-efficiencies for governments. The origins of the NPM movement began with Prime Minister Margaret Thatcher of the United Kingdom and local government practitioners in the United States (U.S.) to implement market-based reforms amidst severe recessions and other fiscal challenges (Gruening, 2001). President Reagan quickly adopted the movement. As noted by Beaty and Cizmar (2017), NPM was considered by many as an improvement to the traditional public administration managerial theories founded on hierarchical structure, centralization, and strict conformity to policies and procedures (de Vries, 2010; Gow & Dufour, 2000; Gruening, 2001; Zia & Khan, 2014).

Public choice theory (PCT) and principal agent theory (agency theory) inform the conventional basis of NPM market-based philosophies, that contracting out to competitive private vendors will enhance quality, improve accountability, and lead to greater cost-efficiencies. As further noted by Beaty and Cizmar (2017), both theories derive from business management and economic rationality assumptions that self-interest dominates human behavior. Thus, government bureaucrats, in the absence of profit motives, are motivated by the desire to maximize individual benefits with the least amount of effort or cost (Bennett, 1990; Boyne, 1996; Buchanan & Tullock, 1962; Green & Shapiro, 1994; Niskanen, 1971, 1975; Tiebout, 1956). Professional and legal accountability thus arise from hiring the right contractor and rewarding or punishing them accordingly (Eisenhardt, 1989; O'Connell, 2005).

Context: Prisoner Reentry

One of the more ironic aspects of living in the “land of the free” today is the fact that we incarcerate more people—693 people for every 100,000 residents—than any other country in the world (Wagner & Walsh, 2016). According to Prison Policy Initiative, the American criminal justice system holds almost 2.3 million people in combined federal, state, local correctional facilities, military prisons, immigration detention facilities, and state psychiatric hospitals in the U.S. territories (Sawyer & Wagner, 2019). Given that 95% of all individuals sentenced to prison will be eventually released, one of the fastest growing social concerns in the U.S. is prisoner reentry, or the process by which prisoners reintegrate to society.

The release of prisoners after they have served out their sentences is not a new concept. Recent government reentry initiatives that advocate community-based reentry programs to alleviate the staggering financial and social costs of overcrowded prisons and high recidivism rates have become a salient public policy focus (Petersilia, 2003; Travis, 2005). Prisoner reentry has become the new buzzword used by policy makers to address the challenges, and proposed solutions, associated with the dramatic rise in numbers of individuals released from prison each year (BJS, 2019; Petersilia, 2003; Reisig & Pratt, 2000). Getting ahead of the revolving door of incarceration is particularly challenging because statistics also indicate that an estimated 68% of released offenders will re-offend within three years, and nearly half of those will return to prison (BJS, 2019).

For taxpayers, these statistics are significant given that between 1980 and 2010, the amount spent by all levels of government on corrections more than quadrupled. In 2012, the U.S. spent more than \$265 billion (\$845 per person) on criminal justice, including corrections, policing, and judicial expenses (Schanzenbach et al., 2016). Mounting pressures from health care and aging prison populations will continue to boost correctional spending (Travis, 2005). The partnering of criminal justice, social services, and non-governmental community-based services is quickly becoming the preferred solution for addressing the daunting costs associated with America's burgeoning correctional system.

Consequentialist Ethics

This study follows the lead of NPM principles by applying a consequentialism context to the organizational context rather than individual behavior (Sinnott-Armstrong, 2019). In other words, it is important to note that this study does not attempt to look at the ethical actions of the CEOs of reentry programs. Nor does the paper link consequentialism to each of the four findings of distinctions between the nonprofit and for-profit sector. The consequentialism model is, however, used to show the changes that occurred for the nonprofit sector based on the results (see Figures 1 and 2). The following discussion of the consequentialist framework is necessary to illustrate the ethical decision-making process by which prisoner reentry programs justify government objectives to reduce recidivism rates amongst former inmates.

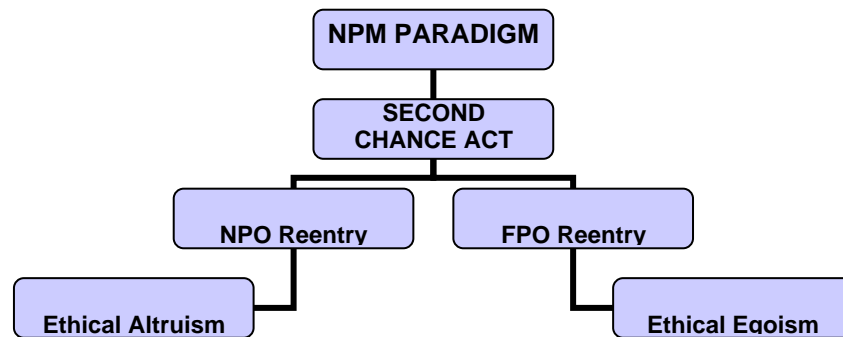
The normative assumptions of consequentialism argue that an action is morally right if the consequences of that action are more favorable than unfavorable (Ethics Center, 2016). On the issue of prisoner reentry, public policy decision makers have similarly taken their lead from NPM goals that emphasize performance based outcomes, efficiency and accountability, and networks of public, private and nonprofit partnerships. Elected officials market restorative justice models—implemented vis-à-vis community-based nonprofit and for-profit treatment programs—as a way to benefit all stakeholders that share the financial and social burdens associated with high incarceration rates.

The purpose of the 2004 Second Chance Act, H.R. 4676, is to reduce recidivism, increase public safety, and help states and communities better address the growing population of ex-offenders returning to communities (Second Chance Act of 2007).

The goal of the Second Chance Act is to encourage the growth of nongovernmental treatment agencies to facilitate prisoner reintegration. The anticipated consequences of better treatment programs, before and after release, should benefit everyone including former offenders, the victims of crime, and the community at large.

Two subdivisions of consequentialism—ethical egoism and ethical altruism—provide a mechanism by which to focus on the consequences of using nonprofit or for-profit reentry programs to deliver services. Ethical egoism argues that an action is morally right if the consequences of that action are more favorable than unfavorable to the agent performing the

Figure 1. New Public Management Paradigm 1



action (Aslam, 2019). This form of consequentialism reflects the private market economic model, where self-interests in a competitive market system dominate.

Nonprofit organizations, conversely, fit better with ethical altruism, which holds that moral agents have an ethical obligation to help or serve others (Aslam, 2019). An action is morally right if the consequences of that action are more favorable to everyone except the agent. The assumption made by contract failure theory is that while the for-profit organization, driven by profit motive, might be tempted to betray the trust of the purchaser, the motives of nonprofit organizations are more charitable in nature, and therefore more worthy of trust (Salamon, 1995).

Both forms of consequentialism, as depicted by Figure 1—ethical egoism and ethical altruism—focus on the consequences (e.g., outcomes) of actions for different groups of people. However, each variation is a rival of the other. Each yields different conclusions about what the “moral” thing to do is. A consequentialism framework should be the most effective means towards classifying key differences between the nonprofit and for-profit sectors.

Overlooked Dimensions: Private Sector Distinctions

In the U.S., it is the consumption of goods and services and the manner in which they are classified that determines the role of government and private institutions in supplying those goods and services (Savas, 1987). Many economists consider public goods such as education, national defense, or clean air to be a case of market failure. The allocation of goods and services by a free market is not efficient, and therefore the government must finance their provision (Buchanan, 1999). Conversely, the free market system is an economic system in which self-interested individuals, rather than government, make the majority of decisions regarding economic activities and transactions. Purchasing power is mediated by supply and demand within the market rather than the state (Buchanan, 1999). But in recent decades, as increasing demands on government stretch financial resources even thinner, the private nonprofit sector has accounted for a growing share of public-private solutions for tending to vital elements of society.

Most of the discussions regarding nonprofit/for-profit differences suggest it is the legal restrictions on the distribution of profits to shareholders that distinguish the two sectors (Eikenberry & Kluver, 2004; Marwell & McInerney, 2005; Rose-Ackerman, 1996; Salamon, 1997). Indeed, the agencies examined by this article share the legal characteristics of the nonprofit and for-profit communities at large. Organizations in both sectors are private non-governmental organizations with self-governing boards. As legal entities, both must operate for lawful purposes, and both must be efficient and effective to survive (Drucker, 1995).

Distribution of monies also distinguishes the private sectors. Nonprofits may generate excess revenues, but unlike for-profit corporations, they are constrained by their tax-exempt status as to how they distribute those funds. Nevertheless, a nonprofit may accept, hold, and disburse money and other items of value, making the distinctions and debate over preferences for one or the other somewhat difficult. In the NPM era (the Hollow State), where nonprofit and for-profit agencies increasingly coexist in the same service market, it becomes even more difficult to separate the social, economic, and political parameters that normally distinguish their roles and functions.

Increasing fiscal pressures on government have resulted in the marked growth of the nonprofit sector (Cooper, 2003; Landsberg, 2004; Salamon, 1994). Cooper (2003) describes contracting with the nonprofit sector as a good deal for government, a mutually advantageous partnership in which government can expand the range of its social welfare functions without increasing the size of government. Nonprofits can thus carry out their missions on a larger scale. However, government's increased emphasis on competition and performance measures has caused the trend in contracting for social services to shift from using noncompetitive, quasi-grant arrangements with nonprofits to using competitive contracts and vouchers with both the nonprofit and for-profit sectors. Contracts are no longer awarded to providers because of "who they are but what they can do" (Eikenberry & Kluver, 2004, p. 134). Hence, private for-profit businesses have also increased their share of social service provision. Both the private nonprofit and private for-profit sectors have assumed an increasingly prominent national role in carrying out functions once thought to be inherently governmental.

Skeptics of the Hollow State caution that the competitive-market model and its heavy reliance on achieving a single value (e.g., efficiency) do not address the complex realities of contracting for government services. They argue there are ethical implications inherent to the contracting relationships that are not only critical to the public goals of the contracting decision, but differ according to the sector with which they occur (Cohen & Eimicke, 1995; Cooper, 2003; Frederickson & Frederickson, 1995; Menzel, 1999; Thompson, 1992). Effectiveness and efficiency may be the ultimate objectives for privatization, but how are those private sector values balanced against other ethical values such as obligations to the public interest, to public sector employees, or to prisoners trying to get their lives back on track.

Methodology

This article examines the differences between nonprofit and for-profit agencies that facilitate prisoner reentry. The study relied primarily on semi-structured interviews administered to the directors and senior management officials from six nationally recognized prisoner reentry programs headquartered in six different states. The specific population of interest for this article was private nonprofit and private for-profit community-based reentry providers that contracted with state correctional departments to facilitate the transition of criminal offenders from prison back to society (see Table 1).

As Table 1A in the Appendix illustrates, the demographic profiles of reentry organizations according to program type and locations provide two immediate pictures of the reentry field. First, large, for-profit chains dominate the community corrections field. For example, two of the three for-profit organizations examined by this study—BI, Inc. and Community Education Centers—dominate the market in terms of locations and providing community-based treatment services to federal and state correctional agencies. In 2007, Community Education Centers (CEC) acquired CiviGenics, Inc., another large, national for-profit correctional treatment agency, giving CEC more than 3,500 employees in 22 states (Clarke, M., 2011).

Table 1. Case Studies Investigating Differences between Nonprofit and For-Profit Organizations

| Nonprofit (NPO) Reentry Programs | For-Profit (FPO) Reentry Programs |
|---|---|
| Safer Foundation (Safer) Headquarters: Illinois | Community Education Centers (CEC) Headquarters: New Jersey |
| Oriana House Headquarters: Ohio | BI Incorporated Headquarters: Colorado |
| Community Justice Resource Headquarters: Massachusetts | Cornell Corrections Headquarters: Texas |

The interview questions were open-ended, progressing from broad demographic data to the examination of respondent perceptions on important distinctions between private for-profit and private nonprofit reentry agencies. It is important to note that the content analysis of the interviews, agency websites, and other documentation was largely exploratory, and thus hypothesis generating as opposed to hypothesis testing (Strauss & Corbin, 1998). The telephone interviews ranged from 30 minutes to an hour. The questions examined the following broad inquiries:

- What was the motivation for entering into a reentry contract with government?
- What values inform the mission of the organization?
- How do nonprofit and for-profit reentry stakeholders view their differences?
- Who are the organization's primary constituents?
- How does the level of competition influence the achievement of contracting goals and/or the delivery of services?
- How do nonprofit and for-profit organizations respond to legal challenges that involve questions of appropriate state action and the use of public monies?

All interviews were recorded, transcribed, and manually coded to identify themes and patterns related to distinctions between the nonprofit and for-profit reentry agencies. Qualitative coding is the process of grouping interviewee responses into categories that bring together similar ideas, concepts, themes, or steps in a process (Rubin & Rubin, 2004). Because the literature on qualitative research suggests that data collection and analysis are best conducted simultaneously, the data collection and analysis occurred in a cyclical process until concepts and themes became detailed and redundant, and new information ceased to emerge (Coffey & Atkinson, 1996; Miles & Huberman, 1994; Rubin & Rubin, 2004; Strauss & Corbin, 1998).

Limitations of the Study

A number of factors limited the scope of this study. The first limitation of the study was that the sample was a convenience sample based on accessibility rather than chosen from a database of all possible alternatives. Datasets of reentry programs meeting the scope and requirement needs of the present study were limited. As a result, the ability to generalize the findings to the contracting literature or other social programs is subject to scrutiny. Nevertheless, the variation in the six targeted reentry agencies, which have long-standing contract relationships with federal and state granting agencies in over 30 states, are reasonably representative of the reentry agencies out there to draw preliminary conclusions and point to the need for continued research.

Problems with self-selection also occurred. Individuals that feared they or their organization would not be well-portrayed by the study were sometimes reluctant to speak on the record, or very guarded in the information they disclosed. Many of the interviewees were reluctant to talk about the organizational characteristics of their organizations such as budget size, CEO

salaries, or the contract itself. Because many of these questions fell outside the scope of the study, to pursue their perspectives about nonprofit/for-profit distinctions, other lines of questioning were not pursued. It is important to note that many of the public officials and reentry contractors were nevertheless eager to speak to the issue of nonprofit and for-profit sectoral differences as well as their commitment to meeting the challenges of prisoner reentry in the U.S.

The following findings will first address private nonprofit and private for-profit sector similarities that came from the interviews. The primary focus will, however, be on the differences between the nonprofit and for-profit agencies. Findings revealed differences in their core values and motivations, their capacity building efforts, treatment philosophies, and the means by which each is held accountable to the citizenry for their actions.

Results

Reentry Nonprofit-FPO Similarities

Overall, the data indicated that the nonprofit and for-profit organizations share many legal, structural, and behavioral characteristics. The tax-exempt nonprofit corporations reviewed herein operate in many ways the same as their for-profit counterparts. They have bank accounts, own assets of all kinds, receive income from a number of activities, employ professional staff, and enter into contracts that have identical goals and performance requirements. Both nonprofit and for-profit reentry agencies relied heavily on evidence-based practices, and in most instances were able to offer subjective measures to justify ongoing relationships with government agencies. Both groups perceived their agency's role largely the same, viewing themselves as filling a societal need and providing rehabilitative treatment programs for individuals preparing to reenter society. They also discussed being held accountable to a wide variety of actors including their boards, their shareholders, the contract, and their employees—providing them with a competitive salary and ongoing training.

Finally, the nonprofit and for-profit groups appear to have in common a desire for a level playing field in which no sector, including the government itself, is privileged. Ironically, given that the Hollow State has been cast as a collaborative, networking approach to governance, the interviews suggest there is a marked tension—an arms-length relationship—between all sectors. Comments such as, “As a for-profit, you are at a disadvantage bidding against a nonprofit because they have so many extras” (Connelly, FPO, 02/02/07), or, “I have some real strong concerns about for-profit organizations getting involved in this business, making money off of crime” (Butler, NPO, 12/20/06) cast doubt on the notion that such relationships are collaborative. Summarizing the perceived distinctions between the nonprofit and for-profit sectors based on the interviews—many of which pointed to a rapidly changing face of the nonprofit sector—was more complex.

Reentry Nonprofit-For-Profit Distinctions

The nonprofit and for-profit reentry providers examined by this exploratory study revealed four important distinctions: Entrepreneurial motivations, capacity building efforts, correctional treatment philosophies, and standards of accountability. Despite these important differences, the overall findings suggest, as have others, that these differences are eroding (Eikenberry & Kluver, 2004; Landsberg, 2004; Rose-Ackerman, 1996; Weisbrod, 1998).

Entrepreneurial Motivations

The nonprofit and for-profit reentry organizations examined herein were founded on different principles. In addition to the legal structure, these differences were, in most instances, driven by the date of their origin, and the founder's motivation. Prior to the 1980s, providers were primarily religious-based nonprofit organizations with altruistic motivations (Butler, Safer Foundation, 12/20/06). Later, as funding for social services became more readily available, for-profits and nonprofits followed a more businesslike model. Nonprofit Community Resources for Justice (CRJ), a nonprofit agency, for example, was founded in 1878, providing a service that had a religious or community-based motivation. After the 1990s, as the spotlight of national attention began to focus on the problems of prisoner reentry, and because government funding caused the number of reentry providers to swell, CRJ changed their program design to reflect modern business strategies,

I think the business practices are more demanding now that you have good business practices, and it is not just on the financial side, but I think it's also having good efficiencies and good outcomes on your programs. A larger organization can afford to have a director of clinical care, something that a small agency cannot afford to have. You get a richer set of services. (Larivee, CRJ, NPO, 11/09/07)

By contrast, the organizations founded in the post-correctional boom era were, with the exception of Oriana House, for-profit agencies with business backgrounds. These groups, which often started out serving different populations (e.g., cattle tracking systems, substance abuse, or private prisons), shifted their attention to fit the scope of a growing trend, providing alternative community-based sentencing options for offenders (see Table 2A in the Appendix).

The altruism motivation of the nonprofits is less apparent in the organizations created during this later period. One respondent, an executive for nonprofit Safer Foundation in Chicago, suggested the shift in motivations, particularly the for-profit agencies, was created by the availability of funding

...the buzz surrounding reentry has created the potential of dollars, and when you have the potential of dollars, people come out of the woodwork...The difference between the nonprofit and for-profit organizations is that prior to the lure of government funding, only nonprofit organizations were interested in working with prisoner populations. Suddenly, everyone is interested. (Butler, Safer Foundation, NPO 12/20/06)

While the altruism motivation may not be as dominant for the nonprofits as in the past, especially in the younger organizations, it still exists. When nonprofit reentry manager Jerry Butler discussed at great length the discrimination and legal barriers faced by former offenders, his message reflected a concern for individuals that might otherwise not have a voice.

Conversely, the primary purpose of the for-profit corporation is to generate financial returns to shareholder investors. The fiduciary relationship is to the investor. Caring about the social

mission is acceptable only if it does not reduce or eliminate return to investors. If there were in fact no differences between the for-profits and nonprofits—that is, if the two sectors were fundamentally the same—it would follow that there would be an incentive for the for-profit organization to shift its legal structure to capture the tax benefits and preferential treatment it perceived the nonprofit organizations to have. The following comment, a view shared by other for-profit practitioners, suggests that the fundamental values and fiduciary commitment of the market place remain intact,

If you are a nonprofit, you are not supposed to make a profit. People are in business to make a profit. If they are shareholders, you are not going to get anybody to invest in a nonprofit corporation; you are not going to be able to grow that way. You are also not going to be able to pay out dividends to employees. You cannot give stock options; there are many things you cannot do.
(James Anderson, BI, Inc., FPO, 03/08/07)

The for-profit structure allows stock options and dividends to employees. Most importantly, it allows for the sale of shares on a public market. It thus allows a company to sell itself, retain shareholders, and gain new capital. This allows the company to grow and capitalize on economies of scale, but also provide capital-intensive services, such as construction or purchases of residential facilities. While the for-profit structure does not preclude the use of benevolence—a concern for the well-being of clientele—the responses suggested that the primary motivation of the for-profit company remains maximizing profit for the owners and shareholders. If the for-profit organization suffers losses or does not realize sufficient gains, it will exit the market. By contrast, a nonprofit organization, said Butler (12/20/06) from Safer Foundation, will remain in the community even if it suffers financial losses in order to carry out the mission.

Capacity Building

Public and private officials regularly address the capacity building efforts necessary to create effective programs, build trust, and promote policy goals. Capacity building is the process by which individuals and organizations obtain, improve, and retain the skills, knowledge, tools, equipment, and other resources needed to do their jobs. For the nonprofit agency, it refers to a nonprofit's ability to deliver its mission effectively, now and in the future (National Council of Nonprofits, 2019). Capacity building involves various strategies that make one's organization more adaptive and responsive so that it can be more successful in today's changing conditions (George, 2019).

In the case of community-based reentry programs, correctional departments choose contractors based on their ability to deliver cost effective services on day one, as opposed to which sector they believe aligns more with public values. Hence, capacity building was used in the present study to reflect on the methods relied upon by each sector to strengthen or expand their ability to remain competitive and present themselves in the best possible light. The findings indicate that the capacity building efforts differed for the nonprofit and for-profit organizations according to the ease by which each could access resources, as well as by the constraints imposed by their tax status. The tensions between the two sectors were particularly evident here, as the for-profit sector viewed the nonprofit sector as advantaged by their virtuous image, and the nonprofit sector perceived the for-profit sector as advantaged by their ability to access capital from private investors.

Historically, nonprofits, like for-profits, have had the ability to access both public and private monies. In looking back, one finds that many of the nonprofit organizations involved in

human services looked to the public sector for assistance. Often, this was in the form of grants, which were then combined with other state, local, and private donations to subsidize the cost of operations. The nonprofit sector has been stressed by changes in federal spending priorities, resulting in billions of lost revenues (LeRoux, 2005). Despite the belief that private donations would offset the government cutbacks, charitable giving, noted one respondent, declined: “I mean nonprofits are going under at a very alarming rate; organizations going under meaning closing down” (Butler, 12/20/06). Many nonprofits, in particular the smaller or less visible nonprofits, struggle to stay afloat, continually looking to alternative sources of funding to fill in gaps of needed services. Conversely, the for-profit organizations have greater access to capital from investors or stockholders than do the nonprofit organizations, with less bureaucratic red tape and decision-making channels to navigate. The ability to access capital allows private businesses to do more in terms of business strategies, including, “the ability to ride out some of those financial storms” (Larivee, 11/09/07).

To compete with the for-profits, the nonprofits need to adopt a business mindset that will allow them to become large enough, diverse enough, and persuasive enough to weather the financial storms alongside their for-profit counterparts. This is precisely what happened in Ohio, where three nonprofit agencies—Oriana House, Alvis House, and Talbert House—joined forces to capture economies of scale benefits, serve reentry needs in rural areas, and in particular, keep for-profits at bay,

The reason why Ohio links came together was that about 10 or 15 years ago, many for-profits started going into states, and underbidding contracts to get the contracts away from the nonprofits. By combining the resources of the three organizations, what you have instead of a \$30 million dollar company is a \$90 million dollar company. (Robinson, CEO of Alvis House, NPO, 07/20/07)

Despite a current ban on for-profit community-based companies in the state of Ohio, Robinson and her colleagues perceived a threat of mounting competition by the for-profit sector. She and others proceeded proactively to protect interests which they felt were better served by the nonprofit sector. Some of the nonprofit reentry organizations implemented business strategies not normally identified with benevolent organizations. In the case of Oriana House, a long drawn-out legal dispute arose over the appearance of a conflict of interest between Oriana President Jim Lawrence and one of Oriana’s wholly owned for-profit subsidiaries, Correctional Health Services. Lawrence was president for both organizations (*Oriana House, Inc. v. Montgomery*, 2006). The dispute arose because the state auditor, who suspected there were inappropriate transfer of funds between the two organizations, wanted to examine Lawrence’s personal financial records. Lawrence refused, and the case eventually worked its way up to Ohio’s Supreme Court. The Court ruled in favor of Oriana House, stating that while the relationship between Oriana House and its subsidiary was clearly a conflict of interest, there was no evidence to indicate that Lawrence’s personal records should be open to public disclosure. There is, as the Court pointed out, nothing illegal about such arrangements. Nevertheless, such collaborations raise important questions about the lack of transparency, not to mention the unanticipated expenses associated with lengthy litigation.

Another set of differences in capacity building attach directly to the national tax code. According to Moore (06/17/07), Vice President for Public Affairs at Guidestar (a national database of nonprofit organizations), the credibility of the nonprofit sector is preserved under strict enforcement of three criteria—nonprofits are prohibited by law from being involved in elections; there are specific restrictions for 501(c)3 organizations related to the

amount of lobbying expenditures they can make; and any monies retained in excess of expenditures are held by the nonprofit board for the furtherance of its mission. The first two criteria differ at least in theory from that of for-profit corporations, which regularly lobby by testimony and through campaign contributions for elected officials they feel will be supportive of their organizational goals. The third criteria, that excess revenues earned by a nonprofit organization must be reinvested in the organization's mission, weaken the nonprofit's incentive to maximize profits to its executives at the expense of private donors or public taxpayers.

Treatment Philosophies

The utilitarian theory of punishment states that there are two ways in which punishing criminals benefit society. First, punishment serves as a deterrent, and second, by providing effective treatment, offenders will eventually return to society as productive citizens (Second Chance Act of 2007; Rachels, 1999). Reentry initiatives, and in particular, The Second Chance Act signed into law by President Bush on April 9, 2008 (Second Chance Act of 2007), emphasizes the second goal of punishment, that the greatest public benefit will derive from rehabilitating offenders by improving outcomes for people returning to the community from prison.

Historically, nonprofit organizations have been associated with healing and rehabilitative missions whereas private for-profit correctional agencies have traditionally been associated with the punitive, retributive policies associated with the use of coercive force. The exercise of physical force is commonplace in prisons, even though other institutions, such as mental health hospitals, also use coercive power to restrain uncooperative patients when necessary. However, because a hospital's primary mission is to heal patients, coercion is viewed as a justifiable means to an end. A prison, on the other hand, exercises coercive authority to control and deprive inmates of their liberty, a policy that is consistent with punitive rather than rehabilitative goals. Although the nonprofit reentry organizations exhibited more characteristics consistent with healing missions than did their for-profit counterparts, the evidence suggests that The Second Chance Act has softened the nation's emphasis on punitive policies,

We're actively involved in that arena, especially in things that we think will support our clients, whether it is laws being enacted or being changed, or actively working with local, state or federal legislators on policies that would impact our population. (Butler, Safer Foundation, NPO, 12/20/06)

Well, we hire lobbyists and consultants out there, so I sort of oversee them. I actually visit with and attend many meetings with legislators, governor's staffs and those kinds of people...Therefore, it is educating and trying to sway elected officials from spending more and more money on prisons. (Anderson, BI, Inc., FPO, 03/08/07)

Accountability

From the public perspective, it is accepted policy that civil servants are held accountable to a wide variety of citizens and stakeholders. Public servants are expected to conform to high standards of personal morality, exhibiting public values such as honesty, integrity, and commitment to the public interest. Their decisions are to be transparent to the citizenry. Are

the standards the same in the private for-profit and nonprofit world? This section looks at the issue of accountability from two perspectives—accountability to public scrutiny, and accountability for outcomes.

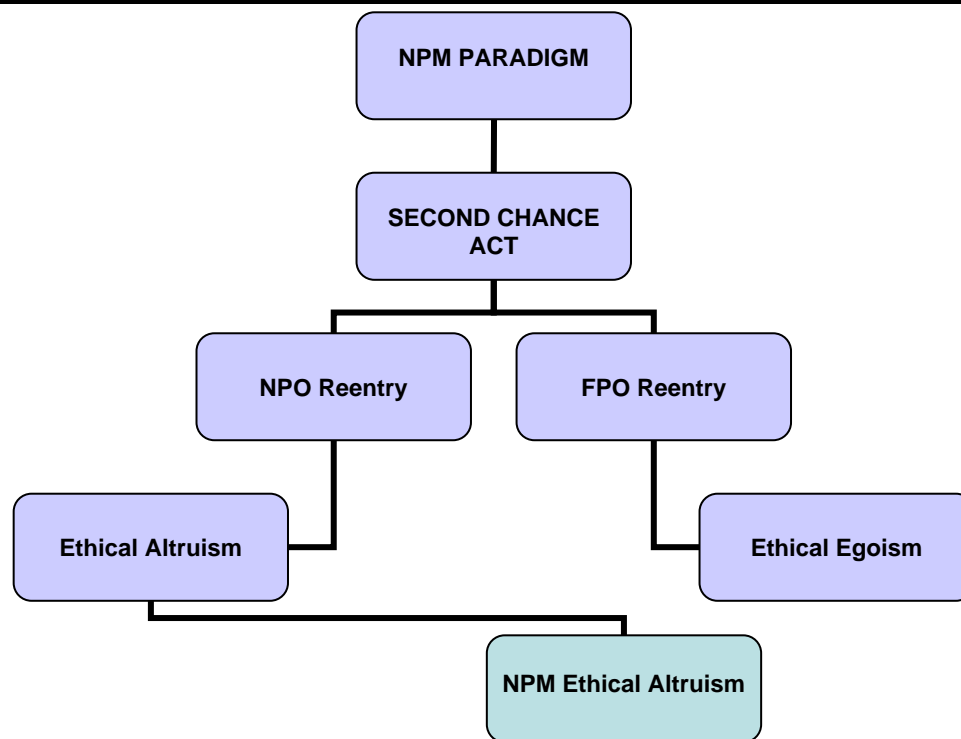
Leaders of both the nonprofit and for-profit agencies, as private corporations, enjoy certain protections. The corporation acts as a separate person, a legal entity that makes contracts, pays taxes, incurs debt, and protects the individuals involved from being held personally liable for the consequences of business activity. However, by virtue of a 1924 ruling whereby the Supreme Court gave the nonprofit sector a charitable exemption in recognition of the benefits that the public receives from corporate activities, they are held to a higher standard of scrutiny than the for-profit sector (*Trinidad v. Sagrado Orden*, 1924). The Revenue Act of 1938 (Colm, 1938) reiterates the Court's position.

The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare (The Revenue Act, 1938).

The *Trinidad* decision and The Revenue Act of 1938 suggest that, in addition to their board and direct clientele, nonprofits should consider citizens as among their stakeholders. Because of the benefits and tax-exempt status that nonprofits receive from government, there is an inherent expectation that the public has the right to scrutinize how nonprofits are fulfilling their requirement to serve the community. This expectation is more than window dressing. The nonprofit sector's finances are open, by law, to public inspection. The 501(c)(3) exempt organization must file an IRS Form 990 that is available for public inspection and photocopying at the offices of the nonprofit organization or by written request. This means that the public can obtain copies of a nonprofit's tax returns, inspect the salaries of its employees, examine its board members, and look at other related expenses relating to their operations. When for-profits talk about the unfairness of preferential treatment of nonprofits, they should remember that there is a disadvantage to being a nonprofit in a competitive environment: Because nonprofits are required to be more open in terms of filing information, for-profits gain an edge by understanding their competition without a requirement of symmetrical disclosure.

The next area of accountability pertains to outcomes. Performance is one of the more difficult, but critical areas that differentiates the nonprofit from the for-profit sector. The reason is because the two sectors have traditionally required different methods for tracking success. For-profit corporations routinely require that subjective information be translated into objective forms, (e.g., return on investments). On the other hand, it is much more difficult for nonprofit corporations to quantify the effectiveness of two homeless shelters to see which is doing a better job of helping mentally ill individuals. In the present case, elected officials sell reentry initiatives to the tax-paying public, by emphasizing the desired benefits of these programs: costs savings and reduced recidivism rates. Recidivism generally refers to an individual who is arrested and convicted of a new offense within three years of their release. Is there a difference in practice between for-profits and nonprofits in their achievement of results? This portion of the interviews focused heavily on the "what works" evidence released by each of the six nonprofit and for-profit profiled agencies.

Not surprisingly, all six private reentry agencies reported favorable outcomes in terms of reduced recidivism rates. However, no distinctions could be drawn with regard to which sector was more successful or held more accountable to the requirements of the contract due to the marked variation in the definitions of recidivism, methodologies, and measurements employed by the agencies. For example, whereas one reentry agency reported recidivism rates at one-year post-release, another reported recidivism rates at three years out. Others,

Figure 2. New Public Management Paradigm 2

such as Cornell Corrections, relied on annual audits as evidence of successful performance. Similarly, as noted by researcher and community-based expert Latessa (12/13/07), many states placed a low importance on outcomes, requiring in many instances an audit that simply made sure an agency was meeting the fire code, health codes, and walking away requirements.

Seldom did either the nonprofit or for-profit reentry entities rely solely on recidivism rates as a measure of success: the nonprofit agencies were more likely to emphasize soft measures instead. For example, Community Resources for Justice cited stable housing or job placement at the time of release from their program as the measure of a successful outcome. Comments such as, “We have not done any follow-up recidivism studies because we have yet to figure out how we would explain our contribution to that rate if we only touch the individual for 3 or 4 months,” or, “You can look at the numbers, but they don’t tell you what is behind that” (Larivee, 11/09/07). Butler (12/20/06) refuted the suggestion that social outcomes could be meaningfully quantified. Butler, who did not hide his skepticism over all the reentry buzz words because there is no mutually agreed upon understanding and definition of “what works,” nevertheless jokingly added, “When it is time to talk about our recidivism numbers based on the research, when contract renewal comes around, we use them” (Butler, 12/20/06).

There is no evidence that meaningful outcomes exist. The different program designs, the size of their operations, and the variation in state and contract requirements rendered any attempt to standardize outcomes impossible. Instead, the evidence suggests that for-profit standards remain commensurate with maintaining acceptable profit, whereas for the nonprofit sector where survival is often more tenuous, the standard has trended towards adopting the rules of the corporate world. From a normative perspective of performance in nonprofit and for-profit organizations, the outcome-based approach presents a conflict for both the nonprofit and for-profit organizations.

A New Nonprofit Reality

A new nonprofit sector is emerging, becoming more business-like in today's world of government competition for contracts. To recap the findings, motivation and legal structure were the major recurring themes for each of the aforementioned distinctions. Both the nonprofit and for-profit interviewees expressed similar sentiments about the definition and objectives of reentry. However, the defense of their individual sectoral forms revealed differences in the ways in which each perceived or justified their own roles and the decisions they made in the course of delivering reentry services.

In other words, the nonprofit and for-profit reentry agents generally subscribed to the models of decision-making identified in Figure 1. For nonprofits, an altruistic model that places the needs of others above their own, and for the for-profit business a model of decision-making that places self-interest and profit at the fore of service delivery. According to these models, it would be unethical for the nonprofit agencies to pursue any mission or objective that does not place the needs of their clientele (e.g., former offenders) first. Similarly, it would be wrong for the for-profit reentry agencies to put the needs of the clientele over the profit motive of the investor or organization. This decision-making model (Figure 2), in particular the ethical altruistic model associated with the nonprofit sector, has shifted towards ethical egoism.

The implications of pitting nonprofit and for-profit against one another as though there were no differences, has been that the two sectors have in fact become more and more, in all important respects, the same. Rather than meet in the middle, the nonprofit sector has shifted more towards this revised ethical decision-making model of the market system where economic self-interest is the primary motivation and where, in the absence of profit, the company will eventually exit the market.

In summary, the results of the study suggest that although nonprofit and for-profit reentry organizations share many legal and behavioral characteristics, they continue to exhibit a number of important differences. These distinctions—fundamental values, capacity building efforts, treatment models, and accountability—underscore that nonprofits simply do something different from either business or government. However, these differences are eroding. In the competitive environment of the NPM paradigm where sectoral differences are devalued, the nonprofit sector is adopting more business strategies, including some of the for-profit sectors' less transparent and self-interested behaviors. The latent implications of this evolution include the loss of important democratic traditions such as social capital and the perceived legitimacy of the nonprofit sector. In the policy area of reentry, implications include the potential for exploitation of a long-overlooked means (e.g., prisoners) in an effort to reach the desired ends of winning contracts.

Concluding Remarks

It has been more than thirty years since Ronald Regan promised the American people that the pathway to a better life was for government to get out of the way (Johnson, 2007). In turn, the voters agreed to let the private nonprofit and private for-profit sectors take over as many of the duties of government as practical (Johnson, 2007). A fundamental question facing policymakers today is whether corrections and its emphasis on public safety should be subjected to the values of the marketplace. Meanwhile, the challenges associated with trying to monitor the growing network of contractors in the Hollow State have also grown (Agranoff & McGuire, 1998; Brown & Potoski, 2003; Cooper, 2003; Milward & Provan, 2000). Among those challenges is the tendency to analyze third party contract relationships as though there were no differences between them even though, as stated by contract expert Cooper (2003),

“Just as contracting for services is different from contracting for goods, contracting with nonprofit organizations is different from contracting with for-profit firms” (pp. 45-46).

The purpose of this exploratory study was to examine the key differences between private nonprofit organizations and private for-profit organizations that contract with government to facilitate prisoner reintegration back to society. The consequentialist ethics discussion under the literature section verbalized the decision-making process that both nonprofit and for-profit prisoner reentry supervisors used to look at the outcome goals of reentry (e.g., reduced recidivism). The results found that while nonprofit and for-profit reentry organizations share many legal and behavioral characteristics, a number of important distinctions persist:

1. The entrepreneurial motivations that gave rise to the different sectors differ, with nonprofits exhibiting more commitment to the social mission versus the for-profit's emphasis on the economic goals of providing goods and services.
2. Their capacity building efforts, the activities that improve an organization's ability to be successful and competitive, differ. Nonprofit organizations foster capacity-building relationships with numerous donors and constituents, including the community, whereas for-profit organizations normally look to transactional relationships in the form of private investors and stockholders.
3. The correctional philosophy to which each sector subscribes is different. The nonprofit organizations examined herein conducted themselves more like organizations involved in healing and rehabilitative missions, using community education forums to dispel myths and foster change. The for-profit reentry programs tended to reflect the sterner retributive philosophies that formed the basis of the tougher sentencing policies. One philosophy advocates changing the public policy dialogue on prison expansion; the other exacerbates it.
4. The level of accountability is different, with the nonprofit sector being more subject, by law, to public scrutiny than the for-profit sector.

The results of this study, however, suggest that a new reality for nonprofit organizations is emerging. This new nonprofit sector recognizes the importance placed upon NPM goals to meet twenty-first-century fiscal demands. This new sector understands the pressure from decision makers to produce measurable outcomes and the greater good argument that justified the contracting boom. In particular, nonprofit organizations understand the need to embrace the marketplace of ideas. We see evidence in the study that nonprofits are endeavoring to become more efficient and sophisticated. We also see evidence of nonprofits, faced with stiff competition from for-profit entrepreneurs, engaging in less than transparent activities. Some of these actions call into question their tax-exempt status, a benefit given in exchange for their commitment to the public's interest. The consequence for those nonprofit organizations who choose not to adapt to the new standards of contracting in the Hollow State, or who cannot because they lack the capacity or size to do so, is that they will disappear, taking with them core democratic principles essential to a thriving democracy.

In conclusion, this study suggests that it is the structural features of organizations that bring about changes in failed public policy decisions such as the “tough on crime” era. For the short term, the results of this qualitative study suggest it is the nonprofit organization and its commitment to the mission, clientele (e.g., former inmates), and the community it serves that best meets this directive. Drawing advice from nonprofit Safer Foundation's Butler (12/20/06), the best long-term approach for addressing the issue of prisoner reentry is to quit bailing out individuals as they reach the bottom of the stream. Rather, a better approach to reentry would be to address the underlying problems of incarceration in the United States, “to figure out who is pushing them all in” (Butler, 12/20/06). Changing the public policy dialogue on corrections must begin with redirecting the disproportionate amount of effort and financial resources towards other priorities such as afterschool programs, making higher

education more affordable, or changing laws that perpetuate the disenfranchisement of prisoners long after their release.

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Appendix

Table 1A. NPO and FPO Program Focus and Locations

| Reentry Programs | Sector | Program Types | Locations |
|-----------------------------------|--------|---|---|
| Safer Foundation | NPO | Direct Services, Youth Services, Adult Transition Centers, In-Prison Treatment | Illinois,* Iowa |
| Oriana House | NPO | Chemical Dependency Treatment, Community Corrections Programs, Property Management | Ohio* |
| Community Resource Justice | NPO | Adult Correctional Services, Youth Services, Community Strategies, Crime and Justice Institute (CJI) | Massachusetts,* New Hampshire |
| Community Education Centers, Inc. | FPO | Jail/Prison Management, Community Corrections, In-Prison Treatment Programs, Outpatient Treatment Programs, Electronic Monitoring, Drug Treatment, Juvenile Treatment | New Jersey,* Colorado, Indiana, Pennsylvania, South Carolina, South Dakota, Wyoming, Ohio, Texas, California, New Mexico, Delaware, Florida, Illinois, Nevada, Oregon, Rhode Island, Washington |
| BI, Incorporated | FPO | Monitoring Services, BI Self Pay Program, Reentry Programs, Day Reporting Centers | Colorado,* Illinois, California, Kansas, Missouri, New Jersey, New York, Oregon, Pennsylvania, New Mexico, Louisiana, Washington |
| Cornell Corrections | FPO | Adult Secure Services, Community-Based Corrections Services, Jail Management, Juvenile Services | Texas,* Alaska, California, Nevada, Utah, Colorado, New Mexico, Oklahoma, Kansas, Illinois, Mississippi, Georgia, Ohio, Pennsylvania, Delaware |

Note: *Headquarters
Source: Agency Websites

Table 2A. NPO and FPO Reentry Programs: Founding Date and Mission

| Reentry Programs | Sector | Founding Date | Origins | Mission |
|-----------------------------------|--------|---------------|---|---|
| Safer Foundation | NPO | 1972 | Religious – Employment Services for Offenders | To reduce recidivism by supporting through a full spectrum of services, the efforts of former offenders to become productive, law-abiding members of society. |
| Oriana House | NPO | 1982 | YMCA | Provide quality and humane chemical dependency treatment and community corrections services to clients while contributing to safer communities. |
| Community Resource Justice | NPO | 1878 | Religious – Criminal and Mental Health Advocacy | Community Resources for Justice supports our most challenged citizens. We work with individuals in, or at risk of being in, the adult or juvenile justice systems; individuals transitioning out of these systems back to their communities; and individuals with developmental disabilities requiring intensive support to be part of the community. |
| Community Education Centers, Inc. | FPO | 1994 | Health Care Industry – Substance Abuse | To provide a healthy, drug-free, safe and secure environment within which we will provide treatment and education services that focus on changing addictive and criminal behaviors. We provide our participants with the knowledge and skills necessary to lead a productive lifestyle prior to reintegration into their communities. |
| BI, Incorporated | FPO | 1978 | Engineering Business – Cattle Tracking Systems | The BI team of professionals will be the leading provider of offender monitoring and re-entry services to improve community public safety. |
| Cornell Corrections | FPO | 1992 | Business – Private Prison | We are a values and mission-driven company. Many can build and operate programs and facilities, but it is the manner in which Cornell operates its programs and facilities that truly makes a difference. We want our employees, host communities, and shareholders to be proud of the service they perform. We want our clients to become contributing members of society. |

Source: Agency Websites and Interviews