

Maine Policy Review

Volume 2 | Issue 2

1993

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Recommended Citation

Anthony, Cushman. "Move with Caution toward Privatization." *Maine Policy Review* 2.2 (1993) : 79 -81, <https://digitalcommons.library.umaine.edu/mpr/vol2/iss2/11>.

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To steer or to row: Contemplating the role of privatization

Maine Policy review (1993). Volume 2, Number 2

At the "Rethinking State Government" conference held at the University of Maine in January 1993, a panel explored the issue of privatization -- of using private enterprise to provide public sector services. In introducing the panelists, Patricia Collins, chair of the University of Maine System Board of Trustees, noted that privatization has been proposed to address societal needs that can no longer be met by traditional methods. With too many demands and too little money, and with the prevailing view of government as inefficient and unresponsive, the State of Maine asked the Special Commission on Governmental Restructuring to consider new solutions and present recommendations to the 115th Legislature. Among the ideas proposed was that of privatization.

According to Collins, advocates of privatization quote E.S. Savass, chair of the Department of Management of City University of New York, who said, "the word government is from a Greek word which means to steer. The job of government is to steer, not to row the boat. Delivering services is rowing, and government is not very good at rowing." Or they quote Mario Cuomo: "It is not government's obligation to provide services, but to see that they are provided." Opponents caution that there is much to be lost by privatization, that there are risks of inequities and poor service. Indeed, they stress that some government services should never be contracted out. The following statements by the four panelists in this discussion reflect this same wide range of perspectives.

Move with caution toward privatization

by Cushman Anthony, Lawyer, mediator, and former State Representative

Both the local and state governmental levels have used private providers for a number of years, especially in the social services. By acknowledging the existence of this ongoing public/private partnership, we can move on to the real question: What is the nature of this public/private partnership, and how can it be strengthened or readjusted? For example, we have never supported private providers terribly well. Much of my work when I was an advocate at Community Counseling Center in Portland was spent trying to get state government to better support the contracted social service providers.

I am against privatization for the sake of privatization. Some members of the current administration in Augusta seem to be of the opinion that privatization is inherently good, and therefore, government should do more of it. That viewpoint may be partially responsible for the recent push to increase privatization, and for development of a "privatization work plan" within the Governor's office.

In considering privatization, we need first to assess the quality of existing governmental services. We should then ask whether those that are done poorly by government could be done better by the private sector, and whether they could also be provided more cheaply. For example, the Department of Corrections has instituted a private contract for health services at the Maine

Correctional Center in Windham, which I feel has been relatively successful. One of the reasons for this success is that the Department began with the observation that it was not doing a very good job, and the belief that there were providers who could do it better. However, a thorough cost-benefit analysis was not conducted, so I would question whether or not services are actually being provided at less cost. Cost-benefit considerations should always include all the costs of development, of contract compliance, and of evaluation, costs that are too frequently ignored, along with an analysis of whether state employees could effectively provide the same level of resources as the private contractor. A proper cost-benefit analysis can also identify ethical dilemmas as well. I am opposed to the privatization proposal for the Maine Youth Center in South Portland on such ethical grounds, among other reasons. The driving force behind this proposal was the availability of Medicaid dollars; that is, the opportunity to shift the cost burden from Maine taxpayers to federal funds. There was never any argument that the total cost of operating the Maine Youth Center would be lower with Medicaid funding. According to my analysis, the total cost would be higher. Despite the savings to Maine taxpayers, is it ethical to privatize if the total amount of state and federal dollars spent will increase? There is no easy answer to this. My opinion is that if the increase is small, the decision to privatize may be acceptable. But if the increase is significant, a decision to privatize solely on the basis of shifting the tax burden suggests irresponsible governing. At any rate, each of us will have a different opinion as to what is appropriate here.

Even in situations where privatization is desirable, the state should never entirely surrender responsibility for an area, because that would leave them too vulnerable in the event of a failure by the private provider. For example, despite many contracts with various service providers who help to support troubled families, the state still retains overall responsibility for child protection. In juvenile corrections, I would quickly support a substantial reduction of state services at the Maine Youth Center while retaining a small, state-run, secure detention facility for the worst cases that private providers refuse to handle. The same perspective applies to mental health. The state needs to have some institution of last resort, such as the Augusta Mental Health Institute in each one of these systems.

In addition, we should develop objective standards for privatizing governmental services, including legislative oversight of the process. Other states have done that, and legislative proposals have been offered in Maine as well. The non-partisan legislative Office of Policy and Legal Analysis has published a volume on privatization in corrections which also includes a set of possible standards. Any standards which are adopted should include performance measures to be contained in privatization contracts, effective compliance monitoring including a quality assurance process and an evaluation component, an escape mechanism for the state in the event of difficulties, and a prohibition against individuals leaving state contracting and immediately working for a contract provider or applicant. An effective liaison between the new contract provider and existing services should also be included.

Finally, state-provided services should never be withdrawn until after the contracted-out service is in place and operating successfully. More than anything else, this was the missing component in the proposal to privatize the Maine Youth Center, and the primary reason why I opposed it.

Privatization in some areas is appropriate, but we must move cautiously to ensure that privatization really is the optimal approach. Privatization requires the same commitment to quality through effective oversight as any other effective public program. Only when that is assured should we privatize existing governmental programs.

Cushman Anthony is a lawyer and mediator in Portland, and a former state legislator. He served as House Chair of the Corrections Committee.

Full cite: Anthony, Cushman. 1993. *To steer or to row: Contemplating the role of privatization: Move with caution toward privatization.* Vol. 2(2): 79-81.