
Win-Win Contracting Out

Stuart Nagel
PSO-DSI-MKM Center and University of Illinois

I. SOCIALISM VERSUS CAPITALISM

The changes that are occurring in Eastern Europe and in many other regions and nations of the world provide an excellent opportunity to apply systematic policy analysis to determining such basic matters as how to organize the economy, the government, and other social institutions. Population control and land reform are highly important problems, but they may not be as basic as reconstituting a society.

Table 5-1 analyzes the fundamental issue of socialism versus capitalism in the context of government versus private ownership and operation of the basic means of producing industrial and agricultural products. The essence of socialism in this context is government ownership and operation of factories and farms or at least those larger than the handicraft or garden-size, as in the Soviet Union of 1960. The essence of capitalism is private ownership and operation of both factories and farms, as in the United States of 1960. The neutral position or middle way is to have some government and some private ownership-operation, as in Sweden of 1960. The year 1960 is used because that is approximately when the Soviet Union began to change with the advent of Nikita Khrushchev. The United States also underwent big changes in the 1960s with the advent of John F. Kennedy.

Table 5-1 refers to government ownership-operation as the liberal or left-wing alternative, as it is in the United States and in world history at least since the time of Karl Marx. The table refers to private ownership-operation as the conservative or right-wing alternative, as it is in the U.S., and elsewhere at least since the time of Adam Smith. In recent years in the Soviet Union and in China, those favoring privatization have been referred to as liberals, and those favoring retention of government ownership-operation have been referred to as conservatives. The labels make no difference in this context. The object of Table 5-1 is to find a super-optimum solution that more than satisfies the goals of both ideologies or groups, regardless of their labels.

TABLE 5-1. GOVERNMENT VERSUS PRIVATE OWNERSHIP AND OPERATION

| GOALS | C | L |
|--|-------------------|--|
| ALTERNATIVES | High Productivity | 1. Equity 2. Workplace Quality 3. Environmental Protection 4. Consumer Protection |
| C Private Ownership and Operation (Capitalism) | + | - |
| L Government Ownership and Operation (Socialism) | - | + |
| N Some Government and Some Private | 0 | 0 |
| SOS OR WIN-WIN | | |
| 1. 100% Government Own 2. 100% Private Operation | ++ | ++ |

The key capitalistic goal is high productivity in terms of income-producing goods substantially above what it costs to produce them. The key socialistic goal is equity in terms of the sharing of ownership, operation, wealth, and income. Other goals that tend to be more socialistic than capitalistic, but are less fundamental consist of (1) workplace quality, including wages, hours, safety, hiring by merit, and worker input, (2) environmental protection, including reduction of air, water, radiation, noise,

and other forms of pollution, and (3) consumer protection, including low prices and goods that are durable, safe, and high quality.

Going down the productivity column, the liberal socialistic alternative does not score so high on productivity for a lack of profit-making incentives and a surplus of bureaucratic interference in comparison to the capitalistic alternative, assuming the level of technology is held constant. The empirical validity of that statement is at least partially confirmed by noting that the capitalistic countries of Japan and West Germany are more productive than their socialistic counterparts of East Germany and China, although they began at approximately the same level as of 1945 at the end of World War II. Going down the equity column, the liberal socialistic alternative does score relatively high. By definition, it involves at least a nominal collective sharing in the ownership and operation of industry and agriculture, which generally leads to less inequality in wealth and income than capitalism does.

On the goals that relate to the workplace, the environment, and consumers, the socialists traditionally argue that government ownership-operation is more sensitive to those matters because it is less profit-oriented. The capitalists traditionally argue that private ownership-operation is more sensitive in competitive marketplaces in order to find quality workers and to increase the quantity of one's consumers. The reality (as contrasted to the theory is that without alternative incentives or regulations, both government managers and private managers of factories and farms are motivated toward high production at low cost. That kind of motivation leads to cutting back on the expenses of providing workplace quality, environmental protection, and consumer protection. The government factory manager of the Polish steelworks may be just as abusive of labor as the private factory manager for the U.S. Steel Company. Likewise, the government factory managers in the state factories of China may be just as insensitive to consumer safety and durability as their monopolistic counterparts in the American automobile industry.

As for how the super-optimum solution operates, it involves government ownership, but all the factories and farms are rented to private entrepreneurs to develop productive and profitable manufacturing and farming. Each lease is renewable every year, or longer if necessary to get productive tenants. A renewal can be refused if the factory or farm is not

being productively developed, or if the entrepreneur is not showing adequate sensitivity to workers, the environment, and consumers.

As for some of the advantages of such an SOS system, it is easier to not renew a lease than it is to issue injunctions, fines, jail sentences, or other negative sanctions. It is also much less expensive than subsidies. The money received for rent can be an important source of tax revenue for the government to provide productive subsidies elsewhere in the economy. Those subsidies can especially be used for encouraging technological innovation-diffusion, the upgrading of skills, and stimulating competition for market share which can be much more beneficial to society than either socialistic or capitalistic monopolies. The government can more easily demand sensitivity to workers, the environment, and consumers from its renters of factories and farms than it can from itself. There is a conflict of interest in regulating oneself.

This SOS alternative is only available to socialistic countries like the USSR, China, Cuba, North Korea, and others since they already own the factories and land. It would not be economically or politically feasible for capitalistic countries to move from the conservative capitalistic alternative to the SOS solution by acquiring ownership through payment or confiscation. This is an example where socialistic countries are in a position to decide between socialism and capitalism by compromising and winding up with the worst of both possible worlds. That means the relative unproductivity of socialism and the relative inequity of capitalism. The socialistic countries are also in a position to decide between the two basic alternatives by winding up with the best of both possible worlds. That means retaining the equities and social sensitivities of government ownership, while having the high productivity that is associated with profit-seeking entrepreneurial capitalism. It would be difficult to find a better example of compromising versus super-optimizing than the current debate over socialism versus capitalism.

The third problem is the privatization problem. It illustrates how two apparently conflicting approaches can be simultaneously combined with a somewhat imaginative combination that is not a compromise. It is a combination where both sides do better than their best expectations rather than yield substantially to the other side. Other examples include:

1. Providing legal services for the poor with volunteers absorbed into the salaried system through a well organized clearinghouse and training program.
2. Combining private enterprise and state enterprise in American higher education within the same schools as well as in the system.

II. ATTORNEYS FOR THE POOR

The Washington newsletter of the American Bar Association reports that Legal Services Corporation was given a five-year authorization during the first Bush Administration.

A. PROGRESSIVE CONTRACTING OUT OF LEGAL SERVICES

The idea of competitive bidding or contracting out of legal services raises some interesting questions. One question is simply whether it is possible for a Democratic Congress to trust a Republican administration with handling competitive bidding. In theory, this could be a highly liberal kind of privatization. The specification of the contract on which bids are taken could be like the following:

1. Law reform. Whoever gets the contract must agree to devote half their money to law reform cases before the Supreme Court or other courts. Such cases are designed to improve substantially the legal rights of the poor as consumers, tenants, welfare recipients, public housing recipients, voters, arrested persons, employees, health care recipients, students in elementary and high schools, family members, clients of lawyers, and other frequent roles.
2. Clarifying and enforcing existing rights. Perhaps more important than improving rights is just seeking clarification and enforcement of existing rights.
3. Affirmative recruitment. A strong affirmative action program must be adopted to seek out qualified lawyers who are women, members of minorities, disabled, from poor backgrounds, and so on. The

affirmative action program should not award any preference or points to those people. The emphasis should be on affirmatively seeking out those who are qualified.

4. Public education. There should be a lot of public education in the contract, informing the general public about the legal rights of the poor and the legal rights of consumers, tenants, and so on, regardless of whether they are poor.
5. Seeking legislation. The contract should include active activities on the part of the firm that is awarded the contract in terms of seeking legislation designed to better clarify and enforce the legal rights of the poor, and not just court cases.
6. Law school interaction. There should be activity at law schools across the country designed to bring law students into the program according to the theory that this will give them an involvement that will carry on for the rest of their lives and help to shape favorably their attitudes toward legal services for the poor.
7. Writing articles and books. In addition to counseling activities, litigation activities, legislative activities, law reform, and negotiation, there should be encouragement of activities that involve the writing of law review articles or books. This is more a matter of educating the bar and influencing the legal system than it is of public education.

In other words, just because the system is turned over to private enterprise does not mean that poor people are going to be hurt. It all depends on what the contracting out provides for in the contract. If contracting out has provisions like the above, it is much better than government ownership and operation. This is really a good example of cases where liberals have a knee-jerk negative reaction to privatization as somehow being inherently reactionary.

B. PROGRESSIVE CONTRACTING OUT IN GENERAL

Privatization does not mean an inherent conflict between government ownership and operation, and private ownership and operation.

It can mean government ownership and private operation through a progressive system of contracting out, as contrasted to a reactionary system.

A progressive system involves contracting out with contract provisions requiring environmental protection, workplace safety, and consumer protection. It also involves contracting out to more than one supplier of the service in order to provide competition. It further involves relatively short-term contracts that come up for renewal and are not renewed if they are not being complied with. Also there should be provisions in the contract for terminating it before the term is up, if violations are severe enough.

A reactionary system involves contracting out that leaves the private entrepreneur free to do anything they want with regard to the environment, workplace, or consumers. Worse, they are given a monopolistic franchise that leads to even more abuses than would result from simply not having any contract provisions against them. It is also highly undesirable that the contract be for an indefinite time or a definite time that is so long, that the idea of non-renewal gets lost in inertia or that the contract provides for a relatively short time but without monitoring to see if it is being well complied with, and renewal tends to be automatic.

The concept of contracting out normally refers to the reactionary version and therefore it tends to be opposed by liberals. A progressive version of contracting out, though, can be even better for promoting liberal values than government ownership and operation. The progressive version is also politically and administratively feasible. It is politically feasible because it represents a move away from government ownership and operation, which conservatives should endorse. It is politically feasible for liberals, given the liberal provisions. It is administratively feasible because there will be entrepreneurs who will be pleased to accept these contracting provisions if what they are supplying in the way of services or other activities involves substantially less expense on their part than what they are being paid to do. If the contract is highly profitable, they can easily absorb the environment, workplace, and consumer provisions.

Even though the entrepreneurs are making a profit, the government and taxpayer may also be come out well ahead. This is so because the private entrepreneur may be reducing expenses through the incentive of competition and the private profit motive. These incentives may also be

substantially improving the quality of what is being provided, beyond what a monopolistic government agency could provide.

A recent new form of contracting out is the running of the public schools in a city or school district by private enterprise firm. The contract provides that the firm receives payment equal to 90 percent of the previous tax costs. The contract also provides for various standards designed to determine how well the students are learning at the beginning of the contract and at the end of each academic year. The contract can be awarded through open bidding and is up for renewal or rebidding every few years. This arrangement may improve the quality of the schools, but generally does nothing for the integration of students from different economic classes.

III. PRIVATE-SECTOR PRISONS (Table 5-2)

TABLE 5-2. CONTRACTING OUT PRISONS

| CRITERIA | C More Profits Less Taxes | L No Mistreatment |
|--|---------------------------------|----------------------|
| ALTERNATIVES | | |
| C | | |
| Do It | + | - |
| L | | |
| Don't Do It | - | + |
| N | | |
| Do It some | 0 | 0 |
| SOS OR WIN-WIN | | |
| Contract Provisions: | | |
| 1. 80% of Former Cost | | |
| 2. Improved Recidivism Rate by 10% | | |
| 3. Open Auction Bidding with Termination for Cause | ++ | ++ |

On the contracting-out of prisons, the conservative way is to do it. The liberal way is don't do it. The neutral way is do it some. The conservative goal is to increase profits to business and reduce costs to the taxpayers. The liberal goal is to be nice to prisoners, or at least don't mistreat them simply to cut expenses and raise profits. The SOS or win-win solution is a contract that says the private sector company must run the prison at 80% of the former cost and improve the recidivism rate by 10%, or they lose the contract. Improving profits satisfies the conservatives.

Reducing recidivism appeals especially to liberals. The contract could also have a provision whereby the contracting business firm loses the contract if it fails to comply with the provisions, including open bidding, not abusing the workers, and not abusing the environment.

IV. CONTRACTING OUT PUBLIC SCHOOLS

Table 5-3 deals with education policy at the kindergarten through twelfth grade level. The problem especially relates to school integration and the need to uplift inner-city schools. The conservative position is basically to do nothing, on the grounds that things are fine the way they are, or as good as they reasonably can be. The key conservative goal is to support the neighborhood school system. Many conservatives would also like to see more support for private schools, including possibly religious private schools.

TABLE 5-3. EDUCATION POLICY ESPECIALLY INTEGRATION

| GOALS | C | L |
|-----------------------------------|---|-------------------------------------|
| ALTERNATIVES | 1. Neighborhood schools 2. Private schools | 1. Integration 2. Public schools |
| C | | |
| Do nothing | + | - |
| L | | |
| Busing | - | + |
| N | | |
| School choice | 0 | 0 |
| SOS OR WIN-WIN | | |
| 1. Integration-oriented subsidies | ++ | ++ |
| 2. Contracting out | | |

Since about 1960, the liberals have been advocating busing to bring inner-city students to integrated and better schools. Their goal is integration and support from the public school system.

The neutral position is partial busing which could mean (1) only short distances, (2) only within the city limits, and (3) only busing out of the inner-city, no busing in. It is also a neutral position to advocate spending more money on inner-city schools to compensate for their relatively low-quality buildings, lack of experienced teachers, and middle-class peer group inspiration.

A recent new alternative is contracting out the running of the public schools in a city or school district to a private enterprise firm. The contract provides that the firm receives payment equal to 90 percent of the previous tax costs. The contract also provides for various standards designed to determine how well the students are learning at the beginning of the contract and at the end of each academic year. The contract can be awarded through open bidding and is up for renewal or rebidding every few years. This arrangement may improve the quality of the schools, but generally does nothing for economic-class integration of the students. It thus needs supplementing with policies like (1) rent vouchers that must be used one concentric circle up in terms of the economic status of the neighborhoods and (2) setting aside former public housing land for integrated condominium developments near downtown employment.