

frustration with feminists who constantly portray women as helpless victims but I think that her judgment of modern feminists as 'priggish, disingenuous, unforgiving', is inadequately reasoned. The writing is

beautiful but the thesis is simplistic. Read it anyway.

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Private Prisons and Police: Recent Australian Trends

Edited by Paul Moyle; Pluto Press, 1994; 304 pp; \$24.95.

The extent to which the privatisation or 'contract management' of Australian prisons has gathered pace over the last five years is extraordinary. From the 1990 opening of Borallon Prison in Queensland, managed by Corrections Corporation of Australia (CCA), we have watched the Queensland Government offer the management of Arthur Gorrie Correctional Centre to Australasian Correctional Management Ltd (ACM) in March 1992 and discuss the re-opening of Woodford Correctional Centre under private administration. We have watched the New South Wales Government open Junee Correctional Centre in May 1993, also managed by ACM. The Victorian Government has called for tenders to finance, design and construct three private prisons and we have watched the South Australian Government announce that the new Mt Gambier facility is to be offered to private contractors. A contract has been awarded for a private prison in the Northern Territory. There are currently approximately 1200 inmates in Australian private prisons, or 8% of the total prison population — the highest percentage in the world.

I say 'we have watched', but perhaps few of us could consider ourselves informed on the issue, such has been the poverty of any public discussion. *Private Prisons and Police*, comprising 15 short essays from a variety of authors, is offered in George Zdenkowski's foreword as a 'scholarly yet practical foundation for an important public policy debate'.

However, the collection of essays is initially surprising in that, whilst indeed providing a much needed 'practical foundation' for debate, it persistently avoids the business of actually taking a position in the privatisation argument. That is, after presenting the political and economic issues surrounding privatisation, Paul Moyle's editorship leaves us with no overriding argument that private prisons are either good or bad things. This, it might be thought, is a

matter of some interest in itself, given that many of the contributors to the book are left-leaning criminologists (Janet Chan, Richard Harding, Paul Moyle himself). So, where is the outrage? (See, by way of contrast, Catherine Gow's 'No Women in Men's Prisons! No Private Prisons!' (1994) 2 *Australian Feminist Law Journal* 174-179.) A couple of the essays are perceptibly anti-privatisation in their drift, but the standard rhetorical tactic seems to be to present the fruits of one's research and then to draw up two lists: the pros and cons. 'Let the reader decide!' proclaim Moyle and many of the contributors. For example Chan emphasises that 'economic rationalism can be as much a resource as constraint in penal reform'. Similarly, Harding states that '... private sector contract management could stimulate beneficial change across the whole system. ...' Perhaps one of the reasons behind any apparent lassitude is that many of the articles see private prisons as a *fait accompli*: the question is not so much whether we want them, but what to do with them.

This deliberate reluctance to editorialise is, no doubt, a sound technique when broaching a public issue of which very few people are aware. It would probably be seen as peremptory and naive to cast judgment over private prisons when even the oldest has been running for only five years, when all the information has yet to be gathered and interpreted, and when the politicians have not yet begun to cast their attention to the relative efficacy of private prisons. Better editorial practice simply to raise the issue and see what happens.

However, the plain fact that emerges from this book — notwithstanding the arguments in favour of change — is that the privatisation of prisons is a disgrace. The management of public prisons is bad, the management of private prisons is worse. The introduction by legislatures of privatisation policies without public discussion is unfortunate and the withholding of management contracts

from public scrutiny by the Queensland Corrective Services Commission (QCSC), with the excuse of 'commercial in confidence', is deplorable. Goals for private prisons (reducing reoffending, for example) have not been set. Lines of accountability are untested. It is widely acknowledged that the public sector authorities which are given the task of regulating private prisons are in grave danger of becoming 'more concerned to serve the interests of the industry with which they are in regular contact than the more remote and abstract public interest'. In Queensland, the monitoring process is not even contained in the private corrections stature — an unsatisfactory omission which will be imitated by Victoria. But even in NSW, where statutory safeguards do exist, there is evidence that the monitoring mechanism has been 'captured' by the contract managers. Regulation has been less than rigorous.

Further, the political profiles of ACM and CCA have been poor and again, the damning evidence accumulates from *Private Prisons* in spite of attempts at even-handedness. At Arthur Gorrie, prisoners have been treated badly — there have been two riots so far and three suicides. We are, it seems, not far away from the bad old days of private punishment in the US earlier this century. The most forthright attack on privatisation in Australia comes from Eileen Baldry ('USA Prison Privateers: Neo-colonists in a Southern Land'), who draws attention to the fact that both ACM and CCA are owned in large part by American security companies. Baldry sees a parallel between the American export of private prisons and the American export of nuclear reactors and toxic chemicals. She shows that the only reason these American companies are showing an interest in Australia is that, in America, officials were pulling prisoners out of private prisons for financial or bad management reasons as long ago as 1991. The US domestic market has dried up (except in Texas), so these entrepreneurs look to less scrupulous overseas governments for endorsement. What we do know about ACM is unflattering. Wackenhut, one of the American companies behind ACM, was found by the US Committee on Interior and Insular Affairs to have obstructed the Committee's investigation into environmental health and safety breaches. And there are suggestions from numerous sources that ACM is exploiting its employees. David Belton, from the Prison Officers Association,

tion of Australia, argues that in some cases moves toward privatisation are simply ill-conceived responses to union involvement in public prisons ('The Industrial Issues of Private Prisons'). The private prison workforce, constituted under enterprise agreements, is by ACM's own admission casualised and relatively untrained.

The defence of private prisons in Moyle's book is put by Debra Diplock and Wayne Calabrese, who are, respectively, the General Manager of Human Resources and Chief Executive Officer at ACM. Their reassurances to the public include statements such as '[i]n general, the major reasons for the privatisation of prisons can be summarised in three words: Cost, Culture and Innovation . . .' Or this: '[At Junee] a well-integrated process of community liaison by both the government and ACM ensured the concerns of the local residents were addressed and resolved . . .' It can be commented that alarmist fears of a totalitarian 'corrections-commercial complex' may well be justified.

And it slowly becomes clear from *Private Prisons and Police* that there is not even any reliable evidence, in Australia or from overseas, that private prisons save money. Their *raison d'être* is false. Any favourable comparisons between private and public prisons, in America or Australia, have been loaded (as between, most notably, Borallon and Lotus Glen in Queensland), although this does not prevent Steve Macionis of the QCSC from claiming an 'outstanding success' for Borallon. As one American author comments on the prison industry, '... there is some reason to fear that, instead of being competitive like the trash collection industry, it will be competitive like the nuclear submarine industry — which is to say, not at all'. Further, it is generally agreed to be next to impossible for a government to switch contractors. Allan Brown's essay ('Economic and Qualitative aspects of Prison Privatisation in Queensland') is an excellent examination of the pitfalls of cost comparisons between the public and private sectors. And of the surrounding ethical questions. In the end, the argument goes, it is impossible to draw a meaningful distinction between the *allocation* and *administration* of punishment (how do you categorise decisions relating to parole or routine discipline?), and to have American multinationalists allocate punishment in Australia, as is the case now, is intolerable.

By contrast, any points that are aduced in this collection in favour of privatisation (leaving aside the offerings of Diplock and Calabrese) are speculative. Indeed, it is possible, as Chan points out, that privatisation could improve access to information but there is apparently no evidence of this. Nor is there evidence of any improvement of conditions for inmates. And what do the inmates themselves think? It is a shame that Moyle's book does not contain anything written by a prisoner representative, although he shows the extensive results of his research into prisoner attitudes towards the Borallon management, including his opinion that the most vulnerable workers at Borallon are the inmates: 'a business approach had compelled the exploitation of cheap labour'. There is no broad skills training for prisoners. Moyle suggests the possibility that in the management contract there are no performance criteria relating to recidivism rates, rehabilitation of inmates, reduction of violence levels within centres, and the provision of amenities. Borallon might be better than Boggo Road, but there is no general criterion on which it could be said that private prisons are clearly superior to public ones; and there are many criteria on which they are worse.

Trial by Voodoo

By Evan Whitton; Random House 1994; 369 pp; \$17.95

There is no doubt that we of the common law could learn some lessons from the European civil law inquisitorial system. However, Evan Whitton's attempt to argue away any virtue in the common law in favour of the introduction of the civil law model is largely unsuccessful. The calibre of his statement that 'The civil law and the common law are so different that one must be wrong' sums up the quality of argument in this book.

The main purpose of the book is to expose the most fundamental flaw in the legal system — that it is not interested in the truth and that it does not seek it. The 'voodoo' of the title refers to the procedure and rules that conceal relevant evidence, obscure the truth and tilt law in favour of the individual against the community.

Whitton's analysis is mainly of the criminal law, based on anecdotes gathered during his work as a journalist. His interest seems to have been fuelled by the belief that a large number of corrupt

All this is apart from the fundamental ethical problem presented by the privatisation of punishment that no amount of research can dispute or qualify: if the state is going to sentence criminals, then it should have the courage to oversee their punishment. Any attempt by government to absolve itself of managing prisons is hypocrisy, especially so in an environment of 'three strikes and you're in' law and order policy. Corrective service bureaucracies, and the public at large, must face the unpleasant fact that prisons are, for better or worse, places where the authorities of the state coerce criminals. The balanced presentation of academic research is gently persuasive in Moyle's book, but at a certain point it needs to be said: privatisation is a wrong move. The only solution to the expense incurred by public prisons is to stop putting people in them. There is no improvement offered by private prisons that cannot be effected from within the public system. If we withhold judgment for too long before deciding whether or not we want private prisons, the decision will surely be made for us.

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individuals exist in our society, and cannot be caught by the common law legal system. He argues that the answer lies in expanding the use of Royal Commissions in the style of the Fitzgerald Inquiry. Fitzgerald QC, in heading that inquiry, took on a role akin to a European civil law inquisitorial judge and suspended many of the prohibitive rules of evidence. In doing so, he was able to get to the bottom of systemic corruption and uncover the truth. Such a feat, Whitton argues, is not possible under the current restrictive rules of 'voodoo' that pollute our criminal law system.

Whitton does make some very valid criticisms of the Australian legal system. Such criticisms are always welcome, particularly when combined with interesting journalistic anecdotes. However, the arguments throughout the book are so unbalanced and generalised that I often found myself fiercely defending the Australian criminal justice system — a stance I do not often take. Whitton's arguments tend to be based