

## *Will the Private Sector Improve the Prison System through Competition, Market Testing or Cross-Fertilisation?*

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The contracting of aspects of prison service delivery has become an entrenched part of government penal policy in most Australian states in the 1990's. Because of its rapid development, estimates of total numbers of citizens being held in contracted centres can be imprecise. Nevertheless, by early 1998 three multinational companies - Australasian Correctional Management (ACM), Corrections Corporation of Australia (CCA) and Group 4 - had secured contracts to manage a total of eight correctional centres in Queensland, South Australia, New South Wales and Victoria. The level of inmate security classification at these centres ranges from open to high security and includes the first privately operated women's prison outside the US (the Metropolitan Women's Prison, Deer Park, Victoria).

In early 1998, about 12% (2,333) of the total Australian prison population were held in contracted centres. This percentage is likely to increase. At the time of writing, senior government officials from Western Australia, Tasmania and the Australian Capital Territory were considering this policy option mainly as a response to increases in prisoner numbers. This policy option is not motivated purely by responding to the increase in prisoner numbers. Quality of service is also becoming an important consideration for correctional policy makers. For example, a Select Committee of the Legislative Council of the Tasmanian Parliament was recently appointed to examine, in part, the privatisation of prisons including their design, finance, construction and administration. The Committee will consider replacing the existing state operated prison - Risdon - with a privately built and operated centre because it is expected the private sector will provide superior programs and a more rehabilitative environment (Personal communication with the Committee Secretary, Parliamentary Office, February 6 1998).

### **Explaining cross-fertilisation theory**

If it is accepted that the rationale for private sector involvement is to improve the quality of correctional services, then important issues emerge. The need to find a model which accommodates this change in purpose for the private sector from cost savings to improved quality of service has begun to receive serious scholarly attention. Harding (1997: 99) challenges purely financial justifications for contracting arguing that the 'crux is *value for money*, penological and regime accomplishments as well as effective financial accountability being integral to this concept'.

Embedded in the idea of value for money is the requirement to examine the impact of the private sector on the total prison system. Harding (1997) terms this cross-fertilisation theory. At first glance, raising the issue about how privatisation will impact on the prison system might seem to be an inconsequential shift in emphasis. Instead of asking, is it justified to pursue privatisation policy on the basis of straight comparisons between private and public prisons? It is now necessary to examine the overall impact of the policy. From this, the results of qualitative and quantitative comparisons are of limited value in terms of whether to pursue the policy. For Harding, the results of comparative studies are not decisive on the issue of whether to privatise, rather:

they should enable the strong and weak aspects of the two components to emerge and areas for productive cross-fertilisation to be identified. This is so whether the studies relate to cost, programmes, environment or attitudes, and whether they are processual, qualitative or quantitative in their approach (1997:111).

Such an approach shifts the focus to more difficult theoretical terrain. It is easier to map and identify the qualitative and/or quantitative performance of correctional centres (and then make comparisons between centres) than to speculate about the cause and effect of differences/similarities on the total prison system. This issue received attention from Bottomley and James (1997) who recently noted that in order to test the cross-fertilisation theory:

[the] research task facing criminologists would not only involve the evaluation of the performance of a jurisdiction's entire prison system before, during and after the introduction of private sector management of prisons, but also require them to be able to attribute any changes directly to the introduction of private sector management. In practice, researchers are faced with very imperfect environments for testing this hypothesis (1997:269-270).

The difficulty of identifying cause and effect within correctional environments is an issue with which Bottomley and James have had considerable experience. During their research into Wolds (England's first private prison) they also examined broader system wide changes in the UK prison service (see Bottomley and others 1997). Bottomley and James concluded that important developments in the Prison Service Agency (in the areas of mission statements, corporate and business plans and key performance indicators) were very difficult to attribute to private sector involvement.

The extent to which privatisation contributed independently to the changes that occurred is very difficult ... to assess. Almost inevitably, the evidence has to be impressionistic and anecdotal - which is not to say that it has to be dismissed out of hand. In a situation of this sort, there can be no empirical certainty about what changes might or might not have occurred in public-sector prisons in England and Wales if the privatization of the last 5 years had not taken place (1997:270).

It would appear from this that Bottomley and James have two objections to Harding's conclusion that privatisation in the UK prison system led to public sector reform. The first relates to the methodological difficulty of identifying cause and effect. The second involves disagreement with Harding that the available evidence suggests that the private sector was a catalyst for prison service reforms as opposed to a 'new competitive ethos' (Bottomley and James 1997:270) brought about by the possibility of competition rather than privatisation *per se*. The second difference is important because if the public sector was to innovate anyway through corporatisation and managerial changes, this would undermine Harding's thesis that the private sector is an essential catalyst for reform.

## **Cross-fertilisation - other methodological issues**

Harding's hypothesis that the value of private sector involvement is in its system wide influence needs to be explored. For Harding, the private sector is a part of a single system engaged in fierce competition. But the possibility for competition varies between jurisdictions and is depended upon structural arrangements. In Queensland for example, the corporatisation of service delivery elements of the QCSC and the introduction of market testing, have only recently been introduced. Historically, Borallon and Arthur Gorrie Correctional Centres (both privately operated) functioned relatively independently from other correctional centres and were poorly integrated into the accountability structures of that system during the 1990's (see Moyle 1992 and Moyle 1994). In such a structural scenario, competition was not possible. It is important to note that the quality of service of both these

centres for this period was undistinguished at best and in the case of Arthur Gorrie, standards fell below minimum mandatory standards set by the QCSC (Moyle 1998b). This appears to support the conclusion of Bottomley and James that competition is more important than privatisation *per se*.

With the introduction of corporatisation and the establishment of QCORR in 1997 the possibility for the private sector to provide an alternative mode of service delivery within a single system emerged. When current service contracts expire QCORR must bid for the design, construction and management of facilities it previously operated. Likewise, it is possible for the private sector to bid for the management of QCORR facilities (see QCSC 1997:12).

In jurisdictions where corporatisation does not exist (such as NSW and SA) direct competition of this sort is not possible. The public and private sectors still operate relatively independently. In Victoria the government opted for yet another model which created a statutory based independent monitoring agency to oversee a public corrections agency and private operators (see Daly 1997 and Van Groningen 1997). This underlines the point that where a corrections system is structured so that private and public sectors can submit tenders to design, construct and manage facilities, there is the possibility for system wide improvements. Again, it would appear to be the opportunity for competition which encourages innovation, at least for those groups/consortiums that wish to successfully win the right to manage centres. It is the presence of competition and market-testing that allows for improvement, not the involvement of the private sector as such.

Harding conceptualises improvement as a transfer of innovations from the private to the public sector through either osmosis or the threat of competition. The catalyst for the improvement of the public sector is the private sector's superior performance. This approach has one important assumption in that it views reform as occurring in a unidirectional way flowing from the private to the public sector. Evidence from Queensland does not support this model.

My own research into the Queensland prison system shows that commercial interests have restricted the operation of freedom of information legislation and increased the use of defamation which stifled public debate and decreased levels of accountability (Moyle 1998a). (The point relating to the impact of commercial confidentiality on freedom of information legislation has received detailed evaluation by Freiberg 1997).

On the basis of internal qualitative comparisons it is unclear whether the private sector is providing better quality regimes. Comparisons between Borallon and Lotus Glen Correctional Centres showed that Lotus Glen (a public centre) developed a more conciliatory management style, had a better quality prison environment from an inmate's perspective, provided more rehabilitative programs, introduced case management more successfully and had more community involvement in decision making (Moyle 1998a). Other evidence supports this finding. In the case of *Jarvis v Australasian Correctional Management Pty Ltd* a judge found that ACM had failed to reach mandatory minimum standards in a range of operational areas and awarded nearly \$200,000 in damages to an employee (see Moyle 1998b).

The point of these illustrations is to stress that for the weak and strong aspects of the two systems to emerge, there must be appropriate regulatory structures which promote the transfer of ideas between both components of the system. It is adequate regulatory models and ongoing accountability which are pre-requisites for genuine competition, not the involvement of the private sector *per se*.

## Conclusion

Cross-fertilisation is a useful way to identify the possible source of some elements of correctional reform. It is suggested that more evidence is needed before the utility of this theoretical model is able to be tested. In particular, a broader conception of the positive aspects of the public sector need to be incorporated into the model. In other words, the model should not be used exclusively in a unidirectional sense. The debate between Harding and Bottomley and James highlights that identifying the systemic impact of any single policy initiative, even one as visible as privatisation, is fraught with difficulties. Correction systems (like most bureaucratic organisations) are complex. Individuals who make key operational and policy decisions are influenced by external developments (eg. riots, escapes) and bureaucratic priorities (eg. cost cutting). Often the introduction of market testing, benchmarking and public sector reforms such as corporatisation, have occurred simultaneously with private sector involvement. The lack of any apparent logical development in the policy process would count against the validity of a single causative theory such as the private sector leading to innovations in the public sector.

Putting the issue of causation aside and supposing a particular innovation was transferred through cross-fertilisation, such developments may be of limited value. There are significant structural differences between correctional jurisdictions in regulatory and operational areas. These observations are not intended to scuttle the enterprise of applying cross-fertilisation theory, but point out that specific jurisdictional developments may not be readily applicable to other correctional systems. In the end that may not matter. Given the complexity of correctional changes, cross-fertilisation theory may be impossible to prove (or disprove) unless wider access is given to deliberations and documentation within bureaucratic organisations and private companies. Only then can the basis for decision making be evaluated and the causative issue explored.

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