

The market revolution in criminal justice

Mary Corcoran introduces this issue of *cjm*

New forces appear on the scene, but they have been marshalled by old assumptions. (Marquand, 1997)

Two events coincided at the end of May 2014 which illuminate contrary directions in thinking about the future of our social economy. The first was the conference on Inclusive Capitalism, convened in London to ponder how markets could be rebalanced to be more inclusive and redistributive. The second was the confirmation by the Ministry of Justice that the public Probation Service would be dissolved on 1 June 2014. It is succeeded by Community Rehabilitation Companies (CRCs) which, according to the current shortlist of bidders, comprise consortia of security corporations in partnership with large charities and social enterprises. These CRCs will take over three quarters of work with offenders in the community deemed to be of 'low risk', leaving a much reduced, new National Probation Service to maintain responsibility for 'high-risk' offenders. Without stretching coincidence to a point of conspiracy, their concurrence makes a striking contrast between those who wish to shepherd the global economy, post crisis, towards stability and fairness, and those for whom the remedy to the inequities brought about by decades of free market policies is even more market liberalism.

The marketscape

The controversy surrounding marketisation can be traced back to wider debates about the present and future scale of absorption of our social institutions, ranging from publicly-owned services to civil society, by private, profit-oriented interests. Since the 1990s, relationships between governments, capital and civil society have been structurally transforming, bringing far-reaching changes. This shift is exemplified by the rise of a mixed market in the criminal justice sector, where commercial, and latterly charitable, providers are contracted to augment state services (as in the case of privately managed prisons and detention centres), service existing institutions (court translation, prisoner transport or tagging, community-based supervision, for example), or replace them (as with the Probation Service).

Today, discussion about the market revolution in criminal justice has been rendered more contentious by successive phases of privatisation, outsourcing, and deregulation in the UK over three decades. Proponents justify these as the painfully necessary application of commercial shock to reform moribund state services. Privatisation, of course, is one aspect of a broader cultural and political alignment of institutional and social behaviour with the laws of the market. More pragmatically, the lure of market solutions has gained

currency among centre-right and centre-left governments (with some marginal differences) in the UK and elsewhere in pursuit of the elusive alchemy of greater efficiency, cheaper costs and better services.

Undoubtedly, too, greater competitive openness and cultural transformation have been championed by proponents of public sector reform, including the objective of disciplining 'vested interests', which might have included for-profit providers but was explicitly aimed at professional associations and trade unions. Julian Le Grand (2007), who advised New Labour on public sector modernisation, proposed that direct accountability to consumers would curb the professional privileges that inhere with provider-led public service hierarchies. Greater direct public accountability creates equality and mutuality of interests among *all* stakeholders, he argued. Marketisation is thus quintessentially democratic in handing consumer choice and responsibility from the state back to citizens and providers.

By contrast, critics have equated the elevation of market forces with an attack on collective welfare, the transfer of public resources to private pockets, and the erosion of a public sector ethos or altruistic values. It is argued that free market concepts and techniques do not transfer unequivocally to the voluntary or public sectors, especially to criminal justice, which is discharged with the grave responsibilities of punishment by rule of law. Market distribution systems have historically failed to meet significant areas of human need where there is no obvious opportunity to acquire profits or capital. As such, public services evolved because of market failure.

Each position is prone to oversimplify the picture. This has not been helped by the rancorous political rhetoric and the sometimes risible claims that this is all in the cause of rescuing the welfare state which have emanated from Conservative, Labour, and Liberal Democrat ministers. Elsewhere, I have identified ideological and technocratic prerequisites for converting non-market sectors into profitable markets which have been deployed by successive governments in recent decades (Corcoran, 2015). These include:

- Conflating stubbornly high rates of imprisonment and reoffending with the inadequacies of criminal justice agencies, and by extension, with the failures of public service models.
- Encouraging the involvement of for-profit and voluntary sector providers as essential actors in crime prevention and security.
- Converting goods or services produced by the state into commodities which can be contracted out to other parties.

- Developing competitive service markets which will foster bidding wars among potential providers, irrespective of sector.
- Rationalising services to encourage co-production between adjacent private and public competitors. This includes 'inter-agency' partnerships where private and public services 'share' the same clients or jointly occupy the same premises, for example.
- Applying managerial techniques for measuring and evaluating performance by public agencies, allied to a punitive culture of league tables, naming and shaming the 'failing' ones, and exploiting the data to further privatise them.
- Responding to lobbying from for-profit and voluntary sector interests to deregulate service markets.
- Moderating the rules or specifying different targets, outputs and governance for new entrants to the market.
- Finally, the state underwrites the risks associated with the transfer of public resources to private interests.

This edition of **cjm** marks the first anniversary of the launch of the competition to bid for contracts to deliver probation services under the banner of Transforming Rehabilitation. Despite the heat of the debate, the deployment of concepts of marketisation remains inconsistent and contested. **Kevin Albertson** steps back to consider the idealistic grounding of neoliberalism in the work of Milton Friedman, who posited that market economies establish equilibrium and individual freedoms with minimal regulation. Albertson concludes, however, that 'free markets are by no means adequate to align reasonable social goals ... with the pursuit of corporate profits'.

Gary Craig explores how the accelerated flows of goods, services, and people is matched by the exploitation and commodification of human labour in our contemporary global economy. 'Slavery, in fact, never ended', but pervades the clothing, food, hospitality services and construction industries, as well as illicit trafficking markets. As with other contributors, Craig concludes that efforts to regulate human trafficking are weakened because legislators also wish to avoid curbing free trade.

The criminogenic impact of deregulation has become evident after several well-publicised failures in service contracts from Olympics security to tagging, and poor performances in the private prison and detention estates. The vigilance of the House of Commons' Justice Committee and the Public Accounts Committee has shown how regulatory measures are often ineffective in counteracting 'implementation gaming' or 'cream skimming' (the selection of preferential clients) by contractors. Experience from the US shows that all sectors - public, private or charitable - are susceptible to perverse incentives thrown up by deregulated market competition (Salaman, 1987).

Ed Cape examines one aspect of the commercial 'inter-relationships and inter-dependencies' between the police and business. He focuses on the rising trend by which some police forces pursue investigations in private

criminal prosecutions for which they receive up to a quarter of any compensation payment. The problem is less with private prosecutions as a legal mechanism, Cape concludes, than with 'the obvious danger of arrangements by which the police can generate income from pursuing cases on behalf of a company'.

Taking such conflicts of interests in another direction, **Simon Bastow** examines the shape of the market for criminal justice services, arguing that it resembles a 'mature oligopoly' dominated by four private firms (G4S, Serco, Sodexo, and GEO Amey). Despite efforts to diversify the supply chain for resettlement services under the Transforming Rehabilitation programme, the shortlist for the CRCs 'still shows strong dominance of single firm bidders'. Given the lack of transparency of the contracting out system, **Jenny Chambers** has assembled a dossier of misdemeanours and harms occurring in the privately-run prison estate. Whilst not unique to the private sector, their frequency and severity contradicts the purported efficiency and safety of contracted-out prisons.

If breaking up the dominant role of the state in public services is intended to stimulate the emergence of alternatives to our present system of dispensing with 'offenders', **Sarah Lamble** argues that substitute systems are susceptible to becoming attenuated, fragmented and reactionary. 'Well intentioned alternatives' can and do replicate the normalising and punitive foci of 'mainstream' criminal justice policy, rather than 'addressing the social, economic and political conditions of harm'. She concludes with some principles by which organisations, especially from the voluntary sector, might assess their willingness to participate in offender management under current arrangements.

In the topical issues and comment section, **Daniel McCarthy** analyses the current context of reductions in the youth justice system. **Jamie Grace** questions the efficacy of the Domestic Violence Disclosure scheme which, he argues, is in doubt with some public protection professionals, and civil liberties and victims' organisations. **Becky Clarke** points out that current criminal justice interventions cannot reduce 'crime' and the government's failure to recognise the harms created by such a system. **Andrew Henley's** prize-winning essay is featured, and **Chris Hignett** reviews Beth E Richie's new book. ■

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References

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