

An aerial photograph of a city, likely in the United States, showing a dense residential area with many houses and trees. In the center of the city, there is a large, multi-story institutional building complex, possibly a prison or a government facility, with several interconnected buildings and a large parking lot. The sky is clear and blue.

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'Be careful what you ask for': findings from the seminar series on the 'Third Sector in Criminal Justice'.

Dr Mary Corcoran, Keele University, Staffordshire, ST5 5BG.

Background

In recent decades, several countries have transferred some welfare and penal roles from the state to community-level actors including for-profit and third sector interests. This handover is premised on a blend of neoliberal political rationalities for restructuring state welfare systems as 'mixed service markets' in late capitalist societies and communitarian aspirations to liberate the untapped social capital of the community and voluntary sectors.¹ Both the New Labour and Conservative-Liberal Democrat coalition governments have pursued programmes for engaging communities and civil society actors in determining local crime, justice and community safety strategies. Empowering groups, localities and communities to meet more of their own social and justice needs, the argument runs, fulfils public expectations more effectively and legitimately than the central state can achieve. Not only does self-reliance foster greater diversity and pluralism in developing local justice, it is supposedly more responsive to the needs of marginalised social groups (such as women, offenders and 'minorities') who have hitherto been neglected by criminal justice and social welfare.²

The key trends shaping policy frameworks for involving more diverse groups in offender-related work at community level can be summarised accordingly: firstly, they reflect a *localism* agenda in which successive governments have devolved responsibility for discharging ancillary and, increasingly, core roles in reducing crime and reoffending to the most local administrative level. Secondly, *diversification* describes the strategies through which the National Offender Management Service [NOMS] has sought to raise extra capital, expertise and labour through collaboration with for-profit, community and voluntary sector service providers³. Thirdly, the reconfiguration of criminal justice service networks is being encouraged through *marketization*, evidenced by the introduction of competitive commissioning and the

removal of legal and political constraints on non-state agents from direct involvement in treating, rehabilitating or supervising offenders in the community and in custody.⁴ Fourthly, governmental interest has converged on stimulating *partnerships and consortia* comprising agencies from the public-, private-, and voluntary sectors to deliver support and resettlement services. The 'rehabilitation revolution', for example, proposes fundamental changes in the locations and methods of disposal of offenders from the costly and ineffective prison system to community-based treatment and supervision involving for-profit and voluntary sector agencies.⁵ These trends are also stimulated by the requirement under the Comprehensive Spending review that NOMS finds savings of fifteen per cent from its budget.

At first sight, these policies represent welcome responses to decades of lobbying on the part of community- and voluntary sector groups for parity of access to public service contracts, and for recognition as an alternative welfare system which has compensated for failures in market- and state systems to meet the complex needs of offenders and victims of crime. However, the prospect of closer engagement with both government and private sector providers has also generated ambivalent, vexed and cautious responses. Despite general interest in, and support from, voluntary sector organisations (hereafter VSOs) for these initiatives, they have also generated fundamental concerns that they are entering uncharted territory. The crux for community and voluntary sector is that the different strands underlining current policy are inherently in conflict. Whilst the 'Big Society' programme suggests that real responsibility is being handed to communities and voluntary bodies, the drives towards marketisation and the commodification of public services exposes local as well as national providers to the imperatives of competitive and commercial discipline. It is not at all clear how these policy objectives are reconciled.

1. Norman, J (2010) *The Big Society: The Anatomy of the New Politics*. Buckingham: University of Buckingham Press.
2. Local Government Information Unit (2009) *Primary Justice: An Inquiry into Justice in the Communities*, London: LGIU.
3. NOMS (2012) *Commissioning Intentions*. London: NOMS.
4. Ministry of Justice (2011) *Competition Strategy for Offender Services*. London: HM Government. <http://www.cjp.org.uk/publications/government/the-competition-strategy-for-offender-services-13-07-2011/>
5. Ministry of Justice (2010) *Breaking the Cycle*, London: Ministry of Justice.

This article presents the state of the debate about the current and future role of community and voluntary sector actors' engagement in criminal justice fields of work. The discussion draws on the research literature and proceedings of six meetings of a seminar series on the 'Third Sector in Criminal Justice' between February 2011 and June 2012.⁶ The series was attended by participants from voluntary and community organisations, local and central government departments, statutory services, academics and researchers who deliberated on several contemporary challenges regarding the participation of voluntary workforces, the role of the sector in penal reform or service provision, and the wider implications of mixed economies in criminal justice, among other topics. Discussions embraced the legal, contractual and political implications of commissioning, contract and audit regimes, and partnership/co-producer relationships. Participants also explored questions of trust, power, identity and social roles, as well as perceptions of risk, compromise, resistance and adaptation to current developments. Finally, the series identified long-standing and ongoing critical questions about power, equity and relationships in an 'all sector' penal landscape.⁷

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Cooption or negotiation?

Two positions tend to dominate the debate about non-profit organisations working with the formal criminal justice system. The first stresses the inevitable risks of VSOs being co-opted into the normative, criminogenic or political orbits of their paymasters, whether state, philanthropic or corporate funders. As a consequence, even those organisations that initially set out to preserve their independence or alternative credentials are invariably suborned by relationships of dependency, compromise and accommodation. A second approach proposes that VSOs knowingly negotiate a series of implicit and explicit inequalities between funders and service providers. Not only do their

activities bring about tangible improvements to the lot of offenders, victims and communities in the criminal justice field, the argument runs, they play an essential role in 'supplementing, complementing and extending informal and statutory arrangements *but also* sometimes meeting new needs and using different approaches'.⁸ Several speakers focused on the conflicting implications that inhered with the position of the voluntary sector as a 'critical friend' of government. However, there was a strong consensus that retaining their duality of roles as service deliverers and as campaigners was non-negotiable, however much in contention. This was not simply in order to preserve the sector's distinctiveness, but it allowed VSOs to perform social functions as 'bridge-makers' between policy makers and (often) disenfranchised communities. Additionally, it was asserted that they play irreplaceable roles in delivering services and shaping how policy is made as well as translated into practice.

Nevertheless, claims that the sector is always and innately progressive are open to question, especially given the constraints on penal reformism and the potential for collusion with state punitive agendas, whether intentional or not. Citing the Canadian experience, Kelly Hannah-Moffatt described how radical reforms

initiated by the Elizabeth Fry Societies, initially embraced by the prison service in the aftermath of critical public inquiries, were appropriated by security and punitive agendas.⁹ Cautioning participants to 'be careful what you ask for: you might get what you want', she outlined how innovation was institutionalised by the exclusionary strategies for accrediting programme used by prison authorities alongside the selective use by government of approving 'spokespersons' from the sector, while discrediting critics. Ultimately, prison reformers failed to challenge their own assumptions about the beneficial consequences of engaging with policy and prison administrative processes. In the UK context, Stephen Shaw¹⁰ noted that that for all the virtues of innovation and flexibility associated with community and voluntary

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6. Over 150 participants attended the series, which was funded by the Economic and Social Research Council and jointly coordinated by Leeds and Keele Universities (Hucklesby, Corcoran and Mills). The views in this article reflect the author's interpretations. For full reports of the proceedings see: <http://www.law.leeds.ac.uk/research/projects/the-third-sector-in-criminal-justice.php>
 7. The seminar was run according to Chatham House rules, whereby the discussion is reported but not attributed to individuals. Any speakers cited here are already named in the public reports.
 8. Poole, L. (2007) 'Working in the Non-profit Welfare Sector: Contract Culture, Partnership, Compacts and the 'Shadow State'', Mooney, G. and Law, A. (eds) *New Labour/Hard Labour: Restructuring and Resistance Inside the Welfare Industry*. Bristol: Policy Press. pp233-261.
 9. Hannah-Moffatt, H. (2011) 'Reflexive Engagements: The Evolving Dynamics of Penal Reform and Community Involvement', presented at the seminar 'Penal Reform in service provision', University of Birmingham, 13 September 2011.
 10. Shaw, S. (2011) paper given to the 'Penal Reform in Service Provision' seminar, University of Birmingham, 13 September 2011.

sector groups, they could also be ideologically inflexible and self-preservatory. The sector's refusal to get involved with the electronic monitoring of offenders was both an example of its 'conservatism' and handed the advantage to the private sector, he contended. Organisations also faced future challenges including the potential for 'capture' if it become increasingly difficult to campaign against a partner or funder, and because organisations will have to undertake punitive and coercive roles as well as the 'nice work' if they contract to undertake core penal tasks. Chiming with Hannah-Moffatt, Shaw noted that the 'community' has become a site for penal expansionism alongside the provision of prison places.

Whose community justice?

From a sociological vantage point, 'community' is a heuristic construct that artificially joins movable and baggy entities together. Too often, appeals to 'the community' become occasions for majoritarian self-righteousness preceding the explicit or subtle exclusion of the criminal 'other'. As Herbert comments: 'the assertion of the necessity of 'community' involvement in efforts to address such problem as crime is not a straightforward one'.¹¹ Because the 'crime and community' question is not self-apparent, it poses knotty problems regarding the representativeness and status of the 'active community', including who volunteers and who is volunteered upon? The second seminar considered the benefits and problems associated with volunteering including the recruitment and management of voluntary labour, identifying appropriate and inappropriate roles for volunteers, managing risks, and levels accountability and responsibility expected of lay citizens in discharging criminal justice roles. There was a strong consensus that volunteer labour should not substitute for paid professional jobs, nor that the sector should become a cheap alternative utility in the light of cuts to local services.

A primary virtue that the community and voluntary sector frequently lays claim to is that it is more socially representative of, and closer to, the concerns of communities. Yet, since the Deakin Commission on volunteering (1996), there have been concerns about the

narrow social demography of volunteers, sometimes pejoratively summarised as middle aged, middle class, female and white. Recent studies indicate that these remain the resilient core of voluntary participation. There are greater levels of participation in volunteering among those aged 35-49 years. Participation is higher in wealthier parts of the country. More women than men volunteer as do more 'able bodied' persons than those with a long-term illness or disability. Managerial and professional workers are more likely to volunteer, followed by small employers, supervisory and technical workers, full-time students and those who have never worked or are long-term unemployed.¹² Black and minority ethnic volunteers tend to leave service in criminal justice earlier and in greater numbers than other groups. Several factors contribute to marginalisation of minority constituencies including the unforeseen consequences of mainstreaming BME organisations. This can detach them from their community and political roots (especially among communities which have been historically wary of engagement with criminal justice or political authorities). There were concerns that the double jeopardy encountered by Black and minority ethnic groups in the criminal justice system more widely might recur in the field of

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voluntary activism. 'Double jeopardy' refers to the over-criminalisation of Black and minority ethnic persons (especially youth) alongside the concomitant neglect of their security and criminal justice needs. In short, minorities are over policed and under protected. The ensuing discussion considered the problems of recruiting volunteers from one section of the community to 'police' other groups. A discord was identified between the aims of 'social engagement' with offenders, which largely motivated volunteers, and the potential for their becoming involved in coercive or quasi-punitive roles.

Volunteering by offenders: views from prisons and community-based peer-mentoring projects.

Issues about whose voices are heard as members of the 'community' and as 'citizens' were also pertinent to discussing the role of offenders and ex-offenders as volunteers. Ironically, offenders are least likely to be

11. Herbert, S. (2006) *Citizens, Cops and Power: Recognising the Limits of Community*. London: University of Chicago Press, p5.

12. NCVO (2011) UK Civil Society Almanac, 2010: 'Workforce: Formal volunteering per annum'. London: National Council for Voluntary Organisations.

thought of as active agents in volunteering. Research on the Samaritans 'Listener' programme, conducted by prisoners in prisons, and on peer-mentoring programmes in the community indicated that volunteering can enhance social capital, which is a precondition to 'making good' on the part of offenders.¹³ Offenders who volunteered reported perceived increases in skills, confidence and self-esteem. Because they share a common status and struggles as former offenders, peers offer a unique empathy and can therefore bridge a gap between staff and service users. Many mentors had made the journey from service user to volunteer to paid staff. Identity arose as an important theme with reference to who constitutes a 'peer mentor' and whether this changes over time. It appears that acting as a mentor or a mentee allows offenders to undergo shifts in their personal identity in order to make the transition from offender to resettled person.

Yet volunteers who have been involved with the criminal justice system have yet to attain an equal voice and full status as volunteers or citizens. The unique challenges associated with volunteering with a criminal record or as an offender revolve around constraints because of their status as probationers and prisoners. Operating under close probationary supervision or as a volunteer in the prison environment are crucial distinguishing factors from 'regular' volunteering. Jaffe found that the prerogatives of prison security shape the nature of confidential peer support in prison. Listeners reported that there were few private places for confidential discussions, for example. Unlike Samaritans on the outside, Listeners, who are trained Samaritans in prison, uniquely sharing the closed environment of the prison with their clients. They are known to their clients and under constant demand. Moreover, Listeners constantly struggle to balance the potential suspicion of peers that they are 'grasses' with dependency on the goodwill of staff to discharge their roles. More widely, security procedures can be used to exclude VSOs from prison premises. Consequently, offender-volunteers can experience burnout and exploitation, while many programmes need to develop more appropriate exit strategy protocols for those who wish to leave.

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With the likely expansion of voluntary sector work with offenders (Mills et al, 2010), and the continued reliance upon volunteers in victim-oriented work, crime prevention, community safety, the composition of voluntary sector workforces, their motivations, values and conceptions of their roles is a prime area of research. This is all the more important because criminal justice agencies will continue to want to engage diverse demographic groups as especially important to working successfully with offenders and the wider community.

A 'mixed' economy?

Neo-liberal orthodoxy relies on several recognizable justifications including the importance of competition for 'driving up the quality' of public services, the superiority of market mechanisms over state bureaucracies in distributing social goods, and the capacity to link payment and the social value to measurable outcomes. Concomitantly, 'Big Government' must be pared back by decentralising authority and transforming the role of governments from that of primary social provider to catalysing all sectors into solving complex social problems. In addition, consumer choice is viewed as empowering citizens by offering them more control over public services. These principles, initially promulgated by New Labour as mechanisms for reforming prisons, the police and probation services, are central to

the current government's framework for integrating VSO's into service delivery through competitive commissioning and encouraging 'all-sector' (public-, private- and voluntary) participation in liberalised criminal justice service markets.

The ensuing discussions were largely framed within these normative paradigms, signalling an apparent consensus that the pace of marketisation has left little scope for stakeholders other than to adapt, perish or disengage. It was argued that the mixed economy presented both favourable and unfavourable conditions for different providers. For example, competition presented an unprecedented opportunity for providers from different sectors to enter into constructive partnerships and enhance each other's strengths. Private enterprise partners in bidding consortia could provide the initial investment outlay and

13. Jaffe, M. (2011) 'Volunteering by Prisoners'. Paper presented to 'The Third Sector in Criminal Justice, ESRC seminar, Keele University, Staffordshire, UK, June 28, 2011. Gamble, D. (2011) 'Development of ex-offenders volunteering: Some views on the process, challenges and benefits'. Paper presented to 'The Third Sector in Criminal Justice, ESRC seminar, Keele University, Staffordshire, UK, June 28, 2011.

cash flow, thus bearing the financial risks and allowing VSO partners to supply skills and services. Several arguments were made as to why a commissioning approach could be beneficial to justice services, including claims that greater 'success' could be achieved for less cost, and that the involvement of more competitors would raise the quality of services, bring about more innovation and reduce obstructive bureaucracy. Moreover, VSOs were natural contenders as they had always operated within mixed markets. Indeed, the current direction of policy was continuation of existing practice because offenders already accessed services from a wide range of providers acting collaboratively.

The prospect of receiving 'payment by results' as distinct from payment for service provided or by clients generated considerable heat. The PbR model requires that providers carry the financial risks and payment is only made on measureable outcomes — currently defined by the reduction in reoffending rates as agreed between providers and NOMS. Four different PbR methods currently under evaluation at HMP Peterborough and HMP Doncaster were discussed as opportunities for NOMS to gather evidence of 'what works', with a view to scaling up successful methods nationally. 'Payment by results' (PbR) was presented as a viable solution on the basis that it sets transparent performance and outcome thresholds on which payment will be made. In turn, this stimulates providers to offer value for money whilst also giving greater discretion and autonomy for providers to decide how services will be delivered.

Critics of these claims argued that this system of funding made it more likely that providers would conform to marketised behaviour by 'cherry picking' client groups that are thought to be most likely to satisfactorily complete programmes. PbR did not reflect the diverse needs of service users, and that the hard binary measure (did/did not reoffend) seemed inimical to measuring desistance and the 'distance travelled' by offenders, as well as the value added by particular providers. In particular, the needs of hard to reach groups and those already socially and economically excluded, especially women, would be further marginalized by the commissioning mode, it was claimed.

The new landscape was thus spoken of as offering unprecedented opportunities to improve services for the benefit of offenders, the wider community and the public benefit more widely. However, delegates

challenged the claims that the current commissioning model was the most appropriate way to achieve sustainable mixed service partnerships. Several political objectives were identified in the government's determination to achieve a mix in criminal justice provision and governance. A central concern related to a growing recognition that the *mixed economy* may in practice result in private sector dominance of the service landscape. In this vein, it was observed that partnership working could in practice become contractual working or sub-contractual working for third sector partners. Criticism was also focused at the quality and type of services provided and whether the pressure on services to be commercially viable would be compatible with meeting the needs of clients. Additionally, the dominant influence of private sector values, notably the profit motive, is predicted to

accelerate the trend towards selecting 'mainstream' client groups with the most stable rate of return, thus diverting VSOs from accessing minorities or hard to reach constituencies. Thus, the core attributes which VSOs claim for legitimating their social role — independence, advocacy, client-centredness and trust in the community — are at risk.

Under these circumstances, commissioning and marketization are thought to hasten the current trend whereby small agencies are crowded out of the market, while large-scale charities emerge that are indistinguishable from large

corporations. It was observed that voluntary sub-contractors can be used by primary (often commercial) bidders as 'bid candy' to win contracts. Overall, VSO providers could be susceptible to a loss of autonomy and 'mission drift' as their survival becomes increasingly dependent on the priorities of the market, directed by criminal justice policy, rather than service user needs. Private sector representatives concurred that such concerns were material, given that 'niche' or specialist work does not necessarily attract funding. Meanwhile, VSOs must adapt to exposure to the monopolistic behaviours that are stimulated by 'free' markets, as well as risk becoming targets of mergers or acquisition by the private sector. Whereas the dominant concern in previous decades was that VSOs were continually subject to co-option by their state funders, their current challenge will be resist the turbulence of markets and the amorphous influence of large market players. In this sense, the old burden of dependency on state funders has been substituted for dependency on market funders.

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Critical reflections:

The seminar series identified and challenged several contestable, self-fulfilling myths that have become normalised within voluntary and community sector discourse. These narratives not only reinforce problematic assumptions about the nature of volunteers and volunteering, but they inform misconceptions in policy about the motives and role of the voluntary sector, especially as how far it is willing to expedite political projects. Jurgen Grotz introduced the concept of the 'benefit fallacy' as a critical framework for deconstructing conventional narratives of volunteering as a panacea, or all-inclusive solution to complex social and policy issues¹⁴. The dangers of oversimplified concepts of 'helping offenders' were all the more important when one considers their multiple needs and how these might or might not be met by volunteering projects, he argued. Grotz identified some key issues:

- ❑ Firstly, the assumption that volunteering is universally beneficial for all participants (volunteers and clients) must be counterbalanced with the risks and detriments that occurred in practice, but which rarely came to public attention.
- ❑ Secondly, attention must be paid to potentially harmful or adverse affects of volunteering in criminal justice arena more broadly.
- ❑ Thirdly, VSOs and other stakeholders must acknowledge and prepare for the contingency that as the demand for voluntary involvement with offenders increases, so also do the risks of managing the activities and behaviours of volunteers fall to individual agencies.

Agencies were thus being obliged to develop 'quasi-employment' relationships with volunteers alongside legal obligations to paid staff, clients and contractors. They were obliged to establish procedures for dealing with misconduct, bullying, harassment, breaches of confidentiality and safety practices, discrimination and disrespect for clients. Additionally, volunteers were also subject to burnout, post-traumatic stress, injury or death while agencies working in a criminal justice framework would also have to adapt their practices with a view to 'public protection'. These concerns are eliciting complex and sometimes adverse changes within VSOs.

The final deliberations foregrounded several critical themes that will continue to inform dealings among

communities, charities and other stakeholders. A primary observation is that there is little room for avoiding the significant influences of market players as well as the state in the future development of criminal and social welfare frameworks. The role of successive governments as 'enablers' of the sector has produced some unforeseen strains. Participation campaigns have not increased volunteer numbers (which remain static) but the state is asking civil society to bear more social demands. Evidence suggests that volunteers do not participate because they wish to replace public services. The contentious issue of criminal justice exceptionality, i.e. that is whether the criminal justice field is different from other policy fields such as social care or housing, for example, is largely glossed over by advocates of the current status quo. The question as to how far, and to what degree, for-profit and citizen groups should be involved in criminal justice disposals, which invariably imply punishment and coercion by rule of law, poses significant ethical, legal and socio-cultural challenges for communities. Political rhetoric and official reports tend to idealise the contribution of the voluntary sector without recourse to clear evidence as to the unique challenges and constraints that inhere with their involvement in the criminal justice arena. With regards to payment by results [PbR] the prospect of paying providers based on narrow indices of 'reducing reoffending' is based on a logical fallacy which sets volunteers, VSOs and offenders up to fail. Rewarding providers on the basis of a crude offending/reoffending binary does not stem from a valid criminological proposition but reflects an actuarial conundrum with regards to how to monetise service activity. Compelling trustees, workers, volunteers and to provide evidence of binary outcomes without reference to wider contributions, such as enhancing life chances, life choices or health, for example, is thought to reflect a misconception of what voluntary interventions do. Just as problematically, claims that recruiting more offenders into volunteering creates a route into desistance or reduced offending behaviour and lifestyles are not unequivocally supported by research. At most, the literature indicates that any links between volunteering and outcomes such as reduced criminal behaviour are consequential. Overall, the consensus of participants is that voluntary engagement in criminal justice is a complex arena of social activity that cannot be straightforwardly treated as an extension of state functions of crime and security management.

14. Grosz, J. (2011) 'Deconstructing the Panacea', paper presented to 'The Third Sector in Criminal Justice, ESRC seminar, Keele University, Staffordshire, UK, June 28, 2011.