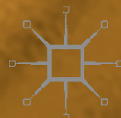
THE PRIVATE SECTOR AND CRIMINAL JUSTICE

Editors

Anthea Hucklesby . Stuart Lister



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1

The Private Sector and Criminal Justice: An Introduction

Stuart Lister and Anthea Hucklesby

This book brings together a collection of chapters that explore the relationship between the private sector and criminal justice. This is undoubtedly a controversial topic, which excites a range of fears, consternations and anxieties among expert and lay audiences. It gives rise not only to fundamental normative and ideological debates about how societies ought to respond to 'crime' and administrate 'justice' but also to descriptive and analytical questions concerning how criminal justice structures, agencies and processes function and, crucially, with what effect. It is also a subject that often generates highly polarised debates, pitching the worst excesses of the state against the most grotesque failings of the market. Hence, objections over the curbs to freedom and liberty of an over-powerful, over-bureaucratic and centralised state sit alongside and jar against normative concerns about the extent to which the intrusions of the market threaten public interest goals of ensuring ethical, proportionate and fair criminal justice practices. The contentious nature of these debates is unsurprising. Criminal justice interventions are underpinned by recourse to coercive force and have significant implications for the

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freedom, rights and life chances of citizens. How criminal justice as a set of institutional practices is authorised, exercised and regulated, therefore, has crucial implications for the lived experience of citizens. Introducing private, market-based values and incentives into this highly politicised endeavour raises fundamental questions about the extent to which these accord with democratic and accepted values and the interests of the public, more broadly. The entanglements of state and market in how criminal justice responses are formulated and operationalised thus generate debates that attend to the very heart of the political, legal and social order.

Central to these debates are claims about the virtues and the vices of the public and private sectors which emanate from both sides. The debates are shaped by the different and arguably irreconcilable norms and values attributed to each (Jacobs 1994). Whereas the public or governmental sector is widely held as acting on behalf of collective or 'societal' interests, the private sector is routinely contrasted as serving more individualistic, corporate and profit-motivated interests (Johnston 1992; Jones and Newburn 1998). This distinction informs many of the key areas of debate, as it resonates powerfully through a series of fundamental questions about 'how justice is done', 'how it is perceived' and, crucially, 'whose interests it serves'. Yet the extent to which the public and private sectors can be simplistically characterised in a crude binary comparison has become increasingly questioned (Cohen 1985; Weintraub 1995). A series of political and economic transformations have led to a blurring of the boundaries between the two sectors, resulting in the public-private distinction becoming empirically less clear and conceptually more complex. Indeed, making sense of the effects of these unfolding developments requires new ways of thinking that recognise the complexity of contemporary interconnections between the public and private sectors. For example, the 'contracting out' (or 'contracting in') of public service functions by the state to private sector agencies queries the extent to which these services can be characterised as wholly 'public'. The widespread adoption of private sector management techniques into public sector organisations has also eroded differences between sectors. Likewise, the frequent cross-over of personnel between the two sectors blurs rigid demarcations in the values, cultures and identities of their respective workforces (White 2010). It is also important to note that 'the private

sector' particularly is heterogeneous, encompassing a wide variety of organisations and ways of working. The 'public sector' too is diverse particularly when viewed from a global perspective. Devolution and the localism agenda in the UK are also ensuring that the public sector needs to be viewed increasingly as 'public sectors'. The waters are muddied further by the changing nature of the voluntary sector and the growth of different types of organisations, such as social enterprises, which blur traditional distinctions between public, private and voluntary sectors by bringing a public service ethos into a for-profit operating model (Corcoran and Hucklesby 2016). As the chapters in this book show, 'criminal justice' has been widely caught up in these broad processes of change, resulting in a complex assemblage of public, private and voluntary sector agencies functioning interdependently in various ways and at various points in the criminal justice process.

The chapters in this collection demonstrate the ongoing need for new empirical enquiry and analytical reasoning, as well as the evolving nature of contemporary debates. Whilst only the more ardent libertarians would argue that 'criminal justice' should not be a core function of the state, current debates tend to explore the influence of neoliberal forms of governance and administration on how that responsibility is fulfilled and with what effects. Central to these debates has been the critical shift of the post-modern era from 'government to governance', in which the act of governing is no longer tied to monopolistic 'command and control' modes of government, but draws on the capacities of a more pluralised or 'nodal' set of institutional formations (Rhodes 1997; Rose 2000). A key allied trend has been the rapid marketisation of public services, resulting in the emergence of significant commercial opportunities for the private sector to exploit. In this, neoliberal traits of governing have brought to the fore a range of strategies and policy doctrines promoting and embedding ideologies of 'economic liberalism', in which public bodies have been exposed to market disciplines and quasi-markets have been established across the public services, for example, through the widespread introduction of purchaser-provider distinctions. As aspects of public service delivery have been increasingly transferred to the private sector, the role of the state has shifted towards 'steering' the activities of others rather than 'rowing' itself (Osborne and Gaebler 1992). A mixed economy of

service provision has subsequently emerged, bringing together coalitions of state, market and voluntary sector organisations to compete for market advantage, often in tangled but fragile webs (Crawford and Lister 2004a, b; Corcoran and Hucklesby 2016). Yet for some, as Mashaw (2006: 135) suggests, the growth of markets in public service delivery is not just conceptually destabilising, it is also ideologically upsetting.

Within this increasingly pluralised and marketised landscape, we have seen a proliferation of outsourcing arrangements in which the private sector is contracted by the state to deliver public service functions. These contractually governed arrangements have become commonplace in prison and probation services, but are also increasingly evident in the policing and security sectors where they are often referred to as 'business partnerships'. Whilst a variety of terms have been deployed to describe the context surrounding the growth of these large-scale public-private collaborations, including the 'hollowed-out state' (Rhodes 1994), 'new public contracting' (Vincent-Jones 2006) and 'government by contract' (Freeman and Minow 2009), they are often referred to under the rubric of 'privatisation'. Given there are different degrees of privatisation, such collaborations might be understood as a form of 'weak privatisation' (Cohen 1985: 64), or 'low-level privatisation' (Zedner 2004: 276), in which the state seeks to retain a degree of control. Yet the extent to which the concept of 'privatisation' adequately captures the breadth of contemporary ideas, policies and developments involving the private sector and criminal justice is debateable. As a concept, 'privatisation' is often loosely deployed to describe a wide range of processes and practices that structure the allocation of goods and services, from 'outsourcing' or 'contracting in' specific (inward- and outward-looking) services or functions of public bodies to the wholesale transfer of one or more public services to the private or 'for-profit' sector (Matthews 1989). It is thus a broad, container concept, the precise meaning of which is subject to much debate (see Starr 1988). Given this, the title of this book was chosen purposively to circumvent the definitional minefield associated with the term 'privatisation'. Moreover, we wished to avoid imposing an analytical straightjacket on our contributors, instead allowing them to develop and explore the concepts that they felt best captured the developments they wished to discuss. In so doing, our aim was to encourage expansive and open-ended

analyses of the broad range of contexts in which the private sector is, or has been, involved in the delivery of criminal justice functions. As such, the focus of this book is not 'privatisation' per se, but rather the myriad of questions raised by the shifting nature of relations between 'the private sector', 'the public sector' and 'criminal justice'.

Whilst there is a long history of entanglement between public and private sectors in the delivery of 'criminal justice' (Spitzer and Scull 1977), private sector involvement has expanded significantly over the last two decades. In the USA, for instance, since the advent of the first US private prison of the modern era in 1983, 'private correctional facilities' have become commonplace. In 2015 over 8 per cent (126,300) of the total prison population of 1.53 million were housed in privately run facilities, equating to 7 per cent of state prisoners and 18 per cent of federal prisoners, with 6 states housing over 20 per cent of their prison population in private facilities (Bureau of Justice Statistics 2016). In the UK, 14 prisons in England and Wales (and a further 2 in Scotland) are currently run by 3 private sector companies (G4S, Serco and Sodexo), resulting in 19 per cent of the UK's prison population being held in private prisons (Prison Reform Trust 2016). In addition, all of the electronic monitoring provision in England, Wales and Scotland is privately operated and many of the new Community Rehabilitation Companies, who are responsible for the supervision of all low to medium risk offenders in the community, are either lead by or involve private sector organisations. Furthermore, a range of 'back-office', 'middle-office' and more recently 'front-line' police functions add to the significant presence of private security personnel generally and in quasi-public spaces specifically. In 2012, for example, Lincolnshire Police signed a 10-year contract with the security company G4S for the provision of 18 functions, including inter alia the running of the force's custody services, force control room, crime management bureau, firearms licensing, criminal justice unit, human resources unit, fleet management and facilities and estates. The contract is worth in the region of £200 million, accounting for 18 per cent of the force's annual budget (see White 2014). As well as showing the breadth and depth to which outsourcing can penetrate a public police force, this pioneering initiative also reflects how companies with a history rooted in the security industry have diversified to supply a range of organisational support functions, often marketed as 'government solutions'.

Although there is a dearth of aggregated data on the size of markets in criminal justice globally, some indication is available from the scale of the operations of the leading multi-national corporations. G4S, for instance, with a global workforce of over 600,000 is the world's third largest private sector employer. In the UK alone it supplies a range of 'criminal justice' and 'care' services which include the management and provision of adult prisons and youth detention centres, court facilities, police custody suites, police call handling centres and immigration and detention centres. Similarly, in the USA, the Corrections Corp of America (CCA) operates within each link of the supply-side chain for incarcerating prisoners, from designing, constructing and managing prisons. Housing nearly 70,000 prisoners in over 70 prison and other detention facilities, most of which it owns, it is the fifth largest provider of correctional services in the USA, behind the federal government and three States. Furthermore, 'justice services' are increasingly being provided by global 'facilities services' conglomerates. One of the largest is Sodexo currently involved in both prison and probation services in England and Wales. Sodexo began as a food services and facilities management company in France and now employs 425,000 people in 80 countries (http://uk.sodexo.com). In 2017, it operated 122 prisons in 8 countries. In aggregate, the 'facilities' provided by these organisations cover large tracts of social, economic and political life. In the case of Serco, these include defence, transport, justice, immigration, health and citizen services and include both London's cycle hire scheme and prisons (https://www.serco.com/). Many private prison providers have profited particularly and significantly from the growth of the allied emergent market in the detention of asylum-seekers. For example, CCA has earned almost $700 million from contracts awarded by the US Immigration and Customs Enforcement Agency since 2008, which equates to 12 per cent of the total revenue it has earned from state and federal contracts over the period (Edwards 2016). Despite restricting its operations to the US context, in 2015 CCA reported $1.9 billion in total revenue and made more than $221 million in net profits. Clearly, potential profits are higher for those corporations supplying services to both criminal justice and security sectors and which are operating globally. For instance, it has been estimated that the global market for private contract security services is worth $240 billion, with the USA accounting for 26 per cent of demand (The Freedonia Group 2017).

Before outlining the structure of the book, in the remainder of this introduction, we summarise some of the key issues raised by public-private debates in this field and which are frequently discussed in the chapters that follow. As within other policy domains these debates tend to be framed by the 'comparative efficiency' of public-private sector performance, in which 'efficiency' is the sole criteria of assessment (Dolovich 2009). In this, proponents of private sector involvement tend to highlight a range of instrumental benefits arising from the introduction of competition within the supply of public services. On this view, market disciplines bring forward a range of desirable public policy objectives: driving change and/or greater adaption; increasing responsiveness and accountability; and garnering innovation across institutional practices. By contrast, the public sector is often portrayed as being overly burdened by bureaucratic, legal and political impediments. Whilst such claims can be subject to empirical enquiry, a key problem with this type of analysis is its failure to recognise that the connections between criminal justice and the state are not merely instrumental, they are also symbolic. Indeed, debates dominated by 'cost-effectiveness' and 'cost-benefit' analyses misleadingly treat criminal justice processes as merely functional business transactions. Yet the delivery of criminal justice functions or 'services' differs markedly from, say, that of refuge collection services owing to the moral and ethical dilemmas they raise. As the practice of criminal justice is intimately linked to the use of force, its interventions must be tied to legitimate political authority and tightly governed by state-prescribed legal norms and principals (Loader 1997). The apprehension of suspects and the punishment of offenders, for instance, require justification on moral and rational grounds (Materni 2013), but equally such actions need to be legitimately exercised, legally regulated and democratically governed. It is for these reasons that any perceived or actual withdrawal of state responsibility for 'criminal justice' is often viewed with deep suspicion.

Given the close relationship between the democratic governance of criminal justice institutions and their perceived legitimacy (Crawford and Hucklesby 2013; Tankebe and Liebling 2013), much of the debate has focused on the different accountability regimes of the public and private sectors. The contrast typically drawn, between the 'democratic accountability' of the former and 'commercial accountability' of the latter, points

to how public sector managers are accountable to elected political office holders through a series of principal-agent relationship chains, whereas private sector managers are directly accountable to their company executives and shareholders through corporate governance structures. Private companies must also demonstrate 'value for money' to those 'commissioning' their services, but this is a narrow and by definition 'private' mechanism of market-based accountability which excludes the general constituency of citizens or even those specific 'recipients' of their services (Mashaw 2006). It is in this context that some have argued it is a conceptual misnomer to describe the disciplinary effects of markets as a mechanism of 'accountability', as markets are designed to entrench 'responsiveness' to private consumers, not 'accountability' to those in authority positions (see, e.g. Mulgan 1997). More frequently, concerns are raised over the extent to which the private sector is exposed to legal, administrative and political scrutiny (Bovens 2005). For example, service delivery contracts are subject to commercial confidentiality clauses. This absence of transparency restricts not only evaluation of value for money but also assessments of the level of services which should be provided. Furthermore, in most jurisdictions private companies are exempt from the legal framework of freedom of information requests, although information about the 'public' services they provide is available via government departments. In the criminal justice context, for example, it is only recently that private sector contractors providing services to the police in England and Wales (e.g. in police custody settings) have become subject to the same external complaints process as police officers. By contrast, private prisons, electronic monitoring and the new Community Rehabilitation Companies are subject to the same regime of inspections by HM Inspectorate of Prisons and Probation (CJJI 2008, 2012) and complaints procedures and, in the case of prisons, the same independent monitoring boards as state-run services and institutions. National Audit Commission reports also attest to the fact that 'public' services provided by the private sector are not immune from scrutiny (NAO 2006, 2013, 2014) as do the sessions of numerous Parliamentary Select Committees which scrutinise public service provision. Despite these mechanisms of oversight, it has been argued that the differential level of public accountability of private actors is not a symptom of 'market failure', but is in itself a significant means by

which the private sector is able to gain an advantage of 'comparative efficiency' over the public sector (Mashaw 2006). The role of the private sector in criminal justice thus raises important related questions of how private sector managers can be subjected to effective public accountability mechanisms, whilst ensuring that the principles of 'democratic governance' are not subjugated by the practices of 'corporate governance'.

A second area of difference between private and public sectors pertains to questions about whose interests they serve and the motivations which lie behind their respective activities. Critics suggest that the institutional mentalities of the private sector introduce a set of instrumental logics into criminal justice that corrupts rather than complements an imagined public service ethos and its attendant values. On this view, the extent to which private incentives can be mobilised to serve the public interest is questioned. For instance, reflecting the contractual nature of its arrangement, private forms of policing and security have been conceived as privileging the narrow interests of their paymasters, rather than those of the broader constituent of 'public' interests (Crawford and Lister 2006). In so doing, private security actors seek to construct an instrumental and risk-based social order, which is predicated on commercial not moral imperatives (Garland 2001). They tend therefore to focus not on apportioning blame and punishing transgressors for 'past wrongs' (Shearing and Stenning 1987), but on intervening pre-emptively against those who are deemed to be 'potential risks' to their client's interests. Private modes of policing and security therefore raise particular normative doubts not only about the extent to which they serve just those who can afford to pay for their services (Johnston and Shearing 2003) but also about the substantive basis of their interventions. And whilst there are questions whether policing by the public police has ever truly delivered on its 'collectivist' pretensions of universal and equitable provision, the private sector seldom denies that it serves the narrow and parochial interests of those who commission its services (Zedner 2006).

These concerns are echoed in the penal field where questions exist about the extent to which privatised criminal justice can and does provide the services which are required for *all* criminal justice users. For example, the creation of Community Rehabilitation Companies to provide probation services in England and Wales was widely heralded as

ushering in a system which focused on service provision for the majority, leaving minority groups without the specific interventions they required and which had hitherto been provided by public sector Probation Trusts (Annison et al. 2014; Hough 2016). Hence, when it is the state commissioning services on behalf of its citizens, questions attain to the deployment of contracts and how effectively they can serve to prescribe, govern and regulate the relationship such that it functions effectively and in the interests of service users and the public more generally (Vincent-Jones 2006). In theory, at least, the shift towards commissioning enables the state to act like a rational consumer, selecting between service providers based on the facts it decides are relevant (Zedner 2004). Yet, the scale and type of the contracts often reduces the market's flexibility and dramatically shrinks the choice of available providers (Johnston et al. 2008), therein undermining a core logic of marketisation. For example, a key principle of the new electronic monitoring contracts first tendered for in 2013 was the involvement of small and medium-sized enterprises (SMEs) which has not been fulfilled (see Hucklesby, Chap. 8, this volume). Similarly, the introduction of Community Rehabilitation Companies was to involve a significant role of voluntary sector organisations, and whilst they are represented in the new arrangements, this is largely as smaller partners alongside larger and more powerful private sector companies (see Dominey and Gelsthorpe, Chap. 7, this volume).

Critics of marketisation also argue that the pursuit of profit by the private sector risks marginalising the moral and ethical considerations which serve to justify but moreover constrain and shape criminal justice interventions. Hence, for some, the dynamic of capital accumulation offers the dystopian prospect of a qualitatively worse criminal process, but also a quantitatively larger criminal justice apparatus. Turning to the first of these twin concerns, a qualitatively 'worse' criminal justice process may result, for instance, if policies of corporate enterprise too readily translate into practices that privilege efficiency savings over service standards and due process rights. In this regard, critics fear the effects of pervasive pressures to drive down the costs of service delivery. And whilst such pressures transcend the public-private divide, they are deeply engrained in the culture, organisation and discourse of the private sec-

tor, where the impact of costs on profitability is 'bottom-line thinking'. Hence the private sector has gained a powerful reputation for delivering services at a lower cost than the public sector, often through the systematic and economic rationalisation of structures (e.g. downsizing the workforce) and task-based work processes (e.g. stripping out bureaucratic checks and balances). For example, private companies are commonly criticised for using quantitatively less and poorer quality staff in private prisons in the UK. Yet, as Crewe and Liebling observe in their chapter (Chap. 6, this volume), the relationship between these factors and the quality of service provision is more complex than first appears. Who delivers services and how is largely the responsibility of the service provider but failure to deliver a service at the 'contract price' may result in fines reducing profit margins. Whilst on the one hand this might be seen as an effective way of ensuring the private sector delivers value for money, on the other hand, it might motivate private companies to adopt cost-cutting practices that, at best, circumvent procedural protocols and, at worst, engage in unethical practices (see, e.g. Freeman and Minow 2009 for a summary). Hucklesby in her chapter (Chap. 8, this volume), for example, identifies the practice of 'creaming' in which private contractors providing rehabilitation services disproportionately direct resources towards those 'clients' who they perceive as having the best prospects of reform and thus who are most likely to enable them to meet contractually specified performance targets. Likewise, there is the risk of the inverse practice of 'parking', in which those clients who are deemed to be most challenging to reform are denied equitable access to resources in support of their rehabilitation. Both these policies may be examples of 'commercial pragmatism', but they deny equitable opportunity by constructing hierarchies based on risk-based perceptions of profitability.

The second concern, that a quantitatively 'larger' criminal justice apparatus will result from the greater private sector involvement, is linked directly to the expansionary logic of the market. On this view, the commercial imperative that continually drives corporations to explore and develop opportunities to increase demand for their goods and services is antithetical to the normative ideal of a minimal criminal justice state. Hence a key concern of critics is the extent and influence of political lob-

bying by the private sector, which is designed to curry favour with government officials and 'open up' new or expand old markets (Jones and Newburn 2005). As White shows in his chapter (Chap. 3), representatives of private corporations can be understood as 'political actors' in their attempts to influence and shape political and legislative agendas to further their own commercial interests. Indeed, this ambition appears to underpin many of the (frequently successful) attempts of the private sector to recruit to its senior positions former ministers, politicians, civil servants and other ex-high-ranking public officials (see also White 2010). As well as advancing opportunities to cultivate new markets in criminal justice, private companies are likely to act in ways which seek to ensure that demand for their existing services is maximised, independent of variations in crime rates (Christie 2000). Weiss in his chapter (Chap. 2, this volume), for example, highlights how a major US-based corporation had a clause inserted into its contract to provide 'incarceration services' which specified that a guaranteed number of prisoners would be housed in its prison at any given time throughout the duration of its contract. As Johnston (2000: 180) reminded us over a decade ago, the challenge for the state is to ensure that the activities of those private sector companies that participate in democratic decision-making blend not conflict with public interest objectives.

In responding to the regulatory challenge, the state must also be vigilant of the market behaviours of the private sector. The supply side of the market for criminal justice services is characterised by oligopolistic conditions, as only very large, usually multi-national, corporations have the range of capacities and competencies required to deliver large-scale public sector contracts (White 2010). These market conditions, coupled with the vociferous appetite of private companies to exploit avenues for aggressive profitability and ever greater economies of scale, drive corporate mergers and takeovers. Yet these takeovers can have significant implications for the arrangement and provision of criminal justice services and may in themselves be detrimental to the public interest (see Hucklesby, Chap. 8, this volume). Mergers give rise to integration of services and functions along two dimensions within the supply chain. 'Horizontal integration' sees companies increase market share by providing services within a (criminal justice) sector in which they already have a presence.

'Vertical integration' sees them pick up contracts within a sector where they do not currently operate. Integration thus enables a company to consolidate but also expand its market provision. But both types of integration may incur risks for the public interest. The former arguably places too much responsibility into too few hands. The fatalistic phrase 'too big to fail' is often deployed in this context to describe the potentially catastrophic effects of a private company failing to deliver crucial public services. As White describes in his chapter (Chap. 3, this volume), an example of this occurred in summer 2012 when G4S failed to deliver on its contracted security obligations to the London Olympic Games, and, as a result, the British military were brought in to provide security to this global sporting event. The latter on the other hand risks introducing conflicts of interest in to the criminal justice processes, as companies may choose to act instrumentally by adopting practices that have 'net-widening' or 'mesh-thinning' effects which generate additional 'business' for themselves.

Alongside normative objections to the role of the market, there are a range of more practical concerns. To the fore here are the various organisational, legal and cultural challenges of developing and sustaining meaningful cross-sectoral relations, or what tend euphemistically to be referred to as 'partnerships' (Crawford 1997; Rhodes 1997). The operational effectiveness of such arrangements can be undermined, for instance, by the challenges of ensuring that information (sensitive or otherwise) flows smoothly between public and private agencies. Overcoming these challenges by establishing data sharing and other legal protocols can in itself bear significant cost burdens and create inefficiencies. Similarly, an absence of trust between public and private providers routinely undermines the effectiveness of inter-organisational relations. In the context of policing, for example, research has repeatedly found that the difficulties of ensuring intelligence flows efficiently within an organisation are made more acute where it is required to be passed between agencies that span the public-private divide (Crawford and Lister 2004a, b). Building trust takes time and often requires the input of significant long-term commitment and resource. And yet the returns on such 'up-front' investment can be severely limited where there is a high turnover of personnel or where contracts for service delivery are in a regular state of flux. And of course,

the need to set up highly prescriptive legal contracts to govern public-private 'business partnering' arrangements reflects the absence of trust. But as Hucklesby illustrates in her chapter (Chap. 8, this volume), these contracts can themselves be a source of significant and often hidden cost, both in their drafting and their management, as the primary accountability instrument by which the performance of such arrangements is monitored and assessed (Vincent-Jones 2006). Suffice it to say, the process of harnessing the efforts of private companies such that they work effectively with public sector agencies is not only frequently difficult, it is equally time-consuming and can incur a range of largely unseen costs.

In summary, we are living in an era of significant change in how public services are arranged and provided (Freeman and Minow 2009). The increasingly marketised and pluralised landscape of public service provision has seen a striking shift in responsibility, in which the state has increasingly parcelled out core aspects of its work to the market, but also to the voluntary sector. Criminal justice has not been insulated from these developments, resulting in the recent and unprecedented growth of outsourcing arrangements within the sectors of policing, prison, probation and community sanctions. Whilst debates about the role of the private sector in criminal justice broadly map on to those found in other areas of public policy, owing to the nature and effects, both of its processes and its outcomes, they can be particularly affecting. These debates coalesce around the extent to which the private sector can be enlisted to deliver criminal justice functions in ways that meet public policy goals. But they also raise questions about the nature of governance itself and the extent to which private governance is 'shoring up' or 'withering away' the capacity of the state to govern within the realm of criminal justice.

Structure of the Book

The chapters in this book approach these questions in different ways and examine developments in different state jurisdictions and in different criminal justice contexts and sectors.

In Chap. 2 Robert Weiss offers a political-economic analysis of the changing nature and global expansion of the private sector criminal jus-

tice industry since the advent of neoliberalism under Reagan and Thatcher. Focusing on current private-public 'partnerships' or 'collaborations' in policing, prisons and post-release corrections under market fundamentalism, he analyses the for-profit privatisation claims of efficiency and effectiveness and weighs them against the costs of diminished popular sovereignty. He suggests the boundary between the private and public spheres of surveillance and control has nearly vanished under neoliberal governance, with private firms engaged in sovereign functions and public entities functioning as extensions of the market. For Weiss, this merger of power structures makes accountability problematic. He argues the market failures of oligopoly and oligopsony—especially in the artificial markets of incarceration and national security surveillance—encourage companies to appeal to non-market factors to obtain more lucrative contracts, facilitating the manipulation of fear and desire for more security-related products through advertising. His analysis concludes that corporatised security fails to serve the public interest on savings and security whilst seriously threatening civil liberties and democratic governance.

Adam White, in Chap. 3, seeks to unravel the complex connections between state regulation, the private security industry and the widespread public expectation that domestic security ought to be delivered exclusively by the state. His point of departure is the role of regulation as a mechanism for mediating the direct and indirect transfer of state functions to the market. Drawing on a range of sources, he develops insights into the relationship between private security and the state in post-war Britain—a relationship which has become increasingly high profile and controversial following recent moves to contract out a wide range of police functions to the private sector and the failure of G4S to deliver on its London 2012 Olympics contract—but also sheds light on the changing nature of the public/private divide in contemporary criminal justice arrangments more generally.

In Chap. 4, Rick Sarre and Tim Prenzler examine the role of private security personnel in the contemporary provision of security and protection services in Australia. Drawing on extensive work by the authors, the analysis explores several partnerships between the public police and private security personnel, identifying factors upon which good cooperative public/private partnerships can be and are being built. In so doing, the

discussion identifies a range of health, safety and welfare risks that both security personnel and those with whom they come into contact are exposed to as a result of their routine practices. It also considers whether current regulatory models meet the required standards of acceptable transparency and accountability. The chapter concludes by suggesting how the law may need to be adjusted to accommodate better the changing nature of the public/private policing landscape.

Chapter 5, by Mark Button and Alison Wakefield, focuses on the role of Employer Supported Policing (ESP), a pioneering initiative to provide more 'public' policing actors on the streets by levering in 'private' sources of funding. They use two case studies in the South of England to explore this scheme, which they situate against the backdrop of a range of broad changes that have impacted on UK police and which coalesce around the themes of 'fiscal constraint' and 'police privatisation'. They argue that, although there are risks that arise from the ESP scheme, subject to the maintenance of certain principles, it provides the prospect for expanding uniformed police presence without draining scarce public resources. Throughout the chapter they develop the theme of 'franchising the police', both in its historical context and through the contemporary lens of ESP. They conclude by suggesting that the ESP scheme reflects a new dimension to the police privatisation paradigm.

Jane Dominey and Loraine Gelsthorpe, in Chap. 7, consider the limits and scope of the privatisation of probation services in the UK. In so doing, they place the relationships between the probation service and the private and voluntary sectors in their historical context before outlining some of the 'push' and 'pull' factors which led to the recent Coalition Government's policy of increasing privatisation. They proceed to offer some critical reflections on the broader debates about 'probation as a public good', the prospects of privatisation in terms of costs, profits and market share and the prospects of privatisation as a mechanism to drive up standards. They conclude by suggesting that whilst probation services have no monopoly on 'care', there is need to think very carefully about how the philosophy of 'care' (which is fundamental to the concept of supervision, control and programme delivery) is embedded and sustained within the new professional culture and practice and structural arrangements.

Drawing on a detailed study of five private and two public sector prisons in England and Wales, Ben Crewe and Alison Liebling discuss the relative quality, professionalism and balance of power of public versus private sector prisons in Chap. 6. Their findings show that two private sector prisons appeared at the lowest end of a quality spectrum and two at the highest end, complicating any simplistic argument that 'private is better' or vice versa. Drawing on well-validated measures of the moral and social climate of prisons, they reveal how clear strengths and weaknesses were found in each sector. Their analysis covers a range of critical themes, identifying distinctive power distributions, cultures and experience levels in each sector, each of which produced different types of penal order, leading to different outcomes. They conclude by suggesting that some public sector strengths are overlooked in contemporary policy making and that these strengths are at risk of being eroded as public sector prisons are remodelled as larger, cheaper and more streamlined institutions.

The final two chapters focus on electronic monitoring (EM) and provide valuable insights into debates about the private sector's involvement in criminal justice given that EM has been delivered exclusively by the private sector in the UK since it was first introduced in the late 1980s. In Chap. 8, Anthea Hucklesby provides a detailed examination of the complexities which are created by the private sector's operation of EM. She contends that the privatised EM service, as currently operating in England and Wales, is over-complicated detracting from what has the potential to be an effective and humane criminal justice tool. Drawing on her analysis, she suggests that debates about the role of the private sector in criminal justice have thus far largely failed to appreciate these operational complexities or consider their implications for service delivery. If private sector involvement is to be challenged effectively and EM and other criminal justice measures are to be delivered in humane and responsive ways, then a more nuanced and evidence-based approach is required.

In the final chapter (Chap. 9), Mike Nellis explores the emergence of EM as a set of key contemporary criminal justice technologies, the development and implementation of which is increasingly driven by the private sector. Nellis contends that the UK Government's anticipated 'transformation' of EM for offenders is itself an expression of both the 'digital by default' agenda and of their ideologically constructed notion of

'commercial common sense'. He argues that expanding EM is also, at a still deeper level, a manifestation in the correctional sphere of the communication, locatability and data management technologies that have become integral to contemporary neoliberalism, whose necessity is now as likely to be justified by appeal to commercial as penal rationales.

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2

Vanishing Boundaries of Control: Implications for Security and Sovereignty of the Changing Nature and Global Expansion of Neoliberal Criminal Justice Provision

Robert P. Weiss

The private provision of criminal justice in the West is many centuries old and has taken many forms, including citizen volunteer and for-profit contracting. Its modern commercial form developed largely in the USA, where from the mid-nineteenth century the private detective agency and contract prison industries flourished. Today, private criminal justice is a giant global corporate industry with unprecedented social, economic and political significance. A number of developments have combined to create a corporatised security-industrial complex, chief among them: a dominant neoliberal ideology of privatisation and deregulation; various neoconservative 'wars' on domestic crime and illegal drugs that have created a formidable private prison industry; heightened national security concerns since 9/11 and the creation of a greatly enhanced homeland security industry; the increasing sophistication of information gathering and analysis by corporations and governments; and the growing influence of multinational corporations in creating a transnational policing and security

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consultancy industry for corporate and national security (O'Reilly 2015; O'Reilly and Ellison 2006). This chapter will focus on four recent developments that concern many policymakers, criminologists, legal scholars and civil libertarians: first, the dramatic increase in *private/public partnerships and joint ventures*, a collaboration that encourages the circulation of personnel, especially the movement of operatives from public to private sectors (Cockfield 2003); second, *interest group and corporate lobbying* that has significantly influenced criminal justice legislation favouring the delivery of public services by private companies; third, the growing involvement of *telecommunication and social network companies* in government surveillance; and fourth, development that concerns the increasing *transnational oligopolistic character* of the private security and privatised corrections industries. After a short history to highlight continuities and differences in the politics and economics of criminal justice privatisation over the past century, we will consider some of the implications for security and sovereignty of current developments.

The issue of state[1] sovereignty is as old as private policing, and the controversy is perhaps never more significant than it is today. The privatisation debate asks: How does the commodification of force affect democratic governance? Does commodified criminal justice expand or diminish the powers of the state? When corporate entities act as instruments of the state, as in subcontracting and outsourcing, or are vested with state power for the protection of private property and persons, as in deputisation, is sovereignty itself being outsourced (Verkuil 2007)? What are the trade-offs? Is greater efficiency or security worth a diminution of sovereign powers? Many approach these knotty questions burdened with common assumptions that we question. A critical examination of privatisation must avoid various conceptual pitfalls and barriers that have muddled many previous discussions (Donahue 1991; Logan 1990), including conceptualising private security as *either* outside of state authority *or* a usurpation of state authority. This creates a false or misleading private/public dichotomy (Abrahamsen and Williams 2007).[2] At various historical moments, one would be hard pressed to determine to what extent private security is acting merely as a corporate *apparatus* of the state or as a *master* that *makes* policy in the supposed process of executing governmental directives. This is not a fixed or constant question.

The boundaries between private and public spheres have fluctuated with major historical events including wars, business cycles and various political developments. The power and direction of sector influence has varied also. One constant appears to be a *symbiotic* relationship (O'Reilly and Ellison 2006) between government and corporate providers. Since most private security has been devoted to the protection of private property and the lives of wealthy individuals, the changing nature of the private security/state relation has followed the political economy of capitalist development. Different historical stages of social structural development and the political economies associated with them—from nineteenth-century laissez-faire, to post-war corporate liberalism, to today's neoliberalism—have presented distinctive threats to private property and challenges to capitalist relations of production, occasioning a succession of security 'complexes' or interconnections and interweaving of private and public powers to meet those threats (Weiss 2008). One matter should be clear: the legitimacy of the capitalist state has always rested on the health of the economy of the day, so it is not surprising that governments have in different ways at different times intervened in the functions of the market to assist accumulation, including in the ancillary realm of law and order (Brown 2005; Novak 2008). Instead of functioning as an effective regulator of the market in capitalist society, the state has more often acted as a mere extension of the market. Guided by neoliberal doctrine, the state today is attempting to be an actor in the market for contract security. But capital in most cases has the upper hand in deal making. Let us recount some of the regulatory history in the USA to see how private criminal justice has been managed.

Early History of Criminal Justice Privatisation

A century and a half in its modern form, the private delivery of criminal justice can serve as a model of institutional prosperity through mutual accommodation between government and business. In the USA, the nineteenth-century Auburn-style contract system of prison industries prospered with northern industrialisation, profiting small business entrepreneurs while helping to create a disciplined factory labour force for the

developing nation. For their part, State officials were keen on the anticipated fiscal benefit of defraying incarceration costs with contract fees. In the south, convict leasing flourished as a legacy of slavery in the post-bellum (1866–1913) era, enriching agricultural and mining contractors while alleviating a financial burden for war-devastated States and contributing to the economic redevelopment of the former Confederacy with forced labour (Myers 1998). Another nineteenth-century institution, private detective agencies, performed much of the nation's early policing. In a period of weak local governments, inept and corrupt municipal and State governments and the absence of international policing agencies, detective agencies like the Pinkerton National Detective Agency filled gaps in the public protection of urban commerce, including banking and the retail jewellery business. In the hinterlands, detectives protected the rapidly expanding railroads from robbers and the cattle frontier from rustlers.

The most controversial and profitable private policing was in labour discipline. In company towns and urban factories, private 'industrial services' in strikebreaking and strike guards burgeoned, unimpeded by State and federal governments that, under a laissez-faire rationale, refused to exercise their monopoly on the legitimate use of force (Weiss 1981, 1986). Private security prospered without regulation even as the scope of direct government authority overall increased dramatically (Rubin 2010). Private 'detective' agencies mushroomed in the laissez-faire era of industrial conflict by invoking the legal rationale of private property rights and the 'liberty of contract' (Hogg 1944). The formal legal boundary between the private and public sectors in US constitutional law was sharp and absolute in the *Lochner* era,[3] freeing private security from criminal procedure requirements and state regulation (Joh 2004, 2006). Periodic scandals elicited 29 congressional investigations conducted between 1887 and 1892 and again during the Great Depression of the 1930s. While the official reports of these investigations denounced the 'infringement on the monopoly of coercive force which can only be entrusted … to governmental authority responsible to the public' (Subcommittee of the Committee on Education and Labor 1939: 12), Congress and various state legislatures stopped short of regulation (Joh 2004, 2006; Sklansky 1999; Weiss 1981, 1986). Charging that private detective agencies were 'usurping State authority' by

creating private armies engaged in 'outright warfare,' Congress drew a clear distinction between the responsibilities and legal authority of public and private policing (Auerbach 1966). Nevertheless, the federal government remained unwilling to enforce that separation, claiming that this was the responsibility of individual State governments. The Great Depression and the New Deal brought another round of congressional scrutiny that, along with dramatic economic and political changes, placed anti-labour union policing under unprecedentedly intense federal criticism. Most of the union-busting industry collapsed under the weight of public opinion generated by the LaFollette congressional hearings of the 1930s on the violation of civil liberties in the exercise of newly created collective bargaining rights. While small, less image conscious companies took over strong-arm labour discipline, the general trend—especially in the monopoly sector—was a 'labour relations' policy of class collaboration and accommodation among representatives of big government, big unions and big business (Weiss 1986).

With the 'apparent retreat of private policing' (Joh 2006: 373)—at least from the strikebreaking business after WWII—came other businesses selling the 'labour relations' and 'union avoidance' industrial strategies of labour discipline (Logan 1990). The big 'establishment' security companies, including Pinkerton and Burns, shifted emphasis from the productive sphere to the spheres of consumption and circulation (Allmer 2010: 51), pursuing the burgeoning new markets of industrial espionage and counterespionage, corporate embezzlement and fraud and residential and commercial security policing of 'mass private property,' especially shopping malls and vast suburban apartment projects (see Shearing and Stenning 1981). During the Cold War, upstart security companies, many spun off from newly created national security agencies, added services to protect against domestic and foreign terrorism, sabotage and executive ransom kidnapping in North and South America. Political policing using government/private security 'partnerships' extends back to Allan Pinkerton's espionage work for the union during the Civil War (Riffenburgh 2013). The company conducted undercover political espionage during various nineteenth-century political repressions enforcing anti-anarchist and syndicalism laws, the most notorious of which was Pinkerton detective James McParland's infiltration of the 'terrorist' secret society, the Molly Maguires (Riffenburgh 2013).

The first large-scale private/public joint operations came during WWI, with the greatly war-empowered federal government. The Red Scare of 1918–1920 occasioned a private/public collaboration that involved a stream of personnel from the private security sector to the recently created federal Bureau of Investigation (BOI). Famous private detective and former US Secret Service agent, William J. Burns, directed the BOI from 1921 to 1924. Among the numerous scandalous actions of his administration was to direct BOI business to his international detective company.[4] Other new state espionage organisations borrowed expertise and style from the leading private detective agencies (Jeffries-Jones 2002). There were also early surveillance arrangements between telecommunication companies and the federal government. In 1920, a predecessor to the National Security Agency (NSA) gained secret illegal access for the Woodrow Wilson government to all Western Union telegrams received, dispatched and transmitted through the USA, in violation of the Radio Communications Act (Bamford 2013).

Wackenhut as a Precursor to Transnational Contract Security

The liberal corporate nature of the security business immediately after WWII is usefully illustrated by the history of the Wackenhut Corporation (now G4S in security services and GEO in correctional services), which joined the Pinkerton-Burns duopoly in 1954. The political savvy of George R. Wackenhut, a former Federal Bureau of Investigation (FBI) Special Agent, fundamentally altered the security industry by recapturing federal government contracts. He accurately predicted that a lucrative market could be obtained in rent-a-cops for state, federal and municipal governments. He staffed his company's management and board of directors from the ranks of retired State and federal government operatives, reversing the flow of personnel between the two sectors.[5] Cultivating right-wing political connections, Wackenhut epitomised the police-industrial complex of the Cold War period. Old-boy networks (O'Toole 1978) of retired federal agents were used to gain inside information and influence, especially from among

those in government service eyeing lucrative retirement opportunities in corporate and commercial private security. By the late 1960s, his jackbooted military-uniformed 'Wackencops' were busy guarding prisons, airports, nuclear test sites, US embassies and other federal facilities. Flourishing on government business, Wackenhut soon opened subsidiaries in the Caribbean and Latin America.

Wackenhut was also in the forefront in his understanding that the fear of communism could be commodified.[6] His guard services were a bread-and-butter necessity for his early detective agency, but his real business future was in protecting classified projects at Lockheed Martin[7] and NASA from communist spies and in his services in the analysis and management of corporate risk as a major market opportunity. Wackenhut's foray into government work anticipated today's security-industrial complex. Other early players in the current epoch included the private intelligence agency, Intertel, founded in 1970 by Robert Peloquin, a former naval intelligence and national security operative, and Kroll investigative and security services, founded in 1972 by Jules B. Kroll. The organised crime investigation unit Peloquin put together included over a dozen former officials of the Secret Service, FBI, US Bureau of Customs, Internal Revenue Service (IRS) and the Defense Department. Using the latest technology developed by the military and expertise from former government operatives, these commercial agencies provided services in political snooping, the compilation of dossiers and wiretapping—constituting, in effect, a private Central Intelligence Agency (CIA) for hire.

While government policymakers, the news media and scholarly attention turned away from private security in the immediate post-WWII period, the industry began to boom, so that by the late 1960s and early 1970s a 'quiet revolution' had transpired (Cunningham and Taylor 1985), with private security overtaking public policing in numbers and resources. Migration of former public policing and military security officials into the private security sector fuelled the subcultural foundation for a powerful police-industrial complex. Impatient with legal restrictions on state surveillance, corporate in-house security and metropolitan police agencies teamed up to set illegal wiretaps. Throughout the 1960s and 1970s, the security directors of Southwestern Bell, AT&T and other telephone companies (whose executive ranks were staffed by ex-FBI agents

and former State and city cops) routinely cooperated with the Houston Police Department and other Texas police agencies (O'Toole 1978). Cooperative programmes were established between the IRS, FBI, CIA and military intelligence and various military contractors. Company cops at Honeywell Corporation of Minneapolis, for instance, called on the FBI to infiltrate anti-Vietnam War protestors with paid informants (O'Toole 1978). This arrangement was an instance, O'Toole (1978) observed, of an early trend that is commonplace today: employing the FBI as an extension of corporate private police forces. Unsurprisingly, the president of Honeywell and its chief of security were members of the old-boy network for cross-institutional employment, the Society of Former Special Agents of the FBI.

To summarise the changing state-private security relationship: over the course of 160 years, the US federal government assumed three distinct legal positions towards private policing: (1) *laissez-faire* tolerance during the labour wars, (2) New Deal liberal corporate capital supersession of anti-union policing through labour protective legislation and (3) the current neoliberal security policy of subcontracting and outsourcing. Local and federal authorities under the current neoliberal regime promote various boundary-blurring 'partnerships' and joint policing investigations. While not without precedent in limited fashion, private/public collaboration appears to have become the central policy direction in a number of Western governments.

The Origins of Neoliberal 'Partnerships' in Ronald Reagan's Privatised Leviathan State

While the Ronald Reagan administration is generally credited with introducing neoliberal 'partnerships' in criminal justice, President Jimmy Carter's deregulation initiative set the stage. He signed the 1978 Executive Order that allowed suspension of federal regulations if they were deemed to impose an 'unnecessary burden' on business. To hasten this development, various ostensibly nonpartisan and objective public policy think tanks, including The RAND Corporation (RAND), Hallcrest and the

American Legislative Exchange Council (ALEC), made their appearance (or reassertion, as in the case of RAND, a WWII corporate creation).[8] Their 'experts' advocated privatisation or corporatisation of many public services, from hospitals to social work. With what appeared to be an alarming rise in the crime rate, criminal justice became a particular object of desire for would-be profit-makers. A new phase of accumulation was introduced: the commodification of public services as a secondary accumulation, where *use values* (education, health care, corrections) are commodified, transforming them into exchange values (Huws 2008; Lewis and Huws 2011). The taxpayer becomes a 'customer' or consumer of services. Deregulation and privatisation advanced the New Right's anti-union agenda as well, especially in the public sector.

Today's privatisation initiative is no mere return to laissez-faire, let alone to the free-market principles of Adam Smith. Rather, a neoliberal state is a *positive* political state (Brown 2005), not only in its failure to regulate but also by enacting legislation promoted by lobbyists and corporate interest groups like ALEC. The federal government's position was clearly shifting from *selective constraint* initiated in the New Deal to active *collaboration*. With the arrival of neoliberal privatisation and deregulation, private criminal justice mushroomed by negotiating space for various 'partnerships' and collaborations—often in activities that have helped governments of the day avoid constitutional restrictions on government surveillance and to help break public service unions. Ronald Reagan wed neoconservatism's pro-imperialistic, anti-crime and anti-welfare state agenda to neoliberalism's assault on organised labour and the regulatory state, allowing him to expand the repressive apparatuses of the state while appearing to 'downsize' government through privatisation (Weiss 2011). The taxpayer becomes a 'customer' or consumer of services and government 'expenditures' become gross domestic product (GDP).[9] Never mind that, rather than increasing competition, privatisation actually promotes monopoly (Lynn 2012). With efficiency and cost savings as the cardinal values of outsourcing, economists of the Chicago School argued that competition was 'wasteful' and harmed the consumer; *economies of scale* were beneficial in government outsourcing as elsewhere. Under neoliberalism, 'privatisation' has come to mean 'corporatisation' (Allen 2011)—public service delivery by large, often multinational and monopolistic, corporations—

not 'private sector' in the sense of small, competitive free enterprises of Adam Smith's political economy. One of the earliest privatisation initiatives came in prison industries.

Prison industrial enterprises were revived during the Jimmy Carter administration, with the creation in 1979 of the Prison Industry Enhancement (PIE) certification programme, exempting State and local certified corrections departments from legal restrictions on the sale of prisoner-made goods sold in interstate commerce. This was the beginning of a new era of corporate penology and one of its architects was ALEC, a lobbying organisation that exerts enormous political influence to this day. Formed in 1973 by conservative activists Lou Barnett and Paul Weyrich (who also founded the Heritage Foundation), along with the then-State representative Henry Hyde (R-Ill) and other Republican legislators, this new corporate interest group lobbied vigorously for PIE and would go on to promote many other legislative initiatives to create a criminal justice-industrial complex. Under the name Free Venture, private penal industries became a policy darling during the Reagan administration. Its importance to conservatives was epitomised by a 1981 speech and a 1985 article by Chief Justice Warren Burger advocating the transformation of prisons into 'factories with fences,' a way to help repatriate jobs lost to globalisation (Weiss 2001). Criminal justice militarisation and privatisation intensified during the 1980s, with alliances established between military, police and commercial organisations. Private security, under the direction of transnational corporations, quickly expanded operations to police the second and third worlds.

Private Security Protects Foreign and Domestic Neoliberal Frontiers

In most of Africa and much of Latin America, neoliberal reform begun in the 1980s brought economic stagnation or decline, increased inequality, poverty, street crime, drug wars and general insecurity (Putzel 2004). At the same time, privatisation of the public sector weakened state apparatuses, contributing to failing and failed state syndromes. Opportunities abounded for the private security industry to help ensure a safe capitalist

environment through executive security, labour control, commercial protection and corporate and political espionage. In Latin America, a panoply of services to protect the rich and their corporate investments followed structural adjustment of the 1980s. Africa experienced a dramatic expansion of private security beginning in the late 1980s. Nigeria alone is now host to nearly 2000 private security companies employing over 100,000 personnel (Abrahamsen and Williams 2007), making security that nation's second largest industry financially, after the oil and gas industry for whom they serve as an adjunct. In Kenya, a corrupt and weak state unable and unwilling to deliver basic 'public' services also offers sizeable market opportunities for private security companies. India now employs over 5.5 million private security personnel, dwarfing the public police sector (Kaushik 2010). Private security came to China 'at behest of foreign investors and private enterprises,' according to Michael Dutton (2005: 293). Foreign-owned and partially foreign-owned enterprises wanted workplace security of the neoliberal variety, not the mass line policing model, exchanging egalitarianism for market relations. From 1985 to 1998, the number of private security personnel ballooned from just 50 employees to over 300,000. This is part of an ongoing process of contractualism. In contrast to the West, however, private security companies are a state-owned monopoly, quasi-private subsidiaries of local branches of the Ministry of Public Security (Dutton 2005). Unlike the USA, in China the State *has* the upper hand.

Private Security Shifts from the Sphere of Production to Consumption

In the advanced capitalist nations, private security's fortunes have soared with the reprise of Gilded Age inequality and the extraordinary economic influence and political power of big business under neoliberalism. This has been no mere recapitulation of the laissez-faire regime of industrialising America, with its Pinkerton battles over basic labour rights versus the 'freedom of contract' of the 1892 Homestead strike. Under neoliberalism, labour unions and labour discipline are no longer the focus of power relations. Transactions at the core of today's market involve *information*

and *consumption*; these are the new property rights (Purdy 2012). In the USA, the neoliberal state has exchanged Industrial Age economic libertarian jurisprudence of the pre-New Deal era of private security with the First Amendment of Chief Justice John Robert's Supreme Court, protecting data markets from regulation in the Information Age (Purdy 2012). Much of the new economy involves marketing and information transfer, economic transactions that the US courts vigorously protect as freedom of speech. In market logic, corporate political lobbying and advertising using Political Action Committees (PAC) are matters of free speech. According to Wendy Brown (2015: 158), the 2010 *Citizens United* ruling granting free speech rights to corporations renders all speech corporate—of legal value—not because free speech is an essential element of citizenship but rather because it takes place as one commodity form among others in the 'marketplace of ideas.' Justice Kennedy's majority opinion on the *Citizens United* essentially argued that speech (*qua* information and information technology) was *like* capital and thus should be free to compete in the market (Wark 2015).

The anti-regulation posture of the US courts concerning data markets makes a very hospitable environment for political and economic surveillance by corporations, including data mining, monitoring customer behaviour and employee communications as well as corporate espionage. Companies are free to gather and market consumer and employee information with only a few federal restrictions. The US Supreme Court has ruled that there is no expectation of privacy in business records and information that people give to third parties like banks, other businesses and privately held email servers (Balkin 2008). In Europe, privacy is a fundamental *rights* issue, observes the chairman of the Dutch Protection Authority (Streitfeld and O'Brien 2012: 8), while in the USA, 'privacy is a consumer business.' Facebook, Google and other Internet companies lobby heavily to stave off data protection laws and privacy legislation, while jealously guarding their own operations (Sengupta 2012). Google has never shared with US regulators the information that their Street View cars gathered from American citizens, reports the *New York Times* (Streitfeld and O'Brien 2012). Their lobbying efforts are aided by the fact that governments are interested in these data, too, for other than corporate regulatory purposes. Government access to the private databases of

commercial aggregators and brokers has given law enforcement a powerful tool against individuals and groups. Yet American consumers willingly surrender their privacy to the social media industry, while worrying about the intrusion of privacy in national census questionnaires! The UK, USA, Canada, Australia, New Zealand and Western Europe are leading corporate consumers and producers of corporate/government security in its imperial and anti-terror fronts.

Corporate/Government Partnerships in Criminal Justice

There are several kinds of government/private sector collaboration—the most important of which is surveillance and monitoring in the forms of 'joint operations' and information sharing networks. Various government agencies (at all levels) team up with the private sector, including in-house company security divisions, private security corporations, the telecommunication industry and all sorts of other businesses, including national airlines, hotels, banks, Amtrak and universities, which share information gathered in their routine business operations (Riley 2013). Internet browsing (through Google) and social media such as Facebook all convey the personal information of their customers to government agencies. Commercial data brokers such as ChoicePoint custom tailor personal information in huge data centres for law enforcement agents (Hoofnagle 2004). It is worth noting that Internet data brokers often get personal information wrong, and the US Supreme Court is now considering a case to decide whether victims are entitled to sue (Savage 2015). Google and Facebook have considered building special portals for the US government to spy on users, in real time (Chatterjee 2013a). While 'telephone cops' of the post-WWII liberal corporate period—involving the cooperation of corporate internal security departments and the FBI and other policing agencies using informal old-boy networks—were an important part of the police-industrial complex, today's surveillance-industrial complex is much more sophisticated and significant, extending not only to Global Positioning System (GPS) cell phone records but also

'supercookies' that cannot be erased or evaded used by Verizon and AT&T to track the Internet activity of 100 million customers (Timberg 2014) and other digitalised data that can be recombined. Much of this information goes to 72 inter-locked state 'Fusion Centres,' which create bigger pictures based on other data mining (Monahan 2006, 2011). These data are stored indefinitely and shared with all sorts of corporate entities and quasi-public agencies like InfraGard, an information sharing and analysis arm of the FBI and the Department of Homeland Security. InfraGard describes itself as an association of businesses, including Microsoft Corporation, academic institutions, state and local law enforcement agencies, and other participants dedicated to sharing information and intelligence (InfraGard n.d.). With the alignment of government and corporate power, today's surveillance state has created a Panopticon of such comprehensiveness and sophistication as would have amazed Bentham and even Foucault!

For bigger profits, among other advantages, telecommunication companies have moved to eliminate security companies as middlemen and perform state surveillance directly. Beginning with the George W. Bush administration, the communication industry has greatly intensified its direct 'partnership' with the various governments, including China and Iran and other authoritarian countries, as well as in the USA. Business corporations become de facto security companies when they routinely give government agencies personal information on employees, customers and others. They are often *paid* for the intelligence and equipment. In recent years, NSA paid hundreds of millions of dollars a year to US corporations for clandestine access to communication networks, creating a regular revenue stream for participants in the Corporate Partner Access Project (Timberg and Gellman 2013). On other occasions, courts order the compliance of telecommunication companies and data aggregators; other times, the companies provide data free and willingly to curry favour with government officials for various reasons, including the prospect of lucrative Homeland Security contracts and various advantages over their competitors such as special access to security databases. Holdouts from the NSA's warrantless surveillance programme, such as Quest, were reportedly threatened by the agency with denial of future classified work with the government (Peterson 2013). Undoubtedly, companies whose executives might

entertain the notion of resisting government pressure for client information fear increased government scrutiny of their business operations (and in the current security hysteria, corporate executives could reasonably fear for their personal freedom).[10] When formalised, this arrangement is a form of *deputisation*. Under the Cybersecurity Information Sharing Act 2015 (CISA) passed by the US Senate on 27 October 2015, private companies are now able to monitor network traffic such as email and transfer information to the government immune to oversight or legal accountability (Rosenfeld 2012). These are data for which the government generally needs a search warrant, so that CISA allows private companies—including Verizon, Facebook and Google—to circumvent the Constitution and judicial review. In effect, CISA deputises the online industry to police the Internet for various federal agencies (Rosenfeld 2012).

The new quality of private/public partnership sharply contrasts with the old days when public law enforcement merely asked for technical assistance in telephone taps or email monitoring, done within constitutional limits. While given carte blanche government approval to spy on company employees for national security, we can assume corporate security officials serve broader corporate interests as well. This collaboration allows private actors to determine the focus of state power, making the state a mechanism of the market (Joh 2006). All kinds of policing can ride along with 'national security' surveillance conducted by private security companies, telecommunication corporations and private employers: labour discipline, corporate counter-espionage and drug war operations. Examples of such partnerships can be found in more overt forms of political policing, which today involves a corporate/government alliance, for instance, in policing Occupy Wall Street protests in the fall of 2011. Under the guise of 'national security' threats to the financial district, Wall Street firms spied on protesters in a tax-funded centre as part of a $150 million 'Lower Manhattan Security Initiative' (Martens 2012a, b). IBM and its so-called Smart Cities programme spy on citizens in China as well as the USA (Jacobs and Bullock 2012a, b). Chinese telecommunication equipment companies such as ZTE Corporation sold Iran's Telecommunication Company powerful surveillance equipment produced by such leading US tech companies as Microsoft, Oracle, HP, Cisco, Symantec and Dell, with whom ZTE has partnerships (Stecklow 2012).

All of these partnerships involve the circulation or crossover of personnel. Private/public circulation is such a common occurrence that we can assume that government officials work routinely to develop policies and connections favouring their future careers in the private sector. And the flow goes both ways: there is also movement from the private sector to the public sector. Under the current neoliberal security regime, we are on a course of nearly complete inter-penetration of private and public sectors —especially in surveillance work. In many cases, it has become very difficult to determine who is controlling whom, who is doing what and who is who. The boundary between the private and public spheres of surveillance has nearly vanished under neoliberal governance, with private firms engaged in sovereign functions and public entities functioning as extensions of the market. The strategic planning and consulting firm Booz Allen Hamilton (for which Edward Snowden worked) is an almost absurd model of the inextricability of government/corporate interests and functions. The firm is in effect a private extension of the federal government, from whom it receives 99 per cent of its revenue and is staffed at the senior levels with dozens of former operatives from the government intelligence establishment, some of whom return periodically to government service, revolving door fashion (Chatterjee 2013b). Mike McConnell, former NSA Director and Vice Admiral, became a Booz Allen Executive in 1996, only to return to government service as Director of National Intelligence in 2007, and yet again returned to Booz Allen in 2009 as Vice Chairman. In the process, he made himself a multimillionaire on government contracts (DeLong 2013; O'Connor 2013).

Some Implications for Security and Sovereignty of Corporatised Security

Let us begin with a consideration of the privatisation claims of efficiency and effectiveness, in a sort of cost-benefit analysis. If corporate security does not make us more secure, is it worth the price of diminished sovereignty?

One of the most significant sources of danger for security and sovereignty derives from the concentration of producers and consumers. Like

the old military-industrial complex, today's security-industrial complex is not a competitive market in either buyers or sellers, and this puts government at a contractual disadvantage. The prison business is not a natural or free market. Individuals cannot purchase incarceration services. This is the state's business and, fortunately, it holds a monopoly on it. Oligopsony, or a market condition with few purchasers, means that the actions of any one of the buyers can materially affect the price and have a measurable impact on competitors. Recent annual reports of Corrections Corporations of America (CCA) (2010, 2011) indicate that in 2010 one-half of its business came from just eight individual states. Adding various agencies of the federal government (43 per cent of total revenue) and state and federal governments together constituted 93 per cent of their business. Oligopsony leads to oligopoly. This is also the case with national security surveillance.

In the USA, there is a long history of market consolidation, or oligopoly, in the security service industry, particularly in the hardware and technology side of the business and in telecommunications (McCrie 1988). The alarm industry was oligopolistic by 1910, dominated by AT&T and Western Union. Telecommunication giants gobbled up independent private security firms. In 1900, AT&T—the nation's leading telephone company—bought out Holmes Security (headed by a former Bell Telephone executive). Shortly after, Western Union—which had controlling interest in 57 independent private security firms—was incorporated as the American District Telephone Company. Then, in 1906 the two conglomerates entered into various restrictive agreements to carve markets in burglar and fire alarm business. The two major fire protection companies did the same. Further consolidation in the security industry followed over the next half century, until 1958, when the Grinnell Corporation purchased the American District Telephone Company, Holmes and Automatic Fire Alarm. This move prompted a Justice Department's Anti-trust Division investigation of the Grinnell holdings, and in 1964, under federal court order, Grinnell had to divest all of its holdings. The plaintiffs in the anti-trust suit quickly entered the industry to fill the vacuum: the technology giants Honeywell, Wells Fargo, Westinghouse and 3M Corporation. Since the 1970s, the Justice

Department has followed the Chicago School of Law favouring 'natural monopolies,' and the market is again highly concentrated.

Transnational corporations dominate the private security guard market today. G4S—with local and regional subsidiaries in 125 countries with 615,000 employees—corners the higher profit global business of security. In the USA, G4S, Allied Barton and Securitas have nearly 50 per cent of the total market, and governmental contracting is especially concentrated. Securitas is in 50 countries with 300,000 employees. As market growth declines, the big players merge with smaller competitors. In prisons, CCA (2010: 9–10) reports that it has 45 per cent of the total US market and, together with GEO and three other, smaller, companies, corners 90 per cent of the US market. In private security, Canada's four dominant companies hold 70 per cent of that nation's market.

Does Privatisation Deliver Services More Efficiently and Less Expensively?

The market failures of oligopoly and oligopsony—especially in the artificial market of political surveillance—encourage corporatisation and facilitate the manipulation of fear, among other deficiencies. Since there is little competition in corporate criminal justice, companies appeal to non-market factors to obtain contracts. In neoclassical economics, exchange is emphasised over production, and in the marginalist theory of value, a good's worth is determined by subjective scarcity—security, in this case—which is determined not by the cost of its provision but by the scarcity of supply (real and imagined). How does the oligopolistic sector limit supply? One method is by government regulation and specially tailored projects for which the contractor is best equipped. High cost of entry restricts competition, creating a high barrier for competitors. Oligopolists expand their market and profit margins through advertising that heightens desire (Rubin 2010), as can be seen at Las Vegas trade shows and corporate-sponsored exotic vacation seminars. Who could resist the latest wares and services offered by contractors, especially products they could not afford as public servants? The security-related industry sponsors many 'conferences' and 'symposia' for politicians, government officials and

the corporate sector, such as Cisco Events' Public Services Summit 2011 in Oslo, where William J. Bratton, the then Chairman of Altegrity Risk International, delivered the keynote address on the unsurprising theme: 'Collaborate or Perish.'[11]

Not surprisingly, we find that private surveillance is much more expensive (Coll 2012). In this nearly $50 billion a year business, 70 per cent of the US intelligence budget goes to private contractors, who on average charge twice what it would cost a government official to do the same task (Cole 2011; Priest and Arkin 2010).[12] How do contractors get away with this? The government often skips competitive bidding. In May 2012, the Senate Homeland Security and Governmental Affairs Committee approved the Orwellian-named Keeping Politics Out of Federal Contracting Act 2011, which would prohibit the government from forcing federal contractors to disclose campaign spending and lobbying expenditures as a condition for keeping their contracts (Aronsen 2012). Unsurprisingly, determining whether private providers are more 'efficient' is not easy. How would one know anyway? When do we have 'enough' security? Guardsmark, the largest employer of former FBI agents, draws from that federal agency's quite active history of manipulating fear through fabrication and exaggeration (Lowenthal 1950; Weiner 2012). On Guardsmark's webpage (Guardsmark 2012), 'Illusion of Security,' they point out that 'vulnerabilities' are often invisible. In Alice in Wonderland logic, excellent security service is difficult to appreciate because who knows what might have happened without their security services? And in a final frustration, they conclude with this warning: in an unregulated industry such as private security, naïve customers might associate security value with lower cost.

In the correctional business, privatisation does not deliver higher quality and, often, not even lower cost when all operative factors are considered (Hartney and Glesmann 2012). This is because oligopsony stifles innovation in corrections. Quality will be limited to what is most profitable, which means the delivery of services that meet minimal contractual obligations and regulations, tending only to imitate the public sector, from which they draw most of their management (Gilroy 2012). There is scant evidence that privatisation is superior to government service provision even if the goal is efficiency (i.e. achieving the goal of the lowest

cost). Neoliberal proponents depict governments as inefficient because they are bureaucratic. While the history of government provision shows notorious examples of bureaucratic imperatives and 'empire building,' such as the FBI and the Drug Enforcement Agency (DEA), global security firms are themselves complex organisations run by corporate bureaucrats, many of whom come from the public sector (Rubin 2010: 915). This leads to 'status quo bias' (Frank 2000), aiming for the 'exact same thing' (Gilroy 2012). The corporate sector stifles innovation also because neoliberalism promotes standardisation, for the global application of transactions and accountability of its local and regional subsidiaries. Instead of programme innovation, 'efficiency' means lower pay and fewer benefits for the rank-and-file security workers and salaries for corporate management that are multiples of their public service counterparts. Efficiency sets a narrow goal—cost minimisation—undervaluing services that are hard to measure in strictly economic terms, such as rehabilitation (Dolovich 2007; Rubin 2010). Corporate annual reports of private correction companies do not indicate that much is invested in research and programme development, while CCA's 'America's Leader in Partnership Corrections' PAC gave over $1.5 million to state election campaigns between 2003 and 2010 (Walshe 2012). Along with the GEO group and Management and Training Corp, CCA spent nearly $45 million in lobbying state and federal governmental officials from 2003 to 2012 (Walshe 2012). Private firms are not creative, except perhaps in their accounting practices. Most of their investment money goes to public relations and investor relations.

Some Implications for Popular Sovereignty

Criminal justice outsourcing is profoundly anti-democratic and creates an industry that is not effectively regulated. Why is neoliberal public policy anti-democratic? Privatisation or corporatisation emphasises the executive, promotes the circulation of elites and makes policy while depoliticising the economy and society. Let us briefly look at some of these baleful effects on policing:

(a) *Privatisation emphasises the executive*. Neoliberalism strongly favours the government by executive order over judicial and legislative authority (Harvey 2007). Contractor manipulation is not as problematic as when contractors become too accountable to the executive, observes Jon D. Michaels (2010: 723), a process Michaels calls 'executive aggrandising'. Undermining other branches of government often takes the form of what he calls 'workarounds'—a contracting failure where the executive is an unfaithful agent vis-à-vis the legislature or the judiciary, for instance. Workarounds are used in policing, especially in surveillance, as when government agencies like Homeland Security use private contractors to avoid constitutional restrictions on data mining.

(b) *Mission Creep* is a second anti-democratic tendency. The great danger of the security state is that that surveillance data gathered for one purpose, like national security, will be used for other law enforcement purposes, such as policing welfare recipients and searching for illegal immigrants. There is considerable political pressure to use powerful government surveillance and data mining technologies developed for national security in everyday law enforcement. And that is exactly what was revealed in a recent *New York Times* article (Lichtblau 2012), 'Police are using phone tracking as a routine tool,' as cell phone companies are providing local police with data from their users in exchange for substantial surveillance fees. Mission creep is especially tempting in preventative law enforcement because the US Constitution's Fourth Amendment does not constrain private parties. Local and State police, as well as a host of federal agencies, have been clamouring for data mined by NSA (Lichtblau and Schmidt 2013). If these technologies can help locate terrorists, why not use them in regular policing, such as the 'drug war'? In August 2013, journalists for Reuters revealed that the DEA secretly uses NSA and CIA intelligence to launch State and local drug investigations against Americans (Shiffman and Cooke 2013). Even more astonishing, the DEA instructed local law enforcement agencies to conceal the origin of the information (from all parties, an especially egregious blow to defence attorneys) by creating false trails and narratives. And what is *not* terrorism related? Plausibly, terrorists could

be connected to illegal drug networks, the pornography industry, money laundering and so on. What constitutes 'terrorism' is a quite elastic concept in the minds of some legislators. In Utah and Iowa, for instance, undercover filming of farm animal mistreatment is illegal under a 2002 ALEC-sponsored legislation—the Animal and Ecological Terrorism Act 2006. Increasingly, government permits or requires employers to monitor and report on the conduct and activities of their employees, clients and customers—but not the other way around. While employers are seemingly doing the government's bidding, what restricts them from using such intelligence to thwart union activities or seek out whistle-blowers? All types of industrial and commercial employers—including banks, phone companies, condominium and apartment managers and even private detective agencies soon to be using drones—are gathering information on the public that falls in the hands of government agencies. This promotes a convergence of private and public regulatory power, including, of course, substantial self-regulation through Panopticism.

(c) Finally, *criminal justice outsourcing is not effectively regulated*, often because of corrupt private/public sector entanglements. Community Education Centers, Inc. (CEC)—a New Jersey company with extensive connections to politicians of both parties, most notably Republican Governor Chris Christie—operates for-profit halfway houses in New Jersey and 16 other states. The subject of a recent ten-month *New York Times* investigation (Dolnick 2012a, b), CEC received $71 million in New Jersey public money out of a halfway house budget of $105 million last year, and for this money the state gets a system riddled with drugs, gang activity, violence and sexual assaults (often unchecked) and thousands of escapes annually because of lack of oversight. These massive barracks-style facilities (with hundreds, some well over a thousand beds) are overseen only by $11 per hour 'counsellors.' They are dumping grounds for prisoners emptied from county jails—housed at half the cost per day at a CEC—to make room in county jails for federal prisoners and immigration detainees for which they are paid twice the rate. In other words, this arrangement is a big money maker for the counties, while lining the pockets of political cronies. When requested by the *Times*, neither

> state nor company officials were able or willing to provide records of state inspections. The senior vice president of Community Education is the governor's close friend, political advisor and former law partner. Mr. Christie himself was a registered lobbyist for the company in 2000 and 2001, and '… in early 2010, he hired the son-in-law of Community Education's chief executive as an assistant in the governor's office' (Dolnick 2012b: para.27). The governor has benefited handsomely from campaign contributions by Community Education (Eidelson 2014). Christie is a nationally prominent Republican, and he has promoted Community Education as an exemplar for the national movement to privatise 're-entry' programmes.

Let's take a close look at the case of Ohio, because this state illustrates many of the anti-democratic tendencies of neoliberal criminal justice, including (1) executive aggrandising, (2) the incestuous circulation of personnel between sectors, as well as (3) self-dealing, influence peddling and lobbying, the latter on which CCA alone spent $18 million over 10 years. Ohio was a bastion of industrial unionism during the post-war Golden Age, and it has a large organised public service sector. Ohio is important as a political bellwether state for the former industrial heartland of the USA, and its policies are influential in at least seven other nearby states. It is therefore a pivotal state for the entire US political direction. In July 2012, Ohio sold its medium security Lake Erie Correctional Facility to CCA for $75 million, awarding a 20-year contract that guarantees 90 per cent prisoner occupancy (one of five prisons the state hopes to sell on these terms). This is one of Ohio Republican Governor John Kasich's key policy reforms, along with legislation abolishing public service unions. Ohio's current Director of Rehabilitation and Correction, Gary C. Mohr, helped negotiate the purchase and will monitor their performance. Surely, this is a case of the fox guarding the chicken coop. Appointed by Governor Kasich, Gary Mohr is a former Managing Director of CCA, who went on to establish the consulting firm Mohr Correctional Insight, where he advised CCA in areas of staff leadership and development and unit management implementation (a move to decentralise prison governance). Establishing consulting firms after public service is a main vehicle for influence peddling and cronyism.

The broker between CCA and the State of Ohio was CCA lobbyist Don Thibaut, founding partner of the consulting firm Credo Company, who boasts on his company's website that he was instrumental in Kasich's early political career and was his Chief of Staff for nearly 20 years (CREDO 2012).

The nexus for these very cosy relationships between the chief of corrections, corporate lobbyists and the company with which he contracted prison services has been ALEC, the special interest group. Corporations, including CCA and GEO, have provided most of the funding for ALEC's operating budget and influenced its political agenda through participation in policy task forces. Ohio Governor Kasich was a founding member of ALEC. As a state legislator, he helped push through ALEC-sponsored 'get-tough' sentencing legislation devised by its Criminal Justice Task Force, which was chaired by CCA and the GEO Group business development officials. ALEC writes model bills with beguiling names ready for legislative floor action, including the Recidivism Reduction Act, Swift and Certain Sanctions Act, Community Corrections Performance Incentive Act and the Community Corrections Performance Measurement Act. This political lobbying organisation enjoys tax exemption as a 'charitable' organisation, while it spends millions annually to promote corporate interests. Its 'Scholarship Fund' enables State legislators to 'travel to ALEC conferences at lavish resorts where their spouses and children can vacation alongside other legislators, lobbyists and their families' (People for the American Way 2012). Arizona and Wisconsin have been equally potent targets of ALEC criminal justice initiatives.

Even the stimulus of ALEC, however, might not be enough to sustain the profit momentum in the face of the decline in prisoners nationwide, which has prompted the closure of a large new prison in Colorado (Deam 2012) and numerous older prisons elsewhere. Private prison companies in several states that have guaranteed minimum high occupancy contracts, including California (at 70 per cent) and Arizona (at nearly 100 per cent), recently have threatened to sue states for failing to maintain guaranteed occupancy. Unless a crime wave drives a new incarceration boom (which CCA's 2012 Annual Report predicts will happen with the economic recovery, interestingly), the industry will have to pursue markets in (1) 'community corrections,' which is less capital intensive, and (2) try to take over

state-owned facilities, a strategy which undermines their community service business. The two initiatives work at cross-purposes. Guaranteed occupancy contracts discourage diversion of lower-level offenders. Paroles are down considerably since Ohio Governor Kasich's prison sale. In 2011, just 7 per cent of the prisoners getting release consideration were paroled, compared with 20 per cent of the prisoners who got hearings the previous year, or in years before that, when nearly 50 per cent were paroled (Alaimo 2012). This drop-in release comes as the State legislature strives to decrease the prison population as a fiscal move.

Ohio, like many states, is moving towards the privatisation of probation and parole (Hartney and Glesmann 2012). In 2007, ten states contracted with private probation agencies covering 300,000 clients on court-ordered probation (Hartney and Glesmann 2012). The newest initiative is the ALEC-sponsored proposal, 'Conditional Early Release Bond Act,' which promotes privatised parole through surety bonds, providing conditional early release of non-violent offenders from sentenced incarceration. Early release is also proposed for those at the pre-trial stage. Such releases, facilitated through performance bond and indemnity agreements, would in theory reduce prison and jail overcrowding, as well as recidivism, and make more room for violent offenders. In other words, private sureties assume certain law enforcement and corrections functions. These releases would be far more conditional than government parole, which is seen as a failure. Arizona, South Dakota and South Carolina are among the states adopting this legislation. Georgia, where over 30 for-profit companies operate in hundreds of courts, is one of the most egregious in the use of private probation company fees to raise revenue for city and county courts, as a back-door taxation, where both governments and private enterprise profit from unnecessary misdemeanour incarceration (Bronner 2012).

Concluding Comments

States compromise their sovereignty when they fail to regulate market behaviour and instead try to become participants in the market (Backer 2008: 5; McCarthy 1994). On the other side of the equation, corporations

surrender little or nothing of their private character when they act as a sovereign via private contracting. Take the lack of oversight of private corrections, for instance. In the majority of states, private prisons and other correctional institutions are not required to disclose information to the same extent as government agencies (Tartaglia 2014). In Ohio as well, as in a number of states, private correctional institutions are exempt from public records laws. In 2003, Oriana House, Inc., a publicly funded non-profit private chemical dependency and community correctional facility, refused to comply with a special State audit. The State auditor revealed that Oriana House's president loaned a for-profit subsidiary, Correctional Health Services, Inc., of which he was also president, $6 million of public funds. Correctional Health also purchased property from Oriana House and then leased it back for more than three times the amount (*State ex rel. Oriana House, Inc. v. Montgomery 108 [*2006] Ohio St.3d 419). In *State ex rel. Oriana House, Inc. v. Montgomery*, the Ohio Supreme Court ruled 4–3 against the State auditor and declared Oriana House was not required to produce documents requested by the State auditor, ruling that private prisons are not 'the functional equivalent of a public office'; therefore, they need not abide by the Public Records Act: 'A private business does not open its records to public scrutiny merely by performing services on behalf of the state or a municipal government,' the Court ruled (*State ex rel. Oriana House, Inc. v. Montgomery 108 [*2006] Ohio St.3d 419, para.36). With this lack of oversight, private agents are in a position to alter or create policies they are supposed to be neutrally administering, including programmatic content. Even if government executives know what is going on, they cannot do much about policy implementation they do not like. Governors lose executive authority because they cannot fire a private prison warden for poor management, that is, the shareholders' authority. Cancel the contract? The problem here is that governments are captive to oligopolistic prison providers. Who would replace a poorly performing provider should a contract be withdrawn? Over time, governments become less capable of resuming control because of lost expertise and—in the cases where they sold their prison facilities—the lack of an alternative. The private criminal justice industry is difficult to govern, principally because contracts are between partners of unequal power. Capital in most cases has the upper hand. The government—the public's representative—enters the private market terrain largely on capital's terms.

The private/public dichotomy mystification also allows private policing to escape judicial oversight. The US Supreme Court has ruled that, unless formally deputised, private security guards are not performing a public function as state actors, even as they perform duties on behalf of the government (Metzger 2003). The benefit of this ruling is seen in a pernicious form of criminal justice corporatisation: 'strategic partnerships' with the FBI in corporate counterintelligence (Marx 1987). Unburdened by due process and evidentiary restrictions that apply only to state action, corporate security officials at IBM have set a trap using a front business in a counterespionage investigation that has led to criminal charges against officials of two leading competitors (Marx 1987). Many multinational corporations are sideline or incidental security providers, whose main business is non-security, but that have sophisticated in-house security operations and/or commercial cyber security subsidiaries (e.g. IBM and the military contractor, Lockheed Martin). The movement of personnel from the FBI, CIA, Pentagon and other federal investigative agencies into corporate security (Lohr 2012) today involves a seamless transfer of expertise and techniques gained at taxpayers' expense to corporate settings unconstrained by Constitutional restrictions that burden the public employee.

In his discussion of private policing and democracy, David Alan Sklansky (2006) argues that one of the principal roles of government in a democracy is to prevent unjustifiable hierarchies by promoting equality and personal liberty. On this premise, criminal justice in a democratic society should help combat unjustifiable private systems of domination, and protect its citizens from private coercion, while avoiding unnecessary official domination. This governmental role, however, is often compromised by entangling relations between private and public entities. Criminal justice privatisation is essentially corporatisation, and designating corporations as society's protector from private systems of domination appears strange in as much as corporations are a major source of domination in everyday life. Corporations are a leading contributor to economic inequality through their favourable tax burden and low-wage structures, facilitated by enormous political contributions frequently made anonymously. In today's security-industrial complex, we are suffering the realisation of Reagan and Thatcher's neoliberal vision of a strong state of social control with weak governmental regulation of the market.

Already wielding enormous power to shape the collective life of the whole society, corporate bureaucrats are now routinely armed with state power to collect data on the most intimate and personal behaviours of millions of citizens. Larry Catá Backer (2008) reminds us that economic surveillance (of producers and consumers) is not just a matter of personal privacy. Surveillance categorises, profiles, assigns risk and worth and in many other ways has a profound effect on life's chances in a consumption society and a 'credentialed' state (Marx 2005)—making surveillance a matter of power and coercion and therefore social and legal justice.

The prevailing critical view is that, while privatisation is worrisome, it's inevitable. So, let us try to manage it. Many prominent legal scholars, including Laura Dickinson (2011) and Caroline Holmqvist (2005), argue that the enterprise can be effectively regulated and have offered various schemes. But whom can we trust? We cannot even assume that governments want the private sector responsive or accountable to public will, interests or values. In reality, outsourcing is often done to avoid public regulation and scrutiny. Our government officials, let alone subcontractors, cannot be trusted with our civil liberties. The NSA has violated privacy rules and frequently overstepped its legal authority since Congress granted the agency broad new powers in 2008, according to internal audit (Gellman 2013). At other times, the NSA brazenly defied the meek and secret Foreign Intelligence Surveillance Court. Chief Justice Roberts appointed 11 of the 12 justices, all whom strongly favour executive authority (Savage 2013). The Obama administration's position on privacy has been one of, 'trust us, we're not abusing power.' If the criminal justice industry is to be democratically controlled, some argue that we must look to forces other than governmental ones. Conservatives say the free market itself is the best approach to personal liberty and security. This is somewhat plausible, at least in a limited sense. Resistance to the surveillance state has arisen on several fronts, including encrypted email systems and the revelations of leakers and whistle-blowers like NSA subcontractor Edward Snowden and Pfc. Chelsea Manning, who have shed considerable light on government's clandestine mass electronic surveillance. By 2013, many IT corporations themselves began to balk. In December 2013 eight of the largest technology firms sent an open letter disavowing the NSA's dragnet surveillance programmes (Lennard 2013). Not with standing the early history of cooperation

between IT corporations and state and federal government agencies, the cyber and telecommunication industries/government alliance is beginning to work against corporate interests. Confidence in the confidentiality of customer communications—especially among global business and political customers—is the lifeblood of Microsoft, Google, Twitter, Skype and other communication industries. Companies associated with the PRISM programme have begun to resist routine surveillance requests, for instance, in providing automated back-door access for government snooping on customer accounts (Chatterjee 2013a; Firestone 2013). Microsoft, Yahoo, Facebook and Google, in order to increase 'transparency' of their operations, mounted a legal challenge in 2013 to federal gag orders on secret data requests (aggregate numbers of Surveillance Court orders) (Timberg and Kang 2013). In January 2014, President Obama declared that Internet companies in the lawsuit can give the public a 'better idea' of how often (in gross ranges) the government demands customer information, but they cannot disclose *what information* or *how much* is being collected (Apuzzo and Perlroth 2014). In deference to the oligopolistic sector, the new rules prohibit start-ups from revealing information about government requests for two years! Of course, all this does nothing to address the amassing by communication companies of enormous amounts metadata in the first place—in the case of AT&T, with employees acting under the guidance of embedded DEA agents (Shane and Moynihan 2013)—and storing these records for periods of time well beyond any business purpose other than to sell it to the government in later investigations. In a secret partnership between federal and local drug enforcement officials in three States and AT&T, the federal government for many years paid phone company employees to work alongside DEA agents and local police in examining phone data going as far back as 1986, in reality, helping government officials skirt the Fourth Amendment questions (unresolved) concerning 'reasonable' searches of private data technically belonging to AT&T—all this for a failed drug war.

The challenge to effective oversight and accountability of the private sector in the Information Age is more formidable when jurisprudence follows the Industrial Age laissez-faire principle that the market is the most important realm of individual freedom and that personal liberty is most endangered by government regulation. In the twenty-first century,

our privacy and liberty are poorly defended by a legal system that fails to recognise the abuse of corporate power and the dangers of commercial surveillance and social control. The other horn of the dilemma of mistrust, however, is the government sector itself. The US government has been pressuring companies such as Facebook and Google with the threat of heavy fines if they fail to heed orders to intercept online communications in real time (Nakashima 2013). In the wake of the November 2015 coordinated terrorist attacks in Paris, the US government (led by the CIA) is again trying to force big tech companies to engineer 'back-door' keys to unlock encrypted conversations. Failure to meaningfully regulate the collection and use of private data by Internet companies on the one hand and the National Security Agency programmes of mass surveillance on the other are twin threats to civil liberties: a great sacrifice for ineffective and likely unconstitutional tactics.

Notes

1. Throughout this chapter, we use 'State' in the upper case to indicate individual US state governments; lower case 'state' is used to indicate a means of rule in a given or sovereign territory, such as a nation state, which has as a chief attribute, to paraphrase Max Weber, the authority and ability to *exercise a monopoly of the legitimate use of physical force*. A state is more than a government, and private security can be (and often is) a state apparatus.
2. Private policing has customarily been considered either delegated authority, as in deputisation ('inside'), or 'outside' of the state, exercising mere civilian powers (e.g. 'citizen's arrest'). Any other private use of force is usurpation, a 'dispersal' of power, an 'erosion' of the state or 'hollowing out' of the state, among other conceptualisations of recent developments (Shearing and Stenning 1981; Shearing 1992).
3. *Lochner v. New York* (1905). Following laissez-faire economic doctrine of 'liberty of contract,' the Supreme Court ruled that employers and workers were free to form contracts without government restrictions. The Court invalidated state laws protecting the right of workers to join unions, States to establish minimum-wage laws and maximum working hours, on the premise that capital and individual workers met as equals

in the market. The New Deal era Supreme Court abandoned *Lochner* jurisprudence in the 1937 case of *West Coast Hotel Co. v. Parrish*.

4. The William J. Burns International Detective Agency is now part of Securitas Security Services USA.
5. With the help of the law firm of Florida's Senator George A. Smathers, Wackenhut found a legal loophole to circumvent the 1893 Pinkerton Act prohibiting detective agency employees from obtaining private security contracts with the federal government by creating a wholly owned subsidiary that did not employ 'detectives,' merely 'guards,' a semantic trick.
6. Allan Pinkerton was the pioneer of conspiracy culture marketing, through his agency's many books associating industrial conflict with socialism, communism and anarchism.
7. As part of a trend of companies in the military-industrial complex to branch out to the security-industrial complex, Lockheed Martin became a private security provider in its own right.
8. A brief history: Beginning in the late 1970s, the Department of Justice, through its research division, the National Institute of Law Enforcement and Criminal Justice (NIJ), commissioned a series of studies of the private security industry. The NIJ turned to a prominent policy think tank, the RAND Corporation, to assess the extent of private policing and examine its nature and role. The RAND report (Kakalik and Wildhorn 1971a, b) was strongly favourable to the private security industry, whose services were seen as *complimentary* or *supplemental* to public policing, serving as 'junior partners.' The RAND study was followed by the Hallcrest Reports of 1985 and 1990 (Cunningham and Taylor 1985), which identified a 'vacuum' of policing in the face of the growing fear and reality of crime.
9. As James O'Connor, in *Fiscal Crisis of the State* (1973: 7; 150–53), observed, privatisation turns *social expenses of production*—services required to maintain social harmony (many of which used to be assumed by corporations as welfare capitalism or the Pinkertons)—into *social investments* that increase the rate of profit; government 'expenditures' become GDP.
10. There are even those who have felt compelled by business ethics, conscientious objection and fear to close their businesses rather than surrender data. The founder of one encrypted email service company, that of Lavabit, purged all accounts and closed down operations out of fear of the results of an impending federal government search by secret court order that he was issued pursuant to the Snowden case (Snowden was a subscriber). A second company has also closed operations (Sengupta 2013).

11. Mr. Bratton has spun the revolving door between government service and corporate security as frequently as anyone, and his dizzying career provides a chronicle of the extent of corporate-government entanglement brought by frequent circulation of personnel between the sectors. Joining the Boston Police Department in 1970, Mr. Bratton quickly climbed to Executive Superintendent by 1980. After a stint with the Boston transit police, he then served as chief of the New York City Transit Police from 1990 to 1992. Then, in 1993, Bratton returned to Boston to become Police Commissioner, but returned to New York at the end of 1994 to serve as the chief of the New York Police Department (NYPD). Resigning that job in 1996, he joined Kroll Associates private security consultancy, whose president served at the time as the federal monitor of the troubled Los Angeles Police Department (LAPD). Impressing the LA Police Commission with his recommendations, Bratton was soon appointed LAPD police chief (2002–2009)—under the watchful eye of his former boss and friend at Kroll. In 2009, Bratton returned to Kroll (later purchased by Altegrity). His assignment sent him back to New York where, in December 2013, he was reappointed New York City police commissioner (Goodman 2013).
12. Apparently, the US government is getting a little fed up with outrageous charges for contract surveillance. On 3 March 2014, US federal prosecutors sued Sprint Corporation alleging overcharging by 58 per cent for electronic surveillance and investigative wiretap expenses, costing federal law agencies over $21 million in approximately three years (Lifsher 2014).

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3

Just Another Industry? (De)Regulation, Public Expectations and Private Security

Adam White

On 22 September 2010, the BBC broke the news that the Security Industry Authority (SIA)—the Home Office quango charged with the responsibility of regulating the private security industry across Britain—was to 'face axe in cost drive' (Campbell 2010). The SIA was one of 904 such public bodies targeted for either abolition or merger in the recently elected Coalition Government's flagship Structural Reform Plan which sought to reduce the size and scope of the British state in the cash-strapped post-global financial crisis era (National Audit Office 2012: 12–14). As the BBC went on to report, one of the additional rationales for 'axing' the SIA and other public bodies which regulated commercial activities was to 'save firms money' and to reduce 'burdensome regulation' (Campbell 2010). In the Government's view, this was a sure-fire vote-winning rationale based on the assumption that as a general rule commercial organisations welcome the elimination of costly state regulation. Rather than welcoming this news, however, the various sub-sectors of the private security industry immediately rallied together under the banner of the newly established 'Security Alliance' and on 13 October

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2010 sent a letter to the Home Secretary vehemently opposing the SIA's proposed abolition. In an embarrassing volte-face, one day later the Government announced that the SIA was no longer targeted for abolition. Contrary to the Government's assumptions, private security was not just another industry.

The purpose of the chapter is to offer an explanation for this sequence of events, with an emphasis on the political agendas of the state and market actors involved. The central thread of this explanation is an analysis of how these agendas have gradually taken shape in relation to the core variable of public expectations—more specifically the expectation that domestic security ought to be delivered exclusively by the state in accordance with the public good. This expectation is entwined with Robert Reiner's (2010: 3) identification of 'police fetishism' across the liberal democratic world: that is, 'the ideological assumption that the police are a functional prerequisite of social order so that without a police force chaos would ensure', for the assumption that the police represent the thin blue line between order and chaos often translates into a more general normative expectation that, wherever possible, the sphere of domestic security ought to be governed by and constituted within the public sector. When this public expectation is taken into account, the significance of state regulation (i.e. the SIA) immediately becomes apparent. While an unregulated private security industry has the appearance of delivering security as a private good to whoever is willing to pay, a regulated industry is to some extent imbued with the quality of 'stateness'—a quality which resonates much more closely with public expectations and is therefore of great (commercial) value.

In developing this explanation, the chapter sheds light on the relationship between criminal justice and the private sector more broadly. In empirical terms, many of the private security contractors who feature prominently in the regulation debate are also responsible for delivering a range of other criminal justice services in Britain and elsewhere. Multinational corporations such as G4S and Securitas have in recent decades expanded far beyond their traditional base in contract security and have penetrated the criminal justice sector on a global scale. Exploring how these contractors have engaged with the state in their traditional area of business provides a valuable lens through which to interpret their activities

in other parts of the criminal justice sector. In more conceptual terms, the explanation demonstrates how the sphere of domestic security—as with any sphere of the criminal justice system—is politically constituted not only through the ever-changing strategic agendas of localised state and market actors but also by shifts in the political economic climate which may originate at a great distance from the domain of criminal justice.

The chapter proceeds in three stages. It first sketches out the chapter's organising perspective: the advocacy coalition framework. This particular framework has been chosen because it provides a valuable set of concepts for explaining how political agendas—such as those featuring in the regulation debate—form over time and interact with one another. The chapter then advances a five-part chronological analysis of the different political agendas which have emerged throughout the post-war era in relation to the issue of private security regulation, culminating with the controversy over the proposed abolition of the SIA. It is important to note that each part of this analysis delineates a different set of localised and distant pressures acting upon the public/private divide in the sphere of domestic security, thus illustrating the key point that far from being a given, this divide is politically (re)constituted again and again over time. To conclude, the chapter briefly reflects on what the dynamics of regulation say about the changing contours of the criminal justice system more generally.

The Advocacy Coalition Framework

The task of empirically investigating the emergence of multiple political agendas in relation to the issue of private security regulation is a complicated and extensive one. To bring order and clarity to this task, the Advocacy Coalition Framework (ACF) is employed as the chapter's organising perspective. The ACF has been developed and refined by Paul Sabatier and colleagues from the 1980s onwards, becoming one of the most widely used heuristic devices for understanding the policy making process in liberal democracies (key contributions include Sabatier and Jenkins-Smith 1988, 1993; Sabatier and Weible 2007).[1] During this time a large number of concepts and propositions have been added to the framework in an ongoing effort to expand its explanatory

scope. This section, however, presents a much simplified version of Paul Sabatier and Christopher Weible's latest (2007) iteration and prioritises those concepts and propositions of most value to the present task.

The ACF's opening proposition is that when actors enter into a 'policy subsystem'—in this chapter the governance of domestic security—they are guided primarily by their long-term beliefs rather than, say, their short-term material interests. Beliefs are seen to exist at different levels: at a 'deep' level they cohere around fundamental positions on any given issue; at a more immediate or 'secondary' level, they are shaped by a strategic reading of which policies best serve these positions. In this chapter, the fundamental positions relate to the rightful balance of state and market in the sphere of domestic security, while the more immediate policies used to realise these positions for the most part concern the role of state regulation. In order to push forward their policy preferences, the ACF asserts that actors then ally with others who share these preferences, in the process creating 'advocacy coalitions'. It is often the case that when actors share policy preferences they also subscribe to the same fundamental positions, giving rise to discrete and cohesive coalitions of like-minded actors. In the governance of domestic security subsystem, however, it is more frequently the case that actors who subscribe to a different state-market balance at a 'deep' level very often share a policy preference for state regulation at the 'secondary' level, in turn generating a series of rather nebulous and counter-intuitive inter- and intra-coalition relationships. Table 3.1 provides a brief summary of these coalitions.

Table 3.1 Advocacy coalitions

Coalition name	Main actors	Fundamental position	Policy preference
Reformers	House of Commons, senior police, New Labour, SIA	Strong state, controlled market	Regulation
Distancers	Home Office civil servants, senior police	Strong state, controlled market	Self-regulation
Relegitimaters	Private security industry, New Labour	State partnership with controlled market	Regulation
Free Marketeers	Private security industry, Conservatives	State partnership with free market	Self-regulation

The value of the ACF relates not only to its belief-driven explanation of how 'advocacy coalitions' form in the first instance but also how they interact with one another over time and, by extension, generate policy outputs and outcomes. The ability of a coalition to influence the direction of the policy process is to a large degree determined by its key resources which include the legal authority of its members, the financial resources at its disposal, the extent to which its policy objectives resonate with prevailing public opinion and the skill of its leadership. The distribution of resources in a policy subsystem at a given moment generates a particular configuration of coalitions and policy outputs and outcomes. However, it is also recognised that resource distributions change over time in line with shifts in the political environment both inside the subsystem (e.g. localised scandals) and outside the subsystem (such as economic crises and changes in Government). These 'shocks' thus hold the potential to move the policymaking process in an entirely new direction. Importantly, during the course of the post-war era, a number of shocks had this effect upon the governance of domestic security subsystem, most notably: the crisis of the welfare state in the late 1970s, scandals relating to the Deal Marine Barrack bombings and Group 4 prisoner escapes in the late 1980s and early 1990s, the New Labour landslide election victory in 1997 and the global financial crisis in 2007/2008.

These interrelated concepts and propositions, which explain how advocacy coalitions form and interact with one another, are used to organise the empirical material over the subsequent five chronologically ordered sections. Each section explores a phase in the private security regulation debate which is defined by a distinct configuration of coalitions and each configuration provides an insight into the changing relationship between the public and private sector in the governance of domestic security subsystem (and indeed beyond). The processes through which each phase moves into the next are mediated by some kind of shock which serves to reconfigure inter- and intra-coalition dynamics. So by the time the analysis reaches the SIA's proposed abolition in 2010, the political agendas which feed into this contemporary debate can be seen as the product of multiple coalition configurations and shocks which occurred throughout the post-war era.

Post-war Consensus, 1945–1979

The political landscape in Britain during the three decades or so following the end of World War II is commonly referred to as the 'post-war consensus'. Although there is debate over its origins and historical content (see Heffernan 2002; Kavanagh 1992; Kerr 1999), it is widely acknowledged that this period was characterised by a popular and elite belief in the social democratic state's ability to produce and distribute a range of goods and services across economy and society. This collectivist sentiment had important implications for the governance of domestic security subsystem. By the 1940s and 1950s, the police had long since allayed the general fear that they represented an authoritarian threat to individual liberty—even if specific fears persisted among often persecuted minorities. Yet it was not until this period, when belief in the state's capacity to order economy and society was at its greatest, that the police experienced their often cited 'golden age'. As Robert Reiner (2010: 68) notes: 'The relative social harmony and consensus of the mid-twentieth century, symbolised by the Battle of Britain and the Festival of Britain, was also the finest hour of the British bobby myth'. Around this time the expectation that domestic security ought to be delivered exclusively by the state in line with the public good became more embedded in the public consciousness than ever before. Indeed, this 'police fetishism' (Reiner 2010: 3) turned into something like an inter-subjective norm which in different ways served to shape the behaviour of all actors engaged in domestic security provision (see White 2012). Unsurprisingly, this expectation had a particularly profound impact upon the way in which policymakers interpreted the growth of the private security industry in the immediate post-war decades.

Records in the National Archives indicate that public officials began to take notice of the industry in the early 1950s when the Commissioner of the Metropolitan Police opened a file on a then small private security company called Night Guards (which became Securicor in 1953) (Metropolitan Police n.d.).[2] Over the next two decades, a group of Home Office civil servants in 'F' Division (policing policy) and a handful of senior police officers from around the country joined the Commissioner

in monitoring the operations of such contractors through a series of working parties (Home Office n.d. a, b). During this time, two interconnected advocacy coalitions simultaneously began to take shape: the 'Distancers' and the 'Reformers'.[3] Significantly, these two coalitions shared the exact same fundamental position: at a 'deep level' they both believed that a strong state should dominate the sphere of domestic security and, by extension, that any market presence should be strictly controlled by the state—a position which was, of course, shaped and reinforced by the public's 'police fetishism'. However, they differed in their strategic reading of which immediate policies would best serve this fundamental position. The Reformers reached the conclusion that the state should regulate the operations of private security contractors so as to assert its control over the market and its pathologies. This is illustrated by an internal Home Office communication sent by the then Home Secretary Frank Soskice in 1965:

> There is a feeling that services of this sort [those provided by contractors] should only be undertaken by the police, and anything like 'vigilantes', or (although happily we are miles from this) private armies would excite extreme public resentment. But should anything occur like a fight between these organisations and gangsters there would be immediate disquiet. Has the time not come when if they are to operate they must be strictly publicly controlled? (Home Office n.d. b)

Soskice was clearly concerned by possible 'public resentment' and 'disquiet' over the operations of private security contractors and saw state regulation as the solution. The Distancers reached a different conclusion, however. They conceded that state regulation would provide much needed control over the industry, but they also judged that it would simultaneously confer some of the state's legitimacy upon contractor operations, presenting them with an opportunity for further expansion. As one Home Office civil servant remarked: 'the words "approved by the Home Secretary" would provide companies with a valuable piece of propaganda' (Home Office n.d. b). They drew the conclusion that the state should instead encourage these contractors to regulate themselves through a newly formed trade association over which the state could

exercise control from a safe distance. This strategic reading therefore left the key state actors divided over which policy preference to pursue.

There is no documentary record of what the private security contractors were planning behind closed doors at this time—their intentions only become traceable on those occasions when they make contact with state representatives and in turn feature in the Metropolitan Police and Home Office files. During these moments of contact, however, a third distinct coalition can be discerned: the 'Relegitimaters'. Given that this coalition was emerging from within the industry, its fundamental position was perhaps unsurprisingly that the market should play a major role in the delivery of domestic security alongside the state. Yet the most effective policy for realising this preference was, it seems, not at all clear to its members. The problem facing these contractors was that their very existence grated against the public expectation that domestic security ought to be delivered exclusively by the state, and the resulting lack of legitimacy put a limit on the extent to which they could expand their operations. This is neatly illustrated by the comments of an industry public relations officer in the mid-1960s:

> People who say there is no such thing as bad publicity have never handled a security company's account. One theft with built-in news value can cancel years of solid successes. One stupid incident involving a security guard can revive all the old canards about strong-armed men and private armies. (Clayton 1967: 12)

As such, certain contractors began to pursue policies designed to enhance the legitimacy of their operations, in particular developing relations with state institutions in an effort to capture some of the 'stateness' on which the public placed such a high value. Before long, this had evolved into a policy preference for state regulation. In 1965, for instance, when a Home Office-led working party met with representatives from the three largest companies—Securicor, Security Express and Factory Guards (which would become Group 4 three years later)—for the first time, the minutes of the meeting show that these representatives reasoned that 'it would seem desirable for the Home Office to undertake a system of licensing to prevent unsatisfactory firms from setting up business'

(Home Office n.d. a). While the request was couched in the diplomatic language of preventing the spread of 'cowboy' firms, which in itself would have the dual effect of cleaning up the industry's image and protecting the market share of the large firms (see Stigler 1971; Smith and White 2014), the fact that such a system would entail the issuing of licences inscribed with the legend 'approved by the Home Secretary' was on reflection most probably the primary rationale. For these words would allow the contractors to present themselves not as pure market actors, but as state-deputised actors operating to some degree in line with the public good—a valuable asset in a sector so deeply permeated by police fetishism (for an expansion of this logic, see White 2010).

In the immediate post-war decades, then, three advocacy coalitions were seeking to influence the policy process, with two in favour of state regulation and one against. In the event, it was the Distancers who prevailed over the Reformers and Relegitimaters, decisively shaping the direction of the policy process from the 1950s to the late 1970s. The reason for this dominance was a combination of dextrous leadership and superior resources. When the Distancers were dealing with their public sector rivals, the Reformers, they had to rely upon clever leadership since they held no real advantage in terms of legal or financial resources. In a critical 1965 meeting, for instance, one of the key senior civil servants in the Distancers was able to persuade the ardent Reformer—and his superior—Home Secretary Frank Soskice of the dangers entailed in introducing state regulation. Following this meeting the civil servant in question noted: 'After some discussion S. of S. [Soskice] … said that in his view the objections to introducing any system of registration were in the present circumstances conclusive' (Home Office n.d. b). When the Distancers were dealing with the industry-based Relegitimaters, however, they were able to turn the substantial legal authority of the state to their advantage, best demonstrated by their success in inducing the largest private security companies to band together in a new trade association (the British Security Industry Association (BSIA)) with which the Home Office and police could liaise and control from a safe distance (i.e. a distance which minimised the conferral of state legitimacy). The biggest challenge to the Distancers came in the mid-1970s when a number of Relegitimaters (most notably Group 4) teamed up with a new member of the Reformers

(Bruce George MP) in an effort to put private security regulation firmly on the parliamentary agenda (White 2010: 95–6). However, the two resulting 1977 private members' bills (HC Bill [1976–7] [62]; HC Bill [1976–7] [114]) proposing such state regulation were soon undermined by a 1979 Home Office Green Paper which decisively reaffirmed the anti-regulation policy stance of the Distancers (Home Office 1979).

In the period 1945–1979, then, the traditional public/private divide in the sphere of domestic security was holding relatively firm. This was reflected in the dominance of the Distancers advocacy coalition which not only incorporated the strong state/controlled market ideal into its political agenda but also sought to prevent the conferral of legitimacy upon the private security industry by suppressing the issue of regulation. From the 1979 onwards, however, this traditional public/private divide was to come under increasing pressure from different directions.

The Neoliberal Turn, 1979–1989

The Conservative Party's 1979 election win is often taken as a critical turning point in the British political landscape, marking the decline of the state-centric social democratic vision embedded within the post-war consensus and the rise of free market neoliberalism. There is debate over the extent of this turning point, with a central line of reasoning being that the neoliberal shift was often more ideological construct than material change (see Marsh and Rhodes 1992; Hay 1996). Nevertheless it did serve as a sufficient shock to the governance of domestic security subsystem to shake up inter- and intra-coalition relationships over issue of private security regulation. Most importantly, it created the right conditions for a fourth advocacy coalition to emerge: the 'Free Marketeers'. Similar to the Relegitimaters, this coalition was centred upon the fundamental proposition that the market should play a major role in the delivery of domestic security alongside the state. However, they departed from the Relegitimaters in their strategic reading of which policies best served this position, for they interpreted the ascendance of market-led neoliberalism as a sign that contractors could now operate freely without offending the public expectation that domestic security ought to be delivered exclusively

by the state. As such, they lobbied in favour of self-regulation—the exact same policy preference as the Distancers, but of course informed by a completely different fundamental position.

The core membership of the Free Marketeers comprised both state and market actors. On the state side were members of the incumbent Conservative Party who, true to their neoliberal ideals, maintained that an unfettered—or self-regulating—industry was best placed to serve the security needs of state, economy and society. For example, when questioned about evidence of malpractice in the industry during the late 1980s, members of the Conservative Government—including the Home Secretary Douglas Hurd—repeatedly asserted their firm belief in self-regulation (HC Deb [1988–89], vol. 146, col. 411; HC Deb [1988–89], vol. 149, col. 598). Adding depth to this position, a subsequent Home Office (1991: 8) report on self-regulation in the private security industry stated that 'The Government starts from a position of favouring deregulation in as many spheres of economic activity as possible in the interests of maximising competition and consumer choice'—a textbook neoliberal justification for self-regulation. Two further observations need to be made about the beliefs which permeated the state side of this coalition. First, a caveat: it is interesting to question the extent to which Home Office civil servants were actually now pursuing self-regulation as Free Marketeers, for they could equally have been Distancers given that both coalitions shared the same policy preference. Until the relevant Home Office records are declassified and filed in the National Archives, it remains difficult to answer this question. Second, a clarification: the belief in an unfettered industry did not entail a corresponding devaluation of state security, as appearances might suggest. Neoliberal philosophy holds that while the open market is the best mechanism through which to distribute goods and services across economy and society, it functions most effectively in a stable order guaranteed by non-market actors—that is, the state (see Friedman 1962). As such, the police continued to receive significant support from the Conservative Party throughout the 1980s, primarily in the form of increased staffing, resources and powers (Rawlings 1991: 42)—and, crucially, in this way the Conservatives were able to satisfy the public's 'police fetishism' while at the same promoting a free market for the delivery of domestic security.

On the market side of the coalition were representatives from the private security industry. It would be wrong to say that there were no Free Marketeers within the industry prior to the neoliberal era, but judging by the relative lack of free market rhetoric coming from the industry during the immediate post-war decades, it seems that they had not come together in an advocacy coalition, leaving the Relegitimaters as the sole industry coalition during this period. After 1979, however, there was something of an exodus from the Relegitimaters to the Free Marketeers. Notwithstanding the critical facilitating factor that these coalitions shared the exact same fundamental position on the rightful state-market balance in the sphere of domestic security, there were push and pull factors at play in this movement. On the push side, the pro-regulation momentum generated by the Relegitimaters in partnership with the Reformers during the late 1970s was decisively halted by the 1979 Home Office Green Paper which sought to undermine the case for regulation. The Relegitimaters were thus experiencing a lull at the beginning of the 1980s, making their membership open to other policy agendas. On the pull side, with the neoliberal turn it also appeared as though state regulation was perhaps no longer necessary in any case, for in the new political economic order the presence of market actors in the domestic security sector might now be more acceptable to the public instead of grating against their state-centric attitudes. It seemed possible, in other words, that private security could be just another industry operating on the open market without encountering cultural resistance. Indeed, such reasoning was certainly encouraged by the Conservative Government which was contracting out more and more functions to the industry at the time: Ministry of Defence expenditure on private security, for instance, increased from £461,000 in 1984–1985 to £4,418,00 in 1989–1990 (Defence Committee 1990: ix). As a result, many industry representatives found themselves alongside (mostly Conservative) state representatives in the Free Marketeers coalition during this period.

Moreover, the Free Marketeers were able to take control of the policy process throughout the 1980s. There are two main reasons for this. To begin with, the rather basic system of self-regulation which the Distancers had initiated more than a decade ago by persuading the main private security companies to set up the BSIA served as an excellent foundation from which the Free Marketeers could further pursue this policy preference

(see Defence Committee 1984: 246)—though as alluded to above, it cannot be discounted that Distancers within the Home Office were also still facilitating this preference behind the scenes and simply regarded the ascendant free market ideology as the path of least resistance towards realising their own objective of minimising the transfer of state legitimacy to the industry. In addition to this, the combined state-market resources of the Free Marketeers were more than a match for the (now much depleted) Relegitimaters and Reformers. A pro-regulation alliance between these two coalitions did continue to exist throughout the 1980s—and indeed was much strengthened when the Association of Chief Police Officers (ACPO) joined the Reformers towards the end of the decade after they uncovered substantial evidence of criminal practice within the industry and adopted a policy stance in favour of regulation (see ACPO 1988)—but it failed to make headway against the Free Marketeers. This is perhaps best illustrated by the fact that the Home Office responded to ACPO's evidence with an enquiry which was limited to the 'ways in which self-regulation could be improved' (HC Deb [1988–89], vol. 149, col. 597) in line with the policy preferences of the Free Marketeers.

It would be easy to glance at the governance of domestic security subsystem towards the end of the 1980s and conclude that very little had changed since the era of the post-war consensus. State regulation—and the transfer of state legitimacy that came with it—was still off the table in a policy arena which was dominated by the Home Office. However, all the conditions surrounding this one policy continuity—and by extension its very meaning—had changed considerably. In line with the neoliberal shift towards the market, the Home Office was now—ostensibly at least—objecting to state regulation on the basis that an unfettered market would best serve the security needs of state, economy and society. Furthermore, many in the industry had made the calculation that in the new political economic climate the public expectation that domestic security ought to be delivered exclusively by the state was less acute than was previously the case, allowing an unregulated market to expand without constraint. So rather than self-regulation signifying that the traditional public/private divide in the sphere of domestic security was holding firm—as it did during the immediate post-war decades—the opposite was in fact closer to the truth, with the balance seemingly shifting ever more in favour of the private sector. This shift was soon to be checked, however.

Scandals, 1989–1996

The late 1980s and early 1990s is not usually regarded as a time of significant change in the British political landscape. The rocky transition in the Conservative Party's leadership from Margaret Thatcher to John Major may have represented a historic moment—the downfall of the twentieth century's longest serving and first female Prime Minister—but it did not mark a new direction in political terms. The incumbent Party remained firmly attached to its free market neoliberal principles. Yet this period did witness another decisive shift in inter- and intra-coalition relationships inside the governance of domestic security subsystem. The catalyst was two scandals within the private security industry itself which together had the effect of undermining the anti-regulation Free Marketeers and what remained of the Distancers and reinforcing the pro-regulation Reformers and Relegitimaters (though not under circumstances of their own choosing).

The first scandal took place in September 1989, when the Irish Republican Army (IRA) bombed the Royal Marine Barracks in Deal, Kent, killing 11 marines and seriously injuring 22 others. In the aftermath of the bombing it was revealed that in January 1988 the task of guarding the Barracks had been contracted out to Reliance Security. In the media frenzy that followed, the industry was in part held responsible for the casualties, with *The Independent* (Cohen et al. 1989: 1) reporting the following day that:

> As the bodies of the dead – aged in their twenties and mid-thirties – were dragged from the rubble, the privatisation of security was strongly criticised. The job of patrolling the perimeter was taken from full-time Marines last year and given to Reliance Security Systems, a private security company.

A few days after the attack, *The Independent* newspaper (O'Sullivan 1989: 2) was still reporting on the guarding arrangements, derisively noting that 'some [private security] guards refused to patrol the graveyard because they believed it was haunted. One was frightened of the dark'. Public emotions were of course running high so it was perhaps inevitable

that blame was going to spread beyond the immediate IRA perpetrators, yet because it was the private security industry in particular which entered the picture as a possible object of blame rather than, say, the marines or the police, it seems that much more blame was apportioned beyond the IRA than would normally have been the case. The neoliberal shift towards the market had not, it seems, eroded the public's state-centric expectations about how domestic security ought to be delivered: the industry was still regarded as a 'tainted trade' (Thumala et al. 2011).

A second scandal then served to confirm the industry's negative status in the public consciousness. In 1993 Group 4 commenced a groundbreaking £9.5 million per year Home Office contract to escort approximately 100,000 prisoners between police stations, courts and prisons in Yorkshire, Humberside and the East Midlands. In the first week, six prisoners escaped with a seventh breaking loose a few days later, in the process attracting some very public criticism about the wisdom of contracting out such important functions to the private sector. Reflecting back on this period, *The Guardian* (1999) (as cited in Livingstone and Hart 2003: 164) observed that 'in the early 90s, poking fun at Group 4 became a national pastime after they managed to lose seven prisoners within three weeks of taking on the first prisoner escort service. Newspaper cartoonists and satirical shows like Have I Got News For You had a field day'. Though far less serious than the Deal bombing, this incident nevertheless served to underline the point that contractors were not on the whole accepted by the public as a legitimate market actors.

Ian Butler and Mark Drakeford (2005: 1) observe that 'a scandal is not coterminous with the underlying events from which it springs. Often the events will have been in train for many years before they are construed as scandalous'. They accordingly reason that a scandal is better regarded as a 'powerful signal that change is occurring, or that pressure for change has reached unsustainable levels' (Butler and Drakeford 2005: 5). So it was with the Deal bombing and prisoner escapes. There was nothing unusual about substandard levels of service delivery within the industry, as ACPO's 1988 report made clear. What these scandals actually symbolised was public discontent with private security contractors operating like any another industry on the free market reaching breaking point. As such, these scandals had a profound impact upon inter- and intra-coalition relationships.

In the first instance, the Reformers were strengthened considerably by the parliamentary reaction to these public outcries. During the 1989–1990 session, the Government was required to provide no less than 13 written answers on the matter of private security regulation, and during the three years after the Deal bombing, four pro-regulation private members' bills were introduced into the House of Commons, with two more following the Group 4 prisoner escapes (though none of these bills was successful in securing a second reading).[4] At the same time, there was something of a reverse exodus taking place inside the industry, with substantial movement from the Free Marketeers back to the Relegitimaters. Once again recognising the need for state legitimacy to ameliorate public antipathy, many contractors were returning to the old pro-regulation cause. This left the anti-regulation Free Marketeers and what remained of the Distancers significantly weakened both in relative and absolute terms. But with the Conservative Government still committed to its free market ideals, there was no sense of inevitability about the direction of the policy process.

The contest between these coalitions came to head in 1994–1995 when, responding to the building pressures for private security regulation, the House of Commons Home Affairs Committee launched an enquiry into the issue. The Committee took evidence from a wide range of actors, with the majority of industry representatives presenting themselves as Relegitimaters and almost all other participants—including Members of Parliament, the Police Federation, the Police Superintendents' Association and ACPO—joining together as Reformers (see Home Affairs Committee 1995b). Only the Home Office bucked this trend by adopting a non-committal stance which no doubt reflected its reluctance to relinquish its long-standing attachment to an anti-regulation position, even in the face of overwhelming opposition (see Home Affairs Committee 1995b: 40–47). After receiving this evidence, the Committee unsurprisingly concluded in favour of state regulation (Home Affairs Committee 1995a). However, this did not persuade the Government to act—indeed, it remained ominously silent on the issue. It was only after New Labour—now part of the Reformers coalition—initiated an Opposition Day debate on the matter in February 1996 that the Government was forced to lay its cards on the table. Interestingly, the debate featured a strong reassertion of the Government's belief in an unfettered market, with David Maclean, Minister of State for the Home Office, arguing: 'The

security industry has expanded enormously over the past 25 years. It has had 25 years of success and achievement, which had been brought about because governments did not interfere with it' (HC Deb [1995–96], vol. 271, col. 882). But in a similar manner to the Home Affairs Select Committee's enquiry the year before, this was an outlying position in a debate otherwise dominated by pro-regulation discourse (primarily in the Reformers' vein). Eventually caving to this pressure, in December 1996 the Government (reluctantly) published a Green Paper outlining a tentative scheme for regulating the industry (Home Office 1996).

The pressures acting upon the public/private divide in the sphere of domestic security thus changed markedly in the wake of the Deal bombing and Group 4 prisoner escapes. The Free Marketeers' ideal of an unfettered market serving the security needs of state, economy and society quickly was eclipsed by a more pragmatic vision of a regulated market only permitted to perform security functions in a manner sanctioned by the state. However, while this seemed to suggest some kind of return to the traditional public/private divide after a sharp neoliberal interlude, it was of course a double-edged sword. From the Reformers' perspective—which dominated during the fallout of the two shocks—this did indeed represent a return to the traditional divide. Yet from the Relegitimaters' perspective, it represented something very different: at some point in the future memories of the shocks would begin to fade and more public trust would gradually be placed in a state-authorised industry, thereby generating more opportunities for market expansion than ever before. In 1996, however, this future vision of a regulated industry remained on shaky ground, for the Government was hardly enthused by the proposition. It would take yet another shock to the governance of domestic security subsystem to consolidate this vision (this time under circumstances which very much pleased both Reformers and Relegitimaters).

The New Labour Effect, 1997–2010

New Labour's election victory in 1997 is recognised as another key turning point in the post-war British political landscape, ending 18 years of Conservative rule and promising a new political economic order in the

form of the 'third way', an ideological position which cut through the dichotomy of market-led neoliberalism and state-centric social democracy. As ever, there is disagreement over the degree of transformation, the main contention being the extent to which New Labour's policy agenda represented a cleverly repackaged version of Conservative neoliberalism or a genuine attempt to bring social democratic principles back into mainstream politics (see Crouch 1997; Hay 1997). Either way, this victory had notable implications for the governance of domestic security subsystem, for New Labour's pro-regulation policy stance meant that for the first time in the post-war era the full legal authority and financial resources of the state were behind the project of regulating the private security industry. This stance requires close examination, however, for in line with their third way ideology New Labour's fundamental position regarding the rightful state-market balance in the sphere of domestic security actually straddled the deep level beliefs of the Reformers and Relegitimaters, thereby bringing an unusual degree of unity and consensus to the policymaking process.

Upon coming to power, New Labour immediately started implementing a partnership approach to the delivery of public services which sought to harmonise the resources of state, economy and society. In the sphere of domestic security, this resulted in a range of policies which sought to cast the police as the lead body in a broad network of crime-fighting institutions—an arrangement which New Labour later termed 'the extended policing family' (Home Office 2001). Moreover, it soon transpired that the private security industry was regarded by New Labour as one potential branch of this family. In July 1997, shortly after the election victory, the new Home Secretary Jack Straw announced the following at the BSIA annual luncheon:

> To solve the chronic problems of neighbourhood disorder will require coordinated action by central and local government, by the criminal justice agencies and by the communities themselves. But the private sector – and the private security industry – also have a crucial role to play. To ensure that you are able to play that role to the full, we must get your industry onto a sound footing. This means proper regulation. But in reiterating my commitment to regulation, my message is not one of mistrust, but of confidence.

> I am confident that by working together for sound regulation, we can rid the industry of the 'cowboy' operators and so restore public faith in your important role in the fight against crime. That is in the public interest as much as it is in the interests of the industry. (Straw 1997: paras. 36–37)

Clearly Straw recognised that for the industry to be an effective branch of the crime-fighting network, not only would the pathologies of the market have to be resolved (i.e. cheap security delivered by substandard and sometimes criminal contractors), but the industry would also have to become more accepted as a legitimate provider of security functions. His corresponding rhetoric, with its references to both a 'sound footing' and the 'restoration of public faith', appealed to both Reformers and Relegitimaters.

With this grand alliance between the Reformers and Relegitimaters firmly established, the pathway to regulation was a relatively straightforward one. There were still objections from the remaining Free Marketeers—especially Conservative peers in the House of Lords—but these had little impact upon the legislative process, and the Distancers were nowhere to be seen. As such, in May 2001 the Private Security Industry Act 2001 entered into the statute books. This legislation provided for the establishment of the SIA, a non-departmental public body (or quango) accountable to the Home Office and responsible for regulating seven sub-sectors of the industry in England and Wales (and later Scotland and Northern Ireland): security guarding (contract); door supervision (contract and in-house); close protection (contract); cash and valuables in transit (contract); public space surveillance (CCTV) (contract); the immobilisation, restriction and removal of vehicles (contract and in-house)[5]; and key holding (contract). In these sub-sectors, the SIA was empowered, firstly, to license individuals in line with 'fit and proper' person criteria and training requirements and, secondly, to accredit companies which voluntarily met certain standards of delivery (for a more detailed analysis of these regulatory functions, see White 2015a). This was, in broad terms, the kind of system long envisaged by the pro-regulation campaigners. The Reformers welcomed the 'fit and proper' person, training and standards specifications, though there was frustration about the fact that in-house security was only regulated in two sectors—indeed, the academic reformer Mark Button (2007) ranked private

security regulation in 15 European countries in accordance with measures of coverage and training and positioned the SIA's regime second to last. The Relegitimaters welcomed the symbolic links with the state, especially the state-issued licence which every private security officer (in a similar manner to every police officer) was now legally required to display upon their personage, in anticipation that these would appeal to the public's 'police fetishism'.

The reality of regulation, however, did not at first match the vision. The process of rolling out the licensing system between 2004 and 2006 was marred with costly errors, such as inaccurate projections of application numbers and bureaucratic delays in turning around applications (HC 1059 [2004–5]: 17). Then in November 2007 it was revealed that 39,885 licences had been issued to non-European Economic Area individuals who had not undergone a right to work check, eventually resulting the revocation of roughly 7000 licences (HC Deb [2007–8], vol. 469, col. 481). To complete a trilogy of confidence reducing mistakes, towards the end of 2008, it transpired that 38 members of SIA staff had not been given the required level of security clearance to issue licences, resulting in the resignation of the institution's Chief Executive (BBC 2008). Yet towards the end of the decade, the SIA's troubles appeared to be in the past, with its regulatory regime finally operating in a (relatively) efficient and effective manner. In August 2010, the SIA could list among its achievements: 345,442 issued licences; 19,120 revoked licences; 21,242 refused applications; and 676,886 awarded training qualifications (White 2015a: 430).

By this time, then, the complex public/private divide which had begun to emerge in the mid-1990s was now seemingly cemented. State regulation was becoming fully embedded in the private security sector. Moreover, regulation was taking on a Janus-faced character. On one side, it looked backwards to the traditional public/private divide, reinforcing the authority and symbolism of the state over the market, both through the extension of the state's legal authority over the industry and by conferring the quality of 'stateness' upon the industry. On the other side, it looked forwards to an increasingly pluralised and fluid security landscape where both state and market actors operated with legitimacy alongside one another. The cemented appearance of state regulation was

a misnomer, however, for on 22 September 2010, the BBC broke the news that the SIA was to 'face the axe' as part of the Coalition Government's Comprehensive Spending Review.

Crisis and Coalition, 2010 to Present Day

At the time of its announcement, the proposed abolition of the SIA came as a shock to all those outside the Government. With the advantage of hindsight, however, it is possible to see the pressures which led to this announcement steadily building over the preceding couple of years. These pressures were being fuelled by two more shocks—the global financial crisis and the emergence of a Conservative-led Coalition Government—which together had the effect of bringing the anti-regulation Free Marketeers advocacy coalition back into centre of the governance of domestic security subsystem after a more than a decade of isolation. Each of these shocks requires detailed examination.

British and American economic expansion throughout the 1990s and 2000s revolved around what Colin Hay (2011) terms the 'Anglo-liberal growth model'. The core features of this model include a booming housing market driven by easily accessible mortgages, consumption of goods and services funded by private debt largely secured against equity in the housing market and a macro-economic environment characterised by low interest rates and low inflation. Critically, the mortgage-lending banks at the centre of these arrangements were in the practice of repackaging and trading their mortgage loans on the global financial markets, thereby spreading the risk embedded within these mortgages throughout the global financial system—a process known as 'securitisation'. So when in response to a variety of global pressures (in particular oil price hikes), interest rates and inflation began to rise and borrowers started to default on increasingly expensive mortgage repayments during 2006 and 2007, the ripple effects were global in scale (for an in-depth analysis of this complex sequence of event, see Hay 2011). These ripples hit the highly globalised British banking sector especially hard, epitomised by the run on Northern Rock in September 2007—the first run on a British bank for 140 years. In the ensuing financial turmoil, the New Labour

Government ended up nationalising Northern Rock and Bradford and Bingley as well as initiating publicly funded capital investments in Lloyds TSB and the Royal Bank of Scotland. These bailouts—amounting to 'the largest UK government intervention in financial markets since the outbreak of the First World War' (Bank of England 2008)—created a seismic rupture in the public exchequer which is still having a profound impact on the topology of the state today.

The 2010 general election was unsurprisingly dominated by two related questions. How do we mend the rupture in the public exchequer? How do we achieve economic growth in the post-crisis landscape? That no party won a majority in the election suggests that the voting population was not decisively persuaded by any of the answers on offer. In forming a Coalition Government, however, it was the answers given by the Conservatives and the Liberal Democrats which shaped the direction of post-election policy. Given that the Conservative Party—the majority party in the Coalition by some distance—still advocated more or less the same economic principles as it did in the Thatcher/Major era, the answers read like something out of a neoliberal textbook: reduce the size of the state and remove constraints on individual entrepreneurship as quickly as possible in order to ease the burden on the exchequer and stimulate economic growth. Against this backdrop, state regulation inevitably became a central target, with the Conservative Manifesto (2010: 20) specifically singling out as a problem the 'increasing amounts of red tape and complex regulation [which] have eroded Britain's reputation as a good place to invest, create jobs or start a business'. This is how it came to be that the SIA—alongside hundreds of other quangos which performed regulatory functions—was earmarked for abolition in the Coalition Government's Structural Reform Plan. In accordance with neoliberal ideology, private security was once again cast as 'just another industry' best placed to meet the security needs of state, economy and society in its unfettered form, unconstrained by 'red tape and complex regulation'—a policy stance made even more salient when considered against the backdrop of a 20 per cent cut in the police budget and the hosting of the London 2012 Olympics, both of which were set to significantly increase the public sector's demand for private security contractors in the short and medium term. Put differently, the Free Marketeers had re-entered the governance of domestic security subsystem and, crucially, they once

again had the full legal authority and financial resources of the Government behind them.

Private security was not 'just another industry', however. The announcement was met with staunch resistance, especially from the industry-based Relegitimaters. A pro-regulation counter-discourse immediately began to take shape. On 23 September 2010, one day after the BBC broke the news of the SIA's proposed abolition, the Chief Executive of the International Professional Security Association (an industry trade association) asserted that 'With cuts likely to be made in the budgets of all police services, now is the time when the private security industry could take up the slack. Therefore it needs to be licensed by Government in order to ensure that public confidence remains high' (Security Management Today 2010a). On 24 September 2010, the Chairman of the Security Institute (a representative body for security professionals) stated:

> There can be no doubt that, since the introduction of regulation, there has been a notable reduction in the extent of criminal involvement and influences in the private security sector. This has enabled increased confidence and trust in the private security sector on the part of the police and, indeed, the public in general. Any steps taken which could damage such trust and confidence would, in our view, be a retrograde act. (Security Management Today 2010b: para. 6)

This discourse was clearly structured around a now familiar two-part calculation. First, with impending police budget cuts, the industry is facing huge opportunities for expansion within the domestic security sector. Second, in order to take advantage of these opportunities the industry needs to align itself as far as possible with the public's state-centric expectations about how security ought to be delivered, which means the industry needs to be regulated by the state. Articulating this logic through official channels, the newly formed Security Alliance—an umbrella body headed up by the Chairman of the BSIA and also representing many other trade and professional bodies from across the industry—sent a letter to the Home Secretary on 13 October 2010 opposing abolition. On 14 October, the Cabinet Office released a brief statement announcing that rather than being abolished, the SIA would instead undergo a 'phased transition to a new regime'.

It is important to highlight that in addition to the lobbying of the industry-based Relegitimaters, the Reformers were also fighting to save the regulatory regime—in particular the SIA whose employees obviously had a strong vested interest in its survival. Yet the chronology of events—the single day between the Security Alliance letter and the reversal of the Government's position—suggests that it was the Relegitimaters who made the decisive intervention. This is seemingly affirmed by a summary of the events given by Baroness Henig (Chairman of the SIA at that time) to the House of Lords a few months later:

> [The private security industry] made their opposition to the ending of regulation and the abolition of the SIA very clear. They wrote to the Home Secretary, the Prime Minister and the Deputy Prime Minister. They organised and highlighted the tremendous risks inherent in the Government's proposals, forcing the Government to change their mind. (HL Deb [2010–11], vol. 725, col. 903)

Impressively, then, the united leadership and combined resources of the Relegitimaters forced the Coalition Government Free Marketeers into a U-turn. Admittedly, this was not one of the major issues facing the new Government, so they were probably disinclined to expend too many resources on this contest. But it was a noteworthy feat nonetheless.

That said, it is important not to disregard the Free Marketeers. In outlining what the 'new regime' would look like at November 2012 SIA Annual Stakeholder Conference, Lord Taylor of Holbeach, parliamentary under secretary for criminal information, sketched out a regulatory system based upon four principles: first, 'greater transparency and accountability for how the industry is regulated'; second, 'deregulation, so that businesses, such as the businesses that many of you run or work for, aren't overburdened by Government regulation and red tape'; third, 'to lower the cost and burden of regulation on the industry and deliver better value for money'; and fourth, 'that the SIA continues to raise standards, combat criminality – in particular organised criminality – within the industry and continues to work to keep the public safe' (SIA 2012). With its emphasis on reducing the cost of regulation and red tape as well as keeping the public safe, the new regime is ultimately set to represent a

compromise between the 'deep' fundamental positions and 'secondary' policy preferences of the Reformers, Relegitimaters and Free Marketeers advocacy coalitions at the same time, though by the end of the Coalition's term of Government, no significant changes to the regime had been pushed through.

With this settlement, then, the public/private divide in the sphere of domestic security continues to be mediated by Janus-faced regulatory regime. However, under the influence of the Coalition Government Free Marketeers, the balance of the two faces is seemingly shifting. In its more market-friendly post-global financial crisis permutation, regulation is now less focused on the traditional state-centred public/private divide and more orientated towards a pluralised and fluid security landscape in which a flexible, state-legitimated private security industry sits in pole position to take over an increasing number of security functions from a police force besieged by sizeable Government-enforced budget cuts—an early signpost of this new era is the £229 million strategic partnership between Lincolnshire Police and G4S which commenced in April 2012 (see White 2015b, 2014 for an analysis of this partnership). In short, regulation is more than ever responsible for facilitating the increasing penetration of the market into the sphere of domestic security.

Conclusion

The chapter has now explained how the political agendas feeding into and shaping the debate over the SIA's proposed abolition can be understood as the culmination of a complex and long-running game involving multiple advocacy coalitions operating both in alliance and in competition with one another. Table 3.2 provides a summary of these configurations.

In particular, it has shown how the key variable influencing the nature of intra- and inter-coalition dynamics has been the deeply embedded public expectation that domestic security ought to be delivered exclusively by the state. Without this variable it is difficult to make sense of the public/private divide in the sphere of domestic security. The chapter has also illustrated, however, that in addition to the calculated strategising of allied and competing advocacy coalitions, the regulation debate has also

Table 3.2 Configuration of advocacy coalitions

External context	Advocacy coalition configuration	Dominant policy preference	Public/private divide
Post-war consensus	1) Distancers 2) Reformers 3) Relegitimaters	Self-regulation	Traditional public/private divide
Neoliberal turn	1) Free Marketeers 2) Reformers 3) Relegitimaters	Self-regulation	Strong public with shift towards private
Legitimacy crises	1a) Reformers 1b) Relegitimaters 2) Free Marketeers	Self-regulation giving way to state regulation	Traditional public/private divide
New Labour	1a) Reformers 1b) Relegitimaters 2) Free Marketeers	State regulation	Janus-faced regulation looking backwards to traditional divide and forwards to fluid divide
Crisis and coalition	1a) Relegitimaters 1b) Reformers 1c) Free Marketeers	State regulation	Janus-faced regulation looking increasingly forwards to fluid divide

been at the mercy of a series of shocks, some local to the domestic security subsystem (the Deal bombings and prisoner escapes), some originating a significant distance away (the global financial crisis). This serves to emphasise the important point that while a range of state and market actors have expended significant energies in attempting to influence this policy area, the direction of travel has often been determined by events far beyond their control.

The chapter also has conclusions which reach beyond the SIA abolition story. In empirical terms, it has given an insight into the behaviour and motivations of contractors who have a market presence in other criminal justice sectors in Britain and elsewhere. So when multinational corporations such as G4S and Securitas are delivering services in these sectors, it can be assumed that they are sensitive to localised public expectations and regulatory pressures, even if variables are slightly different to those in the security sector. In more conceptual terms, the chapter has demonstrated how the public/private divide is politically constituted, shaped by competing interests seeking to realise their preferences in a fast-moving and unpredictable national and global context. This is an

important lesson because all too often the public/private divide is taken as an immutable given. This is especially so in the criminal justice system because of its status as the traditional sovereign domain of the state. Yet, as all the chapters in this book emphasise, in today's post-crisis market-led neoliberal world, this domain is being ever more penetrated by the private sector under conditions of great uncertainty. So when studying the criminal justice system, it is not only necessary to look beyond the activities of the traditional state institutions so as to bring into view the ever widening range of operations undertaken by the private sector, but it is also important to appreciate the broader political economic context which can serve to shape the system in quite unexpected ways.

Notes

1. It is worth noting, however, that with the exception of Abrar et al.'s (2000) analysis of domestic violence, the ACF has not been applied to the policy-making process in the criminal justice system. As such, this chapter can be regarded as a useful bridge between these two areas of research. For a list of where the ACF has been applied, see Sabatier and Weible 2007: 217–220.
2. The acronym 'TNA: PRO' which appears in multiple references over the next few pages stands for 'The National Archives: Public Records Office'.
3. Elsewhere (White 2010) I have grouped these together under the term 'Reformers'. For the purposes of the present discussion, however, it makes sense to separate them into two coalitions.
4. The written answers are: HC Deb (1989–90), vol. 163, written answers, col. 391; HC Deb (1989–90), vol. 164, written answers, col. 384; HC Deb (1989–90), vol. 165, written answers, cols. 869–870; HC Deb (1989–90), vol. 168, written answers, col. 72; HC Deb (1989–90), vol. 168, written answers, col. 86; HC Deb (1989–90), written answers, vol. 168, col. 103; HC Deb (1989–90), vol. 169, written answers, col. 756; HC Deb (1989–90), vol. 170, written answers, col. 372; HC Deb (1989–90), vol. 171, written answers, col. 99; HC Deb (1989–90), vol. 173, written answers, col. 172; HC Deb (1989–90), vol. 176, written answers, col. 119; HC Deb (1989–90), vol. 177, written answers, col. 261; HC Deb (1989–90), vol. 177, written answers, col. 471. The bills are: HC Bill (1988–89) (214); HC Bill (1989–90) (55); HC Bill (1989–90) (148); HC Bill (1991–92) (58); HC Bill (1993–94) (108); HC Bill (1994–95) (170).

5. The regulatory regime covering the immobilisation, restriction and removal of vehicles is uneven in its geographical coverage, for this activity has been banned in Scotland since 1992 and banned in England and Wales since October 2012, though it remains legal in Northern Ireland.

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4

Privatisation of Police: Themes from Australia

Rick Sarre and Tim Prenzler

If policing was ever monopolised by the state, one can safely assert that that is no longer the case in modern democracies. As Stenning and Shearing (2012: 267–270) wrote recently:

> It is now widely accepted, that policing is an inclusive domain involving many agents and many sets of resources … Moreover, [p]olicing has become increasingly technology-intensive rather than labour-intensive and in this respect … private security have always enjoyed an enormous advantage over public police in doing it. … Nor is the use of force, or the threat of it, now as critical to policing [as has been suggested]. Other coercive mechanisms, again pioneered by private rather than public police, have proven much more effective in persuading people to comply with many modern prescriptions for order …

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There is thus an established and growing appreciation of the value of the private sector in the policing task and, indeed, the 'plurality' of policing operatives (Prenzler and Sarre 2006). Governments are relying more and more upon a range of policing actors to carry out tasks that had formerly been the sole preserve of their state-appointed personnel.

This chapter examines the role that private security personnel now play in the provision of security and protection services in Australia. It explores a number of successful partnerships between the public police and private security personnel. It offers some observations on the subject of health, safety and welfare of both security personnel and those with whom they come into contact. It tests the ability of current regulatory models to meet the required standards of acceptable transparency and accountability. Finally, it suggests a number of ways in which the law may need to be adjusted in order to accommodate better the public/private policing landscape.

This examination becomes especially important when one considers the scandals that have been revealed in recent years in Australia regarding security officer conduct. There have been widespread problems with serious assaults by crowd controllers in the past. There remains a suspicion amongst many rank and file police in Australia that private operators are simply 'cowboys'. Sadly, a number of people (typically patrons at licenced premises) have lost their lives or have been seriously injured at the hands of security staff. As a result of these incidents (and the negative perceptions arising therefrom), major reforms have been introduced in Australia to strengthen private security licensing regimes and to increase training requirements. There is, however, continuing concern over the inability of these reforms to counter public suspicion that more needs to be done to ensure that appropriate standards prevail.

This material for this chapter is drawn from a wider three-year project that was completed by the authors in 2011 (Sarre and Prenzler 2011). This study provided a vast array of empirical evidence to confirm (and deny) many of the assumptions extant in Australia on the subject of private security. It included an examination of a range of selected (what we considered to be) successful public/private police partnerships as case studies (discussed below).

To place the industry in context, however, it is first important for us to examine its recent past.

Police and Security Cooperation in Australia: A Short History

Private sector security personnel in Australia today are now involved in a vast array of 'policing' responsibilities on a daily basis. They are regularly engaged in tasks (sometimes in a partnership capacity) that have traditionally been seen solely as police responsibilities. The roles shared currently include not only more traditional police roles such as surveillance, investigation, crowd control, prison escorts, court security, guarding and patrolling, but also proactive tasks such as crime prevention, risk management and assessment, weapons training, crime scene examination, assistance with forensic evidence-gathering, information technology advice, hi-tech systems development and monitoring, interviewing and offering communications support.

The demand in Australia for these services comes from a range of industry types (IBIS World Industry Report 2007) including manufacturing industries and retail traders, especially shopping precinct owners, accommodation providers and managers of cafes and restaurants. The finance industry sector, too, buys in an enormous range of security services in order to enable their bank branches and building societies to ensure the safety and security of their premises, their staff and their automatic teller machines (ATMs). Specialist cash handling services, property and business services, education services, health and community services and cultural and recreational services all regularly call upon private firms to provide appropriate levels of safety and security.

Industry growth data shows a clear upward trend in the provision of private policing services in recent years and shows little signs of abating. There are a number of key factors and business drivers that have given considerable impetus to this growth. These include greater demand from consumers for effective local security in their neighbourhoods, an increasing cost differential between private security options and police (with the latter becoming more cost-effective as competition in the market-place

grows) and vast improvements in the ability of security services to provide technological solutions (especially in the provision of hardware and software) to security problems (Prenzler et al. 2009). Governments, too, are keen to access private services and indeed, the state, through its purchasing power in supplementing its police services (see the discussion on partnerships below), is a key (and growing) driver of this mixed policing economy. It is not uncommon to find local government councils hiring private security firms to maintain a presence in parks and at beach fronts. At the national level, the counter-terrorism agenda has allowed private security operators to exhibit their skills and their hardware in an antiterrorism environment (Sarre 2012).

In order to examine the size of the industry and its growth patterns, the Australian Bureau of Statistics census in 2011 (ABS 2012) provided us with an up-to-date report of the size of the various components of the security industry that allowed us to observe longer-term trends. We also accessed current licensing data from the various Australian regulatory agencies. Table 4.1 lists the occupational categories in the census data reports for 1996, 2001, 2006 and 2011 that relate generally to security work. It lists the number of persons whose description of their main occupation was included by the authors in 'security' categories (Sarre and Prenzler 2011). It tells us that the total number of persons whose main occupation involved security work has seen a significant increase over the years of the census. Indeed, in the 15 years between 1996 and 2011, security personnel numbers increased by 44.6 per cent compared to police numbers which only increased by 26.3 per cent. In 2011 there were 8.3 per cent more people directly involved in security work (n = 54,060) than there were police (n = 49,546), although the rate of growth of security appears to be slowing.

If 'debt collectors', 'courts bailiff or sheriff' and 'security consultants' are excluded from the total number of security providers (which may more accurately represent the categories of security personnel associated with traditional policing tasks), then the total number of persons whose main occupation can be described as 'security work' is 44,060, a figure which is lower than the number of police (n = 49,546). The ratio of security providers (with the broader definition) to police in 2011 was 1.09–1.0. These 2011 data indicate that, for the first time since around

Table 4.1 Security providers, police and population figures from 1996 to 2011

Security providers	1996	2001	2006	2011	Per cent change 1996–2011
Private investigator	904	1205	761	728	–19.5
Security consultant	584	733	894	874	50
Locksmith	1492	1877	2279	2574	73
Insurance investigator	401	486	418	444	10.5
Debt collector	5933	9666	10,141	8487	43
Court bailiff or sheriff	566	600	694	639	13
Armoured car escort	53	88	485	535	909
Security officer[a]	27,439	33,884	5424	38,147	n/a
Alarm, security or surveillance monitor[b]	n/a	n/a	30,752	766	n/a
Crowd controller	n/a	n/a	920	866	–5.9
Total security	37,372	48,579	52,768	54,060	44.6
Total police	39,225	41,426	44,898	49,546	26.3
Australian population	17,752,829	18,769,249	19,855,288	21,507,717	21.2

Source: ABS 1996–2012

[a]'Security officer' was labelled 'security guard' prior to 2006. From 2006, the ABS definition for 'security officer' includes 'security guard'. It is difficult to accurately track changes in this category given the change in definition (Prenzler et al. 2009). The 2006 number appears unusually low. It is likely that a significant portion of 'alarm, security or surveillance monitors' ought to have been labelled 'security officers'

[b]This was a new category in 2006. The 2006 figure appears unusually large. It is likely that a significant portion of 'alarm, security or surveillance monitors' ought to have been labelled 'security officers'

1997/1998, there has been a small decrease in the ratio of security providers to police. Figure 4.1 depicts these trends in a visual form.

Put another way and using these data, we can estimate the ratio of private security (as main occupation) to population in Australia at 251 per 100,000, compared with 230 per 100,000 public police to population. In a comparatively recent global review of crime and security, Jan van

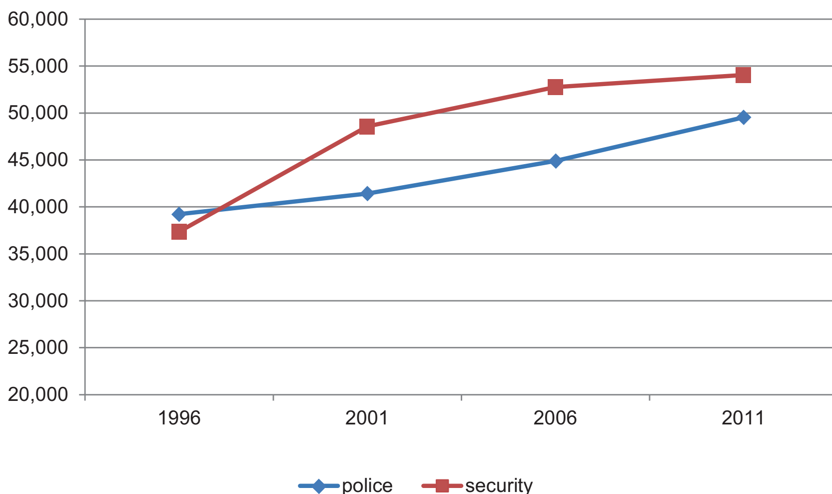

Fig. 4.1 Police officers and security providers, 1991–2011 (Source: Australian Bureau of Statistics 1991–2011. These are combined security-related functions for all census reports. Note that these have been modified and expanded over time. In 1991 'guards and security officers' was the only category in use. The authors are grateful to Dr Colette Langos for her assistance in collating the data from the 2011 census)

Dijk (2008: 15) estimated that, '[w]orldwide, more people are employed as a private security officer (348 per 100,000) than as a police officer (318 per 100,000)'. So the disparity in Australia is of the same magnitude, although the rates in both categories in Australia appear to be quite a bit lower than the world average.

It should be remembered that the official ABS census figures only record a person's 'main occupation' and this omits consideration of the many part-time members of the security workforce. Licensing figures help us to estimate these numbers. Assuming that most people who do security work have taken up the appropriate security licence required by the law for them to operate as security agents, the data indicate a very large part-time workforce. Although the authors experienced some difficulty in gaining access to all relevant data, Table 4.2 shows the breakdown of licences held by individuals across Australia in 2012, totalling somewhere in the order of 135,000.

Table 4.2 Licences data from the Australian regulatory agencies

Jurisdiction	Regulatory data—number of licences held in 2008	Regulatory data—number of licences held in 2012
Australian Capital Territory	2605	2838
New South Wales	36,654	45,089
Northern Territory	1417	1500[a]
Queensland	17,983	18,500[a]
South Australia	8313	8662
Tasmania	1568	3200[a]
Victoria	25,030	27,286
Western Australia	20,306	28,470
Total licences held in Australia	**113,876**	**135,545**

[a]Best estimates

Relying solely on licensing data gives rise to its own set of difficulties. Different jurisdictions have different regulation requirements and thus they offer licences for a range of different 'security activities'. This means that totalling the number of licenced individuals may not capture all of those personnel doing security-related work. This may result in the official number of security personnel being fewer than the number actually engaged in security tasks. Conversely, an individual may hold more than one licence and so simply counting licences may inflate the number of security personnel. Despite these difficulties, it would be reasonable to conclude that there are as many people operating part-time in a security role in Australia as there are full-time employees and, adding them together, there are at least twice as many people carrying out a security function in a private capacity in Australia than sworn police officers.

The Australian Institute of Criminology reported recently that the total expenditure on police services in Australia in 2010–2011 was approximately £5.4 billion (Australian Institute of Criminology 2013). Growth since then has been significant. For the fiscal year 2013–2014, the figure was £6.07 billion, a rise of 18 per cent over three years (Productivity Commission, 2012). According to one of the major security industry associations, the Australian Security Industry Association Limited (ASIAL), the private security sector paid salaries and wages for 2012–2013 of over £1.5 billion. Expenditure on hardware and electronics (including

installation and monitoring) was over £1.36 billion for the same period, a combined expenditure of almost £3 billion (ASIAL 2013). While one should avoid a direct comparison between the two figures, because expenditures and cash turnovers are not the same thing, one can quickly glean that the private security 'business' in Australia has grown into a massive commercial enterprise on a scale that would have been unimaginable a generation ago.

Public and Private Cooperation

The growth of the security industry has led to repeated calls for closer ties between police and private security in the fight against crime in Australia. These calls have come, predictably, from the private security sector itself, which is not surprising, given that it is keen to expand its markets and establish its credibility. But the calls have come from governments too, seeking cost savings especially in relation to the sorts of tasks that do not necessarily need specialist policing services. What has emerged is a new 'public-private security constellation' (Loader 2000: 333) which has moved beyond the usual conceptual boundaries (Williams 2005: 318). As Philip Stenning writes:

> [t]he police', as commonly thought of, are now but one member – albeit still a very significant and influential one – of an ever extended 'policing family'. (Stenning 2009: 23)

His words echo those of Lucia Zedner who offers the view that the publicly employed officers of state police

> may come to be seen as an historical blip in a more enduring schema of policing as an array of activities undertaken by multiple private and public agencies and individual and communal endeavours. (Zedner 2006: 81)

Public-private policing partnerships in place across Australia today involve a wide variety of permutations. These include private agents working with state and regulatory authorities, with community groups

(government funded and private) and with non-public third parties in a variety of crime control roles (Webster 2013). In the paragraphs that follow, a number of short case studies of Australian crime prevention partnerships are presented, followed by a commentary on the useful lessons that may be drawn from them. These case studies reveal a mixture of partnership models, from an almost complete handing over of roles from the public sector to the private sector to a more jointly run partnership model where public and private personnel work in the same spaces towards the same ends. Some partnerships involve little more than ongoing contractual arrangements that are mutually beneficial. Others are more complex, involving technical experimentation and innovation, sharing of intelligence and incident data, face-to-face roundtables and Memoranda of Understanding (MOUs). The beneficiaries include government, businesses, their customers and the general public. These case studies were selected specifically by the authors to illustrate these possibilities.

Centrelink

In 1999, Centrelink (the key Australian Government welfare agency) formally adopted covert surveillance as a regular tool in its armoury against welfare fraud. Formerly, cases of suspected benefit malfeasance were handed over to the police. Today, cases amenable to this type of examination are outsourced to a panel of private investigation firms across Australia. Covert surveillance is now termed an 'enhanced investigation initiative'. By 2010 Centrelink had 11 contracted surveillance providers on its panel. In the first year of operation, 1063 cases were finalised, with 70 per cent leading to almost AU$4 million in payments targeted for recovery (Prenzler and King 2002). Savings were estimated at AU$26,126 per investigation.

Centrelink report that an 'effective' investigation is one that incurs a reduction and/or a debt. The 'review effectiveness indicator percentage' is the proportion of effective reviews divided by the number of completed investigations. According to a recent report, the 'enhanced investigation initiatives' have produced an effectiveness indicator rating of 72.5

(Prenzler 2011a). As part of its evaluation of the programme, Centrelink reported the surveillance contract costs at just over AU$1 million for 2009/2010 (Sarre and Prenzler 2011: 97). It also offered the view that an in-house fraud unit would simply not be cost-effective. The irregular nature and location of operations meant that surveillance was more effectively contracted out to specialist firms in targeted locations.

This case study illustrates the potential for specialist private services to be contracted 'in' by governments for combatting welfare fraud without adverse consequences. Specifically, the handling of private information by the private sector, which may have given rise to privacy concerns, is strictly and successfully managed.

Project Griffin

The idea of this project is to have, at the ready, a significant number of private security officers, specifically 'Griffin-trained', available to help police if there was a major incident, such as a terrorist attack in the Central Business District (CBD) of major cities. Based upon the model created by the City of London, these officers remain employed in other 'security' occupations, usually as security managers of selected CBD buildings, but are 'on call' for emergency responses. Their managers regularly exchange information during scheduled telephone hook ups. The limited legal powers of these officers only come into play when a terrorism incident occurs and they are called up for critical incident management duty, principally to staff police cordons and to control access to areas affected by terrorist acts or other emergencies.

Project Griffin was launched by Victoria Police (VicPol) in 2005 and operates in the Melbourne CBD under the auspices of VicPol's Counter-terrorism Coordination Unit which was also set up in 2005. In a similar move in 2008, South Australia Police (SAPOL) initiated a Project Griffin Steering Committee (made up of SAPOL representatives and a selection of private security managers) to progress the implementation of the initiative in the Adelaide CBD and the metropolitan area. This case study illustrates the shifting boundaries of public and private duties in public space and the ability of private operatives to move successfully between

the two sectors without compromising safety or generating community unease. This model remains untested, however, given the (pleasing) lack of terrorist activity in Australia since its inception.

Qantas Security

In 2005 the Australian Government announced a major review of Australian airport security. The resulting Wheeler Report (Wheeler 2005) was damning. Specifically, Wheeler highlighted inadequacies in 17 areas. These included poor information sharing amongst agencies, a lack of threat assessments regarding threats from terrorism, a lack of assessments regarding threats of criminality, the poor flow of such information to relevant parties, an inadequate airport classification system, a series of problems in airport policing, weak and disorientated airport security committees, inadequate regulation and weaknesses in the Aviation Security Identification Card (ASIC) scheme. Furthermore, the report highlighted the inadequate use of CCTV, insufficient regulations in relation to the employment of personnel from the private security industry, the lack of monitoring of employee access to secure areas, inconsistent cargo screening, minimal regional airport security, minimal observation of the emerging technologies in security and inadequate attention to the principles of crisis management. The report provided detailed recommendations on each problematic issue. The major requirements of Wheeler were an overhaul of the airport policing system, a review of the frequency and means by which intelligence and information was to be shared amongst relevant agencies, a review of the licensing and background checking of contracted security employees and a change in the emergency response arrangements.

One of the major spin-offs from the report was the response of the Australian airline, Qantas. Today Qantas is the largest consumer of security staff in aviation in the world. It employs its own security organisation, a company in its own right with an annual budget of over AU$100 million globally. A partnership arrangement with the Australian Federal Police (AFP) was developed under a formal MOU. Under the MOU, the AFP can 'swear in' a security officer as a 'special member', which gives the

security officer unique powers of investigation. This arrangement enables police and security to work closely together to deal with even highly sensitive intelligence. This case study provides us with another interesting model of cooperation, given that one of the major concerns of those observing public-private partnership trends in recent years has been the potential for sensitive police intelligence to fall into the wrong hands. The authors are not aware of any concerns that have arisen as a result of this MOU nor as a result of any such powers being abused or information being shared inappropriately. One would assume that if that were to happen, the MOU would come under immediate review.

'Eyes on the Street'

'Eyes on the Street' is a crime prevention initiative involving partnerships between Western Australia Police, local government, local businesses and the security industry in Western Australia. The aim of the programme is to encourage businesses and their employees to gather information and report suspicious activities to police. The theory behind the endeavour is that, by increasing the level of police intelligence through business involvement, crime will be reduced and threats to businesses and customers will be diminished.

When an event takes place, the partner submits a report to a member of the Eyes on the Street team who then follows up the report. The advantage of having private security personnel involved in this programme is that they require less training than local business persons and shop staff who participate in the programme. They are more likely to recognise a relevant incident, provide more detailed and useful information in their report and be more willing to report in the first place. According to an evaluation done by the Crime Research Centre (CRC) at the University of Western Australia in 2008, security personnel, generally speaking, have a good relationship with police, understand the practice of reporting incidents and thus provide a valuable service (CRC, 2008). The Eyes on the Street programme currently boasts the involvement of over 100 agencies and over 4000 employees. Over 500 vehicles have been branded with the Eyes on the Street logo.

The programme was replicated in Canberra in April 2010. The programme there utilises the resources of the organisation Crime Stoppers to increase the number of reports sent and to process and disseminate the information received. This case study provides us with a model of cooperation that ties together so-called 'natural surveillance' crime prevention with more directed training and a dedicated process of 'formal surveillance', specialist 'place management' and professional guardianship.

Prisoner Transport and Courthouse Security

In 2000, the Western Australian Ministry of Justice (now Department of Justice) was the first government department in Australia to introduce, by a 'licence' system, the contracting 'in' of court security services and custodial services, prisoner transport and police 'lock-up' management from the private sector. It is not uncommon now to find police and private providers sharing the same jurisdiction in these areas. Western Australia was not alone with this idea. South Australian court administrators had embraced the private option in relation to prisoner transport four years earlier than their Western Australian counterparts, in December 1996.

Likewise, the Victorian Supreme Court, County Court and magistrates' courts have all embraced the private sector, with contracts in existence with international security companies G4S, Independent Security Services (ISS), Wilsons, Liberty Group and Chubb. In the Australian Capital Territory, Metropolitan Security Services (MSS) provides court security for both Supreme Court and magistrates' courts. In the Northern Territory Supreme Court, MSS is used for prisoner transport. ISS is used for access and premises security, while Protective Security Officers (PSOs) are used for in-court security. All court security in Queensland is undertaken by government employed Protective Security Officers (PSOs). In Tasmania's Supreme Court, security is undertaken by government employed officers, although in the magistrates' courts, private providers are used. In all Federal Courts in Australia (including the High Court) security is managed by Wilson Security (Sarre and Prenzler 2012). The partnership model for court

security provides one of the clearest opportunities for the private sector to tout the confidence its abilities has generated in governmental circles (Sarre and Vernon 2013).

The National Motor Vehicle Theft Reduction Council (NMVTRC)

The NMVTRC, which was first convened in 1991, has been described as 'arguably Australia's most enduring and successful business and government partnership in crime prevention' (Australian Crime Prevention Council 2012: 1). Its membership includes police, representatives of Australia's insurance industry and motoring and transport bodies (NMVTRC n.d.). Initiatives that have enjoyed prophylactic success have included immobiliser technology, vehicle parts tracking and a 'U-turn programme' that is designed to divert young offenders into employment. Independent evaluation indicates the Council's work contributed to large reductions in thefts and millions of dollars in savings to the community (Australian Crime Prevention Council 2012: 1–5). This case study illustrates the point again that crime prevention through specific design and 'target hardening' more generally both play a vital role in the overall fight against illegal activity above and beyond the deployment of agents of the state in observing crime and the threat of punishment in dealing with those who are apprehended. The private sector plays an indispensable role in those strategies.

Strike Force Piccadilly

The Strike Force Piccadilly partnerships have been amongst the most successful public-private crime prevention partnerships in Australia. The combined Strike Forces projects have won two Australian Crime and Violence Prevention Awards along with the 2013 internationally based Herman Goldstein Award for Excellence in Problem-Oriented Policing. Strike Force Piccadilly 1 was established in 2005 by the New South Wales Police Property Crime Squad to counter a large upsurge in ATM ram raids in the greater Sydney area. Little headway was made, however, until

June 2006, when police convened a stakeholder forum. This led to the establishment of an ongoing partnership between police and security managers from the Australian Bankers' Association, the Shopping Centre Council of Australia, cash-in-transit firms and the ATM Industry Association. Extensive consultation, research and information sharing identified key vulnerabilities associated with ATMs, including easy vehicle access and numerous false alarm activations that delayed police responses. The analysis led to a commitment by banks to implement a range of cooperative measures designed to reduce the vulnerability of ATMs to any form of attack.

Incident analyses showed the rapid response system at ATM locations was successful in dramatically reducing the number of successful raids (where cash was obtained) and unsuccessful raids (involving considerable property damage) (Prenzler 2009). The targeted rapid response system closed the time frame available to raiders. Relocations and anti-ramming technology reduced access and increased what is referred to as 'target hardening'.

There was then a switch in offender tactics to explosive gas attacks—pumping combustible gas into an ATM and setting the gas alight. A subsequent crime outbreak included 19 attacks in November 2008 alone. Strike Force Piccadilly 2 set out to halt this new crime threat (Prenzler 2011b). The strategies adopted by Piccadilly 1 were maintained, including stakeholder meetings, along with the installation of gas detection devices by ATM operators and the rapid enlargement of the number of Strike Force investigators. Over the long term, there was a 100 per cent reduction in successful ATM ram raids, with no cases recorded since August 2009. At the height of the attacks, from August 2005 to June 2007, attempted but unsuccessful ram raids averaged 3.0 per month. This was reduced by 85 per cent to 0.5 per month over the following six years. Similarly, there was a 100 per cent reduction in successful gas attacks, with no cases recorded since April 2009. At the height of the gas attacks, from August 2008 to February 2009, there were, on average, 4.1 attempted but unsuccessful attacks per month. This was reduced by 95 per cent to 0.2 per month over the following four years. The evaluation (Prenzler 2011b) analysed statistics for related crimes—such as robbery, burglary and motor vehicle theft—and found no evidence of displace-

ment. This case study provides another example of a crime prevention initiative arising from dedicated information sharing across a range of stakeholders.

What Do These Case Studies Tell Us?

The evidence presented above suggests strongly that private and public sector security managers can work synergistically with a range of partners to produce successful outcomes in policing, crime prevention and crime reduction (Prenzler and Sarre 2014a).

Partnerships are not, however, unproblematic. There may be risks to civil liberties by virtue of, for example, intrusive surveillance or harassment and excessive force by security officers, especially if there are inadequate licensing systems, poor training and supervision and no introduction of codes of conduct nor enforcement of procedural rules. There is a danger, at least in perception, that government resources are sometimes used to favour particular businesses or security firms, although these perceptions can be reduced or eliminated through proper tendering processes.

It has also been the case that partnerships between public and private operatives seeking anti-terrorism goals in Australia, despite having been pursued enthusiastically by Australian Governments, have reported less than ideal outcomes (Sarre 2012). While Australia has, fortunately, not been the target of terror attacks in recent years, there is a disturbing lack of regular comprehensive risk assessments, appropriate security upgrades and system tests, an inability to assign security responsibilities horizontally and vertically and inadequate training and screening of staff who exercise these important security responsibilities (Prenzler et al. 2010).

Also untested is the flow-on effect for the justice system of an increased presence of security personnel into the policing landscape more generally. One might speculate that, with any heightened security partnership presence, there may be more pressure on courts along with police and other criminal justice agencies to deal with an increasing number of accused persons flowing through them. There may also be a flow-on effect in the

civil justice system as more people are exposed to the poor handling of inadequately trained staff. Until some further work is done in order to test these hypotheses, they will remain speculative.

Be that as it may, the crucial message here is that the partnerships that are now commonplace need to be carefully managed, with a clear public interest benefit. This is especially the case where public money is involved.

Safety in Security

With security work comes a range of physical risks for those involved and for those with whom security personnel come into contact. In the following section we review the issue of safety as it impacts private policing duties both with regard those doing the policing and those who are being policed. Security officers work in a high-risk environment, as evidenced in the statistics compiled from occupational safety sources along with the results of the authors' survey of frontline security providers. The data are also indicative of the considerable 'first responder' role played by some security officers, mainly crowd controllers, in dealing with risky offenders outside of, or preceding, a police response. Policing partnerships, indeed, potentially displace some physical risks, generally associated with police patrol officers, onto security officers. The scale of the problem and the financial and personal costs involved, show the need for a sophisticated approach to protecting security officers and members of the public (Ferguson et al. 2011).

One review of workplace violence data a decade ago reported that 'the jobs at highest risk of "client-initiated" violence in the US, Britain and Australia are: police, security and prison guards, fire service, teachers, health care and social security workers' (Mayhew 2003: 3). However, there is considerable variability in estimates of violence against police and security officers and published research is heavily biased towards US sources and to homicides rather than non-fatal injuries. Earlier reports nonetheless consistently placed police and security officers in the six highest groups for occupational homicide and often in the top three. They also indicated that security officers are the victims of work-related homicide at a lower rate than police officers. For example, a

review two decades ago of four published papers that compared US rates of work-related homicides for 'security guards' and 'police/detectives' showed lower rates of work-related homicide for security guards (Kraus et al. 1995).

This component of the research was designed to bring these data up to date. The authors explored safety issues for security officers utilising two research instruments; the first, government data and the second, our own survey (Sarre and Prenzler 2011). The government data source was national workers' compensation data provided by Safe Work Australia. The data provide for a comparison of police and security officer experiences of workplace violence and injury. Security and police were in the top three highest claiming occupations for work-related injuries and deaths from occupational violence, with security officers at number one in both instances. Between 2000–2001 and 2007–2008, security officers and police in Australia made compensation claims for 17,231 work-related injuries. While the rate of police officers' work-related injuries overall occurred at twice the rate for security officers, the rates of occupational violence were about equal and followed the same trend over time, rising during the mid-2000s and then declining steadily. The findings support those of the earlier Australian National Occupational Health and Safety Commission (1999) study, which relied upon data from 1989 to 1992. The findings are unsurprising, considering that there are similar risk profiles for the two occupations, namely, close encounters with stressed and aggressive citizens.

Despite the similarity in rates of occupational violence, however, the nature of the injuries suffered by police and security officers differ. Australian security officers appear more likely to sustain serious non-fatal injuries than police, as evidenced by the high rates of head injuries and substantial differences in the amount of time lost as a result of an incident (Sarre and Prenzler 2011: 122–123). This finding is not dissimilar to the figures found in a South Australian study (WorkCover SA 2008). The research revealed that, although security officers have fewer personal injury claims than police, their claims are for more serious injuries. Again, it is difficult to say why this is the case, but one possible explanation is the more prominent role adopted by security officers in crowd control duties that involve direct confrontation with

the public in a context where they lack the same levels of physical skills and 'defensive tactics' training as police. Moreover, they are less likely to have access to non-lethal or less-lethal weaponry such as capsicum spray and stun guns. Their duties are generally carried out without the authority, back up and range of non-lethal weaponry that police have available to them. It is also difficult to explain the rises and falls in rates of injuries from the data, although it is possible that enlarged regulation of the Australian security industry—including better selection and training—and slowly improving policing safety procedures might help account for the downward trend (Allard and Prenzler 2009; Sarre and Prenzler 2009).

The second data source was a survey of security personnel. The survey found that 57 per cent of crowd controllers had experienced a major physical assault once or more in the past year compared with 24 per cent of security officers who did not act as crowd controllers. 86 per cent of crowd controllers had experienced a minor assault at least once and all crowd controllers had experienced verbal abuse. A large majority of both crowd controllers and security officers reported experiencing a verbal threat, or threatening or intimidating behaviour in the past year. In terms of their experiences across their careers to-date, 58 per cent of all respondents had experienced a major assault at least once. Just under one third reported anxiety as a result of workplace violence, and just under 20 per cent reported that they experienced depression. On the whole, the majority also felt that the current system for training, licensing and regulating the security industry was ineffective in relation to safety for security personnel, but the majority also felt that the system was at least partially effective in reducing assaults by security personnel on members of the public. Suggestions for improving safety did not produce any large consensus positions, however. The largest percentage of respondents—28 per cent—wanted stricter requirements on training and assessments. A relatively small percentage—12 per cent—wanted increased attention to compliance checks. These results would suggest that insiders look to improved government regulation for greater safety. Employers, operating in a competitive market, are unlikely to provide the consistent standard of protection required across the sector (cf., Stenning 2000).

The findings add to the very limited literature on injuries and violence experienced by security officers. Both research projects showed that security officers suffer unacceptably high rates of workplace injuries, violence and fatalities. Situational analyses of police deaths suggest that the majority of these are preventable and it is likely that this also applies to security officer risks (Allard and Prenzler 2009). However, very little is known about the circumstances in which injuries to security officers occur.

In relation to training, a majority of survey respondents expressed the view that the current system for training, licensing and regulating the security industry in Australia was ineffective in relation to safety for security personnel, although a majority, too, felt that the system was at least partially effective in reducing assaults by security personnel on members of the public. Suggestions for improving safety did not produce any large consensus positions. The largest percentage of respondents—27.6 per cent—wanted stricter requirements on training and safety assessments.

The data developed in these two projects were not particularly productive in providing information about situational factors involved in injuries and deaths which could be modified to reduce the incidence of these problems. Some clues are provided in relation to the salience of falls, trips and slips, body stressing and being hit by moving objects. Improved training and procedures and better debriefing and counselling might be of assistance here.

The literature on police injuries indicates that methods to reduce body contact, through the deployment of capsicum spray or stun guns, for example, can significantly reduce injuries (e.g. Smith et al. 2009). While there are some problematic features associated with the deployment of non-lethal or less-lethal weapons, the fact remains that they are, on balance, to be preferred to firearms in situations where a person is being apprehended. Equipping security officers with these tools would necessitate a significantly enlarged compulsory training regime and more astute regulatory scrutiny. Also, one should not discount the value of training in order to correct officer under-estimates of risk along with training to develop and improve the ability of officers to deploy unarmed defensive tactics. This would include training designed to ensure the maintenance of skills (Kaminski and Sorensen 1995).

The higher compensation claim rates for males over females for both police and security work suggest a culture of male risk-taking behaviour that might be amenable to modification. Encouraging more women into security work is one option available to address this problem. The risk here—as in any occupations that involve working with offenders—is that women are employed because of stereotypically female traits of pacification (Hucklesby 2011; Prenzler and Sinclair 2013). However, the approach does include an employment equity outcome for women, so long as they are deployed on an egalitarian basis. Intensive training in de-escalation techniques and low-impact physical control techniques is another important strategy.

A common finding in research is that more research needs to be done. In the case of these studies of security and police injuries, it is clear that the high rates of injuries and fatalities experienced by both groups point to the urgent need for better prevention-oriented research. This should include studies that better capture situational variables which might be modified to reduce the injuries experienced by both security providers and members of the public. Data sources should include purpose-built studies using detailed surveys or systematic observations. Research should also include intervention studies that trial innovative approaches to injury reduction (e.g. Smith et al. 2009).

Is There a Role for the Criminal Justice System in Reducing the Number of Public Fatalities?

There have been a number of cases in Australia recently which have led to fatal outcomes for a member of the public at the hands of security personnel. Each of them involved a prosecution of the security officer involved, with unpredictable outcomes. It is valuable to review three such cases in order to reveal the limited way in which the criminal justice system is capable of providing a brake on the excesses of overzealous security personnel.

One of the more notorious incidents occurred on 26 July 2004 when a cash-in-transit security guard, Ms Karen Brown, shot dead an armed

robber near the Moorebank Hotel in Sydney. The robber had assaulted Ms Brown. He then dragged her along the ground, before stealing her backpack containing the day's takings from nearby businesses. A short time later he was found by Ms Brown sitting in a stolen getaway car. She shot him at point blank range through the window. New South Wales Police charged her with murder. Ms Brown argued in her defence that she had been concussed and was acting in the fashion of an automaton, that is, she didn't fire the gun intentionally; rather it was fired while she was not in a fully conscious state. In August 2006 she was acquitted by a Supreme Court jury of both the murder charge and the alternative charge of manslaughter.

A manslaughter charge was chosen by prosecutors following the death of well-known cricketer David Hookes in 2004. Late on 18 January 2004, 22-year-old Zdravko Micevic, while on duty as a crowd controller at the Beaconsfield Hotel in St Kilda, Melbourne, became involved in a verbal altercation with Mr Hookes. Punches were thrown. Mr Hookes was hit from behind by Mr Micevic and taken to hospital in a coma. Mr Micevic was charged with assault, but, when his victim died soon after, police added manslaughter to the charge sheet. The trial of Mr Micevic went ahead a year later. On 13 September 2005 Mr Micevic was found not guilty by a Melbourne jury after five days of deliberation.

In a final example, one Paul Edwards, while working as a crowd controller at the Ramsgate Hotel, Adelaide, in February 2005, was involved in a fight with a patron. His victim, Dominic Esposito, died of asphyxiation, having been held by Mr Edwards in a headlock for up to eight minutes while the accused endeavoured to subdue him. Mr Edwards was charged with manslaughter. In December 2006, a Supreme Court jury delivered a majority verdict of guilty. On appeal, the South Australian Court of Criminal Appeal ordered a retrial, after defence counsel successfully argued that the jury had been presented with inaccurate evidence regarding the times at which events occurred in relation to the offence. In November 2008, Justice Layton (sitting without a jury) found Mr Edwards guilty of manslaughter by both its forms, namely, killing by an unlawful and dangerous act and killing by criminal negligence. She was satisfied beyond reasonable doubt that his actions were not reasonably proportionate and were well in excess of what was reasonable to control

Mr Esposito and to protect either Mr Edwards himself or others. The defendant was imprisoned for a term of two years, eight months.

It appears that the law allows latitude in these cases for judges and juries to make judgements that, presumably, satisfy the public interest. They highlight the risks associated with inappropriate force in security operations. They highlight also that the formal criminal justice system is rather a blunt instrument when it comes to responding to criminal conduct carried out by security personnel.

It should be added here that these observations are also pertinent when one considers the use of excessive force by public police. One might consider, however, that police are rarely prosecuted for their excesses while private security personnel are regularly faced with the full force of the law. It might be possible to conclude that the increase of private security in public life and the attendant risk of fatal outcomes thereby might, somewhat perversely, lead to an increase in the judicial scrutiny of such incidents. One useful consequence of this is that such scrutiny may lead to a stronger development of the common law principles guiding the use of force in effecting arrests.

Accountability Issues: The Preferred Models of Regulation

In addition to the overzealous activities of security persons that gave rise to the fatal incidents described above, there is no shortage, sadly, of inappropriate conduct and recurring scandals that have kept in the public eye the need for appropriate regulation of the security industry. These scandals have included information corruption, fraud, assaults, insider crime, incompetence and inattention to the required standards. There has been, in addition, an infiltration of nightclub security by organised crime figures trading in illicit drugs (ACC, 2011). These cases and other incidents severely tarnish the image of the security sector. In the media, terms such as 'backyarders', 'cowboys', 'thugs', 'gang members' and 'criminals' are regularly used to describe sections of the industry. In the face of this there have been and continue to be increasing calls for more effective regulation.

Like public policing, security has a risk profile that derives from the pressures and opportunities inherent in the work and as with police, governments have grudgingly increased regulation of the sector (Button 2012; Prenzler and Milroy 2012; Prenzler and Sarre 2008a, 2012). There have also been efforts by professional security associations to address conduct issues through membership standards. However, associations usually have limited investigative capacity and limited reach through voluntary membership. Consequently, while voluntary associations can provide some assurances to the market on a selective basis, they cannot deliver consistent standards across the whole industry (Sarre and Prenzler 2011). Accountability has also occurred less directly (but, arguably, no less effectively) through the criminal and civil law; employment law, fair trading law, privacy legislation and weapons legislation; if not the market itself (Sarre and Prenzler 2009). However, each of these mechanisms is limited in its capacity to bring poor operators and criminally minded security personnel to justice or to deter misconduct more generally (Stenning 2000).

In terms of coverage of the industry, government licensing, which requires all persons seeking to do a 'security' task to have the appropriate licence, has been extended to all areas of security work, including locksmiths, consultants, in-house security personnel, trainers and electronic system installers and monitors. The number of disqualifying offences has also been enlarged to cover firearms offences and drug offences. Regulators have been given greater powers to deny or suspend licences on discretionary grounds, including evidence of poor character and criminal associates. In two jurisdictions, New South Wales and South Australia, regulators can use confidential intelligence to reject an application for a licence; that is, there is no need to provide access to that intelligence to the applicant, nor to give any reason for the rejection of the application. Most jurisdictions also suspend licences if a licence-holder has been charged with a criminal offence. Indeed, licence-holders are required to inform the regulator if they have been charged. Mandatory fingerprinting has been introduced in all jurisdictions in order to allow regulators to make more reliable criminal history checks.

While there are mixed views on how effective the move to consistency in licensing has been (Prenzler and Sarre 2014b: 187–188), the Council

of Australian Governments (COAG) has repeatedly sought a national approach to regulation (COAG, 2008). COAG writes that it has recognised 'the important contribution the private security industry makes in supporting Australia's counter-terrorism arrangements' (COAG 2005: 5). In an effort to improve standards, the Council commissioned a major report, published in 2007, which recommended regulatory 'harmonisation' (Centre for International Economics 2007). While there may be some value in attempting to get a uniform approach to regulation of what is essentially a 'national' industry, there is a downside of an appeal to uniformity in the face of disagreement: the potential for compromise. When those designing a regulatory framework finally resort to a lowest common denominator compromise, the result is likely to be unsatisfactory.

Be that as it may, the focus of the Council was on boosting pre-employment competencies through a prescribed training curriculum and associated qualifications framework (consistent with established competency development principles) and ensuring training standards were nationally consistent. The primary intended beneficiaries were the clients and recipients of security provider activities. The opportunity was, however, stymied by then New South Wales Premier Morris Iemma, allegedly because it would entail reducing standards in his State (Coorey 2007).

Notwithstanding the above actual reforms and attempts at same, under-regulation has been the norm, except perhaps in the area of licence fee collection (O'Malley 2011). There is little doubt that Australia's continuing faith in the regulatory powers of the market, in combination with a simple government licensing scheme, has led to repeated cases of regulatory failure. Scandals and exposés precipitated three major enquiries between 2007 and 2009 (Prenzler and Sarre 2008b). The enquiries by the Australian Crime Commission (ACC 2008b), the Fair Work Ombudsman (Fair Work Ombudsman 2010) and the New South Wales Independent Commission Against Corruption (ICAC 2009) were unprecedented in their scope and resourcing and in the range of investigative techniques they deployed. The ACC investigation was the largest enquiry into the industry in Australia's history, with a special federal budget allocation of £5.14 million (ACC 2008a: 56). All three enquiries found extensive and entrenched forms of misconduct in key parts of the industry, including

drug dealing, extortion, fraud and under-award employment conditions. Thus the need for ongoing research into the optimal scope of regulatory activity is unquestionable.

Within the space of regulation, the key field of prescribed training provides grounds for ongoing concern. Training requirements are intended to guarantee adequate competencies and operate in tandem with probity tests, complaints investigation and adjudication and inspections and audits. At present, there is no legislative requirement for public disclosures of training methods and quality control in Australia. In that regard, a key regulatory task of reassuring consumers about the competency of security providers has not been realised. The national certificate requirements represent a major step forward, but these are limited to operatives, with no requirements for the holder of a company licence or government security managers to have training. In Queensland, as one example of an anomaly, it is possible to obtain a security consultant licence without undertaking any training at all (Office of Fair Trading 2012). Indeed, the ease with which a person can obtain a security licence in Queensland (along with allegations that the assignment answers have been provided to applicants by one less than reputable training agency) was highlighted in a recent media report in that State (Harvey 2012). Outside basic training requirements, national consistency remains as elusive as ever, despite decades of lobbying by the industry and support from COAG. Significant differences remain between jurisdictions, including in the areas of licence categories, terminology and fees. Differences also remain in areas such as drug and alcohol tests, disqualifying offences and disqualifying periods, criminal history checks, 'fit and proper' tests, 'close associate' checks, testing for drugs and alcohol and controls on firearms.

There are also differences in the roles of stakeholders on regulator advisory boards—including owners of security firms and professional security associations—and the use of enforceable codes of conduct. In addition, specialist regulatory agencies for the security industry are narrowly state- and territory-based, with no national coordination. As an example of the way in which the jurisdictions essentially go their own way, the New South Wales model of co-regulation—involving a major role for company 'self-regulation' through approved industry associations, alongside government controls—was adopted in Queensland around the same time it was abandoned in New South Wales.

In 2010, a nationwide survey of security firm owners and security managers found very mixed views on regulation (Sarre and Prenzler 2011: 55–75). When asked about pre-licence training, a majority felt that courses were adequate in the areas of knowledge of law (60 per cent), basic security procedures (83 per cent) and occupational health and safety (78 per cent). However, training was considered inadequate in developing skills in communication (73 per cent), conflict resolution (69 per cent), physical restraint (69 per cent) and self-defence (75 per cent). In addition, 59 per cent thought that the system in their jurisdiction was highly ineffective in 'removing disreputable operators from the industry' and 67 per cent felt that compliance with legislation was not effectively monitored (Sarre and Prenzler 2011: 57, 74). What this is telling us is that the professional associations themselves want better regulation in order to eliminate from the industry (and the potential for public and political opprobrium) their unreliable and unprofessional co-travellers. At the moment both the professional societies and the quality operators are desirous of greater quality in training and professional standards, knowing that while poor performance remains the norm they will be less likely to win over the public, along with the governments that are keen to establish policing partnerships.

One possible way of moving forward is for the Australian Attorney-General's Department to take a more proactive role in coordinating the development of a model Act and regulations which all jurisdictions could adopt through the COAG process. The salience of the industry provides a strong justification for the creation of a small unit in the Department to have a research and monitoring role and to promote a nationally consistent approach towards best practice regulation. Such a straightforward response to an ongoing problem would not, one would think, be asking too much.

Powers and Immunities

Given the rapid expansion of the tasks now being carried out on a daily basis by private security personnel in policing partnerships, one might assume that careful attention would have been paid to the legal framework within which these cooperative activities take place. Regrettably,

this has not been the case. One can sympathise with lawmakers. It would be a very difficult task for parliaments to specify private security powers across the board, given the many forms and varieties of private operatives and the multitude of activities in which they may be engaged. In addition, many private security firms are national, indeed global, corporations and any general attempt to set legislated rules which transcend state and international boundaries would be difficult to do, let alone to implement and enforce. That being the case, those wishing to add a legal 'touch; to private policing in Australia have tended to focus more on how to ensure security provider conduct is lawful rather than curtailing and shaping the legal powers that may apply (Sarre and Prenzler 2009; Stenning 2000).

The consequence of this legislative reluctance to do anything more than tinker around the edges is that the legal authority, powers and immunities of private security providers are found mainly and obscurely, in bits and pieces of the criminal law, the law of property, the law of contract and employment law (Sarre 2014: 151). It is unlikely that these common law powers would ever be limited by legislation, for to do so would be to limit the rights of all property owners to protect their families and properties.

Thus, while there has been legislation passed in all Australian jurisdictions concerning the registration, licensing and training of private security personnel, the main aim of this legislation is to oversee those who operate within the industry and to check those who wish to enter it against certain 'fit and proper person' criteria along with minimum training standards. This legislation does not deal with powers and immunities at all. There is no legislation in Australia that permits security guards generally to wield specific powers. Indeed, two jurisdictions make it clear that no inferences regarding powers are to be drawn from security licencing legislation. Section 8 of the Security Industry Act 1997 (NSW) says that the holder of any licence can carry out the functions authorised by the licence but that '[a] licence does not confer on the licensee any function apart from a function authorised by the licence'. The Security and Investigation Industry Act 1995 (SA) s 15(1) goes a little further, stating that '[a] licence does not confer on an agent power or authority to act in contravention of, or in disregard of, law or rights or privileges arising under or protected by law'.

This lack of legislative direction is potentially confusing for security personnel and the public alike. Moreover, there are few legal precedents emerging from the courts, essentially because only about 3 per cent of claims seeking compensation for negligence end up in court and the results of these cases are rarely reported (Sarre and Prenzler 2009). The other 97 per cent are either abandoned or settled by negotiation 'out of court'. Insurance companies, especially, prefer to settle claims out of court because it is quicker and cheaper for them. Criminal prosecutions, the numbers of which are negligible, are confined to the more blatant assaults by crowd controllers. Hence it is difficult to find a comprehensive body of law on the subject of private policing and security.

In contrast, public police have coercive and intrusive powers that are delineated in legislation. These delineations reveal distinct differences between the powers of public police officers and private security personnel. For example, public police are given statutory immunity from prosecution in circumstances where their beliefs and acts are 'reasonable'. Private personnel are afforded no such luxury. Indeed, private security, in carrying out their duties, constantly run the risk of being sued in the torts of assault, false imprisonment, intentional infliction of mental distress, defamation, nuisance and trespass. This is not to say that police do not run these risks, but because they have immunities in place, the police are far less likely to find themselves on the losing end of a lawsuit brought by an aggrieved person.

Moreover, public police may act to prevent the commission of an offence before it actually happens (acting upon a suspicion). This concession is not granted to private security personnel. Police powers, duties, rights, responsibilities and immunities have been so often debated in the courts that there is now a large and continually expanding body of law on these issues. The same cannot be said for private security law.

Starting from first principles and speaking generally, unless there is specific legislation that empowers specialised security staff to undertake certain tasks for some particular event, the law confers no powers upon security personnel beyond the powers given to the ordinary citizen (Sarre and Prenzler 2009: 59). That having been said, the powers of the private citizen are considerable. The law of property, for example, grants to the owner of private property the power to require visi-

tors to leave the premises (using reasonable force if necessary), or to subject visitors to stipulations (such as a search) prescribed and advertised by the property owner. Similar powers exist for employers over employees, subject to the law relating to occupational health and safety and workplace fairness and equity. Each of these powers can be delegated to agents (private security) who are entitled to wear uniforms and even to carry a firearm if they have the correct training and hold the appropriate licence. It should be mentioned, however, that this issue is not unproblematic, given that so many areas in modern life are, at the same time, both quasi-public and quasi-private property (such as shopping malls, universities and sports complexes) where the lines of delineation between public and private are not easily drawn.

Moreover, the common law provides citizens with general powers that include the power to use force in self-defence and in defence of one's property. In two States, legislation has extended these general powers to defence of others' property, but the justifications differ. In Queensland, a person has the right to defend another's property so long as they do not inflict 'grievous bodily harm' on the wrongdoer (section 277(2) of the Criminal Code 1899 (Qld)) but in a similar provision in the Western Australian equivalent, the term used is merely 'bodily harm' (section 254(3) of the Criminal Code Act 1913 (WA)) and there appears to be no valid reason for the difference. Private citizens have the right to make an arrest but the rules relating to citizen's arrest are somewhat confusing. It is highly unlikely that a citizen (or a trained security guard for that matter) will know precisely which definitions apply in any given jurisdiction and if they do apply, what the consequences might be. Other possibilities for confusion emerge from the common law rights of persons to sue others for breach of their rights of liberty. For example, retail managers who detain shoplifters upon reasonable suspicion of theft have had damages awarded against them (paid to wrongly accused suspects) in some cases, but not in others. The outcome, it seems, depends upon the level of restraint, the length of time involved and the extent to which the accused person was given an opportunity to allay suspicion (Sarre and Prenzler 2009: 108). The confusion stems from the fact that the laws that apply to private personnel have developed over the years to apply not to

those doing police-type work but to private citizens, journalists, landowners and employers. They may translate into something potentially quite different in the hands of the agents of these individuals.

There have been recent attempts by governments to grant specific powers to private security personnel who are not sworn police officers. These personnel are often referred to as '2nd tier'-style police. For example, in 2007, the South Australian parliament created the title of Protective Security Officer (PSO) for appropriately trained personnel. Under Part 4 of the Protective Security Act 2007 (SA), PSOs have the authority to (amongst other things) give reasonable directions; refuse entry; require a person to provide identification; conduct searches on persons, vehicles or property; and detain a person for a 'Protective Security Offence'. Likewise, Sydney Harbour Foreshore Authority 'Rangers', under the Sydney Harbour Foreshore Authority Act 1998 (NSW) and Sydney Harbour Foreshore Authority Regulation 2011 (NSW), have search and seizure and 'move on' powers, and Queensland's State Buildings Protective Security Act 1983 creates a State Government Protective Security Service that operates on a commercial basis. Since 2009, Queensland transit officers have had the power, under Part 4a of the Transport Operations (Passenger Transport) Act 1994 (Qld) to handcuff and detain unruly passengers, and there are many other examples of specifically created transit security powers around Australia. This is, however, a rather 'piecemeal' approach, yet one that looks set to continue into the foreseeable future.

Should we embark upon a new legislative crusade, one that settles powers and immunities once and for all? There is a view that says that leaving the law ambiguous encourages fewer lawsuits against private security, forcing those aggrieved to negotiate more and litigate less. What this means for the general law, however, is that there is little guidance concerning when security personnel can safely rely upon legal immunity from a lawsuit. There is an alternative view that parliaments could and should legislate to give certain powers and to protect security personnel by immunities certain circumstances. The idea of a person being protected from a law suit when exercising good faith is not novel. For example, s 74(2) of the Civil Liability Act 1936 (SA) states that '[a] good samaritan incurs no personal civil liability for an act or omission done or made in good faith and without recklessness in assisting a person in

apparent need of emergency assistance'. There is now similar legislation in all States and Territories (Sarre 2011). A 'reasonable suspicion and good faith immunity' could be installed into legislation, applying to all people who engage in security functions, especially those who have satisfied a specified level of training. This is likely to be controversial, given that it would allow private security personnel, when engaging in many restraint and arrest situations, a level of immunity that the common law does not permit them currently. If this position were to be adopted by law-makers (although there are no signs of that occurring in the immediate future) one would expect the common law to develop standards related to conduct that is appropriate in balancing the desire to reduce public disorder with the necessity of keeping the potential of public harm to a minimum.

It is the view of the authors that policy-makers ought to continue exploring the possibilities offered by these two suggested reforms. Their implementation at the very least would serve to raise public confidence in security personnel specifically and should enhance policing cooperation generally. The limited evidence canvassed in this chapter to support this view largely comes from within the industry in terms of survey findings—including qualified support for the greater regulation and mandatory training.

The policing literature, too, shows that improved training can have significant positive effects on police conduct and police-community relations, as part of a wider programme of improved regulation (e.g. Porter et al. 2012). Any move towards enhanced powers for security officers would therefore need to be part of a programme that includes strong feedback and impact measures, including detailed complaints data and stakeholder (including public) experience and opinion data.

In summary, as policing moves more and more into private hands, the traditional legal powers that distinguish between sworn officers' powers and private personnel powers are rapidly becoming out-dated. The powers and immunities of private security personnel continue to differ markedly from those of the public police even though they are often carrying out many of the same tasks. If police are going to take on more duties as they embark upon more joint operations and multifaceted partnerships, policy-makers need to apply their minds to the possible legislative amendments that may need to be considered relating to powers and immunities and associated training and regulation.

Conclusion

As illustrated by the evidence provided above, there has been an undeniable shift in confidence in Australia regarding privatised forms of policing. In the past, it was nearly impossible to conceive of private security personnel operating entirely in the public interest. That notion has been consistently challenged in the last three decades, as public expectations of security have shifted and as policy-makers and the public alike have witnessed successful policing partnerships. Complementary public and private arrangements have been put in place to control violence and disorder in and around communities, businesses and major events.

In response to scandals regarding the private sector delivery of security services, reforms have been introduced in Australia to lift the standards of regulation. The accountability measures, however, require further development.

Provision of security services sometimes comes at a high cost, as evidenced in the health and welfare studies, and it is important for policy-makers not to lose sight of the importance of protecting the welfare of security personnel. It is also important to ensure that the public feels safe at the hands of those who are deployed to carry out policing tasks.

What can we anticipate for the future? The trend towards greater reliance on private security for protection from crime and violence in our society is strong and continuing. The studies reported in this chapter now allow us to have a better understanding of private security industry trends, laws, regulation, private-public partnerships and occupational health and safety issues. The safety and security of all Australians depends upon continuing the research, testing the assumptions and, ultimately, getting the balance right.

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5

'The Real Private Police': Franchising Constables and the Emergence of Employer Supported Policing

Mark Button and Alison Wakefield

In recent years the privatisation of policing has become a highly contentious subject. The 2012 plans for substantial police privatisation in the West Midlands and Surrey Police, followed by the spectacular failure of G4S to meet the requirements for its huge contract for the London Olympics, brought the issue to the forefront of policing. The controversy, which led the West Midlands and Surrey forces to abandon their plans, was further intensified with the first elections for Police and Crime Commissioners later in that year.

This debate, however, masked a trend of incremental privatisation that has been ongoing for many years (Button 2002, 2007; Johnston 1992; Jones and Newburn 1998; Palmer and Button 2011; Wakefield 2003, 2014; Wakefield and Prenzler 2009). Governments, local authorities, police forces and private security firms have all been pursuing policies that have been tacitly privatising policing. Many of these initiatives, which could be considered radical, have taken place with little public or informed debate.

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The expansion of private security into more frontline policing tasks such as the patrol of public areas is one example of incremental change that has been taking place for some time. In recent decades there have been many examples of security firms supplying security personnel to patrol 'public areas' either as contractors to public and private bodies or as entrepreneurial initiatives to paying householders (Button 2007; Crawford et al. 2005; Noaks 2000; Sharp and Wilson 2000; Wakefield 2003). The government recognised their contribution in the Police Reform Act 2002 by enabling police forces to use civilian personnel and private contractors to deliver various police functions and in doing so give them statutory powers (ACPO 2009; Crawford and Lister 2004; Jason-Lloyd 2003). Thousands of security personnel across the country are now working in areas where the public has free access, patrolling, dealing with incidents and using force, as well as exercising powers, including arrest (Button 2007; Crawford et al. 2005). Some police forces such as Lincolnshire have contracted out many 'back office' functions in multi-million pound contracts (Plimmer and Worrell 2013). The culmination of these changes has been a substantial growth in the non-police contribution to policing the so-called extended policing family.

These developments formed part of an active governmental agenda during the late 1990s and 2000s formally to embed the growth of the 'extended policing family' into policing. One of the most significant of these initiatives was the establishment of the Community Safety Accredited Schemes, established by police forces under the terms of the Police Reform Act 2002 (see ACPO 2009). Non-police security staff operating under these schemes, such as community wardens or private security officers, providing security in places such as shopping centres, town centre, hospitals or residential areas, are denoted by a special badge and bestowed certain statutory powers including the confiscation of alcohol and tobacco, issuing fixed penalty notices and requiring the name and address of a person. To secure these, the managing body (such as the local authority or shopping centre) must apply to the local Chief Constable and, once admitted to the scheme, the staff must undergo a training course. The objective is to bring some of the extensive pockets of space policed by the 'extended policing family' under the much greater influence of the police. Research conducted in 2010 found there were

2219 staff operating under the scheme across England and Wales (Home Office 2011a). From the perspective of the private security sector, the scheme is attractive because it provides contractors with the opportunity to secure greater legitimacy and potentially achieve greater business opportunities through expanding its perceived 'stateness', building further upon the enhanced legitimacy afforded to private security when regulation was introduced in 2001 (White 2010).

It is surprising that there has been little controversy surrounding the Community Safety Accredited Scheme (CASS) given that it involves the potential for private security officers to secure special statutory powers. The Employer Supported Policing (ESP), the main focus of this chapter, is potentially even more controversial, and it too has secured little public or media interest so far. ESP enables organisations to put forward their staff for appointment as special constables and can be seen as another attempt at the police securing greater influence—if not control—over the extended policing family. Such arrangements extend beyond the organisations eligible for CASS to, potentially, any type of employer. As will be argued in this chapter, ESP effectively enables an organisation to create its own police franchise. It can secure police training and full police powers for its staff, thereby improving its own security capabilities.

This development represents a potentially significant extension of a form of police franchising that has been ongoing in a number of forms for over a hundred years. There have been provisions that enable some ports, other transport locations and parks to set up their own police forces and some of these still exist, albeit in small numbers. Given the outcry over the West Midlands Police and Surrey plans, imagine the furore that would have occurred if the government had announced plans to enable bodies to set up their own police with constabulary powers. What would the political reaction be to the prospect of the Manchester Trafford Centre Constabulary, the Canary Wharf Police or the Alton Towers Parks Police? It is likely there would be a significant negative reaction from the Police Federation, some senior police officers and a wide mix of politicians. However, under ESP, such scenarios have moved a step closer. Indeed, as this chapter will show later, at least on a small scale, some shopping centres are using the scheme effectively to create their own 'police forces'.

This chapter considers ESP and examines in more depth one example of the scheme in Hampshire, centred on the waterfront shopping and leisure complex Gunwharf Quays (GWQ). It will argue that, although there are risks that arise from the scheme, subject to certain principles being maintained, it provides the prospect for expanding uniformed police presence without draining scarce public resources. Before we get to ESP, however, it is important first to set out the context of the strain on police resources that are now being faced, before moving on to examine the extent of police privatisation in the UK. The chapter will then explore historic examples of police franchising before moving on to consider ESP. Throughout the chapter the theme of 'franchising the police' will be developed as a new dimension to the police privatisation paradigm using the historic special police and the new ESP as evidence.

The Financial Challenge to Policing

The economic downturn experienced in the UK since 2008 has created a period of austerity that has had an unprecedented impact on police resources. The police service in England and Wales faced a 20 per cent real terms cut in resources between 2010 and 2014–15. Under the 1997–2010 Labour Government there had been an increase in police numbers from around 127,000 when they took office to the high water mark of 143,770 in 2009. Since then numbers have been falling, to 134,101 in 2012. The Labour party also introduced the new 'sub-officer' police community support officers (PCSOs) in 2002 with an initial target of 24,000, reduced to 16,000 in 2008. By 2010 the number of PCSOs reached their peak of 16,918, which had reduced to 14,393 by 2012 (Berman 2012). The period of austerity does not look likely to end soon. It would therefore seem likely that police numbers will continue to decline, placing even more pressure on forces to achieve 'more for less'. Primary responsibility to do so now falls on the elected Police and Crime Commissioners who replaced police authorities in providing oversight of UK police forces in November 2012 (Home Office 2011b).

The challenges of declining police resources have resulted in a wide range of initiatives. Some of these have been directed by the police or other state

bodies, while others have occurred indirectly. As a consequence of these and longer-term trends, a variety of forms of police privatisation have occurred. Some of the initiatives that fall under this broad umbrella of police privatisation will be considered in the following section.

Police Privatisation

Austerity budgets in the UK and elsewhere have placed enormous pressure on police funding, already challenged by the spiralling costs of policing a high crime, interconnected, post 9/11 world. For a short period in 2012, it appeared that UK policing was facing a new wave of privatisation of police functions until events later that year shifted the prevailing public mood towards the policy, from one of quiet acceptance to disquiet over the prospect of its further substantial growth. Following the UK government's announcement in late 2010 that central government police funding would reduce by 20 per cent in real terms by 2014/2015, two police forces, the West Midlands and Surrey, invited bids for the largest ever police outsourcing contract at a value of £1.5 billion (Travis and Williams 2012), invoking a brief media storm in the spring of 2012. Surrey, however, suspended its plans a few months later following a considerable furore over G4S, the world's largest security company, which failed to meet the terms of its substantial contract to provide the security officers for the London Olympics. This related primarily to the number but also the quality of personnel they were able to mobilise for such a large event (Booth and Hopkins 2012). The West Midlands force also pulled out of the arrangements. The temptation to rely on outsourcing as a means of 'doing more with less' has proven politically challenging for UK police forces to realise.

These pressures are built upon longer-term trends of privatisation in policing that have centred around direct 'load shedding' (Johnston 1992), where the police deliberately give up doing certain functions, and indirect 'load shedding', where police inability to provide certain functions leads to the private or third sectors stepping in and filling the gaps. A second element of police privatisation has been contracting out of services which is where policing functions are outsourced to the private sector.

Thirdly, private sector practices have been embraced including private sector management styles, sponsorship activities and charging for services (Button 2002). The remainder of this section discusses each of these types of privatisation in turn.

Load Shedding

Load shedding refers to circumstances when the funding mechanism and the delivery of the service is moved from the public to the private or third sector. It can happen directly, where the police abandon certain functions, or indirectly where, because of constraints on resources, they are unable to supply a service that is wanted and others step in to fill the gap. Over the last 50 years, the history of the British police has been one of incremental load shedding. For example, the police no longer check that properties' doors are locked or escort cash-in-transit (CIT) vehicles, which they once did routinely amongst many other functions (Clayton 1967). Public order policing is a significant area where the police have sought to reduce their role. Up until the late 1980s, it was common for numerous police officers to be deployed within the grounds during football matches to undertake safety and public order policing functions. As a consequence of the Hillsborough disaster there were a number of reports on the safety and security strategies at football matches, the most important of which was the 'Taylor Report' published in 1990 (Home Office 1990). Following the publication of this report, football clubs agreed to have a greater role in safety, leaving the police to concentrate on crime, public order and emergency management. As a consequence, police presence at most routine matches has declined significantly and has been replaced by stewards and safety officers. Indeed, there are some Premiership football matches that now take place with no police officers within the ground. By way of illustration Frosdick and Sidney (1997) note that in 1989 Nottingham Forest would typically have 150 police officers supported by 75 stewards on the ground. By 1995 this had typically fallen to 250 stewards and 22 police officers on the ground.

Another area where the police have effectively shed their role is in the investigation of fraud. During the 1950s and 1960s if an organisation

suffered a fraud internally, it would be common for the police to undertake the investigation. Such is the extent of fraud in many organisations today that the police will require prima facie evidence before they become involved. They may, indeed, even expect the investigation to be completed. As a consequence of this—often a justification for keeping control of the investigation—many organisations have turned to the private sector to undertake the initial and sometimes the whole fraud investigation (Gill and Hart 1997). The police have been pleased not to have to investigate some frauds, which can be labour intensive, but to pick up the benefits of a successful investigation by the private sector. The degree to which the police have shed fraud investigations was illustrated by the 2006 Fraud Review team (2006: 69) which uncovered the following response from a Chief Constable to an organisation that had discovered a £100,000 employee fraud:

> The investigation of fraud is extremely expensive in terms of hours spent obtaining statements and preparing a prosecution case. The Constabulary is required under the Crime and Disorder Act to produce a crime reduction strategy. Our strategy identifies priority areas and police resources are directed to those priority areas. Fraud is not one of them.

Contracting Out

In this form of privatisation, the public provider retains responsibility for the funding of the activity but contracts out the service to the private sector. There are a wide range of functions within police organisations that have been contracted out to the private sector, some of which are not policing related, such as catering, cleaning and maintenance. Within the field of policing and criminal justice, one of the most lucrative examples for the private sector was the contracting out of the escorting of prisoners between police stations and local courts following the Criminal Justice Act 1991. That legislation also provided for the contracting out of magistrates' court security and this too has been a considerable growth area for the private sector. In many police forces security of police premises has also been contracted out. The government's Private Finance Initiative (PFI) has led to the further contracting out of some roles. In Sussex, for

example, there was a partnership in place with Reliance Secure Task Management to deliver custodial facilities and services, with Reliance having built and financed four of the six sites and providing custody assistants and detention supervisors in all six (Button et al. 2007; HM Inspectorate of Prisons and HM Inspectorate of Constabulary 2011). The Police Reform Act 2002 created provisions for the contracting out of a wider range of police functions. Custody, investigation and patrol functions can all be 'civilianised' and contracted out under this legislation. Several police forces have contracted out the custody function, often linked to long PFI contracts (Button et al. 2007; Johnston et al. 2008). There have also been some very large contracts such as the Lincolnshire police 2011 contract with G4S to provide numerous services over a 10 year period for £200 million. (Plimmer and Worrell 2013).

Embracing Private Sector Management Practices

Throughout the Conservative governments of the 1980s and 1990s and the New Labour administration, there was a gradual application of private sector practices and what has been termed 'managerialism' or 'New Public Management' to the public police (Loveday 1999). Reforms of the police have also targeted police managers, as well as the regime they operate within (Savage et al. 2001). The Police and Magistrates' Courts Act (PMCA) 1994 emphasised the 'chief executive' role of the Chief Constable making them responsible for managing rather than administering the police service. The PMCA designated Chief Constables as budget holders and brought in performance targets and greater business interest to the police authorities.

The police have long charged for 'special services'. Under the Police Act of 1964 (now section 25 of the Police Act 1996):

> The chief officer of police of any police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the police authority of charges on such scales as may be determined by the authority. (cited in Gans 2000: 187)

Under section 18 of the same Act, police forces can also supply goods and services to local authorities. It is not the aim here to explore the debate over what constitutes 'special policing services', rather to illustrate some of the services the police have provided. It has been a longstanding practice for the police to charge for the services they provide at football matches and other public events on private land. In recent years, however, some constabularies have offered officers for hire in a much wider range of roles. Several local authorities, health trusts and businesses have also purchased additional police officers. Most significantly some sectors have funded specialist police units. There are three units funded completely by the private sector which are as follows:

- Dedicated Cheque and Plastic Crime Unit—Funded by the Banking Industry;
- Police Vehicle Fraud Unit—Funded by Motor Finance Companies; and
- Insurance Fraud Enforcement Department—Funded by Insurers

Such practices occur on a much larger scale in other countries. In the USA, Reiss (1988) found three models of employment of police officers in protective roles for private purposes. The first was where officers found secondary employment and charged for their services directly. The second was where unions coordinated officers' secondary employment. In the third case the police department contracted with the organisation for secondary employment for which it received fees which it then used to pay the police officers.

In the UK, police forces are also entitled to raise an additional one per cent of their budget through sponsorship, according to the terms of section 93 of the Police Act 1996 and force sponsorship policies. Many police forces publish details of the sponsorship they receive. For example, during 2011–12, Kent Police received sponsorship income of just over £10,000 from a diverse range of companies including Shepherd Neame, Enevis, MV Trucks and SHB Hire (Kent Police n.d.). In one innovative case a crime writer sponsored a police vehicle in Brighton to publicise his books (Smith 2008).

Linked to the charging of fees and selling of services, Bryett (1996) has identified four methods by which privately owned, non-police resources have been given to police forces. At its simplest level, monies and physical resources have been donated. Clearly the donation of large sums of money or resources to the police raises concern over the independence of the police should an investigation into the donor ever become necessary. At a second level, another type of donation is that of space, which can also be a form of physical resource. Bryett provides one example from the USA where the McDonalds food chain gave part of one of its stores as premises for a police station. A third type of private sector aid is giving time. Most frequently this takes the form of private individuals offering their time as special constables. At another level it might be helping the police in a search for a missing person or for evidence. The pursuit of joint ventures between the public and private sectors is the final means of co-operation. For instance, in Montgomery County in the USA, the local police department worked with IBM to produce a sophisticated computer disaster and security capability. In the UK, the PFI has enabled some forces to use the private sector to design, finance, build and manage police facilities. Some of these include police stations and firearms ranges.

Franchised Policing

There is another dimension to police privatisation that has been overlooked by researchers which, with the advent of ESP, could become a much more common mode of policing. A franchise can be defined as an authorisation by one organisation for another to carry out activities according to specified terms and standards. Franchising is common in many business areas. For example, many fast-food chains such as Subway, McDonalds and KFC provide their products, design of outlets, branding and know-how for a fee to entrepreneurs who operate their businesses in order to expand their market share. To date there has been no direct attempt at franchised policing in the UK. However, there have been historic initiatives that could be described as being a form of franchising and, as will be shown shortly, ESP could be seen as

a move towards franchised policing. Before we consider this in depth, however, it would be useful to explore some of the historic examples of franchised policing.

Specialist Police Agencies

To be distinguished from the 43 so-called Home Office constabularies of England and Wales are a number of specialist police forces. These forces have officers who wear similar uniforms and hold constabulary powers but are funded from different sources and carry out specialist functions. The British Transport Police, Ministry of Defence Police and the Civil Nuclear Constabulary are the best known examples of these so called 'non-Home Office' police forces. There are, however, several others in operation. For example, a number of small police organisations protect transport locations such as seaports, tunnels and, in one case, an airport. Some of these date back to the last century (see Table 5.1), although they are now declining in number and size. Most were created under a myriad of private legislation, which provided limited constabulary powers. For example, ports police agencies have been created in three ways: one, through the incorporation of sections 79–80 of the Harbour, Docks and Piers Clauses Act 1847 into a harbour authority's powers by means of a local Act; two, via application to the Secretary of State for Transport for a Harbour Revision Order made under section 14 of the Harbours Act 1964; and three, for the Port of London (Tilbury) Authority Police through incorporation of sections 79–80 of the 1847 Act (cited above) through local Acts, the most recent of which is the Port of London Act 1968 (Department of Transport 1990). It is estimated that approximately 200 out of around 300 air and seaports within the UK could potentially establish a police organisation with constabulary powers, although in 1990 the Department of Transport found that only 12 had done so. In the case of Belfast International Airport Constabulary, this was established under the Aerodromes Act (Northern Ireland) 1971 and the Airport (Northern Ireland) Order 1994. The Mersey Tunnels Police are sworn in as constables under the County of Merseyside Act 1980 (section 105) as amended by the Local Government Act 1985.

Table 5.1 Special transport police

Force	Statutory undertaker	Year established	Current legislation	Strength
Port of Tilbury Police	Port of London Authority	1914 (but constables sworn in West India Dock since 1802)	Port of London Act 1968	25
Belfast Harbour Police	Belfast Harbour Commissioners	...	Belfast Harbour Act 1847 [a]36	
Port of Bristol Police	Bristol City Council	1929	Bristol Dock Act 1848[a]	45
Port of Dover Police	Dove Harbour Board	1923	Dover Harbour Act 1923[a]	51
Falmouth Docks Police	Falmouth Dock and Engineering Co.	1845	Falmouth Dock Act 1859[a]	8
Port of Felixstowe Police	Felixstowe Dock and Railway Co.	1975	Felixstowe Dock and Railway Act 1968[a]	34
Larne Harbour Police	Larne Harbour	...	Harbour Docks and Piers Clauses Act 1847	16
Port of Liverpool Police	Mersey Docks and Harbour Co	1811 (Earliest known force, current 1975)	Mersey Docks and Harbour (Police) Order 1975[b]	72
Port of Portland Police	Portland Harbour Authority	1997	Harbour Docks and Piers Clauses Act 1847	4
Mersey Tunnels Police	Merseyside Passenger Transport Authority	1936	County of Merseyside Act 1980 as amended by Local Government Act 1985	82
Belfast International Airport Constabulary	Belfast International Airport	...	Current Airport (Northern Ireland) Order 1994	...
Tees and Hartlepool Police	Tees and Hartlepool Port Authority Ltd	1904	Tees and Hartlepool Authority Act 1966	21

Source Department of Transport (1990), Button (2002)
Note: it was not possible to secure up-to-date information for all these organisations
[a]Incorporates section 79 of the Harbour Docks and Piers Clauses Act 1847
[b]Made under section 14 of the Harbours Act 1964

Another area where there have been specialist police is in parks, although these have also declined in recent years. One of the most famous was the Royal Parks Constabulary in London. This constabulary was taken over by the Metropolitan Police Service (MPS) in 2004 as an operational command unit within the MPS funded by the Royal Parks Agency (Royal Parks n.d.). Other notable parks constabularies run by local authorities include the Wandsworth Parks Police (taken over by the Metropolitan Police in April 2012), the Royal Borough of Kensington and Chelsea Parks Police, the Hampstead Heath Constabulary and the Epping Forest Keepers. Members of the latter are sworn in as constables under the 1878 Epping Forest Act, while employees of the other two are sworn in as constables under section 18 of the Ministry of Housing and Local Government Provisional Order Confirmation, Greater London Parks and Open Spaces Act 1967. These specialist police forces vary in the degrees to which they could be considered private (Button 2002). The British Transport Police, although largely funded by the private companies operating on the railways, could be viewed by the general public as being little different from Home Office police forces aside from its specialist functions on the railways. Others, particularly in the ports, could be considered as closer in character to corporate security departments with the added dimension of the police uniform and powers, particularly since many other ports organisations have dedicated security departments and personnel.

Some of these specialist police forces could be seen as an early form of franchising since, in these cases, the state has enabled organisations to adopt the distinctive features of the police such as the uniforms and powers in return for their funding of the arrangements, in order to reduce the burden on Home Office forces. Some of these organisations have in effect purchased their own private police rather than the more common private security arrangements. These initiatives have existed for some time with little controversy and they are generally in decline. They are also on such a small scale as to have warranted little concern from most commentators. However, the advent of ESP provides the opportunity for a different route to the development of such private forces, which could be considered a more overt form of the local constabulary franchising policing. ESP will now be considered in more depth.

Employer Supported Policing (ESP): An Opportunity for New Franchising?

Following a pilot in the Metropolitan Police Service in January 2010, the ESP scheme was launched. This is an initiative designed to encourage greater recruitment of special constables by encouraging employers to support the special constabulary, according to a four-stage model:

- Option 1. Promotion of the concept and encouraging recruitment;
- Option 2. The above plus releasing staff for training and at times of significant emergency, as well as allowing the use of facilities;
- Option 3. Allowing staff 50 per cent time off for training, a minimum of four hours paid time off per month for policing duties and published organised policy or guidelines supporting the scheme;
- Option 4. Allowing staff full time off for training and a minimum of eight hours per month paid time off for duties (National Police Improvement Agency 2010).

The promotional literature for the scheme highlights the benefits for employers. These are: being seen to support their local community, staff development, improved staff morale and motivation and greater staff retention/lower recruitment costs (National Police Improvement Agency 2010). The other benefit which is not mentioned in the literature is the potential for the employers to secure staff members with constabulary powers linked into the local police network. This situation arises because special constables retain their powers when they are not in uniform. Consequently, having trained staff with such powers can be potentially very useful to organisations, even when they are working in their 'normal' roles. However, a more significant benefit of the scheme is that it enables organisations to possess their own police officers with full constabulary powers, who can be deployed to police their premises in police uniforms. It is this unpublicised element to ESP that provides the basis for franchised policing. As the following section will show, this has resulted in the scheme being implemented in innovative ways. Before we consider this, however, it is important to briefly explore the eligibility to become a special constable, as recent guidance has widened the potential occupations that can be considered.

Eligibility to Become a Special Constable

The detailed guidance for eligibility to become a special constable is set out in the National Police Improvement Agency (NPIA) Circular 01/2011 (National Police Improvement Agency 2011). Various elements of primary and secondary legislation underpin this guidance. The guidance sets out requirements on qualifications, competence, nationality, age, character, health and occupation. It is the latter to which we now turn. There are a variety of occupations proscribed in law and guidance from becoming special constables, there are others that are permitted subject to the agreement of the employer and the discretion of a Chief Constable, and, finally, there are those occupations which require careful scrutiny by a Chief Constable:

1. Proscribed occupations

These comprise armed forces personnel, traffic wardens, civil enforcement officers, school crossing patrol officers, neighbourhood wardens, other uniformed patrol wardens, highway agency traffic officers (on road, whereas those operating off road are eligible), police community support officers, personnel of non-Home Office constabularies (who already have constabulary powers defined to a particular role and/or area), magistrates, judges, justices' clerks, Crown Prosecution Service employees, National Crime Agency personnel with immigration or revenue and customs powers, members of police authorities and immigration officers.

2. Occupations allowed subject to agreement of employer and at discretion of a Chief Constable

These comprise armed forces reserves, fire service employees, occupations involving client privilege, medical and health professions, and National Crime Agency staff.

3. Officers requiring careful scrutiny by the Chief Constable

These comprise holders (and their partners) of premises licences and designated premises supervisors, personal licences and licences of betting/gaming premises, probation officers, youth and social workers, bai-

liffs, warrant officers, private detectives, inquiry agents, employees of security organisations, security officers, door supervisors and civilian personnel of police authorities.

It is worth teasing out some of the occupations in the latter category in more depth. Employees of security organisations have been ineligible in the past. Under the latest guidance, however, their eligibility is now at the discretion of the Chief Constable. There is, therefore, scope for a Chief Constable to accept security officers as special constables and, as a consequence, security departments could seek to secure special constable status for their best security personnel. The guidance discourages this, however, stating:

> Normally persons involved in the private security industry should not be eligible to become a special constable if their job involves the potential for them to use their position in the police for their own advantage or the advantage of their employer e.g. such as the patrolling and guarding of buildings, the transit of cash and valuables, wearing uniforms, and contact with the public. (National Police Improvement Agency 2011: 12)

Given that the various forms of wardens are explicitly proscribed, even 'lollipop men (and women)', it appears to be an anomaly that it is possible for security personnel to become special constables when they may be undertaking very similar roles to wardens. In Hampshire, the Chief Constable has allowed small numbers of security personnel to become special constables under ESP. This example will now be considered in some depth drawing on numerous documents provided to the authors, as well as semi-structured interviews with two Gunwharf Quays staff members who were special constables, as well as the police officer in Hampshire responsible for the scheme.

Hampshire Constabulary and ESP

Hampshire Constabulary has been active in promoting ESP. At the beginning of 2013 there were around 70 special constables employed under the scheme, which represented around 15 per cent of the total number of

specials in the constabulary. A number of supermarket chains were at the forefront of ESP, signing up general retail staff as special constables. However, the two most significant schemes were located at the Festival Place shopping centre in Basingstoke and the GWQ complex in Portsmouth. The latter will be the focus of this discussion.

GWQ is a waterside shopping/leisure development built upon former Ministry of Defence land. Its extensive facilities include shopping outlets, bars, nightclubs, restaurants, a cinema, a casino, a landmark viewing tower (Spinnaker Tower) as well as residential housing. It is an example of private space that is freely open to the public: so-called 'quasi-public' or 'hybrid' space (Button 2007). GWQ seeks to promote a more upmarket image than surrounding shopping complexes with its association with sailing, designer outlets and bars/restaurants. Security of GWQ is a high priority and in 2013 a team of just under 30 security officers were designated as 'customer service officers'. The officers were contracted from a major security company and managed by a contract manager and overseen by a general operations manager and a crime reduction manager employed by GWQ. They worked with some of the latest security technology including a state-of-the-art CCTV system. GWQ were keen to enhance the status of their security personnel and just under 20 were accredited under the Hampshire Constabulary Community Safety Accreditation Scheme (although in May 2014—GWQ withdrew from this scheme). Some staff members were also trained in the use of handcuffs, although they did not carry these.

The common security issues GWQ face include shoplifting and fraud-related offences in the retail outlets, drunken disorder associated with licenced premises and low level anti-social behaviour. Generally the security team dealt with these incidents without reference to the police. The police most commonly attended to arrest shoplifters and to deal with significant outbreaks of drunken disorder. Therefore, it was largely reactive to incidents, rather than a proactive presence. Pressures on police budgets, however, meant police patrol of the GWQ site had become very rare. To address this challenge GWQ embraced the ESP model. In January 2013 the special constables at GWQ consisted of:

- A crime reduction manager employed by GWQ (retired police sergeant): special constable two days per week.
- A contract manager employed by security contractor (licensed security officer): special constable 16 hours per month (by May 2014 she had moved to another job).
- Four licensed security officers undergoing training for this, all employed by the contractor (another four had started but dropped out): expected minimum of eight hours per month (by May 2014 only two still doing the training).

There had also been two in-house centre managers who were special constables under this scheme, but one had left the organisation and the other had withdrawn from the scheme due to work pressures. A specific police beat is centred around GWQ which extends beyond the borders. Special constables when working this beat are expected to patrol and respond to incidents in this wider area, beyond GWQ. Indeed on a day when one of the authors visited GWQ, one of the special constables had just come back from dealing with a minor incident in Guildhall Square, about a quarter of a mile from GWQ. The officer explained this was quite normal because police officers were not normally dedicated to patrol only the beat which included GWQ.

One reason why the GWQ scheme is significant is because security employees are accepted as special constables despite it being actively discouraged in the past. However, a second potentially more significant element is that the special constables at GWQ are working at their place of work and getting paid for it by their employer. They experience the novel situation of patrolling the site one day dressed as security staff and paid as such and on another day patrolling as special constables while still paid as security staff members. GWQ therefore gained in effect their own—albeit very small—private police force with constabulary powers. For the GWQ management, this secured the regular patrolling of the site by uniformed police officers, without being a drain on the scarce resources of Hampshire Constabulary. The benefit for the police was that they secured additional police resources, without draining their main resources. They were in effect enabling GWQ (and others) to develop a franchise. Police officers were wearing their uniforms, with their powers, trained to their standards, operating to their procedures, but paid for by GWQ.

There is also evidence that the public were not hugely concerned with the scheme with a comparable sized split for and against. Kierans (2012) conducted a small-scale study at GWQ seeking to gauge public attitudes towards ESP and special constables with the researcher approaching members of the public at GWQ and administering a structured questionnaire. One of the questions asked whether security officers working as a special constable was a good idea. From 112 responses, 35 per cent thought it was a very good or good idea, 22 per cent were neutral, and 43 per cent thought it was a bad or very bad idea (Kierans 2012: 49). Another interesting finding concerned public attitudes to the reassurance given by different forms of security personnel. In the research, members of the public were shown pictures of a special constable, a police officer, a customer support officer, an accredited customer support officer and a door supervisor and asked to rate how reassured they were by them. Table 5.2 sets out the findings.

The overwhelming finding is the significant superiority of special constables and police officers over various security personnel in the eyes of the public in terms of the reassurance they provide. Also interesting was the fact that special constables were rated more highly than police officers. Research by the Audit Commission (1996) has also suggested that significant differences exist in levels of reassurance provided by different types of personnel. Police officers are rated much more highly in terms of the reassurance they provide than private security officers and even a Neighbourhood Watch sticker being rated more highly than a security officer. The results also illustrate why organisations such as GWQ crave a police presence so much.

There are nevertheless a variety of issues about which many commentators on policing might be concerned. Take, for instance, the powers of special constables to stop and search individuals. Might a security officer who is also an off duty special constable who sees an individual acting in a suspicious way be tempted to use their powers to stop and search that person? The response to this issue by the officer co-ordinating the Hampshire scheme was that officers had been advised that it would be considered an abuse of power to do so. Officers in the scheme were also required to sign a 'Conflict of Interest Understanding' and liable to lose their special constable status if caught abusing their powers. It was also

Table 5.2 Public perceptions of reassurance of various policing personnel at GWQ (n = 112)

	Very assured	Assured	Neutral	Not reassured	Least reassured
Police officer	40	51	8	1	0
Special constable	57	36	6	1	0
Customer support officer	0	0	4	15	81
Accredited customer support officer	3	12	72	13	0
Door supervisor	2	0	10	57	31

Source: Kierans (2012: 43)

argued by the interviewees that many other special constables, whether or not they are part of an ESP scheme, may be faced with such potential conflicts of interest. The recruitment and selection process to become a special constable is much tougher than to become a licensed security officer. It was argued the calibre of those security personnel who successfully meet the requirements of ESP is therefore higher and that these individuals are likely to be able to deal with the challenges of wearing two hats.

There are some other issues of controversy that ESP potentially raises. The scheme represents a significant blurring of the public-private divide. Private entities are able to effectively contract their own police presence, over which they will have far more influence than is the case with regular police services. If managers are paying and managing these staff members in their normal working hours, such relationships are difficult to ignore during the times when their staff are working as special constables. This is something which full-time police officers and other special constables are not required to consider. It might be argued also that if these types of schemes expand, such conflicts of interest might pose challenges to the legitimacy of the police. In such a scenario areas of public space would become policed largely by special constables who have some interest in the space they police.

Nevertheless, ESP would seem to provide an opportunity to enhance the policing infrastructure of many organisations and areas without draining scarce police resources, while effectively 'keeping it in the [extended policing] family'. Declining police budgets mean many areas across the country like GWQ will receive less policing resource, which is likely increasingly to become a reactive presence to incidents and intelli-

gence. It is also questionable whether in times of scarce resources the public should effectively subsidise the security of commercial organisations. ESP, therefore, provides a basis to fill the gap and enable organisations to develop their own policing franchise at their own expense, with the guarantee of the standards and governance of mainstream policing. Nevertheless, it is important that some principles under which ESP should operate are laid down. These should include:

- Special constables under ESP should undergo the same levels of recruitment and training as other special constables.
- The special constables should be used in a wider area than just their employers so that benefit from their activities extends to the local community.
- Any special constable who abuses their powers in their day job, unless there are exceptional circumstances, should lose their status as a constable.

A wider reform that should be debated also is changing the status of special constable powers so that these are restricted to when officers are actually on duty for the police. These principles, if applied, might make ESP more politically palatable and potentially encourage its wider usage.

Conclusion

This chapter was largely written during 2014 but by the autumn of 2015 much had changed at GWQ. Only the crime reduction manager remained in the scheme, and the other members of staff who had joined had either left the organisation or had dropped out of the special constable training course. The demands of studying to pass the relevant exams had proved too demanding for some and one, who had been successful, had been able to use the gained skills and status to secure a better job. The high attrition rate had led the Centre, under a different manager from the one who had started the scheme, to conclude further investment was not viable. This shows the importance of commitment from local management for such schemes to continue, but perhaps more importantly that the need for training of staff

and to pass examinations outside normal working hours is too demanding for some private security staff. Also for those who can do this their enhanced CV makes them attractive for better paid assignments.

Operational policing has been immune from deliberate privatisation in its purest form: a process in which government owned assets or services are wholly or partially transferred to private companies. Profit making is widely seen as being incompatible with the ideals of impartial justice and universal service intrinsic to modern policing, while police numbers are always a politically charged issue and perceived threats to police services are considered an electoral liability (Wakefield and Prenzler 2009). There is no doubt, however, that an incremental privatisation has been ongoing for many years (Button 2007, 2002; Johnston 1992; Jones and Newburn 1998; Wakefield 2003, 2014; Wakefield and Prenzler 2009) as market forces have played more and more of a role in the way in which policing is delivered.

In this chapter we have reviewed a variety of initiatives that demonstrate how governments, local authorities, police forces and private security firms have been pursuing policies that have been tacitly privatising policing, often taking place with little public reaction. Many of these have been well documented in academic literature since they were first synthesised by Johnston (1992) under the categories of 'load shedding', contracting out and the levying of charges for police services. The last of these we have broadened out in our discussion in order to examine the embracing of private sector management practices more generally. What has not been discussed, to our knowledge, is the recent developments in what we call 'franchised policing'. This now extends from the delegated contributions of specialist, non-Home Office police agencies, some of which date back as far as the nineteenth century, to a new model called ESP that engages employers in the promotion and expansion of the special constabulary. Complementing other, well established flexible arrangements that allow for the selling of police services to the private sector, these measures conversely allow for the transfer of police powers and training to private sector employees. Such arrangements are still new and only sporadically employed but merit close observation given that austerity budgets and the politicisation of police oversight arrangements have generated considerable pressures that could invite some radical new ways of working. The GWQ experiment shows there are many

barriers to the long-term viability of such schemes. However, many organisations may conclude the schemes such as ESP are the only viable route to securing a regular police presence in the face of pressures on police funding and declining resources which risk leaving a very 'thin' if not no 'blue line'.

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6

Quality, Professionalism and the Distribution of Power in Public and Private Sector Prisons

Ben Crewe and Alison Liebling

> The public have a right to expect continuing improvement in the quality and efficiency of public services, without compromising public safety. The competition strategy and adjustments to the prison estate will help ensure that this is the case. (Lord Chancellor and Secretary of State for Justice, Kenneth Clarke 13 July 2011)

The first privately managed prison in England and Wales opened in 1992. Others have opened at a steady pace ever since, with 14 now operational—amounting to around 16 per cent of the prison population (the highest proportion in Europe) (Ministry of Justice 2013). Following a hiatus between 2005 and 2011, the nature of private sector competition has changed, with the first publicly run prison—HMP Birmingham—handed over to the private sector (G4S) in October 2011, and the second, HMP Northumberland, formerly two separate public sector prisons (HMP Acklington and HMP Castington)—to Sodexo in December 2013. There is presently a hia-

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tus on 'whole-prison' privatisation, but since the basis for this was a commitment from the public sector prison service to reduce its costs to bring them in to line with the private sector, it is evident that private sector competition continues to exert pressure on the wider prison sector. We discuss the consequences of this in the chapter's conclusion. In the meantime, there will be increasing contracting out of ancillary services, such as maintenance and resettlement work, within individual prisons, meaning that the presence of private contractors within public sector prisons will increase significantly, even though establishments will remain under public sector management overall. These developments raise a multitude of questions about the role of the private sector in criminal justice, some of which are largely normative—'should punishment be delivered by anyone other than the state? Is it immoral to derive profit from punishment?'—and others of which require an empirical analysis, 'do public and private sector prisons have different strengths and weaknesses, and, if so, what explains them?' 'Do quality and outcomes differ between sectors?' Our aim in this chapter is to focus on the latter, not least because there are so many critical managerial (and other) lessons arising from the changed terms of punishment provision, and because many of the claims that have been made for (and against) privatisation have been rhetorical and simplistic. Indeed, one of the most striking aspects of the 'privatisation experiment' (words that were used in the Criminal Justice Act 1991 that established private sector competition) is that, despite its far-reaching human consequences, there have been so few credible and systematic evaluations of its impact or effectiveness. In this respect, it conforms to the definition of an experiment only partially, in that it represents the manipulation of the management and organisation of prison life with little objective attempt to observe the outcomes of doing so. As the Public Administration Select Committee argued, 'the need for proper assessment, in a way that is transparent and open to scrutiny and challenge, is fundamental' (House of Commons 2002: 13). The chapter begins by outlining some of the important context to the introduction of private prisons in England and Wales. It goes on to introduce the methods used in the study which we draw upon in the remainder

of the chapter, before summarising its key findings and offering some explanations. The main questions that we seek to address are not just about relative quality in public and private prisons, but what appear to be characteristic features of the two sectors. Here, then, we ask what the links are between values, attitudes and practices: that is, how the profit motive, competition, public sector culture and the performance framework 'work' in shaping prison life. The chapter also includes some reflections on what all of this tells us about prisons and prison quality generally, for one of the most attractive, but also challenging, dimensions of undertaking research in this area is that it contributes to a cumulative understanding of prisons, moving us constantly back and forth between relatively narrow concerns about specific prisons to broader questions about the nature and functions of punishment.

Context

Problems of quality and management in public sector prisons have been the focus of concern externally and internally in England and Wales (and in other countries) for most of the last 30 years (e.g. Home Office 1979, 2001; King and McDermott 1989). Among the more insoluble problems in public sector imprisonment over the recent decades are uncontrolled costs, poor outcomes, continuing union resistance to change, lack of innovation, impoverished and dehumanising regimes, contemptible attitudes by some public sector staff towards prisoners and apparent management powerlessness in many establishments to address these issues. Some public sector prisons are, or have been, outstanding (e.g. Grendon, a therapeutic prison, and Blantyre House, a resettlement prison), but these establishments generally stand out against the grain.

These problems have significant moral as well as practical components and consequences. Left as they were, many public sector prisons were full of morally unacceptable practices, despite assumptions that public sector values are inherently superior to private sector values and are sufficient to secure the public interest. Commitments to equity, social justice and probity, which were undoubtedly present at higher levels of the organisation

(House of Commons 2002; Pollitt and Bouckaert 2000: 9), were not very often instilled in practice at the ground level. Part of the solution to this problem of high costs and poor performance was an intense and ongoing modernising project: first 'managerialism', and then its close companion, competition. Both developments were driven by wider concerns, including a broader assault on organised labour and an ideology that assumed a preference for private sector provision regardless of specific factors such as rising prison populations and institutional overcrowding (for further detail, see Harding 1997; Jones and Newburn 2005; Ryan and Ward 1989). But what we want to emphasise for current purposes is the apparently counter-intuitive observation that the many management revolutions that prisons have undergone in recent decades (the pace and scale of which show little sign of easing) have involved private sector practices and direct competition being introduced in the interest of improving the 'moral performance' of prisons as experienced by prisoners themselves.[1]

As previous research has indicated, this has not been without success: James et al.'s (1997) comparison of HMP Wolds, the first privately managed prison in England and Wales in the modern era, and HMP Woodhill, a comparable public sector prison, found that the former was preferred by prisoners in a number of important domains, including the helpfulness of officers and the fairness of their treatment. Liebling and Arnold (2004) and Liebling (2012) noted that private prisons appeared to outperform public sector establishments in areas such as staff-prisoner relationships, prisoner autonomy and wellbeing. These prisons exhibited weaknesses in the areas of structure, security and safety—a key issue to which we will return. Nonetheless, in companies whose stated goals are profit, expansion and efficiency, previous research has found, at ground level, a genuine adherence among frontline staff to rehabilitative ideals and the genuinely decent treatment of prisoners.

We first depicted this apparent paradox as follows (see Liebling assisted by Arnold 2004: 122).

Figure 6.1 depicts public sector values of social justice and the public interest at senior levels, but shows them failing to 'translate' into healthy prison cultures at ground level. By contrast, it suggests that the high-level commercial values of the private sector find a way, via contracts and tighter management, of taking shape in decent cultures at establishment

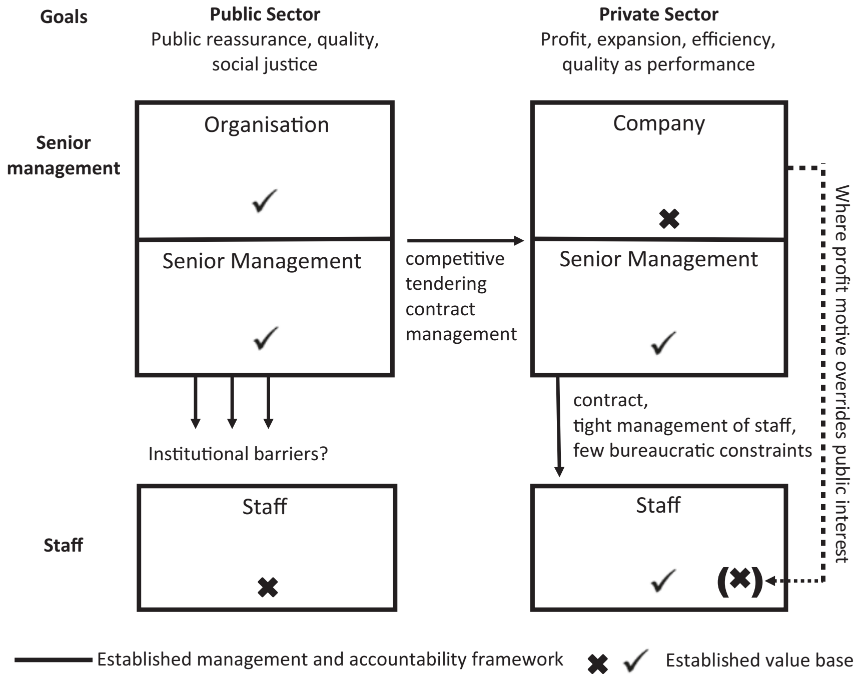

Fig. 6.1 A schematic sketch of structures and mechanisms of value bases in two sectors

level, in some private prisons at least. This was a paradox, which we are now in a much better place to explain, develop and to some degree modify, as we hope to do in this chapter, highlighting the different legitimacy deficits and power balances within the two sectors and the complex relationship between values and practices at all levels of the correctional institution.

The Study

The analysis presented in this chapter draws primarily on data collected as part of a broader study of values, practices and outcomes in public and private corrections, funded by the Economic and Social Research Council (ESRC), which we began in 2007.[2] Briefly, the study aimed to do two

things: first, investigate differences in practices, cultures and quality between public and private sector prisons; second, describe the motivations, principles and practices of senior managers in the two sectors and to explore whether objectives and aspirations differed between them, with what effects on delivery. The main methods that we used for the second aim were interviews with 90 senior managers and civil servants working in, or managing, public and private sector prisons, along with observations of board meetings within the National Offender Management Service (NOMS), and short periods shadowing senior figures within the organisation. To meet our first aim, our methods comprised an ethnographic and survey-based study of two public and two private prisons—matched as closely as possible in terms of function, age, size and other relevant factors—with a further three private sector prisons added in as the research developed, for reasons we shall explain below. While funding for the study ended in 2010, the level of feedback in which we engaged and our continuing interest in public and private sector comparisons has drawn us into additional evaluations (e.g. of HMP Birmingham, over a three-year period) and has helped us to maintain a close eye on subsequent developments, which we will comment on briefly towards the end of the chapter.

For the ESRC-funded study, we sought informal advice on which prisons were comparable from senior practitioners in both sectors, and access was granted with relative ease. We had the advantage that the private sector companies were reasonably confident that they would perform well on many of our measures, so that, while we had to reassure senior executives in one company that the research would not expose them to reputational risk, on the whole we were welcomed into these prisons. Meanwhile, the public sector prison service has, for many years, been fairly enlightened about the advantages of a trusted research presence, seeing it as a source of valued information, helpful analysis and a potential early warning system. Our more recent invitations to measure private prisons were accompanied by more caution, including greater concern about the status and ownership of the research data, as the experiment became more risky and the commercial environment more competitive. We have tried to maintain the position that the research that we conduct in this sector should be undertaken under the same terms and conditions as for public

sector prisons, with a presumption in favour of publication, and in the interests of improving knowledge, with a process of 'first opportunity to comment' granted to the sponsor. This approach has so far proved successful.

For strategic reasons, when designing the ESRC-funded study, we aimed to choose prisons in both sectors that were considered to be towards the higher end of the performance spectrum. We have learned that it makes sense to be 'as fair as possible' to the organisation under study, and we wanted each sector to feel that we were reporting strengths as well as difficulties within their establishments. We also knew that even higher-performing prisons would have problems as well as areas of best practice, so that we would not be encountering establishments which would only demonstrate the more desirable features of each sector. We restricted our selection to adult male local and training prisons: that is, the most numerous and reasonably secure prisons.

We spent six to eight weeks in each establishment, between autumn 2007 and autumn 2008, with all members of the research team involved in the fieldwork in each prison, to a greater or lesser degree, and all team members given keys and allowed unaccompanied access to all areas of each prison.[3] In each prison we conducted surveys with 159 or more randomly sampled prisoners, and with 80–100 staff at full staff meetings, while also carrying out interviews with around 50–60 prisoners, staff and senior managers and engaging in observations of management meetings, adjudications and everyday interactions on the prison landings.

In an important development in the storyline, we soon worked out that neither of our private prisons, Dovegate and Forest Bank, was performing particularly well at the time of our research. However, while we were researching in these establishments, and in the two public sector comparators, Garth and Forest Bank, prisoners talked to us in unusually positive terms about two other private prisons, Lowdham Grange and Altcourse. We had originally excluded Altcourse from the study on the grounds that its contract was famously expensive and its cost per prisoner place higher than elsewhere, so that it was not a fair representative of the sector. However, our curiosity about what high-performing private prisons might 'look like' meant that we decided to add focused research visits (of around a week's duration, with relatively few interviews and more

emphasis on the prisoner and staff surveys) to these prisons into our study.

As we began to share our findings with interested parties, we were asked by the Office for National Commissioning to use our staff and prisoner surveys to provide some reliable feedback on the state of a third additional private prison, Rye Hill, which was coming to the end of its 'rectification notice'.[4] The invitation was difficult to resist, given its operational difficulties, meaning that we ended up obtaining detailed data from five private sector prisons, and two public sector prisons overall.[5] The characteristics of these prisons at the time of our study, and the data that we collected within them, is presented in Table 6.1.

The survey that we administered to prisoners in this study (randomly sampled, and in focus groups of between 8 and 12) was first developed in 2000 during a Home Office *Innovative Research Challenge Fund* project aimed at developing a meaningful measure of the quality of prison life (Liebling and Arnold 2002; and see Liebling, assisted by Arnold 2004). At the time, a common complaint in prisons was that official performance measures lacked both conceptual and methodological validity. Staff-prisoner relationships were regarded by most commentators as central to prison life but too vague to measure, yet through workshops with staff and (to a limited degree) prisoners helped us to identify a set of 'dimensions'—such as staff-prisoner relationships, humanity, order and so on—comprising a number of statements or 'items', which captured the most important aspects of prison life. The Measuring the Quality of Prison Life (MQPL) survey that has been developed around these dimensions has undergone a number of revisions since this time (see Liebling et al. 2011), and now comprises a 140-item self-completion evaluation instrument. For this research, it was adapted in some specific areas, such as policing, security and staff professionalism, which past research findings and our early fieldwork had led us to think would be especially pertinent to the study. The resulting dimensions have been organised into clusters ('harmony' or relational dimensions, 'professionalism' dimensions, 'security' dimensions, 'conditions and family contact' dimensions and 'wellbeing and development' dimensions) reflecting different aspects of prison life and quality.[6]

Table 6.1 Data collected from the seven prisons in the study

	Forest Bank	Bullingdon	Dovegate	Garth	Rye Hill	Lowdham Grange	Altcourse	Totals
Sector/company	Private Kaylx/Serco	Public	Private Serco	Public	Private G4S	Private Serco	Private G4S	
Function	Local	Local+[a]	Cat B training	Cat B training	Cat B training	Cat B training	Local	
Op. cap.	1124	963	860	847	664	680	1324	
Year opening	2000	1992	2001	1988	2001	1998	1997	
Fieldwork period	Sept–Oct 2007	April–May 2008	Nov 2007–Jan 2008	Sept–Nov 2008	Sept 2008	Jan 2009	April 2009	
Prisoner survey sample	183	184	159	186	167	155	100	1145
Staff survey sample	156	136	162	187	135	105	76	957
Prisoner interview sample	32	29	22	19	–	–	–	102
Staff interview sample	40	27	24	19	5	5	5	110
Overall quality of life score (out of 10)	5.53	5.43	4.71	5.20	5.11	6.79	6.40	

[a]Bullingdon described itself as a community prison operating 'as an adult male Cat C training prison with a Cat B local function', but, in effect, it was a local prison taking prisoners from the nearby courts while also holding general category C prisoners. In prison service performance comparisons, it is normally treated as a local prison

The views of staff were gathered using a staff quality of life (SQL) survey, developed along similar principles to the prisoner survey (see Liebling 2008) and organised into four conceptual clusters: 'management' dimensions, 'job satisfaction' dimensions, 'authority' dimensions and 'prisoner orientation' dimensions (see Table 6.2). In all prisons apart from HMP Altcourse (where the surveys were administered by Standards Audit Unit, with one of the research team present), these surveys were distributed and collected by the research team following a brief presentation to all staff present during a full staff meeting.

The populations of the prisons in the study differed somewhat (so, e.g. Bullingdon held only adult prisoners, while Forest Bank and Altcourse also held young offenders; and Dovegate had a much larger therapeutic community than Garth), and each prison was at a particular point in its life cycle (so, e.g. Dovegate and Rye Hill were emerging from particularly difficult periods, in terms of order and security). Our aim in presenting our findings below is not, therefore, to claim that we are directly comparing like with like, or that any of the prisons in the study would still look like they did at the time of the research, but to highlight some *characteristic* features of the two sectors and to offer some explanation for differences between them.

Table 6.2 Revised SQL dimensions measuring staff quality of life (perceived treatment and attitudes)

Management dimensions	***Authority dimensions***
Attitudes towards the governor/director	Safety, control and security
Attitudes towards SMT	Punishment and discipline
Treatment by senior management	Dynamic authority
Treatment by line management	
Relationships with line management	
Job satisfaction dimensions	***Prisoner orientation dimensions***
Relationship with the organisation	Professional support for prisoners
Commitment	Positive attitudes to prisoners
Recognition and personal efficacy	Trust, compassion and commitment towards prisoners
Involvement and motivation	Relationships with prisoners
Stress	
Relationships with peers	

Overview of the Findings

The principal finding of the study was that the private sector prisons appeared at both the top and bottom end of the quality spectrum. This was not unexpected, given our selection of prison sites, but it is significant in countering assumptions and claims that are often made about either the general superiority (or inferiority) of privately managed prisons (see, e.g. Tanner 2013). So great were the differences within the private sector that we have analysed the results by position on an overall performance range as well as by sector, as we initially envisaged. We will therefore begin by describing the overall pattern of the findings, and some important 'headlines', before looking at the results in more detail.

In Fig. 6.2, the prisons are divided into four quality quadrants—from 'poor' to 'very good'—with private sector prisons located at the far end of each quadrant. We use the term 'average' for column B because our estimate, based on our own research over many years, as well as oversight of these data collected by NOMS's Audit and Corporate Assurance Directorate from all prisons, is that most prisons scores would look quite similar to those in this column. Column C, 'good', consists of two high-performing public sector prisons, and column D contains two unusually high-performing private sector prisons.

Figure 6.2 shows only the dimensions (i.e. the aspects of prison quality) scoring a mean of three or above, that is, above the neutral figure (dimension scores are coded in a way that means that a higher figure is always more positive than a lower figure, so that a high score on a dimension such as 'drugs and exploitation' means *less* drugs and exploitation than a low score). This figure displays anything evaluated positively, however small the distance above this threshold. It is worth noting that the scores for each dimension (shown in the Figure) tend to be higher as we move further to the right, from the 'poor' column, to the 'average' column and so on. In other words, the 'very good' prisons were not only rated above three on a greater number of dimensions than the other prisons in the study; they were also rated more highly on almost all of these specific dimensions.

A - 'Poor		B- 'Average'	C- 'Good'		D- 'Very Good'	
Private Trainer	Private Trainer	Private Local	Public Local	Public Trainer	Private Trainer	Private Local
Dovegate	Rye Hill	Forest Bank	Bullingdon	Garth	Lowdham Grange	Altcourse
Respect/courtesy 3.01 Prisoner safety 3.24	Respect/courtesy 3.07 Care for the vulnerable 3.01 Prisoner safety 3.32 Drugs and exploitation 3.02	Respect/courtesy 3.18 Staff-prisoner relationships 3.10 Care for the vulnerable 3.10 Staff professionalism 3.18 Prisoner safety 3.32	Respect/courtesy 3.24 Staff-prisoner relationships 3.15 Care for the vulnerable 3.27 Help and assistance 3.22 Staff professionalism 3.24 Policing and security 3.35 Prisoner safety 3.46	Respect/courtesy 3.29 Staff-prisoner relationships 3.17 Humanity 3.08 Care for the vulnerable 3.15 Help and assistance 3.05 Staff professionalism 3.25 Policing and security 3.26 Prisoner safety 3.36 Personal development 3.04 Personal autonomy 3.04	Entry into custody 3.21 Respect/courtesy 3.47 Staff-prisoner relationships 3.27 Humanity 3.17 Decency 3.30 Care for the vulnerable 3.24 Help and assistance 3.20 Staff professionalism 3.27 Policing and security 3.22 Prisoner safety 3.57 Drugs and exploitation 3.22 Personal development 3.07 Personal autonomy 3.14 Wellbeing 3.19	Entry into custody 3.10 Respect/courtesy 3.48 Staff-prisoner relationships 3.45 Humanity 3.27 Decency 3.38 Care for the vulnerable 3.44 Help and assistance 3.37 Staff professionalism 3.53 Fairness 3.15 Organisation and consistency 3.08 Policing and security 3.27 Prisoner safety 3.48 Personal development 3.28 Personal autonomy 3.22 Wellbeing 3.07

Fig. 6.2 Prisons organised into 'quality quadrants'

The figure shows that in poor and average prisons, not many 'dimensions that matter' reached the neutral threshold, in which prisoners, on average, rated the dimension more positively than negatively. One dimension which does is 'respect-courtesy', but this is a fairly narrow version of respect which reflects courteous treatment rather than the broader con-

cept of one's needs being taken seriously, both by individual staff and by the organisation (see Hulley et al. 2012). Similarly, 'safety' features—at levels that are only just above the threshold—but this is safety of a particular kind (physical rather than psychological), and, in both of these establishments, it was partly an outcome of prisoners generating a level of safety among themselves rather than staff controlling and policing the environment. It is only in the 'average' prison, Forest Bank, that some other dimensions appear, including 'care for the vulnerable' and 'staff professionalism'. The latter, which we define as 'Staff confidence and competence in the use of authority', includes items such as 'Staff here treat prisoners fairly when applying the rules' and 'Staff in this prison have enough experience and expertise to deal with the issues that matter to me'.

Once dimensions appear in the figure, their presence can be virtually taken for granted as prisons move up the quality scale, from poor to good. In other words, a higher-quality prison generally has all of the good characteristics of a lower-quality prison, and the aspects of prison quality which appear in better prisons seem to 'build' upon the basic accomplishments of safety and respect that are found in those that are less good. Thus in Quadrant C, the 'good' prisons, we find 'policing and security', 'humanity' and, an important dimension, 'personal development', which we define as 'an environment that helps prisoners with offending behaviour, preparation for release and the development of their potential'. This dimension, which consists of 'generative' or 'capability' items, to do with growth and development, as well as offending behaviour work, is linked to, but not synonymous with, 'making progress', which is succeeding formally in negotiating one's way down risk scales and into lower security conditions. The eight items in this dimension can be seen in Table 6.3.

'Personal development' appears in only one good public sector prison, but in both of the high-quality private prisons, where a positive score on 'wellbeing' is reported for the first time. This suggests that only if a prison is safe, respectful, humane, professional, well-organised and so on, can it be a place in which prisoners' personal development can take place. Our interviews with prisoners corroborated this argument: where they were preoccupied with securing their personal safety, resentful about the nature of their treatment by staff or exasperated by a poorly run regime, they had

Table 6.3 Personal development ($\alpha = 0.875$)

Item	Corr.
My needs are being addressed in this prison	0.690
I am encouraged to work towards goals/targets in this prison	0.689
I am being helped to lead a law-abiding life on release in the community	0.683
Every effort is made by this prison to stop offenders committing offences on release from custody	0.660
The regime in this prison is constructive	0.650
My time here seems like a chance to change	0.655
This regime encourages me to think about and plan for my release	0.592
On the whole I am doing time rather than using time *(removal $\alpha = 0.877$)*	0.477

insufficient headspace, as well as inadequate assistance, to think about the future and 'engage with the self'. It was only in the very best prisons that developmental thinking and engagement was possible, resulting in higher levels of wellbeing.

We have been struck by this finding and are currently seeking to investigate links between high scores on personal development, as well as 'moral performance' more generally, and outcomes on release. This is proving extremely difficult, not least because we are dependent on early and sometimes unreliable Ministry of Justice 'observed over expected' reconviction data for individual prisons, which are aggregate. Payment by results contracts could lead to better information, but so far there have been no systematic attempts to test this model by linking up Measuring the Quality of Prison Life data for individual prisoners with their engagement on programmes and subsequent experience in the community.

Detailed Findings

In outlining the findings of the study in more detail, we want to focus mainly on those areas that have most relevance to the areas of authority, legitimacy and the balance of power. In doing so, it is helpful to sub-divide the results into three sections 'Harmony', 'Professionalism' and 'Security'—consistent with the way in which we conceptualise the different components of our prisoner survey.

Harmony

In previous studies, which were not specifically about public and private sector comparisons, but happened to include privately managed establishments (see, e.g. Liebling, assisted by Arnold: 2004; Liebling et al. 2005), we had encountered a consistent finding that private prisons seemed to outperform public prisons in the relational areas of prison life, such as staff-prisoner relationships and respectful treatment. Partly in response to the Woolf Report, and as part the competitive promise of the private sector, the management teams of newly opening private prisons in the 1990s had deliberately attempted to create a less oppressive prisoner experience and to cultivate more respectful staff cultures. Malleable staff, who were recruited without prior prison experience, so that they would not bring with them the culture of the public sector, were instructed during their training to call prisoners by their preferred names and to conform to the idea that prisons were 'as, not for, punishment' (rather than to carry the kind of punitive edge that was typical of many public sector staff cultures). The establishment of prisoner consultative committees and regimes, which provided prisoners with more hours out of their cells than in public sector establishments, also contributed what we have elsewhere called a 'lighter' feel in private sector prisons (see Crewe et al. 2014).

Our results, when we look at the two pairs of matched prisons, were therefore striking. Contrary to our expectations, the public sector prisons outperformed their private sector comparators on the majority of the 'harmony' or relational dimensions. As indicated in Table 6.4, Bullingdon (public) was rated significantly higher than Forest Bank (private) on 'decency', 'care for the vulnerable' and 'help and assistance'.[7] However, if we add into this comparison the results from Altcourse, the high-performing private local prison, these results are put into perspective. Altcourse was rated well above both its public and its private sector comparators, on almost everything (but with some important exceptions that we will come to below).

In relation to the other matched establishments—which were both category B (i.e. relatively high-security) training prisons—we find that

Table 6.4 Results from all seven establishments for the 'harmony' dimensions

	FB	BN	DG	GA	RH	LG	ALT
Harmony dimensions							
Entry into custody	2.91	2.86	2.78	2.98	2.89	3.21 ***FB, DG, BN, GA, RH	3.10 **DG
Respect/courtesy	3.18	3.24	3.01	3.29 *DG	3.07	3.47 **FB, ***DG, RH	3.48 **FB, ***DG, RH
Staff-prisoner relationships	3.10 **DG, ***RH	3.15 ***DG, RH	2.77	3.17 ***DG, RH	2.74	3.27 ***DG, RH	3.45 ***FB, DG, RH, **BN, *GA
Humanity	2.96	3.00	2.82	3.08 **RH	2.79	3.17 ***RH, **DG	3.27 ***DG, RH, **FB, *BN
Decency	2.74	2.88	2.72	2.97 *FB, DG	2.83	3.30 ***FB, RH, DG, BN, GA	3.38 ***FB, RH, DG, BN, GA
Care for the vulnerable	3.10	3.27 ***DG, **RH	2.89	3.15 *DG	3.01	3.24 ***DG	3.44 ***FB, DG, RH, **GA
Help and assistance	2.93	3.22 ***DG, **FB, RH	2.74	3.05 ***DG	2.92	3.20 ***DG, *RH, FB	3.37 ***DG, FB, RH, **GA

Garth, the public sector establishment, significantly outperformed Dovegate (private sector) on all dimensions in this group. The highest score here was for 'respect/courtesy', for which Dovegate scored neutrally rather than positively, and Garth scored positively, at 3.29. Garth was a culturally traditional prison in the North West of England, with what we would characterise as a somewhat 'heavy' staff culture. Dovegate was a relatively new establishment hosting a large therapeutic community, with relatively benign (and non-unionised) staff, yet its 'respect' score was comparatively lower.

The results for some of the individual items which comprise this dimension are worth further elaboration. In all of the prisons, most prisoners agreed with the statements: 'personally, I get on well with the officers on my wing' and 'most staff address and talk to me in a respectful manner'. There was, however, significantly higher agreement at Garth than at Dovegate with these items. Fewer agreed in all prisons with the items: 'I feel I am treated with respect by staff in this prison', and 'staff are argumentative towards prisoners in this prison', and the differences between Garth and Dovegate are more considerable. As we have explained elsewhere (see Hulley et al. 2012), these results indicate that prisoners define respect not just as courteous and polite treatment, but also as their needs and concerns being taken seriously and reliably addressed. The form of professional competence that is needed for such purposes is one in which staff have the time, willingness and expertise to answer prisoners' questions, to help them find a way of understanding and navigating increasingly complex sentences and sentence conditions and to assist them in managing their way out down the security and risk classification scale (Hulley et al. 2012). Being addressed politely, having greater levels of autonomy and feeling that staff are not trying to make your life harder than it already is are important but insufficient for many prisoners to feel that they are being respected and recognised in full, as expressed in the following quotation:

> A lot of people are bothered that they don't call them by their first name but I mean there's worser things in the prison than being called your first or second name. I'd rather them sort my food out than call me my second name. Do you know what I mean? [...] There's a bigger picture than just my name. (Prisoner, private prison)

This pattern of results is confirmed in the dimension on 'staff-prisoner relationships'. Here, Forest Bank and Bullingdon were rated by prisoners at reasonably similar levels Bullingdon (public sector) generally outperformed Forest Bank, but not to a degree that was statistically significant, while Garth (public sector) outperformed Dovegate on each of the items in this dimension, as well as on the overall dimension. Higher proportions of prisoners in Garth compared to Dovegate felt treated fairly by staff, trusted officers, felt that staff displayed 'honesty and integrity' and felt that they could get things done 'by talking to someone face to face'. These aspects of the staff-prisoner interface—fairness, trust, competence, reliability and responsiveness—are determined not just by the orientation of staff (e.g. whether they are benign or indifferent), but also by levels of staff experience, training, confidence and presence. Factors that inhibit them include high levels of staff turnover, which mean that experience is lost from the prison landings, and low staffing levels, both on the wings and in administrative departments.

It is important to note that Dovegate was the lowest-scoring prison in our study and that Garth was by no means a model training prison, as the comparison with Lowdham Grange, in Table 6.3, indicates. Its staff culture was somewhat cynical, and it was an establishment that many prisoners, and we ourselves, felt to be rather oppressive. This placed limits on prisoners' experiences of decency. However, its staff group was committed to professional practice and was accomplished in organising the prison day and providing clear and reliable information to prisoners. This was greatly appreciated by prisoners, who, in interviews, compared this kind of culture—'knowing where you stand'—in a favourable way to the more relaxed but less dependable staff culture that was found in the poorer-performing private establishments. In Dovegate and Rye Hill, in particular, our staff survey results as well as our interviews indicated that staff were well-disposed towards prisoners, and less punitive and more rehabilitative in their orientation, but their positive attitudes could not compensate for other deficiencies in their practices, as we explain below. Staff were liked but not respected, and in this sense, they lacked legitimacy in the eyes of prisoners.

A key point that we are making here (that others have made before, see McEvoy 2001) is that 'niceness' is not the same thing as 'respect', and,

similarly, that having strengths in the area of 'harmony' or relational dimensions is only a partial indicator of prison quality. As suggested above, for prisons to operate well, they require that staff have high levels of 'professionalism' as well as positive and progressive attitudes towards prisoners.

Professionalism

Our professionalism dimensions—'staff professionalism', 'bureaucratic legitimacy', 'fairness' and 'organisation and consistency'—relate to staff confidence, competence and impartiality in the use of authority and in the interpretation and use of formal and informal sanctions. How staff approach, interpret and apply 'the rules' constitutes one of the most significant variations between prisons—indeed, in this study, there was greater variation between the best and worst prisons for this set of dimension scores than for any others—and is linked to staff experience as well as expertise. Variations in such matters make a significant difference to the prisoner experience, yet prison researchers have paid relatively little attention to the role of professional practice in determining prison quality, despite it having being highlighted in some studies as a weakness in some privately managed establishments (e.g. Rynne et al. 2008; James et al. 1997).

Table 6.5 shows the scores for our professionalism dimensions for all seven prisons in the study.

If we first compare the two pairs of matched establishments, we find a similar profile at the two local prisons, Forest Bank (private) and Bullingdon (public). Both were given passable ratings by prisoners on staff professionalism and lower scores on the other three dimensions, but Bullingdon was rated significantly higher than Forest Bank on 'Organisation and consistency'. The scores for Dovegate (the private sector training prison) were very low, with Garth (public sector) significantly better on all four dimensions, even though its profile was not outstanding. In the poorer-quality private sector establishments (including Rye Hill), prisoners complained that the prison regime was poorly organised and under-structured and that staff boundaries were often

Table 6.5 Results from the seven establishments for all 'professionalism' dimensions

	FB Private	BN Public	DG Private	GA Public	RH Private	LG Private	ALT Private
Professionalism dimensions							
Staff professionalism (α = 0.885)	3.18	3.24	2.68	3.25***	2.62	3.27	3.53***
Organisation and consistency (α = 0.836)	2.55	2.81***	2.23	2.79***	2.27	2.88	3.08**
Bureaucratic legitimacy (α = 0.881)	2.65	2.66	2.35	2.56**	2.38	2.59	2.97**
Fairness (α = 0.820)	2.79	2.88	2.49	2.86***	2.46	2.94	3.15**

* Significant at the 0.05 probability level; ** Significant at the 0.01 probability level; *** Significant at the 0.001 probability level

unclear, leading to confusion among prisoners about the limits of authority and friendship. In contrast, prisoners in the public sector establishments consistently cited the clarity and reliability of the regime as a strength. While officers were considered to be slightly 'standoffish', their 'firm but fair' approach was in many ways preferred to the benign disorganisation of the private prisons. The fact that officers in the public sector prisons were highly competent seemed to mitigate their slightly more cynical attitudes towards prisoners.

If we look at the two high-performing private prisons, we see much higher scores on all four professionalism dimensions and a particularly noteworthy score on 'staff professionalism' at Altcourse. Table 6.6 slide shows the items that comprise this dimension:

While public sector Garth scored above three on some key items, such as 'Staff in this prison have enough experience and expertise to deal with the issues that matter to me', Lowdham Grange and Altcourse were more highly rated in this item, with the latter scoring 3.38—much higher than anywhere else. The scores for these two high-performing private prisons for 'Staff in this prison tell it like it is' (3.08 and 3.64, respectively), 'Staff in this prison often display honesty and integrity' (3.08 and 3.30, respectively) and 'Staff are argumentative towards prisoners in this prison' (3.13 and 3.18, respectively) were well above the threshold (all items are scored positively), suggesting that staff were straight with prisoners without being 'edgy'. This is in contrast with the scores elsewhere, most notably in Rye Hill and Dovegate, which scored 1.89 and 2.22 on 'Staff in this

Table 6.6 'Staff professionalism': all item scores

	FB	BN	DG	GA
Staff professionalism	3.18	3.24	2.68	3.25***
Staff here treat prisoners fairly when applying the rules	41.0 (3.14)	54.7 (3.33)	29.7 (2.65)	45.9 (3.21)***
Staff here treat prisoners fairly when distributing privileges	35.7 (3.02)	36.1 (3.07)	27.4 (2.63)	36.1 (3.04)****
Privileges are given and taken fairly in this prison	41.5 (3.14)	41.0 (3.14)	23.6 (2.55)	39.8 (3.08)***
Staff in this prison have enough experience and expertise to deal with the issues that matter to me	30.4 (2.81)	35.4 (3.03)	15.8 (2.22)	39.2 (3.10)***
Staff in this prison tell it like it is	49.7 (3.31)	43.8 (3.16)	23.6 (2.59)	42.9 (3.14)***
The rules and regulations are made clear to me	54.1 (3.31)	55.4 (3.29)	39.5 (2.89)	67.6 (3.57)***
Staff carry out their security tasks well in this prison	51.6 (3.41)	50.6 (3.34)	42.7 (3.02)	56.0 (3.45)***
The best way to get things done in this prison is to be polite and to through official channels	66.7 (3.66)	73.4 (3.77)	51.0 (3.19)	73.5 (3.71)***
If you do something wrong in this prison, staff only use punishments if they have tried other options first	27.8 (2.76)	34.5 (3.02)*	20.3 (2.46)	34.2 (2.98)***

*Significant at the 0.05 probability level; **Significant at the 0.01 probability level; ***Significant at the 0.001 probability level

prison have enough experience and expertise to deal with the issues that matter to me', for example. These are very large differences, which highlight the range in quality within the private sector and the most pressing problem in poor-performing private prisons, where prisoners tend to describe staff as 'nice, but ineffective'. To quote one prisoner, 'Staff are great – just don't ask them to do anything' (prisoner, fieldwork notes).

Senior managers in these prisons likewise expressed frustration about the difficulties of embedding working routines and good practice among

their staff groups, which they described as highly willing, but often lacking in knowledge and 'jailcraft'. To put this in another way, where staff lacked competence, their positive attitudes were insufficient to guarantee good outcomes for prisoners. By contrast, in the public sector prisons, staff were less well-disposed towards prisoners, but their levels of professionalism and expertise insulated prisoners to some degree from these more cynical attitudes.

Security

Our 'security' dimensions provide an assessment of policing, security and safety, and Table 6.7 shows the dimension scores for all of the prisons in the study in these areas.

There were few differences between the dimension scores for Garth (public sector) and Dovegate (private sector), except on 'policing and security' where Dovegate was rated significantly higher. However, Bullingdon (public sector) was rated significantly higher than Forest Bank (private sector), on three of these four dimensions, including on 'drugs and exploitation' (the level of drugs, bullying and victimisation in the prison). To give some detail from the 'policing and security' dimension, prisoners in the private sector establishments were significantly more likely than those in the public sector to agree that staff turned a 'blind eye' when prisoners broke rules, that staff were reluctant to challenge prisoners and that the prison was run by prisoners rather than staff.

Table 6.7 Results from the seven establishments for all 'security' dimensions

	FB	BN	DG	GA	RH	LG	ALT
Security dimensions							
Policing and security (α = 751)	2.95	3.35***	2.94	3.26**	2.98	3.22	3.27
Prisoner safety (α = 0.734)	3.32	3.46	3.24	3.36	3.32	3.57**	3.48
Prisoner adaptation (α = 0.623)	3.25	3.60***	3.71	3.61	3.73	3.77*	3.48
Drugs and exploitation (α = 780)	2.46	2.96***	2.59	2.59	3.02	3.22***	2.80

* Significant at the 0.05 probability level; ** Significant at the 0.01 probability level; *** Significant at the 0.001 probability level

As a result, prisoners in the private prisons reported lower feelings of safety than those in the two public sector comparators.

These findings were supported by our interviews and observations. In the less good private prisons, prisoners said it was far easier to 'get away with things', and while some enjoyed the greater freedom that they had to engage in trade and exploitation, most saw the drawbacks of this model, not just in terms of their personal safety but also the greater difficulty of avoiding trouble or resisting temptation (i.e. drug use, inter-group conflict or patterns of behaviour that they recognised were 'bad for them'). Often, they complained about the ways that private sector staff 'let prisoners talk to them, calling them dickheads an all that – they just turn a blind eye'. As suggested in the following quotation, prisoners wanted more rather than less power to flow and they wanted staff rather than their peers to control the wings:

> You know when you go through HMP that you can't talk to a screw like you would talk to one of these in here … These in here you can practically get away with all sorts, talking to them as you like. It's more relaxed, [but] people get away with lots of stuff they wouldn't get away with in HMP.
>
> *How is it different to how officers use their power in other prisons you have been in?*
>
> They use it properly in an HMP prison.
>
> *Who runs the wings here?*
>
> The lads, the cons. Definitely. That's what I couldn't get my head round when I first came here.
>
> *So what does that mean?*
>
> It's not good, is it? There's no authority, really. Just mayhem, everywhere. (Prisoner, private prison)

Staff in these establishments sometimes expressed unease about their own confidence in using authority and that of their peers. When things went wrong, it was too often prisoners rather than staff who stepped in and prisoners described staff as easily intimidated both by violent situations and by hostile prisoners. Such tendencies communicated to prisoners a lack of staff confidence in themselves and each other (what Justice Tankebe and Tony Bottoms would call self-legitimacy; see Bottoms and

Tankebe 2012, 2013). Some custody officers in these private prisons were reluctant to use their authority and relied excessively on relationships and 'being nice' to make the day work. This was a naïve and inadequate model of order. Others avoided using power for the most part, but then 'jumped in', deploying formal sanctions when the earlier use of informal authority would have been preferable or using their power in ways that prisoners felt were excessive, arbitrary or inconsistent. As one prisoner in Forest Bank joked, 'if you wanted to sell drugs you'd get away with it in here, but if you have a towel at the end of your bed you're gonna get a nicking'. In the public sector prisons, by contrast, prisoners more often complained that power was used in a way that was consistently 'heavy', with officers often accused of enjoying using their power slightly too much. At the same time, it was in these establishments that we more often heard prisoners talking about the use of power being fair, judicious and reassuringly confident: 'They are not too quick to use their authority, but they will, there is no lack of authority within the staff body' (prisoner, Bullingdon).

While the features of staff authority that we found in the less good private prisons were much less pronounced in Altcourse and Lowdham Grange, some of the survey results in these areas are worth noting. Altcourse's performance on 'drugs and exploitation' was relatively low in this area (scoring below three) and its scores were lower than Bullingdon's on three of the four 'security' dimensions (although not to a degree that was statistically significant). Meanwhile, Lowdham Grange was rated significantly less well than Garth on two important items within the 'policing and security' dimension: 'Staff in this prison are reluctant to challenge prisoners' (2.85, compared to 3.22; $p < 0.001$) and 'Staff respond promptly to incidents and alarms in this prison' (3.87 compared to 3.66; $p < 0.05$). Uniformed staff in these prisons expressed somewhat ambivalent views about the levels of power held by prisoners in their establishments and about the levels of discipline within the institution. Such views pointed to an insecurity among staff about their authority, not so much due to naivety and inexperience (as in the less good private prisons), but because of thin staffing levels, which left them feeling 'outnumbered' on the wings and feelings of powerlessness in relation to senior managers (in part because the workforce tends not to be unionised).

Our interpretation of these findings is that some of the weaknesses that we see in the poorer private sector prisons in the ways that staff use their authority are also present in high-performing private prisons, albeit to a much lesser degree. In all of the private prisons that featured in this study, we witnessed activities that were indicative of a slightly more lenient atmosphere: prisoners rushing in and out of cells on a wing during evening association; tea and toast being eaten by staff and prisoners in a classroom, where there were clear signs that this was not allowed; and the occasional naked prisoner on a landing. This, we think, reflects a distinctive model of order in the private sector, which has a tendency towards under-enforcement compared to the public sector, where over-enforcement is more typical, and is problematic in a different way. Private prisons, then, may be slightly 'looser' and less safe, including for vulnerable prisoners, than most public sector establishments. In private prisons, concessions were made to powerful prisoners who are willing to 'keep the peace' on behalf of staff or even a lack of awareness among staff as to the identities and activities of those prisoners who are exercising power over their peers.

Authority, Legitimacy and the Use of Authority

Some of the explanation for apparently greater 'power sharing' in the private sector is positive, linked to the period in which privatisation was introduced (see Liebling 2004). But the fact that power sharing is common in low-resource prison systems internationally points to the tendency for under-enforcement to follow where staff are relatively thin on the ground or where they lack the competence and confidence to master the environment. In England and Wales, public sector prison staff have traditionally been far more at ease with the use of authority than their private sector counterparts. Sometimes, they have been far too at ease, descending into disrespect and disregard for prisoners and flaunting their power in ways that make life miserable for them. At their most professional, however, their power flows almost effortlessly, through the deployment of talk, the projection of confidence and the establishment of supportive-limit setting (see Wachtel and McCold 2001), with formal

punishments resorted to only in the last instance. Certainly, there has been a different power balance in this sector between prisoners and staff, with the former having rather less than in the private sector and the latter rather more.

In the private sector, then, for reasons that we have already noted, senior managers are more powerful in relation to their staff and have more scope to control the workforce and mould its occupational culture. Staff may be more reliant on senior managers to define their moral priorities, and directors have to reinforce and embody these carefully and continuously, for example, at full staff meetings, where they reiterate company straplines and their own key priorities. Such performances reflect the degree to which staff are pliable (and compliant) but also the tendency for frontline staff to 'lose their shape'. The key variable in the private sector is not whether staff hear the management message, but whether it 'sticks'. Meanwhile, the directors of private prisons devote more time than their public sector counterparts to managing the external stakeholders and 'the contract'. This means that frontline staff are all the more dependent on middle-managers to demonstrate the good use of authority. Furthermore, the same conditions that enable frontline staff to be easily shaped by managers—a smaller, less experienced and less bonded workforce—present dangers in terms of the provision of order and safety. Prisoners are often more confident and organised than staff and are therefore able to exert influence upwards, so that uniformed staff often feel pressurised by all around them.

In the public sector, messages and practices are harder to embed among uniformed staff, because of entrenched staff cultures and resistance, often spearheaded by local Prison Officer Association committees. Staff are more powerful, both in relation to senior managers and in relation to prisoners, because they are more knowledgeable and experienced, more collectively organised and contractually better protected. Compared to the private sector, management messages are more often wilfully misheard or ignored. One governor summarised this situation as follows:

> [There are] long-established small groups of disproportionately influential staff who pick away in the background and influence other staff and disrupt and just make life bloody difficult. … There are determined people

> and they've been doing what they've been doing for ten, fifteen, twenty, twenty-five years some of them [and] they're protected by our utterly ridiculous approach to personnel for instance. (Governor, public sector)

In the public sector, governors, as well as prisoners, often use a language of being 'bullied' by uniformed staff (ostracised, intimidated or simply ignored). As Camp and Gaes suggest (2000), these differences in the balance of power, which we depict in Fig. 6.3, help to explain differences in quality and culture. In the public sector, staff at low levels of the organisation are relatively powerful and have tended to be poorly regulated by management, resulting in them being able to overuse their power both 'upwards' and 'downwards'. In the private sector, the same personnel are relatively powerless and the malleability that results can be a strength or a weakness.

This comparison has helped us to think further about the concept of legitimacy in prison: its accomplishment and how it might be operationalised. Legitimate prison regimes certainly need authority of a certain kind flowing through them. There can be too much authority, of the wrong kind, and there can be too little. Here, there is a crucial distinction between staff-prisoner relationships which are 'good'—a vague and inad-

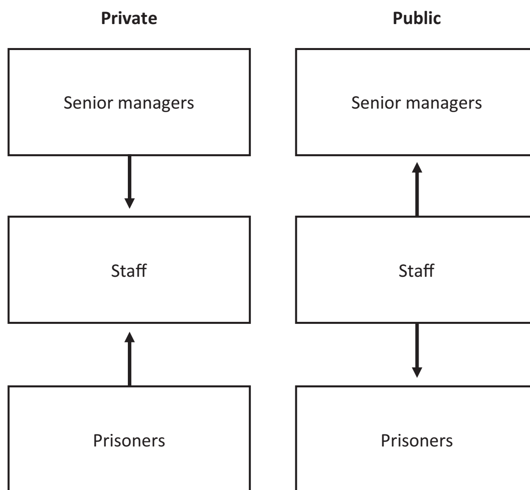

Fig. 6.3 The balance of power in public and private sector prisons

equate term, which can mean relationships which are rather loose and collusive—and those which are 'right', a form of 'dynamic authority', where power flows *through* relationships (see Liebling 2011).

One way that we have conceptualised differences between the two sectors is through the concepts of 'heaviness' and 'lightness' (see Crewe et al. 2014). The former (typically, public sector) describes a staff culture that, at its best, is ordered and boundaried and at its worst is oppressive and confrontational. The latter (typically, private sector) refers to one that, at its best, is relaxed and cooperative, but at its worst is lax and under-policed. What matters here is the degree to which authority is 'present' or 'absent' within the environment and the degree to which its form is unobtrusive. In the poor-performing private prisons, the absence and lightness of staff power was not welcomed by prisoners; an environment in the public sector establishments that was heavier but in which authority was 'present' was preferable. Because prisoners lived within a relatively predictable and ordered environment, they did not need to be constantly preoccupied with their own safety and could be assisted somewhat in matters of personal growth. The high-performing private sector prisons were somewhat light—in a way that was mainly, though not exclusively, a strength—while high levels of staff professionalism meant that there was enough staff 'presence' to ensure a safe and organised milieu. While we are not convinced that these prisons exhibited the kind of 'light-present' cultures that we think are *most* desirable or legitimate in prisons (where power is present, but is worn lightly), we have seen very few prisons in the public sector that have met this standard either.

Explanations

'History' tends to be left out of explanations of prison quality, despite the fact that prisons are, in many ways, past-oriented environments which are shaped by key events secreted in institutional memory and long-established 'ways of working' (Sparks et al. 1996). One explanation for the relatively high quality of prison life that we found in Altcourse, apart from its generous contract (a factor we should not downplay), is its record of outstanding, highly experienced and long-stay senior management. Its

first Director, Walter McGowan, was a highly experienced leader, who had governed three prisons already and directed two private prisons, before taking on Altcourse, where he stayed for seven years. His operating policy was to try to employ staff who were aged 25 or over, and he 'doubled the senior management presence on the wings' for the first six months, to build up staff confidence and 'concentrated almost exclusively on staff support throughout the first year', knowing that little profit would be generated during this time:

> I was content to meet the budget, where I knew other Directors who were trying to beat their budget, to show financial profit. You never get your first year back. You have to get your foundations right; get your staff confident and your prisoners under control.

This kind of expertise, confidence and experience in prison management seems critical in the storyline. Succession planning, and long stay leadership, also seem vital. Altcourse's second Director took up post in 2004 and was still there at the time of our research. The succession plan was careful: 'he had done every senior management job in the place before he took the post', according to his predecessor. None of these variables are typical in public sector prison management.

The explanations for the relatively poor performance that we found in Dovegate and Rye Hill at the time of our study seem more closely related to cost.[8] Both establishments were considered by some of their own senior managers to be 'too cheap to be effective'. Never managing to build up staff confidence and with a small number of staff trying to manage prisoners who had more knowledge and experience of the system than they did, their turnover was high, particularly as a result of major losses of control in their early years, which led many staff to resign, and left many of those who remained somewhat traumatised. Such teething problems are common in newly opened establishments, but they are especially difficult to recover from once turnover levels reach above a certain point and experience levels fall sharply as a result. By the time that we conducted our research, both prisons had highly competent ex-public sector directors in post, and staff felt that their prisons had been rescued from highly volatile periods.

Even so, levels of experience in these establishments were telling: at Rye Hill, Dovegate and Forest Bank (the poorer-performing private prisons), almost a third of uniformed staff who we surveyed had been in post for less than one year, compared to 10 per cent or less at the four other establishments. Altcourse and Lowdham Grange had built up a better experience base, with 66 per cent and 56 per cent of their respective staff having between one and six years' experience. In the public sector prisons, a far higher proportion of uniformed staff had more than ten years' experience (57 per cent in Garth, and 40 per cent in Bullingdon, compared to 12 per cent in Altcourse and under 6 per cent in the other five private sector prisons). Here, then, we find a continuum, in which there seem to be risks to quality and culture at both ends: too little experience, in some private prisons and too much in many public sector prisons, where many longstanding staff are cynical and unhappy, but have no desire to leave their profession because of their pay and conditions. Lowdham Grange and Altcourse seemed to have a more balanced staff group, with a mix of experience, a stable turnover rate and high levels of organisational commitment.

Concluding Comments

We have learned a great deal from this study, and we are continuing to pursue and develop our analysis by following interesting leads and continuing to explore MQPL data for each of the prisons in our original study. Our observations of the newly opened, very low-cost, privately managed HMP Oakwood suggest that the problems it has experienced to date are consistent with our models. Staff are not seen by prisoners as malign, but are over-stretched and lacking in jailcraft. To be effective, they may need to 'lose some of their innocence'. In HMP Birmingham, after a period in which staff morale declined following the transition from pubic to private sector management, there are signs that the prisoner experience is improving, particularly in the 'harmony' domains of prison life, as staff recognise that their reduced numbers require a more relational version of order than the 'control model' to which they had worked previously. It is in the remaining public sector that we are seeing

a more radical reconfiguration of culture and practices, as a result of cost reductions, increases in the size of establishments, a political emphasis on 'punishment and discipline' and a break in the psychological contract between prison staff and the state. One of the effects of lower staffing levels and morale is that public sector staff now feel themselves to be much less powerful than in the past. Increasingly, as in private sector prisons, they are devolving some forms of power to trusted prisoners and are using their power slightly more reluctantly, as their confidence in their own authority and in the support of their peers diminishes.

As our final point, we should return to Fig. 6.1 that we presented at the start of this chapter. What was missing from our previous understanding of this paradox was an additional level of complexity. Among the most important discoveries of our current research are two issues that we have emphasised in this chapter. The first is that private sector staff are more malleable than their public sector peers, both by managers and prisoners, and this malleability may work for or against prison quality or legitimacy. The second is that there is an important distinction between the attitudes of staff, which (it follows) are easier to shape in the private sector and their levels of professional competence, which are less simple to forge, and are, at the same time, an under-appreciated strength of public sector prisons, and increasingly under threat.

Notes

1. It is relevant here to note that many values-driven public sector governors have moved to the private sector because of their view that it is easier to do 'good work' in private than public prisons.
2. Research grant RES-062-23-0212.
3. Both authors participated in the fieldwork, with Susie Hulley and Clare McLean working as full-time research assistants for almost the entire duration of the project. Sara Snell, a prison governor on secondment from the Prison Service, was involved in the fieldwork phases in HMP Forest Bank and HMP Dovegate, and the majority of the period in HMP Bullingdon. Jennifer Cartwright and Marie Hutton provided additional research assistance in HMP Rye Hill.

4. The Office for National Commissioning (ONC) was the body within the NOMS which oversaw the monitoring and performance of all of the private sector prisons. The 'rectification notice' was served on the prison's contractor to highlight serious shortcomings in the prison's performance (principally in the areas of prisoner safety and regime activities). The notice required the company to produce a written action plan and to address the issues identified in an operational review of the establishment.
5. Short, informal visits were also made to two further private sector prisons, HMP Parc and HMP Wolds.
6. A full list of dimensions, definitions and items can be found in Liebling et al. (2011).
7. When reading these figures, it is important to look at 'substance', or score, as well as 'difference': the decency score was well below three in both establishments, suggesting that prisoners were being less negative in their evaluations, rather than positive, as such.
8. It should be noted that, by 2012, the MQPL results for both of these establishments had improved considerably, particularly in Dovegate.

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7

Competing to Control in the Community: What Chance for a Culture of Care?

Jane Dominey and Loraine Gelsthorpe

In thinking about care and control in the community, we might argue that the late nineteenth century was a period of *minimal state intervention; g*overnment provision was seen, at best, as a necessary evil. The majority of public services were located in the charitable sector or through private provision (Owen 1965). We then moved into a period when—with the recasting of social and economic problems as shared and societal problems—the provision of some key services via the state was seen as legitimate (Osborne and McLaughlin 2002). Only where the state could not provide such services, a partnership with charitable and private sectors was to be created (although with the state as the senior partner). This has sometimes been referred to as the 'extension ladder' where the state provided the basic minimum and the other two sectors provide beyond this—bringing, it has been argued, flexibility and potential for innovation (Webb and Webb 1911). The *welfare state* period (1945–1980s) is widely recognised as being one in which it was assumed that the state could and would meet all needs, 'from the cradle to the grave' as Beveridge (1942) put it in mapping out the possibilities for state provision. But

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from the late 1970s and early 1980s onwards, we have existed in a *plural state*. This has involved, inter alia, a critique of the state as the main provider of welfare provision, a perceived need for individual provision rather than a basic service for all, and a desire for greater choice and greater say in the design and delivery of services. Thus the 'privatisation' and 'marketisation' of services (Ascher 1987) has emerged against this sort of backcloth. The allure and promotion of the private market has perhaps never been greater than now. Is 'marketisation' appropriate for probation work, which concerns some of the most vulnerable people in society and is highly emotionally charged? Can the private sector maintain the careful level of control and care which has hitherto been achieved through state-led partnership with the private and voluntary sectors? Is it in the public interest to privatise probation?

This chapter considers these questions. We review the history of relationships between the probation service and the private and voluntary sectors, outline some of the 'push' and 'pull' factors which led to the Conservative-Liberal Democrat Coalition Government's move towards increasing privatisation, and offer some critical reflections on the broader debates about 'probation as a public good', the prospects of privatisation in terms of costs, profits and market share, and the prospects of privatisation as a mechanism to drive up standards. Our concluding reflections are that whilst the probation service has no monopoly on 'care', there is need to think very carefully about how the philosophy of 'care' (which is fundamental to the concept of supervision, control and programme delivery) can be embedded and sustained within the new professional culture and practice which is emerging in the new structural arrangements.

The Probation Service and the Private Sector: The Story So Far

The story of the creation, development and subsequent reforms of the probation service has much in common with the stories of other institutions, in areas such as health and education, providing help and welfare services to the public. Many such organisations have their origins in charitable and voluntary endeavour and then grew into professional

public services with subsequent challenge to adapt to an environment of marketisation, out-sourcing and competition. For the probation service, the relationship with the voluntary sector has always been important. Probation has its roots in voluntary sector activity (Nellis 2007). Throughout the twentieth century the probation service grew and took for itself, and into the public sector, previously charitable work with offenders in the community. However, the probation service continued to work alongside voluntary sector organisations providing a wide variety of services, projects and interventions (Dominey 2012).

The probation service has not been immune from the neo-liberal turn in political thinking and the associated rise of new public management (Burke and Collett 2015; Clarke et al. 2000). The argument that the public sector should not have a monopoly on the provision of public services is made clearly in a trio of discussion papers published by the Conservative Government in the early 1990s (Home Office 1990a, b, 1992a). The most significant impact of these papers was on the relationship between the probation service and the voluntary sector; each local probation service was required to spend a proportion of its budget on partnership schemes, almost entirely with voluntary sector organisations. In order to establish partnership schemes, probation services had to develop systems for awarding grants, writing contracts and establishing service level agreements. In guidance written for its members in 1993, the Association of Chief Officers of Probation gave a muted welcome to this more formal approach to working with other agencies. It described competitive tendering for contracts as 'neither practical nor desirable' (ACOP 1993: 8) explaining that 'there are simply not enough independent agencies available at local level to submit bids'.

The private sector is explicitly mentioned in the Home Office papers from the early 1990s. In one opening paragraph, the Home Office (1990b: para 1.1) explains 'The aim of this paper is to build on and develop the work of voluntary organisations and the private sector in the criminal justice system.' ACOP (1993) also acknowledges the potential involvement of the private sector in new partnership arrangements, but the focus of its guidance was on joint work with voluntary sector organisations. The survey of established partnership arrangements listed in the ACOP guidance document includes almost no examples of partnership

with commercial organisations. There are a couple of cases of contracts with specialist private providers of services for sex offenders.

The 1990s also saw growing interest in the use of electronic monitoring to enforce curfew orders and bail conditions. Use of this technology was strongly opposed by the probation service and, as a result, contracts for this work were awarded to private sector companies (Nellis 2004). The probation service in the early 1990s did not experience a similarly significant shift in its relationship with the private sector as that felt by the prison system on the opening of the privately run HMP Wolds in 1992, but, as a result of the electronic monitoring contracts, the private sector's involvement in community supervision was well underway.

The election of a Labour Government in 1997 did not bring an end to the push for prison privatisation. Rather, the new Government also continued with policies that encouraged and enabled the voluntary sector, now often referred to as the third sector, to take a greater role in the delivery of reformed public services (Alcock 2010).

For the probation service, the early years of the Labour Government were a time of rapid policy change including the adoption of evidence-based practice (Chapman and Hough 1998), a determined attempt to tighten both standards for practice and enforcement processes (Hedderman and Hearnden 2000) and the establishment of a new qualification for probation officers, the Diploma in Probation Studies (Knight 2002). They were also a time of organisational centralisation, with the structure of local probation services giving way, following the passing of the Criminal Justice and Court Services Act 2000, to a National Probation Service in 2001 (Canton 2011).

The National Probation Service did not survive for very long however. The Correctional Services Review, published in 2003, had been charged with recommending changes to the prison and probation services in order to reduce crime, maintain public confidence and control expenditure (Carter 2003). Carter made wide-ranging suggestions in the Review: including the creation of a National Offender Management Service (NOMS) and seamless 'offender management' between custody and the community. The Review clearly advocated greater use of the private sector as a provider of correctional services. It argued that privatisation had led to improvements in the prison service and marketisation could improve service delivery and cost-effectiveness to other aspects of offender management.

> There is a danger that the full benefits of contestability will not be realised if the involvement of the private sector is limited to new and failing prisons. Private providers need to be given an incentive to invest if they are to continue to be a credible alternative to public sector providers. (Carter 2003: 24).

NOMS came into being in 2004 and a policy framework was developed to implement the practice implications of consistency and continuity in offender management (NOMS 2006). This framework drew a clear distinction between the task of offender management and the provision of interventions. Offender managers (either probation officers or probation service officers[1]) were responsible for assessing offenders, drawing up a sentence plan and overseeing its delivery, encouraging motivation and engagement and taking responsibility for any necessary enforcement actions. Offender managers would tend not to deliver interventions themselves, referring onto specialist probation teams for group work programmes or to external organisations, usually in the voluntary or statutory sector, for input in areas such as drugs, alcohol, mental health and housing.

The private sector did not play a significant role in the delivery of community orders, apart from the electronic monitoring of curfew requirements. A private company, ClearSprings, was contracted to provide accommodation for people on bail (the Bail Accommodation and Support Service), a contract that was subsequently lost by the private sector and awarded to a voluntary sector provider, Stonham, in 2010 (Hucklesby 2011). Private companies were also used for support services such as facilities management and IT equipment although with mixed outcomes. Opponents of privatisation always seemed to be able to find examples of inadequate software, expensive hardware and contractors sent on very lengthy journeys to change light bulbs (Ledger 2012).

Some of the changes anticipated in the Correctional Services Review required legislation and had to wait for the arrival of the Offender Management Act (OMA) (2007). The OMA 2007 led to yet another reorganisation of the probation service. It created Probation Trusts, locally based entities both delivering services commissioned by NOMS and also commissioning services from local voluntary, statutory and commercial organisations. The Act also enables the Secretary of State to commission probation services from organisations other than Probation

Trusts. At the time of their creation, supporters of Probation Trusts argued that these new public bodies would have more control over their own priorities, finances and objectives than their predecessor organisations. However, as has been a common theme in the recent history of probation governance, Probation Trusts were also destined for a short life.

Running parallel with these organisational changes, there has been debate about the extent to which shifts in probation policy have led to a loss of important probation values. Whilst there has never been a universally adopted statement of probation values, there has been wide recognition that probation practice is founded on 'care' as much as control and wide agreement that practice should be based on the ethic of care (Lancaster 2003). In contrast to the prison service, which has frequently been challenged to display its humanitarian and civilised values (Liebling and Arnold 2004), the probation service has perhaps symbolised a particular humanitarian value base revolving around social work—one of the caring professions. The social work values which are taken to be the foundation of probation practice have a complicated history (Nellis 2007), suffice to say here that it took some time to disentangle probation practice from police court missionary work and denominational ties. It is perhaps for this reason that 'treatment' or 'social work' values continued to be the dominant currency for some considerable time—reflected in the notion that probation officers might serve to 'advise, assist and befriend' (Gelsthorpe 2007); thus a broad notion of 'care' survived right through to the 1980s. Gradually, the direction and language of probation changed, from 'care' to 'enforcement', 'commitments' and 'responsibilities' (Home Office 1992b). Other ideologies or value systems were explored by probation leaders and academic critics of the managerial thrust in policymaking: anti-custodialism, community safety, community justice, restorative justice, relational/reintegrative shaming, humanity and mercy, and human rights (Gelsthorpe 2007) although none replaced the normative value of care which underpinned probation practice.

It is clear that the credos of punishment and efficiency have been in the ascendency for the past three decades. For some commentators, the move to a more correctional service in an increasingly punitive political environment inevitably constrained the ability of the probation supervisor to respond with flexibility and understanding to the supervisee (for

examples across the years, see the contributions to Walker and Beaumont (1985), Gorman et al. (2006)). For others, whilst new policy directives changed some priorities and tasks, they were not seen as necessarily changing the values that guided practice. Probation work maintained a culture of care not because practitioners were wedded to old-fashioned notions of 'welfare', but because of a strong intertwining of the moral and the practical case for exercising control in the community with respect, warmth, fairness and optimism (Phillips 2014; Mawby and Worrall 2013).

The 2010–2015 Coalition Government: Transforming Rehabilitation

When the Coalition Government came to power in May 2010, it announced a rehabilitation revolution (Ministry of Justice 2010). A revolution was argued to be necessary given reoffending rates, the size of the prison population and an over-reliance on centrally set targets at the expense of outcome-orientated innovation. Ironically, reoffending rates for those on probation were lower than for those leaving prison, but this is a fact which seemingly escaped the notice of government (Ministry of Justice 2012a). Proposals for the future were also set in the context of economic austerity and the need for the Ministry of Justice to make financial cuts. The Government argued that competition, moving to a mixed provider market and a system of payment by results, would help secure the desired change. Plans were put in place to pilot a variety of payment by results models. At this point, the Government appeared to envisage a future for Probation Trusts, describing them as having 'an important and continuing role to provide local strategic leadership for managing offenders' (Ministry of Justice 2010: 46). A Competition Strategy for Offender Services was published in 2011 (Ministry of Justice 2011). It restated the Government's commitment to using competition for probation services as a means of improving outcomes and value for money. It explained that its more detailed plans for the probation service would be contained in proposals to be published that autumn.

In fact, it was March the following year when the consultation document *Punishment and Reform: Effective Probation Services* appeared (Ministry of Justice 2012b). A significant and unanticipated element of its proposals was a split between work that would remain the business of public sector Probation Trusts and work that would be opened up to competition. Advice to courts, decisions about risk assessment and enforcement action for all offenders (except those on stand-alone curfew requirements) and the supervision of those assessed as high risk would remain with Probation Trusts who would then commission other services, including the management and supervision of low- and medium-risk offenders, from a new market of providers. In subsequent responses to the consultation, many voices from within probation argued that the management of all orders should remain a public sector responsibility and that attempting to draw a distinction between high-risk offenders and the rest revealed an inadequate understanding of the fluid nature of risk assessment. Most, but not all, Probation Trusts welcomed their suggested role as local commissioners of services working together with local authorities, police and health services and the newly created Police and Crime Commissioners (Munro 2012).

The proposals to divide the probation caseload on the basis of risk and out-source the management of low- and medium-risk cases from the public sector to new providers survived the consultation period. Probation Trusts did not. The document *Transforming Rehabilitation: A Revolution in the Way We Manage Offenders* was published in January 2013, marking the arrival of Chris Grayling as Secretary of State for Justice (Ministry of Justice 2013a). It was followed, after another flurry of consultation, by a decision paper in May that year (Ministry of Justice 2013b). Probation Trusts were to go; they would be replaced by a new National Probation Service (NPS) responsible for the public sector duties and by private or voluntary sector organisations (to be called Community Rehabilitation Companies (CRCs)) commissioned by the National Offender Management Service to work in 21 'contract package areas'. The Transforming Rehabilitation proposals maintained the commitment to payment by results as the means of ensuring that services successfully reduced reoffending. The proposals also extended statutory post-release supervision to short sentence prisoners (those serving less than 12 months

in custody). Grayling brought a halt to the community-based payment by results pilots begun by his predecessor not wanting to delay his Transforming Rehabilitation revolution (Burke and Collett 2015).

The Transforming Rehabilitation process moved swiftly through the final years of the Coalition Government. The timescale for change was variously described as ambitious or foolhardy (Travis 2013). Probation Trusts ceased to exist at the start of June 2014, the successful bidders for the new CRCs were announced in October 2014, and contracts for the sale of the CRCs signed in February 2015. The successful bidders for the CRCs (Ministry of Justice 2014) were, with one exception,[2] consortia led by private sector companies working with voluntary agencies, including some new agencies formed by staff from Probation Trusts. Three big winners were Sodexo Justice Services (working with the large voluntary sector organisation Nacro), Purple Futures (led by the company Interserve working with voluntary sector organisations including Shelter, Addaction[3] and P3) and MTCNovo (a joint venture between a US-based private company MTC and a consortium of private, public and voluntary sector providers). Sodexo and MTC operate private prisons; Interserve has previous involvement in building prisons.

The abolition of Probation Trusts was unpopular with staff across the probation service. For workers, it led to considerable uncertainty and insecurity about the future (Robinson et al. 2015). It raised questions, many for which the Ministry of Justice had no answer, about the future of practice, workloads, employment status, employment security, pay, benefits and redundancy. Practitioner staff were allocated to either the NPS or the CRC in a process which was viewed by many as inflexible and unfair (Burke 2014). The Ministry of Justice was criticised for inadequately assessing the risks to public safety and the competent administration of court orders inherent in pushing through with the reforms at speed (Probation Association 2014).

Some aspects of the Transforming Rehabilitation proposals do not follow inevitably from the decision to move work to the private sector. Extending post-release supervision to short sentence prisoners is a task that could have been allocated to a public sector probation service. This alternative course of action would have marked a return to the, albeit voluntary, aftercare provided to this group of prisoners by the probation

service, until during the 1980s, a combination of increasing numbers of prisoners being released on parole and a Home Office instruction to give priority to statutory supervision led to the end of this strand of work (Maguire 2007). Similarly, payment by results mechanisms could have been introduced into the funding arrangements for Probation Trusts; there are a number of different financial models that aim to reward outcomes judged successful and they can operate in public, voluntary and private sectors. The Coalition Government strongly supported the use of payment by results in the delivery of public services, and examples can be found in work with drug users, the long-term unemployed and troubled families. There are a variety of payment by results mechanisms: differences include whether initial working capital comes from the public purse, the commercial money markets or social investors and the extent to which risk is transferred from the commissioner to the service provider or the investor (Fox and Albertson 2011). Under the Transforming Rehabilitation arrangements, the Government funds CRCs through a combination of a payment for work done (fee for service) and payment by results, with the necessary working capital provided by the private sector.

The extent of the debate about payment by results in probation practice is considerable. The Government's funding proposals were criticised from a number of angles. Private companies considering bidding for CRCs wished to avoid a system that penalised them for changes in workload that are outside their control. An independent analysis of the initial payment by results mechanism concluded that it was likely to reward providers who allowed a small rise in reoffending and would discourage them from investing in rehabilitation (Mulheirn 2013). Those familiar with the practice challenges of working with offenders questioned whether success can sensibly be measured by looking for the presence or absence of a further offence in a short follow-up period. They also argued that a simple binary measure of offending fails to take account of the diversity of people on the probation caseload. For example, given that women and men have differently constructed criminal careers and are helped to desist from offending in different ways, a simple payment by results system may serve to reduce the services available to female offenders (Gelsthorpe and Hedderman 2012).

The Probation Association, the organisation representing the interests of Probation Trusts, wound itself up as a consequence of the abolition of

the trusts. It described its final publication as a parting shot and concluded with a number of questions against which, in its view, the Transforming Rehabilitation reforms should be judged by future commentators (Probation Association 2014). A number of these questions were about the costs of the Transforming Rehabilitation reforms, asking whether the money paid to achieve the reforms and then monitor the new contracts would have been sufficient to fund Probation Trusts to work with short sentence prisoners on their release from custody. It also queried whether payment by results mechanisms would become a minor part of the future funding arrangements, thus negating one of the central arguments for excluding public sector Probation Trusts from the new contracts. The Probation Association also asked future commentators to consider the effect of the reforms on staff professionalism, morale and motivation in the longer term. In asking these questions the Probation Association made clear its position that neither wholesale reform nor the embrace of market solutions were required to achieve the outcomes desired by the Coalition Government.

The Transforming Rehabilitation reforms represent the end of the probation service as a public service providing an integrated range of services to courts, offenders and victims. The extent to which they mark the end of care, help and social justice in probation practice is a much more complex question.

Privatisation and the Probation Service: Understanding the Debate

The publication of the Transforming Rehabilitation documents in the first half of 2013 marked the moment when the broad debate about privatisation and the probation service ended and a frantic discussion about implementing a specific scheme began. This broad debate about the appropriate relationship between the probation service and the private sector is comprised of a number of positions which will be explored in this section of the chapter. These positions are: private companies have no business delivering public services in general or criminal justice services in particular; marketisation does not provide the state with the cost savings claimed by its supporters; and privatisation cannot be relied upon to raise standards.

Is Probation a Public Good?

There is an argument that it is simply wrong for the private sector to play a part in the delivery of public services in general or in the punishment and management of offenders in particular. Advocates of this position would strongly agree with Sandel (2012) that markets have moral limits. In the world of probation, this view, opposing privatisation on principle can be found amongst practitioners, senior managers and academics. Canton (2011: 190) writes 'Security is not a commodity, rehabilitation is not a "product"'. Napo, the largest trade union representing probation staff, has consistently campaigned against privatisation with slogans such as 'Keep Probation, Keep it Local and Keep it Public' (McKnight 2009).

This argument, favouring public sector delivery of public services on principle, is critical of the neo-liberal turn in government policy evident in the UK and beyond. In this context, reforms of the probation service are a small part of a much wider social change agenda affecting criminal justice, health and welfare services. Confidence in the capacity of the state to provide solutions to social problems is replaced by confidence in market solutions and a shift of responsibility from institutions to individuals. Collett (2013) (a former probation Chief Executive) argues that neo-liberal prescriptions have harmed both the probation service and its involuntary clients. If poverty is defined as individual failure, the concept of the public good is worthless and government spending must be reduced; it follows that the likely responses to crime favour restriction and incapacitation over social inclusion.

Private Sector Criminal Justice: Costs, Profits and Market Share

The case against privatisation is made on practical as well as ideological grounds. Commercial involvement in criminal justice is bad for society because private companies are necessarily concerned with profit and growth, whilst society would benefit from finding ways of reducing its reliance on using criminal justice tools to solve social problems. Private companies will not, on purpose, seek ways of shrinking their business. However, the desire to maintain an institution and grow its influence is unlikely

to be unique to the private sector. Large voluntary sector organisations employ many staff and resemble private sector companies in their commercial approach to government contracts (Senior 2011), and public bodies, including Probation Trusts, rarely welcome their own demise.

The argument that privatisation is a cost-effective way of delivering public services is hotly contested. Saving money is one of the central justifications for out-sourcing work to the private sector: 'The private sector is driving savings within the criminal justice system – we estimate we will save £25m on the Community Payback bill over the life of the contract in London after Serco took over delivery in October 2012' (Ministry of Justice 2013b). Opinion is divided about the extent to which the private sector manages costs by being nimble, innovative and efficient or by bearing down on the pay and conditions of its employees. For criminal justice agencies, staff costs form a significant part of the budget; private prisons employ staff who earn less and enjoy smaller pension and benefits packages than their public sector colleagues. For the probation service, staff costs form a significant proportion of the budget. For example, London Probation Trust estimated that, for the financial year 2013/2014, more than 80 per cent of its expenditure would be on staff (London Probation Trust 2013). The announcements of significant redundancies in many CRCs suggest that costs will be reduced by shrinking the wage bill (Travis 2015).

Judgments about the cost-effectiveness of private provision need also to take into account the costs of contracting and out-sourcing. Procurement processes must be run and contracts written, awarded and monitored. Managing large out-sourcing projects is a challenging task for civil servants and the Ministry of Justice has limited experience of this work. Ludlow (2014) argues that applying contract mechanisms to probation raises particular challenges: first, the difficulty of measuring the performance of the service since many of its outcomes depend on work done by other agencies, and second, achieving the aim of improving a service already judged to perform well.

> This makes the commissioning challenge posed by the Government's probation plans greater than anything attempted before: NOMS must commission improvement and innovation in services that are already providing high quality services and good value for money. (Ludlow 2014: 71)

Privatisation As a Mechanism for Driving Up Standards in Criminal Justice

The assertion that a mixed market of probation providers will raise standards and improve outcomes is made repeatedly in government policy papers dealing with partnership, competition and reform (see, as examples, Ministry of Justice 2013b; Carter 2003; Home Office 1992a). The validity of this assertion is contested as hotly as the claims for privatisation as a successful mechanism for driving down public spending.

Advocates for competition as a means of driving up standards in probation work often use the experience of the prison service to advance their case (Carter 2003). One strand of the argument is that it is as much the threat of privatisation as the awarding of a contract to the private sector that compels conservative public sector bodies to improve and do better. This argument has been made from within the probation service as well as by external critics. Writing in response to 'Punishment and Reform: Effective Probation Services' (Ministry of Justice 2012b) and, therefore, at a time when Probation Trusts seemed to have a future as local commissioners of services, Heather Munro (then Chief Executive of London Probation Trust), in an article clearly stating the importance of offender management as a public sector task, argued:

> As someone who is a strong believer that the public sector has a key role in the delivery of probation services, I, like many Chief Executives, can still however see the value of competition. There is no doubt that it focuses the mind on greater efficiencies and encourages new ways of thinking. (Munro 2012: 51)

Private companies delivering criminal justice services argue that there are a number of reasons why the public can be sure that private provision will be of good quality. They point out that they are contractually bound to deliver services that meet quality standards, that rigorous inspection regimes monitor outcomes and that they and their staff operate within a culture that values good practice (Morris 2012). These assertions are supported with evidence of successful work in private prisons and with electronic monitoring. These claims are viewed more sceptically by those

who prefer to remember that the Crown Prosecution Service is prosecuting staff from A4E for fraud in delivery of the Work Programme contract (BBC 2013), that the Government used military personnel to save G4S from its failure to provide sufficient security staff for the Olympics (BBC 2012a) and that investigative journalism revealed the abuse of patients at Winterbourne View (BBC 2012b).

Given the importance of the prison experience to the discussion about the probation service, it is worth looking thoroughly at lessons that can be drawn from prison privatisation and the extent to which they can be transferred across to the community. The evidence from comparisons of performance in public and private prisons in the UK (see Crewe and Liebling, Chap. 6, this volume) suggests that this argument is more nuanced than its protagonists are often willing to acknowledge. The empirical evidence suggests that individual prisons have different patterns of strengths and weaknesses, with private prisons included in both high-performing and poorly performing groups.

Aside from the fact that the prison experience does not prove that private sector involvement will drive up standards, there are also good reasons for caution about assuming that privatisation will work in the same ways for probation. The probation service is different from the prison service in at least two crucial respects. Firstly, privatisation was used in the prison service as a means of producing change in a troubled organisation (Liebling 2006). The probation context is different; the probation service was not judged by its inspectors or external assessors as poorly performing and unwilling to change. Secondly, successful probation outcomes depend centrally on the way that probation supervisors engage with supervisees; probation is about people as much as about places.

The commitment and motivation of probation staff is key to the work of the service and privatisation was driven forward with almost no support from the existing workforce. The process of dismantling Probation Trusts and allocating staff to successor organisations led to national and local industrial disputes. Both the new NPS and the CRCs began life with staff who were formerly employed by Probation Trusts. The future staffing arrangements in CRCs remain uncertain, as these new organisations have considerable freedom to decide about pay, conditions and what, if any, qualification will be required of staff at different grades. The challenge for

the CRCs, made uncompromisingly clear by the mechanism of payment by results, is to out-perform the superseded Probation Trusts. However, early indications support the critics of the Transforming Rehabilitation reforms who warned that CRCs were created, funded and structured in a way that would impede the delivery of good practice (Leftly 2015).

Probation Practice: Maintaining a Culture of Care

In a world where private companies are already involved at every stage of the criminal justice process and the Transforming Rehabilitation reforms are secured with long, expensive-to-break contracts (Travis and Syal 2014), debating the moral or financial case for marketisation may seem entirely academic. The public sector monopoly is gone and, at least for pragmatists, the pressing questions are about getting the best from the new arrangements. What are the implications of marketisation and, in particular the Transforming Rehabilitation version, for probation culture and practice?

One curious aspect of recent probation history is that, despite a background of continual organisational change and shifting policies and purposes, the service has strengthened its understanding of, confidence about and commitment to effective practice with offenders in the community. Probation has been described as resilient (Mawby and Worrall 2013) and improbably persistent (Robinson et al. 2013).

Probation practice today is shaped by an understanding of the importance of relational aspects of supervision in encouraging desistance (McNeill and Weaver 2010), concerns about risk assessment and public protection (Kemshall 2003) and evidence about the effectiveness of interventions drawing on the risk/needs/responsivity model (Bonta and Andrews 2010). Probation staff are involved, amongst other things, in engaging offenders in the process of change and delivering cognitive-behavioural group-work programmes. They undertake risk assessments and provide advice to courts making sentencing and enforcement decisions. They contribute to multi-agency public protection arrangements

and integrated offender management schemes and work alongside voluntary organisations at women's centres and drug projects.

The phrase 'offender engagement' has been in regular use in the probation service since the National Offender Management Service launched its Offender Engagement Programme (OEP) in 2010 (Rex 2012). Although relatively new as a piece of occupational jargon, the phrase describes the core task for the probation supervisor: working with people, including those who are reluctant to participate, in such a way that they meet the requirements of their court orders and are supported to make changes in their circumstances and behaviour. The OEP, which came to an end in 2013, produced and evaluated a model of good practice for practitioners and their managers (the SEEDS[4] model). It also commissioned two literature reviews: one on the implications of the desistance literature for offender management (McNeill and Weaver 2010) and another examining the concept of quality in probation supervision (Shapland et al. 2012). The OEP stresses the importance of skilful staff using professional discretion, responding flexibly to the specific needs of each supervisee and adopting a structured approach to supervision.

Prior to the establishment of the OEP, the What Works initiative had dominated probation practice (Raynor 2012a). These two developments, a focus on relationship and supervision skills and the creation of evidence-based programmes based on the principles of risk, need and responsivity, are complementary rather than at odds. New insights from research add empirical weight to the moral and practical argument that probation practice requires an atmosphere in which people are valued and supported. Probation supervisors work effectively when they can build positive relationships with their supervisees, provide practical help and make use of specific programmes and interventions. However, practice is not undertaken in a vacuum but in an organisational culture shaped by custom and values and communicated in the way that staff are trained and supported. As Canton (2011: 45) reminds us:

> Probation, perhaps, is distinguished less by its instrumental objectives – after all, many other agencies are committed to public protection and reducing crime – than by the means by which this can and should be accomplished.

Whilst the probation service may have moved some way from its traditional mission to 'advise, assist and befriend' offenders and been pushed hard in the direction of law enforcement, front-line staff still want to be in the business of supporting, helping and valuing people (Deering 2011). A culture of care remains and is seen as the main motivation for professional staff (Annison et al. 2008; Mawby and Worrall 2013).

A Future Without the Probation Service

A key question about the Coalition Government's Transforming Rehabilitation reforms is whether, as claimed, they will improve practice with offenders in the community. Whilst the evidence suggests that, before the changes, probation practice was of a good standard and Probation Trusts were well managed organisations, it would be inaccurate to claim that there is no scope for improvement and illogical to argue that organisations other than Probation Trusts are incapable of undertaking the tasks of offender supervision.

There are, though, hurdles that the new providers will have to overcome in order to avoid a worsening in the arrangements for community supervision and reasons for believing that the culture and standing of the public sector probation service made it uniquely well placed to service the competing interests of courts, offenders and the public.

CRCs began with the challenge of a caseload increased by the new licence arrangements for short sentence prisoners. Providing supervision and support intended to reduce reoffending by people leaving prison is a laudable aspiration. It is not, though, straightforward work given that this group of prisoners have multiple needs (Maguire 2007) and are, at best, ambivalent about a licence period that lasts considerably longer than their time in custody. The Government anticipated that mentors and volunteers would play an important part in this supervision. Certainly mentors, including ex-offenders working as peer mentors, provide valuable help and support to people leaving prison. Community volunteers can assist the process of resettlement and reintegration in a very practical way. However, volunteers need to be recruited, trained, supported and overseen (see Hucklesby and Wincup 2014). Volunteers in criminal justice agencies,

including peer mentors, need to be able to make difficult judgments where a return to prison is a possible outcome. Anticipating an increase in the use of volunteers is one thing; anticipating a plentiful supply of competent volunteers requiring little oversight and available in the correct geographical location is another.

The desire to include the voluntary sector alongside the private sector as part of the probation reforms is a recurrent theme in successive governments' policies. Probation privatisation is a three-cornered process with a shifting balance of power between the private sector and the voluntary sector as well as the private sector and the public sector. Creating a market for probation services requires voluntary sector agencies to adapt and reconstruct their purposes and values (Corcoran 2011). The Government has encouraged the voluntary sector to play a part in CRCs in practical ways, including the provision of money for workshops on topics such as calculating costs, measuring impact and understanding pensions.

The voluntary sector and the probation service can point to many examples of successful, innovative and established joint work. There are existing mentoring schemes, service user groups, drug rehabilitation programmes and women's centres. It is too simple to suggest that, whilst joint work with the private sector creates difficulties for the voluntary sector, that collaboration with the public sector is straightforward. Bidding for public sector contracts, managing time-limited and poorly funded projects and working within the constraints of community sentences all pose challenges. However, playing a part in private probation services brings additional risks for the voluntary sector.

One consequence of the Transforming Rehabilitation reforms for the penal voluntary sector is that any organisation that wishes to make a contribution to the core tasks of offender management will need to do so as part of the supply chain of a large prime provider. By corollary, some voluntary organisations with a history of partnership work with a particular Probation Trust have lost work to the incoming prime provider's preferred supplier. This pattern of private sector primes passing work down to voluntary sector organisations was the model adopted by the Coalition Government's Work Programme; lessons from the Work Programme suggest there are real hazards for the voluntary sector, including being used to strengthen bids but then receiving little work when the contract is won (Rees et al. 2013).

The practice culture that is created in CRCs is crucial to the way that probation privatisation will be judged in the future. This culture will be strongly shaped by the knowledge and experience of the workforce, the training provided to incoming staff and the systems that are put in place for assessing performance. CRCs are not obliged to employ qualified staff in offender management roles nor are they required to adopt evidence-based practice tools such as SEEDS, although they will need to ensure that their staff are adequately equipped to meet the contractual requirements set by the Ministry of Justice. Those who lead CRCs will be wise to take note of the research that suggests that organisational quality, alongside staff and programme quality, contributes to work that reduces recidivism (Raynor 2012b).

The culture of CRCs will be formed from the values of its staff, but also the priorities of its senior managers and shareholders who are new to the world of community justice. It will develop in the context of Government spending cuts and staff redundancies. This is a challenging environment in which to maintain staff morale, provide continuity of offender management and sustain a culture of care. Early indications of performance are not encouraging (Leftly 2015).

As well as its implications for organisational culture and competence, privatisation also raises questions about legitimacy of the reformed probation services. This is an issue both for the relationship between supervisees and supervisors, but also for the inter-agency links between the new probation organisations and external partners. Writing about the supervisory relationship, McNeill and Robinson (2013) describe legitimacy in this context as 'liquid': flowing and changing form as community sanctions are constructed and reconstructed. Compliance with community supervision depends on supervisees acknowledging the legitimacy of supervisors and their demands. Such legitimacy cannot be assumed to transfer between supervisors or between organisations. There is evidence (Dominey 2013) that probation workers bring a distinctive approach to working with people who are sentenced to supervision.

In addition to taking care of its legitimacy in the eyes of supervisees, the probation service needs to have the confidence of the courts and its partners (police, prisons, local authorities, the health service and voluntary organisations) in inter-agency projects. The new small, but still public

sector, National Probation Service has responsibility for advice to courts, decisions about enforcement and multi-agency public protection arrangements. Its challenge is to manage the demand for its expertise whilst developing as a new organisation with staff geographically dispersed across England and Wales. Courts and other partner agencies are likely to notice that the NPS is not simply the old local Probation Trust with a new logo, but much remains to be seen. If there are relatively few changes in personnel, this may enhance the prospect of continuing trust, even if the organisational structure changes.

CRCs have the task of earning their external legitimacy. The confidence of the courts is essential for the operation of community sentences. A good working relationship with the police is needed to operate inter-agency schemes working locally with priority groups of offenders. Successful partnership working requires clarity about purposes and values, leadership, robust processes and the means to resolve conflict (Rumgay 2003). The young private providers of probation services will need to demonstrate to long-standing and powerful players in criminal justice that they can operate as reliable partners.

The fragmentation of the probation service together with concerns about the impact of privatisation on the relationship that new providers will have with service users and partner agencies supports the argument that the Transforming Rehabilitation vision of innovative and effective practice will be hard to realise.

Conclusion

It is clear that the probation service has no monopoly on 'care', but such a philosophy is rooted in its very being. We have indicated that the prison experience does not prove that private sector involvement will drive up standards; on the contrary, we have indicated that there is good reason for caution in assuming this. Equally, probation has worked across different sectors for some time and has utilised the work of private sector experts in the design and development of programmes. But the Transforming Rehabilitation reforms were a push and rush for fundamental change in the structure of the delivery of practice. Notwithstanding the fact that

some staff who worked within Probation Trusts moved over to the CRCs, we still know too little about future operating models and how a culture in which offenders are seen as people will be maintained. The prime providers have yet to reveal detail of their operational philosophies or explain the values that they bring to practice. In whatever lies ahead, there is need for an ethic of care—which revolves around the moral salience of responding to offenders as people with hopes and fears, rights and needs. If this can be held on to, then a foundation for good practice remains.

Notes

1. Probation Service Officers are employees of the Probation Service who do not hold the Probation Officer qualification. They undertake similar tasks to their Probation Officer colleagues but are not responsible for the highest risk cases.
2. The successful bidder in the Durham Tees Valley area was a joint venture without a private sector company.
3. Addaction withdrew from the Purple Futures Partnership in April 2015 'due to a failure to agree on the detail of subcontracting arrangements' (Addaction 2015).
4. SEEDS is an acronym for Skills for Effective Engagement, Development and Supervision. The model and its associated training are most commonly referred to as SEEDS (Sorsby et al. 2013).

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8

A Complicated Business: The Operational Realities of Privatised Electronic Monitoring of Offenders

Anthea Hucklesby

Private sector involvement in criminal justice is one of the most controversial policies of successive governments, and the provision of electronic monitoring (EM) is no exception. Since EM was first used in England and Wales in the late 1980s, fierce debates have taken place about its role in criminal justice and the involvement of the private sector in EM. However, the implications of the inclusion of EM in criminal justice systems for the 'privatisation' debate have not generally been explored in any depth (with the exception of Lilly and Ball 1993). EM has often been ignored or superficially included by those interested in wider privatisation debates which centre on the more visible criminal justice sectors of prisons, policing and most recently probation services (Cavadino et al. 2013; Deering and Feilzer 2015; Johnston 1992). Yet, EM provides a fruitful area to gather empirical evidence about the operation of a privatised criminal justice service, but this too has been neglected by EM scholars in favour of debates at an abstract level of policy, ethics and ideology (Nellis 2013; Paterson 2013) or at a macro level of the 'punishment industry' (Lilly and Knepper 1993; Lilly and Deflem 1996). EM at an

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operational level has remained largely unexplored with the exception of a thematic inspection and a follow-up inspection carried out by the Criminal Justice Joint Inspectorate (CJJI 2008, 2012). The CJJI reports identified a highly complex EM system using the term 'a complicated business' to describe it in the title of its report. This chapter charts how relevant its terminology remains whilst also engaging with broader debates about role of EM and the private sector in criminal justice.

The chapter provides unique insights into the operation of EM drawing on evidence gleaned from several empirical projects in England and Wales (Bottomley et al. 2004; Hucklesby 2005; Hucklesby and Holdsworth 2016) and Europe (Hucklesby et al. 2016) carried out over more than a decade. It gathers together for the first time original, largely unpublished, data from these studies to provide the first detailed examination of the complexities which are created when the private sector operates the EM. It, therefore, provides a distinctive contribution to the debates about private sector involvement in EM and the wider arena of criminal justice. It suggests that privatisation debates thus far have failed to appreciate the operational complexities or consider their implications for the involvement of the private sector in EM particularly and the wider arena of criminal justice. It argues that a privatised EM service as currently operating in England and Wales is over-complicated detracting from what has the potential to be an effective and humane criminal justice tool.

The embryonic use of EM in the late 1980s and early 1990s coincided with the introduction of the first private prisons in England and Wales. The Conservative government of the time were ideologically wedded to privatising many public services. By injecting the free market into public service, competition between providers would be increased, thereby driving down costs and improving the quality of services. In reality what was produced was a quasi-market whereby a small number of providers received contracts to run privatised services for a fixed period of time including single prisons, prison escort services and EM. Opponents of privatisation argued inter alia that punishment should be the sole preserve of the state and that criminal justice was a public good which morally and ethically should be operated by state agencies (see, e.g. Cavadino et al. 2013). These ideological positions have led to a polarised debate between proponents of both sides. What is lacking, with some exceptions

(see Crewe and Liebling, Chap. 6, this volume), is detailed information on how privatised services work in practice which would begin to provide an evidence base with which to evaluate the claims and counter-claims of both sides.

Electronic monitoring in England and Wales (and Scotland) has been operated exclusively by the private sector since the first pilots began in the late 1980s. EM in England and Wales is used at the pre-trial, sentence and post-release stages of the criminal justice process. It can currently be imposed as a condition of bail, as a requirement of community or suspended sentence orders and as a form of early release from prison via Home Detention Curfew (HDC). These applications of EM utilise radio-frequency (RF) technology[1] to monitor compliance with curfew conditions/requirements. GPS (Global Positioning System) technologies[2] are used in England to track a small number of critical cases, mainly under Multi-Agency Public Protection Arrangements, for high-risk sexual or violent offenders and in a few terrorism-related cases (Hucklesby and Holdsworth 2016). At the time of writing, the Conservative Government is in the process of implementing a series of pilots to explore the use of GPS technologies more widely in the criminal justice process (Cameron 2016). For all Ministry of Justice EM applications, the private sector provides the monitoring equipment (hardware and software) and manages the whole monitoring process from start to finish under contract to the National Offender Management Service (NOMS) at the Ministry of Justice.

In recent years, there has been a proliferation of 'voluntary' schemes run by the police primarily working under the auspices of Integrated Offender Management (IOM) (Hucklesby and Holdsworth 2016; Hudson and Jones 2016). Offenders, usually on release from prison, are offered GPS tags in return for less physical monitoring by the police and additional assistance which may include easier access to services and extra support. The schemes work with offenders who are under the statutory supervision of probation services and those who are not. The voluntary nature of the schemes means that they operate outside of any legal framework (Hucklesby and Holdsworth 2016). In these schemes, which use GPS technology, the private sector provides the equipment and associated software, but the day-to-day management of offenders is undertaken by the police and their IOM partners, mainly probation services. The

police model is much closer to, but still distinct from, the predominant European model whereby state criminal justice agencies, usually probation services, manage EM having purchased the equipment from private sector providers (Hucklesby et al. 2016).

This chapter is split into six sections which examine specific aspects of past and current EM policy and practice including procurement, contracts, cost, multi-agency working and data management. Each section provides evidence of how the EM contracts operate and relates it to broader debates about the privatisation of criminal justice services. The chapter begins by exploring how the 'market' for EM equipment operates and some of the implications for EM providers and governments.

EM Equipment Providers and the Market

All countries which use EM have some private sector involvement to a greater or lesser extent. At the minimum, governments are reliant on the private sector for the provision of monitoring equipment and associated software. This sets EM apart from all other areas of criminal justice because governments have no choice currently but to procure equipment from private providers. There are a range of equipment providers worldwide although a small number of large companies dominate the market. Their domination is partly explained and facilitated by the significant capital investment which is required for initial and on-going development of EM equipment. This limits the capacity of new providers to join the market, thereby reducing competition. Despite this, new equipment providers in the EM criminal justice field do emerge. Buddi, a British company, has been providing equipment to a number of UK police forces in the last few years. Importantly, however, it was not completely new to the EM market (Daily Telegraph 2011). The original equipment it used in criminal justice contexts was adapted from equipment which was developed for other purposes, that is, the 'safety' of children and older people.

A second, not inconsiderable, stumbling block to new entrants joining the market thereby constraining a truly competitive EM market in England and Wales is the stringent government equipment specifications. These run to many pages and all equipment used under the Ministry of

Justice contracts is required to comply with them. One of the specifications is that the strap of the ankle tag must break at a certain point to avoid injury to the wearer if it gets entangled in objects such as machinery. Several tags which are on the market, including the Buddi tag, do not meet this specification and would not be able to be used in their current form under the Ministry of Justice contracts. Buddi and others are, however, able to provide equipment to English police forces because the specifications do not apply. Indeed, police forces report that they prefer the Buddi equipment, partly because it is more difficult to remove.

The EM equipment market is extremely competitive despite it being dominated by a small number of providers. A variety of strategies are used by them to increase their market share. For example, Buddi offered equipment to police forces free or at a reduced rate on a trial basis. As a result, forces became accustomed to having the tool and the information gleaned from it at their disposal, building practices and capabilities around the equipment, making it difficult to withdraw. This strategy has been tremendously successful as Buddi now dominates the police market for GPS tracking in England. It also enabled it to gain credibility as a provider of EM and to hone its equipment and service provision allowing Buddi to become successful in selling its equipment overseas. It is now working in criminal justice contexts across the world (see Nellis 2016).

A second set of strategies to increase market share coalesce around providing good customer relations. EM providers have been responsive to criminal justice needs, developing solutions to problems brought to them by EM users. This has brought about incremental improvements in the equipment's performance and capabilities. The advantage for EM users is that innovations requested by one government or criminal justice agency are made available to all users of that equipment. For example, Buddi has developed its tag and accompanying software to suit its main users in the UK. Many police forces in England and Wales use Buddi equipment predominantly with prolific property offenders as part of IOM. Although numbers in individual police forces are small (reportedly up to a maximum of 70 tags), Buddi quickly became the preferred provider in most forces because its equipment (hardware and software) gives the police what they want and/or believe they need. Buddi has been responsive to adapting their equipment to police requirements on an on-going basis. For example, the

police have access to all of the data produced by the GPS tags on a web-based system which is easy to access and interpret. This sets Buddi apart from other providers who provide specific and sanitised information to users. It has developed tools to assist the police with its reading of these data. Examples include producing heat maps which highlight the places where offenders go most frequently, enabling crime scenes to be overlaid onto offenders' movements to identify whether offenders were in the vicinity of where crimes occurred at relevant time periods and allowing the data to work with Google Maps so that officers can visually identify the places where offenders have been. Arguably, Buddi is able to be more responsive to its customers' needs because of its small size relative to other EM providers such as G4S and 3M, but similar levels of service are provided by them. However, Buddi's customer focus is also driven by the need to build a reputation as a credible and reliable provider in a competitive marketplace.

Whilst EM providers are undoubtedly responsive to customers' needs, governments are beholden to them in terms of the type and capabilities of the equipment which is available. To date, government policies in the UK and elsewhere have been driven partly by what is technologically possible but also what the private companies want to develop and sell. Significant investment is required in research and development to bring new equipment to market. Inevitability EM providers are predominately interested in selling high volumes of equipment which bring the greatest return on their investment. Therefore, some equipment may not be made available, not because it does not work effectively but because the market is not sufficiently large. An example is the development of a tag which is designed specifically for women who comprise a relatively small proportion of the tagged population. Tags are usually worn around ankles and women's physical make-up which makes the tags currently in use, and which were designed for men, uncomfortable to wear (Holdsworth and Hucklesby 2014). Such issues mirror those relating to the pharmaceutical industry whose focus is on the development of drugs which tackle frequently occurring illnesses and diseases, that is, those with the largest market rather than those which are rarer (Sharma et al. 2010; Gaze and Breen 2012; Gibson et al. 2015). Furthermore, it is not always easy to distinguish between what is not currently possible technically and what providers are unable or unwilling to invest in. An important limitation in

this regard is the myriad of patents which have been taken out by equipment providers as a protective mechanism to prevent other providers from exploiting the technology—a practice which mirrors the 'land bagging' undertaken by UK supermarkets to prevent competitors building shops (Competition Commission 2008; The Guardian 2014; Seeley 2012). Such practices inevitably block some technological innovations and may increase costs.

There are few examples of governments setting agendas in terms of what they want EM equipment to do. One example is the Ministry of Justice's project to procure a new 'hybrid tag'—one which has both radio-frequency (i.e. static location monitoring) and tracking (i.e. location monitoring on the move) capability. Ultimately, this endeavour failed resulting in the government resorting to procure 'off the shelf' rather than bespoke equipment (Raab 2016). For the purposes of this chapter, however, it is the fact that governments are beginning to wake up to the idea that they can dictate their requirements and terms to private sector equipment providers. This is potentially significant; yet, there are considerable risks involved as demonstrated by the UK government's poor record of successful procurement of IT infrastructure projects generally (Chakelian 2014) and the current procurement of EM equipment. Another potentially more successful example of government's setting their own agendas is embryonic cooperation between some European countries in establishing minimum standards and procurement rules and negotiating costs following the realisation that countries are paying different prices for the same product. It is to procurement issues that this chapter now turns.

Electronic Monitoring Procurement

There have been three contracts for the provision of EM services to the Ministry of Justice in England and Wales. The first two contracts were based on a vertically integrated geographical model whereby England and Wales was split into contract areas and companies bid to provide the equipment and operate the end-to-end service in specific geographical locations. The first contract (1999–2005) was awarded to three companies, roughly splitting the

country into three spatial sections (Reliance in the South, Premier in the Midlands and East Anglia and Securicor in the North). The second contract (2005–2012) reduced the number of providers to two, creating a duopoly between G4S Care and Justice Services in the North and South and Serco in the West Midlands, Wales and London (NAO 2013). Over time, these two providers took over much of the competition by buying a number of companies involved in EM which resulted in increased vertical integration i.e. control of the supply chain. This reduced competition in the market by preventing competitors working with the subsumed companies, by ensuring that the companies could not bid for the contracts independently and by securing innovative equipment providers. For example, On-Guard Plus, an equipment manufacturer, was brought by Strategic in 2004 which in turn was taken over by Securicor/G4S in 2006. Similarly, Guidance Monitoring Limited, another UK-based equipment manufacturer, was acquired by G4S in 2011 and Serco took over Geografix in 2000. These are examples from companies involved in the UK market but the propensity for mergers and takeovers in the private sector EM and wider security industry is well-documented (Christie 2000; Lilly and Knepper 1993; Nathan 2003; Selman and Leighton 2010). EM is firmly embedded within the wider security industry and as Lilly and colleagues persuasively argued in the 1990s remains part of the 'commercial-corrections complex' (Lilly and Ball 1993; Lilly and Knepper 1993; Lilly and Deflem 1996). Indeed, the increasing use of EM worldwide has deepened the role EM plays in the 'punishment industry'. The growing dominance of technologies more broadly has blurred boundaries between the military, security and corrections industries still further and has extended its reach into 'social care' with EM applications being used increasingly to monitor the elderly, mentally ill, young people and children.

The government completely re-configured the way EM was delivered in England and Wales under the third contract which was due to commence in 2013. The aim of the government's new configuration was to increase the level of competition in the market whilst at the same time gaining greater control over the operation of EM (Lockhart-Miram et al. 2015). It split the provision of EM into four lots, totally unpicking the vertically integrated service which had gone before. The four lots were monitoring services including a processing centre, staff and vehicles (awarded to Capita); monitoring and mapping software (awarded to

Anstrium); monitoring hardware (ankle tags) (originally awarded to Steatite); and the GSM telecommunications network (Telefonica). Capita were also awarded the integrator contracts to facilitate the provision of a seamless service. In reality, the new landscape, which is not yet operational, produced a fragmented operating model, significantly increasing its complexity (Hucklesby and Holdsworth 2016; Lockhart-Miram et al. 2015). The operation of EM will be reliant on four separate companies delivering what they promised as well as successful integration. It also has potential implications for quality of the service provided. For example, equipment is available which is able to use any mobile network to transfer data from tags to providers' servers. This has the advantage of the equipment being able to pick up a signal in most geographical areas, but the downside is that it is slightly more expensive. The English and Welsh contracts, both existing and new, work with only one network provider so that it is more susceptible to blind spots.

An additional challenge of the new configuration is ensuring that hardware and software which were not designed to work together can do so. Providing a fully integrated system involves time and costs and may not work as effectively as a system which was initially designed to operate together. In the Netherlands, the prison service has recently taken over the operation of EM from private contractors (Tyco) which has resulted in problems integrating the IT systems of the organisations (Boone et al. 2016). Innovation may also be stifled because of the complexities of working with two different providers to bring about, even relatively simple, changes to how the equipment works and the operating model. Some of these complexities are currently being played out in England where at the time of writing the new service is not yet operational four years from the publication of the original tender and over three years since the preferred bidders were announced. Instead, since 2014 a business-as-usual model has been operating whereby Electronic Monitoring Services (EMS) owned by Capita are providing the monitoring service using G4S equipment and software and largely following processes and procedures used in the 2005 contracts. Delays in the development and implementation of the new equipment have had significant implications for EMS who have been unable to implement many of the changes to the service it had planned and which were expected to result in efficiency savings.

The EM contracts in England and Wales also illustrate how the procurement and contracting cycle impacts upon service provision and results in periods of intense activity followed by lulls. By way of illustration, during the lead up to the 2012 procurement exercise when the bids were being prepared, members of the operational EM teams, usually involved in quality assuring day-to-day operations, were moved to work exclusively on the new bids. Their efforts were focussed on shaping their bids for the new contracts rather than on how the service was being operated or could be developed under the current contracts. As a result, much of the work which had been undertaken ceased to take place. For example, G4S was well known for working with criminal justice agencies and the judiciary, building relationships and trust in their services but also EM more generally (CJJI 2008). A team of regionally based relationship managers undertook these tasks which increased awareness and understanding of EM and led to improved service provision, strengthened links between providers and criminal justice agencies as well as anecdotally increasing the use of EM (CJJI 2008). There was obviously an element of self-interest in this work given that increasing the use of EM has advantages for the providers because they are paid in part according to the number of offenders who are monitored (NAO 2013). During the time when the tenders were being prepared, however, such activities ceased almost completely and have, by in large, not restarted (Hucklesby and Holdsworth 2016). Striving for improved service performance, over and above what is required by the contracts also noticeably declined during this period.

By contrast, the period leading up to the end of the contracts and the publication of the tender documents was a time of innovation and increased activity for the incumbent EM providers and potential bidders. These activities were focused on piloting new ways of working and new technologies and working with new partners with the aim of giving them a competitive edge in the forthcoming procurement exercise. The first example of innovative practice was the wider piloting of GPS tracking with police forces discussed above. The Herefordshire scheme, which was the first, began much earlier, but there was a proliferation of pilot schemes involving G4S, Serco and others linked to preparing their bids for the Ministry of Justice contracts. Most providers withdrew or stopped these

pilots once the tender documents were published, and the new structure of EM was unveiled or once their contracts had been submitted. A second example were several pilot projects of so-called plug and play whereby, instead of EM providers installing equipment in offenders' home as has been the practice hitherto, offenders would take the equipment home themselves and install it. Overall, the benefits of these pilots during the bidding process were that new uses of EM were piloted via private funding, allowing evidence to be gathered about potential innovations in the use of EM. The downside was that many of them were short-lived although their wider implementation remains possible and foreseeable under the new contracts.

There is an implicit assumption in the criminal justice privatisation literature that the contracts are always so lucrative that private sector organisations will inevitably want to be involved because of the huge profits which are available. Yet, one of the pressures of the procurement process is ensuring that the proposals are sufficiently enticing for providers to submit bids to operate the service and that bids are of the required quality and are viable. In Germany, for example, the field services—that is, the installing and removal of equipment and visits to monitored individuals' homes—are undertaken by Securitas at the time of writing. Yet the number of tagged individuals in Germany is so low and appears to have little prospect of increasing that practitioners expect few, if any, companies to be interested in the business because costs are high and returns will be low. Similarly in England the number of bidders for the new NOMS contracts was lower than one might expect and in reality left the Ministry of Justice with little choice of potential suppliers. Even once preferred bidders have been announced, potential providers might withdraw requiring negotiations to begin again with an alternative provider or the procurement process to be rerun from scratch. Buddi was named as the preferred provider of equipment (hardware) by the Ministry of Justice in 2013. It later withdrew from the process very publically, suggesting that the government required it to pass over the intellectual property rights for their equipment which it refused to do (MoJ 2014). The issues arose partly as a result of the government's approach to the EM procurement exercise. The two lots to provide the hardware and software for the new contracts were awarded to different providers, one of which was Buddi. In order to ensure that the hardware

and software worked together, both companies would be required to share details of the composition of their technologies. Providers may well have assumed that the lots would be awarded to the same provider, so by-passing the need to integrate the systems. Consequently, they may not have fully appreciated the implications for their intellectual property rights if they were awarded only one of the lots. At the same time, the Ministry of Justice appeared not to have foreseen the implications of their approach to procurement for providers.

The 11 per cent reduction in the number of individuals tagged in England and Wales in 2013–2015 has put additional pressures on the current EM provider (EMS) (Hucklesby and Holdsworth 2016). EMS expected the number of those tagged to be much greater and to rise, not fall, over time, given the explicit commitment of government to increase the use of EM. The fixed costs of EM for the contractors (i.e. control centres, equipment, staff, etc.) comprise a significant portion of the overall cost which adds to financial pressures if numbers fall as well as bringing significant economies of scale if they rise. If the actual numbers are much lower than expected, this puts pressure on the business model which formed the basis of companies' bids. In these circumstances, it is possible to foresee a situation in which a provider withdraws from a contract because the costs outweigh the benefits. Indeed, the situation is being played out currently in relation to the provision of privatised probation services in England and Wales (Plimmer 2016). Falling prison numbers in the USA are also forcing private prison providers into hitherto uncharted territory (Barrett 2016) and have similarities to the situation identified by Lilly and Ball (1993) as contributing to the introduction and expansion of EM in the 1980s and early 1990s.

Government's dependency on the private sector to provide EM as well as broader criminal justice services is a concern which was highlighted by the overbilling scandal involving G4S and Serco.[3] The question is whether EM contracts are too big to fail. The Public Accounts Committee (House of Commons 2014) raised concerns, in its inquiry into contract management, about the consolidation of criminal justice contracts. It highlighted that a few companies hold many government contracts and questioned whether the Government would or could withdraw from these (House of Commons 2014: para, 31–36). Government practice relating to EM suggests that it

may not be able or willing to do so. Government continued to work with both G4S and Serco on EM and other public services provision after the overbilling scandal and awarded them new contracts in other departments despite giving the impression that this would not do so (NAO 2013; House of Commons 2014). G4S remains EM equipment supplier in England and Wales at the time of writing despite being removed from providing the full service. One of the drivers for this outcome may be that the government recognised, as the Public Accounts Committee and National Audit Office, that whilst G4S and Serco were culpable, so was lax oversight of the contracts by government (NAO 2014). But it was also left with little option given the costs involved in swapping the equipment and associated hardware and software to another provider. This would have involved changing all of 14,000 tags and monitoring units deployed at any one time, training staff in the new systems and so on (see also Lilly and Knepper 1993). By way of example, the process to replace all of the Serco tags in 2015, as a result of its decision to pull out of the EM market, took several months and one which had significant financial and other costs for EMS. Some of the procurement problems which have arisen since the operation has been taken over by EMS have been exacerbated by, if not directly caused by, the decision to remove G4S and Serco as EM service providers earlier than planned (BBC 2013).

Prospective suppliers may also be wary of tendering to run EM services because of the possible risks. These are mainly associated with the potential for reputational damage as a result of high-profile incidents such as further serious offences being committed by individuals under EM. Given that many of the EM providers worldwide also provide a wide range of other services to government, the impact of any scandals may go far beyond EM. This risk is heightened given the high profile of both criminal justice and private sector involvement in EM which results in focussed scrutiny from the media and NGOs. The Netherlands provides another example of a potential risk. In 2015, EM services which had been operated by Tyco were brought under the management of the prison service in order to utilise the overcapacity in that service which resulted from falls in the prison population and the closure of prisons. Similarly, the US federal government has decided to phase out the use of private prisons (The Guardian 2016). It is also conceivable that EM may be brought

under the management of state agencies as a result of changes in government or in policy, although exit payments would be due if this was to happen mid-contract in England and Wales.

The Public Accounts Committee (House of Commons 2014) also alluded to concerns about the vertical as well as horizontal dominance of private sector providers. A small number of providers are now involved in the provision of services right across the criminal justice system with potentially wide-ranging implications. For example, G4S employees working in its private prisons are responsible for making recommendations about who should be released early on Home Detention Curfew (HDC)—a form of early release—on the basis of which G4S were paid for EM services it provided until 2014. Safeguards are in place to ensure that HDC decisions are taken on the basis of criminal justice factors. In the case of HDC, prison service employees make final decisions, but whether such safeguards are sufficient as private sector involvement in offender management evolves is questionable.

Electronic Monitoring Contracts

Having discussed issues relating to procurement, this section now turns its attention to evidence about how the contracts for the provision of EM ran during the lifetime of the 2005 contracts. The original intention was that the 2005 contracts would run for five years, although they were extended for a further two years and then another year to give the government additional time to prepare the procurement exercise. Finding the optimum timescale for contracts with private providers is difficult requiring the balancing of various, often conflicting, factors. If contract periods are too short, EM providers may decide that it is not worth bidding for the contracts, procurement costs are increased and services may not be implemented for long before procurement commences again. On the other hand, if contracts are longer, the advantages of a competitive market may be undermined and contractors may be locked into providing outdated services at higher cost (House of Commons 2014).

Policy Exchange (Geoghegan 2012), a right-leaning think tank, has been critical of the inflexibility of the 2005 EM contracts which resulted

partly from the length of time they were in place. It argued that the contracts had precluded the government from benefiting from falling prices of RF technologies and had stifled innovation and the introduction of emerging technologies (Geoghegan 2012). Longer contract periods for EM equipment may be a particular problem given the pace of change in the technologies. Policymakers and practitioners are also critical of the lack of foresight and 'future-proofing' in the new EM contracts, particularly in relation to the potential wider use of GPS technologies and the utilisation of equipment from more than one supplier which would enable novel or more appropriate equipment to be deployed (Hucklesby and Holdsworth 2016). The need to have flexible contracts which enable changes during the lifetime of the contracts was also highlighted as an important principle by the Public Accounts Committee (House of Commons 2014). It concluded that government had been too focussed on enforcing the terms of contracts as originally agreed rather than being flexible to the changing environment. It suggested that open book clauses should be used in future because they enable contracts to be amended, but these relate only to varying costs over the lifetime of contracts and not to other elements.

EM contracts include service requirements with the potential for fines to be levied if they are not met. Discussion of service requirements is hampered by a lack of transparency resulting from the contracts not being publically available. It has been reported, however, that the contracts are complex, with the 2005 contracts running to 25 documents over 291 pages (CJJI 2008). Income from the contracts is largely derived from fees paid for particular activities related to key performance indicators although a fixed standard charge is also payable. According to Policy Exchange, EM providers were paid during the 2005 contracts on the basis of the number of effective installations and removals of equipment, the number of days individuals were monitored and the number of court hearings relating to breaches the providers attended (Geoghegan 2012).[4] The contracts also required other activities to be carried out including visits to individuals' homes in specified circumstances. A total of 17 reportable service levels were included in the 2005 contracts (CJJI 2008). The Public Accounts Committee (House of Commons 2014) suggested that there were too many performance targets in the contracts and that the targets themselves missed 'what was important around the performance' (para. 47). Similarly,

the CJJI (CJJI 2008: 11) concluded that EM providers were 'mainly carrying out what they were required to do to an adequate standard' but concluded that the use of EM for sentenced offenders was 'meeting the contract but missing the point'. Neither of these reports, however, provided clarity about the factors which contributed to their conclusions.

Service requirements set out in the contracts drive the ways in which EM is delivered and managed, and work is focussed on the targets providers are required to meet primarily because they are linked to payments (Hucklesby 2005). Yet, a managerialist culture and target-driven delivery pervades all criminal justice services whether operated by the public or private sectors and skews and distorts the ways in which services are provided across the criminal justice system. The injection of payments into the equation and the requirement for private sector companies to make profits may well provide additional impetus to target chase or game play, but it is difficult to disentangle the complex drivers of these practices. Some of the arguments made recently demonstrate the complexities of these issues. For example, Policy Exchange (Geoghegan 2012: 33) argues that EM providers are able to manipulate the number of visits to individuals' homes they carry out to fit and remove monitoring equipment, therefore increasing income. But in reality such activities and the associated payments are tightly prescribed in the contract requirements leaving the providers little room for manoeuvre. The targets are clearly aligned with the courts and public's expectations that the equipment should be installed and monitoring commenced as soon as possible. EM providers do prioritise fitting the equipment on individuals and require staff to carry them out within the specified time limits. Field monitoring officers (who visit offenders' homes to fit equipment) are acutely aware of the priority to fit and remove equipment and prioritise these visits over other more routine visits not linked to service level requirements (Hucklesby 2011a). The drivers for their behaviour are undoubtedly linked to managers' requirements, but there is also a very clear sense that they feel obligated to install equipment because it is important for public safety and because the courts require it. They perceive it as their duty, not simply their job, to install the equipment as quickly as possible (Hucklesby 2011a). Service level requirements were not the only or even the most important determinant of their working priorities (Hucklesby 2011a).

Another complicating factor is that the installation and removal of monitoring equipment, requiring visits to individuals' homes, has to take place within specific time periods. The time limits are challenging, given the number of individuals and geographic distances involved. All routine visits must take place within curfew hours and before midnight which means that EM providers usually have no more than a five-hour window to visit residences and install or remove the equipment (Hucklesby and Holdsworth 2016). As a consequence, the driver of service levels is not simply the number of equipment installations and removals which are carried out but the time it takes to do them. Time pressures may mean that equipment installations are not always conducted as thoroughly as they should be. For instance, observations of equipment installations suggest that offenders and other household members are not always made fully aware of curfew requirements and/or fully understand them (Hucklesby 2005; Hucklesby and Holdsworth 2016). However, the main cause of visits to offenders' place of residence and the fitting of equipment being rushed, or not done at all, are safety issues rather than time pressures (Hucklesby 2011a). Monitoring officers' primary concern is for their personal safety and, this alongside their working credo, influences the time spent in the accommodation of those who were, or about to be, monitored (Hucklesby 2011a).

Tensions exist in relation to how much latitude to allow contractors to operate within the contract requirements. On the one hand, if contracts are very tightly worded with very specific targets, they may stifle corrective or innovative practices. There are some examples of this in relation to how EM contracts operate. As discussed above, the contracts set out specific requirements in most areas of service delivery and even when these cause blockages or inefficiencies it can be difficult to change them. Innovating or changing practices not linked directly to performance measures is relatively straightforward, but most changes to the way EM operates require the permission of the NOMS. This may result in a long process of negotiation and inevitable delays which were also reported to exist in the private prison estate during research interviews (Hucklesby and Holdsworth 2016). On the other hand, if contracts are not sufficiently tight, then accountability mechanisms may not be robust. This is particularly important in the criminal justice arena where individuals'

freedom of movement is at stake. However carefully contracts are worded, they are open to different interpretations. The overcharging scandal involving G4S and Serco illustrates this well. According to the National Audit Office (NAO 2013), there are three disputed charging practices which the EM providers argued were within the letter, if not the spirit, of the contract. One, EM providers charged NOMS according to the number of orders to monitor they received from courts and prisons rather than the number of individuals monitored. Consequently, if individuals were being monitored on different orders at the same time providers were being paid more than once. Whilst this is certainly ethically challengeable, it begs the question of why this situation was not foreseen by the NOMS in the original contract and how it continued for such a long period of time, especially given the proportion of defendants/offenders who are subject to multiple remands and sentences at any one time. Two, EM providers were charging for monitoring individuals who were not being monitored. Systems were set up which required an end date to be entered before monitoring would cease and in turn this required notification from an authorising authority to be received by the provider. This is understandable given the potential consequences of failing to monitor individuals who should have been. Yet, for various reasons, providers were not (and are still not) always made aware of end dates, that is, when EM should cease, so charged for periods when in fact individuals were not being actively monitored. Some of these were clearly cases in which providers should not have charged NOMS, but in other cases, it is less clear cut, for example, when the courts failed to inform providers that cases had been completed or defendants were no longer on bail. Three, providers charged monitoring fees from the first day of installation whether or not the equipment was installed then or the day after or not at all. This practice seems to be more clearly a 'sharp' business practice which apparently went undetected for a significant period of time.

Contract terms can also have unintended consequences which may have significant implications and costs for the contractors and other criminal justice agencies. An example is the current requirement for contractors to inform the police, prisons or probation services each and every time an individual breaches their curfew which may happen on multiple occasions in different curfew periods. On paper this requirement appears

to be sensible and indeed it is what would be expected. In reality, however, it can result in multiple breach statements being sent to criminal justice agencies by contractors. This situation occurs when breaches happen over successive curfew periods and will continue until the contractor is advised that the electronic monitoring requirement has been removed. Ensuring that the police and probation staff are aware of multiple breaches may strengthen the case for taking action against individuals, but it also leads to them to describe being 'bombarded' with breach statements, sometimes every day over a period of weeks for one individual. Dealing with what is viewed as unnecessary information increases the workload of statutory agencies because they already should have instigated breach proceedings or set procedures in motion to arrest individuals.

The EM contracts have evolved over time both as a result of new procurement exercises and during contract periods. The changes have been driven primarily to cut costs and have had the effect of reducing face-to-face contact between the tagged individuals and the monitoring company. This is likely to have a negative impact on compliance levels given that such encounters provide an opportunity to reinforce messages about compliance (Hucklesby 2009). Examples of such changes in practice include the withdrawal of the 28 days' visit for all tagged individuals and the removal of the requirement for home visits in some instances of non-compliance. A third example is the changes which were made to the timing of the removal of equipment installed pre-trial, that is, as a condition of bail (Geoghegan 2012). Until 2010 tags were removed on the night before each court appearance and re-installed if defendants were bailed again with an EM-monitored curfew condition. Consequently, EM providers were paid on multiple occasions for installing and removing equipment on the same individuals during the time they were on bail. Since 2010, tags are removed only when the courts have informed the EM contractor that defendants are no longer on bail. According to Policy Exchange (Geoghegan 2012: 34–35), this reduced the number of new starts of EM between 2010/2011 and 2011/2012. However, these figures must be treated cautiously given that we now know that statistics prior to 2013 are unreliable and include cases in which individuals were not being monitored (NAO 2013). It can be assumed that the legality of the new practice was explored by the Ministry of Justice, but it certainly raises

fundamental questions about the status of remanded defendants whilst in the custody of the court. More problematically, practitioners have reported that delays occur in courts communicating with EM providers about the ending of bail cases resulting in defendants being tagged for up to a week whilst no longer on bail. Such cases provide some of the examples discussed above relating to breach proceedings, whereby the police receive breach notices from EM providers which may result in arrests that relate to defendants who are not on bail. The communication delays also increase costs as the EM providers are paid per tagged day. It is to issues relating to costs that this chapter now turns.

Electronic Monitoring and Costs

Costs are one of the greatest areas of controversy in debates about private sector involvement in criminal justice (Cavadino et al. 2013). There is a lack of transparency about the true costs of private sector provision of criminal justice services. This arises partly because the contracts are not published, but there are also significant costs which are not usually included in calculations. The situation is no different for EM. Various reports purport to demonstrate that EM is cost-effective relying largely on data which appear to show that EM is considerably cheaper than imprisonment (Lockhart-Miram et al. 2015; NAO 2006). The comparisons are made on a cost-per-day basis. Making such comparisons assumes that EM always operates as an alternative to custody, thus reducing the prison population; however, the extent to which EM does operate in this way is impossible to gauge accurately (Hucklesby et al. 2016). Some uses of EM have a more direct impact of the prison population. For instance, HDC reduces directly the number of days prisoners spend in custody, whereas other forms of EM are more likely to draw populations from both custody and bail/community sentences. The use of EM at the pre-trial stage should reduce the time spent in custody for those convicted and sentenced to imprisonment because the period spent on EM is deducted from any prison sentence. Published data suggest that EM may be more expensive than other forms of community supervision, but the debate is again mudded by a lack of transparency about what the costs

include and exclude and the comparability of the samples. The remainder of this section examines the evidence about the published and hidden costs of EM.

The government's 2013 protracted procurement exercise was premised on the view that the 2005 contracts were not delivering value for money and that by increasing competition costs would fall and value for money would increase. Its view was supported by the limited evidence which is publicly available. Overall costs of EM had increased at a time when the cost of EM equipment was falling, caseloads were rising and economies of scale might have been expected. According to the National Audit Office (2013), the average cost per case had risen from £876 in 2009–2010 to £1200 in 2012–2013, and the government expenditure on EM had increased from £94 million in 2009–2010 to £117 million when the number of cases in which EM was recorded remained the same. Policy Exchange (Geoghegan 2012) suggested that the price differential between what was paid by the UK government (£13.14 per day) compared with the cost in the USA (£8.29 per day) in 2011–2012 was even greater. However, comparing costs in different jurisdictions is complex and can be misleading. For example, Policy Exchange did not compare like with like, given that most of the core service tasks in the US are undertaken by supervising (state) agencies and not the EM contractors as is the case in England and Wales.

The NOMS EM schemes pay private contractors a 'block grant' and then on the basis of a number of indicators, including the number of individuals who are being monitored per day. By contrast, most police forces purchase a fixed number of GPS units meaning that a higher proportion of the costs are fixed. By way of example, the cost of the equipment in one force has been reported to be £100,000 per annum for a total of 40 tags, that is, £2500 per tag per year. A number of tags need to remain unused to provide spare units, so the cost per tag is greater even if tags are nearly fully utilised. This payment system puts pressure on the police to keep as many of the tags in use at any one time. Consequently, police officers report that they 'persuade' offenders to wear tags, despite the fact that the scheme is supposedly voluntary, in order to ensure that tags are utilised to the greatest extent possible. Despite this, tags are underused in many forces suggesting that supply is greater than demand.

The quoted costs of EM do not take account of significant elements of expenditure. For instance, costs connected with the day-to-day operation of EM are not always factored into calculations, most notably those which fall onto criminal justice agencies and which are often hidden. For instance, the police, courts and prisons are responsible for processing and dealing with variations in EM conditions including changes in curfew hours and so on. Probation services carry out risk and accommodation assessments for HDC decisions. The police are tasked with arresting defendants/offenders who have breached their EM requirements. The latter task may be considerable particularly in large urban areas. Several police forces have set up specific procedures to process the large volume of cases including tasking a single point of contact to bring about speedy arrests. Any wider use of GPS is likely to increase the work of the police and the related costs because breach rates are expected to rise.

The much newer police tracking schemes also involve additional costs which are not accounted for in published calculations, for example, police staff time in administrating and working with offenders or analyst's time in working with GPS-derived data. For example, in one force, an analyst is employed full time to harvest intelligence from GPS data. Yet, the police argue strongly that the schemes save money and are cost efficient in a number of ways. First, the GPS tags replace the need for police staff to monitor offenders closely including numerous visits to their homes. Second, they reduce investigation costs including the use of arrest and detention by exonerating individuals who would otherwise be prime suspects whilst potentially implicating others quickly and efficiently. Most forces are able to provide examples of cases in which GPS has contributed to the identification of suspects, and in some cases convictions, yet there is no systematic evidence that GPS tags are cost efficient in the ways outlined above. Some forces also claim that their use of GPS tags has a significant impact on offending behaviour although there has been very limited evaluation of the schemes so far (Hudson and Jones 2016).

Changes to the way in which EM operates will also impact upon cost calculations which may give the impression that costs have fallen when in fact they have been shifted onto other agencies. For example, EM providers were responsible for prosecuting breaches of stand-alone community and suspended sentence orders under the 2005 contracts. This responsi-

bility has now passed to the National Probation Service (NPS). In order to facilitate this new role, the 60 or so staff who were responsible for prosecuting breaches in G4S and Serco were transferred across via Transfer of Undertakings (TUPE) into the NPS.

A further element of costs not included in published figures relates to procurement and contract management. In relation to procurement, preparations for the current round of tendering began in 2011 and the exercise is still on-going in mid-2016. The costs, although unquantifiable and unpublished, must be significant for both the government and providers. Once contracts have been awarded, compliance with the contracts and with legal obligations are monitored by NOMs. Since the beginning of EM in England and Wales, the responsibility for contract management has been undertaken by a small team at the Ministry of Justice in London. The team has been recently expanded and now includes around 60 staff based in London with further groups embedded into EMS in its two main locations. Its role is to audit and observe all of EMS' work much more closely than in the past. Its functions were strengthened partly as a result of criticisms directed at the management of the 2005 contracts. Weak contract management was identified as a contributory factor in the G4S and Serco overcharging scandal. A series of failings on the part of government were identified including focussing on procurement at the expense of contract management, a lack of expertise in contract management and a lack of qualified personnel (NAO 2014). It resulted in an 'asymmetry' between the skills of the government and the contractors which has continued (House of Commons 2014). The Public Accounts Committee (House of Commons 2014) identified a need to employ high-calibre individuals to match the skills available in the private sector recognising that this would be challenging given the pay and reward structures of the civil service. Strengthening contract management generally and employing suitably qualified staff will inevitably lead to an increase in the financial costs of EM.

In addition to the day-to-day costs of contract management, there may be significant costs involved when contracts do not operate as planned, again illustrated by the scandal involving G4S and Serco. The forensic audit carried out by PWC on behalf of the Ministry of Justice into the G4S and Serco contracts alone cost in excess of £2 million (NAO 2013). The costs are considerably higher with additional scrutiny by the National

Audit Office and a full criminal investigation by the Serious Fraud Office (which is still unresolved at the time of writing). The scandal also resulted in a more thorough and wide-ranging investigation into the management of government contracts with private providers to run public services (House of Commons 2014).

Multiagency Working in Electronic Monitoring

EM can be singled out as a particularly challenging area of multi-agency working. It requires close liaison with nearly all of criminal justice agencies because of its use across almost all stages of the criminal justice process. Unlike other privatised areas of criminal justice, it has never been run by the statutory sector, resulting in limited knowledge and understanding of its operation outside of the private sector providers. Suspicion and scepticism about the potential for the private sector to make a positive contribution to the criminal justice system remain, exacerbated by governments' use of privatisation as a tool to threaten criminal justice agencies if they are perceived to be failing. Strong ethical and ideological arguments against private sector involvement in criminal justice also continue to be prevalent. These specific challenges add to the already complex environment of multi-agency working. Despite the more routine nature of multi-agency working, a gap remains between theory and practice (Pycroft and Gough 2010). The structures of criminal justice, silos and the strong cultures which pervade it make multi-agency working difficult and time-consuming. Such contextual factors are important because they raise questions about the capacity for effective multi-agency working between private EM providers and the statutory sector agencies which this section explores.

Effective multi-agency working requires trust between the parties involved and has been described as the lubricant of the criminal justice process (Blau 1964; Fukuyama 1996; Luhmann 1988). Trust is built through regular, reciprocal interactions between organisations (Blau 1964; Fukuyama 1996). The question is whether trust is able to exist in the same way and to a similar extent when the private sector is one of the partners; that is, when relationships are contractual, rather than when all

parties are from the statutory sector and when, arguably, relationships are more likely to be based on shared goals and understanding. Braithwaite (1998) and others distinguish between two forms of trust: Braithwaite labels these 'thick' and 'thin', whilst others use the terms 'trust' and 'confidence' to describe a similar dichotomy (Seligman 1997; Tonkiss and Passey 1999, 2000). Essentially, 'thick' trust is built on strong relationships, good will and shared identities. By contrast, 'thin' trust or 'confidence' is based on obligation, that is, that individuals or organisations are required legally or contractually to deliver a service. Whereas Tonkiss and Passey argue that contractual relationships are incompatible with (thick) trust relying instead on 'thin' trust or confidence, Braithwaite (1998) suggests that there is a relationship between the two because those who comply with obligations are more likely to be trusted. What becomes clear from what follows in the remainder of this section is that the relationship between EM provider(s) and statutory agencies has not been a close reciprocal working relationship to date and that it is based more on contractual arms-length relationships rather than 'thick' trust.

Electronic monitoring has never been fully integrated into the criminal justice system in England and Wales. The reasons for this are both structural and ideological. The original trials in the late 1980s involved its use as a condition of bail. This is an area in which the probation service has always been only tangentially involved. This was mainly because providing pre-trial services was not viewed as a legitimate arena for them to work and potentially took valuable resources away from working with convicted offenders (Hucklesby 2011b). Opposition to the use of EM by the probation service was much broader. For example, the National Association of Probation Officers (NAPO) actively campaigned against its use and the Association of Chief Officers of Probation (ACOP) was originally against it although their position softened over time (Mair and Nellis 2013). This opposition coupled with strong ideological commitment of the then Conservative government to privatisation resulted in the bail pilot and subsequent extensions of EM via curfew orders and Home Detention Curfews being operated by private sector companies and at arm's-length from criminal justice agencies. The detachment has largely continued although outright opposition to EM from the probation service has mellowed with time (Bottomley et al. 2004; Mair and Nellis 2013). It is, however, difficult to

disentangle whether opposition to EM is directed at EM itself or the private sector or both. There is still widespread opposition to private sector involvement in offender management from certain sectors of probation services despite its own recent privatisation.

The CJJI report referred to at the beginning of this chapter highlighted that EM was not integrated sufficiently into the criminal justice system concluding that '…we found a missed opportunity to integrate curfews into mainstream offender management practice; at present they operate as something of an anomaly with the National Offender Management Service' (CJJI 2008: 11). The CJJI found that offender managers tended to view curfews as 'separate punishments outside of their jurisdiction' (CJJI 2008: 33) and that there was little if any contact between the EM providers and offender managers. Research has continued to highlight criminal justice professionals' lack of knowledge and understanding of EM generally and the specific details of how it operates (Bottomley et al. 2004; Hucklesby and Holdsworth 2016).

Also noted on numerous occasions has been the difficult and minimal communication between EM providers and criminal justice agencies. EM providers do not receive much of the information about offenders which is routinely available to criminal justice agencies and viewed as vital to the work of offender managers such as details of offences, mental health issues or risk potentially leaving their staff in risky situations (CJJI 2012; Hucklesby 2011a; Hucklesby and Holdsworth 2016). Both the initial CJJI report (2008) and the follow-up inspection report published several years later (CJJI 2012) found inadequacies in the information communicated to the EM providers by the courts. In 2012 less than half the cases reviewed had all the information necessary for EM to be imposed included. Hucklesby and Holdsworth (2016) identified that problems remain with addresses inaccurately recorded on information sent to EM providers and EM providers not being made aware of changes in curfew hours or bail conditions. Consequently, equipment is not being installed and unnecessary breach action is being taken. At least one police force reported having to 'quality assure' breach statements before arresting defendants and offenders to ensure that breaches reported to them by contractors are real breaches. The CJJI report (2012) also highlighted cases in which information about the length of EM curfew requirement was inaccurate. Courts identified

curfew requirement lengths in multiple formats (days, weeks, months), whereas EM providers always use days (CJJI 2012). Bottomley et al. (2004) found that EM providers were not made aware whether curfew requirements were standalone or combined with another community sentence—a situation which remained in 2012 (CJJI 2012) and continues (Hucklesby and Holdsworth 2016). This was important prior to changes in enforcement procedures in 2014 following the creation of the Community Rehabilitation Companies (CRCs) because who was responsible for enforcing curfew requirements differed depending on the type of order. Now there is the potential for further confusion given that cases might be managed by the National Probation Service or CRCs.

Lack of communication also works in the opposite direction. Offender managers do not generally receive details of all violations, only receiving notification once breach thresholds have been reached (CJJI 2008; Hucklesby and Holdsworth 2016; McIvor and Graham 2016). There are physical barriers which prevent seamless information exchange such as a lack of shared IT systems or at least access to them, but there is also underlying issues related to contracts and trust. For example, the practice of providing information to criminal justice agencies only once where breach thresholds have been reached is stipulated in the contract and prevents offender managers, courts and other groups from being overloaded with information. Yet, the information may be useful. For example, probation staff may use it during supervision to motivate offenders to comply. Whilst issues related to data sharing have been highlighted in this section, the next and final section examines issues with the management of data routinely collected as a result of using EM.

Data Management

The privatisation debate has been largely silent on the issues of data security and protection, despite the large amount of data which is now collected, collated and stored on offenders by a range of agencies. Electronic monitoring, especially GPS tracking, produces large amounts of potentially sensitive data about individuals. It provides location data but also information about who wearers are associating with and which addresses

they visit and how frequently. It is also possible to compare EM data with crime data to implicate or exonerate individuals. For all of these reasons, it is vital that EM data are kept securely and are only accessible to specified individuals. Private sector involvement makes doing this more complex than if EM was operated solely from within the state-run criminal justice system. In the Netherlands, concerns about EM data being held by private providers was one of the drivers for nationalising EM (Boone et al. 2016).

European data protection rules require that personal data are stored within Europe to protect it from being used in unauthorised ways and to protect the rights and privacy of individuals. For the past and current EM providers, this requirement has been adhered to. However, it is a potential limitation for some providers who operate outside of Europe. For example, SCRAM which is, at the time of writing, providing the equipment for the London Mayor's Office for Police and Crime (MOPAC) alcohol monitoring pilot is based in the USA (Pepper and Dawson 2015, 2016). Data from its equipment are sent to servers in the USA. Consequently, a specific procedure has been set up to manage the process whereby SCRAM compliance data are sent back to the UK and only then is it linked to specific individuals via a database which holds personal information. This process is more cumbersome and potentially adds costs to any process of information exchange and will be difficult to scale up if the pilot is extended.

EM data are always stored on the servers of the equipment providers resulting in private companies having large banks of data relating to individuals who have been monitored. This raises significant issues about confidentiality and privacy of individuals' data and opens up the possibility that data may be used for unscrupulous purposes. These data may be directly accessible to criminal justice agencies (in the case of Buddi), or they may have to request specific details. In England and Wales, the Ministry of Justice owns the data from its schemes, but the fact that they are stored by private sector companies makes accessing it more complex than it might otherwise be. Currently, NOMs has to make specific requests to access data from the EM providers and is reliant upon them providing it. The non-accessibility of the data to government means that it or other criminal justice agencies are unable to independently mine the information for auditing or any other purpose.

Concluding Comments

EM is the only nationwide privatised criminal justice service which is wholly operated by the private sector and which has never been managed in the public sector. There is general agreement amongst policymakers and practitioners that the private sector delivery model has become embedded and accepted. These groups also nearly all expect the status quo to continue. For these reasons, EM is synonymous with privatisation in the UK. Indeed, it is unclear whether objections raised in relation to EM relate predominately to EM as a criminal justice intervention or to its privatised status. What has been made clear in this chapter, by drawing on original data from multiple studies, is that the system for delivering EM is highly complex and the involvement of the private sector is a source of considerable complications: structures, processes and procedures have been put in place to ensure an acceptable service is provided according to contract requirements. Inevitability these add to the operating costs of government, statutory agencies and private sector providers bringing into question the claims of cost efficiencies of private sector involvement. The degree to which a weakened sense of shared cultures and vision and trust between private sector providers and statutory agencies compounds the complexities and impacts upon service delivery and take-up of EM is less tangible but no less important.

Of particular concern is the ways in which private sector delivery has impacted upon the potential of EM to be an effective criminal justice measure. Whilst there are some examples of innovative practices, generally progress has been constrained by the contracts which are based on outdated and incomplete knowledge of EM from the late 1990s. Incremental changes to contracts have focussed on cutting costs to the detriment of service levels and have generally added to, rather than reduced, layers of complexity. The government's response to the increasing costs of EM and criticisms of its contract management has been to split the EM operation into four lots in an attempt to have more control over how EM is operated and the associated costs. In doing so, it have added yet more layers of complexity to what was already a complex system and reduced the likelihood of improved service delivery models being adopted. Private sector involvement has also resulted in stan-

dardised equipment and routinised procedures which have reduced the responsiveness of EM to individuals' circumstances and needs and have potentially led to unequal and discriminatory outcomes.

This analysis leads to several pertinent questions: does the statutory sector have the capacity and capability to run EM, does it want to, and would it result in a more innovative, humane and responsive criminal justice measure? Whilst EM is made more complex by the involvement of the private sector, it is a challenging criminal justice tool to operate well. It is the only criminal justice measure available pre- and post-sentence and post-prison which requires a geographically dispersed mobile 24/7 service delivery model within stringent legal and policy requirements. It therefore requires a nimble responsive service delivery model which has hitherto not existed in the statutory sector responsible for offender management. Given the current context of shrinking budgets within statutory agencies, the privatisation of probation services and the historical and continuing antipathy of the probation service to EM, it is difficult to foresee that offender management services (prisons and probation) would have the capacity, capability or be enthusiastic about taking on the additional responsibilities. It is also important to recognise that whilst state-operated EM now exists in most of Europe, none provide EM on the same scale of, or are required to work within the stringent rules which pertain to EM in, England and Wales (Hucklesby et al. 2016).

By contrast, the police arguably have the infrastructure available to operate EM. Both the police and most Police and Crime Commissioners have become enthusiastic users and proponents of EM (Geoghegan 2012; Hucklesby and Holdsworth 2016). Some police representatives are keen to see their role in EM increase, suggesting that they would be able to operate it more effectively than at present. EM has already enabled the police to gain a greater foothold in offender management through the 'voluntary' IOM schemes. Yet, it is unlikely that this option would bring about an EM or an offender management landscape based primarily on rehabilitative goals. Tensions are already apparent in existing schemes between 'offender management' goals of desistance on the one hand and surveillance and crime control on the other hand. History and current practice suggests that the crime control capabilities provided by EM would dominate if the police were to operate it more extensively. Consequently, state-operated EM may not result in a more humane, responsive criminal justice measure but a

crime control measure utilised primarily for surveillance and intelligence-gathering functions. In this context relying solely on ideological and ethical arguments to argue for state-run EM or indeed any criminal justice measure, without reference to operational evidence, looks naïve. More nuanced and evidence-based arguments are required if the acceptance of private sector involvement in EM and other criminal justice services is to be challenged and EM and other criminal justice measures are to be delivered in humane and responsive ways.

Notes

1. Radio-frequency technology enables remote monitoring of curfew requirements by monitoring if individuals are present within a specified area, usually their homes. It cannot track individuals once they have left the premises.
2. GPS tracking enables monitoring of individuals wherever they are located. It produces tracks which can be scrutinised in real time or retrospectively to show the movements of monitored individuals. It is often used in conjunction with exclusion zones when authorities are alerted if individuals enter them.
3. G4S and Serco were removed from operating the EM contracts in Spring 2014 as a result of overcharging for EM services (see below). The companies are subject to a Serious Fraud Office investigation which has not reported at the time of writing (NAO 2013).
4. The latter is now not relevant because responsibility for court hearings has been taken over by the National Probation Service.

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9

'The Treasure Island of the EM Market': State-Commercial Collaboration and Electronic Monitoring in England and Wales

Mike Nellis

Since the electronic monitoring (EM) of offenders was first imagined in the USA in the 1960s, there has always been the hope, and indeed expectation, among certain of its champions that some form of it might eventually have a transformational and—in their eyes—improving effect on existing penal practices, notably the near abolition of incarceration (see Nellis 2013 for an overview). This techno-utopian dream has never died (Yeh 2010, 2014). Worldwide, and in the USA most of all, the reality of EM—its technical ingenuity notwithstanding—has been so much more mundane. Over the last 40 years, various EM technologies have become an enduring presence in many penal systems: they have undoubtedly contributed something to crime reduction in individual cases and arguably helped in small ways to manage the size of *some* prison populations—but without significantly reducing them (Nellis et al. 2013). EM everywhere has been shaped for better or worse by prevailing penal cultures and has functioned largely as a modernising adjunct to traditional penal measures, what Christensen (2016) describes as a 'sustaining innovation', nothing more. Could it ever be otherwise?

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This chapter will suggest that between 2012 and 2015 England and Wales—one of the earliest and largest users of radio-frequency (RF) EM in Europe, perceived as 'the treasure island of the EM market'[1] by the companies and corporations who supply equipment and systems because of the lucrative business opportunities it has always afforded—attempted something bolder with EM. The Ministry of Justice, abetted by the think tank Policy Exchange, pursued the idea that the deterrent effects of monitoring large numbers of offenders with Global Positioning System (GPS) technology would have a transformational effect on reoffending. The intended shift from approximately 15,000 offenders and suspects per day on EM-curfews to 75,000 per day under satellite surveillance by 2020 can be understood as a calculated *first attempt* at 'disruptive innovation' using monitoring technology.[2] Aptly enough, the initiative was called 'New World'.

As defined by Christensen (2016) in a purely commercial context 'disruptive innovation' invariably combines a new technology *and* a new business model, the aim (or danger!) being to overthrow and supersede incumbent producers and practices in a particular field and embed demand for a different way of doing things. The term has been popularised (more loosely) in Silicon Valley-style discourses about past and present digital disruptions in fields ranging from journalism and warfare to retailing, education and transportation. Governments, it is clear, can do 'disruption' too, but only in collaboration with commercial 'tech' providers from whose corporate milieu the activating vision springs.

Ostensibly, the Ministry's attempted disruption failed; by mid-2015 the architecture that was to have delivered 75,000 monitorees by 2020 had not been set in place. At the time of writing (September 2016) the Ministry had constructed a fallback position, modestly establishing a series of GPS tracking pilots, but a resumed disruption, a second iteration, is not unlikely. This chapter will suggest that the Ministry's failure, once exposed, was deeply revealing about the neoliberal penal imaginary that is steadily consolidating in England and Wales and that what was actually disrupted by such misplaced confidence in mass satellite tracking was not the undoubtedly high prison population but the more vulnerable

Probation Service, which was downgraded from a national public service to a fragmented, mostly privatised one, within the same broad strategic framework that had promised the upgrade to GPS.

The Ministry of Justice's GPS initiative took place against a broader government commitment to e-governance, to transforming the public sector through the use of commercially available digital technologies (John 2014). The Cabinet Office's leadership of this initiative sometimes created tensions with otherwise autonomous government ministries, including Justice. Public services, wherever possible, were to become 'digital by default' because this both made them cheaper to deliver and empowered and enriched innovative digital technology manufacturers, often small or medium enterprises (SMEs) in Britain whose fortunes the business-conscious government wished to encourage (Maude 2014). Another Cabinet Office watchword, 'commercial common sense'—denoting the use of market mechanisms (always state-regulated to some degree) to deliver best quality at low prices—was infused into other ministries with a view to destabilising their established notions of best practice.

These quintessentially neoliberal protocols helped frame the way in which the Ministry of Justice sought to implement its third EM contract: there were always more than merely 'penal' considerations in play. Although penologists have been slow to recognise it (although see Brown 2006), EM technologies are, at root, ordinary digital technologies customised to suit prescribed penal purposes and, as such, can be imbued by their commercial and governmental champions with the same logic, the same promise as digital technologies more generally, with challenging consequences for existing practice. In an era of ubiquitous, multi-platform digital connectedness, 'coercive connectedness', ordered by a court as a time-limited sanction, may not seem wrong or even strange. The abiding lesson of recent, hubristic developments in the Ministry of Justice is that the oft-discussed 'privatisation of EM' cannot be fully understood apart from the commercial and governmental exploitation of alluring digital technologies, that 'digital sociology' (Orton-Johnson and Prior 2013) is required to analyse it, and that while critical responses to it must indeed affirm specifically penal ethics an 'ethics of technology' also needs to be in play.

Contracting-Out Electronic Monitoring 1999–2012

England and Wales was the first European jurisdiction to pilot EM, very briefly, in 1989/1990. The then Conservative government introduced in part to push the Probation Service away from social work, towards 'punishment in the community', pitching stand-alone EM-curfews (confining people to their homes for part of the day using short-range radio-frequency (RF) technology) as a more viable alternative to prison than probation supervision (Nellis 1991). Probation's (at the time) heartfelt belief that EM surveillance was incompatible with social work unfortunately played into the government's emerging ideological interest in 'privatising' (or more specifically, 'contracting-out') public services. Over the years this policy created a pool of large commercial providers—including G4S, Serco and Capita—who took on work across a range of government departments, from employment to immigration and defence, as well as criminal justice (Paterson 2013; White 2016).

Both the first—local—EM pilots in 1989/1990; the second, regional, ones in 1996/1999; and the nationwide roll-out in 1999 (under a New Labour government) were all 'outsourced' to commercial organisations. In the first national contract between 1999 and 2005, there were three private sector providers, each providing a full service in different parts of the country. This was reduced to two providers in the second contract between 2006 and 2012/2013, split roughly between north and south (Ministry of Justice 2012b: para 2:1). The scheme, the largest in Europe, applied to both juveniles and adults, in bail, sentencing, early release and parole contexts and eventually (in a tiny number of cases) to the monitoring of unconvicted terrorist suspects. Central government policies on the Probation Service and EM ran on largely 'parallel tracks', rivals rather than partners, in sharp contrast to mainland European countries which tended to integrate (and thereby shape and subordinate) EM within their Probation Services, using the private sector only as a supplier of equipment, and for technical back-up (Mair and Nellis 2013; Nellis 2014; Paterson 2007).

The small Electronic Monitoring Team which ran the scheme was originally in the Home Office, but followed the Ministry of Justice when it was split away in 2007. Periodic official evaluations showed mostly high rates of offender compliance with EM, but Mair (2006) suspected that political commitment to it always had drivers beyond empirical research into its penal utility. An early attempt to pilot and evaluate GPS tracking in 2005–2007 was not mainstreamed when government switched from capping the prison population, to which it would have contributed, to permitting its further growth (Nellis 2005, 2009; Shute 2007). A National Audit Office (NAO) (2006) report gave timely legitimacy to EM as 'value for money' but suggested that lower reoffending rates would be achieved if EM was better integrated with other rehabilitative measures. A House of Commons Committee of Public Accounts (2006) report agreed and aspired to end 'parallel tracks' policy-making.

Despite some small gestures towards integration, this never happened. Two joint police, court and probation inspections of EM identified endemic and ongoing communication difficulties between local and central statutory agencies and the EM companies, reflecting the policy split, which made integrated working, both systemically and with individual offenders, an unduly 'complicated business' (Criminal Justice Joint Inspection 2008, 2012; Nellis 2011). They stopped short of questioning 'privatisation' as such—official Inspectorates were mandated to criticise operations, never policy—but in an aslant way they depicted the prevailing division of labour as devoid of penal sense and unamenable to reform.

On the eve of the third contract there were approximately 15,000 people per day undergoing EM, with 116, 000 orders made annually (Ministry of Justice 2012a, para 2:22). 'Community Orders typically accounted for c50 per cent of demand in any one year, Bail Orders c35 per cent and releases on license c15 per cent'. The Ministry told potential contractors that expenditure on EM 'in the 2010/11 financial year [was] c£100m', which made 'it one of the single largest procured services provided to the Ministry of Justice' (Ministry of Justice 2012a, para 2:22). The third contract aimed to make it larger still.

The Coalition Government and Transforming Rehabilitation

A Conservative-led Coalition government had come to power in May 2010 armed with polices that had been significantly shaped by right-wing think tanks Policy Exchange and the Centre for Social Justice. There was, nonetheless, marked continuity with its New Labour predecessor, not least its confidence in digital technology as a means of reforming the public sector. The Ministry of Justice refocused Labour's *Transforming Justice* agenda, (begun in 2009), as *Transforming Rehabilitation*, in the first round of cuts to departmental budgets after the 2008 'banking crash'. These aimed not at 'more for less' but what it called 'better for less' public services, by harnessing innovative voluntary and private organisations which would gradually absorb a range of social care functions from the state, at lower cost (Cabinet Office 2010; Macrae et al. 2011). More generally, the Coalition imposed 'austerity' and 'deficit reduction' strategies on welfare and benefit systems, using them to achieve enduring Conservative ambitions to dismantle a long-reviled public sector that they now insisted was unaffordable (Burke and Collett 2015).

In the name of a supposed 'rehabilitation revolution', the Coalition reiterated the need for tougher community sentences which had first surfaced in 'punishment in the community' in the 1980s (Ministry of Justice 2010). Its *Punishment and Reform* consultation (Ministry of Justice 2012b) retained New Labour's single community order for adult offenders introduced in 2003 (which comprised a menu of 14 selectable and mixable requirements—for unpaid work, EM-curfews, a range of offending behaviour programmes and measures to address drug, alcohol and mental health problems, etc.). Amidst an eclectic emphasis on reparation, restorative justice, revitalised fines, asset confiscation and driving bans, the Coalition also announced the expanded use of EM—now in the form of GPS tracking—to monitor and enforce existing community order requirements as well as proposed new requirements for exclusion, alcohol abstinence and foreign travel (Ministry of Justice 2012b; paras 44–60).

Proposals to recalibrate the punitiveness of EM-curfews (increasing the daily hours of EM from 12 to 16, and the requirement length from 6

to 12 months), and to introduce alcohol monitoring, were enacted in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. *Punishment and Reform* further proposed more 'creative and alternative uses of electronic monitoring technology' but was silent on matters of scale and purpose (other than increased punitiveness). Existing EM-curfews, combined with police oversight of offender's' 'whereabouts in the interests of crime prevention' (para 37), were deemed 'positive' (para 50) but must now be superseded:

> It is a strategic objective for the competition of the new EM contracts to introduce location monitoring technologies such as GPS (Global Positioning System) and GSM (Global System for Mobile Communications), which have advanced since the pilots, and could be used to strengthen community orders in the future. This will include consideration of how location monitoring technologies could be combined with existing RF capability, for example. (Ministry of Justice 2012b: para 52)

The Ministry stated explicitly that 'we do not want to see community sentences replace custodial sentences' (para 20). This was a departure from earlier, somewhat fudged, iterations of the relationship between community and custodial measures, but the ultimate paradox of 'the rehabilitation revolution' was the government's plan—driven forward by Chris Grayling, its second Minister of Justice—to contract-out 70 per cent of the Probation Service's low- and medium-risk offenders to 16 (later 21) 'community rehabilitation companies' (CRCs), run on a 'payment by results' model, leaving the 30 per cent high-risk cases in a new, centrally run 'National Probation Service (NPS)' (Ministry of Justice 2011, 2012b). This twin-track strategy, to simultaneously downgrade Probation from a state service to a commercial enterprise, and to upgrade EM from RF to GPS, for use on a larger scale, was indeed a transformational, 'doing things differently' moment in offender supervision in England and Wales (although the plans to expand EM were, in fact, little noticed). The Probation Service understandably feared that the established EM providers, G4S and Serco, and other companies already involved in running private prisons, would bid successfully to become CRCs (Annison et al. 2014; Fitzgibbon and Lea 2014; Nellis 2014). In

the event, this did not happen, because the Ministry's unfolding EM strategy inadvertently revealed financial improprieties in both companies. Buddi, a new GPS company which began work with the police, and a report from the Policy Exchange think tank whose vision for EM extrapolated from Buddi's achievements played early parts in this process.

Buddi and the Police GPS Schemes

Punishment and Reform (Ministry of Justice 2012b) had nonchalantly acknowledged that 'EM technology to gather surveillance information on the movements of … prolific offenders on licence' (para 56) was already in use, but failed to mention that this had begun controversially, outwith the Ministry of Justice and without its approval. In 2010, Hertfordshire Police, wanting more cost-effective, 'better for less' controls over the priority and prolific offenders (PPOs) in its Integrated Offender Management (IOM) programme, made a separate arrangement with a British GPS-tracking company called Buddi, founded in 2005, without asking the Ministry of Justice. (West Yorkshire Police had tried to do this in 2009 through official channels and been refused.) Buddi's initial contracts had been with health services, the first monitoring dementia patients, the second monitoring prisoners on temporary leave from a psychiatric secure unit in London (which reduced police expenditure on seeking absconders, which sometimes required a helicopter) (Hearn 2013). Both schemes used particularly compact tracking devices, but with harder-to-remove ankle straps with steel bands in them, rather than the easily cuttable plastic straps deployed in RF tagging.

In the absence of any statutory means of imposing GPS tracking on them, offenders were encouraged to volunteer for it, to make their movements transparent in real time and to show, by dint of their digital trails, that they were not proximate to known crime scenes. Volunteers were further incentivised by being spared the 'intrusive supervision'—face-to-face, street-level harassment—that PPOs otherwise received from the police. By using their resources more discriminatingly—applying 'commercial common sense'—(not randomly rounding up 'the usual suspects' if the e-maps clearly showed them elsewhere), the police made significant cost savings. Although

never independently evaluated, the officer in charge of Hertfordshire's IOM scheme plausibly reported that many of its PPOs appreciated the opportunity to 'prove' that they were indeed desisting, experienced the wearable tracking device as a spur to doing so and, with regular socials support as well as GPS monitoring, stayed out of prison longer than they might otherwise have done—also saving costs (Murray and Campfield 2011).

The Ministry of Justice were initially dismayed by Hertfordshire's independent initiative, complaining that Buddi's hard-to-remove ankle straps posed a health and safety risk—and tried unsuccessfully to close it down (Miller 2012). G4S and Serco objected to an upstart business rival trialling GPS technology in a new and potentially lucrative police market, in advance of the new contract awards, when they lacked the same opportunity to do so. The Ministry relented, allowing G4S and Serco to bid for local police GPS contracts (using standard plastic straps). By November 2012, 27 police forces, probation areas and Youth Offending Teams were either hosting or showing interest in GPS pilots (personal communication from Alexandra Vogel, Buddi, November 2012), using all three companies, but mostly Buddi, which was building strong alliances with the police.

The police-led GPS schemes added a new dimension to private sector involvement in EM in England and Wales. They came about because of the operational autonomy of local police forces (even from the Home Office) and the entrepreneurial spirit of Buddi's Chief Executive Officer (CEO), Sara Murray, who was simply undaunted by the authority of the Ministry of Justice and the duopoly of the incumbent EM providers. IOM was not wholly transformed—'intrusive supervision' was still used on offenders who did not volunteer for GPS tracking—but a new, hitherto unknown and unimagined model of EM practice was brought into being, in which a costly, aggressive, labour-intensive style of policing (which may well have impeded offender desistance) was replaced by digital technology and more supportive policing (sometimes with probation input). For the first time in Britain, agency managers and practitioners had to work with technologists to devise a new form of supervision, creating mapping software that practitioners found useful, negotiating the purpose and legitimacy of the tracking device with offenders, rather than imposing a ready-made legislative model of EM.

There was a tension from the start in the police schemes between the use of GPS to support desistance and the use of GPS data merely to augment 'intelligence-led policing', and simply by dint of their novel provenance the schemes were dangerously unregulated by any external authority. They can nonetheless be seen as the first genuine example of EM accomplishing a degree of 'disruptive innovation' in penal practice, albeit in miniature. While the Ministry of Justice learnt to live with the (in their terms) administrative anomaly of the police GPS schemes, Sara Murray's maverick approach never fully endeared itself to them; as a talented tech entrepreneur, however, running precisely the kind of small-medium enterprise (SME) the government wished to encourage, she gained kudos in the Cabinet Office.

Policy Exchange and the Mass Expansion of GPS Tracking

The Conservative think tank Policy Exchange had been founded in 2002, (by, among others, Francis Maude MP), with the aim of reclaiming, repackaging and extending New Labour's modernisation of government agenda (itself usurped from Thatcherite prototypes) for the Tories themselves. It became hugely influential, both in opposition and after, on a wide range of Coalition politics, including 'crime and justice' and 'digital government', and in early 2012 it began a 'future of corrections' research programme, focusing first on EM, publishing its report in December 2012 (Geohegan 2012). This surpassed in depth and comprehensiveness any earlier analyses and criticisms of EM in England and Wales made by liberal or left sceptics of EM, or even academics, and was to have a significant impact on the way the third contract was imagined in government.

Policy Exchange was bold in number of key respects. Firstly it condemned the existing RF EM technology as obsolete, demanding its replacement by GPS tracking, which it argued (more 'by definition' than on the basis of available evidence) would be a more effective form of deterrence. Some of this argument derived from ongoing debates in the

USA, where the question 'is there a future for RF in a GPS world' had been pertinently asked by Doffing (2009), and where the trend was (and continues to be) towards the displacement of RF by GPS technology (Pew Charitable Trusts 2016). At least as much of it derived from the perceived proven success of the home-grown police IOM/GPS schemes, which had both created a new form of police practice and saved costs. But, at root, the argument was not grounded in primarily penal concerns. It reflected Francis Maude's (2010) Technology Strategy Board agenda and Policy Exchange's wider commitment to commercial-technological innovation in the public sector. Sara Murray, Buddi's CEO, served on the Technology Strategy Board, and the EM report celebrated her leadership in this: Buddi's tracking tag graced its cover. Chris Miller, former Assistant Chief Constable in Hertfordshire, and former lead on EM in the Association of Chief Police Officers (ACOP) wrote the Report's pugnacious foreword. 'Electronic tag technology used in most cases today is hardly any different from what it was in 1989, when it was first used in the UK', he complained, adding that its inadequacies had long been obvious to the police. 'New ways of monitoring people's movement and behaviour' were coming into being, and 'this technology needs space to be trialed and in due course *it needs to replace the old technology upon which it improves*' (Miller 2012: 7–8; 2014) emphasis added; see also Innes and Chambers (2013).

Policy Exchange itself criticised the Ministry of Justice and the incumbent EM providers for having failed to be innovative, of not exploiting new technologies as they became available, in ways that would have increased cost-effectiveness. Significantly, it accused the incumbent providers of profiteering, charging government more for EM equipment than equivalent companies in the USA while recognising that the incumbent providers had little incentive to innovate when considerable profits could be made from delivering no more than a contract required. Nonetheless, in line with its commercial orientation, and its sense that the public sector should itself be innovative, Policy Exchange expected companies to be entrepreneurial, to actively promote new practices and seek new markets, as Buddi had done in the police.

This led, logically, to a critique of the Ministry of Justice's procurement and contracting model, characterised by Miller as a 'sclerotic, centrally-

controlled, top-down system that has enriched two or three large suppliers'. In line with Policy Exchange's longstanding commitment to localism, the report argued that devolved decision-making would be more cost-effective, and more productive of innovation in public policy, as the police schemes had been. They favoured local commissioning by police forces (perhaps in combination with and Probation Trusts) suggesting in particular that Police and Crime Commissioners (executive posts first conceived by Policy Exchange a decade earlier (Loveday and Reid 2003), and elected for the first time in November 2012) were best placed to procure EM. The Commissioners did indeed become significant champions of GPS, albeit on a statutory base, compulsory rather than voluntary (Martins 2013a, b, c, 2014).

All of this was very challenging to the status quo, but by far the most striking aspect of Policy Exchange's report was the unprecedented scale on which they envisaged the use of EM. They promoted a massive expansion of GPS tracking in bail, sentencing, post-release licences and Release on Temporary Licence (ROTL) as well as with priority offenders, premised on its low cost and assumed deterrent potential. It mapped low, medium and high uptake scenarios, each unfolding over five years, moving from a minimum 36,000 defendants/offenders per day, to 76,000 (its estimate of what the Ministry's third contract would lead to without a significant push on GPS) to 140,000 offenders if the use of tracking was maximised. This was a clear attempt at disruptive innovation, an extrapolation to the whole country of the disruption-in-miniature that Buddi had accomplished in the police GPS schemes. It seemingly aimed at the normalisation of GPS tracking in offender supervision.

Planning for the third EM contract was well underway in the Ministry of Justice even while Policy Exchange was researching and writing its report, and, whatever its content, it was never likely to be taken up in its entirety. Nonetheless, without much public fanfare, the Ministry of Justice was persuaded in 2013 that RF technology should be dispensed with and adopted a figure of 75,000 as a target for GPS tracking, using this to tantalise the companies it wanted to bid for the third contract, assuring them that it would be a world-leading, lucrative business.[3] Less surprisingly, it disregarded Policy Exchange's preference for local commissioning, arguing that without centralised management standardisa-

tion of services might be difficult, and interoperability between different local systems impossible. There is cogency in this, but it contrasts with the localised (or at least regionalised) approach the Ministry was taking towards probation privatisation, which followed a more decentralised model, in which Community Rehabilitation Companies, in pursuit of 'payment by results', were being encouraged to experiment and 'do things differently'. What it also illustrates is that within a shared neoliberal framework there can be significant political contestation over which particular 'market mechanism' is utilised to deliver services in which dominant, incumbent players usually have a marked advantage over newcomers.

The G4S/Serco Scandal

Fatefully, the Ministry did take up Policy Exchange's criticisms of overcharging by G4S and Serco, who had been paid £700 million since the start of the second contract in 2005. (An anonymous whistleblower may also have played a part in this decision) (National Audit Office 2013). All the think tank had claimed was that the companies had been overpaid in past contracts (because civil servants had not pushed prices down as far as they could, given falling costs for RF technology), as evidenced by their field study in the USA. What the government-commissioned (and the companies) subsequent audits showed was that G4S and Serco had been overcharging the Ministry for their EM services (by systematically exaggerating the numbers of offenders being monitored), dating back to the beginning of the second contract, and possibly in their earlier corporate incarnations during the first contract.

The Ministry immediately banned them for taking on further contracts, and demanded they undergo internal 'corporate renewal' before they could bid for anything again, effectively forcing them out of the 'probation privatisation' initiative. Several further internal reviews of 28 other contracts held by the two companies, and of contract management in general—one by the National Audit Office (2013)—concluded that many civil servants were insufficiently skilled to procure and manage contracts efficiently (Brennan 2013). The EM team was specifically criti-

cised for the longstanding loose billing arrangements they had permitted G4S and Serco, which had allowed the overcharging to go on unchecked, and which could have gone on for much longer, given that G4S had set 2020 as its cut-off point for charging for unmonitored orders, and Serco, extraordinarily, had set the year 3000 (National Audit Office 2013: 11–12). Both companies were referred to the Serious Fraud Office for further investigation, and by early 2014 the CEOs of both companies had admitted flawed judgement in their interpretation of the Ministry's billing arrangements (but not criminal liability), made substantial repayments to the Ministry—£65.5m from Serco, £109m from G4S—and seen their share prices fall significantly.

Grayling insisted to Parliament that losing G4S and Serco would not jeopardise the GPS-based 'revolution in tagging' that he was about to launch, 'at a much lower price than we have paid up to now' (HC Deb [2013–2014], vol.566, col.581). The Ministry in fact, took great pains to reassure Parliament, (and the liberal media) that the failings of G4S and Serco were not evidence of long-suspected flaws in the entire outsourcing project. It claimed that 'outsourcing had bought about service improvement and cost reductions for government, while admitting that it 'entailed management risks which the Ministry had not yet learned to handle' (Ministry of Justice 2013: 6):

> This is typically the case when contracting out a frontline service which has not previously been delivered in house, when the service being provided is difficult to measure and assess, or when a complex contract is required. The outsourcing of electronic monitoring of offenders is an example of a higher-risk contract as it exhibits all of these characteristics. (Ministry of Justice 2013: 6)

One effect of the scandal was to make the Ministry of Justice look authoritative and decisive, and even virtuous, in dealing with 'malpractice' in outsourcing: by defining the problem as arrogance, greed and deception among the big players and publicly ejecting them from the charmed circle of favoured service providers, attention was deftly deflected from the ethics of outsourcing itself. A secondary effect, no less helpful to the Ministry, was to dilute both media and Parliamentary scrutiny of the

upcoming third EM contract, and to make it appear that, if only by default, it was likely to be obvious and necessary solution to the manifest problems thrown up in the second contract (see Syal 2014).

The Third EM Contract: Towards a 'New World'

The Ministry of Justice's dialogue with 'a host of potential providers' about the third contract, to run from 2013 to 2022, had begun at least as early as 2011, but some quickly dropped out because the collaborative commercial model proposed 'required companies to hand over their intellectual property' and seemed too uncertain about the specification of the systems they wanted (Plimmer 2015) More specific requirements had been made available to 'potential providers' in February 2012 (Ministry of Justice 2012a). Some remained constant—running monitoring centres, installing equipment, case management and so on, but it was made clear that GPS tracking would be integral to future provision, without, even at this point, indicating that RF technology would be abandoned. The moment in 2013 at which the contract became 'all GPS' is not clear from any public documentation, but Policy Exchange, and its championing of Buddi (who, unlike most EM companies, only had GPS technology to sell) were taken up. The putative use of GPS was linked to some cost saving operational changes: fitting tags in court at the point of sentence, or in prison at the point of release, and giving offenders a 'plug and play' monitoring unit to take home with them, thereby reducing the need for monitoring companies to visit offenders' homes, cutting installation costs.

'Potential Providers' were encouraged to think of providing services to police and health authorities (especially for mental health prisoners) and to consider supplying technology to monitor drug and alcohol abuse as well as inmate tracking within prisons. No mention was made of probation. The contract requirements did, however, give the first projected expansion scenarios for EM, beyond the 116,000 new starts in 2012: a merely 'prudent extrapolation' of existing trends yielded 200,000 new starts by 2019/2020, but with the (possible, still uncertain) effects of tougher

EM-curfews and the deployment of new technologies factored in this could rise to just under 300,000 per year (Ministry of Justice 2013: 3.8).

Significantly, the contract requirements signalled major changes in the model of service provision, from one (or two) national service providers to an integrated collaboration by four companies, providing infrastructure, hardware, software and telephony services, respectively. By such means, the Ministry hoped to reduce costs, determining a separate price for each component (or 'lot') rather than, as in the past, letting one service provider determine the overall price (understood by the Ministry to be a source of their profiteering). Contract length was to vary: six years (extendable to nine) for the infrastructure provider, but only three years for each of the other three. By such means opportunity to innovate—to make use of new products on the market—was designed in to the contract.

The new contract requirements reflected two strands of the Cabinet Office's work: firstly, new thinking about the management of contracts and procurement across government, particularly the need to involve SMEs, and secondly, the digital agenda of the Technology Strategy Board. Creating capacity to deliver EM was, for the first time, presented as an expression of e-governance in a broader sense, as much about advancing an integrated information and communication technology (ICT) agenda across government as it was about advancing a distinctly penal one:

> It is the Authority's [i.e. the government's] intention to deliver *maximum alignment* between the delivery of EM, the Ministry of Justice's Future IT strategy (FITS) and the Government's ICT strategy. Specifically, the successful network provider for lot 4 must adhere to the Government's Public Service Network (PSN) standards which will be updated from time to time during the course of the competition and the term of the contract. (Ministry of Justice 2012a: para 2.44 emphasis added)

On paper, the Ministry understood that integrating four companies to deliver one monitoring system would be difficult, but the same delivery model had been used with a number of government IT projects, (which EM was now deemed, managerially speaking, to resemble), and it pursued the model despite scepticism about its viability among many of the

potential commercial providers. They perceived it as unwieldy, were uncertain where control would lie, worried about the division of profits and saw no wisdom in separating hardware and software. Until the scandal, it was widely assumed in 'the EM industry' that either Serco or G4S would bid for the system integrator role, and that Buddi, because of its track record in the police GPS schemes, would be a strong contender for the hardware provider.

The successful 'preferred bidders' were announced in August 2013. Lot 1 (the system integrator) went to Capita (an English outsourcing company, whose CEO expressed immediate pride in becoming part of 'the – when fully live – largest, single and most advanced "tagging" system in the world' (quoted in Croucher 2013)). Lot 2 (for software) went to Astrium (a French-owned aerospace company with a speciality in 'geoinformation' services: following a merger with a British company it was renamed Airbus Defence and Space (Ministry of Justice 2014d). Lot 3 (for tracking devices) went as expected to Buddi, and Lot 4 (the GSM network) to Telefonica/02 (a Spanish-owned GSM company) rather than Vodafone. The US company 3M, a major global player in offender monitoring, was the main loser.

The Ministry's initial press release was headed, very significantly for the way EM was now being framed in political discourse, 'New generation tagging contract boosts British economy': the upcoming tagging revolution was projected as much as a commercial triumph as a penal innovation:

> New satellite technology that will help track the movements of offenders in the community is set to be delivered by two British businesses … this is going to be done with world class British technology designed and built by the kind of business we want government to work with more … All four [preferred bidders] faced-off strong international competition to deliver the contracts … With Buddi forming part of today's government announcement it sends an important message to the market - Government is serious about making our contracts accessible to Small and Medium Enterprises (SMEs). (Ministry of Justice 2013: paras 1–7)

The palpable absence of an adequate penal grounding for the 'New World' initiative was reaffirmed in the way the National Offender Management Service (NOMS) (2014) Business Plan for 2014–2015 omitted to mention it. EM was cursorily mentioned therein only as a 'contract management' task. Despite the Ministry's transformational aspirations for GPS, no details were given of the forms or scale of its intended use, its likely impact on existing penal practices and institutions, or of the plan to dispense with RF technology. 'Commercial common sense' was steadily triumphing over penal common sense, even in NOMS.

Aiming High, Falling Short: Searching for the Super-Tag

The four preferred bidders/future contractors began meeting frequently to plan and construct the new system from August 2013 onwards, with Capita working to coordinating them. The Ministry of Justice's plan entailed three phases—The Interim Service—which began when Capita took over the work of Serco and G4S in February and March 2014, respectively, that is, the monitoring centres, vehicles and staff based in Salford and Norwich. Phase 2, grandly called 'New World' Service 1, using the 'RF legacy tags', was planned to begin in December 2014. Airbus Defence and Space and Telefonica were only to become involved in service delivery at this point (Lots 1, 2 and 4). A more robust IT platform—both the software and hardware—would have been operational at this point, but some subjects would remain on existing RF tags. Phase 3—New World Service 3—was scheduled for Summer 2015 using new super-tags, Multi-Purpose Ankle Tags (MATs), with combined GPS and RF capabilities, designed by Buddi, which by then would have 'been through a robust testing regime within a test environment with live subjects' (Ministry of Justice 2014b: 3).

GPS tracking was to be used with a broad range of offenders, but MATs would enable RF curfews to remain available to the courts, with GPS getting switched on if the offender did not arrive at his designated location on time. Trackers would likely be fitted at courts and prisons on a (cheaper) plug and play basis, lessening the need for home installation

visits. Neat as this sounds it overlooks the complication of regular battery charging that GPS always entails; it undermines the useful simplicity of RF tagging and arguably makes offender compliance with monitoring more difficult. 'Once the service with the MAT is embedded, MoJ, working in partnership with the contractors and other stakeholders, will look at the potential to deliver additional services, such as alcohol abstinence, drug monitoring, [and] voluntary monitoring of persistent and prolific offenders' (Ministry of Justice 2014a: 3–4). The Ministry later confirmed its transformational ambitions by claiming that these changes would produce 'the most advanced GPS satellite tracking of offenders in the world' (Criminal Justice and Courts Bill Fact Sheet 2014: 1), a commitment rooted more in Grayling's political vanity than in any agreed penal need. Such was the Ministerial confidence in this that Justice Services International, a commercial arm for NOMS newly created by Grayling in 2012, was expected to sell its expected new expertise in EM abroad.[4]

The prospects of achieving New World targets by mid-2015 were somewhat diminished when preferred bidder Buddi unexpectedly parted company with the Ministry of Justice in March 2014, over a dispute about changed specifications for the MAT, sharing intellectual property rights with competitors and the underfunding of research and development work (Ministry of Justice 2014b; Travis 2014). The delay in procurement caused by Buddi's departure was embarrassing for the Ministry of Justice, which made rapid overtures to those companies that had earlier failed to win Lot 3—3M and Steatite—to find a new provider. Buddi itself was ostensibly happy to be 'free of this unproductive and frustrating relationship' (CEO Sarah Murray, quoted in Travis 2014: para 8) and confident that its continuing relationship with British police forces and its growing EM contracts abroad would ensure its future in the global EM market. Steatite, which became the new preferred bidder, was a medium-size British company making 'robust digital technology', often for the military—but had no experience of EM, having only recently acquired intellectual property from a Taiwanese GPS manufacturer.

Capita (trading as 'Electronic Monitoring Service' (EMS)) took over the premises and staff of G4S and Serco in March 2014 but in the absence of a new tracking device continued to purchase RF tags from them to sustain the existing monitoring system (Plimmer 2015). Confusion

seemingly reigned in the Ministry of Justice, because a mere month later it announced plans to use GPS tracking on some of the many prisoners 'Released on Temporary Licence' (Ministry of Justice 2014c). This was only cost-effective with 'plug and play' GPS technology in which the tracking bracelet was fitted in prison before release, obviating the need for expensive home installation visits. Nothing materialised.

The transition from Probation Trusts to Community Rehabilitation Companies (CRCs) began on 1 June 2014. One former Trust chair had observed just before this that inevitable financial pressures on the companies (as future government funding to them is cut) may lead them to prefer cheaper EM over more expensive trained professionals—particularly as some CRC providers (e.g. Geo Group) are already in the EM business (Kuipers 2014). There was logic ('commercial common sense'?) in this, although one of the steeper ironies in the whole New World strategy was the absence of any engagement between the Ministry of Justice and the CRCs (and the National Probation Service (NPS)) in respect of how EM might best be used. Although the privatisation of probation and the expansion of EM have been loosely complementary strategies in *Punishment and Reform*, the implementation of *Transforming Rehabilitation* had reproduced the same 'parallel tracks' that had kept probation and EM apart in the past, both organisationally and in respect of integrated forms of offender supervision. The transfer of 60 'electronic monitoring enforcement staff' from Capita into the NPS, largely to satisfy sentencer demands that the prosecution of breaches of EM was in statutory rather than commercial hands, was token integration at best, falling well short of what was required if the new probation organisations were to become creative and constructive partners in the use of EM (National Probation Service 2014).

The often watchful House of Commons Committee of Public Accounts (2014) was remarkably diffident in its attitude to the third EM contract. The National Association of Probation Officers (Napo), having asked it to investigate the contract, was subsequently informed by the Committee chair (drawing on confidential information from the National Audit Office), that 'the lifetime costs of the [multiple] contracts is now £384 million', considered an ostensibly reasonable figure which might nonetheless increase 'if the uptake of tags by the courts is greater than expected,

or if additional technical capabilities are developed and made available which the courts decide to use'. The chair had seemingly been reassured that the '15,000 [daily] average caseload' would continue, and that 'a wholesale shift from probation to unsupervised monitoring' (which Napo feared) would not occur (Hodge 2015). The chair did, however, pass on the NAO's evident concern that the Ministry was pursuing implementation without 'robust information, either nationally or internationally on [GPS's] effectiveness to reduce offending'. From the perspective of traditional penal policy-makers, the absence of interest in an evidence-base for such an intended transformation was extraordinary; from the standpoint of disruptive innovators, it was much less so, because almost by definition there is never evidence available which might prove the worth of the coming 'New World' in advance.

The End of the 'New World'?

After the May 2015 election of a fully Conservative government, untrammelled by the earlier constraints of coalition, Michael Gove replaced Chris Grayling as Minister of Justice. He was seemingly unimpressed with several aspects of Grayling's legacy on *Transforming Rehabilitation*, and in July 2015 the Ministry admitted to the Justice Select Committee that its 'New World' GPS programme—now referred to as 'a £265 million, six year contract' (a different figure from Hodges, above)—would not now be introduced until mid-2016, or even after, conceding that:

> there have been significant problems with this programme. We have not developed the infrastructure for these new electronic monitoring tags to the timetable originally set out nor yet at the level of effectiveness required. Integrating legacy technology on the new system has caused particular delays. We are now in the process of testing the new tags. But the new fully integrated service will not be ready for another 12 months at the earliest. (Andrew Selous, prisons minister, quoted in Travis 2015: paras 7–8)

The delay was scandal enough, given the amount of money invested so far, but a more penetrating critique of the Ministry's ill-fated procure-

ment was made in September 2015, by the right-wing think tank Reform (Lockhart-Mirams et al. 2015), an ardent champion of marketised public services, close to government. It reiterated Policy Exchange's view that the procurement model in the third contract was unwieldy, and not cost-effective. The Ministry, Reform damningly said, had 'attempted to create a new market without a clear understanding of what users actually needed'. It had, furthermore, made 'unreasonable intellectual property demands' [on the preferred bidders] and 'left the Government with a limited choice of suppliers and'—contradicting Grayling's repeated claims to the contrary—'very poor value for money for the taxpayer' (Lockhart-Mirams et al. 2015: 11).

Like Policy Exchange, Reform also advocated local commissioning but, by way of compromise, suggested that the Ministry provide a national software platform into which a registered list of preferred technology suppliers must plug if Police and Crime Commissioners and/or Community Rehabilitation Companies commissioned services from them. Again like Policy Exchange, (but without setting targets) Reform endorsed upgrading from RF to GPS tracking in the belief that this would better reduce reoffending, and further wanted GPS linked to software which could 'automate the detection of suspicious behaviour patterns' (Lockhart-Mirams et al. 2015: 63). This was something that Buddi was already doing, and enabling some of the police schemes to do, and continues to be of interest in the USA, if still not widely practised (Heaton 2016).

The Ministry of Justice seemingly remained committed to mass use. In February 2016 David Cameron (2016), speaking (symbolically) at Policy Exchange headquarters, lent prime ministerial authority to its 'groundbreaking' satellite tracking programme, which was still to go ahead, but would not be fully in place until 'the end of the parliament', that is, 2020, although pilots were promised in the interim. The Ministry informed Parliament a few days later that the search for a bespoke MAT device would be abandoned, in favour of 'using off-the-shelf technology which is already available' on the market, as well as conceding that a less complicated business model was needed (Raab 2016). This was once again presented as much as a win for taxpayers as a necessary penal innovation, despite the £23 million that had already been paid to Steatite to develop

the MAT being written off (as well as an undisclosed sum to compensate for the premature curtailing of their contract). The fact that 'Steatite's share price fell 32 per cent after the [ministerial] announcement' (*The Guardian* 25 February 2016) was a sharp reminder of the commercial investment that Grayling's grand plan had encouraged and indeed been premised upon.

Somewhat less publicly, the Ministry also appeared to drop the plan to cease using RF technology. This may have been the inevitable consequence of abandoning the MAT device, but Hucklesby et al.'s (2016: 12) timely five jurisdiction comparative research, with which the Ministry had cooperated, had cogently made the point that alongside appropriate uses of GPS tracking 'RF technology also has advantages and should continue to play a significant role going forward'. In response to criticism of the secrecy with which the grand plan had been pursued and possibly influenced by the more open and consultative way that Scotland had deliberated upon the potential of GPS (Nellis 2016), the Ministry established an EM Advisory Group to enlarge the pool of expertise on which it drew.

GPS pilot schemes, using existing primary legislation, were duly announced in July 2016, targeted on 1000 high-risk and persistent offenders and suspects, in two adjacent regions, firstly, Nottinghamshire, Leicestershire, Staffordshire, West Midlands, and secondly, Bedfordshire, Cambridgeshire, Northamptonshire and Hertfordshire. They were to be police-led, 'because police have experience of working with GPS tags, although there is a need to build in existing CRC processes' (Cambridgeshire Police and Crime Commissioner 2016: para 4.4) and independently evaluated (for a year). The focus was to be on the 'impacts' and 'benefits' of GPS tracking and the results would 'feed in to the broader Electronic Monitoring Strategy which is currently in development' (para 4.2). All that was certain about the 'broader strategy' was that the Ministry of Justice was seeking a new hardware provider and that (in September 2016) all but one of the companies tending for it were American: STOP, Supercom, 3M and (surprisingly) G4S. The pilots themselves were tendered separately. 3M and Buddi were in contention; despite the latter's track record in the police schemes, 3M won.

Conclusion

The 'New World', mass GPS strategy pursued by the Ministry of Justice between 2012 and 2015 was a techno-utopian attempt at 'disruptive innovation' in penal practice which went way beyond any available evidence-base or conventional penal rationale. It potentially empowered the police, enabling them to accomplish certain things very differently, and it gave further flexibility to the prison service in terms of temporary and early release (without in any way facilitating a strategic reduction in the use of imprisonment). It kept the Community Rehabilitation Companies apart from this innovation, not even involving them in the development of the strategy, even though the evidence-base in respect of EM, and ideals of good practice in offender supervision emphasise the importance of integrating EM with other probation interventions (McIvor and Graham 2015). At root, beyond notional cost cutting and prestige (being a 'world-first'), the strategy was driven by a broader and deeper government commitment to delivering digitised public services. Although numerous factors had conspired to turn the Ministry of Justice against a professionalised probation service, it may never have been considered safe to downgrade it without this considerable (over)confidence in what upgraded technological forms of offender management could achieve. It was probation that was most disrupted by the innovation strategy, and that happened anyway, even though the EM strategy itself, at least in its first iteration, failed.

That failure had nothing to do with critical opposition, and everything to do with ill-conceived planning in the Ministry of Justice (abandoning RF, the search for the super-tag, splitting the hardware and software components of the contract and the intended scale of GPS use), and reluctance to take advice from ideological allies like Policy Exchange as to the best way to establish a market in EM services. The strategy was developed in near secrecy and was singularly and arrogantly unconsultative: neither the CRCs, the NPS, the Probation Institute, the Magistrate's Association nor the penal reform organisations were asked for advice on best practice. There is sense in which the 'New World' fiasco can easily be framed as the latest of many government IT disasters, in which government contracts with tech companies were repeatedly abandoned after they failed to deliver

adequate or timely computer systems to various public sector agencies. Technologies (and the image of them as modern, essential and efficient) were often oversold, to gullible agencies who were often conflicted and uncertain about what they wanted digitisation to achieve. Had the wearily repeated NAO criticisms of government project (mis)management into these various disasters, not to mention the 'political vanity' often associated with them, been better appreciated, it is possible that the third EM contract would have been better conceived (King and Crew 2014).

Sheila Brown's (2006) decade-old suggestion that those who engage in penal politics need now to address its manifestly technological dimensions has not been taken up, least of all by the British penal reform bodies who benchmark progressive penal practice. Simply because it is an affordance of ubiquitous digital technology more generally, EM cannot be disinvented or wished away, but (in England and Wales) the ground on which a progressive debate about it might have taken place has been colonised by the neoliberal think tanks like Policy Exchange and Reform who accept this and, vacated by the penal reform bodies, who don't. There is, in fact, much to play for. As the ethicists who engage with contemporary technologies tell us, while a given innovation might be irresistible, the forms, scale, pace and even purposes of its adoption and use are open to contestation, if the will and 'know-how' is there. All technologies, as Andrew Feenberg (2002) puts it—and EM is no exception—are 'radically incomplete'.

The Ministry of Justice's 'New World' initiative sought to push 'coercive connectedness' too far, and the Probation Service, having grown weaker by the decade, was the first casualty of its hubris. Political scientist David Runciman (2014) spells out the new political-economic and cultural context in which progressive penal reformers must operate if the excessive (as opposed to the modest) use of EM is, in future, to be checked by design, rather than, as happened this time with the Ministry of Justice's grand plan, by chance, confusion and incompetence:

> Technology has the power to make politics seem obsolete. The speed of change leaves government looking slow, cumbersome, unwieldy and often irrelevant. It can also make political thinking look tame by comparison with the big ideas coming out of the tech industry. .... In this post-ideological age some of the most exotic political visions are the ones that

> emerge from discussions about tech. You'll find more radical libertarians and outright communists among computer scientists than among political scientists …. Technology is not seen as a way doing politics better. It's seen as a way of bypassing politics altogether (Runciman 2014: 64–65).

The Ministry of Justice's somewhat secretive attempt to upgrade from RF to GPS was very precisely 'a way of bypassing politics altogether', an attempt to make a major policy decision (and change of direction) on purely commercial and technological grounds, requiring no political or ethical discussion with other players in the penal field. Government in this instance *had* actually adapted to 'the speed of change', adopted a techno-utopian stance and was actively promoting 'disruptive innovation'; it was the penal reformers who were being 'slow, cumbersome, unwieldy' and who, by dint of their refusal to become better informed, had made themselves 'irrelevant', in this particular debate, if not in respect of privatisation more generally. The Howard League for Penal Reform's (2014) parameters for debating EM are strikingly narrow, even in their own terms as critics of corporate activity: it rightly attacks G4S and Serco for overcharging, but shows no awareness of the way in which digital technologies have created new forms of commerce and new offender management strategies, and no understanding of how to engage with this.

Hucklesby et al.'s (2016) comparative European research discovered a widespread, if still tentative, sense that further investment in the use of EM, building on its perceived success and general acceptability, was imminent. Richard and Daniel Susskinds' (2015) argument about the transformative effect that the exponential growth in information technology, automation, the processing of big data and the Internet of Things are likely to have on established middle-class professions in the next decade both sheds light on this intuition and adds a degree of urgency to the kinds of debate that need to take place about EM and probation. The Susskinds (2015: 155), with a wealth of interdisciplinary evidence behind them, suggest that 'increasingly capable machines, increasingly pervasive devices and increasingly connected humans' will inexorably result in major changes in the way in which 'professional expertise' is understood and delivered: more tasks will be accomplished online, faster and more efficiently than face-to-face encounters allow. The relational will be dis-

placed by the transactional. It is not that human capacities (empathy, care, interpersonal skills, etc.) will completely cease to matter, but they will be less important: expertise (e.g. the community control of offenders) will reside more in machines and systems (and the people who tend them) than in expensively trained social workers.

Susskind and Susskind acquiesce too easily to the inexorability of this, but the tendency they (and others) perceive is undoubtedly real and has momentum. It is not a difficult stretch, intellectually, to fit the mass use of GPS tracking into this kind of scenario, indeed to see what the Ministry of Justice was simultaneously doing with EM and the Probation Service (upgrading the technical one and downgrading the human one) as a tentative precursor of the transformation of expertise that the Susskinds expect to intensify. The transformation is commercially driven, but becoming integral to the state apparatus. There are few reasons to think that neoliberally inclined governments will halt the process, and many more to think that, in a penal context, unless they are constructively challenged, such governments will embrace the worst and most far-reaching aspects of EM.

Notes

1. I owe this telling phrase to an experienced business person in the EM world, who wishes to remain anonymous.
2. South Korea and a number of Latin American countries, notably Columbia, have moved towards the large-scale use of GPS tracking without ever having established RF monitoring, or indeed, in some instances, a Probation Service. Transformational and important as this is, it is not the same as the 'disruptive innovation' referred to here, because there were not the incumbent dominant players in the penal field to challenge and sideline. New Zealand has attempted a move towards mass GPS tracking, away from established RF EM, but this is as yet undocumented.
3. Two representatives of potential bidders for the third contract, initially uncertain of its commercial viability, separately told me that in private meetings at the Ministry of Justice in 2013, officials tantalised them with a figure of 'about 75,000 per day' as the anticipated, eventual size of the GPS market. Tipped off by Napo, an associate business editor at *The*

Independent, phoned the Ministry of Justice media office to confirm the 75,000 per day figure, which they did—only to withdraw it a day later.

4. Just Solutions International was formally set up under Chris Grayling in 2014 to enable NOMS to sell its expertise in prison design and building, and offender management—including 'cutting-edge electronic monitoring'—although trading had been taking place since 2012. After cancelling a £5.9m contract to build a prison in Saudi Arabia, new Justice Minister Michael Gove closed it down in September 2015. A retrospective NAO (2016) enquiry reported that it had been badly set up and unprofitable.

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