

**Re-thinking Approaches to Government Reforms**  
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**'Government, Public Service and Criminal Justice'**  
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*The way agencies in the UK prison service were managed is an example of how badly-implemented NPM can cause more problems than it solves. The early benefits of NPM reforms to the UK criminal justice system were reduced by political interference in the running of agencies. Later the nature of the contracts between the Prisons Services Agency and private prison service providers and the way the police were managed ran against the grain of good practice as perceived by criminal justice reformers. The implementation of the core NPM concept of separation between policy and operational decisions is difficult in a criminal justice system as the public hold the government accountable for their safety. However, any new reforms will need to resolve this issue by making a clearer distinction between policy and operational responsibility and by improving and decentralising accountability, including to communities and to offenders.*

*The background*

The 1950s brought some ugly episodes in UK criminal justice, including the executions of Ruth Ellis and Derek Bentley. From the time of R A Butler (Home Secretary 1957-62) until the late 1970s, there was an inter-party consensus on criminal justice policy made through Royal Commissions and joint committees. In the 1960s, a philosophy of 'nothing works' infected policy-making for a time. The consensus was broken in the late 1970s following the prisons dispute and the police dispute. These were issues that needed to be tackled by the incoming Conservative Government in 1979.

*The Conservative Government's criminal justice policies: 1979 to 1997*

The 1979 general election was the first occasion on which a political party had featured crime and criminal justice in an election manifesto. The confrontational nature of the Conservative Party criminal justice policy was reduced by, for example, the ability of the Home Secretary, William Whitelaw, to keep the Prime Minister at arms length. Nevertheless, the 1980s was a period of social change. There was an increase in the rate of recorded crime, a decline in the number of convictions, an increased fear of violent crime amongst the public and a decline in confidence that the government and its law-enforcement agencies could maintain a safe environment. Moreover, the criminal justice system was jolted by a number of prominent cases of the miscarriage of justice, including the acquittal of people who had previously been convicted of bombing on behalf of the IRA.

This was a period when New Public Management (NPM) was coming to the fore in public sector reforms, with target-setting and the audit of government departments. However, NPM, whatever its benefits, worked against the grain of the objectives of criminal justice reformers. NPM was not concerned with co-operation, equity, fairness for cultural minorities and for women. Criminal justice reformers were. In the

early 1980s, research produced four principal findings: that recorded crime documented only a quarter of all crime; that one male in three had a serious conviction by the age of 30; that only two per cent of crime resulted in a conviction; and that changes in sentencing practice did not change the overall level of crime.

A critical moment for the criminal justice policy came in late 1992 and early 1993. Its causes were weaknesses and divisions within the Conservative Party in Parliament, the need for the government to re-assert its authority after the exit of sterling from the European Exchange Rate Mechanism, controversy over the Maastricht Treaty and the subsequent need to unite the party. The issue chosen was law and order. The direction of government policy changed abruptly, its tone became more strident and the prison population rose rapidly.

### *Criminal justice policies under New Labour*

Although the current Home Secretary has placed an emphasis on civil rights and on his own role as the co-ordinator of policy, the Labour government since 1997 has continued many of the NPM-type approaches to criminal justice, such as the Private Finance Initiative, the use of targets and performance indicators and punitive penal policies.

The challenges of the criminal justice system for the government are, first, how to make the system work on the ground – how to join-up services (police, prisons, probation, etc.); and, secondly, how to resolve the language of delegation against a background of detailed instructions from central government. The answer to these challenges can be laid out as a programme for criminal justice reform.

Such a reform programme would include:

- investment in new skills and expertise (rather than in structural change);
- developing the probation service as an agency for crime prevention and intervention, as well as enforcement;
- decentralisation of decision-making authority;
- increased accountability to local communities;
- treating offenders as citizens with rights as well as responsibilities;
- the integration of services.

The problem of the prison service illustrates one area in UK criminal justice policy where NPM has not been implemented in the way that was originally intended. There have been problems of accountability, especially with the prison break-out that led to the resignation of Derek Lewis as the Director General of the Prison Service Agency. Furthermore, there has not been any significant financial advantage from the introduction of NPM-type contracting out of prison services.

One problem in the prisons' service is the difficulty of separating policy decisions from operational decisions. In the case of almost every other agency, the government sets the agency's goals through policy decisions, and the agency works to put that policy into operation. It was argued that such separation is very difficult, even impossible, in the prison service. The logic of this argument was *against* the

introduction of agency status for the prison service, *not for* the creation of an agency with both policy and operational functions; yet this was the result.

This dilemma remains to be resolved. Some would argue that the only way to run prisons is to put the entire prisons' service into the private sector. They note that granting agency status to the prison service has not reduced the unit cost of imprisonment. They suggest that private sector operators would not tolerate a lack of investment and that privatisation would bring the crucial advantage of providing a true separation between the policy responsibilities of government and the operational responsibilities of the contractors.

The prisons service is one area where the nature of the industry means that the gains from agency-creation and other NPM reforms can only be realised through the transfer of the entirety of operational responsibility to properly accountable organisations, aloof from Ministerial interference. While this separation is the key to improving accountability for failures in policy and in operations, the benefits of privatisation need to be examined more carefully. Many fear that privatisation would result in a prisons 'industry' that would promote a 'market' in imprisonment with the profit and share value-maximising suppliers.

There are other ways in which the purchasing or commissioning function can be separated from the providing or operating function. One possible structure is central commissioning agency, within the Home Office or set up separately by statute, and a number of regional or functional operating agencies working under contract. They could be within the public sector, although one might envisage a limited role for the private sector. Their operational responsibilities could be incorporated into contracts but as organisations with a public sector ethos, they would be accountable, not to shareholders, but to the communities they served. This amounts to NPM-type reforms taken to their logical conclusion. It requires more political courage than the partial reforms implemented to date but might produce better results.

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