

Privatisation and Community in Criminal Justice

Bruce Benson, To Serve and Protect: Privatization and Community in Criminal Justice, Independent Institute/New York University Press, New York, 1998

Reviewed by Peter Grabosky

Conceptions of what precisely constitutes an inherent governmental function are changing. Private prisons were regarded as unthinkable in Australia, even by conservative governments, only two decades ago. But things move quickly nowadays. When the Reagan Administration asked each US federal agency to outline which of their activities could be regarded as a core government function, the Environmental Protection Agency engaged a private consultant to develop just such a definition (Kettl 1993:194).

The roles and responsibilities of the state are narrowing, all the world over. For those who wonder where this trend will lead us, Bruce Benson, Professor of Economics at Florida State University, has some astonishing suggestions. This fascinating book will stretch the imagination about the limits of privatisation. In brief, the author concludes that there is virtually no area of criminal justice which is not appropriate for devolution to non-governmental institutions, neither law enforcement, nor adjudication, nor punishment.

Indeed, this is arguably the most radical book on criminal justice written in recent years. Combining history, economics, and organisational behaviour, it provides fascinating insights on the extent to which privatisation in criminal justice has already occurred, and charts a dramatic course which, if followed, would revolutionise criminal justice as we know it. Moreover, Benson contends that a fully privatised justice system will achieve significant reductions in crime.

Benson suggests that the disinclination of many victims to report crimes to the police reflects a rational decision on their part. There is simply not enough in it for them. How then, to manipulate incentives to encourage the reporting of crime?

Consider, for example, the idea of conferring transferable restitution rights on victims of crime. Benson would bypass police altogether, and provide civil remedies for victims, which they could pursue through private investigators and litigators working on a contingent fee basis. This is not a uniquely modern idea, having its origins, the author tells us, in medieval Iceland. It is quite reminiscent of the 'thief-takers' and bounty hunters who preceded the rise of the modern state and the nineteenth century invention of the police by Sir Robert Peel.

But wouldn't radical privatisation of criminal justice work to the disadvantage of those unable to afford private protection? On the contrary: The creation of transferable compensation rights would, Benson argues, provide more justice to the disadvantaged than does the existing justice system, which gives short shrift to victims, particularly those from marginalised backgrounds. The

status quo, he maintains, entails policing for the rich: Those who are politically influential are accorded protection, and those who are poor, are left to their own devices. Indeed, Benson argues, existing policies of firearms control are regressively redistributive, because they prevent poor people from defending themselves!

The growth of the private security industry is no longer news. But some manifestations are nonetheless remarkable. The in-house loss prevention division at Sears numbers 6000 personnel. Some small police forces in the United States already contract out investigations arising from narcotics offences and bad cheques.

The American Bankers Association and the American Hotel-Motel Association retain a private detective agency to investigate crimes against their members. Why? Because they claim the quality of service they require is not available from public law enforcement agencies.

Benson sees merit in the US system of bail bonds, where, for those defendants who lack financial means to meet the cash requirements of bail, the decision relating to pre-trial release from custody is essentially a commercial judgment made not by a judicial officer, but by a private entrepreneur. These financiers of liberty have a much greater incentive than the courts to ensure their client's ultimate reappearance.

And what about bounty hunters, who may be driven by incompetence or excessive zeal to capture the innocent or use disproportionate force? Benson assures us that civil remedies would lie against the incompetent or malicious bounty hunter no less than they would against the offender, and reminds us that public police in many jurisdictions enjoy effective immunity from both civil and criminal remedies.

Can courts be privatised? Benson reminds us that private arbitration services have been around a long while. And private fora lend themselves nicely to solutions based on restorative justice, as his proposed system of restitution would be.

The book does have its shortcomings, not the least of which being the author's inclination to cite his own work excessively. To give but one example, the assertion that 'the criminal justice system is truly an interrelated system' is supported by no less than three of the author's previous articles.

Notwithstanding the author's self promotion, and the extreme nature of some of his proposals, it is a most stimulating book, deserving to be read by both enthusiasts and opponents of privatisation.

Reference

Kettl, Donald (1993), *Sharing Power: Public Governance and Private Markets*, The Brookings Institution, Washington DC.

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