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Public vs Nonprofit Incarceration: The Case of The Netherlands

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Public vs Nonprofit Incarceration: The Case of The Netherlands

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Public vs nonprofit incarceration: the case of the Netherlands

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Abstract

Outsourcing of detention is a complex public task, due to quality risks from incomplete contracts, the public responsibility for sentencing and execution, and related social opinions. In the Netherlands, the debate about the outsourcing of prison services to the private profit sector has recently restarted. At the same time, in the Netherlands there is extensive experience of outsourcing prison services – in particular for juvenile detention and internal forensic psychiatric care – to nonprofit organizations. In the Dutch experience, we have not found differences between public and nonprofit execution, with respect to the type of contract with the prisons, costs and quality. The Dutch experience shows that outsourcing to nonprofit entrepreneurs in civil society can be an alternative to outsourcing to the private market.

Keywords: nonprofit organizations, contracting out, prison services

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1. Introduction

In recent decades, supported by the belief in the benefits of contracting out of public tasks to the private sector, in a number of Western countries detention has been increasingly executed by private firms. For example, in the United Kingdom, about 13% of the prisoners are held in privately run facilities. However, the theoretical literature describes a large number of risks associated with contracting out to the private sector, due to the potential incomplete contracts of prison services where quality is hard to define adequately (Hart et al. 1997). In addition, more recent evidence on the efficiency of private detention is not unambiguous (Wilms et al. 2011).

In this paper, we investigate – based on Dutch experiences – whether nonprofit contracting out is an alternative to public or for-profit execution of detention tasks. Therefore, we describe incarceration from an institutional perspective and in particular the use of nonprofit contracting. We find no differences between public and nonprofit execution of juvenile detention and internal forensic psychiatric care, with respect to the type of contracting, the judgement of the inspections and several performance indicators. ⁱ

This paper adds to the literature in a number of respects. As far as we know, it is the first description in literature on contracting out of detention to the nonprofit sector. Secondly, it describes the institutional differences between several types of incarceration in the Netherlands, in particular on their accountability and performance. Wellens and Jegers (2016) pointed out that empirical research on accountability of nonprofit organizations is scarce. We conclude that outsourcing of incarceration to nonprofit organizations can be an alternative to outsourcing to the private market.

The paper is structured as follows. Section 2 describes the literature on the privatization of prison services and the consequences on efficiency and quality. In section 3, the Dutch prison system is described, with regard to the three different types of incarceration and the role of nonprofit

organizations in the execution thereof. Section 4 offers a discussion on the findings while section 5 offers some concluding remarks.

2. Literature

Debate on public vs private

The debate about contracting out of public sector tasks to the private sector is shifting from an ideological debate to a more proper discussion on the political and economic factors that determine the mode of production (Gradus et al. 2014; Hefetz and Warner 2011). Two main factors seem responsible for this shift. First, the economic gains of contracting out to the private sector seem not to be sustainable over time. In the nineties, evidence emerged that private production implied an efficient provision of services. In an overview article, Domberger and Jensen (1997) showed that private production suggests, for a number of government services, cost savings of about 20% without sacrificing the quality of service provided. The nature of the contract is the key to the inherent efficiencies produced through privatization (Hart et al. 1997). Private owners have a greater incentive to innovate because they directly reap the benefits of cost reduction or increases in productivity. This leads to higher levels of productivity. However, recent evidence regarding cost savings from private delivery is more mixed. Bel et al. (2010) conducted a meta-regression analysis and showed that there is no unambiguous evidence for significant cost savings from private production. They found that differences in study results are explained by differences in analysis time periods, the use of longitudinal data and whether US studies are used. Interestingly, they found that more recent studies are less likely to find cost differences between public and private production. They concluded that to ensure cost savings, more attention should be given to industrial organization and policy environment, rather than a debate on public vs private delivery. Brown and Potoski (2004) found that privatization of public services leads to a propensity toward monopoly provision of services. Using the example of municipal refuse contracts, they showed that there is an incongruence of goals

between the provider and the public entity. Realization of savings depends on market competitiveness and/or the ability of the contracting organization to monitor the vendor.

Second, governments have other motives behind their decisions about the modes of production than only efficiency. For example, Lopez-de-Silanes et al. (1997) tried to explain the reservations of local authorities in the USA towards privatization. Based on county data in 1987 and 1992, only 25% of the services in 1987 and 35% in 1992 had been contracted out. In their article, an empirical investigation of the mode of providing government services is given, where three leading aspects based on public choice and transaction costs theory (namely efficiency, political patronage and ideology) are investigated. Hefetz and Warner (2011) showed that market characteristics (competition), citizen characteristics (public interest in the service delivery process) and place characteristics (metro status and public management) are important factors in local government contracting decisions. Wassenaar et al. (2013) showed that for Dutch municipalities pragmatic and institutional motivations for contracting out – such as the stability and continuity of service provision – and path dependency are important in addition to the efficiency motive.

Nonprofit organizations

Particularly in sectors with personalized services, we also find the nonprofit firm as a kind of mixed form between the extremes of public organizations and private entrepreneurs. Especially in the Netherlands, in health care, education and social services in particular, nonprofit delivery is dominant and has been stimulated by the government (Burger and Dekker 2000). Interestingly, also in the Netherlands, incarceration for juvenile and forensic inmates is executed partially by nonprofit organizations. According to Hansmann (1996), the critical characteristic of these organizations is that they are barred from distributing any profits to persons who exercise control over the firm. Instead, a nonprofit firm can distribute its profits only through improvements in the working environment of the entrepreneur and the employees, which may include lower effort levels, shorter workdays,

longer vacations, better offices, more generous benefits or even improvements in the quality of the product. In general, such 'perquisites' are not as valuable to an entrepreneur as income, and so it is not instantly obvious why a rational entrepreneur would constrain himself by choosing a nonprofit status.

Glaeser and Shleifer (2001) expected to find nonprofit firms in activities where: (1) there are substantial opportunities for reductions of the quality of the good after it is purchased, or for other forms of expropriation of consumers; (2) the activity is not too profitable, or – more importantly – relies on charitable donations; (3) altruism and public spiritedness are important motivators of entrepreneurs; (4) it is costly for consumers or employees to change the firms they deal with. In the activities where for-profit and nonprofit firms coexist and information on quality is not easy to verify, they expect the latter to deliver higher quality to consumers. Furthermore, they expect to find higher levels of perquisites in nonprofit firms. Often, services supplied by nonprofit employees are difficult to measure. As an example, Benz (2005) showed by analyzing job satisfaction that employees working in nonprofit organizations are more satisfied with their jobs than their counterparts in for-profit firms and he concludes that nonprofit firms seem to be motivated by more than just monetary concerns. Feiock and Hang (2009) investigated why US municipalities rely more on nonprofit organizations to produce elder services. They showed that service accountability, professionalism and community legitimacy are important reasons for utilizing nonprofits. Their empirical findings indicate that forms of government, mayoral turnover, population diversity and market indications are important explanations for nonprofit use of US municipalities. In their analysis of municipal contracting decisions, Hefetz and Warner (2011) claimed that nonprofit providers will be preferred when the strengths of nonprofits (personalized service, small scale, community control) correspond with government needs. By contracting services that are both difficult to manage and have high citizen interest to nonprofit organizations, the political burden is transferred to a community-controlled sector with actors with specific service expertise. They found that services with the

highest citizen interest (such as human services and culture and arts) are often provided via nonprofits and intergovernmental co-operations. Careful attention to citizen interests in the process of service delivery leads professional managers to use less for-profit delivery (Hefetz and Warner 2011).

Prison services and incarceration

The management of prison services is quite a complex responsibility and task. In fact, incarcerating suspected and sentenced people requires both locking in adequately in humane circumstances – by preventing escapes, riots and so on – and facilitating the re-entry into society through programs and correcting behavior. For this reason, prison services as an activity with a high citizen interest constitute a good theoretical example of the public/private debate and an interesting empirical case to study (Cabral and Sausier 2013; Kim and Price 2014). However, the debate on in-house provision and contracting out of prison services is influenced by a number of aspects that question the possibility of private entrepreneurs executing this public responsibility. The use of force is by law an exclusive right of the government, while it might be a necessary instrument for keeping peace in a prison environment. In addition, there is concern that private providers hire unqualified guards to save costs, thereby undermining the safety and security and humane conditions of prisoners. Finally, a prison stay is primarily meant as a punishment, but it may be used as a preparation for returning to normal society. Questions have been asked about whether private parties have the right incentive to reintegrate prisoners adequately (Gaes et al. 2004).

Hart et al. (1997) examined the conditions that determine the relative efficiency of in-house provision versus outside contracting of government services, particularly in relation to prisons. They concluded that the case for in-house provision is generally stronger when noncontractible cost reductions may have large deleterious effects on quality, when quality innovations are unimportant, and when corruption in government procurement is a severe problem. In contrast, the case for

privatization is stronger when quality-reducing cost reductions can be controlled through contracts or competition, when quality innovations are important, and when patronage and powerful unions are a severe problem inside the government. In the end, they concluded that the case for in-house provision can be made reasonably persuasively for prisons. In the same vein, King and Pitchford (2008) modelled the choice of public versus private prison management as a trade-off between inefficiency (due to the many rules involved in public management) and incentives (due to the cost-quality exchange in private management). The outcome of the trade-off is a positive externality of prisoner welfare. They find that if the externality is weak, then privatization works; otherwise, public management is needed.

In their study on public-private partnerships in prison management, Cabral and Saussier (2013) argued that the achievement of an appropriate governance structure does not rely on the property rights distribution, but rather on the way incentives, contractual design, decision rights and the nexus of institutions interact. The ability of public or private managers to deal with and occasionally bypass imposed institutional constraints is essential in the choice of the contractual mode. Private operation with public supervision might enable the viability and the legitimacy of public and private agreements in prison services, while at the same time ensuring that private sector capabilities will be driven to address the interests of the society (Kim and Price 2014).

Contracting out of prison services, empirical results

In recent decades, in a number of countries – mostly due to overcrowding and poor conditions in public prisons and efficiency claims of privatization – for profit companies have been offered the opportunity to exploit prisons. For example, 8 percent of prisoners in the US (with state rates ranging from 0 percent to 44 percent) (Kim and Price 2014; Mason 2012) and 13 percent of prisoners in the UK are held in privately run facilities (Kish and Lipton 2013; Prison Reform Trust 2011). While many studies have attempted to compare the public and the private prisons, comparability problems exist

across levels of security, accounting methods, definitions of service and measurement of costs (Kish and Lipton 2013). The quality of the prisons could be reviewed according to their contribution to the reduction of the risk of recidivism. However, other external factors that are not under the control of the prison may be much more relevant than the influence of prison services (Gaes et al. 2004). Analyzing and comparing the true costs and quality of private and public prisons is thus very complex.

The empirical literature on the profits of contracting out prison services to the private sector does not provide unambiguous conclusions. In a meta-study on private/public cost differentials, Pratt and Maahs (1999) found no effect of public vs. private ownership on cost. Based on a meta-analysis of 12 studies, Lundahl et al. (2007) concluded that cost savings from privatizing prisons are not guaranteed and appear minimal. The quality of confinement is similar across privately and publicly managed systems, with publicly managed prisons delivering slightly better skills training and having slightly fewer inmate grievances. Kish and Lipton (2013) summarized several prison studies to illustrate the inconclusiveness of the cost savings of private prisons over their public counterparts. Private firms have an advantage in building new prison facilities, both in terms of cost and time and also have a slight operating-cost advantage. Cost savings are typically reported on the prison staff, because of reduced nonwage benefits and increased technology driven efficiency. The private sector has an advantage in terms of procurement. However, it is necessary to qualify this positive view of prison contracting, because the full costs of such contracting (like medical costs and contracting and monitoring contract performance) are difficult to discern and are thus largely ignored in many studies. Finally, agency costs that can affect quality lead to incomplete contracting. One study (Lappin et al. 2005) that does take the additional costs into consideration shows that privatization has no significant effect on the operating costs. Therefore they can't conclude that privatization will lead to a reduction of the operating costs. No unambiguous conclusions could be formulated about the effect of privatization on the quality of prisons. They showed, as side effects, that privatization

could lead to more innovation through incentives for cost reductions, better performances of public prisons due to the competition with other providers and a higher responsibility of private prison directors. Moreover, a possible risk of contracting out is a lower quality level. Alonso and Andrews (2015) found that privately managed prisons perform better on dimensions of quality, such as confinement conditions and prisoner activity, which are more easily measured, while public prisons perform better on dimensions of quality, such as levels of order and prisoner safety, which are less easily measured and managed.

3. Incarceration in the Netherlands

In the Netherlands, several types of incarceration can be distinguished. Criminals may end up in a penitentiary institution – consisting of remand centers and prisons – in cases where they are suspected or convicted of an offense (section 3.1). A number of these convicted criminals have been declared entirely or partially unaccountable for the offense. Instead of or after their imprisonment, they are treated in an intramural forensic psychiatric center (section 3.2). Finally, younger criminals up to 21 years old are kept in special correctional institutions for juvenile offenders (section 3.3).

<insert Table 1 here>

The national Custodial Institutions Agency (DJI) is responsible for the enforcement of these sentences. The most important task is realizing their incarceration, in order to ensure that justice is served, and to help further the safety of society. In addition, the DJI is responsible for the day-to-day care of these detainees and for the task of preparing them to return to society. The emphasis is on both justice and humane treatment as well as on efficiency (Custodial Institutions Agency 2011).

3.1 Incarceration of adult detainees

Criminals are imprisoned to show that society does not accept violation of the laws and rules. Moreover, it can help victims come to terms with and cope better with their criminal experiences. Secondly, a prison sentence makes society a safer place, because the perpetrator no longer constitutes a threat when he or she is inside. Finally, imprisonment offers the opportunity to provide detainees with order, guidance, training and practical skills so that during their stay they can work on their future and prepare themselves for their return to society. The DJI therefore assigns inmates to specific regimes. Basically, inmates that are awaiting trial are placed in a remand facility that is strongly focused on security, the availability for trial and inmate labor. Sentenced inmates are placed in a prison facility that focuses on the preparation for reintegration into society. Prison inmates gain work experience, prepare themselves for future jobs, care and housing provision, and initiate debt restructuring. Within these correctional facilities the DJI provides customized regimes for special inmate groups, i.e. extra care units focused on care and support, open facilities focused on reintegration for almost released inmates, units for repeat offenders (addiction care, known as ISD), high-security units for high-risk inmates and psychiatric care units. Moreover, these regimes are differentiated for male and female inmates. In 2015, on an average day 9,900 people stayed in a penitentiary institution, with an average per diem cost of €240 for each cell.

Institutional setting

All penitentiary institutions (26 at the end of 2015) are public organizations. They are directly governed by the DJI-agency, the prison directors are appointed by the board of the agency and the employees are civil servants in the service of the Ministry of Security and Justice. The agency bears the risk of financial mismanagement of individual prisons. In Dutch prisons, some supportive tasks are contracted out, such as catering, cleaning, maintenance and some of the security tasks. If a new prison is built, this is the result of the central government's policy and done as a public-private partnership, where private parties are responsible for the building and maintenance of the prison. In that case, the detention tasks are executed by civil servants.

Discussion of for profit incineration in the Netherlands

In the Netherlands, the debate on contracting out of prison services restarted in 2011, with the intention in the coalition agreement of the national administration 'to prepare for the privatization of the prison system relevant tasks for the purpose of austerity and efficiency, based on the results of the investigations carried out into the privatization of the prison system in the UK in 2005 and 2009' (Wilms et al. 2011). In the right-wing coalition agreement of the Rutte-I cabinet it was announced that parts of prison services should be privatized to for-profit firms. In 2012, after this cabinet had stepped down, in a coalition between right-wing liberals and social democrats it was not an issue anymore. In 2013, the administration decided to close a number of prisons, due to the falling crime rate, the intended introduction of electronic detention and the increase of the number of two-person prison cells, due to severe budget cuts. Therefore, privatization of prisons to for profit firms was not an actual option.

3.2 Intramural forensic psychiatric care

As well as imprisonment, a judge may order forensic care. The most important forensic care measure is a placement under an incarcerated hospital order in a forensic psychiatric center (TBS). In most cases, this measure is ordered following a stay in prison. Treatment of forensic inmates focuses on changing their behavior in such a way that they will not reoffend. These inmates are given treatment for their disorder or addiction, or they follow a therapy to learn how to handle their disorder responsibly (Custodial Institutions Agency 2011). If a forensic inmate remains liable to reoffend despite intensive treatment for years, he is transferred to a long-stay unit, and the treatment is discontinued.

Although the treatment takes place in a separate regime (more directed toward behavioral change through intensive forensic psychiatric care), it is still a correctional setting, with comparable

restrictions and safety measures. In 2015, on average 1,485 people stayed in an intramural forensic psychiatric center, with an average cost of €504 a day per cell.

Institutional setting

There are two public centers and seven nonprofit centers. In terms of the number of inmates, about 85% are contracted with nonprofit organizations. The nonprofit forensic psychiatric centers are legally independent institutions with a special designation. Despite their independent position, the Minister of Security and Justice is authorized to issue an instruction to the Board of Directors of the nonprofit forensic psychiatric center in the case of inadequate compliance. As a last resort, the Minister may take over the management of the institution or appoint an administrator if the designation is insufficient compliance. The Minister appoints one of the members of the Supervisory Board of the institution whose special task is to monitor compliance with the law.

Each year the DJI contracts the individual nonprofit forensic psychiatric centers with an agreement on the capacity with the associated budget, including objectives regarding the results and quality of treatment. Based on a number of principles established in a starting note, procurement manuals and implementing protocols, potential providers are invited to make offers for the provision of forensic care. The criteria for procurement are: (1) the achievement of adequate care capacity, (2) a qualitative connection between inmates' needs and the supply of treatment ('right patient in the right bed'), (3) qualified care focused on the safety of society, and (4) a good connection with regular care, all against the background of the government's ambition to reduce recidivism. Evaluation of the tenders then takes place on the basis of the assessment framework as drawn up in advance.

The contract provides instructions on performance indicators, for example about unauthorized absence of inmates, the security of the buildings, which has to conform to the standards of the DJI, provision of information about inmates' data and their care pathways, and regulatory requirements that must be met. To obtain a level playing field between the nonprofit and public organizations, the management contracts of the public forensic psychiatric centers are identical in design. In all cases,

the nonprofit centers are part of a regional organization for specialized mental care. Both public and nonprofit forensic psychiatric centers fall under the supervision of many national inspectorates. The inmates are in general placed in the FPC in their region. The nonprofit centers originate from several decades ago when internal forensic care was introduced and the organizations offered this type of care, in addition to their mental care facilities. The possibility of contracting out to these organizations offers the Ministry more flexibility in the provision of internal forensic care.

The main ambition of FPCs is the reduction of the reoffending *risk* among their inmates. Differences in the reoffending rates between public and nonprofit institutions might give indications regarding their effectiveness. However, unadjusted reoffending rates per FPC are not appropriate for the purpose of quality assessment, because many other factors besides the treatment at the FPC are associated with reoffending after release. Most of them are beyond the control of FPCs (e.g. a history of homelessness). In addition, different FPCs treat a different range of inmates, which means that the reconviction rates per institution will vary. To provide a more adequate picture of the functioning of FPCs on the basis of reconviction rates, Wartna et al. (2014) studied reoffending rates controlling for differences in inmates' characteristics, based on individual conviction rates. Two FPCs exhibited higher observed reconviction rates than was expected. Four other FPCs (including two public ones) showed mixed results: For some forms the observed reoffending was higher than expected, while for other forms it was the other way around. Lastly, four FPCs appeared to perform better in terms of reoffending than expected. That being said, due to the limited sample size per FPC, none of these observations of the difference between reconviction rates were statistically significant and conclusions on a different effectiveness of nonprofit FPCs compared to the public FPCs cannot be drawn.ⁱⁱ

Table 2 shows the performance of the forensic psychiatric centers on the most important indicators per 100 occupied cells. Although we find differences between the output of public and nonprofit

centers, in particular with respect to the violence rate against personnel, none of these were significant in a Mann-Whitney test where we tested the hypothesis that one of the subsamples tends to have larger values than the other.ⁱⁱⁱ As this result might be the consequence of the low number of data, we also tested the differences in an independent t-test using the bootstrapping method (Martin 2007).^{iv,v} However, in these bootstrap power calculations of this Mann-Whitney test we didn't find significant differences either.

<insert Table 2 here>

Differences between public and nonprofit institutions might also become clear in the case of a change in institutional setting. In 2008, the public FPC van Mesdag was taken over by a nonprofit mental health-care organization. The main motive was to create possibilities for closer cooperation, based on an equal legal form, with other mental health-care organizations. This was expected to involve improvement of the flow of inmates (especially the outflow of inmates to other mental health-care facilities at the end of their treatment), improvement of the quality of treatment and an integrated approach of treatment and security issues. After three years, Groenendijk et al. (2011) evaluated the takeover and investigated the effects on the flow of inmates, the cooperation within the forensic care system, the integration of security issues and care (risk management) and the relation between the Ministry and the forensic center. They showed that the main benefits consist of the removal of barriers to the day-to-day management of the FPC and of increased possibilities for cooperation with other mental care institutions. According to the evaluation, the takeover has – for example – contributed to the development of joint training programs, combined research activities and more flexibility in exchanging personnel. Although the Ministry has held considerable control over the FPC van Mesdag, as laid down in the FPC statutes, in practice these competencies have not been used and the relationship between the FPC van Mesdag and the Ministry has not really changed. The study did not draw conclusions on two main issues: improvement of the flow of

inmates and increased exchange of personnel with the parent organization. The takeover brought some unintended additional effects. As the FPC van Mesdag was no longer part of the DJI-agency, it did not depend anymore on the administrative services of the custodial institutions agency and it could make its own plans for long-term maintenance of its buildings as its owner.

3.3 Juvenile prisons

In the Netherlands, young people aged between 12 and 21 who have committed an offense are tried under special juvenile criminal law. Serious cases will be brought before the juvenile court, which may order, among other things, that the young offender be placed in juvenile detention, or in a correctional institution for juvenile offenders. In cases of juvenile detention, young people up to 15 years old can be sentenced to a maximum of a 12-month term of imprisonment, and 16 and 17-year-olds can be sentenced to two years maximum. If the court holds that the juvenile offender needs forensic psychiatric treatment, he or she may be placed in a correctional institution for juvenile offenders, part of a penitentiary institution for juvenile offenders.

Although imprisonment for juvenile offenders is based on a specific law, and the detention takes place in a separate regime (more directed at upbringing and education), it is still occupation in a prison, with comparable restrictions and safety measures to a regular prison for adults. In 2015, on average 515 juveniles stayed in juvenile detention, at an average cost of €638 a day per cell.

Institutional setting

In the Netherlands, there are four public juvenile prisons and five nonprofit prisons for juvenile offenders, spread across the country (at the end of 2014). The Law on Juvenile Prison Care states several rules concerning the designation of nonprofit organizations as a juvenile prison. The nonprofit juvenile prisons are in four cases part of a regional organization for child and youth care. In one case, the nonprofit organization is fully independent and does not perform other activities. The nonprofit institutions are subsidized for providing places for juvenile offenders. In terms of the

number of inmates, about 50% are contracted with nonprofit organizations. The management of the nonprofit juvenile prisons is appointed by the supervisory board of the mother organization foundation it belongs to. In the case of financial mismanagement, the foundation bears the risk.^{vi} Also in this case both public and nonprofit juvenile prisons fall under the supervision of many national inspectorates. The nonprofit centers originate from several decades ago when specific juvenile prisons were introduced and the organizations offered this type of care, in addition to their mental care facilities. The possibility of contracting out to these organizations offers the Ministry more flexibility in the provision of juvenile imprisonment.

To obtain a good comparison between the public and nonprofit organizations the contracts of the public juvenile prisons are identical in design. The annual management contract (in the case of a public prison) or performance agreement (in the case of a nonprofit prison) contains agreements on the products (type of detention, budget/grant, performance indicators, the security of the buildings, which has to conform to the standards of the DJI, provision of information about prisoners' data and their care pathways, and regulatory requirements that must be met, etc.). The annual report consists of the realization of the management or performance contract, a financial report and a report on the performance indicators. The budget for each prison is based on standard prices per juvenile detainee per diem, with supplements for specific products or circumstances. At the end of the year, the juvenile prison must report on the expenditures. In the case of degree of occupation of less than 90% of the percentage as used in the management contract, the budget is cut. If the center reports a surplus in its budget, it may add it to the reserves up to a maximum of 5% (for public prisons) or 10% (for nonprofit prisons) of its budget. The other part has to be refunded to the Custodial Institutions Agency. In the case of a deficit, the center has to eradicate it in the following years. Since 2010, all juveniles in a correctional institution have participated in a compulsory daily program called YOUTURN, which includes care, training and treatment. By law, for all juvenile detainees who stay longer than 90 days, a treatment plan is made.

As far as we know, only limited validated information is available on the differences between the public and the nonprofit prisons in terms of the efficiency or effectiveness of their imprisonment and re-entry activities in the Netherlands. Van der Broek (2012) analyzed the employment situation of staff working in correctional institutions for juvenile offenders. In this study, differences between staff in public and nonprofit institutions were also examined. Staff in a nonprofit institution is more positive in their judgement on a range of specific aspects of the work: the extent to which they experience exhaustion, the governance of the organization, the leadership styles of their superiors, the extent to which they offer structure to juveniles and a variety of aspects covered by the theme integrity and safety.

Table 3 shows the performance of the juvenile prisons on the most important indicators per 100 occupied cells. Although we find differences between the performance of public and nonprofit juvenile prisons, in particular on violence against personnel and the number of complaints by juveniles, none of these were significant in a Mann-Whitney test.^{vii} As this might be a consequence of the low number of data, we also did a robustness test for the Mann-Whitney results using the bootstrapping power method in an independent t-test (Martin 2007). However, in this test we didn't find many significant differences either, except for the difference in the number of cases of violence against personnel, which are higher in the nonprofit centers.

<insert table 3 here>

Prison audits are a rich resource of material that can be used to collect data on processes and outcomes (Gaes et al. 2004). Based on the visitations of the inspectorates, we can compare the quality the juvenile institutions in a number of aspects. Based on the scores of these inspections, we tested for each of the 22 aspects using an ordinal regression model, with the inspection score as a

dependent variable, the public/nonprofit status as a dummy variable and the month of the inspection as a control variable. We saw no significant differences between the public and the nonprofit prisons for any of the criteria, although this might have been due to the four-point scale of the data and the lower number of data.^{viii} Table 4 shows these data, aggregated by a number of aspects.

<insert table 4 here>

4. Discussion

In the Netherlands, juvenile detention and intramural forensic psychiatric care are executed by both public and nonprofit organizations. In both types of incarceration there is a market of providers of comparable services in (juvenile) mental care. Four out of the five nonprofit juvenile prisons are part of organizations that provide (intramural) youth care. The seven nonprofit forensic psychiatric centers are part of those organizations that provide (intramural) psychiatric care. In all cases, the nonprofit character should prevent the efficiency incentives leading to lower quality due to profit claims by the owner of the organization. On the contrary, the potential efficiency of the nonprofit firm will be invested in the supply of prison services. In addition, the intrinsic motivation of employees in these nonprofit firms may reduce the risk of contract failures compared with for-profit entrepreneurs.

The main institutional difference between the two types of organization is that in principle the nonprofit firm bears the risk of mismanagement itself, while the risk of mismanagement of the public organization is for the Ministry. The possibility of contracting out to these organizations offers the Ministry more flexibility in the provision of internal forensic care and juvenile imprisonment. As far as information on the performance of public and nonprofit organizations is concerned, we found almost

no significant differences in efficiency and quality between public and nonprofit organizations, either for juvenile imprisonment or intramural forensic care. However, due to the low number of cases with data, conclusions on the differences between types of incarceration have to be reviewed with bootstrap power calculations (Martin 2007). However, using these resampling methods for almost all performance indicators for forensic psychiatric centers and juvenile centers we did not find significant differences.

We find opportunities for future research in more in-depth analyses of the differences in the internal organization between public and nonprofit organizations with respect to their internal management of the processes of detention. Experiences show that, although the nonprofit and public organizations are treated equally, the nonprofit organizations seem to have more opportunities to manage their own business and cooperation with other mental care organizations. This could give further insight into their costs and effectiveness.

In addition, we base our findings on the analysis of the execution of detention in a specific setting, in which the care aspects are significant and the market is related to the market for intensive mental care. Future research could give insight into whether the execution of types of regular detention by nonprofit organizations is a real alternative, in particular the extra care units in prisons that focus on care for repeat offenders and psychiatric care for prisoners. Van Slyke (2002) and Feiock and Jang (2009) emphasized that a proliferation of nonprofits involves the overthinking of a number of topics related to management, measurement and accountability, but we believe it is challenging as the Dutch example shows. Moreover, they can be less standardized and 'protocolled' (by law, policy and strict budgetary boundaries) settings are more likely to benefit from a nonprofit design.

5. Conclusion

The incarceration of citizens is a complex public responsibility. In recent decades, many experiences on outsourcing this task to the private sector have been studied. At the same time, based on the literature and experiences in Anglo-Saxon countries, there is great hesitation against this form of

outsourcing due to incomplete contracts and the potential impact on the quality of private services. In the Netherlands, a special form of outsourcing this task is addressed by the execution of juvenile detention and forensic care by nonprofit organizations. Most of these institutions are part of larger regional organizations for mental health care. Because of their status as a nonprofit organization they do not have an undesirable incentive to reduce costs but they seem to have more flexibility than public organizations. In almost all cases, there are almost no significant differences between public and nonprofit performance. Further research should demonstrate their impact. Although we cannot find differences in the performance of public and nonprofit organizations in the incarceration of detainees, future research might deal with varieties in the internal management structures and cost structures of both types of organization.

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Table 1 Incarceration in the Netherlands, in 2015

	number of inmates (average in 2015)	costs per day (on average)	public / nonprofit	Inmates in nonprofit centers
penitentiary institutions	8,375	€240	26 (all public)	-
forensic psychiatric care centers	1,485	€504	2 public / 8 nonprofit in 2015)	85%
correctional institutions for juvenile offenders	515	€638	4 public / 5 nonprofit	50%

Source: Custodial Institutions Agency

Table 2 Annual performance indicators for forensic psychiatric centers, 2012–2015

	average for public forensic psychiatric centers (n=8)	average for nonprofit forensic psychiatric center (n=26)	overall average (n=34)	p-value on the dummy variable, in a Mann-Whitney test	p-value on the dummy variable, in independent samples t-test, with bootstrapping
Annual recidivism during treatment, per 100 occupied prison cells	0.08	0.20	0.17	0,43	0,30
Number of escapes during treatment, per 100 occupied cells	1.97	1.64	1.71	0,66	0,71
Number of cases of violence against inmates, per 100 occupied cells	1.51	2.73	2.44	0,29	0,12
Number of cases of violence against personnel, per 100 occupied cells	4.72	6.35	5.97	0,84	0,40

Number of valid complaints, per 100 occupied cells	12.09	10.28	10.71	0,44	0,29
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Source: Custodial Institutions Agency

Table 3 Performance indicators for juvenile prisons, 2012–2015

	Average for public juvenile prisons (n=16)	Average for nonprofit juvenile prisons (n=20)	Overall average (n=36)	p-value on the dummy variable	p-value on the dummy variable independent samples t- test, with bootstrapping
Number of escapes during detention, per 100 occupied prison cells	0.41	0.35	0.37	0,56	0,88
Number of escapes during furlough, per 100 occupied prison cells	12.36	12.65	12.52	0,92	0,93
Number of cases of violence against juveniles, per 100 occupied cells	32.25	33.18	32.77	0,47	0,92
Number of cases of violence against personnel, per 100 occupied cells	14.70	30.60	23.53	0,40	0,08
Number of valid complaints, per 100 occupied cells	25.59	12.57	18.36	0,27	0,12

Source: Custodial Institutions Agency

Table 4 Judgement of the inspections on juvenile imprisonment, 2012 – 2016, on a four-point scale^a

	Average for public juvenile prisons (n=4)	Average for nonprofit juvenile prisons (n=5)	Overall average (n=9)	p-value on the dummy variable
Legal status of juveniles (incarceration house rules, activities, accommodation, nutrition, contact, access to care, discipline, procedures for complaints)	3.2	3.3	3.2	0,90
Social contact with juveniles (screening, treatment, reports and documentation)	2.9	2.9	2.9	0,76
Internal safety (calamities, anti-aggression treatment, discouragement of drugs)	2.8	2.6	2.7	0,68
Safety of society	2.3	2.8	2.6	0,29
Reintegration into society (reintegration activities, furlough)	3.0	3.2	3.1	0,68
Organizational aspects (personnel, communication, integrity, evaluation)	3.3	3.3	3.3	0,997

Source: Custodial Institutions Agency

a. The scores are on a four-point scale: 1: Does not meet the relevant standards and expectations, 2: Meets in a limited extent to the relevant standards and expectations; 3: Does predominantly but not completely meet to the relevant standards and expectations, 4: Fully compliant with the relevant standards and expectations, the functioning at this criterion is an example for other prisons.

ⁱ The authors thank the participants of the 10th EIASM workshop on the Challenges of managing the third sector, Edinburgh, held on 11–12 June 2015, and participants of the 2nd edition of the ICPP, Milan, held on 1–4 July 2015, for their comments on this paper.

ⁱⁱ In this study, 10 organizations were studied as one other type of forensic care institution (a forensic psychiatric clinic) was included.

ⁱⁱⁱ For this Mann-Whitney test we needed the observations to be independent, which we have assumed, as inmates are placed in the prisons in their own region, so there is no a priori reason for the population of inmates to be different between institutions.

^{iv} Martin (2007) showed that especially in the case of a small number of observations such a bootstrap power method is important for the robustness of (nonparametric) tests. The technique can be used to estimate the accuracy of an estimator and may be useful for analysing small datasets where prior information is sparse, distributional assumptions are unclear, and where further data may be difficult to acquire (Henderson 2005).

^v We thank José Manual Alonso for this suggestion and these results are available upon request.

^{vi} For some nonprofit organizations, the Dutch government guarantees the mortgage on the building.

^{vii} For this Mann-Whitney test we needed the observations from different prisons to be independent, which we have assumed, as inmates are placed in the prisons in their own region, so there is no a priori reason for the population of inmates to be different between institutions.

^{viii} We also tested the differences for the six groups of aspects, using fixed-effect dummies as control variables. None of the results were significant in these models either.