

**'THE DEPRIVATION OF LIBERTY INFRASTRUCTURE: AT THE CORE & AT THE MARGINS OF STATE SANCTIONED DEPRIVATION OF LIBERTY.'**

**DOLI BACKGROUND:**

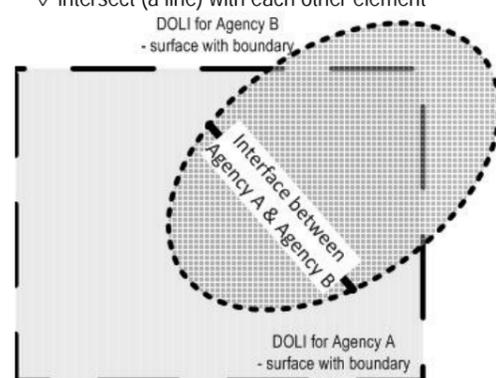
- Infrastructure for State sanctioned deprivation of liberty
  - NOT conditions of employment, invalidity, lifestyle, parenting, illegal deprivation etc
  - NOT fundamentally about the people
  - Focus on Australia & UK derived jurisdictions
  - Purpose - criminogenic, medical (& administrative)
- Critical historic issue - to person & community
  - Magna Carta - National Covenant (Scotland)
  - Anti-slavery
  - US independence
  - UN Charter & OPCAT
- "The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country."<sup>1</sup>
- DOLI as a prospective new model - a logical thread running through several agencies as they each fulfill their objectives by (in part) lawfully depriving people of their liberty.
- MJB background
  - Engineer - public health water & sewage treatment. Concept design & operation/ management
  - Central agencies - MoG, public policy, evaluation
  - Corrections - operations & outsourcing/ PPP
  - No background in epistemology or ethics
  - Network of elder statesmen, decision makers & 'thought leaders' with knowledge & values
  - Seek to 'understand' as is & to change to better
- Not rocket science
  - Domestic parallels - children & aged
- Foundation elements
  - 'Facts' are value laden - conditional. Data subject to different counting conventions, privacy, security, confidentiality
  - Agencies - police, courts, corrections, forensic mental health, health, juveniles, immigration & aged care
  - Consider
    - MoG arrangements - basics, minor/ major players
    - Basic decision making as 'investigative' cf 'adversarial'
    - Oversight & appeal entities - & basis for review
  - DOLI is huge in financial, economic & social terms
  - Community/ jurisdiction expects/ wants?
    - good for community well-being
    - 'good' for those deprived of liberty
    - \$ - value for \$ & absolute
    - Sustainability, stability, predictability, trust, faith

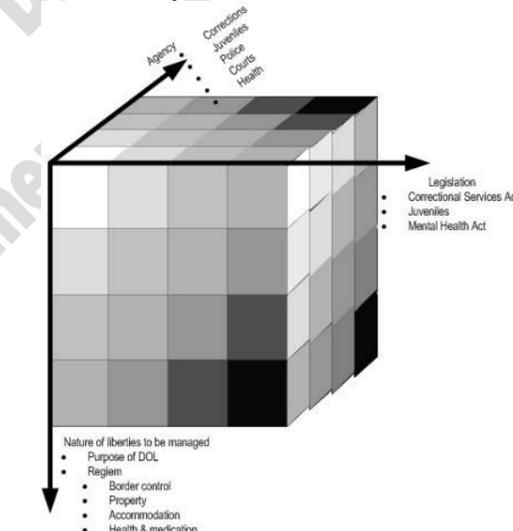
**DOLI network - relationships ↔ & ↑**

	ADMINISTRATIVE INFRASTRUCTURE	PHYSICAL INFRASTRUCTURE	COMMUNITY ATTITUDES
1	International agreements Legislation Government policy & contracts	Bricks & mortar	Political leadership
2	Agency policy Agency contracts	Mechanical & electrical systems	Professions & special interest groups
3	Professional judgements by experienced operators	Electronic systems, including information & firmware	Community identified issues, events & concerns
4	Best judgement by skilled operational staff	Proper use by skilled operational staff	Individuals & local community

- Why is/ might a person be deprived their liberty?
  - Behaviour - imprisonable offence
  - Health - certifiable mental health, guardianship etc condition [plague, leprosy, polio, TB, AIDS etc over history]
  - 'Administrative' detention
- Consider
  - implications if ALL 'eligible' were deprived of liberty
  - implications of No of 'functionaries'
- Purpose of deprivation
  - prevent flight
  - punishment/ retribution/ revenge
  - facilitate treatment/ rehabilitation
  - deterrence/ discourage
  - protection (community/ individual)
- Who involved? Numbers & duration of people deprived
  - Identify statistics & KPIs across all DOLI
  - Statistics - 'standard' ratios/ indicators
    - Corrections normal 75-150/ 100 000 BUT 'others'. Min~30. Max~1 000 or >2 000 for specific 'others'.
    - Recurrent cost - prison ~\$300/ d, juveniles ~\$800, mentally ill ~\$1100. Min~-20%. Max~+500%
    - Capital cost - ~\$½ - 1m/ bed
    - Stay - sentence ~30d, remand ~50d, mentally ill <XX, detainee ~2yrs
  - Indirect - F&F, 'debtors', Pakistan, *sippenhaft*
- Characteristics? 'others'. DOLI as social engineering

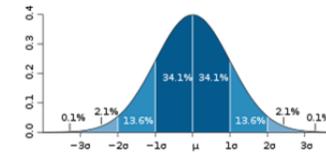
**Administrative infrastructure**

- Ministerial/ agency/ program structure
    - Arrangements for public administration/ management
    - Unique NOT shared among agencies/ jurisdictions
    - MoG of 'governance' & public sector reforms
  - Consider each agency/ provider element of DOLI:
    - as a flat surface - ½ full or ½ empty
    - with a boundary
    - intersect (a line) with each other element
- 
- Consider the impact of this in 3 dimensions - for legislation structure & coverage of relevant issues across several jurisdictions



- Consider the inevitable (interpretative or real) gap &/ or overlap between agency/ program - & consequences thereof

- Management of people deprived of liberty - leads to unit processes (similarity of fundamentals - parallels to wastewater - brewing - food - fermentation processes)
  - Due process - habeas corpus, decision, appeal, "lawful custody/ care" by State nominee
  - Throughcare - into/ out of secure facility
  - 'Duty of care' obligations - Rau, Alvarez, Williams etc
  - 'cohort' - aid management but ... normal distribution



- Agency unit processes of people - non-arbitrary & with associated EOs & OIs & conditions of employment
  - Identity - lawfulness of status & decisions made
  - Case management - issues arising
    - Risk managed - risk of what?
  - Defined regime/ category - hierarchy of restrictions
    - Cost implications
    - Movement - person, information & stuff
    - Accommodation - alone/ with others
    - Catering & 'property' - clothing, ablutions
    - Health & medication
    - Programs - education, work, activities
    - Citizenship - separation & return, voting
- Agency costs
  - Operating, capital - comparisons
  - Planning & contingency - incremental person issue
- Cohesive information across all DOLI agencies dubious
  - system - planning, performance, best practice
  - person - cross agency case management
- Investigation, review & appeal
  - History - jurisdiction dependant arrangements
    - Coroner's Court, Auditor General, Inspectorate, Ombudsman etc
    - Prospects include more 'specialists' & OPCAT
- Developments
  - Public sector reforms
    - 'war on ...' - community perversion for expediency
      - Cf justice reinvestment
    - 'privatisation' & 'outsourcing' - in all 3 DOLI elements
      - Cf Social Benefit Bond
  - Political (cf government) influence over decisions
  - Access to higher level administrative infrastructure - OPCAT etc
  - 'governance' cf 'MoG' - changed accountability & relationships

**Physical infrastructure**

- Agency specific - [few lessons learned]
- System capacity - flow & storage issues re: people & specific role of each facility in each agencies estate
- Defined regime/ category - facility/ bed (person) - can become 'sole/ specialized' use
- Features - safe, secure, humane & for 'purpose'
- Built 'fit for purpose' - cf dynamic/ other need
- 'Tied' to EOs & OIs
- Consider interaction with local community - 'presence'
- Gated communities - ghetto - DOLI in reverse?
  - Keep 'good' people together & exclude bad
  - Cf identify 'bad' people together in special place
- Developments
  - Change management for agency/ facility etc
  - Community standards re: facilities
  - Over specified, over built, over maintained
  - Ever closer links to AI - weft/ weave
  - More developments at lower level than upper level

**Community attitude**

- Hierarchy of 'community' & attitudes with complex interactions
- Economic concern - costs & variability, evaluations
- Social concern - perverse power, duty of care, OPCAT etc, credible information/ spin
- Public opinion - but consider sources of information
- Concerns of sustainability etc
- General Developments - mostly efficiency tools
  - How to 'categorize' 'culture' of professions &/ or agencies in terms of broad based sustainability
- 'Public sector reforms'
  - Personality, leadership within bureaucracy
- Specialist, silo, narrow focus - cf broad understanding
- Sustainability - as lens to assess DOLI - time scale?
  - Bruntland - 'meet needs of this generation - without compromising choices of next'
    - Environmental - new technologies & use of
    - Social - related to cultural norms - human rights, duty of care, derogations, attainder, mass customisation
    - Economic - Budget priorities, value for money
  - Community/ jurisdiction expects/ accepts
  - DOLI as tool of social engineering - gated community &/ or ghetto

**DOLI ISSUES:**

- Silos - professional, vocational, focus/ perspective, perversion of passion NOT conspiracy
  - 'Parallel worlds' & 'little issue'
  - Incremental details revealed - cf 'holism'
- Deprivation of liberty (generally) as a desired solution to what problem?
  - & then to intensity of regime - appropriate?
  - & then to associated consequences - justified?
- Contradictory ideologies of punishment & care. Achievement of purpose - evaluation

- Paucity of quality information across DOLI
  - To understand, to model, 'what if ...'
  - Within & between DOLI elements
- MoG arrangements - politics of government
- Genuine understanding of DOLI purpose
  - & prospect of 'success' in specific context
  - & systematic evaluation
- Perverse management/ treatment of people
  - Deceit, distraction of normalcy
  - 'Others'
  - Etc - & detail for specific individuals

**Community perceptions of itself**

- Churchill - community comparisons - within/ between
- Health & well being
- Safety of justice
- Informed debate - or ...
- Sensible risk management
- Power - transparency/ invisibility
- Costs of DOLI based solution & benefits
  - Absolute - a matter of 'principal'
  - Judgement - but basis for?
  - DOLI as tool of social engineering

**Actual/ prospective issues**

- Purpose - achieved/ delivered
- Proper management/ treatment
- 'Others' & arbitrariness
- Human rights - OPCAT
- Duty of care
- Consequences - at various levels
- Sustainability, efficiency & effectiveness
- Public administration - MoG & reforms
- Development, evolutions & innovations
- Capacity - system, agency, facility with specific/ silo role in agency activities

**Sustainability:**

- regulatory compliance, incremental mitigation, value alignment, whole system, business model, new mission/ objective
- plausible for individual, for group/ organization (now & future), can any 'policy' meet specialized requirements
- Drivers of change - "Tipping Point"
- Law of the few - connectors, malvens (lots of information & pass on) & salesmen
- Stickiness factor
- Power of context

<sup>1</sup> (Winston Churchill (House of Commons, 20 July 1910) (Eady 2007) "A nation is assessed by how it treats its weakest members" Similar sentiments ascribed to all manner of other community/ political leaders

<p>DOLI related question/ perspective will require:</p> <ul style="list-style-type: none"> <li>Qualitative research                     <ul style="list-style-type: none"> <li>Interview thought leaders</li> <li>Review literature - that which is more/ most specific to the headline &amp;/ or supportive questions</li> <li>Review academic &amp; other sources of information - each element of 'literature' is somewhat problematic (for different reasons)</li> </ul> </li> <li>Consider basic characteristics of DOLI                     <ul style="list-style-type: none"> <li>What is state sanctioned deprivation of liberty?</li> <li>DOLI elements &amp; interactions?</li> <li>DOLI roadmap?</li> <li>DOLI performance &amp; sustainability? Assured sustainability?</li> <li>DOLI development drivers? Crisis in XX?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Interviews/ discussion with thought leaders - drawn from people with a range of roles/ interests in one or more elements of DOLI. People who:                     <ul style="list-style-type: none"> <li>are long-standing thought leaders in their field;</li> <li>think about their own profession &amp; interactions with other professionals;</li> <li>have an insight into some element of DOLI &amp; a willingness to consider actual/ prospective contributions of others, without prejudice;</li> <li>insight derived from knowledge &amp;/ or experience;</li> <li>value considered &amp; intense debate of complex issues, prospectively over a series of discussions; &amp;</li> <li>represent diverse professions, working environments (public &amp; private sector, operational agencies, head office, inspectorate/ reviewer &amp; central agencies etc), domestic backgrounds, ethnic backgrounds, nationality, gender &amp; health status.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Gather thought leaders views of:                     <ul style="list-style-type: none"> <li>Big historic picture &amp;/ OR</li> <li>DOLI contribution to society &amp;/ OR</li> <li>DOLI industry changes &amp;/ OR</li> <li>Public Sector Reform (PSR) &amp;/ OR</li> <li>DOLI managerial/ MoG changes &amp;/ OR</li> <li>Advice re: personal professional development/ career issues</li> </ul> </li> <li>Develop/ refine DOLI as a logical framework to suit audience &amp; decisions to be made                     <ul style="list-style-type: none"> <li>Academic - &amp; other particular interests</li> <li>Minister/ CEO/ executive - to influence Treasury Benches &amp; thus allocation of jurisdictions resources</li> <li>Consider Victoria 'Evaluation &amp; Price Review' methodology - or ...</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>My own thought leaders have included:                     <ul style="list-style-type: none"> <li>prospective, actual &amp; ex-politicians (of several political parties) &amp; members of the judiciary;</li> <li>past &amp; present CEOs &amp; senior executives of agencies<sup>2</sup> &amp; contracted service providers<sup>3</sup> through to professional leaders in operational environments<sup>4</sup>;</li> <li>past &amp; present legal entities with lawful custody/ care responsibilities;</li> <li>past &amp; present inspectors/ reviewers of DOLI<sup>5</sup>;</li> <li>people who have worked in only one jurisdiction through to those who have worked in many;</li> <li>only one who has been actually deprived of their liberty, but many who have been touched by deprivation of liberty in their private lives; &amp;</li> <li>academics, media &amp; communications professionals, familiar with DOLI issues.</li> </ul> </li> </ul>
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Some sample questions/ issues for consideration:

- These questions do NOT lend themselves to a specific professional perspective (or any other special interest group) & attempts to do so should be resisted. Consider the implication of inappropriate use of 'religion' as a logical means of solving astronomical problems, or the 'military' in solving disputes, or ... Consider the relative merits of metric/ imperial systems, of rectangular/ polar coordinates. Consider the consequences of 'solving' medical problems in a prison. Consider precedent of Bazalgette (miasma or sewerage - to save lives), Panama Canal (engineering AND public health). Etc.
- DOLI is an alternative - as yet undocumented - model. Some issues have not been adequately recognised without DOLI. Some questions cannot be sensible contemplated without DOLI. Some answers cannot be provided without DOLI.

<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>What are the core characteristics of State sanctioned deprivation of liberty?</li> <li>What are some of the fundamental issues for consideration by those operating at the intersection of health, justice &amp; administrative detention?</li> </ul>																																																																				
<p><b>Headline Answer:</b></p>																																																																				
<p><b>Proposition 1:</b> Within an agency</p> <ul style="list-style-type: none"> <li></li> </ul> <p><b>Proposition 2:</b> Across agencies in 1 jurisdiction</p> <ul style="list-style-type: none"> <li></li> </ul> <p><b>Proposition 3:</b> Across similar agencies in several jurisdictions</p> <ul style="list-style-type: none"> <li></li> </ul> <p><b>Proposition 5:</b> Other notions</p> <ul style="list-style-type: none"> <li></li> </ul>	<table border="1"> <tr> <td colspan="2">DOLI degree</td> <td colspan="10" style="background-color: #f08080;"></td> </tr> <tr> <td>Justice</td> <td>Community member</td> <td>Report to ...</td> <td>Appointment with ...</td> <td colspan="2">Monitored by DOLI agency</td> <td>Open prison</td> <td colspan="3">Secure perimeter</td> <td>'G' Division</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td>Passive</td> <td>Active</td> <td></td> <td>Low</td> <td>Medium</td> <td>High</td> <td></td> </tr> <tr> <td>Health</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>Closed ward</td> <td colspan="3">Acute care</td> <td>Bubble</td> </tr> <tr> <td>Mental Health</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>Closed ward</td> <td colspan="3">Secure</td> <td></td> </tr> <tr> <td>Immigration Detention</td> <td></td> <td></td> <td></td> <td colspan="2">Residential housing</td> <td>Baxter</td> <td colspan="2">Villawood dorm</td> <td colspan="2">Special unit</td> </tr> </table> <p>'Liberties', of various forms, can be deprived to varying degrees -</p> <ul style="list-style-type: none"> <li>in different environments</li> <li>at different capital and recurrent costs</li> <li>with different risk and consequence implications</li> <li>for specific purpose/ reason</li> </ul> <p>HDEM infrastructure - physical and services - can be shared among DOLI agencies for:</p> <ul style="list-style-type: none"> <li>assessment - person, residence etc in context</li> <li>operations - fitting, monitoring and response and removal</li> <li>supporting programs and services</li> <li>information, intelligence and risks without compromising MoG arrangements or obligations</li> </ul> <p>HDEM value for money assessed through:</p> <ul style="list-style-type: none"> <li>KPIs</li> <li>AIs and \$</li> <li>risk management and response</li> <li>evaluation and price review</li> <li>on-going support - colleagues, agencies, community</li> <li>EM technology prospectively useful in facilities to improve safety &amp; security</li> </ul>	DOLI degree												Justice	Community member	Report to ...	Appointment with ...	Monitored by DOLI agency		Open prison	Secure perimeter			'G' Division					Passive	Active		Low	Medium	High		Health						Closed ward	Acute care			Bubble	Mental Health						Closed ward	Secure				Immigration Detention				Residential housing		Baxter	Villawood dorm		Special unit	
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Other prospective headline questions (from a variety of perspectives & at a variety of levels) include:

<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>Are the prevailing arrangements for DOLI sustainable?</li> <li>What parameters might be used to assess sustainability? And thus refine it?</li> </ul>	<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>What happens as a consequence of deprivation of liberty? What might happen? - especially as related to the nominal purpose (above)</li> <li>What can't happen as a consequence of deprivation of liberty? What is unlikely? - ditto</li> <li>From several perspectives</li> </ul>	<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>Can DOLI agencies share best practices, planning assumptions &amp; other manifestations of expertise &amp; capabilities? Can the DOLI agencies share a set of common terms/ concepts?</li> <li>How might this sharing be facilitated? Required? Even 'mandated'?</li> </ul>
<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>What 'innovations' might DOLI agencies/ enterprises adopt to address (above &amp; XXX) issues?</li> <li>Might include consideration of Electronic Monitoring, of actuarial approach to risk management, of 'confronting' etc 'nit wit' 'divisionary' commentators on DOLI issues of substance</li> </ul>	<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>Are there skills &amp; values that might be generic across one or more elements of DOLI? At level of executive, manager, supervisor, worker? For qualifications &amp; conditions of employment?</li> <li>Does DOLI provide career opportunities?</li> </ul>	<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>What at the legal powers/ processes at the core of DOLI?</li> <li>What are 'merely' administrative powers or arise from compliant behavior?</li> <li>From several perspectives</li> </ul>
<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>Do the prevailing arrangements for State sanctioned deprivation of liberty meet contemporary community expectations?</li> <li>How vulnerable are the arrangements to prospective change in these expectations? And how might they be addressed?</li> </ul>	<p><b>Headline Question:</b></p> <ul style="list-style-type: none"> <li>How might a person presenting multiple risks to the community - be properly managed?</li> <li>How might a person who is in the lawful care/ custody of several agencies at the same time - be properly managed?</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

<sup>2</sup> From Federal & 3 State jurisdictions in Australia & from United Kingdom, Canada, New Zealand, Hong Kong & Singapore.

<sup>3</sup> From each of the companies that have managed secure facilities in Australia & each of the companies that have provided security services to operational facilities.

<sup>4</sup> From police, courts, corrections, forensic mental health, health, juvenile detention, immigration detention & aged care agencies.

<sup>5</sup> From operational agencies & from Premiers, Treasury, Attorney Generals, Auditor Generals, Inspectorates, Ombudsman & Public Service Board as well as United Nations & International Red Cross.

<p><b>Community Question</b></p> <ul style="list-style-type: none"> <li>• Why are there such large differences in rates of deprivation of liberty? What makes our community so different from the average? Is it better to be above or below average - why?</li> <li>• Why is the remand stay longer than the average sentence?</li> <li>• I understand innovations in medicine have meant different treatment &amp; different stays required - BUT - How can any of the purposes of deprivation of liberty be achieved in average length of stay?</li> <li>• Why the many disconnects between these several agencies? Aren't they all part of the same public service? The same government?</li> <li>• What should I do if ever brought before the system or 'put to the question'?</li> </ul>	<ul style="list-style-type: none"> <li>• Why is the cost/ day in a secure setting so high? Why are the different forms so different in cost? Can these costs be reduced - at what implication?</li> <li>• Why is the cost/ bed in a secure setting so high? Why are the different forms so different in cost? Can these costs be reduced - at what implication?</li> <li>• What is the real difference in management of a person deprived of their liberty between the various agencies? How can these differences be justified when the same person might be involved in several of these in a very short period of time? [Reference Cornelia Rau]</li> <li>• Does deprivation of liberty for criminals or mentally ill really share base characteristics with the arrangements for aged care?</li> </ul>	<ul style="list-style-type: none"> <li>• 'Why do we get so excited about 'escape'- especially when so many of these people are really not so very different from us? Or are they?</li> <li>• Why do we, as a community, spend so much to avoid 'death in care/ custody' for otherwise ordinary people? Do we really mean to do this? What are the consequences?</li> <li>• What is the 'security rating' supposed to tell us? How can this be credible if there are only 3 grades among all these people? How easy/ often is the rating wrong? And what are the consequences? - similarly for the 'categories' of bed in other forms of deprivation of liberty?</li> <li>• How come the public sector is in such a mess again &amp; it just keeps costing taxpayers money &amp;/ or harming individuals - with little/ no public commentary? Is anyone looking at the whole of DOLI? Who? What have they found out?</li> </ul>
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A tabulation of references (key among MJB's list of >400) in the following areas:

LIBERTY, HUMAN RIGHTS, DUTY OF CARE  The underlying philosophy of deprivation of liberty & associated 'ethics'	'OPERATIONAL' HISTORY & EXPECTATIONS OF THE DOLI AGENCIES  Contemporary practice & 'perversions'	OUTLOOK FOR DOLI AS A SERIES OF DISCRETE ELEMENTS  Anticipated, prospective crises - including crisis of confidence by the community & alternate providers	DOLI - SUSTAINABILITY  As related/ adapted to public administration generally & DOLI more particularly	PUBLIC ADMINISTRATION, EVALUATION, BUDGETING, PUBLIC SECTOR REFORM	OTHER MATTERS OF INTEREST
<ul style="list-style-type: none"> <li>• Declaration of Human Rights</li> <li>• Declaration of Independence</li> <li>• Heuston</li> <li>• Magna Carta</li> <li>• On Line Library of Liberty</li> </ul>	<ul style="list-style-type: none"> <li>• Biles</li> <li>• Brown</li> <li>• Codd &amp; Scott</li> <li>• Coyle</li> <li>• Foucault</li> <li>• Goffman</li> <li>• Liebling</li> <li>• Palmer &amp; other 'reviews'</li> <li>• Stern</li> </ul>	<ul style="list-style-type: none"> <li>• Agency/ providers as source of insight</li> <li>• Auditor General &amp; other reviewers</li> <li>• Codd &amp; Scott</li> <li>• Haney &amp; Banks</li> <li>• Morris</li> <li>• Parisi</li> <li>• Petersilia</li> <li>• Productivity Commission</li> <li>• Sarre</li> <li>• UK Agencies on DOLS</li> </ul>	<ul style="list-style-type: none"> <li>• Aras &amp; Crowther</li> <li>• Eweje</li> <li>• Geczi</li> <li>• Henrichson &amp; Delaney</li> <li>• Hopkins</li> <li>• Hugo</li> <li>• John &amp; Judy</li> </ul>	<ul style="list-style-type: none"> <li>• Bentham</li> <li>• Bezzi</li> <li>• DeGross</li> <li>• Geva-May</li> <li>• Guba &amp; Lincoln</li> <li>• Haynes</li> <li>• Laughlin &amp; Broadbent</li> <li>• Osbourne &amp; Gaebler\</li> <li>• WA Parliament &amp; USA Congress</li> </ul>	<ul style="list-style-type: none"> <li>• deBruin</li> <li>• Ferguson</li> <li>• Sentencing Advisory Council - each jurisdiction</li> <li>• MJB source materials on DOLI, on EM etc</li> </ul>