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## **Justice Reinvestment as Social Justice**

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### **Introduction**

This chapter draws on the work of the Australian Justice Reinvestment Project (AJRP) (Brown et al., 2015). The AJRP has examined the development of justice reinvestment particularly in the context of its alignment with broad social justice values. We are also specifically interested in how and whether justice reinvestment can meet the needs of those social groups that have been adversely affected by mass imprisonment and hyper-incarceration, particularly racial and Indigenous minorities, women and people with mental health issues and cognitive impairment (Cunneen et al., 2013). We argue that justice reinvestment was in its early development strongly tied to civil rights, particularly with the focus on imprisonment and racialization, and social justice for communities where large numbers of residents were recycled in and out of prison.

In 2003, justice reinvestment emerged as a strategy to reduce the number of people incarcerated in the United States of America (USA). The goal of this new strategy was to:

redirect some portion of the \$54 billion America now spends on prisons to rebuilding the human resources and physical infrastructure – the schools, healthcare facilities, parks, and public spaces – of neighborhoods devastated by high levels of incarceration (Tucker and Cadora, 2003: 2).

Citing the ‘cumulative failure of three decades of ‘prison fundamentalism’’ (ibid: 3), the authors argued for a holistic approach to both the systemic drivers of the prison population and to underlying issues that lead to offending. They suggested that this was best done through localism that ‘seeks community level solutions to community level problems’ (ibid: 2). Justice reinvestment was conceived as working both inside and beyond the criminal justice system to achieve reduced levels of incarceration. They proposed that savings from the corrections budget be reinvested to address the causes of reoffending in places where large numbers of residents spend time in prison.

The first element of the approach is the collection and analysis of available data about, inter alia, where prisoners come from and where they go home to and the associated costs. An analysis of the costs of criminal justice interventions goes beyond the direct costs of housing an inmate to associated costs such as policing, court costs, transporting defendants to court (if they live in more remote communities), hospital costs and other services for victims of violent crime (Brown et al., 2015: 56). Based on this evidence about the drivers and costs of incarceration, a package of policy options is devised. Stand-out issues, such as very high numbers of parole or probation revocations or people being remanded in custody after being refused bail, can be examined to see what might decrease detention rates without compromising public safety. The chosen policy options are implemented, and some or all of the savings realised from their enactment are (re)invested into the communities identified in the data collection phase to address the criminogenic factors particular to that place. Local stakeholders are involved in nominating the way that reinvestment happens in their community.

Justice reinvestment captured the imagination of communities, criminal justice system actors and legislators in a range of Western countries. In the USA, there are currently 17 local justice reinvestment initiatives and 24 at the state level in varying stages of development. Within the UK, justice reinvestment has been framed within the marketization ideology of the government, largely in the form of “payment by results” schemes. In Australia, the groundswell of support for justice reinvestment has been led by the community sector; there is a growing number of community initiated justice reinvestment pilots as well as government interest in the strategy in multiple jurisdictions.

Perhaps inevitably, justice reinvestment has taken a range of forms in practice. While its architects envisaged that it would be strongly aligned with social justice, this has not always been the focus in practice. While justice reinvestment has the potential to address important social justice issues, this objective can be nurtured, or sidestepped, as it plays out on the ground. It is our argument that the social justice imperative to justice reinvestment has the potential to reinsert social, economic and political rights in the forefront of prison reform. The extent to which justice reinvestment reforms meet the needs of the most vulnerable groups of imprisoned populations, including women, racialized minorities and people with mental illness and cognitive impairment, is a barometer of its social justice commitment.

### **Characterising justice reinvestment in public discourse**

The uptake of justice reinvestment in the USA and UK, and the high-level of interest in it in Australia and elsewhere, is in large part a response to the fact that ever-increasing imprisonment rates are expensive at a time of fiscal stringency, and provide very little return in terms of high recidivism rates (Brown 2010). Economic arguments for penal reform may have purchase where other arguments have had limited success. As the Aboriginal and Torres Strait Islander Social Justice Commissioner [ATSISJC] stated in the 2009 *Social Justice Report*, ‘framing the problem of Indigenous imprisonment as an economic issue might be more strategic than our previous attempts to address it as a human rights or social justice issue’ (ATSISJC 2009: 10). While the ATSISJC is specifically referring to Indigenous issues, the argument has wider potential purchase. However, there is a danger of framing the problem purely in this way because it in turn delineates the terms of the solution: where the problem to be addressed is a fiscal one, concerns around human rights and social justice in proposed solutions are not likely to be given high priority, or may be conveniently forgotten.

In the USA, the language around justice reinvestment has reflected the push for reduced spending following the global economic downturn. Although, arguments based on fiscal ‘rationality’ are a prominent feature of justice reinvestment advocacy, they do not necessarily trump emotive law and order policies that are electorally popular. Retributive public sentiments are central to long established justifications for punishment as ‘deserved’ and are deeply culturally embedded, such that they cannot be ignored (Brown, Schwartz and Boseley 2012: 101; Freiberg and Carson 2010). As Tonry (2011) asks, when the economic tide turns, and fiscal concerns no longer top political priorities, what will stop justice reinvestment from washing away with it, if this is its primary justification? Justice reinvestment rhetoric can speak both in the language of saving taxpayer dollars/increasing community safety, and of neighbourhood renewal and social justice. To be robust enough to stand the test of time, justice reinvestment needs to speak to practical concerns (including resource allocation), but also to be rooted in moral and social approaches to penalty, including social justice discourses (Brown, Schwartz and Boseley 2012).

### **Addressing mass incarceration**

Justice reinvestment emerged from the fact that the geographies of imprisonment intersect with the geographies of poverty and race. In the USA, the story of mass incarceration, as initially defined by Garland (2001), developed through the notion of hyper-incarceration by Wacquant (2010) and revitalized by Alexander (2012), is that historically high incarceration

rates are borne most heavily by communities of colour. In December 2013, 37 per cent of incarcerated males in the USA were black, translating to almost 3 per cent of the black male population being imprisoned (2,805 per 100,000). In December 2013, 22 per cent of the women in prison were black, at twice the rate for white women (Carson, 2014: 8). Statistics such as these led Alexander (2012: 24) to conclude that '[t]oday mass incarceration defines the meaning of blackness in America: black people, especially black men, are criminals. That is what it means to be black'. Mass-incarceration is thus squarely conceptualised as a key civil rights and social justice concern.

Similarly, justice reinvestment in Australia has emerged from a focus on Indigenous communities. As one of the original proponents of justice reinvestment, Susan Tucker, said in an interview with the AJRP:

It's striking ...that the places that are considering or doing Justice Reinvestment are New Zealand, Australia, the UK and the USA... All places where minorities are disproportionately incarcerated. ...I think it's a recognition that the disinvestment in these communities and their lack of political participation or involvement, is part of the problem (Brown et al 2015: 247).

The processes characterising justice reinvestment, particularly the focus on local solutions and the devolution of control over those solutions to the nominated community itself, are well-suited to developing social justice initiatives for various communities, including those of colour. Place-based policies address entrenched disparity that has come about through combinations of systemic failures, public policy decisions, market forces and patterns of discrimination (Cytron 2010: 3).

It is concerning that the commitment to localised, place-based solutions has largely fallen out of justice reinvestment initiatives in the USA. Similarly, a failure to prioritise the reinvestment of savings in high-incarceration communities undermines the prospects of a social justice-oriented program of reform. Rather, state-based justice reinvestment in the USA has focused on working with the political leadership to secure the passage of legislation, and where reinvestment has occurred it has largely been within the criminal justice system rather than community-based solutions to address reoffending behaviour (Brown et al., 2015: 87-91).

In a powerful critique of the trajectory of justice reinvestment in the USA, Austin *et al.* (2013: 8) emphasise that an ambitious vision for criminal justice reform requires the

inclusion of reform coalitions rooted in the long-term interests of the communities they are part of, especially minority leaders and elected representatives. We would add that active ownership of the project by the community, especially where its members have been historically rendered voiceless or been subject to systemic discrimination and disadvantage, is a pillar of a social justice approach to justice reinvestment.

### **Justice reinvestment as a place-based approach**

Justice reinvestment was originally conceptualised as a ‘place-based’ strategy focused on particular geographic communities. As such, justice reinvestment is connected to social and economic policies based on research showing the long term concentration of poverty and disadvantage in particular neighbourhoods and communities. As we have noted elsewhere, justice reinvestment as a place-based approach can be linked to public policy initiatives attacking social exclusion and enhancing social justice (Brown et al 2015: 94). However, although justice reinvestment is defined as a place-based approach, this can have competing definitions, differing political imperatives, and contrasting priorities for policy and practice. We draw the distinction that can be made between ‘top-down’ and ‘bottom-up’ approaches to public policy development and implementation. Much of the development of justice reinvestment in the USA has been largely top-down and the local participatory focus of justice reinvestment has been lost. There is also a danger in reframing basic government obligations to meet human needs around housing, health, education and employment only within a discourse of crime prevention. There are human rights obligations to meet basic needs, irrespective of whether they contribute to lowering imprisonment rates.

A key element of a bottom-up approach to justice reinvestment is that policy priorities, and service delivery models are determined through community decision-making and negotiated with different levels of government. A community development approach lies at the foundation of justice reinvestment. However, it has not received the attention it deserves. As we have suggested:

It is perhaps easier for criminologists and lawyers working in the area of justice reinvestment to concentrate on systemic criminal justice change (through, e.g., reforms to probation and parole), rather than on how local participatory and reinvestment processes can be developed in specific communities, particularly when an understanding of community development is usually outside their professional repertoire (Brown et al 2015: 244).

The question also remains as to the adequacy of justice reinvestment as a place-based approach in addressing the needs of those social groups who have been particularly affected by the growth in incarceration: people with mental illness and/or cognitive impairment, women, and Indigenous and racialized peoples. We argue that there are opportunities and potential for justice reinvestment strategies to change the way the criminal justice system responds to the needs of these groups. For example, the needs of homeless, criminalised and incarcerated people with a mental illness and/or cognitive impairment can be better met with integrated and more holistic support to people in the community and prior to their becoming caught within the criminal justice system. Presently, such support as exists tends to be available after criminalisation and incarceration (Brown et al 2015: 115-121). The AJRP research noted the example of a local justice reinvestment project in Travis County, Texas where a broad-based coalition of government, community and business sectors were able to initiate a housing program for homeless people who had been frequently rotating in and out of the county courts and gaol (Brown et al 2015: 120-121).

Thus far a specific focus on criminalised women has not been a significant feature of justice reinvestment in the USA, Australia or the UK. There have been some guidelines proposed for justice reinvestment to meet women's specific needs in the UK, and a couple of justice reinvestment initiatives in the USA have some focus on women (Brown et al 2015: 121-128). None of the justice reinvestment initiatives in Australia have a specific focus on women. Current gender-neutral justice reinvestment strategies, particularly in the USA, tend to focus on back-end criminal justice measures such as parole and post-release support. However, front-end measures such as diversion, community-based sanctions, specific programs and social support are more likely to benefit women, and these are also particularly conducive to development through a place-based social justice approach.

As noted earlier, Indigenous and other community organisations have been advocating for justice reinvestment in Australia. We have seen some particularly innovative approaches in Cowra, Bourke and Katherine where justice reinvestment is being driven by the local Indigenous communities (Brown et al 2015: 131-138). For example, in Bourke, NSW, a process has unfolded that stands in stark contrast to the American experience. In Bourke the Indigenous community spent 18 months building broad support for justice reinvestment and a governance structure to initiate programs. The Bourke community then developed a plan of what justice reinvestment might look like. In an interview with AJRP, Sarah Hopkins from

the Just Reinvest NSW campaign, encapsulated the importance of self-determination in the justice reinvestment process:

The reality is, if you look at the Aboriginal experience in terms of government, their relationship with government, support from government funding ... it's so fraught that this is the only way to do it because there's no trust there ... I think for community leaders to actually begin to trust a process I think that's when you see that real community capacity building (cited in Brown et al 2015:6).

Thus community capacity building has been fundamental to how justice reinvestment has been envisaged at the local level. Further, the potential for democratic decision-making in justice reinvestment is a significant departure from the way that government has traditionally approached policy making for Indigenous communities. Community capacity building and democratic decision-making coheres with what Indigenous advocates have always said; to give programs implemented in Indigenous communities the best chance of success, communities need to lead the direction of those strategies (ATSISJC 2009; Gooda 2010; Brown et al., 2015: 5). Through self-determination, well-implemented initiatives of this kind can work to redress these issues that sometimes manifest in contact with the criminal justice system.

It is also clear that the imperative for community-led programming in Indigenous communities goes beyond the question of the success or failure of a given initiative, moving into the deeper territory of self-determination which has had such a fraught track record in government programming, and where the 'rhetoric about "partnering" with communities [has] not translated into communities having genuine involvement in decision-making about the solutions to their problems' (NSW Ombudsman 2011: 2.2). As the Aboriginal and Torres Strait Islander Social Justice Commissioner said, 'what I like about Justice Reinvestment is that it provides opportunities for communities to take back local control... to not only take some ownership of the problem but also to own the solutions' (Gooda, 2010). The challenge now is to ensure that governments understand that 'partnering' with communities is not mere rhetoric, but that communities have a genuine involvement in decision-making.

### **Evidence-led practices**

Justice reinvestment is described as 'data-driven', 'evidence-led' and rational rather than emotional. These features have strong practical and rhetorical appeal and mostly have been seen as welcome (Clear, 2010). However, a great deal turns on how evidence is



conceptualized and the measures that are used. These are not mere technical details. The measures that are included, and just as importantly those that are excluded, shape what counts and what is counted and set limits on the questions that can be examined, the policy options that are considered, and the capacity for evaluation and future research. These decisions have a substantial influence on the possibilities of justice reinvestment for tackling social justice issues, including who will share in any benefits, financial or otherwise, and how the problems besetting high incarceration communities such as housing, education, unemployment and illicit drug use are addressed.

The value of reliable data and an evidence base to inform policy, program development and service delivery in criminal justice is widely recognised. Criminal justice systems commonly suffer from the absence or poor quality of data and the failure to evaluate programs and practices. Within the USA, government and philanthropic funding has provided much needed technical assistance to establish datasets and undertake the detailed data analysis that is essential to justice reinvestment. Technical assistance providers also have brought legitimacy and an independent perspective to identifying the drivers of incarceration, quantifying potential savings and developing and choosing between policy options. Without a similar program of technical assistance, UK schemes faced significant obstacles (Wong, Fox and Albertson, 2014). Proposals for the adoption of justice reinvestment across Australia are likely to face similar challenges.

The drivers of incarceration may differ for different groups. For instance, the rates and patterns of incarceration are very different for women, minorities and mentally ill or cognitively impaired people. This may reflect the differential effects of criminal justice practices on vulnerable groups, the criminalisation of social and health issues (e.g. when homeless, intoxicated or mentally ill people are charged with public order offences), social determinants of imprisonment (e.g. poverty, homelessness, unemployment, poor levels of education, low levels of literacy), or a combination of these factors. A social justice aligned approach requires understanding differential drivers of incarceration; this in turn depends on having data, a methodology and an analytical framework adequate for the task. Assessing the contribution of policing practices is also important, yet this is not commonly addressed within US approaches to justice reinvestment.

During fieldwork in the USA, the AJRP was surprised to find that racial disparities in incarceration have been given little explicit attention in justice reinvestment schemes. Marshall Clement from the CSG Justice Center told us in an interview that state policy

makers had never asked for an analysis by race, possibly because ‘people recognise that there’s not clear solutions...It’s not clear cut in the data’. We found that little consideration had been given to questions about whether the drivers of incarceration differ for different groups, although some schemes operating at the local level had identified that mental illness and homelessness were common among ‘frequent users’ of jails.

Where datasets and analytical frameworks do not address these differences, they may entrench the invisibility of vulnerable groups into the future, and preclude more tailored policies and programs. Groups that are in a minority within correctional populations may be overlooked, especially where cost cutting is prioritized, because they are seen as unlikely to yield substantial savings. For instance, within correctional systems women have often been seen as ‘too few to count’. However, there are other ways of approaching savings. For instance, the costs of incarceration and its effects are not only borne by criminal justice agencies, but also by other state agencies (e.g. out of home care of children, welfare support for families) and disproportionately by disadvantaged individuals, families and communities. Taking account of these costs would likely direct attention to the need to provide targeted interventions and support to those most affected.

Justice reinvestment in the USA has shifted from an initial focus on reinvesting in high incarceration communities to reinvesting in ‘high-performing public safety strategies’ (Urban Institute, 2013: 1). This may, in part, reflect the political limits on what is achievable but the emphasis on evidence-based practice (EBP) and ‘what works’ has encouraged a focus on criminal justice reforms and programs to reduce recidivism over other possible objectives (Clear, 2010). Evidence-based approaches have assisted legislators, policy-makers and correctional administrators to choose cost-effective policy options and programs. Forms of cost-benefit analysis (CBA), such as developed by the Washington State Institute for Public Policy, are commonly used to select interventions likely to ‘give taxpayers a good return on their crime fighting dollars’ (Aos and Drake, 2013: 1). However, this narrower focus on the delivery of programs is in tension with visions of justice reinvestment that focus on place-based initiatives, community redevelopment (Tucker and Cadora, 2003) and social justice.

Approaches to EBP differ but a common feature is the use of meta-analysis which synthesises previous evaluative studies that meet an established threshold. Meta-analyses are seen as more rigorous and authoritative than narrative reviews, although there are ongoing debates about the merits of each approach. It is common for a hierarchy of evidence to be adopted

with random control trials endorsed as ‘the gold standard’. However, meta-analyses only include well-established practices that are in widespread use and that have been evaluated within a particular statistical framework (Van Voorhis, 2012 120) but few criminal justice programs or practices are evaluated to these standards. The evidence base is poor concerning programs tailored to particular groups, such as racial minorities or women. Programs that respond to minority interests or arise from local initiatives may be less likely to be funded for evaluation or may use evaluation methodologies that are deemed unacceptable for meta-analysis and, thus, they are unlikely to be endorsed as evidence-based. Yet programs ‘may have effects on the community beyond those that can be observed within an experimental or quasi-experimental framework (Roman, 2004: 271).

Within justice reinvestment, EBP is strongly linked to the ‘what works’ framework and to ‘principles of effective intervention’ based on the risk-needs-responsivity approach and risk assessment (Latessa and Lowenkamp 2006: 521-2). ) The risk-needs-responsivity approach has its origins in individual psychology and focuses on predicting recidivism (Andrews and Bonta 2010), but has been challenged conceptually and empirically (Van Voorhis, 2013, Hananh-Moffatt 2009) especially when used with women and racialised peoples. However, it continues to be very influential within justice reinvestment and it has become common for state justice reinvestment schemes in the USA to mandate the use of EBP. In 2011 alone, five US states passed legislation mandating the use of risk assessment tools and specific evidence-based programs such as drug treatment, cognitive behavioural therapy or forms of intensive community supervision (James, Eisem and Subramanian, 2012: 826).

The reliance on EBP, ‘what works’ and the risk-needs-responsivity approach may enshrine a limited range of programs deemed to be evidence-based and stifle innovation. This possibility is greatest where other forms of knowledge and other modes of assessing effectiveness are excluded. As Clear (2010: 10) has argued, the what works approach tells us ‘which current practices deserve to be spread more widely’ but justice reinvestment requires knowledge to ‘enable us to imagine new and potent strategies for improving justice and public safety’. A social justice aligned justice reinvestment is likely to need different methodologies and measures that recognize family, neighbourhood, community and societal factors. Here we note some approaches that may be more congruent with a social justice vision of justice reinvestment.

As Roman (2004: 261) observed, EBP and CBA largely rely on indices such as recidivism to gauge success, and commonly measure outcomes at the individual level. However, he urges the use of CBA to ask different questions: '[b]ecause the de facto goal of virtually every criminal justice intervention is to improve public safety, it is critical that welfare effects are measured at the community level' (ibid: 271). Others have recommended measuring Social Return on Investment (SROI) in recognition of a wider range of costs and benefits that accrue beyond the criminal justice system (UK House of Commons Justice Committee, 2009: paras 368-375). Desistance scholars point to the inadequacy of recidivism as a measure of success; they note that programs have a range of objectives and thus various measures of effectiveness are needed. They also note that understanding how to bring about positive change in offenders requires understanding the family and community contexts in which it is embedded (McNeill *et al.*, 2012: 50). Qualitative evaluations and methodologies have a place in such approaches.

The need to develop culturally relevant indices and standards of measurement for Indigenous communities and contexts has been recognised internationally and in Australia. Work by the United Nations Permanent Forum on Indigenous Issues to promote Indigenous participation in developing such standards, and the International Centre for the Prevention of Crime community safety framework for Indigenous communities, offer models that can be built upon (Willis, 2010: 2). The Bourke justice reinvestment project uses a collective impact approach with five key elements: a common agenda, shared measurement, mutually reinforcing activities, continuous communication and a backbone of support (Just Reinvest NSW, 2012).

## **Conclusion**

Throughout this chapter we have discussed the importance of a social justice oriented approach as a necessary component to justice reinvestment. Much of the commitment to social justice in the original vision of justice reinvestment has changed, particularly in the USA, into a more practical, government-oriented program that attempts to reduce incarceration rates through criminal justice reform. However we argue there is scope to reinsert social justice values. We suggest that human rights are a key part of the normative framework of a social justice approach. There are broad normative principles including non-discrimination and rights to participation, access and social inclusion that are fundamental,

and these have special resonance for those groups who have borne the brunt of increases in imprisonment including women, people with mental illness and cognitive impairment, and Indigenous and racialized minorities. The principle of least restriction is an important protective safeguard in the support for and care of people with mental and/or cognitive disability in health and justice settings (Baldry 2014: 380). This principle supports the focus on developing community-based options for people who would otherwise be incarcerated. In the area of Indigenous rights, there are well-articulated norms such as respect, recognition, and specific Indigenous rights, including the right to self-determination and to free, prior and informed consent (see the *Declaration on the Rights of Indigenous Peoples*). Thus the potential of justice reinvestment policies in Australia to realise social justice outcomes is bound up with issues of community governance and empowerment, and specifically for Indigenous people, with self-determination and nation-building.

Our research indicates that justice reinvestment can be an *inspiration* for locally-based community development strategies that utilise enhanced data on and identification of local community assets and current forms of service support. We need to challenge the over-emphasis on EBP and CBA where it can lead to ignoring communities of vulnerability that have high contact with the criminal justice system, and the organic solutions to problems that derive from the community itself. The development of justice reinvestment in Bourke is one such localised approach developed for Australian conditions and for a specific Indigenous community.

Justice reinvestment is a major source of policy, program or rhetorical support for a diverse range of activities. It has served to encourage a focus on penal reduction, and provided a narrative that offers something positive in developing political strategies and programs for change. However, we argue that the reliance only on arguments about cost savings or limited interpretations of ‘smart’ justice, needs to be balanced by a clear articulation of a normative position which values social justice and human rights, particularly for those social groups affected by decades of growing imprisonment rates.

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