Faculty of Law

www.law.unsw.edu.au
THE PROMISE AND PITFALLS OF JUSTICE REINVESTMENT

EMERITUS PROFESSOR DAVID BROWN,
LAW FACULTY, UNSW
Justice Reinvestment (‘JR’), an emerging approach addressing the high social and economic costs of soaring incarceration rates. JR invests in public safety by reallocating dollars from corrections budgets to finance education, housing, healthcare, and jobs in high-crime communities.

JR – WHAT IS IT?

- Picked up by the Council of State Governments Justice Center (‘CSG’) — a national non-government organisation (‘NGO’) providing advice to government policymakers — become the main body for JR implementation in the US since the first pilot began in 2006.

- JR involves advancing ‘fiscally-sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditures and make communities safer’. (CSG Justice Center, ‘Justice Reinvestment: About the project’, www.justicereinvestment.org./about)
The key strategy is the quantification of savings and subsequent reinvestment in high-stakes neighbourhoods to which ‘the majority of people released from prisons and jails return’, by, for example, redeveloping ‘abandoned housing and better coordinat[ing] such services as substance abuse and mental health treatment, job training, and education’.

JR –WHAT IS IT?

- outgrowth of ‘evidence based public policy’ strategy cf law and order populism;
- largely cost driven; GFC
- focus on outcomes –recidivism rates/’efficiency’
- counter to tradition of prisons as immune from the accounting that lies behind decisions on investment in other forms of social infrastructure such as schools, hospitals and public transport.

Distinguishing features of JR:
- justice and asset mapping;
- budgetary devolution;
- localism;
- desirability of bipartisanship.
Key distinguishing features

1. Justice and asset mapping

‘justice mapping’ — analysis of data and trends affecting incarceration rates, including identification of the areas producing high numbers of prisoners and the factors driving the growth in prison population. “Million dollar blocks”.

- Policy options developed and implemented to reverse the rates of incarceration and to increase the effectiveness of spending in the criminal justice arena.
- Impact of the changes evaluated.
- Savings are quantified and reinvested back into those communities producing high numbers of offenders.
Key distinguishing features – justice and asset mapping

- ‘Mapping’ process two-fold:
  1. identify high risk – high crime neighbourhoods,
  2. map the community ‘assets’ in those communities (the various government, non-government, civic, community, business, educational, familial, religious, sporting, cultural and community organisations and agencies - sources of strength and social cohesion).

- Justice reinvestment funding used to bolster existing organisations by supporting various local community building projects. Place-based.
2. Budgetary devolution and localism

- JR schemes typically involve a form of budgetary devolution. In the UK - from central to local government; in US from federal or state jurisdictions, to county administrations.

- Budgetary devolutions can take the form of block grants; fiscal incentives; the use of social bonds by trusts, local businesses or social entrepreneurs (eg UK Peterborough prison scheme - post release mentoring by charitable trusts and foundations using social impact bonds); or the use of various voucher systems.

- A strong strand of localism in much of the JR literature, encompassing existing local community organisations, NGOs, church and welfare agencies, and the private sector.
Key distinguishing features: bi-partisanship

- Potential to attract bipartisan support from both left and right. Especially in US, Christian right.
- Partly because meaning and theoretical foundations unclear;
- Appeal based on conflicting motivations—cost savings; evidence based outcomes/efficiency returns for tax dollars/reduce waste-recidivism;/social justice/build community infrastructure;
- appeals across political spectrum including both neo-liberals and social democrats
- Bipartisanship key pre-condition for adoption but difficult to obtain, especially in first past post electoral systems. Trumped by law and order politics.
Key distinguishing features: bi-partisanship

- Australia - NSW conservative coalition government supportive cf Victoria.
- NZ Bill English, prisons a ‘fiscal and moral failure’ – Waikato prison
JR in the United States

- highest imprisonment rate in the world.
- gross race-specific disproportions - ‘mass imprisonment’ (Garland) - effects of imprisonment cease to be explicable in terms of individual offending and involve whole communities becoming part of the socialisation process.
- US corrections budget more than US$60 billion per year. In the last 20 years, spending on prisons has increased by more than 300% cf higher education 125%
- US state expenditure on corrections risen from $12 billion to $52 billion 1988-2008.
- language of fiscal responsibility and increasing public safety cf morality/politics of racially based mass imprisonment
JR in the United States

The opening remarks of the report of the 2011 National Summit on Justice Reinvestment and Public Safety were: “Americans have made it clear they want a correctional system that holds offenders accountable and keeps communities safe. But they also want and deserve a system that makes the most of their tax dollars — especially in perilous economic times, when public funds are scarce and there are compelling, competing needs such as education and health care that must be addressed.”
JR in the United States

- 16 American states signed up with the CSG Justice Center to investigate or apply the JR model. Others pursuing JR through other avenues.

- Some striking results - pilot in Connecticut has resulted in the cancellation of a contract to build a new prison, realising savings of US$30 million. So far, US$13 million of these savings have been reinvested into community-based crime prevention initiatives.
Similar savings were realised in Kansas and Texas.
more
UK, the 2010 House of Commons Justice Committee Report, *Cutting Crime: The case for justice reinvestment*, argued that the criminal justice system ‘is facing a crisis of sustainability’.

The overall system seems to treat prison as a ‘free commodity’ … while other interventions, for example by local authorities and health trusts with their obligations to deal with problem communities, families and individuals, are subject to budgetary constraints and may not be available as an option for the courts to deploy.

Justice Committee recommended capping the prison population at current levels; phased reductions to two-thirds of the current population and a devolution of custodial budgets so that there is ‘a direct financial incentive for local agencies to spend money in ways which will reduce prison numbers’.
In December 2010, a Green Paper, *Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders* 19 was released, seeking community consultation on a variety of proposals, including decentralising rehabilitative services to ‘open up the market to new providers from the private, voluntary and community sectors’.

In June 2011 the Institute for Public Policy Research *Report, Redesigning Justice*. Used the London Borough of Lewisham as case study. Mapping of both offenders and existing rehabilitative services in Lewisham showed that 518 adult offenders were released into Lewisham over the course of 2009/10 having served sentences of less than 12 months, at a cost to the state of 2.8 million pounds, an average of 5,386 pounds per sentence.
Majority of the offences non-violent.

Existing local social services capable of absorbing these offenders into local programs of a reparative and rehabilitative nature, at much lower costs.

Report recommended that: short term sentences of less than six months should be replaced with community based sentences; local authorities should be made responsible for reducing offending in their areas; and local custody budgets for short term adult offenders should be devolved to local councils and the probation service should be decentralised and integrated into crime reduction work locally.

JR in UK still largely an aspiration cf on the ground programs
JR in Australia

- Groundswell of interest in Australia;
- Aboriginal and Torres Strait Islander Social Justice Commission, 2009 *Social Justice Report*.
- 2010 Noetic Solutions Report Juvenile Justice NSW
- 2010 Australian Greens adopted JR as part of policy platform;
- Current Senate Legal and Constitutional Affairs Committee Inquiry – report in May.
JR in Australia

- Term of inquiry – “the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments”.
- Federal/state responsibilities
- Indigenous focus
- Greens proposal for an independent National Centre for Justice Reinvestment – clearing house/technical assistance/policy and financial advice for states and Territories wanting to set up pilots.
‘Justice reinvestment’

- Spatial dimension – ‘million dollar blocks’ – ‘millions are being spent on the neighbourhood but not in it’
- Papunya NT - 72 adults in prison at cost of $3,468,960 for community of 4000 people.
- Devolving accountability and responsibility to the local level
- Data driven – incarceration mapping - Vinson’s ‘post codes’ cf ‘hot spot’ mapping
- Queensland Justice Agreement – specific goal to reduce the rate of ATSI people incarcerated by 50% by 2011.
Criminogenic effects of incarceration

- Effects of incarceration itself – ‘crime education’; fracturing of family and community ties; hardening and brutalisation; effects on mental health.
- Post incarceration effects- labeling,; deskillling; reliance on criminal networks; reduced employment opportunities; civil disabilities.
- Third party effects –on families and communities.
- ‘high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up’ Rose and Clear
Criminogenic effects of incarceration

- ‘Mass imprisonment’
- ‘normalisation, transmission and reproduction’ of imprisonment
- Levy -20% of Aboriginal children have a parent or carer in prison
- Incarceration one more contributor to social dysfunction – weakening communities and reducing social capital
- Need to reformulate the key question – Vera Institute ‘the pivotal question for policymakers is not ‘Does incarceration increase public safety, but rather is incarceration the most effective way to increase public safety?’
- Redirecting resources from the burgeoning prison sector into practical assistance with ex-prisoner resettlement; reduce recidivism rates
Pitfalls

- **Ambiguity** – all things to all people – vague buzz word – lack of internal coherence
- **Lack clear theoretical and normative base** – ’moved from beautiful idea into real-world practice without a stopover first in academic theory development’ – Shad Maruna.
  Must be connected to fundamental progressivist traditions of economic and political equality, democracy and redistributive justice – Michael Tonry
  cf Todd Clear – gains can be made within existing frameworks by stimulating neo-liberal incentives – eg to employ ex-offenders
- **A cover for disinvestment?** Cost cutting to prison and post prison programs and services
Pitfalls

- Limits of fiscal rationality arguments
  - Trumping effect of law and order
  - ‘Irrational’ public beliefs – eg sentences getting shorter/crime going up
  - Retributive sentiments deeply embedded – need to address
  - Durkheimian view – punishment defining and promoting community cohesion and collective morality – not addressed in calculus of fiscal rationality
  - Can JR be articulated with various moral and social approaches to penalty?
Pitfalls

- **Limits of ‘evidence-based’ approaches**
  - what counts as evidence?
  - obsession with metrics
  - distorting effects of KPIs and ‘managerialism’

- **Lack of transparency/paucity of information**
  - ‘savings’ not real savings
  - in US where is money coming from and going to?
  - role of PEW, Vera, BJA?
  - tacking JR badge on a range of programs
Pitfalls

- Structures for devolution?
  - Co-ordination agency? Esp in federal system
  - Federal/state/local government?
  - Role for NGOs, church, welfare, charities?
  - How are ‘savings’ to be calculated?
  - How are financial transfers to be made?

- Achieving bi-partisanship?