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JUSTICE REINVESTMENT: CAN JUSTICE REINVESTMENT DELIVER SOCIAL JUSTICE?

ABSTRACT

Justice Reinvestment is both an ideal and an approach to reducing mass incarceration. It was originally conceived of as a way of creating a more socially just criminal justice system based on reallocating prison funds to invest in high incarceration communities. Underpinning it is an explicit economic argument, centred on using evidence to make changes which will provide a better return for society than the existing criminal justice system. This article assesses the extent to which the social justice conceptualisation of Justice Reinvestment set out by Susan Tucker and Eric Cadora in 2003 has been achieved. It will examine: the development and implementation of Justice Reinvestment in the United States, United Kingdom and Australia; how the impact of Justice Reinvestment on social justice can be measured; and how it is likely to develop in the future.

KEY WORDS

Justice reinvestment, criminal justice system, social justice, prison reform, evidence based practice, economic analysis

1: INTRODUCTION: WHAT IS JUSTICE REINVESTMENT?

Since its origins in the seminal paper by Susan Tucker and Eric Cadora in 2003¹, Justice Reinvestment (JR), has been advocated as a response to mass incarceration. It has become both an ideal and an approach to the delivery of a more socially just criminal justice system. Underpinning it is an explicit *economic argument*, centred on using data and evidence to make changes which will provide a better return for society than the existing criminal justice system.

The term first appeared in Tucker and Cadora's article for *Open Society* (2003²). It captured the imagination of prison reform advocates with a simple but compelling argument. That it was better to re-direct funds spent on prisons to rebuilding the human, social and physical resources of neighbourhoods affected by high levels of incarceration.

Tucker and Cadora's concept of JR was based on research by Cadora and others which gave rise to the phrase which best captures the essence of JR, that of '*million dollar blocks*'; city blocks in Brooklyn where a million dollars was being spent on incarcerating residents³. As a response to mass incarceration and to those communities most affected by incarceration, by default, it offered a way of addressing the disproportionate representation within prison of people from "low income neighbourhoods of color"⁴.

Since then, as noted by some commentators, JR has come to mean different things to different people.⁵ Therefore, it is worth considering in some detail, Tucker and Cadora's original vision of JR. This will be covered in the section which immediately follows. The rest of this article will examine the following:

- the extent to which this vision (for the purposes of this article) held up as the *social justice ideal*, has been achieved in three countries with relatively high levels of incarceration: the United States (US), the United Kingdom (UK) and Australia⁶;
- how social justice generated through JR can be measured drawing on learning primarily from the US and UK; and finally
- the future of JR.

2: JUSTICE REINVESTMENT AND SOCIAL JUSTICE

Tucker and Cadora’s socially inclusive vision is projected through three key themes. Firstly an explicit call for prison funding to be re-directed for non-criminal justice spending, specifically, to rebuild “...the human resources and physical infrastructure – the schools, healthcare facilities, parks and public spaces – of neighbourhoods devastated by high levels of incarceration.”⁷. Secondly, the emphasis given to devolving accountability and responsibility to a local level, “...seeking community level solutions to community level problems”⁸. Thirdly, a preventative approach to public safety that “...targets money for programs in education, health, job creation, and job training in low income communities.”⁹ Looking for preventative solutions outside the criminal justice system.

Looking beyond the US, the emphasis on community focused, place-based initiatives has been championed enthusiastically by JR proponents outside the US. In the UK, Rob Allen, an early proponent of JR argued that JR should, “...improve the prospects of not just of individual cases but of particular places,”¹⁰. The argument for what in the UK is termed localism was further reinforced by the Commission on English Prisons Today¹¹ and the UK House of Commons Justice Committee¹². In Australia, arguments have also been made for trialling JR in high crime communities¹³ and earlier by Brown, Schwartz and Boseley as a mechanism for addressing the over-imprisonment of indigenous people¹⁴.

As a mechanism for effecting prison reform JR was intended to “...depoliticise the issue of mass incarceration” acknowledged by Susan Tucker in an interview over a decade on from the publication of the original paper¹⁵. It was acknowledged as an attractive feature by commentators such as Ross Homel, who described JR as intertwining the themes of “...a rational social policy, the intelligent use of data on the geography and sociology of crime, the futility (and, implicitly the savagery) of imprisonment as a cure all for crime and safety

problems...”¹⁶. Fox, Albertson and Wong had also identified the potential for the economic underpinning of JR to transcend populist punitivism¹⁷. Thus, providing politicians and policy makers with a publicly acceptable justification for reducing prison populations, particularly, in the wake of the economic crises of 2007 and 2008. This was noted by Brown, Schwartz and Boseley as JR being “...compatible with various tenets of neo-liberalism.” in using economic incentives to change public policy¹⁸.

What has emerged in the last decade since Tucker and Cadora’s social justice vision of JR is an approach to JR primarily, described as criminal justice system re-design¹⁹ based on delivering efficiencies within the criminal justice system rather than alternatives outside the system²⁰.

3: JUSTICE REINVESTMENT IN PRACTICE

This section examines the differing trajectories of JR implementation in the US, UK and Australia. It will assess, in broad terms, the extent to which implementation has followed a social justice or criminal justice system re-design model. These are not necessarily mutually exclusive and instead can be conceived of as two ends of a continuum, along which individual initiatives may be located²¹.

3.1: Justice Reinvestment in the US

The implementation of JR in the US has been both advanced and limited by the Justice Reinvestment Initiative (JRI), a federal programme which has supported the development of JR in the US. It can be considered to be advanced, because the most extensive implementation of JR has occurred in the US (compared to the UK and Australia), as a consequence of the funding provided by the Bureau of Justice Assistance to states and localities²². However, it can also be viewed as limited in relation to upholding the social justice principles of Tucker and Cadora²³, because it has largely followed a criminal justice

system redesign model. In their review of the JR1, Austin, Cadora, Clear, Dansky, Greene, Gupta, Mauer, Porter, Tucker and Young commented that the JRI had abandoned the basic tenets of JR, specifically, the commitment to place-based strategies and reinvestment of savings in communities with high incarceration rates²⁴. This is not to say that what has been achieved by the JRI is not laudable. In a wry comment, Mark Mauer, interviewed for their comprehensive review of JR for the book by Brown and colleagues observed that the article (referenced immediately above) which he contributed to should have been retitled, “What you are doing is good...but don’t call it Justice Reinvestment”²⁵.

In the US, JR has operated at both state and locality levels²⁶. At a state level, through pre-investment, providing funding for programmes based on anticipated savings; and post-investment, reinvestment of actual savings and averted spending²⁷. At a locality level, in comparison the funding of JR, pre and post investment has been more limited²⁸.

In their detailed analysis of JR implementation in the US, Brown and colleagues discerned two parallel developments based on administrative and jurisdictional boundaries, with the “shape” of JR determined by whether this occurred at a state or locality level²⁹.

At a state level, they concluded that the model operated as a:

“...political and legislative process to address over-incarceration in state controlled (and funded) prisons and is largely driven by the work of the CSG [Council for States Government].”³⁰

This was based on the four step ‘justice mapping’ blue-print advocated by the Council for States Government. This requires (1) analysing prison population and public spending in the communities which prisoners return to, (2) examining the provision of options for generating savings and increases in public safety; (3) the quantification of savings and reinvestment in

high-stakes communities; and finally (4) the measurement of impacts and evaluation of programme effectiveness³¹.

However, as noted by some commentators by 2011, the four steps had narrowed to three³².

The third step, the place based strategy of reinvesting savings in communities with high rates of incarceration had been removed; alongside an absence of analysing public spending in the communities which prisoners returned to³³.

As noted by Brown and colleagues, “What remains is a reform program centred on consensus-driven passage of legislation aimed at a reduction in corrections expenditure without jeopardising public safety.”³⁴ The focus on the legislative component may have helped to make reform more durable and reduce the likelihood of punitive relapses³⁵, however, arguably it has lost the key social justice component of reinvestment in high incarceration communities.

This has not been lost on those at the forefront of promoting JR in the US. Marshall Clement, the Director of the CSG’s Justice Center (interviewed for the book by Brown and colleagues) suggested that the structural challenges inherent in the criminal justice system made it difficult to move beyond these to consideration of a more community based focused, added to which there was a lack of community development expertise³⁶.

At a local level, the focus has been individuals incarcerated in county jails, identified as being a generally low risk, high churn population, who frequently recycled back into the criminal justice system³⁷. Legislative action has not dominated these local initiatives, instead there has been more of a focus on working with stakeholders on the ground, at sites with a history of progressive criminal justice reform³⁸. The opportunity for a more place based, social justice oriented approach to JR may have been more possible. In practice, the potential for

focusing on high incarceration neighbourhoods has not been realised, with attention given instead to countywide prison populations³⁹.

It is worth noting that three features mark out the development of JR in the US compared to the UK and Australia. Firstly, political bi-partisanship and support, arguably driven by the requirement for this to be in place in order to receive Federal financial support⁴⁰. Secondly, a shift in the political narrative about crime solutions from being ‘tough on crime’ to being ‘smart on crime’, which was embraced across the political spectrum.⁴¹ Thirdly, the role of faith based organisations such as the Prison Fellowship in promoting JR through a restorative approach to justice, articulated through a redemptive agenda – giving prisoners a “second chance” and being “smart on crime”.⁴²

3:2 Justice Reinvestment in the UK

By contrast, in the UK, despite the immediate post financial crisis interest in JR by politicians and policy makers, there has been no overarching guiding force behind JR development such as the JRI in the US.⁴³ As a consequence, implementation has been fragmented and limited to a set of largely uncoordinated schemes, originating in different government departments - the Ministry of Justice (MoJ), Department of Health and Department of Communities and Local Government⁴⁴. In the main, JR in the UK has largely been diverted along a payment by results (PbR) route. The two explicit JR pilot programmes commissioned by the Ministry of Justice being: the Youth Justice Custody Reinvestment Pathfinder; and Local Justice Reinvestment Pilot were PbR pilots⁴⁵.

However, taking a broader view of what constitutes JR, i.e. beyond the two pilot programmes explicitly labelled as JR, Wong and Christmann identified other JR schemes in the UK⁴⁶.

These operated at different levels of administration - national, regional and local, working to targets ranging from specified fiscal savings, reduction in reoffending, to a basket of

measures spanning the disparate spheres of employment, crime, child welfare, mental and physical health⁴⁷. This unplanned, mixed economy of development has arguably allowed for the testing of JR solutions both inside and outside of the criminal justice system. The most significant of these outside the justice system being the Troubled Families Programme which operated in 143 English local authorities.⁴⁸ However, this implicit JR initiative has been tainted by controversy⁴⁹.

In the UK, while the disproportionality (of black and minority ethnic individuals) within prison and the criminal justice system (more generally) exists⁵⁰. It has not been a significant feature of the discourse around JR in the UK.

While the capacity and capability to implement JR has been addressed in the US through the funding of technical assistance as part of the JRI, in the UK, the issue of capacity and capability has been largely unconsidered⁵¹.

The redemptive agenda, a key feature of JR in the US has so far played little role in the development of JR in the UK. It was given prominence in the announcements around prison reform by the then UK Prime Minister, David Cameron in February 2016⁵². However, both the political interest in offering prisoners a “second chance” and the prison reforms have proved to be short-lived, kicked into the long grass by the political earthquake of the “Brexit” vote and subsequent and lasting diversion of political attention and effort to securing an exit from the European Union⁵³.

3.3: Justice Reinvestment in Australia

In Australia there was support for the Commonwealth adopting a leadership role in facilitating the implementation of JR across the country⁵⁴. However, this did not materialise, because of political opposition to the leadership role and then a change of government⁵⁵.

Instead, developments have been driven at a community level⁵⁶. In broad terms, of the three

countries considered in this article, Australia has adhered most closely to the social justice principles outlined in Tucker and Cadora's original 2003 paper. In particular, the focus on place-based initiatives and explicit commitment to addressing the disproportionate representation of indigenous people in the criminal justice system⁵⁷.

The actual implementation of JR has been less extensive in Australia than either the US or UK, as noted by Brown and colleagues in their comprehensive examination of JR in the US, UK and Australia⁵⁸. Nevertheless, their review of JR implementation in Australia, identified four themes which have marked out its development.

The first of these, is the community involvement aspect of the Australian pilots. The most advanced of these in Bourke, New South Wales (NSW) is community led and seeks to address the overrepresentation of Aboriginal young people in custody⁵⁹.

The second, is the involvement of a range of non-governmental organisations in individual states which have consistently advocated for JR and have been actively involved in developing the pilots, such as: Just Reinvest in the Bourke pilot in NSW⁶⁰; the Australian Red Cross involved in a community project in Wooribinda, Queensland⁶¹; and Smart Justice, campaigning for a youth justice reinvestment approach in the state of Victoria.⁶²

The third, is at a state level, government and political support for JR, such as: an election commitment from the New South Wales Labor party to invest \$4 million in three JR pilots⁶³; and the Australian Capital Territory (ACT) Government setting out a four year Justice Reinvestment strategy from 2014-18.⁶⁴

The fourth and final theme are the academic projects which have developed to advocate for and inform, community, state and national developments around Justice Reinvestment. The most prominent being Brown and his colleagues – the Australian Justice Reinvestment

Project and a project to examine reinvestment options in Cowra NSW led by Dr Gill Guthrie from the National Centre for Indigenous Studies at the Australia National University⁶⁵.

4: MEASURING THE IMPACT OF JUSTICE REINVESTMENT ON SOCIAL JUSTICE

The extent to which social justice has been achieved through Justice Reinvestment has been examined by assessing the approaches adopted in the US, UK and Australia against the originating principles set out by Tucker and Cadora⁶⁶. Inevitably, the development of JR across these three countries has been shaped by funding, capability and political will. Arguably, adhering to the original social justice principles is not altogether simple. If anything, the experience thus far, suggests that to achieve this requires a wider range of capabilities than is required to achieve a criminal justice redesign JR solution⁶⁷.

As acknowledged by governmental bodies across all three countries⁶⁸ and JR commentators⁶⁹ JR is “avowedly, data-driven and evidence-based”⁷⁰. Arguably, therefore the impact of JR in delivering social justice should be measurable. However, with some notable exceptions, Brown and colleagues concluded that:

“There has been limited critical analysis of what counts as evidence, the measures used and to whom they are applied...”⁷¹

Arriving at a similar conclusion, and in the absence of a means of making comparisons between JR initiatives, Wong and Christmann (drawing on the experience of JR measurement in the US and UK) devised the following outcome and measurement framework, reproduced at Table 1.

Table 1: JR Outcome and measurement framework from Wong and Christmann⁷²

Outcomes	Measures
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<i>Reducing criminality</i>	<ul style="list-style-type: none"> • Reduced crime rates • Reduced reoffending • Reduced demand on the criminal justice system
<i>Social justice</i>	<ul style="list-style-type: none"> • increased social trust and associational networks: • lower crime rates; • better health rates; • improved longevity; • better educational achievement; • greater levels of income equality; • improved child welfare; • lower rates of child abuse; • less corrupt and more effective government; and • enhanced achievement through increased trust and lower transaction costs
<i>Savings realised within a specified time frame</i>	<ul style="list-style-type: none"> • To agencies within the criminal justice system • To agencies outside the criminal justice system • To wider society not covered by the other two categories
<i>Reinvestment</i>	<ul style="list-style-type: none"> • Pre-investment - reinvestment based on projected savings • Post investment - reinvestment based on actual savings
<i>Process outcomes</i>	<ul style="list-style-type: none"> • More effective working between agencies • Systematic use of evidence based practices • Greater transparency and accountability in the use and reporting of data and analysis

While this framework draws together the best of JR measurement available at the time, it is nevertheless limited by what has been developed and implemented thus far. In particular, given that to date, JR implementation has done little to encompass and address the social determinants of crime⁷³, the framework provides a starting point for measurement and would benefit from further refinement as JR itself develops.

5: CONCLUSION: THE FUTURE OF JUSTICE REINVESTMENT

There is the potential for JR implementation to develop in a way which approaches the social justice ideal set by Tucker and Cadora⁷⁴. The development of JR to date can be viewed as a journey moving from criminal justice system re-design models to a more social justice oriented iteration of JR. Reviewing what has been implemented thus far in the US, UK and Australia, there are examples of: place based initiatives; solutions outside of the criminal justice system; a focus on addressing racial disproportionality within the incarcerated populations and those within the criminal justice system more broadly. Perhaps more encouragingly, the discourse and debate around shifting JR to that social justice ideal has not abated, if anything, it is being kept alive, both by policy makers, commentators and researchers in the field⁷⁵.

There is the potential for JR to develop as specific responses to vulnerable groups within the criminal justice system, such as women and girls, young people, young adults and those with mental health problems⁷⁶.

In the US, the JRI has taken JR implementation along an efficiencies within the justice system direction focused on back-end measures such as parole processing, post-release support and dealing with probation and parole violations⁷⁷. However, JR development at a local level (in the US) demonstrates the potential of front-end options: addressing the

characteristics of ‘frequent flyers’, diverting offenders and improved case processing; and engaging agencies outside of the criminal justice system in identifying solutions⁷⁸.

In the UK, formal devolution to the English regions and Police and Crime Commissioners with responsibility for countywide areas, making good on the ‘and crime’ part of their remit may provide an opportunity for the development of a more localised JR response in the UK⁷⁹.

In Australia, the community led nature of JR development offers a template for bottom-up approaches in other jurisdictions and may be instructive in helping to shape the way in the which the social determinants of crime may be factored into a more sophisticated conceptualisation and measurement of JR⁸⁰.

SUMMARY

The phrase Justice Reinvestment (JR) was used by Susan Tucker and Eric Cadora in a seminal paper published in 2003 which argued for tackling mass incarceration by diverting prison funds to rebuilding the human, social and physical resources of neighbourhoods affected by high levels of incarceration. This place-based approach was founded on the principles of using data and evidence to inform changes which were intended to create a more socially just criminal justice system. Since 2003, there has been support for this approach from prison reformers, politicians, policy makers and academics in the United States (US), United Kingdom (UK) and Australia.

The trajectory of JR implementation in these three countries has varied considerably. In the US, supported by the Bureau of Justice Assistance, JR has been driven by the Justice Reinvestment Initiative (JRI) which has led it down a criminal justice redesign approach, focusing on efficiencies within the criminal justice system. States have generally adopted a legislative route for JR based on pre-investment and post investment of resources. In localities there has been a wider engagement of stakeholders including those outside the

justice system but JR has tended to focus on whole prison populations rather than high incarceration neighbourhoods.

In the UK, there has been a mixed economy of JR implementation characterised by being commissioned through a payment by results process. There have been JR initiatives which have operated a criminal justice system redesign approach as well as others which in aiming for solutions outside the justice system have reflected a social justice approach.

In Australia, implementation has been less extensive than the US and UK, however, the JR pilots and policy discourse here, has adhered most closely to Tucker and Cadora's vision, with place based initiatives targeting indigenous communities which are over-represented in the prison population.

The measurement of the impact of JR on social justice is nascent, with the approach proposed here being based on the best practice to date but subject to refinement as JR implementation itself develops.

There is potential for JR to contribute to creating a more social just criminal justice system and by default a more socially just society. The future development of JR in the US, UK and Australia offers the promise that this may be possible.

DISCUSSION QUESTIONS

1. How did the original conception of Justice Reinvestment intend to deliver social justice?
2. How has Justice Reinvestment developed in different jurisdictions?
3. What have been the facilitators and barriers to Justice Reinvestment and why?
4. Has Justice Reinvestment achieved the goal of social justice?
5. How may Justice Reinvestment develop in the future?

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- ⁷² Wong and Christmann Supra note 22 at 64
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- ⁷⁸ Lachman, P., Neusteter, S.R., 2012) Tracking costs and savings through Justice Reinvestment at the Local Level Brief 1, Washington DC Urban Institute
- ⁷⁹ Fox, C., (2017) Justice Devolution: An opportunity for Greater Manchester, Metropolis, Manchester Metropolitan University Wong and Christmann Supra note 22, Allen 2015 Supra note 43 .
- ⁸⁰ Brown et al Supra note 6