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## REDRESSING OVER-INCARCERATION, ADDRESSING HUMAN RIGHTS: WHAT CAN JUSTICE REINVESTMENT DO IN AUSTRALIA?

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FLICKR: MISS\_MILLIONS, PRISON CELLS

*By Melanie Schwartz and Chris Cunneen*

Justice reinvestment (JR) emerged in the US in 2004 as a strategy for reversing the crisis of over-incarceration. Its central idea is to make savings in the corrections budget, and then reinvest those savings in localities that produce high numbers of offenders. Reinvestment might be in such things as redeveloping abandoned housing, providing job training and education, treatment for substance abuse and mental health services. Examples of ways to realise savings in the corrections budget include removing bail and probation/parole revocations for technical breaches, or ensuring that, where appropriate, prisoners are paroled at an early opportunity. JR is not about abolishing imprisonment; rather, it works on the assumption that many more people are incarcerated than is necessary for public safety.

The [Council for State Governments](#), which has carriage of a large number of JR initiatives in the US, identifies the four steps required in JR:

1. Analyse data relating to crime, arrest, conviction, jail, prison, and probation and parole. Identify specific neighbourhoods that are home to large numbers of people under criminal justice supervision. Collect information about the need for relevant services in those locations, such as for addressing unemployment, substance abuse or housing issues, in order to address the underlying causes of criminal offending that are specific to that place.
2. Develop policies that will reduce corrections spending and use those savings to invest in strategies that can improve public safety and build human capital and physical infrastructure in focus communities.
3. Implement the new policies.
4. Measure their impact on rates of incarceration, recidivism and criminal behaviour.

JR is a “place-based” approach in which resources that would be spent on incarcerating offenders are redirected to the local communities from which offenders come and to which they will return. It has been described as a form of “preventative financing, through which policymakers shift funds away from dealing with problems ‘downstream’ (policing, prisons) and towards tackling them ‘upstream’ (family breakdown, poverty, mental illness, drug and alcohol dependency)”.

In the US, justice reinvestment has been met with a warm reception from liberals and conservatives alike. In order to make the approach palatable to both sides of the political spectrum, rhetoric in the US focuses on possibilities for increased public safety through lowered crime and recidivism rates, as well the potential to save taxpayer dollars. Since it began in 2004, more than 25 US states have participated in JR, and approximately 18 have enacted legislation to stabilise corrections populations and budgets. In addition, a further 18 counties across six states are undertaking a localised version of JR. In Texas alone, JR is [reported](#) to be responsible for \$1.5 billion US dollars in construction savings and \$340 million US dollars in annual averted operations costs.

### **Justice Reinvestment for Australia?**

In Australia, there has been a great deal of interest in the potential of JR to deal with our own swelling prison populations. The Senate Legal and Constitutional Affairs Committee handed down a report in June 2013 in which it recommended an Australian trial, to include at least one remote Indigenous community. Indigenous organisations across Australia have also identified the potential of JR for Indigenous communities experiencing high levels of incarceration. The Greens have adopted JR as part of their justice platform, with [MP Penny Wright stating](#) the following:

Australia is locking up more people than ever before ... Less than 3 per cent of Australians identify as Aboriginal or Torres Strait Islander, but Indigenous Australians make up more than a quarter of the nation's prison population. They are among the most imprisoned people groups in the world. In fact, an Indigenous person is more likely to be returned to prison than they are to stay in high school or university. This is a national disgrace.

For Indigenous people, it is not only the rate of imprisonment that is striking, but also the fact that Indigenous offenders are more likely to cycle in-and-out from community to prison to community to prison and so on. The [median sentence length](#) for Indigenous prisoners is 24 months; for non-Indigenous prisoners it is 47 months. In the Northern Territory, where mandatory sentencing is in place, 60 per cent of all Indigenous prisoners are jailed for less than six months, and 38 per cent for less than three months. This is costly in social terms for prisoners and their families, and also in financial terms for the government footing the bill.

*“It is estimated that more than one in five Indigenous children will have a parent in jail over their lifetime.”*

There is also a very significant [over-representation](#) of Indigenous people on remand. In NSW, where people who are refused bail make up more than a quarter of the total prison population, Indigenous people are held on remand at a rate of 583 per 100,000 population, compared with the overall NSW rate of 49 per 100,000. One quarter of [the increase](#) in Indigenous imprisonment in NSW between 2001 and 2008 is said to be because of greater incidence of bail refusal and longer time spent on remand. Overly onerous bail conditions and lack of access to adequate housing, particularly in non-urban settings, is a particular problem that often results in bail refusal or revocation.

The effects of these levels of incarceration cannot be overstated. It is estimated that more than one in five Indigenous children will have a parent in jail over their lifetime.[1] The loss of significant numbers of people from a community creates social and economic stress, making it difficult for supportive and pro-social institutions to thrive, and increasing the likelihood of further offending. In some communities, levels of imprisonment are so high that at all times, nearly every family is missing at least one member. This is hugely destabilising not only for families but for communities as a whole. And the picture is getting worse rather than better: if the rates of Indigenous imprisonment continue to grow along current trends, it is [estimated](#) that the number of Indigenous adults in jail will double within 12 years.

### **Indigenous hyper-incarceration and the potential of justice reinvestment**

In considering the potential for JR in the Australian Indigenous context, the [2009 Social Justice Report](#) published by the Australian Human Rights Commission states the following:

The scarcity of public funds might be just the pragmatic opportunity we need to shift governments away from a law and order, tough on crime mentality. 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.

Whatever the strategic framing, there is no doubt that positive human rights outcomes would flow for Indigenous people from the implementation of JR. The “raising up” of whole places, increasing individual, family and community prospects, would place people in a much stronger position to exercise and enjoy rights outlined in the ICCPR (International Covenant on Civil and Political Rights), and would better protect the rights enshrined in ICESCR (International Covenant on Economic, Social and Cultural Rights) – the right to work, to adequate standards of living and of mental and physical

health, among others.

There are a number of features of JR that make it an attractive strategy in the Australian Indigenous context. These include the following:

- JR has a core commitment to addressing disadvantage as a way of tackling the underlying causes of offending.
- JR's localised approach, which includes devolution of authority to community, coheres well with the necessity for Indigenous community buy-in for Indigenous community programs.
- JR's potential to improve service delivery in remote areas.
- The capacity that reinvestment would bring to fund victims' services, given the high numbers of Indigenous victims, who would benefit from the healthier communities that JR strategies aim to build.

#### **Slow and steady: reasons for caution**

*“JR, at its core, calls for a democratic, consensus-based approach to decision-making about the needs of focus communities.”*

But despite the strong support for JR in the Australian Indigenous context, there are a number of things to think about before rushing in. For example, it has been noted that JR, at its core, calls for a democratic, consensus-based approach to decision-making about the needs of focus communities. This fits well with the observation of former [Social Justice Commissioner Tom Calma](#) that the only way for Indigenous service delivery and policy to succeed is through working in partnership with communities. JR requires the government to commit to genuinely doing things differently and this is no easy ask, particularly considering our history of [superficial consultation](#) in place of true community control.

This reservation has particular resonance because of [recent criticisms](#) of the way that JR has been implemented in some places in the US, where a *lack* of involvement of local individuals and organisations has, it is argued, compromised the integrity of the JR process. This outcome seems alarmingly close to the historical experience of government program implementation in Indigenous communities in Australia. Consideration must be given to how we might prevent JR in Australia from becoming a cover for the same failed policies of the past, and how JR can truly fit within the principles of Indigenous self-determination.

There is also a need to tread carefully with place-based models. Certainly there is the potential for JR to make inroads into geographic disadvantage by providing support for remote communities and developing initiatives in their cultural and geographic context. An injection of funds can also create capacity for non-custodial sentencing options in regional or remote areas where they have not previously existed.

Yet there is a metropolitan bias to the way that JR has evolved in the US, and the model may need rethinking to make it cohere with the Australian geographical context. How will the usual problems in remote service delivery be overcome in the roll out of JR? Furthermore, while the idea of “high incarceration” communities appears to be self-evident and relatively easily measured, there is considerable movement of Aboriginal people between communities, for example between more remote communities and town camps in Alice Springs and Cairns. There is some difficulty accommodating this movement or transience in a place-based, community-focused approach.

Indeed, even the notion of “community” is complex in the Indigenous context. Many remote and rural communities are the outcomes of colonial policies of concentration and segregation. This may give rise to significant intra-“community” conflict. The idea of place-based models of JR needs some critical thinking in the Indigenous context.

Finally, a note of caution about the identification of focus communities. In the US, mapping of high-incarceration communities is advanced. (These high-incarceration communities are also referred to as so-called “million dollar blocks”, because of the cost of imprisoning the inhabitants of areas sometimes no larger than a suburban block.) The identification of these localities is central to JR because savings are to be targeted to communities that contribute the most to the prison system. However, these “hot-spot” suburbs are often named without sensitivity or explanation. For example, the JR initiative in Arizona has produced [publications](#) including maps of the state's south that draw attention to a particular zipcode in Phoenix as home to 1 per cent of the state's total population but 6.5 percent of the prison population – requiring \$70 million per year to incarcerate residents just from that neighbourhood.

We need to avoid branding particular “postcodes” or discrete communities as undesirable or troubled. This concern is especially acute when considering the alleged failure of JR in the US to meaningfully follow through on the community reinvestment limb of JR. Here, “high stakes” communities are subject to the stigma attached to their selection as JR sites, and none of the benefits.

## A new way for a different future

There is every reason to be optimistic about the potential for JR to reduce the number of Indigenous people in the cycle between prison and the community, and to address a range of factors that can affect rates of offending. There is a clear and accepted link between levels of disadvantage in Indigenous communities and levels of offending, and we have known for some time that community-owned programs have the best chance of success in addressing entrenched issues. [We also know](#) that the role of the prison in controlling or reducing crime is very limited and, at the same time, that large-scale imprisonment has incredibly destructive effects. All these factors point towards the need for justice reinvestment.

We can learn lessons from the 10 years of American experience with JR when critically considering potential potholes in the road to reducing of the prison population. We should carefully consider the applicability of the American experience to the Australian context. We should also be mindful that JR is not a silver bullet. As a stand-alone approach it won't, for example, directly impact on criminal justice practices like discriminatory policing, or punitive public order legislation that contribute significantly to Indigenous over-representation. But what it can do – and what it has done in the US – is to bring about a shift in the public and political mindset so that a serious reduction in incarceration rates is considered both possible and desirable. And that can only be a step in the right direction.

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## Endnotes

[1] Levy M (2008) 'Children of prisoners: an issue for courts to consider in sentencing' Presentation to Federal Criminal Justice Forum, 29 September. Canberra.



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