Review Symposium

Justice Reinvestment: Winding Back Imprisonment by David Brown, Chris Cunneen, Melanie Schwartz, Julie Stubbs and Courtney Young, Palgrave Macmillan, 2016, 291pp (ISBN 978-1-137-44910-8)

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In summary, the book describes: how the concept of justice reinvestment developed and how its usage differs between countries; what a place-based approach means and why the Australian model is so unique in its approach; how measuring outcomes, as always, is fraught with complexities, but how the approach used is also such an important determinant of understanding what does and doesn't work; and how marginalised and socially disadvantaged groups — those usually affected by policies that lead to mass incarceration — may or may not benefit from a place-based approach to justice reinvestment. After reading *Justice Reinvestment: Winding Back Imprisonment*, I feel much more at ease as an advocate for justice reinvestment strategies, but I am not sure that I am convinced that it will be the solution to turning (or winding) back the self-perpetuating and ineffective penal justice system that is currently in place. My doubts are not due to any gaps in the book; in fact, I found the book comprehensive and balanced in its presentation of arguments around the suitability and applicability of justice reinvestment in Australia. My doubts are more a product of my own research endeavours and finding, time and time again, that it is so difficult to change a system that is too closely influenced by penal populism, particularly when it comes to marginalised and racialised groups such as Indigenous Australians. I am not sure how we can overcome this, particularly when the authors themselves acknowledge that justice reinvestment is heavily influenced by context. The answer that Brown et al (p 247) provide is that:

> justice reinvestment can be an *inspiration* for a form of locally-based community development strategy utilising enhanced data and identification of local community assets and current forms of service support, conducted initially in the communities of vulnerability which have the highest contact with the criminal justice system.

The latest Report on Government Services published by the Australian Government Productivity Commission shows that on average the daily number of people held in Australian prisons increased by 7 per cent in the last financial year and that the 'national (crude) imprisonment rate for all prisoners was 190.3 per 100 000 people in the relevant adult population in 2014–15', which represents a 20.5 per cent increase from a rate of 157.9 in 2005–06 (Productivity Commission for the Steering Committee for the Review of Government Services 2016:8.5). Things do not look promising and it is difficult to believe that the rhetoric of justice reinvestment in Australia is having (or will have) much of an impact. Why is that?

Maybe we need to be patient and recognise that justice reinvestment is still in its infancy here in Australia. Indeed, the Just Reinvest Project in Bourke (Just Reinvest NSW 2016) has only been operating since 2014, when it received funding and in-kind support from philanthropic, corporate and government donors. I do not doubt that good things will happen

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as a result of an initiative that is community led and owned, and which has the support and backing of the local Indigenous population. But I wonder if the project can or will convince governments to take a social justice approach to crime and punishment and be the inspiration we need to do things differently. I believe that it all hinges on the type and method of data that is collected, and how the program is evaluated.

After researching Indigenous sentencing courts for approximately 15 years, an initiative that I would argue in many localities resembles a justice reinvestment approach to crime and punishment, I have doubts about the influence such programs can have on changing government policy. The formalised use of Indigenous sentencing courts started in 1999 in Port Adelaide when a maverick magistrate, Chris Vass, decided after many years of being on circuit in the Anangu Pitjantjatjara Yankunytjatjara Lands and working in Papua New Guinea that 'Aboriginal people were getting a pretty raw deal from the justice system as a whole and they mistrusted the system' (Daly and Marchetti 2012:467). Vass therefore decided to change the way he ran his sentencing court hearings when dealing with Indigenous offenders. After speaking to Aboriginal people living in the area for a couple of years and taking a bottom-up approach, he started what is now referred to as the Nunga Court without seeking government approval. His aim was to make the court room more comfortable for Aboriginal offenders, a place where they could trust the process and be able to speak and have their say in a setting where their family and community members were present. Part of the conversation includes thinking about what local services are most appropriate for a particular offender to support his or her transition from an anti- to pro-social way of living. Within three to four years, similar courts were established in New South Wales, Queensland, the Australian Capital Territory and Victoria. They have appeared and disappeared at the whim of governments in Queensland, the Northern Territory and Western Australia, mainly because the outcomes they are producing do not necessarily accord with what governments and the public believe are the most effective measures of success.

When the overall Australian imprisonment rate for Indigenous people in 2014 was 13 times higher than the aged standardised imprisonment rate for non-Indigenous people (Australian Bureau of Statistics 2014), there is reason to be concerned about the ever-increasing over-incarceration of Aboriginal and Torres Strait Islander people. From my research experience, new criminal justice initiatives introduced to address the over-representation of Indigenous people in the criminal justice system work best when what Brown et al have termed 'Indigenous democracy' is allowed to flourish. I've seen this illustrated in the context of the Indigenous sentencing courts — when Elders or Community Representatives are respected and are allowed to direct the manner in which the sentencing process (which still sits within the mainstream court system) unfolds. Whether that means dictating which offences should be allowed to come before the court or the extent to which a magistrate and other legal players talk during the process, or how the courtroom is set up or decorated, the Indigenous sentencing court process acquires a cultural authority and power, which can influence an offender in ways a mainstream sentencing process never will. Until you witness the presence of this authority within the courts, it is hard to believe it is there, and the impact of the cultural authority is even more difficult to measure.

It therefore makes sense that the application of justice reinvestment within the Indigenous domain, needs to embrace one of the key principles of the original justice reinvestment process: situating the public policy approach within a place-based, community-driven context that is committed to 'a process of democratisation and empowerment, the satisfaction of human physical, social and economic needs, and respect for human rights' (p 103). However, although this looks good on paper, and I know it does work in practice, convincing policymakers of the benefits can be difficult if we do not start measuring things differently.

As the authors point out 'what is measured and what counts as evidence are important considerations with significant implications' (p 141).

This has been all too evident when it comes to determining what works within the context of Indigenous sentencing courts. Research on the Indigenous courts suggests that community-building aims are typically achieved. Specifically, the courts provide more culturally appropriate processes, increased communication, and community participation — all of which contribute to making the sentencing process more meaningful for defendants and victims. But when it comes to criminal justice aims, particularly reducing recidivism, the findings are not so positive, and this is where the danger lies when implementing innovative culturally appropriate criminal justice programs that nevertheless end up being measured in ways that reflect Western notions of success. The authors note that '[j]ustice reinvestment is avowedly data-driven and evidence-based' (p 141), and that '[m]any jurisdictions have inadequate administrative and research data, especially for women, minorities, those with mental illness or cognitive impairment or other vulnerable groups, and those at the intersection of social categories such as racialised women' (p 158). As part of the process of reinvesting funds to build community capacity and address social determinants of incarceration, we, as evaluators and researchers, need to be continuously mindful of measuring and critiquing justice reinvestment initiatives from the worldviews and perspectives of the communities involved. This is the only way to aptly present justice reinvestment outcomes in ways that will ultimately convince policymakers to wind back imprisonment rates.

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