

**Submission to the Inquiry by the Senate Legal and Constitutional Affairs
Reference Committee into
Value of a justice reinvestment approach to criminal justice in Australia**

from

Professor Andrew Coyle

Personal details

1. I am Emeritus Professor of Prison Studies in the University of London and Visiting Professor in the University of Essex, United Kingdom. I was Director of the International Centre for Prisons Studies in King's College, University of London, from 1997 to 2005 and again between 2010 and 2011. During that period I was also Professor of Prison Studies in the School of Law, King's College London. From 1991 until 1997 I was Governor of Brixton Prison in London. Prior to that I was a prison governor in the Scottish Prison Service, where I was in charge of three major prisons. I have a PhD in criminology from the Faculty of Law in the University of Edinburgh and am a Fellow of King's College London. I act frequently as an adviser on prison issues to bodies such as the United Nations, the Inter American Commission on Human Rights and the Council of Europe, including its Committee for the Prevention of Torture. I have visited and advised on prison systems in over 60 countries in all regions of the world. I have published widely on prison and criminal justice issues.

Context of this submission

2. Between 2005 and 2007 the International Centre for Prison Studies (ICPS) undertook a research project on Restorative Justice. The project studied the genesis of the concept of Justice Reinvestment in the United States and considered how its principles might be more widely applied. The report on the project, *Justice Reinvestment – A New Approach to Crime and Justice*, was published by ICPS in 2007 and can be downloaded from the Centre's website at <http://www.prisonstudies.org/info/downloads/justice-reinvestment-2007.pdf>. ICPS has continued its interest in this subject.
3. I have visited Australia on a number of occasions over the last 15 years and have maintained close links with academics working in the justice field and with justice practitioners, particularly in the prison world. My latest visit was in August 2012 when, among other activities, I took part in a conference organised by the National Centre for Indigenous Studies in the Australian National University in Canberra on the theme *Is Justice Reinvestment needed in Australia?*
4. The Committee will be well aware of the facts relating to the use of imprisonment in Australia, particularly in respect of incarceration rates for indigenous persons, and has received a number of submissions in respect of these matters. For these reasons I will not comment further on these issues. I will confine myself briefly to some comments about the development of Justice Reinvestment in the United States of America and more recently in England and Wales, before making some concluding remarks .

The United States of America

5. In the three decades from the mid 1970s the number of people in prison in the USA increased dramatically, rising from a rate which was broadly in line with that in many other countries in the developed world to one which placed it far ahead of any other country in the world, with well over 700 out of every 100,000 of its citizens imprisoned, a total of 2.3 millions. Throughout the early years of this period this rise went almost unnoticed, at least in public and political circles. When it was noticed, it was not regarded as a matter of any great concern. Nor was the fact that rates of imprisonment were spread disproportionately on a racial basis, with a higher proportion of young black men entering prison than were entering higher education.

6. However, over the last decade or so perceptions have begun to change. There have been two main drivers for this. One is an awareness that something on the region of 700,000 persons are being released from prison and jail each year. They are coming back onto the streets of American cities and towns with very little support or encouragement to live law abiding lives in the community. This has led to a new focus on that is called “re-entry” by attempting to provide released prisoners with accommodation, access to employment and assistance with personal problems, such as substance abuse and health matters. It is significant that much of the impetus for this work has come from non-criminal justice agencies, whose primary interests are in labour, housing or health matters.

7. The second driver has been a financial, economic and social one. Quite simply, state and local governments can no longer afford to spend high proportions of their reducing budgets on locking people up at a time when they are cutting back on other services. Again, the impetus for a change of direction has come, not from criminal justice agencies, but from others. They include economists who have looked at the amount of resources, financial and other, that are expended on the criminal justice system, have evaluated the return that the public and taxpayers get from this expenditure, and have considered whether there might be other ways of distributing these considerable resources to give a better return on investment. They also include social anthropologists and urban geographers, who have focused on the consequences for communities. In the United States they have coined the phrase, “million dollar blocks”. These are blocks of apartments and houses within a town or city where a million dollars each year is spent sending some people who live there to prison. Politicians and other policymakers are now asking whether it would make more sense to redirect some of the resources which are currently spent on providing prison places towards re-building the social fabric of communities and whether this might have a more effective long term impact on the quality of life in these communities.

8. These policy considerations have led to the development of research into what has become known as Justice Reinvestment. Its underlying principle is that the criminal justice system on its own cannot accomplish successful reintegration and resettlement of former offenders into their communities. Instead a wide cross-section of agencies and bodies need to be involved to ensure positive “re-entry”. In practical terms the concept of

justice reinvestment is now developing in a variety of different forms in several states around the USA.

The Oregon experience with juvenile justice

9. In many parts of the United States the juvenile court system is run by the county authorities. If a juvenile county court decides to impose a sentence of custody on a young offender, that person goes to a state institution, so the county incurs no fiscal burden for this incarceration. Indeed, there is a perverse incentive for the county to transfer responsibility for this young person to the state. In 1997 Oregon State introduced a new fiscal arrangement. As an experiment, it awarded a block grant to some of the counties equal to the amount that the state was spending to incarcerate juveniles from these counties each year. The county was free to spend the annual grant as it saw fit. If it continued to send the same number of young offenders to state institutions, it would have to pay back that grant to the state. Alternatively, it could choose to spend the grant on other resources which were intended to benefit the community and to provide facilities for the young people. The result was a 72 per cent drop in juvenile incarceration from the county, redeployment of community supervision in those areas in which the young people lived and leverage of new investments in civic service and neighbourhood revitalization. This model has since been emulated in a number of other states, which have also seen substantial drops in the use of custody for juveniles and the strengthening of local infrastructure.

The Connecticut experience

10. A number of states are now experimenting with policies that cut costs by reducing the adult prison population and reinvesting the savings to help the communities to which high numbers of people return on release from prison. The first state to take on the issue for its adult prison population was Connecticut. In the early 2000s the state experienced rising prison numbers, despite the fact that crime rates were declining. The traditional responses to these problems have involved either building more prisons, which sends the state into greater debt, or releasing prisoners early, which has the potential to threaten public safety. At that time the state had to implement severe budgetary restraint. The state government

decided to introduce an alternative strategy which would reduce the number of people in prison substantially while avoiding any danger that crime rates might increase.

11. Public officials sought support from a network of experts who analysed data about prison growth and the places where people in prison came from and to which they were returning. Their research confirmed national trends. The recall of people on probation and parole was pushing prison populations up; they were staying in prison longer and there were myriad delays in their release. They discovered another significant fact. Half the prison population in the state came from a few neighbourhoods in three cities, including one where a single neighbourhood was costing the state \$20 million a year in prison and probation costs. By examining not only criminal justice data but also social services data, the study found that people returning from prison lived in the same neighbourhoods as those where a disproportionate number of people received unemployment insurance and where many families received special welfare payments.
12. This led to a growing political consensus formed around recommendations made by the researchers for reducing the pressure on the prison population and for reinvesting anticipated savings. In 2004 the state passed an Act Concerning Prison Overcrowding, which included measures creating comprehensive community plans for accommodating people returning from prison. The state halted its plans to provide more prison places and reduced the corrections budget by \$30 million, reinvesting much of the savings in targeted strategies in the relevant neighbourhoods. These reinvestment funds went to support community planning processes, to increase the capacity of the Department of Mental Health and Addiction Services to provide more community outreach and treatment and to new resettlement initiatives focused on transition from prison to home.
13. As a consequence of these initiatives Connecticut moved from having one of the fastest growing prison systems in the country to having one which was shrinking faster than any other. At the same time the state was able to divert additional resources to community based and residential treatment programmes to assist in resettlement.

England and Wales

14. The rate of imprisonment in England and Wales is high in relation to comparable countries, with high spending on imprisonment but less investment in mental health and drug treatment. In recent years the criminal justice system has reached more deeply into controlling a wide range of behaviour and the prison and probation services are expected to solve deep-seated social problems they are not equipped to handle. The effectiveness of prison sentences is a highly contested issue but a wide body of research indicates that, while a huge increase in the use of imprisonment can have some effect on crime rates, a similar effect could have been achieved more cheaply and efficiently by social expenditure in other areas.

ICPS research project

15. In 2005 the International Centre for Prison Studies embarked on a research project to explore the relevance for the United Kingdom of some of the justice reinvestment initiatives which were then being developed in the United States. One of the key elements of the project was a focus on places as well as on individuals, developing responses to the heavy concentrations of prisoners and others under criminal justice supervision in deprived neighbourhoods. Field work was undertaken in Gateshead, a medium sized town in the north of England. While the local government responded positively to our approach there was an initial reluctance to resource the data which was needed. This was due in part to a political concern at the prospect of drawing formal attention to the high levels of multiple deprivation in some communities and making any link between those and imprisonment data.

16. In due course researchers were able to access information on how many people went to prison from Gateshead, for how long, and which part of the town they came from. Unsurprisingly it was discovered that they were concentrated in certain areas. For example, almost one third of the 5,000 people known to the Probation Service came from the poorest ten out of 111 electoral wards, while the concentrations of those who went to prison were even higher. Researchers calculated the cost of sending these people to prison and produced a set of recommendations of what could be done to deal more effectively

with these matters.¹ In the end, the main outcome of the ICPS project was to kick start a national discussion about the role of local government in dealing with people involved in crime in their area. Responses developed in the course of this discussion fell into three distinct but overlapping groups: the need for a more local method of dealing with offenders; the need for better inter agency coordination and information gathering in order to inform policy planning; and a greater role for local authorities in supervising and supporting offenders in the community.

Parliamentary Interest

17. In 2009 the House of Commons Justice Committee decided to undertake an inquiry into Justice Reinvestment. It concluded that “Justice Reinvestment approaches – which channel resources on a geographically-targeted basis to reduce the crimes which bring people into the criminal justice system and into prison in particular – offer potential solutions to these challenges”. In its report² it presented what it called a blueprint for the future of justice reinvestment in England and Wales. This had four main elements: justice mapping, devising options for policy makers, quantifying savings and reinvesting in selected high-stakes communities, and measuring the impact of the justice reinvestment approaches. The report included a cautionary note: “A piecemeal approach to justice reinvestment is unlikely to work and a holistic approach to reform is necessary”.

18. The Parliamentary All Party Group on Local Government also undertook a review of criminal justice from the perspective of local communities in 2009. The report of the inquiry³ was entitled *Primary Justice*, drawing a parallel with health issues, where primary care is delivered in local communities as distinct from secondary care which is normally delivered in hospitals. According to the report ‘primary justice’ is concerned with events that are likely to happen on a daily basis in some communities, making the point that the sort of crime and offending which touches the lives of most people happens at a local level; its effects are experienced locally; and the report suggested that the solutions to it were also likely to be found locally. The report was quite clear as to the

¹ Allen R. and Stern V. (eds) 2007. *Justice Reinvestment – A New Approach to Crime and Justice*. London: International Centre for Prison Studies

² House of Commons Justice Committee. 2009. *Cutting Crime: the case for justice reinvestment*. HC 94-1. London: The Stationery Office

³ All Party Local Government Group. 2009. *Primary Justice: An Inquiry into Justice in Communities*. London: Local Government Information Unit

need to transfer resources from centrally controlled criminal justice agencies to local control and went as far as specifying that something in the region of 35 per cent of the criminal justice budget should be transferred in this way from national bodies such as the prison service.

Other Justice Reinvestment initiatives

19. Practical Justice Reinvestment initiatives are at an early stage of development. Three examples are:

The Youth Justice Reinvestment Pathfinder Initiative aims to reduce levels of youth custody. The Youth Justice Board is a national body that commissions places to detain children and young people. They commission them from the National Offender Management Service, as well as from private security companies and other providers of secure care. The Pathfinder Initiative is a pilot in four local authority areas and is rather like the Oregon model described above. In simple terms, local authorities are given a sum of money based on the sum which would have been spent on incarcerating children from their area. If they can demonstrate a reduction in the number of children taken into custody from their areas they can retain the equivalent amount of money. If not, the funds have to be returned.

In a similar initiative in Greater Manchester, if there is a demonstrated substantial reduction in the use of the criminal justice system calculated through factors such as suspended sentence orders, community orders, short prison sentences and other low level convictions and associated disposals, central government will pass on half of the savings to the local authority.

The London Diamond Initiative was piloted in six London boroughs where the local councils put in resources from a range of different agencies to target offenders who would otherwise receive little or no post-release supervision. This involved support with accommodation, substance misuse and education, training and employment. This initiative was targeted in some relatively small geographical areas which had disproportionately high levels of crime.

Concluding remarks

20. Justice Reinvestment is not a single idea or initiative. Instead it is a series of principles which sees matters of community safety, security and cohesion as much more than the way we deal with individuals who threaten them. By definition, criminal justice is retrospective; it looks back to a crime or an offence which has been committed and tries to resolve its consequences in a manner which punishes the offender and satisfies the victim and the wider community. Justice Reinvestment is based on a prospective approach which considers these matters from the wider perspective of the individual's place in the community. It also takes account of environment and locality. Most importantly, it looks forward rather than backward.

21. There is no suggestion that Justice Reinvestment is a single panacea which will solve the problem of overuse of imprisonment in Australia and especially the disproportionate overuse of imprisonment for aboriginal and first nation people. However, it does have some potential as a tool to achieve this aim. Its importance lies in the fact that it is a mechanism which allows us to redefine the problem of safety and security in our communities. None of the models described above can be lifted off the shelf and used to resolve the problems of Australia. But they do offer a number of principles which can be translated into the Australian context.

Professor Andrew Coyle CMG PhD
International Centre for Prison Studies

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