

# Lessons for justice reinvestment from restorative justice and the justice model experience

## Some tips for an 8-year-old prodigy

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Has a criminological idea ever caught on as rapidly as “justice reinvestment?” As recently as 2002, no one outside of a small circle of justice activists and ex-prisoners in New York had ever even heard of justice reinvestment. By 2009, the state of Michigan’s bipartisan “Justice Reinvestment Working Group” was outlining plans to channel \$300 million saved by closing prisons into community improvement work. Parallel developments are in the works across a wide variety of states (including unexpected ones like Texas), and a similar enthusiasm has spread internationally. In the United Kingdom, a House of Commons paper called *Cutting Crime: The Case for Justice Reinvestment* (2009) has garnered support from all three major political parties and has generated considerable activity on the ground. That is not too shabby for an 8-year-old idea considering that many of us are still trying to finish book chapters based on ideas we had a decade ago.

Perhaps most remarkably, as Todd Clear (2011, this issue) rightly points out, justice reinvestment (hereafter, JR) has enjoyed all this success even though the idea is still “in its infancy,” has been only “sort of” defined, is not based on a “strong empirical foundation,” and above all, does not really qualify as being a proper “theory!” As such, Clear’s first-ever, rigorous academic assessment of the JR idea is a badly needed contribution to this discussion. It is also something of a shame, of course, as Clear’s exposure of the idea to the cold light of day does reveal some of the devils buried in its details.

After all, justice reinvestment is a thing of beauty. By which, I mean it is an aesthetically compelling idea or, as per the *American Heritage Dictionary*, a vision characterized by “the

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quality that gives pleasure to the mind or senses and is associated with such properties as harmony of form or color, excellence of artistry, truthfulness, and originality.” One read of Susan Tucker and Eric Cadora’s brief 2003 paper spelling this argument out, and one is immediately struck by the elegance of both the critique and the proposed solution. Indeed, with justice reinvestment, the aesthetic element has been intrinsic from the earliest days of the idea. The maps of “million dollar blocks” first promoted by Eric Cadora and colleagues were both logically and visually compelling. According to an article in the *New Yorker* magazine (an outlet that certainly appreciates aesthetics):

Cadora and his team believe that their map depicts a system spending millions to imprison people but little on the communities to which they return. Cadora clicked on a map of New York State that charted the migration patterns of Brooklyn criminals: thousands of lines sprang from Kings County to prisons all over—Attica, Watertown, Great Meadow. The image was striking, like a bird’s spread wing. “We’ve had art galleries ask to exhibit the maps,” [architect Laura] Kurgan said. (MacIntyre, 2007)

That the JR idea should appeal to both art galleries and policy makers should be no surprise. One key finding in the research literature on beauty is that humans seem to be hardwired to find symmetry beautiful, whether in art, architecture, or facial features (Enquist and Arak, 1994). This desire for balance is nowhere more fundamental than in the area of justice studies, and the symmetry inherent in ideas like the “just deserts,” “restorative justice,” and JR is undeniable. As different as they are, the logics of an “eye for an eye,” “making amends” for harm caused, and investing justice dollars in the communities with the greatest crime problems all appeal to this human preference for the elegance of symmetry and balance.

The difficulty—as evident in Clear’s (2011) far messier portrait of what JR might look like in actual practice—is the translation of beautiful ideas into workable policy. It is notable (and somewhat alarming to those of us in academia), for instance, that JR has moved from beautiful idea into real-world practice without a stopover first in academic theory development. In his article, Clear suggests that the JR idea spread by old-fashioned “word of mouth.” Although true, this “word” was accelerated by media coverage in outlets like the *New Yorker* and the *Village Voice*, itself made possible through a very late-modern network of think tanks and foundations. Criminology journals have been notably absent (until Clear’s important intervention) on this road from conception to global success, raising concerns for academia<sup>1</sup> but also for the JR movement.

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1. Wacquant (2009) described a parallel development, albeit emerging from the political Right, with broken windows theory. This surely says something important about the relevance (or possibly irrelevance) of traditional academic publishing practices to contemporary policy debates, but that is for another article (see Uggen and Inderbitzin, 2010).

Although in his article Clear (2011) does briefly link JR to other existing bodies of research and theory (in particular, giving a nod in the direction of restorative and community justice theory as well as the literature on community development in general), there is an undeniable element of “chronocentrism” (or disavowal of the past) in this and other JR publications. In his article “Chronocentrism and British criminology,” Paul Rock (2005) empirically demonstrates that the majority of criminological articles “display a largely unexamined propensity to ignore writings that are more than fifteen or so years old.” He argued that this disciplinary amnesia challenges the field’s ability to cumulate knowledge and leaves criminology open for the periodic reinvention of wheels. Some of this might be on display with the justice reinvestment movement. For instance, Tucker and Cadora’s (2003) hugely creative, original article on JR does not cite a single piece of previous research or theory, nor do many of the Council of State Government documents on [justicerinvestment.org](http://justicerinvestment.org) cited by Clear. Clear’s own article is better in this regard, briefly referencing Austin and Krisberg (1982) and Lemert and Dill (1978)—importantly both are cited as cautionary tales for those who think creating alternatives to incarceration is straightforward. Yet, even Clear’s article still manages to cite more than 15 references from 2010 compared with only 4 from before 2000.

Clear (2011) acknowledges this weakness, admitting that “[t]he most significant problem” with his own JR proposal is that “this is new.” Of course, this novelty is probably among the plan’s chief strengths as well. The lack of scholarly baggage allows the idea to remain politically “neutral.” If one wants to garner the cross-ideological support that documents like *The Case for Justice Reinvestment* (House of Commons Justice Committee, 2009) have achieved in the United Kingdom, one best avoid linking the policy to better developed theories that have already been labeled (and discarded) as too “soft” for the Right or insufficiently radical for justice activists on the Left.

Yet, efforts like Clear’s (2011) to flesh out JR into a practical plan of action also expose the weaknesses of such an ahistorical approach. The JR idea, as Clear readily admits, is too thin on its own to cover all of the necessary complexity of a working model of justice and therefore needs to be situated on the shoulders of theories and models of justice that have preceded it. It also could learn a great deal from the failings of previous efforts to transform beautiful ideas into real-world revolutions. Surely, there must be a graveyard somewhere that contains the skeletons of ideas once touted as “the solution” for crime and justice, and it would behoove those of us who are highly excited by the promise of JR to do a little digging among these bones.

### **Learning from Past Panaceas**

Has a criminological idea ever caught on as rapidly as justice reinvestment? Actually, maybe so. Ideas like community policing, drug courts/therapeutic jurisprudence, broken windows theory, and the “what works” principles in corrections all “went viral” in their own day in their own way. An enterprising Ph.D. student somewhere should do a “sociology of

ideas” study comparing a sample of these various super-trends to understand more clearly the dynamics that generate the “next big thing” in criminological thinking. The two ideas that provide the most instructive comparisons (on multiple levels) for JR, however, are probably the “justice model” and “restorative justice.” Like JR, both big ideas benefited (and ultimately suffered) from unusual Left–Right political coalitions, mainstream media coverage, and groundswells of popular support. Restorative justice and the justice model (which are of course still alive and well) have the closest theoretical links to JR, as well, so it is also worth unpicking the convergences and divergences with the justice reinvestment notion.

The “justice model” is the name given to the reform agenda that first emerged in the 1970s placing “just deserts” and due process at the center of sanctioning policy. According to Cavender (1984: 204), “[t]he keystone of the justice model . . . is retribution. . . . Simply put, it is the idea that rational people deserve punishment if they violate the law.” This may sound a far cry from the progressive ideals of JR, but when it was first promoted around four decades ago in works like *Struggle for Justice* (AFSC Working Party, 1971) and *Doing Justice* (von Hirsch, 1976), the justice model drew from a similar support base and had similar selling points to those of JR today. “And sell, it did,” according to Moore (1989: 76). “People who had been dissatisfied (or outraged) by the criminal justice system found *Doing Justice* to be The Answer. . . . Legislatures and parole boards moved ahead with incredible alacrity to put the reforms into effect.” The original idea emerged out of the prisoner rights movement and had radical ambitions and implications. For some prominent activists, in fact, the justice model proposals “fit logically into a program for building a socialist movement in the United States” (Greenberg and Humphries, 1980: 211).

To say these ambitions were not fully achieved is something of an understatement. According to Cohen (1985: 113), “[t]he progressive, even radical thrust to the original ‘struggle for justice’ movement . . . was transformed by powerful interests. Only one element of the ideology was abstracted—the individualistic, moralistic notion of justice—and the rest was discarded.” Indeed, the first eulogies for the justice model began to appear only a few years after the idea’s inception, as it became clear that the changes resulting from the justice model idea “bear only a superficial resemblance to the principles they purport to embody” (Greenberg and Humphries, 1980: 221). The justice model idea still has its contemporary champions among the 1970s true believers (notably in the pleasingly retro Austin et al. 2007 report, cited and coauthored by Clear), but none can look back at the disgrace of the last 30 years of penal policy in the United States and argue that mistakes were not made. I will offer just two of the better-known lessons that might (or might not) have relevance for the JR movement:

*The Negative is easier than the positive, but the positive is more important.* Justice model advocates were scathing in their criticisms of the rehabilitative ideal; they spent much time articulating the sinister underbelly of the therapeutic state, and they achieved substantial

victories in undermining the perceived legitimacy of this work. They spent much less energy imagining what would emerge in the place of the rehabilitative ideal and (hopefully) did not imagine the grotesque and degrading human warehouses that filled the void left behind by the therapeutic state's demise (see Toch, 1980, for one dissenting voice that predicted this outcome). The JR movement, somewhat parallel, focuses primarily on the waste of mass incarceration, but JR advocates may not be devoting the same amount of attention to what would be involved in the community development work that would theoretically replace it.

*Look out for cooptation by powerful interest groups.* The justice model played brilliantly into the hands of the "penal harm" movement by providing a fancy justification for deinvesting in support services and responsibilizing disadvantaged individuals and communities. Despite its origins among progressive justice advocates, the language of the justice model was quickly co-opted by those with different agendas. Likewise, the JR movement is accruing some strange bedfellows as it grows. As Clear (2011) argues, the perception that JR is fiscally conservative has been one of the idea's key selling points, and it is easy to imagine JR language being used as cover when cutting state jobs and challenging unions. Clear's article will raise additional concerns by assigning a fairly central role to for-profit companies in the private sector. After all, as Feeley (2002: 322) has shown in his assessment of "entrepreneurs of punishment," the legacy of privatization has been penal expansion: "when successful, private efforts have . . . expanded, not contracted public social control . . . and public expenditures." To its considerable credit, however, Clear's proposal recognizes these incentives toward constant growth and seeks at least to harness these forces in a positive direction. Moreover, the role to be played by private-sector companies in Clear's vision is actually one in which there is firm criminological evidence of effectiveness: They are to act primarily as employers (not as service providers or treatment experts), and ample research suggests a strong link between such employment and desistance from crime (Laub and Sampson, 2001; Uggen, 2000).

Still, there are concerning parallels (albeit opaque ones) between Clear's (2011) hypothetical JR proposal and the push for "postconviction commercial bail" emerging from the right-wing lobbying group the American Legislative Exchange Council (see Maruna, Dabney, and Topalli, forthcoming). Under the ALEC plan (already under consideration in several states), prisoners would only be able to secure their release only by posting "post-conviction bail." As with pretrial bail, the individual would pay a percentage of this amount (for instance, \$10,000 for release bail that is set at \$100,000) as a nonrefundable charge to be released to the responsibility of a commercial bail agency. Persons in the participant's release environment, such as parents and guardians, voluntarily sign agreements of indemnity whereby they, along with the individual, would have a monetary incentive as indemnitors to the surety, to encourage compliance by the participant. After a breach, the bond could be revoked, and bounty hunters can be legally empowered to bring the individual back to prison. Unsurprisingly, the idea is being pushed strongly by the representatives of the commercial bail bonding industry who have not hesitated to use the rhetoric of "reducing

prison overcrowding” (Maruna et al., forthcoming). Who is to say that such a program will not go further and adopt the rhetoric of “justice reinvestment” as well?

Indeed, despite the parallels and shared origins with the justice model, chief among the gaps in the JR idea exposed in Clear’s (2011) helpful article is the question of “what about justice?” Not justice department spending, but justice itself. The hypothetical JR vouchers, as outlined by Clear, for instance, would certainly raise numerous traditional justice concerns, ranging from parity/consistency to “less eligibility.” Desert theorists, like von Hirsch and Ashworth (1998) would, I imagine, have real issues with the idea of one’s “community” or victim—let alone some private employer—deciding whether a person should be released early or spared imprisonment altogether. One might predict systematic biases between those selected for the JR alternatives and those left to serve their full sentence behind bars.

To address such concerns, JR needs (as Clear [2011] acknowledges) to be situated within the much better established (although still developing and amorphous) literature on restorative justice theory. Restorative justice is “best understood as a different way of ‘doing justice’ by repairing the harm caused by crime in a non-adversarial process that invites offenders to ‘take responsibility’ rather than simply take their punishment” (Bazemore and Maruna, 2009: 376). The JR literature is infused with restorative concepts throughout, although interestingly the “restorative” term is generally avoided. Indeed, Dennis M. Maloney’s work has come to symbolize the heart of the JR movement, but before there was JR, Maloney understood himself as working very much in the restorative justice tradition (see Maloney and Umbreit, 1995). There is a reason for this: Without adopting the logic of restorative justice and situating itself in this wider, possibly more radical framework, JR simply does not make sense.

Despite its logical beauty, the JR idea, on its own, has no real theory of justice. Embedded within JR, there are underdeveloped empirical, utilitarian claims (i.e., that creating jobs and improving infrastructure in high-crime neighborhoods will prevent future crime) and an implicit theory of social/distributive justice (i.e., that resources should be focused where need is greatest). Yet, there is no normative theory of criminal justice—why the reinvestment of justice resources is a just response to the harms that were committed. Whereas the JR discussion has, since its origins, involved sophisticated discussions of economics and cost-effectiveness (and the restorative justice movement on the other hand has never met an economist as far as I am aware), JR lacks the sophisticated normative foundations of restorative justice (e.g., Braithwaite and Pettit, 1990).

As such, the fact that JR advocates seem to distance themselves from the wider and better developed restorative justice movement speaks volumes for the future of the latter, itself a previous heir to the title of “The Answer” in criminal justice.<sup>2</sup> The rise and rise

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2. There may be a geographical component to these things too. For its critics (e.g., Acorn, 2004), restorative justice is associated with deeply unhip places like rural Indiana, Wagga Wagga in Australia,

of restorative justice throughout the past two decades (but especially the 1990s) was just as swift as that of the justice model, with equally impressive successes, but the restorative justice movement's failings are almost the opposite of those of the justice model (as indeed the two theories are famously in opposition; see e.g., von Hirsch and Ashworth, 1998). Again, there are many lessons here, but I will only pick two for space purposes.

*Don't let them put you on the fringes.* Even the strongest advocates of restorative justice acknowledge that, despite the widespread adoption of restorative practices across nearly every continent on the globe, the idea has been too often marginalized into "boutique" or tokenistic "programs" (Bazemore and Maruna, 2009) rather than delivering the fundamental overhaul of criminal justice promised by the movement's early advocates. The ghettoizing of restorative ideas into interventions designed for adolescents caught committing misdemeanor or very low-level criminal offenses (shoplifting, unsafe driving) in so many jurisdictions has tarred the "restorative" brand and raised the serious risk of "net-widening" (Cohen, 1985). Conceivably, JR could suffer a similar fate. Indeed, Clear's (2011) statement that "[j]ustice reinvestment work has been carried out in over a dozen locations, but in every one of them the correctional budget has continued to grow" has to be a wake-up call in terms of this potential marginalization of justice reinvestment as yet another "add-on" project. Additionally, some of the standards that Clear sets in his list of principles (e.g., "No benefits follow when the decision leads to more crime" and "Nothing happens without both system and community oversight") sound remarkably stringent (would the same rules apply for decisions to incarcerate?) raising the concerns that such alternatives will be limited in their potential scope.

*At the same time, avoid overpromising.* Whereas the justice model's virtue was that it promised so little (and, some would say delivered on this!), restorative justice from the beginning made ambitious claims that were bound to come back to haunt it. Restorative justice critics like Annalise Acorn—a former advocate turned apostate who says she had been "seduced" by restorative justice's "utopian" promises—mock the hyperbolic rhetoric associated with the movement as a way of discrediting the theory. For instance, Acorn (2004: 67) wrote, "No punitive system would presume to promise 'healing' to victims." Such published critiques of restorative justice are often self-contradictory and paper-thin (see Morris, 2002); yet many criminologists and criminal justice practitioners feel a deep-seated distrust of the theory for reasons they often cannot articulate. When pressed, many admit that their reaction is more gut-level than rational; they fear there is something too evangelical or too proselytizing about restorative justice's support base, and as naturally skeptical social scientists, they resist it.

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Vermont, and New Zealand. JR, however, is straight out of New York, with its upstate prisoners (sent "up the river") and downstate parolees—not to mention its media outlets, think tanks, and universities. The JR idea itself surely plays better among city dwellers as well, with its promise of resources flowing from rural to urban economies.

Justice reinvestment advocates can certainly learn from this experience as well. The enthusiasm surrounding this 8-year-old idea is encouraging and contagious, but the idea may need less hype and more sober scrutiny to shoulder the burdens of this great promise. One place to start is to begin subjecting the idea to the sort of rigorous academic examination that Clear (2011) initiates with his article. The JR that results from such analysis over the next decade may not be as beautiful as the initial JR vision, but it may be stronger, wiser, and more resilient than some of its predecessor panaceas. I, for one, hope so.

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