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# Justice Reinvestment and its potential contribution to criminal justice reform

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## Introduction

**A question which has bedevilled governments since the onset of the global financial crisis is how to achieve more public good or service from every unit of taxpayer resource. In the criminal justice sector, much has been said of the potential for a new approach — Justice Reinvestment, JR. However, in the UK the application of JR has been limited as there has been little agreement on what may be gained, how much can be saved and even of what JR is comprised.**

The term 'Justice Reinvestment' was used for the first time by Tucker and Cadora<sup>1</sup> based on analysis undertaken in the USA. They argued:

*There is no logic to spending a million dollars a year to incarcerate people from one block in Brooklyn—over half for non-violent drug offenses—and return them, on average, in less than three years stigmatized, unskilled, and untrained to the same unchanged block. This unquestioned national dependence on mass incarceration reflects a fundamentalist approach to imprisonment that actually sacrifices public safety.<sup>2</sup>*

At its heart, JR postulates, it may be more economically efficient to prevent criminality in a neighbourhood than it is for society to try to deal with the crime and the consequences of crime. This holistic approach locates JR within economic and political debates about criminal justice and suggests that it has much to offer to current debates about criminal justice policy. However, the breadth of its vision also touches

upon broader debates about social justice and the type of society in which we want to live.

In this article we describe briefly the principles of JR and then the development of the movement in the USA and, latterly, the UK. Thinking about current policy challenges in the UK we argue that JR has never been more relevant but that its implementation would be aided by a clearer theoretical account of JR and a strategy to effectively 'sell' the concept to politicians and the general public.

## WHAT IS JUSTICE REINVESTMENT?

### The application of economic thinking to criminal justice policy

The term 'Justice Reinvestment' arises from the observation that, if there are more cost effective ways of reducing crime than what is currently on offer, the social resources saved from the implementation of a successful intervention will more than outweigh the costs. Therefore investment in programmes which reduce criminality will lead to a return, in terms of future costs foregone, which will more than pay for the project.

Thus JR seeks to reduce the cost of crime in the most efficient way possible; at its base is the consideration of criminal justice as a resource allocation problem. JR is not a single strategy, project, or intervention. It is a multi-stage process providing a framework for local agencies to work together to identify and reduce the drivers of criminal justice costs<sup>3</sup>.

In general, JR has two key elements. First, it seeks to develop measures and policies to 'improve the prospects not just of individual cases but of particular places'<sup>4</sup>. Secondly, JR adopts a strategic approach to the

1. Tucker, S. and Cadora, E. (2003) Justice reinvestment: To invest in public safety by reallocating justice dollars to refinance education, housing, healthcare, and jobs [Monograph] Ideas for an Open Society, 3. Available at [http://www.opensocietyfoundations.org/sites/default/files/ideas\\_reinvestment.pdf](http://www.opensocietyfoundations.org/sites/default/files/ideas_reinvestment.pdf)

2. Ibid p.2.

3. La Vigne, N. G., Neusteter, R.S., Lachman, P., Dwyer, A. and Nadeau, C.A., (2010) *Justice Reinvestment at the local Level, Planning and Implementation Guide*, Washington: Urban Institute, Justice Policy Center.

4. Allen, R. (2007) From restorative prisons to justice reinvestment in Allen, R. and Stern, V. (eds.) *Justice Reinvestment – a new approach to crime and justice*, London: International Centre for Prison Studies p.5.

5. Ibid.

prevention of offending and re-offending by collecting and analysing data to inform commissioning decisions<sup>5</sup>.

Thus, a JR approach recognises the potential to create a more law-abiding society in a more effective and less costly way than the traditional detect/convict/punish approach. Many of the cost savings may come from reductions in the crime rate. This leads to measurement issues, of course, as it not straightforward to assess the level of crimes which have been deterred. Given appropriate quantitative evidence of savings made, JR proposes moving funds spent on punishment of offenders to programmes designed to tackle the underlying problems which gave rise to the criminal behaviour<sup>6</sup>.

As described by the UK Justice Committee<sup>7</sup> there are four main stages to a JR approach:

1. 'Justice mapping':  
Analysis of the prison population and of relevant public spending in the communities to which people return from prison
2. Provision of options to policy-makers for the generation of savings and increases in public safety
3. Implementation of options, quantification of savings and reinvestment in targeted high-risk communities
4. Measurement of impacts, evaluation and assurance of effective implementation

The overriding distinguishing feature of JR is its reliance for its validity on economic theory. It is this aspect which has allowed some politicians to start to re-shape the debate about criminal justice. Ideally, the principles of economics may be employed to address the constraints raised by the 'the silliness of politics'<sup>8</sup>. By presenting and justifying efficient solutions, the political costs of being thought to be 'soft on crime'<sup>9</sup> are attenuated and the policy debate is widened. At the least, economics provides a common ground for

justifying and comparing different approaches and attitudes to criminality.

## THE CASE FOR IMPLEMENTING JUSTICE REINVESTMENT IN TH UK

### The origins of Justice Reinvestment: A response to increasing rates of imprisonment

In part, JR has arisen as a response to an increasing prison population. Over the most recent two to three decades, the USA prison population has tripled. According to the Bureau of Justice Statistics<sup>10</sup> the total number of inmates in State or Federal Prisons in mid-1985 was 744,208. By the beginning of 2008, 2,319,258 adults were incarcerated — 1,596,127 in state or federal prisons and another 723,131 in local jails<sup>11</sup>. The UK, has also seen the prison population rising seemingly inexorably over the last two to three decades. In 1991 the prison population was 44,800<sup>12</sup>; on the 22nd June 2012, according to the Ministry of Justice<sup>13</sup> the prison population in England and Wales, was 86,456. This unprecedented growth in the level of imprisonment has surprised even those most familiar with the England and Wales criminal justice system.

Upon becoming Secretary of State for Justice Kenneth Clarke noted:

*I am amazed that the prison population has doubled since I was Home Secretary in the early 1990s. It stands at more than 85,000 today. This is quite an astonishing number which I would have dismissed as an impossible and ridiculous prediction if it had been put to me as a forecast in 1992<sup>14</sup>.*

### The economic imperative

However, JR is not just a response to rising prison populations. To some extent (and, as we shall see

The overriding  
distinguishing  
feature of JR is its  
reliance for its  
validity on  
economic theory.

6. Allen, R. (2008) Justice reinvestment: Making sense of the costs of imprisonment, *Criminal Justice Matters*, 71:1, 41-42.

7. Justice Committee (2009) *Cutting crime: the case for justice reinvestment*, London: The Stationary Office Limited.

8. The Columbus Dispatch (2008) *Governor wants prisons re-evaluated*. 27 January 2008.

9. *ibid*.

10. Bureau of Justice Statistics (1999) *Prison and Jail Inmates at Midyear 1998*. Available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=173414> [Accessed 2 November 2012]

11. PEW Center on the States (2008) *One in 100: Behind Bars in America 2008*, Washington D. C.: PEW Charitable Trusts.

12. Hicks, J. and Allen, G. (1999) *A century of change: Trends in UK statistics since 1900*, Research paper 99/111, 21st December 1999, Social and General Statistics Section, House of Commons Library.

13. Ministry of Justice (2012) *Population and Capacity Briefing for Friday 22/06/2012*. Available at <http://www.justice.gov.uk/statistics/prisons-and-probation/prison-population-figures> [Accessed 2 November 2012]

14. Clarke, K. (2010) *Public services from first principles* speech given by (then) Justice Secretary Kenneth Clarke to the Centre for Crime and Justice Studies, 30 June 2010.



below, this depends partly on the model of JR under consideration), it is also a political response to a particular set of economic circumstances. Thus, whether or not the rate of incarceration in the UK and the USA is justified, it is apparent that it is no longer affordable. Expenditure on corrections in the USA has increased rapidly over recent years; total state spending rose from \$12 billion in 1987 to \$49 billion in 2007<sup>15</sup>. Costs have continued to rise since that time. The National Association of State Budget Officers<sup>16</sup> reported that state spending on corrections totalled \$51.1 billion in the 2010 fiscal year. Even this may be an underestimate<sup>17</sup>.

In the UK In 2007, the government spent approximately 2.5 per cent of GDP on public order and safety, the highest of all countries in the Organisation for Economic Co-operation and Development (OECD)<sup>18</sup>. Up until the 2008 economic crisis spending had been remorselessly increasing. The total budget for Ministry of Justice for 2009/2010 was just over £10bn<sup>19</sup> and the National Offender Management System (NOMS) budget, from which the cost of prisons is met, is approximately £4bn of this. In 2010 the UK coalition government announced an ambitious cost reduction of 23 per cent over four years for the two Government departments with joint and sometimes competing responsibility for criminal justice: the Ministry of Justice; and the Home Office. Their targets for capital spend were reduced by 50 per cent and 49 per cent respectively.<sup>20</sup>

### The rise of evidence-based policy

Nevertheless, even in these cash-strapped times, politicians might still be advised to assess how best to

reduce high prison numbers. The prisons crisis has come at a time when there is greater interest among policy-makers in evidence-based, or at any rate, evidence-informed policy<sup>21</sup>. From an economic point of view, interventions may be justified, even if they are costly, by their effectiveness in reducing future costs. In the UK during the first decade of the 21st Century, while prison numbers were rising, crime rates were generally falling. A cursory inspection of the data suggests there might be some degree of correlation between these two trends, however there is no evidence which suggests the rise in prison numbers has caused a *substantial* part of the fall in the crime rate.

Based on unpublished research, Carter<sup>22</sup> claims the 22 per cent increase in the prison population between 1997 and 2003 led to a 5 per cent decrease in crime. An earlier British study was even less optimistic about the scale of incarceration effects: Tarling<sup>23</sup> concludes a one per cent reduction in crime requires a 25 per cent increase in the prison population. It is clear there is limited evidence for a reduction in crime from incapacitation.

The evidence for prison being effective at reducing re-offending amongst released prisoners (specific deterrence) is also very limited. An extensive Systematic Review by Villettaz *et al.*<sup>24</sup> found few methodologically robust studies which made a direct comparison between the effectiveness of custodial and non-custodial sanctions. Of these, the vast majority either favoured non-custodial sanctions over custodial ones or found no difference between them. Villatez *et al.*'s study has recently been updated by Nagin *et al.*<sup>25</sup> who note that incarceration might have a criminogenic, rather than a deterrent effect on some offenders. They conclude:

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15. PEW Center on the States (2008) see n.11.
16. National Association of State Budget Officers (2011) *State Expenditure Report 2010*, Washington DC: National Association of State Budget Officers.
17. Henrichson, C. and Delaney, R. (2012). *The price of prisons: What incarceration costs taxpayers*. New York: Vera Institute of Justice.
18. Duffy, B., Wake, R., Burrows, T. and Bremner, P. (2007) *Closing the gaps — crime and public perceptions*, London: Ipsos Mori.
19. Ministry of Justice (2009) *Story of the prison population 1995 – 2009 England and Wales*, Ministry of Justice Statistics bulletin, London: Ministry of Justice.
20. [http://cdn.hm-treasury.gov.uk/sr2010\\_departmentalexpenditure.pdf](http://cdn.hm-treasury.gov.uk/sr2010_departmentalexpenditure.pdf) Accessed 26th April 2011
21. Albertson, K., Albertson, K.E., Fox, C. and Ellingworth, D. (2013) *Economic Values And Evidence: Evaluating criminal justice policy in* Cowburn, M., Duggan, M., Robinson, A. and Senior, P. (ed.s) *The Values of Criminology and Community Justice*, Bristol, The Policy Press.
22. Carter, P (2003) *Managing Offenders, Reducing Crime: A new approach*. London: Home Office.
23. Tarling, R. (1993) *Analysing Offending: Data, Models and Interpretations*. London: HMSO.
24. Villettaz, P, Killias, M and Zoder, I (2006) *The Effects of Custodial vs. Non-Custodial Sentences on Re-Offending: A Systematic Review of the State of Knowledge*, A report to the Campbell Collaboration Crime and Justice Group. Available at <http://www.campbellcollaboration.org/lib/download/108/> [Accessed 2 November 2012]
25. Nagin, D.S., Cullen, F.T. and Jonson, C.L. (2009) Imprisonment and Reoffending, in *Crime and Justice: A Review of Research*, vol. 38, M. Tonry, ed. Chicago: University of Chicago Press.

*the great majority of studies point to a null or criminogenic effect of the prison experience on subsequent offending. This reading of the evidence should, at least, caution against wild claims—at times found in ‘get tough’ rhetoric voiced in recent decades—that prisons have special powers to scare offenders straight.*<sup>26</sup>

Of course, prison might reduce crime by deterring potential criminals others from committing crime (general deterrence). However, there is no strong evidence linking the decline in crime rates with the deterrent effect of increased incarceration. In fact the evidence suggests that prison has, at most, a small impact on overall crime rates. Summarising findings from three of the strongest econometric studies on deterrence, Liedka *et al.*<sup>27</sup> note that collectively the studies suggest a ten per cent increase in the prison population resulted in a 1.6 per cent to 5 per cent drop in crime rates. Indeed, it has been suggested<sup>28</sup> crime rates vary in a non-linear relationship with severity of punishment and that, beyond a certain point, increases in length of a sentence might even increase the crime rate<sup>29</sup>.

### **Taking opportunities afforded by new technology**

One organisation which has pioneered the use of JR in the United States is the Justice Center at The Council for State Governments. They describe JR as:

*a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease crime and strengthen neighbourhoods.*<sup>30</sup>

To some extent, JR in the USA was made possible by the increased availability and power of computing. Thus, it has built on the development of ‘crime

mapping’ as a distinct sub-discipline within criminology and an important tool used by a range of practitioners within the criminal justice system, particularly the police. Justice mapping is one of the building blocks of JR and uses computer mapping to ‘visualise traditional criminal justice data in new geographic dimensions’<sup>31</sup>. This technological revolution is not over. New hardware and software is only useful if relevant data is accessible. In the UK in recent years the UK government has implemented a Transparency Agenda<sup>32</sup> and as a part of this, has made available a growing number of public sector data sets. This is opening up new possibilities for analysis which may underpin new JR projects in the UK.

However, JR is not simply motivated by a technological revolution. The early, more radical model of JR linked new analytical possibilities to a strong account of the interplay between individual characteristics, the family and the community in shaping offenders. Thus, in the USA, ‘justice mapping’ involves more than simply the generation of plots showing the residential addresses of offenders. They are:

*‘Geographic audits’ [that] make connections between criminal justice expenditures and the well-being of neighbourhoods on behalf of whose inhabitants those resources are deployed.*<sup>33</sup>

Thus technological progress has made possible the representation of links between important aspects of offending, re-offending and their relationship with wider social issues. These were very often known intuitively by professionals working in the system, but had proved difficult to convey in simple terms to policy-makers.

In the UK a renewed interest in localism and civic renewal, combined with new technology and data transparency present similar possibilities.

... there is no strong evidence linking the decline in crime rates with the deterrent effect of increased incarceration.

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26. Ibid p.178.  
27. Liedka, R.V., Piehl, A.M. and Useem, B. (2006) The Crime Control Effect of Incarceration: Does Scale Matter? *Criminology & Public Policy*, 5(2), pp.245-276.  
28. Eide, E (1999) The economics of criminal behaviour, in: B. Bouckaert and G. De Geest (Eds.), *Encyclopedia of Law and Economics*, V. *The Economics of Crime and Litigation*, Cheltenham: Edward Elgar.  
29. See Shepherd, J. (2006) The Imprisonment Puzzle: Understanding How Prison Growth Affects Crime, *Criminology & Public Policy*, 5(2), pp. 285-298 and Liedka *et al* (2006) see n.27.  
30. Council of State Governments Justice Center (2010) *Justice Reinvestment Overview*. Available at [www.justicereinvestment.org/files/JR\\_overview\\_2010\\_rev.pdf](http://www.justicereinvestment.org/files/JR_overview_2010_rev.pdf) [Accessed 2 November 2012] p.1  
31. Cadora, E. (2007) Justice Reinvestment in the US, in R. Allen and V. Stern (eds) *Justice Reinvestment – A New Approach to Crime and Justice*. London: International Centre for Prison Studies, King's College p.11.  
32. See <http://data.gov.uk> and Cabinet Office (2012) *Open Data White Paper: Unleashing the Potential*, London: Cabinet Office  
33. Cadora (2007) see n. 31 p.11.

## THE RISE OF JUSTICE REINVESTMENT: SOCIAL JUSTICE OR SYSTEM REDESIGN?

The JR movement started in the USA at around the turn of the new millennium and has developed in a variety of ways since.

### Social Justice redesign underpinned by Justice Reinvestment theory

Early concepts of JR were motivated by the observation that some communities are clearly more in need of criminal justice interventions than are others. As Cadora recounts:

*The phrase 'million-dollar blocks' was coined to refer to research findings which show that in certain communities states are spending up to a million dollars per block to cycle residents back and forth from prison each year.<sup>34</sup>*

The question Cadora and other pioneers of JR asked was simply whether this resource might be better spent on other criminal justice/social justice interventions. The suggestion and vision of JR was to 'to invest in public safety by reallocating justice dollars to refinance education, housing, healthcare, and jobs.'<sup>35</sup>

This early model of JR places criminal justice within a broader model of social justice. Indeed, implicitly the strategy implies it is less than efficient to separate the two. Thus, part of the JR approach is to prevent criminality arising in the first place and, where it does arise, there is a need to address its underlying causes in communities and families. Clearly, social innovations based on rehabilitation can not reach those individuals who are currently at risk of becoming first-time offenders. Therefore, interventions based on 'prehabilitation'<sup>36</sup> must take a holistic view of the society from which offenders come.

In their consideration of the strengths of the JR approach, the Commission on English Prisons Today argues 'Justice Reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it'<sup>37</sup>. To the Commission, the JR

approach allows the social consideration of the problem of criminality. It is in the interlinking of localised costs and benefits — including social costs and benefits — where real opportunities arise for innovation and cost savings.

### Criminal Justice redesign underpinned by Justice Reinvestment theory

Over recent years the scope of JR in the USA has started to narrow. According to Tony Fabelo, who was involved with the Council of State Governments 2007 Texas initiative, and was interviewed by the authors in August 2011, JR was initially seen as a way of 'reweaving the fabric of society'. Fabelo acknowledged that JR is a changing concept and that use of the term varies from state to state in the USA — also it is

changing in line with the current political emphases of the USA. In the early JR interventions, a unifying theme was to intervene in neighbourhoods to reduce incarceration and 'free-up' resources for further investment, (reinvestment) at neighbourhood level. Now, Fabelo reports, money saved from successful interventions is more likely to go on closing the fiscal gap.

While the focus of JR has remained 'efficiency', the concept of efficiency and the time frame over which savings may accrue have been reconsidered.

Increasingly the aspirations of JR programmes are limited to reducing the use of incarceration through analysis of demand for prison places and identifying opportunities at different points in the system to divert offenders from custody and/or reduce the likelihood of re-offending on release. This model of JR — which we may describe as a criminal justice system redesign approach — places little attention on what is happening beyond the criminal justice system or on preventing criminality in the first place.

### Justice Reinvestment as a continuum

We would not argue that JR interventions will generally fall neatly into one of these categories. In reality social justice and criminal justice are not mutually exclusive models. In fact, what they represent is JR as a continuum, where the approach that is adopted by local,

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34. Ibid p.11.

35. Ibid.

36. Justice Committee (2009) see n.7

37. Commission on English Prisons Today (2009) *Do Better, Do Less: The report of the Commission on English Prisons Today*, London: The Howard League for Penal Reform p.49.

regional or national agencies may be shaped by dynamic factors — factors which can and do change over time.

### Justice Reinvestment in the UK

To date, a full 'Justice Reinvestment' model has not been implemented in the UK. However, a number of projects in the UK have implemented discreet elements which could be said to be in line with the principles of JR; for example, the Diamond Initiative in London<sup>38</sup> and a JR project in Gateshead<sup>39</sup>. These and other UK projects have experienced various challenges including: drawing in partners; developing effective incentive structures; and grappling with issues of scale<sup>40</sup>. To date, no UK project can be said to have implemented of a 'full' JR vision. Nevertheless, JR was thoroughly reviewed by the House of Commons Justice Committee and was given a broad endorsement by that cross-party body<sup>41</sup>.

One of the key issues of JR is an increased emphasis on localism and a particular case has been made for the devolution of youth budgets to local level. This has underpinned several ongoing initiatives including The Youth JR Pathfinder Initiative and Transforming Justice. The transfer of remand custody budgets for youth in England and Wales will take place in April 2013.

Generally, JR in the UK, particularly in the adult criminal justice system, has adopted what we describe above as the narrow sense of JR: redesign of criminal justice systems with a view to reducing costs, primarily through demand for custodial sentences. In the remainder of this article we argue the time is ripe for a more radical implementation of JR, that the current policy landscape provides a number of opportunities to achieve this but that there is a need to develop a clearer theoretical account of JR and a strategy to effectively 'sell' the concept to politicians and the general public.

### REALISING THE POTENTIAL OF JUSTICE REINVESTMENT

It is clear there may be a case for implementing JR in the UK. However, this does not guarantee that JR will

be implemented. In this section we argue that more work is needed before such an innovative and potentially transformative approach can be widely implemented in the UK. This work includes: further theoretical development; a clearer presentation of JR to policy-makers and the public; and greater exploitation of current opportunities in the policy landscape.

### Theoretical development

Justice Reinvestment is unavowedly an 'economic' based approach. Notwithstanding, to date very little work has been done to develop a coherent theory of JR. This is of more than merely academic importance. A clearer theory of JR can help policy-makers place it in the broader policy landscape and highlight potential synergies and conflicts with broader economic and social policies. For researchers and evaluators a clearer theory of JR will give an important steer to the kinds of research methods and evaluation designs likely to be most productive. At present, there is not even a clear definition in the UK of what comprises a JR informed intervention.

In an interview with the authors in 2011, Rob Allen, an early UK proponent of JR and Special Advisor to the House of Commons Justice Committee when it produced its influential report on JR<sup>42</sup>, expressed dismay and frustration about the development of JR in the UK. He welcomed the interest in JR from national and local policy makers from across the political spectrum, but observed that JR was like 'motherhood and apple pie' — no-one is going to disagree with it. However, if you ask individuals what they mean by JR, this was a different matter. Allen posited that conceptualisations of JR varied considerably — 'Three or four people will give you five or six definitions of what it is'. Compare for example Home Office Minister, Nick Herbert's pronouncements<sup>43</sup> about the equivalence of JR with Payment by Results to Allen's own view of JR as a progressive way of linking together three critical elements: reducing imprisonment; local responsibility for organising and resourcing offender rehabilitation and reintegration; and a focus on effective use of resources.

One of the key issues of JR is an increased emphasis on localism and a particular case has been made for the devolution of youth budgets to local level.

38. Allen (2008) see n. 6 and Commission on English Prisons Today (2009) see n. 37.

39. Allen, R. Jallab, K. and Snaith, E. (2007) *Justice Reinvestment in Gateshead – The story so far*, in Allen, R. and Stern, V. (eds) *Justice Reinvestment – A New Approach to Crime and Justice*, London: International Centre for Prison Studies.

40. Fox, C., Albertson, K. and Warburton, F. (2011) 'Justice Reinvestment: can it deliver more for less?' *Howard Journal of Criminal Justice* Vol. 50(2) pp. 119-136.

41. Justice Committee (2009) see n. 7.

42. Justice Committee (2009) see n. 7.

43. Herbert, N. (2010) *Howard League for Penal Reform's Annual Parmoor Lecture*. Available at [http://www.nickherbert.com/media\\_centre.php/386/Parmoor%20Lecture](http://www.nickherbert.com/media_centre.php/386/Parmoor%20Lecture) [Accessed 2 November 2012]



What is required is the development of a theory of JR which emphasises the 'economic' approach, but overcomes the limitations of narrowly constituted economic theory. Many theories of crime and criminality have drawn on economic theory from Enlightenment thinkers such as Beccaria<sup>44</sup> and Bentham<sup>45</sup> to social theorists such as Merton<sup>46</sup> and more recently those who have developed the 'criminologies of everyday life'<sup>47</sup>. Increasingly, however, criminologists who draw on or seek to critique economic ideas in criminology take a rather narrow view of economics based on the prevailing orthodoxy: the so-called neo-liberal economic school of thought which posits society is comprised of self-serving, instrumentally rational actors.

The rise of the neo-liberal school of economic thought is well documented<sup>48</sup>, and we recognise the precise meaning of the phrase is subject to debate. We use the term here in what appears to be its recent common understanding — that is, the paradigm of market fundamentalism which informs the so-called Washington Consensus<sup>49</sup>. Governments which follow the neo-liberal approach in general implement policies which promote: 'free' markets; private property; the application of individual incentive structures; and a circumscribed role for government<sup>50</sup>.

As the neo-liberal paradigm came to dominate thinking on social and economic policy, so it became increasingly influential within thinking about crime and criminal justice. Thus, Rational Choice theory, when applied to thinking about crime began to suggest that all a nation's citizens (now categorised as economic

agents) have the potential for criminality and will commit offences if they can get away with it. This is first set out formally in the analysis of Becker<sup>51</sup>. Becker's model suggests a system of deterrence through detection and incarceration as the social response to crime — though he also emphasises fines may be imposed for lesser offences; the expected cost of the fine, ideally, being greater than the expected return on criminal behaviour.

As recently as 1979, *A World Without Prisons*<sup>52</sup> was envisaged, quite realistically by Dodge, among others. Scull<sup>53</sup>, for example, was of the opinion that the policy of 'decarceration' was a product of the social organisation of 'advanced capitalism' and the associated rise of welfare. In their study of (USA) state level incarceration rates between 1975 and 1995, Beckett and Western<sup>54</sup> support this, finding high levels of incarceration are associated with weak welfare systems. However, the 'advanced capitalism' of Scull has advanced further (if advanced is the right word).

According to Beckett and Western<sup>55</sup> there is evidence the rise of the neo-liberal economic paradigm from the late 1970's to the present has seen the state's response to social marginality shift from welfare support to incarceration. This result is further supported by Cavadino and Dignan<sup>56</sup> who note that the neo-liberal economic paradigm excludes many, often whole communities, from the benefits of economic growth and effective citizenship. This leads to the denial of full effective rights of citizenship. In nations which adopt the neo-liberal paradigm, incarceration rates are higher, compared with more inclusive nations:

What is required is the development of a theory of JR which emphasises the 'economic' approach, but overcomes the limitations of narrowly constituted economic theory.

44. Beccaria, C. (1764) *On Crimes and Punishments*, translation published by Hackett Publishing Company, 1986.

45. Bentham, J. (1789) *Introduction to the principles of moral and legislation*, 1948 edition New York: Hafner Publishing Company.

46. Merton (1938)

47. see for example, Cornish, D. and Clarke, R. (eds.) (1986) *The Reasoning Criminal*, New York: Springer-Verlag; Felson, M. (1994) *Crime and Everyday Life: Insights and Implications for Society*. London: Pine Forge Press; Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.

48. See for example Jones, D. S. (2012) *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics*. Princeton University Press.

49. Williamson (1999).

50. Gore, C. (2000) The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries, *World Development* Vol.28(5) pp. 789-804.

51. Becker, G. (1968) 'Crime and Punishment: An Economic Approach', *Journal of Political Economy*, Vol.76, pp. 169-217.

52. Dodge, C. R. (1979) *A world without prisons: Alternatives to incarceration throughout the world*, Lexington Books, Massachusetts.

53. Scull, A. (1977) *Decarceration: Community Treatment and the Deviant: A Radical View*. Englewood Cliffs, NJ: Prentice-Hall.

54. Beckett, K. and Western, B. (2001) 'Governing Social Marginality: Welfare, Incarceration and the Transformation of State Policy', *Punishment and Society* Vol.3:pp. 43-59.

55. Ibid.

56. Cavadino, M. and Dignan, J. (2006) 'Penal policy and political economy', *Criminology and Criminal Justice*, Vol: 6(4): 435-456.



*One theory is that punishment is a sort of 'negative reward': societies that are prepared to reward success with higher incomes and greater social status are also more willing to punish failure with both poverty and formal sanctions. Or one could say, perhaps preferably, that a more egalitarian society is both more inclusive and less willing to consign offenders to an even more unequally low level of existence.<sup>57</sup>*

However, as Jones<sup>58</sup> makes clear, what is now called neo-liberalism comprises only a selective reading of economic theory. In addition, recent developments in Behavioural Economics<sup>59</sup> underline that economics is a much broader field than the Washington Consensus would suggest. If JR is to be grounded in a more holistic economic model, there is work to do to elaborate the theory in the context of the justice system in a form which avoids the limitations of the neo-liberal paradigm.

Fox *et al.*<sup>60</sup> return to the original conception of JR sketched out by Tucker and Cadora<sup>61</sup>. They develop this further into a more complete theory of JR. Their starting point is 'standard' economic theory. When economists or criminologists apply economic concepts to thinking about crime and criminal justice they usually starts with the concept of Rational Choice theory and ask how this applies to offenders<sup>62</sup> and in some cases also to victims<sup>63</sup>. Fox *et al.*<sup>64</sup> review the challenges to the standard model. They suggest that understanding crime and criminal justice starting from the premise of instrumentally rational individuals provides us with some useful insights into offending behaviour. But,

through a discussion of the importance of intrinsic rewards, the impossibility of perfect information and that of non consensual games they conclude that Rational Choice theory falls short in both: explaining the relationship between offenders and the communities in which they live; and describing the process of desistance from offending.

Instead, Fox *et al.* argue that a different conception of rationality is needed and they turn to concepts of substantive rationality and procedural rationality. Employing the concept of substantive rationality allows us to develop a model of social action in which

reciprocal rights are central to explaining how rational actions may be constrained by social norms. This model seems to provide a much more appropriate basis for developing a theory of JR. Thus, a more realistic and subtle model of decision making is presented, one which is more in accord with the complex interactions between humans and the societies in which we live — societies which create and reinforce norms and provide the context and constraints for individuals' decisions. This approach provides the foundations for developing a theory of JR in which delivering social justice is central.

In practice, the emphasis in criminal justice based on the neo-liberal paradigm is on detection

and punishment once a crime is committed. To some extent, marketised innovations to reducing reoffending are also supported by this model, for example, payment by results<sup>65</sup> and an application of Rational Choice theory to crime prevention has also given us situational crime prevention<sup>66</sup>. Nevertheless this is a narrow view of the potential for prevention and the emphasis is in deterrence through the threat of punishment. However, once a broader view of economic thought is

If JR is to be grounded in a more holistic economic model, there is work to do to elaborate the theory in the context of the justice system in a form which avoids the limitations of the neo-liberal paradigm.

57. Ibid p.452.

58. Jones (2012) see n. 48.

59. Thaler, RH and Sunstein, CR (2008) *Nudge: Improving decisions about health, wealth and happiness*, Yale University Press.

60. Fox, C., Albertson, K. and Wong, K. (2013, in press) *Justice Reinvestment: can it deliver more for less?* London: Routledge.

61. Tucker, S. and Cadora, E. (2003) *Justice reinvestment: To invest in public safety by reallocating justice dollars to refinance education, housing, healthcare, and jobs* [Monograph] Ideas for an Open Society, 3. Available at <http://www.opensocietyfoundations.org/publications/ideas-open-society-justice-reinvestment>

62. for example Becker (1968) see n. 51, Ehrlich, I. (1973) 'Participation in Illegitimate Activities: A Theoretical and Empirical Investigation', *The Journal of Political Economy*, Vol. 81(3), pp. 521-565; Ehrlich I (1996) *Crime, Punishment, and the Market for Offenses*, *The Journal of Economic Perspectives*, vol. 10(1), pp. 43-67.

63. for example Felson (1994) see n. 47.

64. Fox *et al.* (2013) see n.60.

65. Fox, C. and K Albertson (2011) *Payment by results and social impact bonds in the criminal justice sector: New challenges for the concept of evidence-based policy?* *Criminology & Criminal Justice*, vol.11(5) pp.395-413.

66. Cornish and Clarke (1986) see n.47.

considered, the implication for crime reduction is that investment in prevention will include measures which build community and individual resilience.

Similarly, a broader range of innovations which address the problem of reducing re-offending are suggested by a broader approach to economic theory. There remains a need to manage risk and address criminogenic needs may also be addressed. But, in this, more radical version of JR, (potential) offenders are assumed to have a degree of agency. Thus some responsibility is placed on (potential) offenders to describe their version of a Good Life and co-producing their own reintegration into society. At the same time, it is recognised individual offenders should be supported in a positive way by identifying and working with their 'assets' (their skills and experience), rather than concentrating on their deficits (criminogenic needs).

While neo-liberal models of criminal justice emphasise the deterrence of individuals, a more holistic economic approach suggests communities have a role. Building and mobilising community capacity to help reduce re-offending should be a key strategy. Fox *et al.*<sup>67</sup> note that there are many points of similarity between this more holistic economic model of crime and criminal justice and the Good Lives Model<sup>68</sup>. They argue that this model of offender rehabilitation might sit comfortably within the broader theory of JR that they sketch out.

This theory of JR places greater emphasis on the important role non-criminal justice agencies play in preventing offending and reducing re-offending and implicit within this more holistic economic model is a mixed economy of criminal justice provision and an approach to commissioning that supports local communities.

In sum, we suggest that an artificially narrow view of economic thought has been drawn on to motivate criminal justice. This is often termed the 'neo-liberal' approach, though it relies on a selective reading even of the work of the founders of the neo-liberal movement<sup>69</sup>. Most of the emphasis here is on the impact of extrinsic rewards (and punishment) on the

individual. Deterrence may be modelled as little more than fear of punishment<sup>70</sup>. In contrast a more holistic view of economics suggests humans may abstain from crime though intrinsic motivation. In this model, the emphasis is on support of communities and (potential) offenders to reduce both offending and reoffending.

### **Selling Justice Reinvestment to politicians and policy-makers**

With a clearer theory of JR in place, the next challenge is 'selling' JR to politicians and policy makers. What can we learn from the US experience? When we consider recent USA experience, the striking thing is that JR has been pitched in economic terms, despite the lack of thorough theoretical underpinnings. In practice, early JR projects pointed out the illogic of ignoring the 'million dollar blocks' (described above). Early pioneers of JR evoked the idea of a failed 'business case':

*From an investment perspective, both our prison and parole/probation systems are business failures. These policies destabilize communities along with the individuals whom they fail to train, treat, or rehabilitate (and whose mental health and substance abuse are often exacerbated by the experience of imprisonment.)*<sup>71</sup>

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As the fiscal crisis caused by spiralling prison numbers became apparent, the economic argument became even more compelling. In 2003, Frank Bowman, a former federal prosecutor noted in the New York Times that in many USA states 'people are scratching their heads and saying, 'You know, incarcerating people for that long doesn't work.'<sup>72</sup>. According The New York Times, 'from Connecticut to California, legislatures and governors are, with a few exceptions, eagerly finding new ways to reduce, rethink or eliminate prison sentences for crimes within their jurisdictions.'<sup>73</sup> It is this latter argument, of dealing with offenders more effectively — especially in the context of the crisis in public finances — which spurred the

67. Fox *et al.* (2013) see n.60.

68. Ward, T. and Maruna, S. (2007) *Rehabilitation*, London: Routledge.

69. Jones (2012) see n.48.

70. Becker (1968) see n.51.

71. ucker and Cadora (2003) see n.61 p.3.

72. New York Times (2003) *Rethinking The Key Thrown Away; As Ashcroft Cracks Down, States Cut Prison Terms*. 20 September 2003. Available at <http://www.nytimes.com/2003/09/28/nyregion/rethinking-the-key-thrown-away-as-ashcroft-cracks-down-states-cut-prison-terms.html?pagewanted=all&src=pm> [Accessed 2 November 2012]

73. Ibid.

development of JR in the USA. That is to say, JR needed little selling — the potential benefits sold themselves.

Also striking in the US is that JR has generally been implemented as a bi-partisan programme. Many of the early JR projects in the USA were implemented with the support of the Council of State Governments Justice Center. As a condition of its involvement in any JR project, the Council requires an invitation from all the three branches of state government (legislative, executive, judicial). This requirement is to ensure that the work will be non-partisan and broadly supported in the state. Of equal import is that JR is data-driven rather than ideology-driven and a bi-partisan approach has been helped by the fact that JR, perhaps in part because of its economic underpinnings, transcends traditional political demarcations. So, as Skolnick<sup>74</sup> points out, it is noticeable that, in the USA, 'progressive re-entry initiatives' are often championed by 'conservative states with conservative leaders'<sup>75</sup>. Thus:

*It's all very warm and fuzzy, yet such policies have been championed by the likes of Newt Gingrich and Louisiana governor Bobby Jindal.*<sup>76</sup>

Superficially, there are some similarities with the current situation in the UK, for instance rising prison numbers and an economic crisis that requires substantial cuts in public spending. There is also some evidence of a degree of cross-party support for JR. So, for example, JR was thoroughly reviewed by the House of Commons Justice Committee and was given a broad endorsement by that cross-party body<sup>77</sup>. As in the USA, notions akin to JR seem to resonate with right-of-centre politicians as well as with those on the left. In the run-up to the 2010 national election the Conservative Party<sup>78</sup>, which might not be thought of as a progressive party on issues of law and order, enthusiastically

endorsed the work on justice undertaken by the Washington State Institute for Public Policy<sup>79</sup>, certainly one model of JR.

However, there are also differences between the USA and the UK. First, while in the UK it has long been recognised that offending and offenders are disproportionately located in certain neighbourhoods, rates of incarceration in the UK are much lower than in the USA and the UK does not have 'million dollar blocks'.

Secondly, there is greater organisational complexity in the UK criminal justice sector than in the USA. Consider the number of organisations involved in the delivery of custodial and community sentences in England and Wales. Overall responsibility lies with the Ministry of Justice, a central government department. The National Offender Management Service, NOMS, is an executive agency of the Ministry of Justice responsible for commissioning and delivering prison and probation services in England and Wales. NOMS is responsible for the National Probation Service and Her Majesty's Prison Service. Through these it delivers offender services by means of<sup>80</sup> 35 Probation Trusts, 119 public sector prisons; and several private sector organisations which between them operate 12 prisons under contract and provide other services including prisoner escorts

and electronic monitoring of offenders in the community. As we discuss below, further organisational change is planned.

Thirdly, there is limited political leadership at a local level. Until recently, the only elected politicians involved in this substantial criminal justice system employing thousands of staff were the handful of government ministers in the Ministry of Justice and the result, was that: '... local communities, however they are defined, have no sense of involvement in prisons and what goes

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74. Skolnick, A (2012) 'Runaway Prison Costs Trash State Budgets', *The Fiscal Times*, 9th February 2011. Available at: <http://www.thefiscaltimes.com/Articles/2011/02/09/Runaway-Prison-Costs-Thrash-State-Budgets.aspx#page2> [Accessed 13 September 2012]

75. See for instance: <http://www.rightoncrime.com/> which draws on many aspects of the Justice Reinvestment model.

76. Skolnick (2012) see n.74: unnumbered.

77. Justice Committee (2010) see n.7.

78. Conservative Party (2009) *Prisons with a purpose: our sentencing and rehabilitation revolution to break the cycle of crime*, London: The Conservative Party.

79. See for example Aos, S, Miller, M and Drake, E (2006) *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*. Olympia: Washington State Institute for Public Policy.

80. *National Offender Management Service (2012) National Offender Management Service Business Plan 2012-2013*, London: Ministry of Justice.

on in them<sup>81</sup>. Recently local Police and Crime Commissioners have been elected. Below we consider what opportunities for JR they might present.

Ultimately, there is at least some anecdotal evidence that the abolition of the Government Offices and reductions in local authority and policing budgets are resulting in a loss of local analytical capacity across England and Wales — an important issue for implementing a data-driven approach such as JR.

All of these challenges suggest that even with a stronger underpinning theory and a degree of political consensus, implementing JR will not be straightforward.

## HOW JUSTICE REINVESTMENT FITS INTO THE CURRENT POLICY LANDSCAPE

In 2010, the Conservative Party and the Liberal Democrats formed the UK's first formal coalition government for 55 years. The first bullet point under the 'Justice' heading in the coalition agreement reads:

*We will introduce a 'rehabilitation revolution' that will pay independent providers to reduce reoffending, paid for by the savings this new approach will generate within the criminal justice system.*<sup>82</sup>

Central to the 'Rehabilitation Revolution' is the use of Payment by Results<sup>83</sup>. In its Green Paper *Breaking the Cycle* Green Paper, the Ministry of Justice proposed extending the principle of payment by results to all services for offenders by 2015<sup>84</sup>. At the time of writing further reforms have recently *been proposed in Transforming Rehabilitation — A Revolution in the Way we Manage Offenders*<sup>85</sup>. These latest proposals reiterate the intention to introduce a widespread programme of competition so that the majority of community-based offender services are subject to competition with providers drawn from the private and voluntary sectors

All of these challenges suggest that even with a stronger underpinning theory and a degree of political consensus, implementing JR will not be straightforward.

and the existing probation service allowed to join the competition by setting up new independent entities (such as employee-led mutuals). It is beyond the scope of this paper to comment on the merits or otherwise of the proposed reforms. We restrict ourselves to identifying some potential opportunities to implement a radical model of JR within this emerging policy landscape.

The latest reforms favour a mixed economy of criminal justice provision and a mixed economy is implicit within a model of JR designed to deliver social justice<sup>86</sup>. A mixed economy is also envisaged by Tucker and Cadora<sup>87</sup> in their original sketch of this radical model of social innovation. They suggest the cycle of offending and re-offending can be broken by a

concerted effort from National government, state government, NGO's, the private sector, the individual at risk from criminality and his or her family working together to improve education, health, job training and (especially pertinent given the recent rise in youth unemployment worldwide, and particularly in the western democracies) job creation.

The model of JR we develop above<sup>88</sup> and the original model of JR developed by Tucker and Cadora<sup>89</sup> envisage a holistic approach to rehabilitation that extends beyond the efforts of criminal justice agencies. In *Transforming Rehabilitation* the government is explicit in its desire to see providers of rehabilitation services 'tackling offenders' broader life management issues'<sup>90</sup>. It also recognises the need for offenders to be able to access a range of public services provided by other Government departments and agencies in order to tackle the multiple issues that offenders often have. Thus interest in maximising results from collective government and public sector resources is explicitly linked to delivering more effective social justice<sup>91</sup>.

Thinking about the issue of political leadership described above, Police Crime Commissioners (PCCs)

81. Coyle, A. (2007) 'Making prisons locally accountable', in Allen, R. and Stern, V. (eds.) *Justice Reinvestment – A New Approach to Crime and Justice*, London: International Centre for Prison Studies p.35.

82. Her Majesty's Government (2010) *The Coalition: our programme for government*. London: Cabinet Office p.23.

83. See Fox and Albertson (2011) see n.65.

84. Ministry of Justice (2010) *Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders*, London: Home Office.

85. Ministry of Justice (2013) *Transforming Rehabilitation: A Revolution in the Way We Manage Offenders*, London: Ministry of Justice.

86. Fox et al. (2013) see n.60.

87. Tucker and Cadora (2003) see n.61.

88. Further elaborated in Fox et al. (2013) see n.60.

89. Tucker and Cadora (2003).

90. Ministry of Justice (2013) see n.85 p 17.

91. Ministry of Justice (2013) see n.85.



could provide the single point of political leadership needed to drive forward JR. Justice Reinvestment in the USA has generally involved a clear incentive structure and a single service commissioner able to realise benefits from a new approach to service commissioning. For example, in Oregon the state government turned over to the local level county administration funds equal to the costs of keeping young offenders in state criminal justice institutions. The county was given the flexibility to invest the funds into community-based supervision programmes and into neighbourhood improvement projects. Thus, an incentive was created for the local administration to reduce the use of youth custody<sup>92</sup>. The latest UK proposals set out a model for commissioning services where the geographies across which services will be commissioned are co-terminous with PCC administrative boundaries. The suggestion is also made that 'PCCs bring an opportunity for collective local leadership to galvanise police, local authorities, the Crown Prosecution Service and courts to work together to prevent crime and reduce re-offending'<sup>93</sup>.

Finally, the general approach set out in the reforms seems to recognise the potential for social innovation to play a greater role in the rehabilitation of offenders and, when JR is theorised as an approach to delivering social justice (as opposed to a narrower conception of 'criminal justice system redesign') it is, we would argue a form of social innovation.

Unfortunately, there are also elements of the reforms which might limit opportunities for JR. A key one is the intention to use a national commissioning model for rehabilitation services with 16 geographic contract areas, but with contracts administered centrally by the Ministry of Justice<sup>94</sup>. The Ministry argues

... when JR is theorised as an approach to delivering social justice (as opposed to a narrower conception of 'criminal justice system redesign') it is, we would argue a form of social innovation.

that '... responsiveness to local needs does not necessitate local commissioning, as diversity can be recognised as part of commissioning at a larger scale ...'<sup>95</sup>. This presents several potential obstacles to JR. First, all models of JR have been data driven with in-depth local analysis providing an understanding of the needs of local offenders and communities. Given the national commissioning model and the relatively short timescales this is scheduled to take place over, such analysis seems unlikely to drive service provision, at least in the short term.

Secondly, such a commissioning model also raises issues about the extent to which 'localism' is recognised in the reforms. As part of their comprehensive review of the prison service in England (and, to some extent, Wales), *Do Better, Do Less*, the Commission on English Prisons Today<sup>96</sup> argued that the policy of localism allows the addressing of two issues simultaneously. According to the Commission, while the people of England feel their communities are increasingly disempowered<sup>97</sup>, there is good evidence to show that justice functions are more efficiently delivered at the local level<sup>98</sup>. It is argued that localising services and service providers also leads to an increase in trust<sup>99</sup>

which is associated with a reduction of the proportion of the population who are incarcerated and, we might expect, a more effective series of interventions. The commission also argues co-operation between stakeholders is more likely to be achieved at a local, rather than national, level<sup>100</sup>. Localisation is, therefore, an approach which will lead to more correctly aligned incentives as well as making it more likely interventions will be supported and be successful.

Finally, commissioning rehabilitation at a regional level and including an element of Payment by Results will result in lead contractors in each area being large

92. Allen (2007) see n.4, Fox and Albertson (2011) see n.65.

93. Ministry of Justice (2013) see n.85 p.26.

94. Ministry of Justice (2013) see n.85.

95. Ibid p.25.

96. Commission on English Prisons Today (2009) see n.37.

97. Watts, B. (2008) *What are Today's Social Evils?* York: Joseph Rowntree Foundation.

98. Mulgan, G. and Bury, F. (2006) *Double Devolution: The renewal of local government*, London: the Smith Institute; Local Government Information Unit (2008) *Getting to the heart of local accountability* consultation paper in response to Community Empowerment White Paper, London: Local Government Information Unit; Stern, V. and Allen, R. (2007) *Localism and criminal justice: Suggestions for a new balance between national and local decision-making* in Allen, R. and Stern, V. (ed.s) *Justice Reinvestment – A New Approach to Crime and Justice*, London: International Centre for Prison Studies.

99. Commission on English Prisons Today (2009) see n.37.

100. Ibid p. 51.

entities that are 'capable of bearing the financial and operational risks'<sup>101</sup>. The Justice Committee<sup>102</sup> noted the squeeze that government policy puts on smaller local organisations in favour of larger commercial enterprises and commentators have noted the risk that payment by results models in the criminal justice system pose to small, particularly voluntary sector organisations<sup>103</sup>. The Ministry of Justice<sup>104</sup> argues that it will take steps to ensure that smaller voluntary sector organisations are part of the commissioning arrangements it enters into and that their role is sustainable.

### Conclusions

The challenge of JR is to look beyond the supposed solutions of previous years. 'Solutions' supposedly based on rigorous theory but the implementation of which have nevertheless seen prison populations grow and communities decline. The response however, is not to throw out economic theory — the economic dimension is key to JR — rather it is to draw on some new ideas (and go back to some very old ideas) in economics.

A broader view of economics recognises the limitations of the neo-liberal model as it is currently accepted; it is clear that society is not adequately represented by independent individuals considering their role in a market for crime. Other variables influence agents' decisions, for example, community resilience, social mores and the local built environment. Local resources — the way in which citizens and localities are embedded in public, private and voluntary sector networks and intangible assets such as relationships of trust and reciprocity — are important pillars of sustainable economic activity and allow us to build a theory of JR where the aim is to reduce the need for (and cost of) criminal justice through an increased emphasis on the efficient delivery of social justice. This must take place through a mixed economy of provision: the state, private sector organisations and the charitable sector all have roles to play. Recent policy provides some new opportunities to promote such a model.

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101. Ministry of Justice (2013) see n.85 p.16).

102. Justice Committee (2009) see n.7.

103. Fox and Albertson (2011) see n.65.

104. Ministry of Justice (2013) see n.85.