

Navigating the Political Landscape of Australian Criminal Justice Reform: Senior Policy-makers on Alternatives to Incarceration

Melissa Lovell,* Jill Guthrie,† Paul Simpson‡ and Tony Butler§

Abstract

Political ideology and populism are often thought to be major impediments to criminal justice reform. Our research has attempted to deconstruct these ideas so that the robustness of the ‘punitive turn’ in criminal justice policy can be better understood. This article reports upon in-depth interviews conducted with five very senior criminal justice policy-makers, each of whom was broadly sympathetic to reforming criminal justice policy to achieve the goal of lower incarceration levels. The interviews reveal that these policy-makers conceived of prison reform primarily in terms of political risk, especially when reform was related to the adoption of prison alternatives and models that focus on ‘decarceration’. Furthermore, policy-makers’ perceptions of political risk were intricately bound up with concerns about potential public policy and program failure. This research indicates the need to develop political will for reform, alongside the further development of the myriad evaluation and policy development processes required to enable successful reform in the criminal justice space.

Keywords: citizens’ jury – criminal justice policy – punitive turn – justice reinvestment – elite interviewing – Australia

* Convenor and Research Fellow, The Herbert and Valmae Freilich Foundation, The Australian National University, Sir Roland Wilson Building, 120 McCoy Circuit, Canberra ACT 2601, Australia. Email: melissa.lovell@anu.edu.au.

† Senior Research Fellow, National Centre for Epidemiology and Population Health, The Australian National University, Building 63A, Cnr Mills & Eggleston Roads, Canberra ACT 2601, Australia. Email: jill.guthrie@anu.edu.au.

‡ Research Fellow, Justice Health Research Program, The Kirby Institute, Level 6, Wallace Wurth Building, High Street, University of New South Wales NSW 2052, Australia. Email: psimpson@kirby.unsw.edu.au.

§ Professor and Program Head, Justice Health Research Program, The Kirby Institute, Level 6, Wallace Wurth Building, High Street, University of New South Wales NSW 2052, Australia. Email: tbutler@kirby.unsw.edu.au.

Introduction

Australia's incarceration rates are higher than at any time since Federation and substantially higher than those in many western European countries. While Australia may not have the mass incarceration culture of the United States ('US'), it has nonetheless seen rates of incarceration more than double in the past 30 years to 208 per 100,000 people in 2016 (Australian Bureau of Statistics ('ABS') 2016; Wood 2014). Indigenous incarceration rates in Australia are even higher at 2346 per 100,000 (ABS 2016), and Indigenous Australians match African Americans as the most incarcerated populations in the world (International Centre for Prison Studies 2015). Imprisonment is expensive: each new adult prison bed costs between \$250,000 and \$500,000 in infrastructure costs and around \$100,000 per annum in running costs (Steering Committee for the Review of Government Service Provision 2015). Youth justice beds each cost around \$200,000 per year. In 2013–14, it was estimated that direct costs of imprisonment in Australia were increasing by approximately one million dollars per day (Steering Committee for the Review of Government Service Provision 2015). Since crime rates have mostly stabilised or fallen since the 1990s, the ongoing increases in incarceration rates are often seen as the result of conservative 'tough on crime' political agendas and a corresponding 'punitive turn' in public attitudes (Tonry & Michael 2011; Wood 2014).

This article provides an analysis of interviews with five senior policy-makers in three Australian states. Starting from the assumption that Australia's current high-incarceration approach to criminal justice is likely to be unsustainable in the long term, we sought to establish policy-makers' attitudes towards criminal justice and alternatives to high-incarceration policy approaches, their perceptions of public opinion and their preferences for policy reform and development. Given the small number of participants and the qualitative nature of the research means, the results of this study are not generalisable to the broader Australian policy community. However, as Richards has observed, the views of people in positions of power can be difficult or even 'impossible' to obtain by other methods (Richards 2011, p. 68).

The in-depth engagement with very senior policy-makers as part of this research project contributes to a better understanding of the issues, concerns and values underpinning criminal justice policy in Australia. In particular, the finding that policy-makers view decarceration and similar reforms primarily in terms of political risk provides insight into the ongoing robustness of incarceration as a default policy approach. That these perceptions of political risk were intricately bound up with concerns about potential public policy and program failure extends previous scholarship on the influence of public opinion and evidence-based policy-making in the criminal justice context (see, for example, Gelb 2006; Wood 2016). The implication of this research is that successful criminal justice reform will probably require the concurrent development of both political will for the adoption of lower incarceration approaches and a better evidence base for successful implementation of alternatives to incarceration.

Background

Criminal courts in Australia can utilise incarceration alternatives such as probation, fines and good behaviour bonds (with or without conviction), orders to perform community service, suspended custodial sentences, deferral of sentencing for rehabilitation, and participation in diversionary programs (Richards 2010). Diversionary programs, where disputes are resolved without judicial intervention, operate through a police referral approach in most Australian

jurisdictions. Prominent and well-known diversionary programs include restorative justice in the form of victim-offender conferencing, and pre-charge programs that typically refer an offender to a treatment or rehabilitative program in response to drug, cognitive disability and/or a mental health issue. Indigenous and circle sentencing courts also occur in most jurisdictions and offer an alternative to mainstream judicial intervention. A central element is the involvement of community, through Elders or Respected Persons with whom the offender has a relationship. However, participation in such courts can be limited to certain offence types and some outcomes may result in a sentence of imprisonment. Further, the evidence base supporting the effectiveness of many of these interventions is lacking (Richards 2010).

An innovative policy idea that is gaining traction in Australia is justice reinvestment ('JR') (Brown et al. 2016; Wood 2014). Justice reinvestment is both a philosophy for justice reform and a set of place-based strategies for investing funds that would typically be spent on incarceration on socially constructive policy interventions that aim to reduce offending. Research has shown that a policy of mass incarceration is itself a generator of crime problems (Brown et al. 2016). Justice reinvestment compels policy-makers to consider the implications of current punitive policies that have produced higher rates of incarceration, particularly of Indigenous Australians and, instead, to fund initiatives that redress the social determinants of incarceration (Krieg et al. 2016). It promotes greater social investment in communities with the socio-demographic features that disproportionately contribute to prisoner populations. As a systems-based approach, JR involves all levels of government, as well as non-government organisations. It also encompasses a comprehensive range of areas such as health, housing, employment, justice, family support, mental health and substance misuse services. The approach retains prison as a last resort. Justice reinvestment has become a popular approach in some US states, in the United Kingdom and elsewhere (Allen 2011; Austin & Coventry 2014; Homel 2014). It has been criticised by those who view it as a neoliberal approach to criminal justice (Austin et al. 2013; Berger 2013), and by those who are concerned that current piecemeal approaches could fall short of the full systems-level approach required to actually reduce incarceration rates (Fox et al. 2011).

There has been considerable political interest in the concepts of JR in Australia with a number of government and official reports advocating for greater engagement with JR concepts by Australian governments (Australian Human Rights Commission 2009, 2014; Senate Legal and Constitutional Affairs References Committee 2013). Local evidence of the effectiveness of JR is not yet available because JR has yet to be formally adopted by any Australian jurisdiction. However, preliminary JR-focused programs are being developed in several regional locations, including Bourke (KPMG Australia 2016) and Cowra in New South Wales ('NSW') (Guthrie et al. 2017), Ceduna in South Australia and Katherine in the Northern Territory (Australian Red Cross 2016). The Australian Capital Territory ('ACT') Government also recently announced a JR trial to be undertaken in collaboration with the local Aboriginal community-controlled health service, Winnunga Nimmityjah (ACT Government 2017). The movement towards JR in Australia appears particularly focused on reducing incarceration of Indigenous Australians since rates of Indigenous incarceration are much higher than for the non-Indigenous population (Austin & Coventry 2014; Gooda et al. 2012; Schwartz 2010).

Method

These research findings were part of a larger project that used a Citizens Jury approach in three Australian cities to explore the opinions and views of a critically informed public

towards how the community views regarding incarceration and alternatives to incarceration (Simpson et al. 2015a; Simpson et al. 2015b). Citizens Juries typically involve bringing together a selected group of citizens, providing them with information on the issue at hand and asking them, as community representatives, about their preferences for certain policy options or priorities. In contrast to surveys, opinion polls or focus groups, jurors may have access to, and critically engage with, a range of 'experts' or knowledge producers on the subject at hand. They may ask questions and clarify key points with the experts and discuss issues with other jurors. This process is facilitated and can last from a half-day to five days. This is aimed at enabling jurors to develop considered preferences for particular policy approaches (Carson 2003; Mooney 2010). Citizens Juries were held in Sydney, Canberra and Perth between December 2012 and October 2013 respectively. Jurors were asked which principles they would like to see underpin the treatment of offenders and how those principles might be put into practice. Jury findings revealed a preference for prison alternatives. Independent oversight of the research process was by means of a research reference group ('RRG') comprising Indigenous, legal and social advocacy experts.

As part of this project we examined policy-makers' views following the Citizens Juries to explore to what extent policy-makers are influenced by the views of a critically informed citizenry on issues of justice and incarceration. After consultation with the RRG, 11 senior policy-makers (such as government ministers, leaders of statutory authorities, commissioners, etc) from the Indigenous, legal and treasury sectors of government in NSW, the ACT and Western Australia were invited to participate in an interview. If the invited policy-maker was unable to participate, then an appointed delegate was sought. Five senior policy-makers and public office bearers (referred to as P1, P2, P3, P4, P5) agreed to be interviewed. Studies that target elite participants are often based on small numbers (Berry 2003; Goldstein 2003), and this was a reasonably good response rate given the rank and seniority of the targeted participants. All comments were treated as 'not for attribution' (Goldstein 2003, p. 671), meaning that participants were assured their comments would not be linked to their names, professional roles or organisational context in the research results. Arguably the opportunity to participate anonymously allowed their responses to be more candid than might have been the case if their comments were identifiable.

Semi-structured, in-depth interviews were conducted (Galletta 2013, p. 45). There were two phases to the interviews. The first was designed to discover policy-makers' attitudes towards incarceration and knowledge of possible alternatives to incarceration. This part of the interview included questions about whether participants were aware of any programs based on non-imprisonment or diversion from prison, their opinions and endorsement of such programs, and their views on JR. The second phase of the interviews was designed to evaluate the influence of the jurors' deliberations on policy-makers' views. The structure and objectives of the juries were briefly discussed, together with any questions about the purpose or validity of the juries. Policy-makers were then shown a summary of the outcomes from the three citizen jury events, including a list of key principles for dealing with offenders and recommendations for enacting those principles. They were asked whether any of the outcomes stood out or whether the jury findings changed their tendency to endorse non-imprisonment policy approaching, including in relation to the JR paradigm. A full schedule of interview questions and the jury outcomes has been reported earlier (Simpson et al. 2015b). Interviews were transcribed and analysed using a thematic analysis protocol (Braun & Clarke 2006). Ethics clearance for the project was obtained from five Human Research Ethics Committees (Aboriginal and Torres Strait Islander Health and University) across three jurisdictions.

The initial aim of the policy-maker interviews was to explore the extent to which policy-makers were likely to be influenced by the views of a critically informed citizenry based on

the Citizens' Jury outcomes. As reported earlier (Simpson et al. 2015b), it is possible that a self-selection effect was present among policy-makers who opted to participate in this study; policy-makers' already high levels of support for prison alternatives precluded those participants from experiencing large attitudinal shifts based on their exposure to the jury findings. Policy-makers were very interested in the Citizen Jury findings but did not change their level of support for justice reforms. Access to five senior policy-makers with high knowledge and support for criminal justice policy reform presented a unique opportunity for the researchers to explore the political landscape of criminal justice reform from the perspective of elite and influential actors in the criminal justice sector. This article therefore presents additional, unpublished analysis of the interviews with policy-makers, and focuses on identifying obstacles to policy reform from the perspectives of policy-makers who are open to alternative approaches to justice.

Findings

The policy-makers interviewed found current approaches to justice problematic and out-of-step with their knowledge and experience of crime and offending, but they were also very cautious about prospects for policy reform. This section outlines the conceptions of crime and the justice system underlying policymakers' views about the effectiveness — or otherwise — of current approaches to criminal justice. It shows that an awareness of possible flaws or limitations in incarceration-based approaches does not automatically translate into policy reform. Criminal justice reform was considered to be desirable by all policy-makers, but also quite risky. Significant impediments to reform included policy-makers' concerns about community attitudes, and the relative complexity of non-incarceration options when compared to incarceration based approaches.

Conceptions of crime and the justice system

Discussions of crime and policy reform revealed policy-makers had a sophisticated understanding of the criminal justice system. All policy-makers conceived of the main objective of the criminal justice system as one of crime prevention through rehabilitation of offenders. For example, P1 observed, 'I see one of the necessary functions of Corrections as rehabilitation.' Similarly, P4 reasoned that '[t]he best effort that we could put into crime prevention are [those] diversionary programs which focus on the rehabilitation of the individual'. P3 provided the most individualist interpretation of the causes of crime. They felt that society would never be able to completely move away from prisons as an instrument for retribution because some people are 'just not right', and because bad behaviour can come from people who might be expected to know better including people from 'very well off families'. Nonetheless, even P3 felt that reform was possible for some offenders and supported a rehabilitative ideal for the criminal justice system.

Support for this rehabilitative ideal arguably stems from policy-makers' willingness to acknowledge that some factors behind criminal behaviour are broader social issues and possibly beyond the control of individual offenders. For instance, P5 argued that, while offending behaviour is 'a choice made by individuals', this choice is made in the context of broader social norms and problems. P2 singled out mental health as a particular problem contributing to criminal activity — the issue 'that's screaming out is mental health' — and observed that offenders in prison with mental health issues comprised 'about 70%'. P4 identified the importance of a range of social issues as contributors to criminal behaviour:

Fifty per cent of everything [the police] do is trying to solve what I would call social issues, and I'll mention things like family violence, you can mention things like mental health, substance abuse, and all of those things, but ... [the police] are not the people to solve that or sort it out, and neither are the prisons really.

Race was also viewed as a factor contributing to the likelihood of experiencing social disadvantage and consequently to the likelihood of contact with the criminal justice system. P2 was aware of the impact that social disadvantage has on Indigenous people, arguing that Indigenous Australians, like 'the Afro American' people in the US, were not dealt a level playing field in terms of access to education and other opportunities. They specifically referred to the educational disadvantages experienced by Indigenous children and spoke of the gaps between 'Anglo white' and Indigenous children emerging in early childhood and being clear 'by the time they get to go to school'.

Acknowledging the combination of individual and social factors underlying criminal activity seems to have predisposed these policy-makers to the view that society has a duty to provide opportunities for offender rehabilitation. Referring to the need for offenders to learn basic life skills, P1 described programs that helped individuals to learn basic procedures such as how to buy and use a bus card so they could use public transport to navigate across town. It was also suggested that rehabilitative programs could focus on developing offenders' cognitive skills. For example, P2 sanctioned a drug diversion program that sought to place young offenders in counselling in order to help them 'get better control around their lives'. The need to boost individuals' skills and capabilities for ordinary everyday functioning was therefore one of the chief justifications provided for rehabilitation as a key objective of the criminal justice system.

Understandings on the effectiveness of incarceration and its alternatives

Prima facie incarceration of offenders was viewed as an inadequate policy approach by all policy-makers interviewed. Each policy-maker viewed at least some alternatives to incarceration as desirable in principle.

Two of the five policy-makers emphasised that incarceration was sometimes a necessary and appropriate response to addressing crime. P2 and P3 argued that incarceration was an effective method for keeping the community safe from dangerous offenders. As P2 argued: 'When we put somebody into gaol for armed hold-ups, for the period that they're in gaol they're not going to commit one more [armed robbery].' P3 felt that some people 'don't deserve to live in the community' because they 'make other people unsafe'.

Current approaches to justice were, however, seen as inadequate by all policy-makers. For example, P2 argued that current approaches to policing involved acting like 'an occupying army' and that this has led to unsustainable 'bursting' prisons and the 'largest prison population we've ever had'. They admitted that 'by and large, the majority of people who go before a Court should not be incarcerated' and acknowledged that prison is not particularly rehabilitative. P4 argued that the current system also leads to high levels of recidivism: '[I]f you look at the statistics of people coming out of prison, there's a very high recidivism rate because the underlying problems are not treated.' Focusing on the overall effects of the justice system, P5 described the current approach as 'a very expensive process, and [one that] doesn't necessarily produce the best outcomes in terms of stopping reoffending behaviour, restoration to victims and so on'.

Policy-makers described a range of policy options that they viewed as potentially more effective than current approaches to criminal justice. Several focused on early intervention

and broader social support for people at risk of engaging in criminal activity. P1 mentioned the importance of public investment in social work and ‘social intervention ... before people are put in gaol the first time’. P3 supported this: ‘There’s certainly an argument for putting more investment ... into prevention activities, and I think that’s very important. And it’s not just police that you put that money into, it’s obviously lots of programs and all these [programs] in the community sector.’ P2 outlined another approach to prevention, focusing on reducing opportunities for criminal activity, ‘through environmental design, or better educating and preparing people in communities against becoming victims of crime’, adding that ‘[t]he more we can prevent crimes from happening, the less we have to deal with this question of incarceration versus some other kind of program’. Collectively, these approaches to intervention tended to emphasise the importance of addressing the social determinants of contact with the criminal justice system.

Policy-makers also focused on programs designed for offenders, such as diversionary programs involving social services, restorative justice programs, and rehabilitative programs aimed at prisoners. All policy-makers were familiar with, and supportive of, current restorative justice initiatives. For instance, P4 argued that ‘[t]here needs to be ... much wider diversionary programs in place to deal with these things [that is, social and health issues]’. P1 spoke approvingly of a range of such programs in the ACT, including the planned Bush Healing Farm for Indigenous offenders, and restorative justice programs where people meet with those affected by their crimes and are therefore ‘forced to confront the consequences of their actions’. P5 argued that restorative justice approaches were:

more effective at achieving a good qualitative outcome, whether that’s a sense of shame on the part of the offender and that translating into a reduced likelihood of reoffending, or better restoration for the victim, an acknowledgement of wrongdoing and understanding that the offender has done wrong against the victim.

P5 also suggested that restorative justice was ‘fundamentally ... more effective’ and ‘certainly cheaper’ than the ‘more traditional Court process’. P3 was supportive of the objectives of restorative justice but felt that it had some practical limitations, such as some offenders not wanting to face the victims of their crimes. P2 suggested that programs aimed at offenders should target repeat rather than first-time offenders, stating: ‘Most of the crime that we deal with, and most of the success we’ve enjoyed over say the recent, five, seven, ten years, has come about because we have targeted [programs for] recidivist offenders.’

Policy-makers were familiar with the concept of JR but defined it in a variety of ways. Three policy-makers conceived of JR as a shift in the kinds of justice sector activities that are prioritised for funding; namely, a move from spending on incarceration to diversionary, restorative justice and rehabilitation programs. P1 described JR broadly and bluntly as ‘things that are not gaol’, and that involve using ‘justice money to try and potentially avoid future reoffending’. P4 was ‘highly supportive of JR’ and saw it as an opportunity to use police to ‘divert people from the justice system’. They felt that this would result in a better alignment between justice sector practices and the expectations of the broader community. P5 described JR as ‘fundamentally about dealing with the causes of crime, rather than the consequences of crime’, and saw ‘significant capacity’ for the criminal justice sector to do more in this regard. P5 fused the ideas of restorative justice (which they were very familiar with) with those of JR and was highly supportive ‘in principle’ of such developments, seeing them as having the capacity to ‘deal with offending behaviour, and to try and reduce ... the cost to the community of [the] more traditional judicial and imprisonment process’.

The other two policy-makers outlined a broader conception of JR as an approach focused upon increasing engagement between the criminal justice and community sectors.

P2's understanding of JR was expansive and included early intervention, as this example of early childhood education demonstrates:

I think the research pretty clearly showed that if you could perhaps invest in that period, say [between ages] two to five, before they go to school, get all of them into some sort of preschool environment whereby you can lift their level of education so that when they do get to school they're not disadvantaged [that would make a difference].

JR was therefore viewed by P2 as more than diversion of offenders from prison. Rather, JR was about whether people, particularly young people, 'go into the criminal justice system or whether they step out of it and stay away from it'. P3 described JR as a method that could lead to better coordination of justice-related programs and as a way to ensure that multiple sectors — including health, housing, education and police — worked collectively towards 'early intervention impact'.

Overall, the policy-makers expressed a high level of interest in the concept of JR. When asked about support for JR, P1 was 'very supportive', P3 'absolutely endorse[d] it', and P2 said that an 'alternate [sic] way' to reduce crime, if shown to be effective, would be 'fantastic'. P4 felt that the police and courts had become overly responsible for the justice system and that the 'community having more say about justice and crime is a very important principle'. P2 argued that JR could only work in Australia if policy-makers looked at the 'broader construct ... of the community' and asked, 'What are the expectations we have about education, and what are the expectations we have about health?' P3 reported a high level of interest in JR among the Australian policy community: 'I've had discussions [about JR] with senior policy-makers right across Australia, and particularly police commissioners and their ministers as recently as last year. So we're all watching that [development] with a great deal of interest.'

In summary, policy-makers were familiar with a range of recent programs that present alternatives to incarceration approaches to criminal justice and saw these as having advantages over incarceration of offenders. They were highly supportive, at the level of broader principle and values, of the development of alternatives to incarceration including JR strategies.

Reform as political risk: public opinion and policy complexity as an impediment to policy reform

While supportive of alternatives to incarceration, policy-makers also considered criminal justice policy reform to be highly risky at this point in time. As P3 noted, while JR was a 'valid option', it might take 20 to 30 years to develop a 'really good working model' in Australia. Policy-makers described two types of risk: first, the implementation of non-incarceration and JR approaches risked public backlash and electoral defeat; second, such reforms were described as complicated and therefore presenting a risk of policy failure.

All policy-makers interviewed felt that governments are reluctant to institute criminal justice policy because they consider the public to hold highly punitive attitudes towards offenders. For example, P2 argued that public opinion, as assessed through what political party (and their proposed justice-related policies) the majority of the public votes for in an election, is quite punitive towards offenders. They suggested that community and media attitudes are behind current attempts in some Australian states to legislate for mandatory detention and tougher sentencing laws:

The fact is communities are telling governments directly through the electoral process that this [tougher sentencing] is what we expect from our governments ... if you spoke to a lot of people in certain parts of this state, at least, they're going to say they [the judiciary] need to get tougher, they need to get stronger, they need to give them [offenders] more sentences.

P3 concurred, arguing that community attitudes, fed by social and traditional media, can be a problem. P3 stated that it was frustrating that the public rarely understand the complexity of the issues that police and the court systems face. P4 agreed that governments view public opinion as punitive, but disagreed that this was an accurate portrayal of public attitudes. They argued that the 'Government thinks that the public want ... tougher penalties for just about everything', but that 'the community, when they get the opportunity to express their opinion, actually like the idea of reinvestment'.

The perception that community attitudes are punitive can lead governments to consider building new prisons as the easy and politically palatable option. P1 was of the view that legislating for justice sector reform is often seen as a politically risky option, stating that 'an element of JR is the political will not to build any new prison beds, you know at a point in time, how politically palatable is that?' They added that it 'would be fatal ... and have significant consequences for ... justice reinvestment or alternatives to incarceration, if we [policy-makers] were to get too far ahead of the community. It's that fine line in leadership'. P2 described governments as 'risk averse' and argued that this made it difficult to obtain funding for JR initiatives, summarising their view as, 'you know it's that electoral cycle that drives everything that governments do. ... [JR is] a social experiment. If it goes wrong it will cost them everything, they won't be in government'.

The complexity of implementing JR was considered to pose as much of a risk to the chances of successful implementation as public opinion. Policy-makers were highly supportive of JR in principle; however, they identified the need for a more robust evidence base about how to implement JR in the Australian context. P1 talked of the need to develop better systems to support JR, arguing that 'there is preparatory work that needs to be done in ensuring the integrity of those systems' and stating that, while there was a 'strong academic case to be made' for JR, there are 'gaps ... in the practical side of it [implementing JR]'. P3 demonstrated a high level of awareness of overseas models of JR. However, P3 was clear in their view that Australian policy-makers could not just copy overseas models:

[Y]ou can't just look in the justice space alone and just say, 'Well take money from them, and pocket it here,' you've got to really look at the whole scope and your whole picture, and not just say, 'Well Finland's got this good program,' or 'Canada is doing this.' You've really got to look at the whole way society is operating, and the community is operating, and the types of expectations on people.

P2 was watching developments in JR closely but felt that they had not yet 'seen a program that works'. One of the issues for P2 was that JR was not yet clearly defined but was 'different in the minds of different people'. This last observation is supported by the findings in this paper, which earlier showed that the policy-makers interviewed held at least two different conceptions of JR.

Policy-makers were of the view that the implementation of JR would require governments to display considerable policy sophistication. P3 discussed a number of challenges to policy implementation such as the need for greater policy coordination and the need to effect cultural change within policing organisations, arguing that JR 'won't work unless you've actually got all the other components working together'. P3 saw integration between justice and human services sectors as crucial to effective implementation of JR. On the issue of cultural change,

P3 pointed out that the police force has traditionally been 'response motivated' and that 'it's a complete flip to have police think about prevention'. The complexity of JR seems to make prison building an easier option for politicians even if incarceration does not work effectively. P4 summarised this view in the following terms:

One of the reasons there is this disconnect is because Justice Reinvestment and solving some of the social problems, you know making sure fairness occurs, making sure that citizens have a say, is complex and expensive. What's very simple and very cheap is to simply strike a piece of legislation ... which just says 'You're going to spend more time in prison for this particular offence.' Now there is a cost of course at the other end when people go to prison, but governments really opt for that because it's an easy way out, that it's much more difficult to have sustainable programs in the community which target the root causes of crime and actually deflect people away from the justice system.

The complexity of implementing preventative-orientated JR strategies therefore appears to constitute a considerable hurdle to moving forward with such strategies.

Three policy-makers discussed the cost of JR, suggesting that the possibility of making an expensive mistake increased the perceived riskiness of the reform process. P3 argued:

Policing, like every type of service industry, is pressured by resources, and particularly now we're going into a period ... where a lot of government departments and services are getting pressured ... [to] provide what you need to provide and really cut away that excess type work. Prevention is probably seen as excess type work, because really the prime focus for police is to be there to respond.

For P5, the level of difficulty in making an economic case for JR in an environment focused on immediate and up-front costs was high:

I think the more challenging aspect with justice reinvestment is being able to demonstrate tangible benefit. It's one of those dilemmas similar to health, you know you're spending a lot of money upfront on ... dealing with the consequences of crime, and that's the most pressing and immediate need. It's difficult to make the case to divert resources from that area to prevention, or dealing with the causes of crime, because you're still having to spend upfront. So you're almost having to spend twice to get a long term benefit, and then hopefully reduce your expenditure in that bottom of the cliff service delivery area.

Policy-makers appeared frustrated with these limitations regarding implementation of JR. P2 suggested that it might be worth looking at private enterprise models for JR in order to make it more palatable to risk-averse governments. Both risk and accountability under this idea is shifted from the state to the private sector.

In summary, the policy-makers interviewed acknowledged public opinion as an impediment to policy reform, but also listed a range of other issues and impediments to criminal justice reform.

Discussion

Policy-makers viewed present mass-incarceration approaches to criminal justice policy as inadequate and of limited effectiveness. However, they were also cautious about the possibility of implementing alternatives to incarceration in substantive ways that might significantly reduce levels of incarceration. Given the high levels of knowledge of — and support for — JR and other low-incarceration policy options among this study's participants, their reluctance to implement such reforms serves to highlight the strength of the obstacles

facing substantial criminal justice reform in Australia. Among the obstacles to substantive reform of the criminal justice system are policy-makers' perceptions of public opinion and the 'risk' associated with supporting reforms that could fail and become a political liability.

We have seen in this study the way in which conceptions about the social causes of crime and understandings of the purpose of the justice system are linked to attitudes about policy reform. This study also shows that perceptions of public opinion count even where policy-makers disagree with the (perceived) views of the public. This finding supports previous research, which states that governments often privilege 'public opinion about the desirability of ever harsher sentences' over evidence about the 'efficacy ... of these measures in reducing and preventing crime' (Gelb 2006, p. 3). While they do not mention the scholarship explicitly, our five policy-makers appear to be acutely aware of the now substantial body of research that has found public attitudes towards offenders to be highly punitive in Australia and other Western countries (Brookman & Weiner 2015; Gelb 2006; Roberts 2002). The perception that community attitudes are highly punitive increases policy-makers' concerns about possible public backlash if 'tough on crime' approaches to criminal justice are dismantled. Politicians might be doubly penalised in electoral terms if such reforms were viewed as failures against other criteria of importance to the public such as fiscal sustainability.

However, as P4 argued (see above), it is possible to overstate the resistance of the broader community to justice reform. Research is beginning to show that public opinion on issues of criminal justice is actually much more varied than is often acknowledged, with a significant portion of the population holding either neutral or positive attitudes to policy reform (Maruna & King 2004). Even those who do hold punitive views may respond in more nuanced ways if they better understood the broader context of policy decisions and rationale for reform. For instance, we have previously reported that, when given the opportunity to be informed by deliberating on the wider context of criminal offending, the community favours non-punitive prison alternatives (Simpson et al. 2015a; Simpson et al. 2015b). In a similar vein, a study by David Indermaur and his co-authors found a high degree of reflection and engagement among research participants who were asked to evaluate information about a number of criminal justice policy dilemmas to judge the relative importance of several key arguments for and against particular ways of addressing those dilemmas (Indermaur et al. 2012). Further challenging the view that the public holds punitive attitudes, an Australian study of 138 trials found that 90 per cent of jurors who participated in those trials perceived the judge's sentence as 'very or fairly' appropriate (Warner et al. 2011). Members of the public appear to respond differently when placed in a deliberative context compared to when asked for 'very general opinions' about justice and sentencing issues (Indermaur et al. 2012). Given that policy-makers' *perception* of public opinion is one of the factors that inhibits their willingness to forge ahead with major reforms to criminal justice, it is important that scholars continue to engage in research that accurately captures the more nuanced and considered views of the public, and that this research is communicated to policy-makers.

More positive community views towards criminal justice reform are only likely to be influential, however, if policy-makers are also convinced that alternatives to incarceration are both feasible and cost effective. The policy-makers interviewed for this research were all positively inclined towards policy reform, yet all five emphasised the risks of policy reform over the potential benefits. This suggests that incarceration is a strong policy norm and an extremely difficult one to successfully challenge. In respect to JR as one particular option for policy reform, the participants in this study all expressed concerns about the gaps in the JR evidence base. Studies in international contexts have previously demonstrated the importance of bipartisan political approaches to JR as well as the importance of implementation being

‘data-driven’ and subject to ongoing evaluation and adjustment (Clement et al. 2011). It is possible that these strategies, if adopted in Australia, may be effective in assuaging concerns about the overall feasibility of JR approaches.

Policy-makers highlighted the need to develop an Australian model of JR rather than transplanting a model from overseas, yet they paid relatively little attention in their interviews to the issue of race. This is surprising because the issue of Indigenous over-representation in prison statistics has, arguably, been one of the key factors motivating an interest in JR within Australia. As noted by Wood (2014), JR appears to have the most promise for Indigenous Australians though the questions of who will identify the needs of Indigenous communities, which stakeholders will have the power to negotiate with governments and make decisions, and how JR initiatives and strategies will be delivered would all need to be resolved. Perhaps proponents of justice policy reform will be able to help policy-makers to better articulate what might be unique about an Australian model of JR, and how racial issues might be acknowledged as part of criminal justice policy reform. There are, as pointed out earlier, a number of highly innovative JR-focused collaborations between researchers and communities in the Australian context and all of these have engaged, to differing degrees, with Indigenous peoples’ concerns about high levels of Indigenous contact with the criminal justice system (Australian Red Cross 2016; Guthrie et al. 2017; KPMG Australia 2016). Hopefully these small, local experiments with JR will eventually contribute to the development of a persuasive Australian model for JR.

Conclusion

This article highlights some of the obstacles to policy reform from the perspective of policy-makers who are already open to alternative approaches to justice. The policy-makers interviewed for this research were all very aware of the limitations of conventional approaches and were all broadly sympathetic to the expansion of non- and low-incarceration alternatives and JR. They nonetheless spoke of multiple impediments to policy reform. Perceptions of public opinion were an important concern for policy-makers — this finding supports previous research suggesting that punitive public attitudes to crime and justice have an impact on justice policy (see Gelb 2006) — and concerns about the administrative complexity and feasibility of non-incarceration options also impeded policy reform. Incarceration occupies a privileged position in criminal justice policy, in spite of its failures and high cost (Hogg & Brown 1998). These interviews with five senior policy-makers highlight that incarceration continues to be the default approach to addressing the problem of crime in Australia. Furthermore, this article points to the value of campaigners adopting a two-pronged approach for seeking policy reform. This approach should seek to both effect changes to public opinion and support the development of an effective, cost-effective model for reforming Australia’s criminal justice system.

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