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Justice Reinvestment: “Motherhood and Apple Pie?”—Matching Ambition to Capacity and Capability

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This paper compares the implementation of Justice Reinvestment (JR) across the United Kingdom and the United States to answer a fundamental overarching question: what capacity and capability are required to effectively implement JR? For this paper, capacity refers to resources including staff, premises and technology and capability refers to skills, experience and expertise.

Being able to implement JR effectively is critical to demonstrating that it can work in the U.K. as well as in any other jurisdiction. In particular, this requires matching the ambition and scale of any proposed JR initiative to the capacity and capability of the commissioners - those who design and pay for a JR program) and providers - those tasked with delivering it. It is doubly curious then that this test is seldom applied, whether for JR initiatives, or indeed any criminal justice intervention.

This paper will propose a standard framework to guide the commissioning and implementation of future JR initiatives. In doing so it aims to enable effectiveness comparisons to be made within and across different jurisdictions, one which is capable of building a more comprehensive international evidence base for JR programs.

In the U.K. the implementation of JR has been limited to a fragmented set of largely uncoordinated schemes, originating in different government departments—the Ministry of Justice (MoJ), Department of Health, and Department of Communities and Local Government. They have operated at different levels of administration—national, regional and local, working to targets ranging from specified fiscal savings, to reduction in reoffending, to a basket of measures spanning the disparate spheres of employment, crime, child welfare, and mental and physical health.

This “mixed economy” of development contrasts sharply with the United States, where since 2010, supported by the federal Bureau of Justice Assistance (BJA), twenty-four states and seventeen localities (i.e., counties) have engaged in the Justice Reinvestment Initiative (JRI).¹ This has enabled a more consistent approach to JR development than seen in the U.K. At the same time, JR expansion in the U.S. has been channelled along a criminal justice system (CJS) redesign approach and away from the social justice model favored by Tucker and Cadora.² CJS redesign has also largely been adopted in the U.K. despite early backing for Tucker and Cadora's social justice emphasis from U.K. proponents of JR.³

Underpinning the development of JR in the U.K. and the U.S. is an explicit economic argument centered on providing a better return for society than the current criminal justice system provides: that there are more cost-effective approaches to reducing crime than are currently being deployed; that the social resources saved through change would more than

outweigh the costs; that savings should be reinvested in further justice-promoting innovations; and that this would lead to a virtuous spiral where criminality declines and costs are reduced.⁴ JR stands out from other approaches to criminal justice reform by the extent to which it is data-driven.⁵ This is illustrated by the four-step approach to JR advocated by the U.K. Justice Committee and the U.S. Council of States Government. “Justice mapping” here requires (1) analysing prison population and public spending on the CJS; (2) examining the provision of options for generating savings and increases in public safety; (3) quantifying savings and reinvestment; and finally (4) measuring impacts and evaluating program effectiveness.

One of the central innovations characterizing JR approaches concerns a focus on particular places where offenders come from rather than just processing individual offenders. Such an environmental penological turn requires looking at alternative measures outside the traditional CJS structure. That JR should be about place-based approaches has its foundation in the seminal paper from Tucker and Cadora, which introduced the concept of the “million dollar block,” based on the annual cost of incarcerating individuals from the block.⁶ This has influenced much U.K. thinking about JR, including Allen's early view that JR should “improve the prospects of not just of individual cases but of particular places.”⁷

This focus on place has been further supported in the U.K. by calls for localism as a means of delivering JR⁸ and boosted by the devolution of government budgets to Greater Manchester.⁹ In the U.S., responsibility for criminal justice and prisons is already devolved to individual states and counties due to the relatively greater independence of states from the federal government and appears to have enabled development of JR in the U.S. to advance more rapidly than in the U.K.¹⁰ As such this need for devolved structures represents an important learning point for commissioners.

This paper is structured in the following way. Part I will examine JR across the dimensions of: determining scale; realizable savings; reinvestment; resourcing; project implementation; effective working between agencies; using evidence; defining outcomes; and measurement. Part II will propose a universal framework for the planning and implementation of JR programs based on a modelling, evaluation and capability component. Part III will conclude by considering the future development of JR in the U.K.

I. Dimensions of JR

A. Determining Scale

Consideration of scale has been part of the discourse around JR in the U.K. This has previously focused on the size of an area large enough to generate sufficient offenders diverted from custody to reduce the use of custody, such that a prison wing could be closed.¹¹ The experience of JR implementation in the U.K. suggests there is a trade-off between scale (used in this paper as a proxy for ambition) and capacity and capability to commission and effectively implement any proposed initiative. Based on the U.K. experience, four factors have thus far determined scale:

- The extent of criminal justice redesign attempted as measured by the number of points in the CJS across which the initiative operated: pre-arrest, arrest, sentencing, community sentence, custody, and release from custody;
- The extent to which the initiative operated outside the CJS by adopting a social justice approach to JR, which can be measured by the number of social capital outcomes attempted¹²;
- The offender population targeted: young offenders (aged under 18), whether female or male only, level of offending (i.e., whether all or just prolific offenders), disposal type (e.g., short-sentenced prisoners—less than 12 months), or risk of a short custodial sentence; and
- The geographical unit of delivery: neighborhood, local authority, groupings of local authorities, or police force area, as well as geographical extent (i.e., whether operated as a pilot in a few locations or whether adopted countrywide).

In the U.S., scale has largely been determined by only two factors: the size of the administrative unit adopting JR (either the state or locality) and analysis identifying the main population and cost drivers, informing the types of interventions to implement for which offender populations.¹³ The U.S. approach is more straightforward and more in keeping with the four-step approach to JR noted earlier. In the U.K., the approach to determining scale has been shaped by which government agency has provided the resources for the scheme, the size of the budget, and what the designers are aiming to test. In some instances, JR has been incidental, offering only an implicit rather than an explicit aim.

B. Realizing Savings

Ultimately, given the economic rationale underpinning JR, consideration about whether an initiative is worth doing has to be decided by the amount of cashable savings within a specified time period that can be achieved for the effort required.

In the U.K., Southwark, a London local authority involved in the Local Justice Reinvestment Pilot, achieved a reward payment (based on savings from averted costs¹⁴) of the equivalent of \$755,580 at the end of the first year and \$1,240,680 at the end of the second year, a total over the pilot of \$1.99 million.¹⁵ While there was criticism by the pilot sites about the complexity of the metrics, due to their number, the sites benefited financially from this “complexity.”¹⁶ Measuring demand reduction across metrics which reflected savings in court administration; use of Community Orders, Suspended Sentence Orders, and custodial sentences (of less than 12 months); and twelve probation requirements for adults, generated greater savings than would have been possible based on a single measure such as reducing the use of custody.

The experience of the JRI in the U.S. has shown that at a local-area level it may be possible to generate projected annual savings ranging from \$112,970 in Grant County, Indiana, from focusing probation resources on medium and high risk offenders; to \$600,000 in Delaware County, Ohio, from establishing a specialized court program for repeat Operating a Vehicle Impaired offenders, and offering early intervention to expedite the resolution of lower-level felony cases.¹⁷

The projected savings generated by the JRI at a state level have taken two forms: “averted operating costs” from incarcerating a smaller population and “averted construction costs” from not having to build new facilities to incarcerate larger populations.¹⁸ The savings, based on Technical Assistance Provider projections, vary considerably, but nevertheless demonstrate very substantial savings. Arkansas, a state with one of the highest projected levels of savings at \$875 million over 11 years (an average of \$79.6 million per annum) projected \$646 million of averted operating costs and \$229 million of averted construction costs. This compared to Delaware, a state with the lowest projected level of savings at \$27.3 million over 5 years (an average of \$5.5 million per annum) comprised solely of averted operating costs.

In the U.K., in addition to savings from demand reduction, schemes have also tested savings derived from reductions in reoffending, but these results have been disappointing. They have either not been achieved—such as in the Diamond Initiative¹⁹ and Liaison and Diversion pilot for young offenders²⁰—or, where a sufficient reduction in reoffending was attained, the reward “payment” showed no linkages to savings accrued.²¹ While not ruling out the use of reoffending as a metric, the U.K. and U.S. experience suggests that calculating savings based on demand reduction provides a more direct way of both identifying and generating savings.

The Troubled Families Programme operating across 143 local authorities in England (and arguably the most comprehensive social justice U.K. JR initiative) was estimated to have accrued £1.2 billion of taxpayer savings.²² However, this result has been called into question and described rather damningly by the Head of the U.K.'s National Institute for Economic and Social Research as “pure adulterated fiction.”²³ The alleged sleight of hand in calculating the estimate is failing to take into account what would otherwise have been spent on those families, which when factored in substantially reduces the savings being claimed. Nor was there data on what would have happened without the program (i.e., there was no counterfactual). Buried within the methodology report on the Government website and not referenced or reflected in the press release is an acknowledgement that the savings figures provided were gross and did not account for deadweight—improvements in outcomes which would happen anyway in the absence of any intervention. Needless to say, these caveats seriously undermine the size of any “headline savings” being claimed. As of the time of this writing, the independent evaluation of the program commissioned by the same government department has yet to produce any estimates of impact.

This caution is also reflected in the assessment of JRI implementation, where the savings reported were based on projections:

[I]t is too early in the implementation process to offer definitive conclusions on what actual population and cost reductions will look like or how they will compare with projected cost and population impacts. State populations and cost savings can be affected by political, economic, and social changes, factors that could not be accounted for when the projections were made. Challenges in implementation can also alter the impact of JRI on costs and populations, distancing actual numbers from the original projections.²⁴

While this indeed illustrates the case against the way that statistics are used and calls to mind the old adage of “lies, damned lies and statistics,” it also strongly indicates the need for an overarching standard framework to define JR and assess its effectiveness.

C. Reinvestment

In the U.S., the reinvestment of savings under JRI has been characterized by two modes of investment:

- pre-investment—providing funding for programs based on anticipated savings; and
- post-investment—reinvestment of actual savings and averted spending²⁵

Of the seventeen states assessed by La Vigne and her colleagues, ten had made pre-investment of savings, two post-investment, one both pre- and post-investment, and four no investment.²⁶ At the local-area level, although implementation was less advanced, a number of localities had identified opportunities for generating savings and had earmarked projects for reinvestment.²⁷

In the U.K., pre-investment was important to incentivize Youth Offending Teams (YOTs) to instigate changes to reduce custody bed nights in the Youth Justice Reinvestment Pathfinder, although they were also motivated by avoiding a financial penalty if they failed to meet reduction targets set by the YOTs themselves.²⁸ In contrast, the Local Justice Reinvestment Pilot provided only post-investment reward payments if demand reduction targets were achieved. As a consequence, the pilot sites invested limited resources, especially as failure to achieve the target was penalty free.²⁹ This suggests that the type of incentives which are devised are therefore critical to influencing decision making and achieving the desired behavior, reflecting the important role that commissioners play in being “choice architects.”³⁰ Not all U.K. schemes involved targets and penalties, however. The Whole System Approach to Women Offenders scheme in Greater Manchester received pre-investment based on projected reductions in demand on CJS and non-CJS services.³¹ The Whole System Approach to Young Offenders adopted across Scotland was one of local agencies adopting a more streamlined and joined-up approach to reduce the unnecessary use of custody and secure accommodation.³²

D. Resourcing

In the U.S., which gave birth to the concept of JR, and very much in contrast to the U.K., there has been a steady development in the implementation of JR. As noted by Allen, this has been due in part to the localization of justice—the U.S. reforms have been possible due to a highly devolved justice system to state and county level—and a changing political context, where political conservatives have embraced prison reform.³³ However, it has also been made possible by the technical support funded by the Bureau of Justice Assistance, which covered a wide range of supporting services such as analysis of justice data; coordination of bipartisan forums and working groups; development of tailored programs, policies, and interventions; identification of evidence-based reinvestment strategies; and assistance in monitoring delivery and assessing impact and cost benefits.³⁴ In short, technical support

covered the four-stage process proposed by the U.K. Justice Committee and Council of States Government.

JR in the U.S. has not only benefited from this technical assistance to help states with implementation planning, but also from further “subawards” that were made to support JR implementation.³⁵ These averaged \$325,000 per state. Of the total sum of \$2,930,882 allocated to the subawards, 59% paid for training for criminal justice staff and educating stakeholders about state-specific JR statutes. Data management, evaluation, and cost-savings measurement accounted for 19%; program development and infrastructure expenditure represented 15%; and administrative assistance to oversee JR activities accounted for the remaining 6% of subaward expenditure.

Comparable dedicated funding to support the systematic development of JR in the U.K. has been absent. Rather resourcing has been piecemeal and confined to a small number of pilot initiatives. Only the Troubled Families Programme, operating in each of the 143 English local authorities and championed by the Prime Minister, David Cameron, attracted substantial resourcing, equivalent to \$658 million over three years.³⁶ This has led to a considerable deficit in the development of JR in the U.K. compared to the U.S.

E. Project Implementation

In their meta-analysis of strategies and interventions to prevent and reduce youth crime and anti-social behaviour, Andy Ross and colleagues found that the quality of program implementation was critical: "This was so important that a less effective but well implemented programme could out-perform a more effective programme that was poorly implemented."³⁷ The elements of effective program implementation, which they referred to as falling into "the category of motherhood and apple pie," were effective leadership and communication, ensuring that all staff understood their roles, and allowing sufficient time for planning and set-up prior to the launch.³⁸

Ensuring that new initiatives are designed and delivered in the right way is central to Dawson and Stanko's reflections captured in their aptly titled paper "Implementation, Implementation, Implementation: Insights from Offender Management Evaluations."³⁹ This was based on their experience of evaluating offender management interventions including the Diamond Initiative, promoted as a JR scheme by the commissioners. Their central argument is that the quality of project implementation hindered the process of testing whether an intervention worked or not—did the intervention fail to show a positive result because it did not work or because it was so poorly implemented that it could not work?

The evidence from the evaluations of other U.K. JR schemes suggest that a higher level of competency is required for the implementation of JR than for other CJS initiatives, given the need for data and economic analysis. While government commissioners of initiatives may have had such specialist capabilities, or have the resources to purchase such services, it was largely absent from the majority of providers. Given the mission critical nature of project implementation, the relative absence of such specialist supporting services for U.K. programs bodes ill for the development of JR.

The final evaluation report of the Local Justice Reinvestment Pilot highlighted the need for investment in the capacity and capability of both commissioners and providers in relation to both these aspects.⁴⁰ The evaluation reports of the Youth Justice Custody Reinvestment Pathfinder found considerable variation in the capacity and capability of YOTs to effectively analyze and interpret data, and use it to inform delivery.⁴¹ Stepping back from the analysis of data, the capacity and capability of provider agencies to record relevant management information in a systematic way was found wanting and hampered the evaluations of the Whole System Approach to Women Offenders,⁴² the Liaison and Diversion for young offenders project,⁴³ and the Whole System Approach to Young Offenders in Scotland.⁴⁴ Since 2010, the U.K. government has generally adopted a laissez-faire, hands-off approach to program implementation, on the basis that local agencies have the competency to make it happen. The plain truth is that much-needed technical support has largely been absent. At the same time, the evidence base and learning around JR suggests that without technical support effective implementation is unlikely to occur. It would appear then that such investment is a necessary prerequisite for any fully functioning JR scheme.

F. Effective Working Between Agencies

Working between agencies (commonly referred to as partnership working) to reduce crime has been a key objective in the U.K. since the landmark Morgan Report.⁴⁵ The implementation of JR in the U.K. has been predicated on agencies working more effectively together. It may appear obvious to suggest that the more stages of the CJS over which a scheme operates, the more agencies need to be involved and therefore the greater level of complexity that is introduced. Similarly, where schemes such as the Troubled Families Programme operate with services both inside and outside of the CJS, this adds further organizational complexity. Similarly, differences in co-terminosity, for example, between court administration, policing units, and local authorities, and between where a prison is located and the discharge destinations for inmates, compound complexities. The experience in the U.K. suggests that this complexity is not always adequately acknowledged, in particular by calibrating effort commensurate to effectively engaging with the number of agencies which need to be involved and obtaining their buy-in to build successful partnership working.⁴⁶

Examples of these challenges in the U.K. include the Local Justice Reinvestment Pilot, which operated at a number of stages of the CJS and had limited involvement of sentencers in a number of sites and in one site had difficulty obtaining buy-in from the police.⁴⁷ The Liaison and Diversion scheme for young offenders operating at a single point in the CJS (arrest) experienced difficulties in gaining access to young people at arrest and obtaining commitment from the police. Such partnership failings hampered the ability to influence decisions about charging and diverting young people from the CJS.⁴⁸

On a different note, three schemes that worked with prisoners on discharge had common challenges accessing community interventions. These were generally provided by non-statutory agencies. While the relationships were eventually established, a considerable investment of time and effort was required to develop them.⁴⁹

By contrast, in the U.S., broad-based stakeholder engagement (including bipartisan political support) was acknowledged as central to the successful implementation of the JRI across states, involving the business community, service providers, law enforcement agencies, and victims' advocacy groups.⁵⁰ This emphasis also extended to garnering public support for JR through public education campaigns, for example, newspaper editorials in West Virginia and media coverage in Oklahoma of community forums hosted by the JR working group. While there may have been challenges in the U.S. to engaging with stakeholders, in contrast to the U.K., engagement appeared to have been planned for and adequately resourced.

G. Using Evidence

The use of evidence based practices (EBP) was an important component of the JRI in the U.S. promoted by the Bureau of Justice Assistance. The use of EBPs across the states involved in the JRI fell into four categories: "(1) monitoring for effectiveness; (2) using immediate, swift, and certain responses; (3) implementing risk and needs assessments; and (4) establishing problem solving courts to work with key populations."⁵¹

In contrast, the use of evidence to support the implementation of selected schemes in the U.K. was far more variable. By way of illustration, of the six sites involved in the Local Justice Reinvestment Pilot, only Greater Manchester adopted a systematic approach to the use of existing evidence and generating new evidence where this was lacking.⁵² Similarly, while two sites in the Youth Justice Custody Reinvestment Pathfinder made systematic use of data and evidence, this was largely absent for the other two sites which withdrew from the pilot at the end of the first year.⁵³ This contrasts sharply with the Whole System Approach to Women Offenders in Greater Manchester, which was predicated on evidence supporting the adoption of a gender-specific approach to service delivery.⁵⁴

H. Defining Outcomes

There has been limited consideration in the U.K. about what constitutes effectiveness in JR and how to measure it, due to the limited number of JR initiatives implemented and lack of interest from the government. Commentary on the results from the two initiatives explicitly labeled as JR (the Local Justice Reinvestment Pilot and Youth Justice Custody Reinvestment Pathfinder) have naturally focused on whether or not they achieved their stated target(s).⁵⁵ Implicit within their reading of the results is that if the demand reduction target was achieved then this constitutes an effective JR initiative.

Broadening out what success looks like, effectiveness could also be measured by outcomes that arise from considerations of the etiology of crime which underpin the theory of JR proposed by Fox and colleagues: reducing the criminality of the individual offender and building their capacity to resist anti-social influences; and improving the social capital of a neighborhood whose inhabitants might be drawn into crime.⁵⁶ Measuring the effectiveness of JR beyond just the fiscal approach which has been adopted thus far in the U.K. would encourage wider aims and gains.

In the U.S., where a more systematic approach to JR implementation has occurred, the JRI across states has been assessed against a wider range of outcomes:

- reduction in overall prison population or a slowing of the growth of the prison population
- reduction in convictions for low level offenders
- projected savings
- reinvestment
- enhanced accountability through data collection and reporting
- system-wide collaboration
- adoption of evidence-based practices⁵⁷

This is a more sophisticated approach to measuring effectiveness than seen in the U.K. and importantly gives adequate emphasis to process outcomes: enhanced accountability, system-wide collaboration, and evidence-based practices.

I. Measurement

Quite apart from the task of determining what outcomes to measure, the experience from the U.K. suggests that the process of measurement itself is not straightforward.

While reducing reoffending is the most obvious outcome to use to measure “reducing criminality,” it is hampered by considerations such as the time taken to measure this, typically a minimum of 18 months⁵⁸ and difficulties in accessing data (Police National Computer (PNC) for reconvictions), which are generally easily available only to the government as a commissioner. The long reporting lag and lack of ready access to PNC data mean that providers have no opportunity to directly monitor their own progress.⁵⁹ Perhaps the most obvious obstacle to using reoffending as a success measure is the requirement for a robust control group against which the performance of the intervention cohort is compared. Without this counterfactual, one cannot know whether the intervention has been successful. The problem is that there are significant transaction costs associated with identifying a statistically robust comparison cohort.⁶⁰ If a JR intervention is implemented for the whole offender group across a jurisdiction (such as young offenders in England and Wales), a control group will not be possible. In such an instance, neither commissioners nor providers are able to answer the most basic evaluation question, did the intervention achieve the desired effect?

While not ideal, the demand reduction approach to JR has appeal because it is easier to measure with data available to the commissioners and the providers—the management data that the providers themselves routinely collect.

An example of this is custody bed night data, which were available to the YOTs and the commissioner (the Youth Justice Board) in the Youth Justice Custody Reinvestment Pathfinder.⁶¹ The two sites that completed the pilot were able to estimate how many young people were going to be in custody and for how long. The same data were available to the other two sites which withdrew from the pilot at the end of the first year; however, they

lacked the capacity, capability, or will to use it effectively to performance manage their scheme.⁶²

As already acknowledged, while the Local Justice Reinvestment Pilot outcome metrics appeared complicated because of their number, the majority of the demand metrics could be tracked using management information collected by the then Probation Trusts and YOTs. In fact, the results of the pilot were partly based on data that were collected and reported by the Trusts and YOTs themselves to the Government.⁶³ The remaining data came from management information collected by Her Majesty's Courts and Tribunal Service (HMCTS). Only one pilot site, Greater Manchester, systematically tracked its performance.⁶⁴ This shows that agencies have the potential to monitor their performance, providing either the will or incentive is in place for them to do so.

The drawback of using demand reduction as a measure of effectiveness is the issue of deadweight, (i.e., reductions and other changes that would have happened without any intervention). The Local Justice Reinvestment Pilot set demand reduction thresholds which were intended to demonstrate that any changes were not due to natural fluctuations; however, the whole of England and Wales and Greater London also showed reductions above the thresholds, although the reductions were smaller than in the pilot sites.⁶⁵ The evaluation of the Youth Justice Custody Reinvestment Pathfinder was able to demonstrate using a statistical threshold that the reduction in custody bed nights in the two sites that completed the pilot was greater than would be expected from fluctuations that might naturally occur. This caution is highlighted in relation to the projections of prison population reductions and associated cost savings which underpinned the approaches adopted by the states participating in the JRI:

Comparing projected population changes and cost savings with actual population changes and cost savings is a delicate task. Multiple factors can affect prison population levels, such as changes in policy and practice outside JRI and changes in crime rates. These factors are difficult to foresee at the time a projection is created. One cannot attribute all population changes, or lack thereof, to JRI.⁶⁶

Neither the U.K. nor the U.S. has overcome the challenge of being able to unequivocally attribute benefits to JR through the way effectiveness is currently measured. Nor has it been possible within the design and measurement of JR to fully account for events that could unexpectedly cause a spike in demand which could affect any reductions arising from JR.⁶⁷

II. Discussion

The development of JR in the U.K. has been both helped but also hindered by what could be referred to as the "motherhood and apple pie" syndrome. This was a throwaway but nevertheless telling comment by Rob Allen, interviewed for Chris Fox and colleagues: that JR is like "motherhood and apple pie—that no-one is going to disagree with it," precisely because it was possible for JR to mean different things to different people.⁶⁸ Based on the experience of implementing JR in the U.K. and U.S., it is possible to define JR by its

operational requirements, and doing so carries the advantages of providing a common means of modelling JR initiatives, which enables comparisons to be made between schemes within and between jurisdictions, and perhaps most importantly, of setting the parameters for the scale/ambition of prospective schemes.

We now turn to proposing a universal framework for JR, one that aims to enable effectiveness comparisons to be made between initiatives within and across jurisdictions.

Table 1 presents the modelling component of a proposed JR commissioning and implementation framework. The framework incorporates the previous four dimensions which were influential in determining JR scale: CJS redesign, social justice, targeted offender population, and geographical units of delivery.

Table 1: Modelling component

| Dimensions | Variations |
|----------------------------------|--|
| Criminal justice system redesign | Whole- or part-system approach based on the following stages of the criminal justice system: <ul style="list-style-type: none"> • pre-arrest • arrest • sentencing • post-sentencing: <ul style="list-style-type: none"> ○ community sentence ○ in custody ○ release from custody |
| Social justice | The extent to which achieving all or some of the following social capital outcomes ⁶⁹ is an express aim of the initiative: <ul style="list-style-type: none"> • social trust and associational networks • lower crime rates • better health rates • improved longevity • better educational achievement • greater levels of income equality • improved child welfare • lower rates of child abuse • less corrupt and more effective government • enhanced achievement through increased trust and lower transaction costs |
| Offender population targeted | All offenders within a geographical area or a discrete group based on: <ul style="list-style-type: none"> • demographic characteristics: age, gender, ethnicity • offending history and/or risk of reoffending • disposal type |
| Geographical units of delivery | In the U.K.: <ul style="list-style-type: none"> • neighborhood • local authority area • sub-region (i.e., more than one local authority but smaller than a region); • region (in this instance defined by being an administrative region which equates to a police force area) • countrywide |

Thus far, we have argued that the economic and data-driven nature of JR seem to demand that effectiveness should be measured quantitatively. In keeping with this, the proposed evaluation component of the commissioning and implementation framework in Table 2 accounts for outcomes derived from the etiology of crime and the economic basis for JR. These have been chosen because they fundamentally reflect the purpose of JR, map across to the modelling component of the framework, and draw on the experience of measurement in the U.K. and U.S., notwithstanding the challenges involved. Also, critically, this component includes the process outcomes identified in the U.S., which if sustained would embed effective practice within the CJS and of themselves would enable a more effective justice system to prevail.

Table 2: Evaluation component

| Outcomes | Measures |
|--|--|
| Reducing criminality | <ul style="list-style-type: none"> • reduced crime rates • reduced reoffending • reduced demand on the criminal justice system |
| Social justice | <ul style="list-style-type: none"> • increased social trust and associational networks • lower crime rates • better health rates • improved longevity • better educational achievement • greater levels of income equality • improved child welfare • lower rates of child abuse • less corrupt and more effective government • enhanced achievement through increased trust and lower transaction costs |
| Savings realized within a specified time frame | <ul style="list-style-type: none"> • to agencies within the criminal justice system • to agencies outside the criminal justice system • to wider society not covered by the other two categories |
| Reinvestment | <ul style="list-style-type: none"> • pre-investment—reinvestment based on projected savings • post-investment—reinvestment based on actual savings |
| Process outcomes | <ul style="list-style-type: none"> • more effective working between agencies • systematic use of evidence based practices • greater transparency and accountability in the use and reporting of data and analysis |

As examined earlier, accounting for deadweight is a daunting challenge in the measurement of JR. A solution to this, which could parallel the development of JR, is a concerted research effort to build up an evidence base of cost-effective interventions and encourage their adoption. The model for this is the work undertaken in the U.S. by the Washington State Institute for Public Policy (WSIPP), which arguably has developed the most sophisticated modelling of program costs and benefits for both justice and other interventions.⁷⁰ In the U.K., a similar approach to youth justice is being undertaken by the Dartington Social Institute and to policing by the College of Policing.

Taken together, Tables 1 and 2 ground JR in the experience of JR implementation, enabling commissioners and providers in any jurisdiction to assess the scale of JR they wish to pursue and how to measure it. Indeed, using these components at an early stage of the planning process for JR is essential.

Consideration of the capacity and capability of commissioners and providers to deliver JR has generally been limited in the discourse around JR in the U.K. While this has been implicitly acknowledged in the identification of the role of data analysis and cost-benefit analysis in informing JR planning and evaluation, the expertise required to facilitate this has not been fully recognised.⁷¹ Perhaps understandably, greater emphasis has been placed on the political, policy, and structural frameworks that could and should shape JR in the U.K., the key features of Allen's recent papers on JR.⁷² There is a similar picture in Australia, where cogent arguments for the adoption of JR have been made; however, the capacity and capability required of organizations and individuals to effectively implement JR have not been examined.⁷³ In the U.S., the issue of capacity and capability has been addressed through funding for the implementation of JRI across states and localities by the Bureau of Justice Assistance. The capability component based on the experience of JR implementation in the U.K. and the U.S. is detailed in Table 3 and completes the proposed commissioning and implementation framework.

Table 3: Capability component

| Dimensions | Requirements |
|---|---|
| Project/program implementation | <ul style="list-style-type: none"> • strategic and operational leadership • political support • communication with stakeholders • time for planning and set-up • use of evidence to support decision making |
| Effective working within and between agencies | <ul style="list-style-type: none"> • coordination • data-sharing agreements • clarity of organization roles and responsibilities • clarity of staff roles and responsibilities • ensuring co-terminosity and where not possible, addressing problems which arise • managing cultural and organizational change |
| Monitoring and measurement | <ul style="list-style-type: none"> • managing quality and consistency of data input and collection • management information systems to provide continuous feedback on performance • ready and equal access to performance data for commissioners and providers • data analysis capability of commissioners and providers • ability to make decisions based on results of analysis • accounting for deadweight • access to a robust comparator cohort |

As noted earlier, capability to deliver JR or any CJS intervention is often given limited attention. In the U.S., the federal Bureau of Justice Assistance correctly recognized that there

were likely to be capability deficits across states and localities in the technical areas required for effective JR implementation: data and cost benefit analysis. There may be ample evidence about what constitutes effective project/program implementation—arguably the subject of every CJS process evaluation ever undertaken—but, by and large, the experience of JR implementation in the U.K. suggests that lessons from these evaluations have generally remained unlearned.

The value of the capability component lies in being able to test out the feasibility of implementing the scale and complexity of any planned JR initiatives as assessed by the modelling and evaluation components. Used in a way that avoids optimism bias (commissioners and providers making over-positive assumptions about their capability), it should enable deficits to be uncovered which can be responded to through additional resourcing and/or scaling back what can be achieved to something more realistic, to avoid the problem of people “setting themselves up to fail.”

III. Conclusion—The Future of Justice Reinvestment in the U.K.

The four-step approach to JR adopted in the U.K. and U.S., and advocated for in Australia, has served as a useful heuristic for how to make JR happen. Based on the experience of JR implementation across the three jurisdictions, the proposed commissioning and implementation framework complements this approach, enabling ambition to be realistically matched to the capability to deliver.

The development of JR in the U.K. is likely to continue in the same asymmetric pattern that has prevailed to date, against a backdrop of continuing reductions in public spending. This leaves a rather messy pragmatism of:

- individual government departmental pilot initiatives with both direct (MoJ and Home Office) and indirect (Health, DCLG) remits for criminal justice and offenders which will affect demand on the criminal justice system
- localized initiatives based on clusters of local authorities with delegated responsibilities and devolved budgets on the lines of Greater Manchester having a greater influence over the use of health and other social welfare funds and potentially using this freedom to influence the commissioning of justice services
- further devolving of custody budgets for young offenders as signaled in the initial report of the Taylor review into the future of Youth Justice⁷⁴
- continued development of holistic services for women offenders which will cut across all stages of the criminal justice system
- structural changes such as “academy prisons,” where full responsibility for prisons is devolved to individual governors, announced by David Cameron in February 2016⁷⁵ (and reported as the centerpiece to the Queen's speech in May 2016, which signaled major upcoming policy and legislative changes⁷⁶)
- fall-out of unintended consequences from the “privatization” of probation services under the Transforming Rehabilitation changes in England and Wales⁷⁷

As a result, advocates of JR in the U.K. may need to scale back their ambition to something that can be achieved and is within the grasp of the many rather than the shining success of the few. Modest implementation is better than no implementation at all.

In an earlier article, one of the authors of this paper and colleagues suggested that the development of JR in the U.K. was a journey from a criminal justice redesign starting point onwards to a more social justice focused destination.⁷⁸ The evidence of JR implementation in the U.K. to date suggests that its future trajectory is more akin to many journeys of differing durations, most of which start and end at the point of criminal justice redesign, others of which are moving towards a social justice end, and a very small number of which start and end at social justice.

Without political will, the trajectory of JR development in the U.K. is likely to be more of the same, i.e., piecemeal implementation through pilot programs. The Troubled Families Programme (extended to a further 400,000 families in England⁷⁹) has the potential to offer a version of JR which harks back to the social justice model advocated by Tucker and Cadora; however, without a transparent accounting of measurement, its impact on JR development is likely to be undermined—handicapped by political conjuring.

The development of JR in the U.K. requires careful nurturing. The proposed framework provides a standard approach to implementing JR which could drive delivery and performance, provide advocates of JR with a way of realistically operationalizing their aspirations, and prevent others from misappropriating JR in a way that is inconsistent with its underpinning principles. Given the continued financial austerity in the U.K., this framework will help to strengthen the case for JR as a credible, systematic approach to delivering a more cost-effective and fairer criminal justice system that better serves the interests of victims, offenders, and society as a whole.

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¹ LINDSEY CRAMER ET AL., URBAN INSTITUTE, THE JUSTICE REINVESTMENT INITIATIVE—EXPERIENCES FROM THE LOCAL SITES (2014). available at <https://www.bja.gov/Publications/UI-JRI-Local-Sites.pdf>.

² SUSAN B. TUCKER & ERIC CADORA, OPEN SOCIETY INSTITUTE, JUSTICE REINVESTMENT: TO INVEST IN PUBLIC SAFETY BY REALLOCATING JUSTICE DOLLARS TO REFINANCE EDUCATION, HOUSING, HEALTHCARE, AND JOBS (2003), available at <http://www.soros.org/publications/ideas-open-society-justice-reinvestment>.

³ Rob Allen, From Restorative Prisons to Justice Reinvestment, in JUSTICE REINVESTMENT—A NEW APPROACH TO CRIME AND JUSTICE 5 (Rob Allen & Vivien Stern eds., 2007); Rob Allen et al., Justice Reinvestment in Gateshead—The Story So Far, in JUSTICE REINVESTMENT—A NEW APPROACH TO CRIME AND JUSTICE 17 (Rob Allen & Vivien Stern eds., 2007).

⁴ Kevin Wong et al., Justice Reinvestment in the United Kingdom in an Age of Austerity, 9 VICTIMS & OFFENDERS 76 (2014); ROB ALLEN, TRANSFORM JUSTICE, JUSTICE REINVESTMENT: EMPTY SLOGAN OR SUSTAINABLE FUTURE FOR PENAL POLICY (2014); CHRIS FOX, KEVIN ALBERTSON & KEVIN WONG, JUSTICE REINVESTMENT: CAN THE CRIMINAL JUSTICE SYSTEM DELIVER MORE FOR LESS? (2013); TESS LANNING ET AL., INSTITUTE FOR PUBLIC POLICY RESEARCH, REDESIGNING JUSTICE: REDUCING CRIME THROUGH JUSTICE REINVESTMENT (2011); NANCY LA VIGNE ET AL., JUSTICE REINVESTMENT INITIATIVE STATE ASSESSMENT REPORT (2014); CRAMER ET AL., supra note 1.

⁵ FOX, ALBERTSON & WONG, supra note 4; LANNING ET AL, supra note 4; Allen, supra note 3; LA VIGNE ET AL., supra note 4; CRAMER ET AL., supra note 1.

⁶ TUCKER & CADORA, supra note 2.

⁷ Allen, supra note 3, at 5.

⁸ This was proposed by the Commission on English Prisons Today in 2009, and championed by the U.K. Justice Committee. See also ROB ALLEN, TRANSFORM JUSTICE, REHABILITATION DEVOLUTION—HOW LOCALISING JUSTICE CAN REDUCE CRIME AND IMPRISONMENT (2015).

⁹ This devolution covered health, social care, transport, planning, housing, and policing. HM TREASURY & GREATER MANCHESTER COMBINED AUTHORITY, FURTHER DEVOLUTION TO THE GREATER MANCHESTER COMBINED AUTHORITY AND DIRECTLY-ELECTED MAYOR (2015).

¹⁰ ALLEN, supra note 8.

¹¹ FOX, ALBERTSON & WONG, supra note 4; Allen, supra note 3.

¹² FOX, ALBERTSON & WONG, supra note 4.

¹³ LA VIGNE ET AL., supra note 4; CRAMER ET AL., supra note 1.

¹⁴ Southwark was the most successful of all the pilot sites, achieving reductions in demand across all metrics (excluding “other court disposals,” including fines for non-payment of fares on public transport and motoring offences) in both years of the pilot. KEVIN WONG ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—LOCAL JUSTICE REINVESTMENT PILOT: FINAL PROCESS EVALUATION REPORT (2015).

¹⁵ Ministry of Justice, Justice Reinvestment Pilots First Year Results, <https://www.gov.uk/government/publications/justice-reinvestment-pilots-first-year-results> (retrieved March 19, 2013) [hereinafter Ministry of Justice, First Year]; Ministry of Justice, Justice Reinvestment Pilots Second Year Result, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/261843/local-justice-reinvestment-yr2-results.pdf (retrieved March 19, 2013) [hereinafter Ministry of Justice, Second Year]. The figures in the text are based on the exchange rate of £1 = \$1.47 at the time of writing (May 26, 2016).

¹⁶ WONG ET AL., supra note 14.

¹⁷ CRAMER ET AL., supra note 1.

¹⁸ LA VIGNE ET AL., supra note 4.

¹⁹ PAUL DAWSON ET AL., METROPOLITAN POLICE SERVICE, AN EVALUATION OF THE DIAMOND INITIATIVE: YEAR TWO FINDINGS (2011).

²⁰ ALINA HAINES ET AL., UNIVERSITY OF LIVERPOOL, EVALUATION OF THE YOUTH JUSTICE LIAISON AND DIVERSION (YJLD) PILOT SCHEME FINAL REPORT (2012).

²¹ SIMON PEARCE, ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—HMP DONCASTER PAYMENT BY RESULTS PILOT: FINAL PROCESS EVALUATION REPORT (2015). Ten percent of the budget was retained by provider as a reward for reducing reoffending by a target threshold.

²² This aimed to work “turn around” the lives of “troubled families” characterized by worklessness, children not being in school, adult and children involved in crime and anti-social behavior, and poor mental and physical health. DEP’T FOR COMMUNITIES & LOCAL GOV., THE BENEFITS OF THE TROUBLED FAMILIES PROGRAMME TO THE TAXPAYER (2015).

²³ JONATHAN PORTES, NATIONAL INSTITUTE OF ECONOMIC AND SOCIAL RESEARCH, A TROUBLING ATTITUDE TO STATISTICS (2015), available at <http://www.niesr.ac.uk/blog/troubling-attitude-statistics>.

²⁴ LA VIGNE ET AL., *supra* note 4, at 53.

²⁵ LA VIGNE ET AL., *supra* note 4.

²⁶ *Id.*

²⁷ CRAMER ET AL., *supra* note 1.

²⁸ KEVIN WONG ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—YOUTH JUSTICE REINVESTMENT CUSTODY PATHFINDER: FINAL PROCESS EVALUATION REPORT (2015).

²⁹ WONG ET AL., *supra* note 14.

³⁰ RICHARD H. THALER & CASS SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2008).

³¹ RACHEL KINSELLA ET AL., HALLAM CENTRE FOR COMMUNITY JUSTICE, SHEFFIELD HALLAM UNIVERSITY, EVALUATION OF WHOLE SYSTEM APPROACH FOR WOMEN OFFENDERS INTERIM REPORT (2016).

³² KATH MURRAY ET AL., EVALUATION OF THE WHOLE SYSTEM APPROACH TO YOUNG PEOPLE WHO OFFEND IN SCOTLAND (2015).

³³ ALLEN, *supra* note 8.

³⁴ LA VIGNE ET AL., *supra* note 4.

³⁵ *Id.*

³⁶ DEP’T FOR COMMUNITIES & LOCAL GOV., *supra* note 22. The figures in the text are based on the exchange rate of £1 = \$1.47 at the time of writing (May 26, 2016).

³⁷ ANDY ROSS ET AL., CENTRE FOR ANALYSIS OF YOUTH TRANSITIONS, PREVENTION AND REDUCTION: A REVIEW OF STRATEGIES FOR INTERVENING EARLY TO PREVENT OR REDUCE YOUTH TRANSITIONS 3 (2011).

³⁸ *Id.* at 64.

³⁹ Paul Dawson & Betsy Stanko, Implementation, Implementation, Implementation: Insights from Offender Management Evaluations, 7 POLICING 289 (2013).

⁴⁰ WONG ET AL., *supra* note 14.

⁴¹ WONG ET AL., *supra* note 28; KEVIN WONG, ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—YOUTH JUSTICE REINVESTMENT CUSTODY PATHFINDER: FINDINGS AND DELIVERY LESSONS FROM THE FIRST YEAR OF IMPLEMENTATION (2013).

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- ⁴² KINSELLA ET AL., supra note 31.
- ⁴³ HAINES ET AL., supra note 20.
- ⁴⁴ MURRAY ET AL., supra note 32.
- ⁴⁵ JAMES MORGAN, HOME OFFICE, SAFER COMMUNITIES: THE LOCAL DELIVERY OF CRIME PREVENTION THROUGH THE PARTNERSHIP APPROACH (1991).
- ⁴⁶ KEVIN WONG ET AL., SHEFFIELD, HALLAM CENTRE FOR COMMUNITY JUSTICE, TRANSITION TO ADULTHOOD PATHWAY PROGRAMME EVALUATION: FIRST INTERIM REPORT (2016).
- ⁴⁷ KEVIN WONG ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—THE DEVELOPMENT AND YEAR ONE IMPLEMENTATION OF THE LOCAL JUSTICE REINVESTMENT PILOT (2013); KEVIN WONG ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—LOCAL JUSTICE REINVESTMENT PILOT: FINAL PROCESS EVALUATION REPORT (2015).
- ⁴⁸ HAINES ET AL., supra note 20.
- ⁴⁹ DAWSON ET AL., supra note 19; PEARCE ET AL., supra note 21; EMMA DISLEY ET AL., MINISTRY OF JUSTICE ANALYTICAL SERIES—THE PAYMENT BY RESULTS SOCIAL IMPACT BOND PILOT AT HMP PETERBOROUGH: FINAL PROCESS EVALUATION REPORT (2015).
- ⁵⁰ LA VIGNE ET AL., supra note 4.
- ⁵¹ Id. at 39.
- ⁵² WONG ET AL., supra note 47.
- ⁵³ WONG ET AL., supra note 41; WONG ET AL., supra note 28.
- ⁵⁴ KINSELLA ET AL., supra note 31.
- ⁵⁵ ALLEN, supra note 8; ALLEN, supra note 4; Russell Webster, The Lessons from Justice Reinvestment, <http://www.russellwebster.com/the-lessons-from-justice-reinvestment/> (2013); Vicki Helyar-Cardwell, Justice Reinvestment: Adding up the Benefits, Huffington Post, http://www.huffingtonpost.co.uk/vicki-helyarcardwell/justice-reinvestment-benefits_b_2660494.html, (2013).
- ⁵⁶ FOX, ALBERTSON & WONG, supra note 4.
- ⁵⁷ LA VIGNE ET AL., supra note 4.
- ⁵⁸ Measurement requires an intervention cohort build-up period, 12 months reoffending follow-up and 6 months recording lag.
- ⁵⁹ PEARCE ET AL., supra note 21.
- ⁶⁰ MINISTRY OF JUSTICE, PROJECT SPECIFICATION: INDEPENDENT ASSESSMENT OF COHORT 2 AND FINAL COHORT FOR THE HMP PETERBOROUGH PAYMENT BY RESULTS (PBR) PILOT (2014).
- ⁶¹ It should be noted that the YJB and YOT bed night count did not always match up and a process of reconciling the data was necessary. WONG ET AL., supra note 41.
- ⁶² WONG ET AL., supra note 28.
- ⁶³ Ministry of Justice, First Year, supra note 15; Ministry of Justice, Second Year, supra note 15.
- ⁶⁴ WONG ET AL., supra note 47.
- ⁶⁵ Id.

⁶⁶ LA VIGNE ET AL., supra note 4, at 32.

⁶⁷ WONG ET AL., supra note 41.

⁶⁸ FOX, ALBERTSON & WONG, supra note 4.

⁶⁹ These outcomes were identified in 2001 by the U.K. Office of National Statistics following a review of the literature; they are associated with high social capital.

⁷⁰ WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, BENEFIT-COST TECHNICAL DOCUMENTATION (2015).

⁷¹ LANNING ET AL., supra note 4; ALLEN, supra note 3.

⁷² ALLEN, supra note 8; ALLEN, supra note 4.

⁷³ AUSTRALIAN RED CROSS, RE-THINKING JUSTICE: VULNERABILITY REPORT (2016); David Brown et al., The Promise of Justice Reinvestment, 37 ALT. L.J. 96 (2012).

⁷⁴ Ministry of Justice, Review of the Youth Justice System: An Interim Report of Emerging Findings, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498736/youth-justice-review.pdf (2016).

⁷⁵ David Cameron, Speech on Prison Reform Given at Policy Exchange, Westminster, London, May 30, 2016, available at: <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>.

⁷⁶ British Broadcasting Corporation, Queen's Speech: Prison Shake-up at Heart of New Laws, May 27, 2016, <http://www.bbc.co.uk/news/uk-politics-36318353>.

⁷⁷ MINISTRY OF JUSTICE, ANNEX A: INTERIM RE-CONVICTION FIGURES FOR PETERBOROUGH AND DONCASTER PAYMENT BY RESULTS PILOTS (2015), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399312/annex-a-payment-by-results-jan15.pdf.

⁷⁸ WONG ET AL., supra note 4.

⁷⁹ HM Treasury & Dep't of Communities & Local Gov., Announcement of £200 Million to Be Invested to Help 400,000 High Risk Families by Chief Secretary to the Treasury (2013).