

Justice Investment and Community Intervention

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I INTRODUCTION

The recent release of the Australian Red Cross 2016 ‘Vulnerability Report: Rethinking Justice’ (‘Red Cross Report’) has once again put the spotlight on ‘justice reinvestment’ as a preferred criminal justice orientation and on the special plight and massive over-representation of Indigenous people in Australian prisons.¹ Among its recommendations the report emphasises the importance of community buy-in and engagement with justice reinvestment projects and programs. We have heard such emphases and recommendations before – most notably in regards to tackling child abuse within Indigenous communities, especially in the Northern Territory.

This article considers how ‘community’ is constructed in research and progressive policy pronouncements (generally in terms of participation and empowerment) and how this contrasts with political debate and legislative measures that position ‘community’ in diametrically opposite ways (as itself the source of the problem yet also warranting a social control response). How investment and intervention are manifested in practice is fundamentally shaped by how community interests are construed. This can work for or against specific communities.

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II THINKING ABOUT COMMUNITY

The term ‘community’ is used in different ways, leading commentators many years ago to refer to it as the ‘spray-on solution’, one that can suit both conservative and progressive purposes.² Among other things, it is used descriptively to identify and compare different groups on the basis of geography (people living in the same area), power structures (federal, state and local level), services (transport line or school provision) and social identification (Indigeneity, ethnicity). Social inequality is especially evident in regards to Indigenous communities as compared to non-Indigenous communities, across a wide range of economic, health, welfare and social indicators.³ Yet, ‘community’ can make reference to

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- 1. Australian Red Cross, ‘Vulnerability Report: Rethinking Justice’ (Report, Australian Red Cross, 2016) 5.
- 2. Lois Bryson and Martin Mowbray, ‘“Community”: The Spray-on Solution’ (1981) 16 *Australian Journal of Social Issues* 255.
- 3. Department of the Prime Minister and Cabinet, ‘Closing the Gap: Prime Minister’s Report 2016’ (Report, Department of the Prime Minister and Cabinet, 10 February 2016).

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unity and inclusion (we all share the same basic values) in the very same moment that it connotes division and exclusion (some people live and act differently to others).

In a criminal justice context, the relationship between community and police incorporates several dimensions that are relevant to later observations in this article:

- Policing *in* the community – the extent to which police are present within a broad range of social institutions and settings, such as schools and at the neighbourhood level;
- Policing *of* the community – the particular task orientation(s) prioritised by police departments;
- Policing *by* the community – the degree to which the community (including the media and other governmental departments) participates in the policing process; and
- Policing *for* the community – the degree to which particular community interests are represented and responded to by police.⁴

Who is policing whom, and why, is central to these distinctions. These questions are also at the heart of the present discussion, as elaborated below.

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III COMMUNITY AS THE ANSWER

The Red Cross Report views ‘community’ favourably and as part of the answer to ongoing criminality.⁵ It recommends the use of prisons as a last resort, drastically reducing the number of people sent to prison, and using the financial savings from this for community development in precisely those neighbourhoods and communities that are the source of most of those ending up in our prisons. The notion of justice reinvestment captures this dynamic. In other words, stop spending so much on expensive facets of criminal justice, that tend to do more damage than good, and start spending more on prevention and rehabilitation. Instead of building prisons, the focus is on rebuilding communities. Instead of bricks and mortar, attention is given to people and communities. Most

4. Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 1st ed, 1995) 212.

5. Red Cross Report, above n 1.

prisoners return to the same communities of which they were originally a part. Bolstering job prospects, providing quality support services, ensuring that people have a roof over their heads, engaging locals in positive community activities – these are the kinds of things that justice reinvestment suggests we spend money on.

Indigenous people, young and old, male and female, are heavily over-represented in Australian criminal justice systems, particularly in the harshest points of these systems such as prisons and youth detention centres.⁶ Unsurprisingly, justice reinvestment appears as an attractive alternative to the present status quo. It is interpreted by proponents as an essentially community-centred approach that offers hope for diminishing the number of Indigenous people entrenched within the criminal justice system.⁷ Among its key elements are the diversion of funds from prisons to community programs, services and activities that are aimed at addressing the underlying causes of crime in specific communities, enhanced opportunities for community involvement and ownership of the solutions, and provision for offenders to be accountable directly to their community.⁸

In Australia, the favoured justice reinvestment model is based on the idea of redirecting money from prisons and youth detention centres to *communities* that feed directly into the prisons, rather than redirect money from prisons to *individuals* needing drug rehabilitation and who are nonviolent (as in some American projects).⁹ Preliminary analysis has been undertaken of areas that detainees come from and how best to redirect funds back into those communities.¹⁰ Rather than a general pan-

6. Chris Cunneen et al, *Penal Culture and Hyperincarceration: The Revival of the Prison* (Ashgate, 2013); Rob White, 'Indigenous Young People and Hyperincarceration in Australia' (2015) 15 *Youth Justice* 256.
7. David Brown et al, *Justice Reinvestment: Winding Back Imprisonment* (Palgrave Macmillan, 2016).
8. Mick Gooda, 'Justice Reinvestment: A New Strategy to Address Family Violence' (Speech delivered at the National Family Violence Prevention Forum AIATSIS and CDFVR, Mackay Queensland, 19 May 2010).
9. Nancy LaVigne et al, 'Justice Reinvestment Initiative State Assessment Report' (Report, Urban Institute and Bureau of Justice Assistance, US Department of Justice, January 2014).
10. See, eg, Gooda, above n 8; Troy Allard, April Chrzanowski and Anna Stewart, 'Targeting Crime Preventing: Identifying Communities that Generate Chronic and Costly Offenders' (Research and Public Policy Series No 123, Australian Institute of Criminology, July 2013); Jacqueline McKenzie, 'Insights from the Coalface: The Value of Justice Reinvestment for Young Australians' (Report, Australian Youth Affairs Coalition, 2013).

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acea or response to mass incarceration, as in the United States, justice reinvestment is seen in Australia to be most relevant to select groups – in particular, the over-representation rates of Indigenous people continue to be untenable. In light of this, justice reinvestment approaches have garnered significant political support within Indigenous communities and advocacy bodies precisely because of the dire nature of the contemporary policies and practices affecting Indigenous people across the country.¹¹

However, by focusing the spotlight on specific communities in this way (that is, in a manner that may portray them primarily as dysfunctional and deviant) the door is open for further stigmatisation of both community and individuals within them, and for coercive ‘outside’ intervention in these same communities. Justice reinvestment as an ideal and concrete practice thus carries with it certain hopes but also potential dangers. In the context of tight government budgets, for instance, while the need for community development is growing rapidly (as indicated by unemployment rates amongst the young), the resources for this are shrinking (due to government priorities). Without dedicated job creation strategies and efforts to improve overall educational outcomes, the success of justice reinvestment seems less than assured, although the benefits may still be felt at the local level in some places and to some extent.¹²

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The issue here is not only about money (how much, and how and where it is spent). It is also about who makes decisions affecting what happens at the local community level. The moral voice of (and for) a community is contestable and is intrinsically interwoven into existing power relations. This reality is highlighted by the Northern Territory intervention, which is ongoing. It is part of the continuing story of the contemporary extension of colonial ideology, policy and practice.

IV COMMUNITY AS THE PROBLEM

In June 2007, the federal government staged a massive intervention in the Northern Territory ostensibly designed to protect Indigenous children from sexual abuse. The government used the ‘Little Children

11. Gooda, above n 8; Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘Social Justice Report 2009’ (Report, Australian Human Rights Commission, 2009) 9–56.

12. See Brown et al, above n 7.

'Stop spending so much on expensive facets of criminal justice, that tend to do more damage than good, and start spending more on prevention and rehabilitation. Instead of building prisons, the focus is on rebuilding communities. Instead of bricks and mortar, attention is given to people and communities ... these are the kinds of things that justice reinvestment suggests we spend money on.'

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are Sacred Report' as the justification for both *taking action* and for the specific sort of *action taken*.¹³ Subsequent legislation removed the permit system for access to Indigenous land; abolished government funded Community Development Employment Projects; quarantined 50 per cent of welfare payments; suspended the *Racial Discrimination Act 1975* (Cth); expected Indigenous people to lease property to the government in return for basic services; compulsorily acquired Indigenous land; and subjected Indigenous children to mandatory health checks without consulting their parents.¹⁴ The measures also included the deployment of additional police to affected communities, new restrictions on alcohol and kava, and the removal of customary law and cultural practice considerations from bail applications and sentencing within criminal proceedings.

The justification for such draconian and dramatic legal intervention was child abuse, yet the words 'child' or 'children' never appear in the actual legislation. As one commentator put it:

This legislation does nothing for children, nothing for Indigenous disadvantage, nothing to actually stop child abuse. It takes control away from Indigenous communities. It allows government bureaucrats to force themselves into our boardrooms. It takes over our land. It takes away our ability to have a say on who can come onto our freehold title land. It places bureaucrats in charge of our lives.¹⁵

The net result of the intervention, introduced under the cover of 'what is best for the community', has been significant deterioration in the health and wellbeing of the individuals, groups and communities subjected to its laws and policies (as measured by indicators such as

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13. Rex Wild and Patricia Anderson, 'Ampe Akelyernemane Meke Mekarle "Little Children are Sacred": Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse' (Report, Northern Territory Government, 15 June 2007); see James Roffee, 'Rhetoric, Aboriginal Australians and the Northern Territory Intervention: A Socio-Legal Investigation into Pre-legislative Argumentation' (2016) 5 *International Journal for Crime, Justice and Social Democracy* 131.
 14. *Northern Territory National Emergency Response Act 2007* (Cth); *Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007* (Cth); *Families, Community Service and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).
 15. Muriel Bamblett of the Secretariat of Aboriginal and Islander Child Care, quoted in Sarah Maddison, 'Australia: Indigenous Autonomy Matters' (2009) 52 *Development* 483, 485.

suicide rates, school attendance, number of children put into out-of-home-care, and incarceration rates).¹⁶

The type of thinking that underpins the intervention is also evident in recent comments by former Prime Minister Tony Abbott, who declared that in North Queensland 10-year-old sex offenders should be arrested, charged and forced into the juvenile justice system.¹⁷ Such statements completely ignore that these ‘offenders’ are simultaneously ‘victims’; that age is a crucial developmental and competency indicator, and therefore children require supportive rather than punitive measures; and that taking the young out of their community, a perennial issue for Indigenous people, is not a solution since it does not deal with issues in the community that produce the problem in the first place. If such advice were followed, it would mirror the punitive and disempowering strategy of the intervention.

V AMBIGUITIES PERTAINING TO COMMUNITY

Notably, a number of Indigenous leaders nonetheless endorsed or at least partially supported the approach of the intervention.¹⁸ However, to understand this, it is essential to once again return to the notion of ‘community’ and how this is interpreted. Specifically, there are a couple of concepts at odds in this instance:

- The need to intervene in relation to serious community issues is conflated with the exercise of coercion over everyone within these communities. This is not empowerment of people, but imposition of power over people; and
- The consequence of coercive intervention is not to the benefit, but

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16. See Jens Korff, *Northern Territory Emergency Response (NTER) – ‘The Intervention’* (9 August 2016) Creative Spirits <<https://www.creativespirits.info/aboriginalculture/politics/northern-territory-emergency-response-intervention>>; Chris Cunneen and Simone Rowe, ‘Decolonising Indigenous Victimisation’ in Dean Wilson and Stuart Ross (eds), *Crime, Victims and Policy: International Contexts, Local Experiences* (Palgrave Macmillan, 2015).

17. See ‘Tony Abbott reacts to Smallbone report saying 10-year-old sex offenders should be jailed’, *The Courier-Mail* (online), 21 March 2016 <<http://www.couriermail.com.au/news/queensland/tony-abbott-reacts-to-smallbone-report-saying-10yearold-sex-offenders-should-be-jailed/news-story/885a1bc5c7c8942a7b0298958669835b>>.

18. See Maddison, above n 15, 485, 487.

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the detriment, of these communities. This is not meeting needs, but creating hardships.

In part, the problems stem from the original construction of the intervention itself and what was fundamentally ignored – namely, the community.

Consider, for example, the very first recommendation of the Little Children are Sacred Report:

That Aboriginal child sexual abuse in the Northern Territory be designated as an issue of urgent national significance by both the Australian and Northern Territory Governments, and both governments immediately establish a collaborative partnership with a Memorandum of Understanding to specifically address the protection of Aboriginal children from sexual abuse. *It is critical that both governments commit to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities.*¹⁹

Indeed, more generally, the recommended ‘rules of engagement’ between Australian governments and Indigenous peoples included a series of important principles.²⁰

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- Principle One – Improve *government service provision* to Aboriginal people
- Principle Two – Take *language and cultural ‘world view’* seriously
- Principle Three – Engage in effective and ongoing *consultation and engagement with Aboriginal Communities*
- Principle Four – Maintain a *local focus* and recognise *diversity*
- Principle Five – Support *community-based* and *community-owned* initiatives
- Principle Six – *Recognise and respect Aboriginal law*, and empower and respect Aboriginal people.
- Principle Seven – Maintain *balance in gender, family and group representation*
- Principle Eight – Provide adequate and ongoing *support and resources*

19. Little Children are Sacred Report, above n 13, 22 (emphasis added).

20. Ibid 50–5 (emphasis added); See also Mick Gooda, ‘Social Justice Report 2007’ (Report No 1/2008, Australian Human Rights Commission, 2007) 203 <social_justice/sj_report/sjreport07/index.html>.

- Principle Nine – Commit to ongoing *monitoring and evaluation* of programs

The intervention has confounded and contradicted these principles at every turn. The policy has been described as ‘punitive, coercive and racist’ and as the imposition of a set of measures on Indigenous people; as such, it is contrary to the wishes of those who argue that ‘Indigenous disadvantage can only be improved when Indigenous people are given greater control over the decisions that impact on their daily lives.’²¹

VI CONCLUSION

The rethinking of justice in ways that include endorsements of justice reinvestment (as well as restorative justice, diversion and related concepts) is vital to changing systems that are fundamentally wrong and unjust. The political dynamics underpinning how individuals and communities considered ‘at risk’ are transformed into those considered ‘as risk’, however, requires sensitivity to nuance and vigilance against imposition. Positioning communities as the problem simultaneously involves disavowal of historic and intergenerational effects of colonialism, and the diminution of their rights.

Justice reinvestment offers the promise of constructive, positive building of community capacity. Yet, in practice, depending upon how it is conceptualised and implemented, it could be interpreted as licence to increase social control over already vulnerable communities (that is, policing *of* the community). As with any state intervention, context and the actual content of the intervention provides the marker of whether or not justice is achieved or further injustice committed.

21. Aden Ridgeway, ‘Mabo Ten Years On – Small Step or Giant Leap’ in Hannah McGlade (ed), *Treaty: Let’s Get It Right!* (Aboriginal Studies Press, 2003) 185, 188.