

# The Ethics of Innovation in Criminal Justice

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## **Introduction**

This chapter presents a bounded analysis of the nature and impact of innovation in criminal justice contexts. Implicit within this reflexive critique are some evocative questions. What constitutes innovation and who or what is being reformed? What makes advances in criminal justice just? According to whom and to benefit whom? Calls for criminal justice reform and public service innovation continue to saturate public, professional and academic discourses in many jurisdictions. Yet, while support for change in principle may be widely observed, it is not matched by a commensurate level of consensus regarding the forms and directions changes might take in practice, and why.

In this chapter, we present one possible schema whereby innovation in criminal justice contexts can be analysed in a more systematic fashion. Specifically, after describing ‘social innovation’ as the central concept of interest here, we start to test its possibilities by interrogating it in terms of what Siedman (2010) calls strategies of amelioration, disruption and transformation, and accommodation. In doing this, we reflect on the extent to which creative and pioneering forms of social innovation may be used not only to benefit the people involved, but also the extent to which they ameliorate, disrupt and transform, or accommodate macro-processes of mass supervision and hyper-incarceration.

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Against the backdrop of contemporary criminal justice systems and penal cultures, we use this schema to demonstrate that innovation is not morally or politically neutral. In other words, not all that is ‘innovative’ is necessarily good or just (Graham and White, 2014). Questions about the forms and functions (‘what’, ‘where’ and ‘how’) of innovation in criminal justice should not be divorced from questions about its architects and beneficiaries, including their intentions and ideologies (‘who’ and ‘why’). Attention is drawn to issues of power and politics in considering which ‘innovative’ justice initiatives are genuinely predicated on a logic of reform, and those which paradoxically propagate the status quo or mask the sources and effects of the carceral problems they are supposed to resolve.

To preface these discussions, it is necessary to clarify the terrain that lies beyond the scope of our analysis here. This chapter does not focus on new developments in electronic monitoring and surveillance technologies, psychological rehabilitation programmes, or the next generation of criminogenic risk assessment tools. Although prominent features of contemporary criminal justice, in many senses these represent the *status quo* rather than necessarily being particularly innovative or creative. Similarly, routine features of offender management processes (e.g., monitoring and compliance), and the labelling of people by risk, diagnosis or crime type are largely peripheral to the line of inquiry pursued in this chapter. Rather, we wish to highlight social justice and social change as integral to our notion of innovation and the ethics and efficacy of its use in advancing positive penal and social change.

### **Social Innovation – Forms and Functions**

It is striking how little critical reflection there has been within criminology on the meaning and consequences of innovation. In part, this has made the task of developing this chapter that much harder, insofar as while it purports to consider the ethics of innovation in criminal justice, there is limited theoretical and empirical scholarship upon which to draw from within the field of criminology. While terms such as ‘innovative’ and ‘creative’ are increasingly used to denote a plethora of new developments in criminal justice, their meaning and use in this chapter is imbued with an emphasis on *social innovation*. This is similar but different to the more widely used general term ‘innovation’, which carries multiple connotations deriving from its intellectual origins in business and science.

Social innovation (SI) is premised on being a response to a need, problem or issue of social justice. Examples include food poverty, sexism and gender inequality, cyber-bullying, lack of infrastructure in war zones, sanitation issues, or climate change. Informing our analysis of SI here is the definition put forward by the Stanford Center for Social Innovation (2013):

A novel solution or pioneering approach to a social problem that is more effective, efficient, sustainable, or just than present solutions and approaches, and where the value and benefits of these are social in the sense of collective.

Social innovation has the capacity to result in change and produce social value beyond the individual personalities and organisations that might have been instrumental in instigating or initiating it (Stanford Center for Social Innovation, 2013; Graham and White, 2015). Similarly, in articulating what is meant by ‘social value’, Phills, Deiglmeier and Miller (2008: 39) explain that it is ‘the creation of benefits or reductions of costs for society – through efforts to address social needs and problems – in ways that go beyond private gains... [these benefits] may accrue to both disadvantaged or disenfranchised segments of society or society as a whole.’ Swapping the term ‘social problems’ for the alternative of ‘social needs’, Murray, Caulier-Grice and Mulgan (2010: 3) define social innovation as:

New ideas (products, services and models) that simultaneously meet social needs and create new social relationships or collaborations. In other words, they are innovations that are both good for society *and* enhance society’s capacity to act.

Notwithstanding the imprecision and contestability of the criteria of being ‘good for society’, this definition is similar to the first in that they are both implicitly relational and humanitarian in their orientation towards processes of social change.

Social innovations, as such, are exceptionally diverse in the forms and functions they may take. They often involve community groups, social enterprises, cooperatives, charitable and civil society organisations in their implementation; however, private firms and public institutions are increasingly partnering with others to enable social innovations to thrive. Social innovations often recognise and tap into the capital of citizens and civil society, inspiring peoples’ interest and mobilising their time and resources, in ways that State policies may struggle or fail to do so. Where there is a complementarity between policies and innovations, the latter are more likely to arise where policies *enable* their development; however, State policy is rarely their catalytic starting point. Innovations are more often nested in what is increasingly being referred

to as ‘eco-systems’ of social innovation in recognition of the constellation of factors and actors that are often involved. Social innovations can be local or structural, ranging in scale and impact from ‘grassroots’-level initiatives which tend to assist vulnerable people or particular communities of interest, through to systemic initiatives which are catalysts for fundamental shifts in attitudes, values, strategies and policies, organisational structures, markets and economies, and systems (Bureau of European Policy Advisors [BEPA], 2011).

Examples of grassroots and community-level innovations include innovative education and digital social innovation technology initiatives which engage different groups of people (e.g., youth, prisoners) in response to issues of inequality and discrimination, such as exclusion from or discrimination in labour market participation and digital society. The ‘Girls Who Code’ (2015) initiative provides young women with intensive computer science education and matches them with female mentors from leading technology companies with the aim of challenging stereotypes and addressing gendered workforce inequalities in technology industries. In a prison context, The Last Mile (2015) program trains male and female prisoners as computer programmers, giving them access to cutting-edge technology and supporting their reintegration and post-release employment prospects in the fields of entrepreneurship and digital industries.

A different form of a community-level social innovation is ‘time banking’, where time is the central element or currency that can be traded or exchanged through a localised cooperative or community-level ‘time banking’ scheme. Each member’s time and capacity to help is considered to be worth the same amount in a time bank, regardless of whether they are offering specialised professional skills or undertaking menial tasks. Time banking is ‘a unique transaction based system for mutual aid and assistance that fosters economic opportunities, social inclusion, community self-help and enhances civic engagement among often marginalised community members’ (Marks, 2012: 1230). Importantly, it can also enhance civic engagement among more influential actors and agencies in civic society. Time banks can be based on a ‘person-to-person’ model or a ‘person-to-agency’ model (Murray *et al.*, 2010: 201), the latter of which can involve all sorts of stakeholders (e.g., including individual citizens, social housing services, local authorities, transport services, schools, trades and commercial services) and time volunteered can become a substitute or form of co-payment alongside money for things like bus fares or rent in social housing. There are existing time banking initiatives

involving children, young people and families involved with youth justice and child welfare services (see Drakeford and Gregory, 2010; Marks, 2012), as well as with prisoners.

Examples of systemic or larger scale social innovations include: the Fair Trade movement advancing ethics and equality in global supply chains; digital social innovations (DSI) which harness the Internet and design new technologies and digital platforms to help overcome geographical, cultural and social barriers (see European Union, 2015); and progressive, participative environmental initiatives which tackle issues of sustainability and climate change. These range from ‘eco-villages’, to cooperatively owned renewable energy plants, through to emissions trading schemes that seek to influence market dynamics (see Murray *et al.*, 2010). Some social innovations incorporate a strong socio-political element, assisting social movements and counter-hegemonic activism seeking social change.

### **Social Innovation in Criminal Justice in an Era of Mass Supervision and Hyper-Incarceration**

In essence, social innovation is responsive, participative and solution-focused in nature. At every level of analysis, it is concerned with ethical and sustainable change. The aforementioned definitions emphasise the pursuit of social innovation as being premised on the acknowledgement of some kind of social problem or need. While theoretical and political debates about crime and justice continue to evolve in Western neoliberal jurisdictions, the characterisation of crime as a social problem attracts a moderate degree of public consensus (see Roberts and Hough, 2002). Thus, social innovations which offer solutions and responses to the costs and harms of crime appear less likely to be rebuffed at face value as unfounded. SI can be harnessed to serve community or collective interests, with its responses amenable to being targeted towards the immensely popular but imperfect ideal of reducing recidivism rates, without necessarily posing a challenge to the dominance of public protection agendas.

With regard to criminal justice, provocative questions linger. How might social innovation be rationalised in light of the costs and harms of crime control and criminal justice, especially in an era of fiscal constraint? The economic, social, moral and human costs and pains of incarceration and probation are well-documented (see, for example, Clear, 1996; Durnescu, 2010; Henrichson and Delaney, 2012). Incisive critiques draw attention to the contributions of ‘mass supervision’ (that is, the burgeoning growth of community-based penal sanctions) and

‘mass incarceration’ or ‘hyper-incarceration’ (that is, spiralling incarceration rates, encompassing a racialised and gendered impact) to crime, social inequality and injustice (Clear, 1994; Cunneen *et al.*, 2013; Garland, 2001a, 2001b; McNeill and Beyens, 2014; Miller, 2013, 2014; Simon, 2000; Wacquant, 2001, 2009; Wakefield and Uggen, 2010). The inference that criminal justice policies and practices are as much of a social problem as the social problem they purport to address (crime) remains controversial, but should not be disregarded. To accept policies and practices as neutral and unproblematic is to belie the social determinants and structural mechanisms that influence who does and does not become subject to them. This, in turn, carries implications for who does and does not need to participate in or become a beneficiary of a social innovation in criminal justice contexts.

Can social innovation be justified as a legitimate response to the proliferation of punishment? We believe it can. In most Western jurisdictions, crime rates are falling, and this trend is consistent over time (see Tonry, 2014). The specific populations in which rates of criminal offending are *not* falling are those who have been subject to disproportionate rates of penal sanction, especially incarceration. It would therefore be more apt to ask whether the forms and functions of social innovation are better placed to respond to the needs and reintegration of people, individually and *en masse*, who have been subject to penal intervention? The rise of critical carceral studies and notions of hyper-incarceration add a certain level of credence to this purpose, insofar as the subjects of punishment are, more often than not, individuals and groups who live with social inequality, exclusion and victimisation before, during and after criminal justice intervention (see Wacquant, 2009, Cunneen *et al.*, 2013).

If innovation in criminal justice is to accomplish ethical and effective impact, extending from the level of the individual (e.g., supporting desistance, reintegration, agency and equality) through to the level of society (e.g., reducing mass supervision and hyper-incarceration, more creative responses to injustice), a considerable amount of theoretical and empirical work needs to be done. Others, such as Fox and Grimm (2015) and Grimm *et al.* (2013), have started to consider the ways in which social innovation in criminal justice might challenge neoliberal ideologies and policies. Similarly, it is our hope that the preliminary analysis incorporated in this chapter and in our ‘Innovative Justice’ international research findings elsewhere present a modest but helpful starting point to inform wider discussions (Graham and White, 2014, 2015; Graham, 2015a, 2015b, 2016; Graham, Graham and Field, 2015; White and Graham, 2015). In particular, we are interested in using ethical critiques of the *status quo* from critical

criminological scholars alongside visions of change from the field of social innovation. The remainder of this chapter is structured around this interest.

*Innovative Strategies of Disruption: Moving Beyond Mass Supervision and Hyper-Incarceration*

In an excellent and aptly named piece on ‘hyper-incarceration and strategies of disruption’, Siedman (2010) envisions three types of strategies which have the potential to tackle the problem of hyper-incarceration in the United States, with particular emphasis on issues of racism and racial justice. Siedman (2010) categorises the three types of strategies for change as:

- the politics of amelioration;
- the politics of transformation and disruption; and
- the politics of accommodation.

Siedman (2010) focuses on penal change and its potential catalysts, but does not cover the topic of innovation. In this chapter, we adapt and expand upon his three categories of strategies and apply them to a series of examples of social innovation, in order to consider the potential implications within and beyond criminal justice.

The three types of strategies differ in scope and temporal dimensions of the change and reform which they seek to produce. Pragmatic and participative in style, ‘ameliorative’ ideas and approaches seek to realise improvements in the here-and-now, helping those most affected by crime and punishment (Siedman, 2010). Conversely, ‘accommodation’ ideas and approaches involve a certain level of acceptance of existing penal cultures and practices which, in part, produce mass incarceration or hyper-incarceration, while incrementally seeking their adaptation to achieve more positive, or at the very least less harmful, outcomes. This type of ‘solution’ may not immediately appear to be innovative or to differ from normative approaches, yet it has the capacity to realise incremental change from the inside (Seidman, 2010). By way of contrast, ‘transformative’ ideas and approaches reject and disrupt the *status quo*, and often entail alternatives to and/or extensive relinquishment of existing orders of penal power and social stratification. This type of strategy is less predictable in its impact: it may spark revolutionary and wide-reaching effects which make it difficult to return to what was before,

or it may amount to utopian but inchoate visions which do little to mobilise the actions needed to realise them, either in part or in their totality (Seidman, 2010). These three categorisations are not mutually exclusive, as a moderate degree of overlap and hybridisation exists, as will become apparent in the discussions that follow.

## **Innovation as Amelioration? Pragmatic, Creative and Compassionate Initiatives in Criminal Justice**

### *The Arts and Creative Practices in Criminal Justice*

Above and beyond criminal justice contexts, the arts are more universally accepted as a medium for expression and enrichment, benefiting individuals as well as having the capacity to change environments and cultures. The longstanding history of the arts in criminal justice settings around the world precludes claims that their use is innovative in and of itself. However, specific applications of the arts and creative practices in criminal justice are being used in participative and progressive ways which make them a form of social innovation. In prison and probation contexts, these include: choirs, orchestras and bands, story-telling forums, writing groups and producing books and poetry, documentary film making and film clubs, graphic design, theatre, dance and choreography, photography, art exhibitions and fine arts, through to textiles and fashion design (see Cheliotis, 2012 and Graham and White, 2015).

Arts-based social ventures in criminal justice tend to take the form of social enterprises, charities or cooperatives that collaborate with prison or probation personnel. For example, Fine Cell Work (2015) is a successful social enterprise which has been operating in English prisons for more than two decades. It trains prisoners in paid, skilled needlework, making bespoke hand stitched products which are purchased by customers in the community. Fine Cell Work offers prisoner participants opportunities for income generation, a creative and productive avenue for making use of daily in-cell time, pro-social connections with community volunteers, training and learning, developing self-esteem in achieving a high standard of workmanship, and fostering positive identity change in the desistance process (Graham and White, 2015). This initiative is particularly ameliorative for prisoners who face approximately 17 hours a day in their cell with few other meaningful activities available to them. One of the fascinating aspects of the achievements of this social enterprise is the ways in which it supplants



stereotypes (e.g., traditional gender stereotypes about sewing) and respectfully defies the overarching risk-averse preoccupation of the closed institutions in which its creative practices occur (e.g., access to needles and thread in prison cells) (Graham and White, 2015). Fine Cell Work represents just one example among many arts-based ventures doing positive work in correctional settings.

In terms of community-based initiatives, new forms of participative ‘forum’ theatre are emerging which give voice to the lived experience of social problems, and engage participants to think and act in ways that seek their amelioration and resolution. In Brazil, Augusto Boal has developed the ‘Theatre of the Oppressed’, where actors and non-actors play out stories of oppression, speaking through images, reflecting on issues (e.g., crime and victimisation, such as family violence) and emotions, and offering participants the ability to re-write the stories, collaboratively co-producing responses and alternative endings (Murray *et al.*, 2010: 32). Participative forum theatre positions marginalised people and their experiences of social injustice as central, offering a potential emancipatory vehicle for healing and being heard. While participative and compassionate in *response* to injustice, this creative approach remains limited in its capacity to *reduce* or *prevent* the occurrence of oppression and the social issues it highlights. As such, its impact is important at the level of individuals and social networks, but is less likely to have a systemic impact which extends to the level of affecting policies, sentencing trends, institutions or the social determinants of crime and injustice.

In conceptualising the arts as ameliorative, it is tenuous, if not naïve, to presume a direct association between the two, as though the arts and creative practices will necessarily be catalysts for cultural, institutional and systemic change. Cheliotis’ (2012, 2014) incisive critique of the arts in prisons demonstrates how they may be used in different ways to pursue very different ends. He draws on the seminal theoretical work of Cohen (1985) to argue that the State uses the arts to ‘empower’ and ‘rehabilitate’ prisoners, yet such ‘good stories’ can constitute ‘decorative justice’, conveniently masking the instrumental functions of the arts as tools of control and denial of the injustices of incarceration (Cheliotis, 2014: 24). Similarly, it would be entirely possible for a government to commission ‘Theatres of the Oppressed’ participative forum theatre to engage and ‘consult’ marginalised citizens (including people with convictions and histories of victimisation), without having to make any real commitment to action in response to the social issues and injustices raised.

Conversely, Cheliotis (2012, 2014) also affirms the capacity of the arts to be used by people with convictions and others as creative tools of resistance and emancipation, giving voice and mobilising momentum for reform. To avoid uncritical uptake and moral reification of arts initiatives in criminal justice as inherently ‘good’, he argues that empirical investigations of arts initiatives must not ignore ‘the socio-political dimensions of their context, content, conduct and consequences’ (Cheliotis, 2014: 16). Questions of power and epistemology – *who* can know and say if the arts ‘work’ or help, and to what end – remain relevant in appraising their ameliorative and emancipatory capacity in criminal and community justice.

### *Animals in Criminal Justice*

Another area where ameliorative strategies can be observed is the increasing use of animals for creative and therapeutic purposes in criminal justice institutions. Elsewhere, we discuss our research findings regarding the positive developments associated with using trained assistance dogs in mainstream and therapeutic treatment courts, policing, forensic interviews, victim services and child advocacy centres, and prisons (see ‘Animals and Therapeutic Justice’ chapter in Graham and White, 2015). The remarkably positive work being orchestrated by the Courthouse Dogs Foundation (2015) with community and criminal justice partners in the United States, Canada, Chile and Finland illustrates the capacity for the place of animals in court innovation to benefit victims (including child victims of sexual abuse) and their families, defendants and offenders (especially in mental health, drugs and veterans courts), and practitioners (including court staff, the judiciary, lawyers, police, forensic investigators). Additionally, animal foster care and training is increasingly common in prison settings (see Britton and Button, 2005; Bachi, 2013). Emergent research indicates positive benefits for prisoners, as well as indirectly for the institution, in terms of fostering self-worth and empowerment through generative giving, and the development of new knowledge and pro-social identity (see Graham and White, 2015). However, many animal-based therapeutic programmes are selective in which prisoners are allowed to participate, and the logic of incarceration may not be fundamentally challenged just because such initiatives help to realise positive changes at the levels of individuals and institutions.

In summary, ameliorative innovations may lessen the pains of incarceration or probation, and advance rights, creativity and quality of life. However, their impact is more likely to be at the micro- and meso-levels, and unlikely to make a dent or lessen macro-level processes of mass

supervision or hyper-incarceration. By way of contrast, the next section canvasses ideas and strategies which extend much further in envisioning change.

### **Innovation as Disruption? Transformative Approaches and Different Visions of Justice**

In the field of social innovation, the concept itself is routinely conceptualised as ‘disruptive’ and game-changing, unsettling traditional thought and established orders to make way for new, more creative and sustainable ideas (Nicholls, 2006). Influential forerunner Joseph Schumpeter drew attention to the ‘creative destruction’ associated with entrepreneurship and social change (in Phills *et al.*, 2006: 37). More recently, extensive theoretical work has been devoted to understanding ‘disruptive innovation’ and leading social change (see Christensen, 2000). Here, we only have space to canvass a few social innovations which pertain to criminal justice: justice reinvestment, restorative justice, and microfinance.

#### *Justice Reinvestment (JR)*

As the name ‘justice reinvestment’ (JR) suggests, a portion of the public funds that would have been spent on covering the significant costs of imprisonment are meant to be diverted to local communities that have a high concentration of people subject to criminal justice intervention. The money is invested in community initiatives, services and networks that are aimed at addressing the underlying causes of crime and social disadvantage in those communities (see Gooda, 2010; Murray, Caulier-Grice and Mulgan, 2010). As is often the case in regards to the development and implementation of social and criminal justice policies, justice reinvestment takes different forms, and these find application in different ways in different jurisdictions due to unique and variable local characteristics (of offenders, of crimes, of communities) (see La Vigne *et al.*, 2014). One approach, for instance, places the emphasis on re-directing money from funding for prisons to *individuals* who are non-violent and need to access drug rehabilitation services. A key issue here pertains to the selectivity involved in who gains assistance, and the abrogation, yet again, of dealing with the ‘hard’ and risky cases (i.e., those needing the most support and attention) within criminal justice.

The more favoured and well-known model, however, is based upon the idea of re-directing money from prisons to those *communities* where prisoners predominantly come from. Geographical and socio-economic analysis is undertaken, and strategies are devised as to how

best to redirect funds and resources back into those communities (see for example, Gooda, 2012, and Australian Youth Affairs Coalition, 2013; see also Allard *et al.*, 2013). The intention is to engage in community development and social inclusion as preventative measures to forestall future offending and marginalisation, and to diminish the possibilities of repeat offending for those leaving criminal justice supervision. There is evidence that, in some American states where JR has been introduced, there has indeed been a significant reduction in the number of (especially young) people being sent to prison (Murray *et al.*, 2010).

However, by adopting a focus on specific communities in this way (that is, in a manner that, explicitly or implicitly, portrays them as dysfunctional and deviant), the door is open for further stigmatisation of both community and individuals within them, and for the widespread legitimisation of coercive ‘outside’ intervention in these same communities. In this way, it may unintentionally contribute to racialised and spatialised (i.e., in the poorest areas) welfare interventions that run parallel to hyper-incarceration. Moreover, the JR focus on reinvestment as crime prevention and as a decarceration strategy may unintentionally obscure broader social justice issues centring on access to employment, education and other opportunities that underpin much adult and youth offending to begin with.

In the Australian context, Justice Reinvestment has had particular resonance in relation to Indigenous young people and their relationship to juvenile justice. In some instances, and in some communities, allocations of funding away from youth detention to community building ‘makes sense’ to local populations and communities that are already struggling to come to grips with severe disadvantage. Rather than a general panacea or response to mass incarceration, as in the United States (see La Vigne *et al.*, 2014), JR is seen in Australia to be most relevant to specific groups of young people and such 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 (see Gooda, 2012; Australian Human Rights and Equal Opportunity Commission, 2009). Interpreted as a social innovation – that is, informed by social justice considerations and collective social impact – justice reinvestment offers the promise of change based upon a logic of penal abolition, decarceration and community development.

### *Restorative Justice (RJ) and Restorative Practices (RP)*

In a similar vein, the spread of restorative justice (RJ), and the wider restorative practices (RP) movement, around the world have generated and reflected widespread support for non-adversarial and inclusive options for conflict resolution. Such initiatives take many different forms and can be highly selective as well, sometimes thereby excluding those who might best benefit on the basis of risk (Cunneen and White, 2011). Nonetheless, non-adversarial justice of this kind does include interesting and creative restorative practices in prisons and offender supervision. Restorative justice has recently garnered significant attention for new innovative applications in response to sexual violence (Centre for Innovative Justice, 2014). Some RJ initiatives tend to reflect more ameliorative as strategies (insofar as they focus solely or predominantly on the victim and repairing harm), but ultimately, the philosophy of restorative justice and restorative practices is predominantly transformative because it seeks to move towards healing and redemption, to advance liberal democratic notions of citizenship, and move away from a reliance on traditional adversarial and exclusionary approaches.

### *Microfinance*

At a societal or, indeed, a global level, the foremost paragon of social innovation is microfinance – the provision of financial services (including savings accounts, small loans and insurance) to people and small businesses affected by poverty and inequality, enabling them to generate capital and their capacity to benefit from their own labour. Its most internationally recognised pioneer is social entrepreneur Muhammad Yunus who, in 2006, was awarded the Nobel Peace Prize with the microfinance and community development Grameen Bank he founded.

Microfinance is an active, social ecological type of response to poverty, in contrast to more passive one-directional forms of charity that offer the immediacy of ameliorative emergency relief but do not constitute a sustainable avenue for change in the future. In the last 15 years, microfinance initiatives and services have grown exponentially with transformative social impact, with recent estimates indicating that approximately 1 billion people access microfinance services globally (Roodman, 2011; Kemp, 2014). Internationally, microfinance is reputed for spurring relatively rapid social change, including shifts in the structures and dynamics of financial markets and the economy, as well as making progress in pursuit of things like social cohesion, citizenship and labour market participation.

Microfinance is raised briefly here for its transformative potential in response to systemic issues of discrimination and exclusion faced by people with convictions. A significant number of people leaving prison and other people with criminal records do not have access to a bank account, let alone credit or financial services. A recent report by Evans (2014), aptly titled ‘The Debt Penalty’, underscores the extensive costs and harms of criminal justice and legal involvement, and the financial barriers that people with convictions face in the process of reintegration. Access to microfinance-related supports for people with convictions may not only yield positive results for individuals and their families, but may redress some of the harms and costs associated with their criminal justice involvement in the hope of reducing or preventing further offending. Little empirical literature exists in this area currently (see Rainford, 2010; and on microenterprise, see Lindahl, 2007), however, and more research is needed.

### **Innovation as Accommodation? Incremental Approaches and Paradoxes in Pursuit of Penal Reform**

Just as punishment is not morally or politically neutral, social innovation in penal contexts is not either. As with many facets of criminal justice, there are frequently helpful, unhelpful and even deeply paradoxical applications associated with particular innovations, and diverse motivations for their introduction.

For example, some advocates for restorative justice see it as revolutionary in potential scope – in effect, as a replacement ideology and set of practices to conventional retribution-based criminal justice. Others, however, view it as having distinctly circumscribed application, as an add-on to existing systems of punishment which will, over time, result in incremental shifts and the greater use of diversion. In Australia, for example, every jurisdiction has some form of restorative justice based ‘juvenile conferencing’. Yet generally these are reserved for first time offenders and in regard to trivial offences. In this instance, the social impact of restorative justice is thus muted and variable. We nonetheless maintain that the very idea of ‘restorative justice’ serves to provide an important counterweight theoretically and practically to punitive discourses and retributive practices. RJ can be both an accommodation to the system (a component of a larger complexity) and present a challenge to it (insofar as it embodies

principles, such as repairing harm, citizenship, participation and forgiveness that are intrinsically subversive of retributive agendas and traditional approaches to crime control).

In some jurisdictions, penal reform agendas and promising ideas have been adapted in ways that are not necessarily ethical, effective or innovative. Two examples are illustrative of the paradoxical tensions and the range of mixed motives and, consequentially, mixed results. The first example is that of the ‘greening justice’ movement, where criminal justice institutions are increasingly advancing policies and practices, in partnership with others, which focus on environmental sustainability and resource conservation. In a recent international review of ‘greening justice’ initiatives, a wide range of motivations and purposes were identified (White and Graham, 2015). Top of the list for administrators and policymakers is fiscal objectives, that is, saving money by cutting energy, saving water and recycling materials and waste. Even so, there was, in many cases, simultaneously a genuine commitment to eco-friendly practices, and for some initiatives this translated into more benign and engaged forms of policing, more socially inclusive courts and more empowering approaches to prisoner rehabilitation.

However, there was certainly instances of ‘decorative justice’ (Cheliotis, 2014) as well. Being ‘green’ does not always translate into being ‘good’, and can constitute more of a case of greenwashing than any association with progressive reform. Nowhere is this more evident than the appropriation of the ‘green’ mantra by the United States government in proclaiming the green credentials and environmental sustainability of the prison and other facilities at Guantanamo Bay in Cuba. Wind turbines, recycling and bicycle-riding traffic police do little to diminish the trauma and injustices that occur within that carceral regime (White and Graham, 2015).

Our view is that, overall, such initiatives can be seen as paradoxical in that positive developments can co-exist with and be seen to be accommodating of quite brutal institutional regimes and with those that entrench exciting new forms of social innovation. An understanding of context, nuanced practice and complexity, as well as critical evaluation of tendencies and consequences, is central to exposing the limitations and possibilities of ‘greening justice’ initiatives and restorative justice projects. Through such assessments, it is possible to better appreciate why it is that, in some instances, the transformative logic is one of decarceration and abolitionism (social innovation = social justice), while in others the system logic is one of cost-saving and continued penal expansion (innovation = instrumentalism in support of the status quo).

The area of correctional industries illustrates the need to differentiate creative and effective ideas and approaches that, when taken on face value, appear similar, but upon closer reflection, reveal ethical divergences. Like in other places around the world, in the American state of California, prisoners are used as firefighters. Again, we wish to highlight the mixed motives and substantive differences in the benefits for participants (the prisoners) and the benefits for the State derived from this seemingly innovative initiative. The socially valued role of fighting fires can tap into feelings of accomplishment and ‘giving back’ on the part of many prisoners, and hence may act as a prelude to their rehabilitation and desistance. Yet issues remain regarding the place of prison labour, in particular instances of its exploitative forms and functions, within criminal justice. Moreover, in recent years lawyers for the State have resisted court orders that they expand parole programmes because to do so would reduce the pool of inmates available to undertake prisoner industries. By employing inmates to fight fires who are paid between \$2-3 per day, working fire fighting shifts of up to 24 hours a day (Barford, 2015), the State of California saves more than \$80million per year (Californian Department of Corrections and Rehabilitation in Barford, 2015). This means that any overarching policy which expands parole simultaneously reduces the number of inmates available to fight wildfires (Flatow, 2014). There is thus a built-in systemic financial disincentive to let prisoners out on parole early (Flatow, 2014), even though prisoner firefighters are able to obtain ‘day for day’ credits for good behaviour that help to ‘accelerate’ their release by discounting time from their sentence (Barford, 2015). Despite the good results it does achieve, this type of initiative accommodates the norms and factors that continue processes of mass incarceration, and enables the State to use ‘good news stories’ as decorative justice to belie ulterior motives that are ultimately at odds with efforts towards decarceration and the promotion of the human rights of prisoners as citizens.

### **Mainstreaming Innovation: Legitimacy, Procedural Justice and Sustainability**

A significant opportunity and challenge in establishing social innovation is the struggle for legitimacy, especially in jurisdictions where the backdrop is one of volatile penal politics. Literature in the international field of social innovation demonstrates that, the more radical and disruptive a social innovation is, the greater its initial struggle for legitimacy. The same applies to the architects and change agents who initiate social ventures. New innovations tend to unsettle and threaten established social orders, and in this case, the established dynamics of



penal power and carceral regimes. To some extent, it affects the capacity of the idea or venture to become mainstream.

Cognitive legitimacy is played out in normative isomorphic pressures that demand a fixed organisational position within the broader socio-structural architecture as a precursor to a venture having a basic right to exist for the wider population. However... social entrepreneurs disrupt these structures and work most effectively outside of established organizational patterns. As such – and in common with many innovative organizations – social entrepreneurship typically lacks cognitive legitimacy, but rather than this be a barrier to effective operations it, in fact, becomes a means towards greater impact (Nicholls and Cho, 2006: 115).

Architects and leaders of social innovation often differ from others in criminal justice contexts in terms of their character traits, values and behaviours. For example, commonly celebrated traits include boldness, ambition, persistence, unreasonableness, relationship building and brokering, and an entrepreneurial ability to leverage resources (Elkington and Hartigan, 2008; Moore and Westley, 2011; Phills *et al.*, 2008). A fascinating anomaly can be observed in noting that these types of people may be celebrated as pioneers achieving change with and within penal institutions while thinking and acting in ways that do not necessarily always complement or comply with the nature and intent of penal cultures and practices (Graham, 2016). This is sometimes described as ‘intrapreneurship.’

Social innovation literature suggests that one of the key barriers to the development and mainstreaming of social innovations include ‘traditional risk-averse cautious organisational cultures of administrations, [and] closed systems which favour single issue solutions developed within clusters of organisations lacking mutual awareness... and trust’ (BEPa, 2011: 11). Unfortunately, this seems an apt description of the state of many prison and probation services in Western jurisdictions, and is not unrelated to the conditions which give rise to mass supervision and mass incarceration. Just as the more radical and disruptive visions of social innovation and change struggle for legitimacy in their adaptation and uptake in the mainstream, so too do the more radical and disruptive visions of liberal reformism and penal abolition – many of which stem from critical criminological schools of thought and desistance scholarship.

Critical questions about capital, resources and sustainability from those in the criminal justice establishment should not be dismissed as unreasonable or unfounded, for two related reasons. The first reason is the sheer number of social start-ups that, irrespective of the calibre of ideas on which they are premised, fail and fold within the first few years. A significant number of

pilot projects or trials associated with social ventures struggle to upscale and integrate. In criminal justice institutions, a moderate degree of power is conferred to senior decision-makers who have a legally-binding duty of care to examine the fine-grain detail of a proposed innovation for how it will potentially impact on different stakeholders. Issues of potential failure usually become bifurcated along the lines of those proposing social innovations as ‘outsiders’, compared to the hegemonic logic of those who are powerful actors within the penal establishment. Hypocritical differences can be observed in the extent to which start-ups or new initiatives have to fight to rationalise their efficacy and ethics, often facing extensive scrutiny and bureaucratic hurdles just to be able to start. Yet, the risks and lack of justification of failed penal policies and practices of the State, and the collateral consequences of such failure, do not attract similar levels of scrutiny and reflexivity.

The second reason is to underscore the fact that procedural justice and legitimacy matter in ground-breaking social ventures, cooperatives or alliances, even where they are initiating new things. As discussed earlier, social innovations are just that, *social*. Perceptions of procedural justice and legitimacy are related to the development of trust, cooperation and the flourishing of creativity – between those leading and participating in the innovative initiative, and in achieving valorisation and trust between those involved and the wider system and communities in which it exists (see Tyler and Blader, 2003; Luo, 2005; Streicher *et al.*, 2012; Sabatini *et al.*, 2014; Graham, 2015a, 2015b). Therefore, some limits are placed on the nature and scope of rule-breaking and counter-normative behaviour by those pioneering new initiatives; otherwise, without boundaries, infractions on justice and the potential of failure are possible, if not likely. A key challenge for people leading social innovations in criminal justice is dealing with people and issues in contexts where there is a lot at stake.

## **Conclusion**

What becomes clear in our analysis of the three types of strategies outlined in this chapter is that they should not be reified as universal solutions, nor are they as discrete and disparate as they might initially seem. Context matters, as claims of being ethical and effective are contingent upon those making them and the multi-faceted implications they carry.

Some innovative social ventures succeed precisely because they are tailor made for people in prison or community-based sanctions. A key example of this is new forms of arts or

employment-based social enterprises which aim to assist prisoners' community reintegration and desistance processes (see Lindahl, 2007; Graham, 2015b). However, many other social ventures are effective because access to and participation in them is open to a variety of people in the community, including but certainly not limited to people with convictions. Examples of this are the networks of people involved in community time bank initiatives.

Much of this chapter has been oriented towards influencing meso- and macro-level processes in criminal justice and society, namely the impact of innovation to realise change in an era of mass supervision and hyper-incarceration. It is at the intersection of personal, penal and social change that the full arc of ethical implications, and the exigency of penal reform, becomes most apparent. It is our hope that these discussions will stimulate the thoughts and responses of others, including the development of empirical agendas, to co-produce new knowledge from the interfaces of social innovation and justice.

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