

A REFLECTION ON GAVIN MOONEY'S CITIZEN JURY ON OFFENDER HEALTH

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In *The Health of Nations: Towards a New Political Economy*, Gavin Mooney (2012) strongly argues that more can be done to improve peoples' health in both developing and developed countries. One central way forward provided is for governments to replace market-led 'neoliberal' policies with community-led policies. An important component in building this case involves understanding health care as a social institution and health in terms of its social determinants. This in turn suggests the need for a critically informed assessment and determination of the principles and priorities in health care policy, best provided by the community. In recognition of this need, Gavin's Citizens Jury work, in part, sought to challenge assumptions that communities of lay people are unable to provide sophisticated policy advice on broad, complex and contentious issues (Mooney 2012).

This article documents and reflects on Gavin's last Citizens Jury, highlighting links between the social understandings and political economies of health and incarceration. A brief overview of Gavin's Citizens Juries work is provided, together with discussion of insights gained for improving methodology for future studies. In the months before his tragic death Gavin was involved in research to test the Citizens Jury approach for exploring the public's views on the treatment of offenders. Given the emotive nature of such a topic, this Citizens Jury provided a pertinent test of the community's ability to provide sophisticated advice on a complex policy issue.

Industrial Complex Framework

As with other 'industrial complexes' (e.g. military- and medical-industrial complexes), the prison-industrial complex also denotes a

market-led logic – in this case dependent on the flow of prisoners as ‘raw materials’. Prison populations feed a multiplicity of large and small businesses such as construction, furniture makers, transportation, food, clothing, health services, communications and security firms. The prison industrial complex, like any industry, needs unfettered access to raw products to ensure economic prosperity. Arguably, therefore, governments, agencies and corporations have an interest in prison expansion, since the economy depends directly on the flow of prisoners. Governments whose political agendas can be to appear ‘tough on crime’ have an implicit and explicit interest in prison expansion.

Within the context of the prison industrial complex it is also important to understand social meanings of prison and offending. In this regard, Davis (2003) argues that conceptually, punishment should be disconnected from offending, in order to properly consider alternatives to address the social determinants of offending and/or the viability of prison. As with poor health outcomes, arguably most offending is driven by social marginalisation and economic disadvantage. Yet wide consumption of crime-related cultural products (*e.g.* mainstream news reportage, talk-back radio and television dramas), together with a lack of opportunities to consider the complex issues that underlie offending, results in little community-wide understanding of the social determinants of crime or the political economy of incarceration (Peelo 2005).

Deliberative-based mechanisms such as Citizens Juries offer one way to redress this lack of understanding and enable the public a potential to exercise ‘countervailing power’ through receiving and scrutinising considered perspectives and statistics on the treatment of offenders. Popularised by Galbraith (1956), countervailing power has come to mean a variety of mechanisms that counter the power of dominant practices and paradigms. In recent decades, consumer groups, local-level political groups, social movements and social media have been described as exercising countervailing power (Gibson and Woolcock, 2008, Rha and Widdows 2002). Mooney and Blackwell (2004:78) recognised that determining which deliberatively-based approach works best in this regard, and in which context, ‘remains subject to debate and requires more research’. The Citizens Jury on offender health provided such an opportunity.

Citizens Juries

Interest in deliberative practices such as Citizens Juries emerged in recent years (Smith and Wales 2000, Smith and Wales 1999, Davies *et al.* 2006). Wakeford, Singh, Murtuja, Bryant and Pimbert (2008:10) state, 'Citizens Juries were perhaps the inevitable product of two features of recent political systems, particularly in many Anglophone consumer-capitalist states: the thirst of politicians for political novelty, and their desire to be seen to be good rulers'. Within that intersection grew a niche occupied by 'post-Thatcherite think-tanks, management consultants and sometimes action researchers' (Wakeford *et al.* 2008:10). Accordingly, Citizens Juries have been used for purposes of public involvement in formal policymaking, consultation and research (Burchardt 2013:4).

The broad objective of a Citizens Jury is to elicit the public's views on a particular subject and then present the findings to a wider audience including policymakers, researchers and other stakeholders (Burchardt, 2013:4). Initially conceived in Germany and the US in the late 1970s and 1980s, Citizens Juries have been conducted in many countries (Carson 2006; Font and Blanco 2007; Gooberman-Hill *et al.* 2008; Kenyon 2005; Smith and Wales 1999; Haigh and Scott-Samuel 2008; Kashefi and Mort 2004; Robinson *et al.* 2002; Wakeford 2002; French and Laver 2009) on matters such as environmental management (Simon and Blamey 2003), waste incineration (French and Laver, 2009), water quality (Robinson *et al.* 2002), planning and infrastructure (Gregory *et al.*, 2008), child poverty (Fabian Society 2005), and healthcare (Pickard 1998; Kashefi and Mort 2004; Mooney 2010a; Mooney and Blackwell 2004).

As with legal juries, Citizens Juries bring together a group of citizens ('jurors'), providing them with knowledge and the opportunity to scrutinise that knowledge through quizzing 'expert witnesses' and enabling them to discuss and reflect on the issue or questions (Mooney 2010b:14). They comprise between twelve and twenty randomly selected people who 'represent' the community (Mooney 2010b:19), serving as a 'microcosm of the public' (Wakeford, 2002: 2) or 'minipublic' (Huitema *et al.* 2007:288). Their ability to represent the public has attracted criticism (Wakeford *et al.* 2008:18). Smith and Wales (2000) prefer the idea of 'inclusivity', due to problems associated with representativeness including that no jury can accurately represent all views present in wider society; issues of false essentialism (*e.g.* no woman can represent *all*

women) and inference that individuals are unable to represent others who do not share one or some identified characteristic(s) but perhaps share unrecognised ones; ensuring marginalised groups are heard (see Wakeford *et al.* 2008); interpersonal and intergroup dynamics including ‘grouphink’ (Huitema *et al.* 2007:297); and bias relating to funding body agendas, research team (Huitema *et al.* 2007:301), facilitator (Font and Blanco 2007:557) and/or selected expert witnesses (Huitema *et al.* 2007:301). Burchardt (2013:4) points out that it is important to declare the specific role (including epistemological premise) of one’s Citizens Jury and to articulate methodological decisions, as these can have significant ramifications for outcomes and claims from such outcomes.

Although Citizens Jury studies tend to emphasise the need for jurors to move towards consensus, a lack of consensus may also be considered productive in terms of not obscuring alternative views (Mouffe 2004; Springer; 2011). Ward *et al.* (2003) believe Citizens Jury practitioners should be cautious of over-investing in consensus outcomes as this may impede certain and insightful perspectives and issues coming to light. A lack of consensus can also mitigate against ‘grouphink’.

Citizens Juries as a Research Methodology

Increasingly, Citizens Juries are being used as a research technique (Burchardt 2013:4). Generally speaking, the ‘less closely a deliberative exercise is tied to a policymaking process, the more it begins to look like research’ (Burchardt 2013:4), though this is not to say that findings from such research cannot impact on policymaking. According to Burchardt (2013:4), ‘the core rationale for deliberative research’ is to determine ‘the informed, considered, views of member of the general public, often on complex issues to which they may not previously have given much attention’ and that such research has a ‘distinctive role to play, provided its purpose and particular application are well-aligned’.

The theoretical origins of Citizens Juries as research derive from Participatory Action Research (PAR), developed from various (sub)disciplines such as social theory (Wakeford *et al.* 2008:3), political economy, critical psychology, feminist studies, and political philosophy, namely deliberative democratic theory (Burchardt 2013:2). While deliberative democratic theory has been critiqued for its anti-political view of society (Springer 2011:530), it has nonetheless generated many

experiments in deliberative practices and research seeking to ascertain people's views and values (Burchardt 2013:3) and institutional design for effective public deliberation (Fung 2003). The link between Citizens Juries and PAR stems from participants being active in the research process through a collective forum where their views may be transformed by the research itself. Where they can differ from PAR is around who defines the research question and methods including participant selection and, importantly, what kind of knowledge (*e.g.* expert, experiential or both) is considered for presentation to jurors (Burchardt, 2013:5). In strict PAR approaches, these questions are determined by experiential knowledge. Within the healthcare context, people with experiential knowledge are those living with illness and/or engage in health services. In offender health research, arguably people with experiential knowledge are those entering the criminal justice system, and victims of crime. According to Wakeford and colleagues (2008:13), Citizens Juries fall along a continuum between 'top-down' (where content and processes are defined solely by funding bodies, researchers and external 'experts') and 'bottom-up' (where those affected by the research topic and representative grass-roots or community-based organisations) determine approaches.

Traditional methods of studying the public's views, such as interviews, surveys and opinion polls, offer limited opportunity for respondents to reflect on their own position or that of others through social interaction. In turn, respondents are likely to express views lacking a considered perspective (Burchardt 2013:6), particularly if the subject matter is complex, potentially controversial and unfamiliar (Burchardt 2013:15). Indermaur and colleagues (2012:148) state that broad survey questions 'posed in a simplistic way bring to mind stereotypes and tap into assumptions that may be neither relevant nor accurate'. However, this does not make one approach better than the other, as ultimately the research objectives will instruct which of these characteristics are considered strengths or weaknesses. A key distinction is whether one's research objective is to understand what participants *would* think under conditions that encourage critical thinking on the subject at hand (Fishkin 2010:196), or what participants *do* think (Burchardt 2013:7) from the 'top of their head' (Indermaur *et al.* 2012). Mooney (2010b: 14) highlighted another distinction: whether one's objective is to understand what participants think *acting on behalf* of a community, or

what participants think *acting as individuals* concerned for themselves (italics authors' emphasis).

Gavin Mooney's Work in Citizens Juries: From Healthcare to Offender Healthcare

The seeds of Gavin's work towards practices like Citizens Juries are manifest in an impressive list of projects dating back to the 1990s covering myriad concepts and claims about the political economy of health (Mooney 1995, 1996, 1998a, b). 'Equity', 'Community' and 'Social Justice' are recurrent themes. These are described briefly to contextualise his Citizens Juries work. In a 1996 guest editorial in *Health Economics*, Gavin highlighted that as the new millennium approached, among the most important research issues confronting health economists was how to conceptualise and measure equity. Australian Aboriginal health was highlighted to bring forth the issue of vertical equity – the 'unequal but equitable treatment of unequals' – as compared with horizontal equity – the equal treatment of equals, or specifically in case of health economics, equal access for equal need (Mooney 1996: 99).

In highlighting the limits of horizontal and individualist approaches to healthcare equity, Gavin raised two central questions: 'If, as is normally the case, ill health is not randomly distributed across different groups in society' but socially determined, 'might that society not want to give preference, on vertical equity grounds, for health gains to those groups in that society who are on average in poor health?' and 'What weight might be applied to such health gains and how do we differentiate between what groups are more deserving?' (Mooney 1996:102). In conceptualising answers to these, Gavin and Jan (1997) saw John Broome's (1989) notion of 'claims' within a communitarian framework as a promising path. Gavin subsequently articulated this path, arguing for the determination of 'communitarian claims' as an ethical basis for allocating healthcare resources (Mooney 1998b, 2000, 2005, 2009). Communitarian claims relate to 'issues that are more distant from the individual qua individual but which nonetheless are seen as important to the individual as a citizen' (Mooney 1998b:1175). This notion presumes that individuals are: 1) motivated by things beyond self-interest such as altruism and mutual-aid, and 2) not 'separate entities divorced from those

around them' (Govender and Mooney 2012:98). Further, communitarian claims are viewed as 'a duty owed by the community', reflecting that 'it is the community who have the task of deciding what constitute claims, the duty to allocate claims and to decide on the relative strengths of different claims' (Mooney 1998b:1176). Such a position challenges a neoliberal culture that has transferred 'public sector goods (health, education, etc.) from a societal responsibility to that of individual responsibility' (Govender and Mooney 2012:95).

A criticism of communitarian thinking has been that communities can do harm such as being violently racist (*e.g.* white-supremacist communities) or perpetuate class-based oppression (*e.g.* middle-class communities that mobilise to exclude the poor from higher-income suburbs) (Gough *et al.* 2006:220; Young 2000). Gavin's response to this criticism was that individuals integrated or embedded within communities will tend to do 'good' (Mooney 1998b:1176). While this may appear utopian in the sense of overlooking existing power relations and structural inequalities, in later work incorporating Anderson's (2003) expressive theory, Gavin urged marginalised social groupings (based on gender, race, ethnicity, class, and so forth) to become actively involved in generating communitarian claims (see Mooney 2009:216). Such active involvement by marginalised groups follows his call for a social justice approach to healthcare and beyond, whereby structural inequalities are centrally considered. This approach is also noted as an important methodological consideration within Citizens Juries design (Wakeford *et al.* 2008:18).

Gavin conducted twelve Citizens Juries on healthcare across Australia, three in Aboriginal Health Services. He insisted on stratified random sampling to select jurors to address issues of representation or 'inclusivity' (Smith and Wales 2000; Carson and Martin 1999) and, relatedly, so that individuals and groups typically marginalised were given a voice. In various interactions between Gavin and the authors it was clear that his commitment to social justice principles encompassed an understanding that contact with the criminal justice system, particularly among Aboriginal and Torres Strait Islander people, had a complex yet decisive relationship with structural inequalities and the social determinants of health. Further, Gavin most likely saw links between the political economies of health and incarceration and how Citizens Juries represent a potential countervailing power towards reconstituting these political economies. These reasons, along with Gavin's history of commitment to Indigenous health and social justice

arguably explain his involvement in a project that sought to test Citizens Juries methodology for examining the offender population, one where Indigenous Australians are alarmingly overrepresented.

In this context, despite comprising just 3% of the Australian population, Indigenous citizens make up 26% of the adult Australian prisoner population and are 14 times more likely than non-Indigenous Australians to be imprisoned (ABS 2013). Between 2000 and 2010, Indigenous prisoner numbers increased by 85% compared with 35% for non-Indigenous. The overall Australian incarceration rate is 165/100,000 adults: the Indigenous rate is 2,182/100,000. Young Aboriginal people are not spared this over-incarceration. In 2009-10, there was an average of 23 Indigenous young people aged 10–17 years for every 1,000 in the population under juvenile justice supervision on any given day, compared with 1.5/1,000 non-Indigenous young people (Australian Bureau of Statistics, 2010). Prisoner populations are characterised by individuals whose lives are affected by structural inequalities reflected by poor educational attainment, unemployment, social isolation and/or mental illness (Indig *et al.* 2009; Grace *et al.* 2013). This population endures some of the worst health outcomes of any group in the community in terms of chronic disease, excess mortality (Kinner *et al.* 2011; Kinner *et al.* 2012), mental illness (Butler *et al.* 2006), and exposure to communicable diseases (Butler and Papanastasiou 2008).

The Public’s Attitudes to Incarceration and Alternatives to Incarceration

A consistent ‘top of the head’ survey finding on the public’s attitudes to sentencing is that, at face value, members of the public appear very punitive. There appears to be little sympathy for the plight and social circumstances of prisoners or people whose actions or behaviours transgress usual social codes of conduct. When asked broad questions such as ‘Do you think that sentences handed down by the courts are too lenient, about right or too harsh?’, an overwhelming majority responded that sentences are too lenient (Jones and Weatherburn 2011). It is highly unlikely that the public, policy makers or politicians would tolerate forgoing incarceration in the absence of viable alternatives. The prevalence of mental illness including serious mental illness (SMI) among prisoners and offenders is disproportionately high compared with

the general population (Schneider 2010; Greenberg and Neilson 2002) and is often referred to as the ‘criminalisation of the mentally ill’ (Teplin 1985). One potential alternative is diversion of those individuals (*ie.* the mentally ill) away from custody and into health services and treatment, particularly treatment that addresses mental health and substance misuse issues. Some Western countries have adopted Court Diversion/Court Liaison (CD/CL) schemes to link those with SMI to mental health services, allowing the judicial system to continue and finalise outstanding legal matters (Greenberg and Neilson, 2002, Schneider, 2010). In Australia, CD/CL has been adopted in all jurisdictions but uptake varies considerably between states (Richardson and McSherry, 2010). Similarly, availability of opioid substitution therapy for prisoners varies between jurisdictions with NSW arguably having the most extensive methadone maintenance treatment (MMT) program in the world (Dolan and Wodak 1996) whereas other states only offer a continuation to those already receiving MMT on entry to prison. This is despite the known benefits of MMT for crime reduction (Hall 1996). Notwithstanding these treatment alternatives to prison, there has been mixed and fragmented uptake of these options in Australia.

A policy option that is gaining attention in Australia is Justice Reinvestment. Initially introduced in the United States of America (US) in 2003 Justice Reinvestment has subsequently been adopted in eleven US states. Justice Reinvestment assumes that imprisonment should be considered a failure as, in most cases, it makes poor financial sense for state-actors and does not prevent re-offending. Instead, the culture should be shifted away from imprisonment to restoration within the community (Justice Centre - the Council of State Governments 2010). A central tenet of Justice Reinvestment is that the high concentration of offenders usually from a small geographic area should be reflected in a concentration of restorative health, social welfare services, and programs to prevent offending in that same area. However, this is rarely the case in practice. At the political level, Justice Reinvestment requires the political will not to build new prisons, so that a portion of funds projected to be spent on building new prisons is diverted to local communities that have a high concentration of offenders, to be spent on programs and services that address the underlying causes of crime. Service provision areas are likely to include housing, employment, legal, family support, mental health and alcohol and other drug use services (Guthrie *et al.* 2013).

The Offender Health Citizens Jury

In 2012 the authors were funded to conduct Citizens Juries to assess the public's views on incarceration and non-incarceration treatment alternatives. Gavin facilitated the inaugural Offender Health Citizens Jury in Sydney in December 2012, about ten days before his death. He was instrumental in its design, including inviting the research team to consider three methodological domains: jury selection, provision of evidence and deliberation procedures. As mentioned, each has implications for validity of findings.

Selection of jury members

Jury selection was through randomly selecting 300 people from the electronic White Pages telephone directory. Each was posted an 'Expression of Interest' (EOI) letter describing the research and noting a sitting fee of \$AUD300. Gavin's experience indicated that a sitting fee is an important incentive for recruitment and retention and thus a successful outcome. Consistent with Citizens Jury selection practices informed by Gavin's (2009:216) embrace of Anderson's (2003) expressive theory, final selection was to be informed by selecting a mix of people by gender, age, ethnicity, Indigenous status and socio-economic status. Seventeen people responded, representing a 6% response rate. From these, fifteen jurors and two reserves were selected. Jurors attended from about 5pm on Day 1 to about 4pm on Day 2. The purpose of the first evening was to 'break the ice' between jurors, the jurors and the facilitator, to inform jurors about what was involved, to present guiding principles and to reassert to jurors that in their thinking and deliberations they were to represent the community.

In the sample, 67% were male¹, 80% were aged 46 years or older² and 67% had a gross annual income of over \$70,000³. Two in three had at least one parent born overseas.⁴ At 60%, jurors' full-time work status was

¹ NSW male proportion is 51% (ABS 2011).

² NSW proportion in this age group is 39% (ABS 2011).

³ NSW average annual income is \$56,222 (ABS 2011).

⁴ The national and NSW figures are about one in five (ABS 2011).

relatively similar to NSW rates⁵ (see Table One below). No-one in the EOIs received, and consequently no juror, identified as Indigenous – highlighting the challenge given limited resources of fulfilling Gavin’s social justice approach in eliciting communitarian claims.

Table One: Demographics of jurors

Demographics		Number	%
Gender	Female	5	33.3
	Male	10	66.7
Age	18-30 years	1	6.7
	21-45 years	2	13.3
	46-60 years	7	46.7
	61 years +	5	33.3
Employment	Unemployed	1	6.7
	Retired	3	20.0
	Student	1	6.7
	Home work	1	6.7
	Part time work	0	0
Parents place of birth	Full time work	9	60.0
	Australia	5	33.3
	East Asia	2	13.3
	Western Europe	4	26.7
	South Africa	2	13.3
Income level	Middle East	2	13.3
	< \$30,000	2	13.3
	30,001 – 70,000	3	20.0
	70,001 – 100,000	4	26.7
Indigenous status	> 100,000	6	40.0
	Indigenous	0	0
	Non-Indigenous	15	100

⁵ In NSW the number of employed people in full time work is 61% (ABS 2011).

Expert witnesses

An important principle underlying Citizens Juries is that jurors be given sufficient knowledge and perspectives to reach informed conclusions. Selection of ‘expert witnesses’ is therefore paramount and was done by the research team in consideration of key issues identified in the offender health and criminology literature. Gavin briefed the expert witnesses prior to the Citizens Jury, discussing expected format of jury, specific roles and presentation timeframes, using language accessible to jurors and avoiding advocacy (and thus bias). Four expert witnesses presented on:

1. Australian prison population characteristics and trends;
2. Psychiatric morbidity in prisons and court diversion programs for the mentally ill;
3. A locally-based program, Clean Slate Without Prejudice,⁶ aimed at preventing young Indigenous people from (re)entering the criminal justice system;
4. Justice Reinvestment theory and practise in the United States and considerations for its application in the Australian context.

Deliberation procedure

Expert witnesses presented for twenty minutes to jurors and then as a panel fielded questions from jurors. Gavin then worked with the jurors on their deliberations. In guiding jurors towards developing their recommendations, and largely as mechanism for hearing everyone’s voice, Gavin asked each juror for one point that seemed to them the most significant or surprising. This led to discussion and questions surrounding various issues including: the purpose of prison; what is meant by ‘prevention’; retribution versus rehabilitation; principles underlying punishment; reasons for re-offending; the meaning of Justice Reinvestment in an Australian context; who should be compensated for crime/s committed; whose values should drive policy on offenders; issues of fairness and equity; reconciliation between offender and victim; education, social and family environment; and social inclusion. This list

⁶ See <http://www.healthinonet.ecu.edu.au/about/news/597>.

of issues gives a feel for the four hours of deliberations that led to jury recommendations on the topic of ‘the principles of the treatment of offenders’. Within Citizens Jury methodology, principles are the set of values that are determined by the jurors through the deliberation process.

Principles Emerging from Deliberations

These deliberations led to an overarching principle — that the values determining the principles underlying treatment of offenders should be those of a critically informed public, such as through Citizens Juries. Sixteen principles were generated by the jury and were, in turn, further categorised into three broad areas: Punishment/Deterrence, Prevention and Fairness (see Table Two on the next page).

The jurors were asked how the principles they had produced might be enacted. Their conclusion – shaped by what they had learned about the principles of Justice Reinvestment – was that the ‘Clean Slate Without Prejudice’ model might lend itself to being scaled up to a National and/or State approach. Their thinking was that to do this required media attention, thereby putting pressure on governments to extend the model to other areas. Further, they felt that savings through not building new prisons should, in the main, be returned (i.e., reinvested into) the community where the offender resides to boost, for example, mental health and education services. Arguably, these discussions are an example from the jurors of how Justice Reinvestment might be implemented in the event that it was ever adopted as a policy option in the Australian context. In addition they believed that consideration should also be given to the community where the victim of crime resides and towards creating a platform that allows the wider community to become aware of, to scrutinise and ultimately to endorse or sanction criminal justice policies.

Table Two: Principles arising from discussion

Category	Principle
Overarching Principle	The values determining the principles underlying treatment of offenders should be those of a critically informed public, such as through Citizens Juries.
Punishment and Deterrence	<p>Punishment needs to fit not only the crime but the individual according to their social circumstances.</p> <p>Rehabilitation – aimed at offender, with a view to that individual gaining skills (defined broadly and including workforce and social skills) which might help them re-integrate into society.</p> <p>Retribution – with focus on the victim <i>and</i> the victim’s family, for example feeling that justice has been done and seen to be done.</p> <p>Importance of keeping a balance between retribution and rehabilitation.</p> <p>Should remain commensurate with that individual’s crime and they should not be ‘made-an-example-of’ punishment to deter others.</p> <p>Deterrence – where focus is society at large.</p> <p>Deterrence in the form of (a) threat of punishment; (b) knowledge of penalties; and (c) being forced to see the damage done, (<i>i.e.</i> a form of moral pressure).</p>
Prevention	<p>Education and mentoring which involves the principle of developing a person of worth through nurturing their human spirit and giving them a sense of social belonging/inclusion. This might involve a family role or in some situations act as replacement for a missing family role.</p> <p>Education and information regarding penalties (but, in broad terms, thereby recognising the autonomy of judges in passing sentences).</p> <p>Early intervention which might involve peer pressure (with the example of drugs in schools being presented as a possible precedent worth emulating).</p> <p>First acknowledging the crucial importance of the underlying, social and economic environment and then altering that but in ways that are conducive to that particular individual’s needs so that that person can attain a sense of belonging which can take a number of dimensions, such as rediscovering culture.</p>
Fairness	<p>Fairness with respect to fines, which should be higher for economically rich than poor offenders.</p> <p>(Taking fines as an example) the level of punishment should be a</p>

function of the dollar costs multiplied by probability of getting caught.

Fairness with respect to society including recognition that it is society which pays for the punishment.

Vertical Equity: this principle applies to society, to the offender and to the victim. Such fairness involves not just 'payback' to the victim, but also to society (this principle needs to be recognised as being potentially problematical because there is no reason to believe that what is fair by way of the level of compensation will necessarily equal the level of penalty seen as ideal for deterrence purposes).

Evaluation of the Citizens' Jury Process

There is a paucity of literature on evaluating public engagement forums and deliberation research. This is because the very act of engaging with the public is often seen as an indicator of success, 'and evaluation itself becomes a superfluous concept' (Rowe *et al.* 2008:420). In response to this Rowe and Frewer (2000) devised an evaluation framework for public participation methods comprising two primary criteria: (i) acceptance, which concern features of a method that make it acceptable to the wider public and includes issues of representativeness, independence and transparency, and (ii) process, which concern features of the process liable to ensure that it takes place in an effective manner' such as task definition/clarity, information and resource accessibility and structured decision making. Drawing from their framework and Gavin's own evaluation survey, the Offender Health Citizens Jury is discussed in terms of three domains: (i) representativeness/inclusivity, (ii) provision of information/evidence and (ii) deliberation procedures. Gavin's evaluation survey asked jurors to assess their experience of the process including facilitation, whether experts provided an unbiased representation of the issues involved, whether the length of deliberation was adequate, the overall satisfaction level in participating, ways for improving the process, and how successful they thought the event was. Jurors were also asked to provide comments regarding a draft recommendation report sent to them with the survey eleven days after the Citizens Jury.

Representativeness/inclusivity

The social demographic composition of the jury was non-Indigenous and skewed towards men, aged 46 years and older with an annual income over \$70,000. As such, this casts doubt over the claim that the jury represents or is inclusive of the citizenry or Sydney community. Due to a lack of representation of persons of lower socio-economic and Indigenous status, any claim to meet a social justice approach in eliciting communitarian claims would seem tenuous. This issue highlights the effort and resources needed to ensure diversity of jurors. Also, requiring jury members to stay overnight (on day 1) possibly denies people who have family and carer responsibilities from participating.

Provision of information/evidence

Eleven of the thirteen jurors who completed the evaluation survey said that the jury was given adequate information by experts. Experts were selected by the research team and thereby represented a more 'top-down' approach. Evaluation of survey results and comments from within the Jury deliberations saw jury members emphasise that the experts had been 'first class' and unbiased. However, three also expressed some concerns that the overall coverage of the experts could have been improved. For example, one juror stated, 'Whilst the experts presented very factual arguments, I felt that there needed to be more balanced arguments for Justice Reinvestment and Clean Slate without Prejudice, though I am still highly supportive of both'. The jury also recommended that statistics on victims of crime should be included and that the experts include a representative of victims' rights and ex-offender groups. In this sense, the jury also saw value in expertise based on experience.

Deliberation procedures

Compared with Citizens Juries conducted elsewhere the length for this one was short (Carson 2006; Kashefi and Mort 2004; Simon and Blamey 2003). Nonetheless, ten jurors stated they were satisfied with the time given to deliberate. Three wanted more time because they felt the issues involved were many and complex. Regarding other deliberation procedures, 12 jurors indicated they agreed or strongly agreed that the

facilitation process was 'good'. In this regard, Gavin paid particular attention to intergroup processes within the deliberations in terms of allowing all voices to contribute and be heard. However, the skewed social demographic of jurors possibly meant that particular members (*e.g.* older men with higher SES) may have been more confident in giving voice to issues. One female juror expressed that they 'felt a little inadequate among so many highly educated people'. Another thought a jury of fifteen jurors was too large. Social desirability influences were expressed by one juror who thought others might be 'too embarrassed' to express more punitive views such as those often heard on 'talk-back' radio. However, despite this possibility, views and principles generated by jurors were diverse and contentious.

Discussion

Limited funding and timing meant that the Offender Health Citizens Jury had several mitigating factors limiting its rigour when compared with other similar examples of deliberative democracy, such as those described by Carson and others (Carson 2006; Carson 2013; Carson and Martin 1999). However, despite these, we draw on its outcomes as well as the wider literature, to present some insights and recommendations that seek to develop Citizens Juries as a more rigorous research approach by way of mitigating bias and improving deliberative processes.

First, it is important to ensure independence between the funder, the researcher/s and the facilitator (Carson 2003; Huitema *et al.* 2010; Kenyon 2005; Smith and Wales 2000). Such independence between co-inquirers helps ensure that any interests of one co-inquirer do not influence processes in such a way that findings align to those interests. The balance of different interests can play a major role in vital elements of the jury process such as the inclusivity of the jurors, [expert] witness choice and the use made of the jury's recommendations.

Second, independence, relationships and interests between co-inquirers should be scrutinised by an independent reference group, which ideally should contain representatives of 'a broad base of stakeholders' who reflect a diversity of perspectives that underpin the research topic (Wakeford *et al.* 2008:12). Different types of knowledge and expertise should be represented from scientific-derived to experiential-based expertise, the former coming from public and academic sectors while the

later from the civil society or community sector. In this sense, citizens jury processes derive from a combination of ‘top-down’ and ‘bottom-up’ approaches whereby various researchers, experts and community representatives discuss and negotiate key issues and perspectives of topic at hand as well as advise co-inquirers on key methodological decisions attached to acceptance and process criteria reported above, as well as social justice issues attached to marginalised voices. This also avoids the pitfalls of an exclusively top-down or bottom-up approach whereby bias and interests may go unchecked. A reference group also provides an important platform to disseminate research updates and findings to their respective networks and communities.

Finally, the reference group should begin its work early in the research project in order for such diversity of stakeholders to form a working consensus towards shaping the research design and processes.

The Offender Health Citizens Jury highlighted the issues of resources and time. Citizens Juries can be costly due to the jury related expenditures of sitting fees, catering and accommodation (if provided), as well as expert-witness related travel costs. Virtual technologies may assist in curtailing some of these costs. Also, while more time may be preferred regarding expert presentations and jury deliberations, the social realities of jury members as well as funding limitations may prevent this. As Gooberman-Hill *et al.* (2008: 279) state: ‘Striking a balance between appropriate duration of commitment [of jury] and having enough time to produce recommendations can be a challenge. It is important to consider these issues at the early stages of the project and for funding applications.

An extension of the project is to examine whether policy makers’ judgments regarding alternatives like Justice Reinvestment are influenced by the opinions and views from the citizenry as obtained through Citizens Juries. An objective of the subsequent Citizens Jury research that will follow this study is research translation in terms of findings informing in some way(s) policymaking discourse. Given this, it is important to ask: what kind of research outcomes can best assist policy development within the context of the current political economy? Is it outcomes that reflect ‘top of the head’ responses based on a likely self-interest point of view that risks reproducing stereotypes, or outcomes derived from considered, deliberative discussion and debate whereby participants are instructed to think on behalf of a collective, community or citizenry?

Citizens Juries are ‘particularly well-suited to situations where the challenge is to identify an informed, considered, and collective view’ on complex and/or potentially controversial topics (Burchardt 2013:15). This is particularly so with regard to topics embedded in conventional thinking and dominant paradigms that, given the opportunity for considered scrutiny, may bring attention to issues of inequalities, class and power (Mooney 2009:217). It was these ideas of equity, social justice and collectivity, considered input in relation to policy discourse on healthcare and the treatment of offenders, that were important to Gavin. Indeed, Gavin’s use of Citizens Juries to explore healthcare and the treatment of offenders represents ground breaking work within the Australian context.

Notwithstanding the limitations of the current project, the diversity of principles and qualified recommendations indicates that community members were able to consider and present a complex array of social issues and meaningful advice regarding the treatment of offenders, suggestive of a counter-position to the current political economy of incarceration.

One poignant irony of this collaboration with Gavin is that his sojourn into the area of criminal justice through the Offender Health Citizens Jury coincided with him and his partner Del Watson tragically being taken by a violent crime. One cannot help but wonder what Gavin’s view would have been on the treatment of the perpetrator. Having worked with and had the privilege of getting to know Gavin, we feel that it would have been compassionate and non-punitive.

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