

Moving On: Penal Reform in New Zealand

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Joint Winner of the Law Review Prize for 1995

I: INTRODUCTION

New Zealand's reliance on the prison system as a last ditch remedy against criminal behaviour is ineffective, out of date, and a waste of human and economic resources. Jails cost more than \$580 million to run in 1993,¹ but this significant diversion of resources does not include the lost production of offenders, and the social costs to their families and to victims associated with crime.

This article presents a theory of an "Inverted Pyramid of Opportunity" ("IPO"). The mobility necessary to move up the IPO is a function of education, health, and autonomy. The higher up one is on the model, the more that opportunity can be recognised and exploited. As one rises, one can recoup more dividend² from one's interaction in society. It is suggested that crime is a response by people who are frustrated with their lack of opportunity in this scheme.

This model focuses on traditional crime, committed by the underprivileged, under-educated person overwhelmingly represented in New Zealand's prison population.³ Aspects of IPO, although not directly accounting for white collar crime, could go some way towards explaining this class of offending.

1 Department of Justice, *Report of the Department of Justice For the Year Ended 1993*.

2 The "dividend" is that reward gained from interaction and participation in society. Tangibly it involves accumulation of material goods, while intangibly it involves Plato's "good life" or Maslow's self-actualisation: see *infra* at note 6.

3 Braybrook and O'Neill, *A Census of Prison Inmates* (1988) 119 and 151.

Essentially, IPO is focused towards finding a remedy. It presents as futile, in every sense, a strategy which continues to punish people, yet leaves criminogenic factors intact. This shift away from punishment for its own sake is consistent with trends seeking alternative responses to crime. The failure of traditional prison systems in halting recidivism is well documented.⁴

There are four parts to this article. First, in Part II the model of IPO is presented. Part III examines the impact of traditional responses to crime: the characteristics of the prison population; what happens to inmates in prison; and reoffending upon release. Against this background, Part IV focuses on present trends toward alternative approaches to crime, and general characteristics found in successful programmes. Finally, Part V outlines “Moving On” – an exploratory model for penal reform. This suggests an alternative response to crime, that builds on the Te Ara Hou proposals,⁵ but displaces its residual prison element.

II: IPO PRESENTED

IPO is the theoretical foundation underpinning the efficacy of rehabilitation of offenders. IPO assumes people are not born “bad”. It accepts that individuals who realise their potential contribute more to society, both tangibly and intangibly. Just as crime has direct and indirect *costs*, lack of crime has similar *gains*. Society gains from people becoming more productive as they approach their potential.

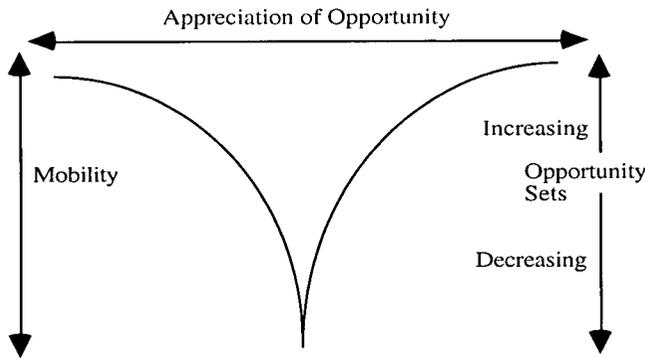
Although arguably idealistic, this approach does not require all people to become self-actualised⁶ before crime will stop. Instead there is some threshold, at which the inclination to offend is outweighed by the prospect of more rewarding activity. The theory argues that detrimental circumstances can fetter a person’s potential.

Individually, a person faces constrained sets of opportunity at the base of the IPO. Movement up the IPO progressively eases these constraints. Thus the IPO represents each individual’s opportunity sets at any given level. Figure 1 opposite depicts the idea:

4 A study of recidivism in New Zealand in 1986 found sixty-five percent of male study subjects were reconvicted within twelve months of release from prison: Department of Justice Policy and Research Division, *Reoffending and Parole: A Study of Recidivism Before and After the Criminal Justice Act 1985* (1988) 19.

5 See *infra* at note 142 and accompanying text.

6 Abraham Maslow of the humanist movement in psychology describes self-actualisation as the desire to realise one’s potentialities, fulfil oneself, become what one can become: Gleitman, *Introduction to Psychology* (3rd ed 1991) 734. An alternative is to view people seeking something similar to Plato’s “good life”.



The vertical “mobility” axis is a function of education, health, and autonomy.⁷ As mobility is enhanced, the greater an individual’s appreciation of opportunity becomes. The horizontal “appreciation of opportunity” axis widens as one progresses higher up the mobility axis, leading to a greater panorama of opportunity.

In a world where initial non-natural endowments⁸ depend on the environment one is born into, any barrier to mobility not attributable to natural endowment limitations, constitutes scope for society’s investment. Offenders are generally underprivileged and under-educated.⁹ Investment to enable them to enhance their mobility helps tip the balance of incentives away from crime to a pro-social lifestyle.

IPO maintains that lost development of individuals is retrievable. The application of IPO involves alleviating opportunity constraints. Practically, this means removal of a criminogenic deficiency, *and* cultivation of the ability to operate pro-socially, for example by providing vocational training. Alleviating opportunity constraints which help propagate criminogenic tendencies, erodes criminogenic drives. Part III shows how those offenders who are incarcerated are overwhelmingly subject to constrained opportunity sets. Intervention programmes, outlined in Part IV of this article, seek to undermine criminogenic tendencies, and to replace

7 Education is used in its widest sense and seeks to instil a recognition of opportunities that exist, and equip each person with the tools they require to realise opportunity so far as their ability allows. Health is a necessary prerequisite as remediable physical and mental defects “drag” unnecessarily against the person’s upward mobility. Autonomy is an empowering good in itself. The writer suggests these components go to the overall mobility of a person but the list is not intended to be comprehensive.

8 The term “non-natural endowments” is used to denote proprietary wealth and money (external appendages), whereas natural endowments are those talents, skills, abilities one is born with and develops over one’s life.

9 See text, *infra* at Part IV.

them with pro-social drives. Enhancing offenders' mobility in the IPO enables them to perceive greater appreciation of opportunity.¹⁰

III: WHO COMMITS CRIME

1. A Statistical Portrait of New Zealand Inmates

Most of New Zealand's prison inmates are disadvantaged, both educationally and economically. The most recent information¹¹ shows that fewer than forty percent of all inmates surveyed stayed in school long enough to reach Form Five or higher. Only about a tenth of these inmates obtained School Certificate passes. Less than one percent of women and two percent of men went on to get University Entrance.¹² This means almost ninety percent of inmates left school without *any* formal qualification.

Inmates were similarly economically disadvantaged. Less than ten percent of inmates reported owning their own house, the rest living mainly in rental accommodation, private boarding, or with their parents.¹³ For about thirty-seven percent of women, the main income source was the domestic purposes benefit, followed by the dole (around twenty-eight percent), wages (eleven and a half percent), and sickness benefits (ten percent). Forty-four percent of men relied on the dole, with thirty percent drawing wages.¹⁴

Almost two-thirds of men said they were unemployed when their sentences began, and almost half of these had been unemployed for more than a year. For women, the situation was worse: eighty-six percent reported being unemployed when beginning their sentence and more than two-thirds of these had been unemployed for more than a year.¹⁵

About two-thirds of all inmates had no assets at all. Those who did owned mainly cars, household, and personal effects.¹⁶ In a later census,¹⁷ sixty-five percent of female and forty-five percent of male inmates reported having children living with them before being imprisoned. Further, virtually all of the women and more than three quarters of the men indicated they cared for, or were financially

10 Because the present focus is on criminals, it is in this context that the discussion proceeds. However, one should not deduce from this approach any inference that people lacking opportunity, but who do not commit crime, are without need and as such do not warrant investment.

11 *Supra* at note 3.

12 *Ibid*, 151.

13 *Ibid*, 119.

14 *Ibid*, 121.

15 *Ibid*, 122-23.

16 *Ibid*, 123.

17 Department of Justice, *Census of Prison Inmates* (1991).

responsible for, all or some of these children.¹⁸

Most people in prison are younger than forty years: two-fifths are under the age of twenty-five. For both sexes, approximately forty percent are European, forty-three percent are Maori, nine percent are Pacific Islanders, with the remainder being of mixed race or "other".¹⁹

Once convicted, almost half of all inmates faced jail terms of less than two years, and about forty percent faced terms between two and seven years.²⁰ About forty percent of women, and sixty percent of men, had already served a prison term; of these, two-thirds of the women and four-fifths of the men had at least six previous convictions, with the first recorded before most of them reached eighteen years.²¹

2. The Effects of Prison

To be quite blunt, the only purpose served by a sentence of imprisonment, and the ruin which follows it, is to satisfy a desire on the part of the New Zealand community to punish, to inflict retribution and ... in the eyes of many victims, to exact revenge. It is ... a primitive and unattractive justification for such sentences.²²

The difference between the theory and practice of prison is extreme. The Justice Department aims to provide a just, humane correctional system that incorporates elements of deterrence, punishment, treatment, education, and rehabilitation.²³ In reality, inmates live in an atmosphere of continual hostility and confrontation, where a climate of fear may predominate.²⁴ The powerful socialising impact of prison perpetuates and intensifies underlying pathology, rather than curing or aiding rehabilitation.²⁵ Exposure of inmates to the brutality of prisons, dominated by the worst elements, teaches crime and traps inmates into offending as a way of life.²⁶ Although New Zealand research relies to some extent on

18 Ibid, 81.

19 Ibid, 14.

20 Ibid, 42.

21 Ibid, 15-16.

22 Comments by McGechan J in relation to expectations of sentencing when dealing with a thirty-three year old Napier man who had raped his adopted sister in 1977. There was no violence, resistance, or degradation involved in the rapes that occurred when he was seventeen and the girl was nine. The man had since had an exemplary record and felt genuine remorse. The Judge said it was fantasy to say a personal deterrent was necessary for a man who had not reoffended in seventeen years in any way whatsoever: *New Zealand Herald*, 21 May 1994, section 1, 1.

23 Department of Justice, *Management Plan 1993/94*, 59.

24 Department of Justice, *Prisons in Change: The Submission of the Department of Justice to the Ministerial Committee of Inquiry into the Prisons System* (1988): Appendix B: The harmful effects of prison on inmates, 25.

25 Scull, "Community Corrections: Panacea, Progress or Pretence?" in Garland and Young (eds), *The Power to Punish: Contemporary Penalty and Social Analysis* (1983) 151.

26 Ibid, 152.

overseas experience, indigenous reports coincide with worst-case scenarios. Newbold, an ex-inmate, describes chronic boredom as the most pervasive element of long sentences.²⁷ He states:²⁸

[P]rison was like a satellite, a million miles from Earth. And like the inside of a satellite only we, the spacemen, could ever really understand what went on within it.

The Justice Department recognises these effects. It acknowledges there is little similarity between social systems existing in institutions, and the “real world”. New prisoners are programmed for the operation of the institution. Individuals are de-personalised, and the dislocation from marriage and family, together with reinforcement of deviance, undermines personal responsibility.²⁹ A Justice Department report on the harmful effect of prisons confirms the idea that institutional culture cultivates criminalisation, psychiatric harm, self-mutilation, suicide, victimisation and violence, and erodes self-determination.³⁰

(a) *Criminalisation*

Newbold said of the inmate, “[t]he longer he is inside, the more criminalised [h]e becomes.”³¹ The Department notes that the unofficial inmate code requires that one oppose authority, even to the extent of assaulting prison officers. Violations of the code may lead to assault or intimidation between inmates.³² It is important for new arrivals to accept the code, and progress up the inmate hierarchy, or they risk remaining victims.³³

(b) *Psychiatric harm*

Some inmates are already psychiatrically distressed before they are imprisoned. Others, however, start their sentences mentally stable, but deteriorate because of prison conditions, and break down as a result. Removal from the prison environment tends to lead to immediate improvement.³⁴

27 Newbold, *The Big Huey* (1982) 8.

28 *Ibid*, 97.

29 *Supra* at note 24, at 26.

30 *Ibid*, 25-36.

31 *Supra* at note 27, at 7 and 74.

32 *Supra* at note 24, at 36.

33 *Ibid*, 32.

34 *Ibid*, 30.

(c) Self-mutilation and suicide

The Department recognises the high rate of prison suicide given that the majority of inmates have deprived backgrounds, histories of emotional disturbance, and drug and alcohol abuse.³⁵ Aggravating factors include the loss of autonomy and lack of privacy in prison.³⁶ Canadian studies show prison suicide is eight times more prevalent than in the non-inmate population. Between January 1980 and March 1988, there were sixteen deaths recorded as suicide in New Zealand prisons.³⁷ The Department views self-mutilation as often constituting attention-seeking behaviour, but recognises that genuine suicide attempts are particularly harrowing for inmates and staff.³⁸

(d) Victimisation and violence

North American research has found that victimisation occurs as part of the establishment of an inmate hierarchy.³⁹ There is widespread fear of rape, which causes inmates to take measures to defend themselves. Some extreme cases involve inmates mutilating themselves to avoid sexual victimisation. Meanwhile, physical assault can degenerate into a constant cycle of tit-for-tat paybacks. Inmates also use verbal aggression to intimidate and dominate others.⁴⁰ It seems most victimisation occurs to inmates imprisoned for relatively minor crimes or for their first offence. The Department reports that the threat of violence is more pervasive than actual attack, although fear is an important component behind self-mutilation and breakdowns in prison.⁴¹ The problem of violence is compounded by a large number of inmates confined in close proximity with individuals they may not have otherwise associated with. This occurs in an environment which is noisy, crowded, and lacks privacy.⁴²

(e) Erosion of self-determination

Evidence suggests imprisonment can lower self-esteem and stunt personal development.⁴³ Prisons operate according to a strict routine which involves a limited, monotonous lifestyle, offering little scope for choice, and which deprives

³⁵ Ibid, 33.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid, 34.

⁴⁰ Ibid, 34-35.

⁴¹ Ibid, 36.

⁴² Ibid, 35-36.

⁴³ Ibid, 25.

inmates of their ability to make decisions. Living indoors means prisoners lose touch with daily and seasonal change. In such conditions, inmates adapt to life in confinement, and are ill-prepared for life on the "outside", where self-determination is necessary.⁴⁴

3. The Extent of Recidivism

Imprisonment does not contribute to crime reduction. It directs resources away from more productive and effective responses, and any deterrent effect is limited to brief spells "inside".⁴⁵ It is unrealistic to expect the present correction system to have a significant effect on the overall crime level. The system aims to provide surveillance, care, control, and secure confinement, sufficient to maintain the integrity of sentences handed down in court.⁴⁶ The Department suggests the most appropriate and realistic role it can play in dealing with high risk offenders is to monitor and manage, rather than provide rehabilitation and re-integrative opportunity.⁴⁷

A local study⁴⁸ sought to find what effect, if any, early parole had on recidivism. The study used a group of 656 releasees in 1985 and 500 in 1986, who made up a cross-section of New Zealand's prison population.⁴⁹ Results found almost two-thirds of the subjects reoffended at least once within a year of being released.⁵⁰ The average number of convictions for the 1985 release group in the follow-up year was nearly four, with one person receiving seventy-five convictions in the year, and another, sixty. In both the 1985 and 1986 release groups, one-fifth of released prisoners received at least three convictions within a year.⁵¹ This indication of a hard-core group of offenders is borne out by the fact that a tenth of each group accounted for fifty-one percent and forty-five percent respectively of proven offences. Research also found post release offences were as serious as the offences that originally led to imprisonment.⁵²

This return to crime led almost a third of the 1986 group, and twenty-nine percent of the earlier group, back to jail for average terms of between nine and eleven months, terms similar to those served for original offences.⁵³

The reality of New Zealand's penal system is vastly different from the goal of setting up a community which prepares the inmate for release, and serves as a

44 *Ibid.*, 29-30.

45 Department of Justice, *Briefing Papers for the Minister of Justice* (1993) 35.

46 *Ibid.*

47 *Ibid.*

48 *Supra* at note 4.

49 *Ibid.*, 11.

50 *Ibid.*, 19.

51 *Ibid.*, at 19-20.

52 *Ibid.*, 22.

53 *Ibid.*, 24.

testing ground for society.⁵⁴ New Zealand's prison population has grown by ten percent each year since 1986. At times every prison bed in the country is full, and the overflow is accommodated in police cells. This is despite a building programme that has cost \$200 million over the last five years.⁵⁵

According to present trends, the Justice Department is preparing on the basis of a rise in the muster to 6,780 by June 2002.⁵⁶ The cost of keeping an inmate imprisoned averages \$35,000 a year, while each new cell costs between \$85,000 and \$160,000.⁵⁷

There is no reliable measure of the total cost of crime because of insufficient information and reporting.⁵⁸ In addition to the \$500 million direct cost of corrections, one must add police budgets, a proportion of the social welfare vote paid to victims and families of imprisoned criminals, plus insurance costs associated with crime. Emotional costs of crime are difficult to quantify, but apart from victims' loss of utility, there may also be a similar disutility for families of the offender.

The financial cost is exacerbated by the recent trend of imposition of community sentences in lieu of fines. The number of people getting a fine as their most serious penalty for non-traffic offences has dropped in the last decade fifty percent to 20,000, while community-based sentences have doubled.⁵⁹ For the year ended 30 June 1993, courts made 51,865 community-based orders – partly it seems, because offenders lacked money to pay fines.⁶⁰ Altogether, the Justice Department collects less money from fines than it pays out to fund community based and custodial sentences.

4. The Present Prison Situation: Cost, Crisis, and Choices

Research shows that although a punitive hegemony is assumed, there is little support for it when it conflicts with more constructive approaches. Public attitudes to sentencing are important, given that crime is politically visible. Political arguments about appropriate responses to crime usually come buttressed by appeals to public support.⁶¹

An Australian survey found general support for violent offenders being jailed, but non-custodial sentences, especially fines, were favoured for property offend-

54 *Supra* at note 25, at 150.

55 Webster, "Counting the costs of crime", (1993) 5 *Crim Just Q*, 8. At the time, Webster was the CEO of the Department of Justice Community Correction Division. The article is based on a Master of Public Policy thesis at Victoria University.

56 *Supra* at note 1.

57 *Ibid*, 29.

58 *Supra* at note 55.

59 *Ibid*.

60 *Supra* at note 45, at 28.

61 Walker, Collins and Wilson, "How the public sees sentencing: an Australian survey" in *Public Attitudes to Sentencing: Surveys in Five Countries* (1988) 1.

ers.⁶² Of those surveyed, the less educated males in lower income groups were more punitive. The higher the income, the less likely imprisonment is advocated. Within the groups, the survey found a sophistication in public attitudes often unrecognised by thunderous editorials in tabloid newspapers.⁶³

A Dutch survey found that half of the respondents in favour of repressive measures equally favoured preventative approaches.⁶⁴ Repressive measures included incarceration, heavier punishment, and work camps, while preventative measures involved reform, social assistance, and job-training for ex-convicts.⁶⁵ Respondents in favour of repressive policies were *less* likely to support more spending on crime control.⁶⁶ Victims of crime were likely to support extra spending and oppose repressive measures.⁶⁷

In Canada, a survey found that although most people wanted stiffer sentences, their opinions were in the context of a distorted view of crime that only slightly resembled the true picture.⁶⁸ The survey authors suggested that reforms needed to be sensitive to the underlying views of the public, rather than following the superficial view suggested by simplistic opinion polls.⁶⁹

The Canadian Sentencing Commission reported that more than half of the sentencing stories which appeared in newspapers dealt with violent offences, and half of these involved homicide.⁷⁰ This was not representative of the total crime picture.⁷¹ In more than two-thirds of the newspaper stories, the court sentence was reported without explanation. Later, people were randomly given newspaper reports or documents the court had considered when sentence was handed down. One case, involving assault causing bodily harm, had been prominently reported in a newspaper and was the subject of an editorial the following day, which criticised the leniency of the sentence. Of those with access to court documents, more than half thought the sentence was too harsh, twenty-nine percent thought it was about right and nineteen percent thought it was too lenient. The response from those people with newspaper reports was dramatically different, just thirteen percent considering the sentence to be too harsh. Less than a quarter thought it was about right, and sixty-three percent thought it was too lenient.⁷² Survey authors concluded that politicians advocating harsher penalties for crime relied on a superfi-

62 Ibid, 150.

63 Ibid, 154-159.

64 Van Dijk and Steinmetz, "Pragmatism, Ideology and Crime Control: Three Dutch surveys" in *Public Attitudes to Sentencing*, supra at note 61, at 74-75.

65 Ibid, 74.

66 Ibid, 78.

67 Ibid, 81.

68 Doob and Roberts, "Public punitiveness and some knowledge of the facts: some Canadian surveys. All findings were from nationwide polls involving at least 2,000 people" in *Public Attitudes to Sentencing*, *ibid*, 111-113.

69 Ibid, 113.

70 Ibid, 126.

71 Ibid.

72 Ibid, 128-130.

cial interpretation of public opinion.⁷³

The Justice Department is to review the present maximum penalty structure to establish whether some prison sanctions should be abolished or reduced. Officials will focus particularly on minor property offences, driving while disqualified, and minor drug and assault offences. These offences accounted for about 370 inmates in the last prison census, which is enough to fill an average-sized prison.⁷⁴ Although the Department recognises imprisonment as a “necessary sanction” to protect public safety or to express denunciation of certain crimes, it notes that the social and financial costs of jail may outweigh the benefits of a sentence.⁷⁵

Such reconsideration involves re-examining the goals of sentencing. Society may decide it wants to emphasise retribution in a brutal penal environment, and decide that the economic and emotional costs are well worth the revenge.

Sentencing principles guide judges when they hand down society’s response to crime. The principle aim is to reduce the level of offending, while retaining the respect and trust of the community, upon which the authority of the court depends.⁷⁶ Fundamental concepts of justice and mercy require limiting punishment to the minimum necessary to protect the community from crime.⁷⁷

Retribution demands that the severity of the sentence is appropriate to the gravity of the offence. Deterrence conceptually deters the individual offender and others minded to offend, and incapacitation physically prevents offending as long as such a sentence persists. While retribution focuses on the actual crime committed, incapacitation focuses on offences an offender may commit in the future.

Reparation seeks to redress matters between the offender and victim. Where possible, the offender is required to return the victim to a position similar to that occupied before the offence occurred. This helps to alter an offender’s depersonalised view of that victim. It also provides a chance for reconciliation between the offender, victim and community.

Rehabilitation aims to protect society by changing attitudes, values, personality, coping skills, and life-style of an offender that are conducive to crime.

The goals of sentencing reveal conflicting approaches to criminals.⁷⁸ Retribution ignores the reality that once inmates pay their debt they leave prison maladjusted by the experience.

Evidence suggests imprisonment does not stop reoffending. Sentencing principles also conflict, making it necessary to impose incarceration to the detriment of a long term solution. Perhaps in recognition of this failure of the present system, alternative sentencing options are being mooted. The conclusion that nothing can stop recidivism is generally seen to be premature.⁷⁹

73 Ibid, 131-132.

74 Ibid, 32.

75 Ibid.

76 Hall, *Hall’s Sentencing* (1994) B/61.

77 *Well v O’Sullivan* [1952] SASR 65, 66 per Napier CJ.

78 Sentencing goals extracted from Hall, *supra* at note 76, at B/61-80.

79 Appendix A: The effectiveness of programmes in penal institutions: A review of research, *supra* at note 24, at 19.

IV: CURRENT ALTERNATIVE APPROACHES

1. Characteristics found in Successful Programmes

A medical model that treats offending as if it were an illness is less likely to reduce recidivism than a social learning approach.⁸⁰ Punitive, deterrent driven programmes also show little effect on recidivism.⁸¹

However, sixteen principles *are* found in successful intervention programmes:⁸²

1. Successful programmes use social learning models to instil new attitudes and behaviours, which replace learned criminal behaviour and attitudes.
2. Authority structures use clear rules and sanctions. A firm but fair approach is taken, rather than one based on domination and abuse.
3. Staff model and reward pro-social alternatives.
4. Programmes enhance coping skills by practising solving personal and social problems.
5. Positive links exist between the institution and the community.
6. Open, trusting, empathetic relationships are encouraged between staff and offenders.
7. High levels of advocacy exist on behalf of offenders, as well as comprehensive referral of offenders to specific interventions and services.
8. Staff are flexible and enthusiastic.
9. Ex-addict and ex-offender staff form positive role models.
10. Offenders participate in planning intervention, rather than having it imposed on them.
11. Focus is on strengthening positive behaviour rather than decreasing pro-criminal tendencies.
12. Staff control offender peer groups to reduce opportunity for offenders to reinforce each other's criminal behaviour and attitudes.
13. Adequate resources back up properly skilled intervention programme designers, and involvement hours are not limited by management considerations.
14. Intervention types are used in combination; eg, following up group counselling with vocational training.
15. Offenders learn to recognise high risk situations likely to lead them back into reoffending and get gradual exposure to such risks.

80 McLaren, *Reducing Offending: what works now?* (1992) 10-11.

81 *Ibid.*, 10.

82 *Ibid.*, 10-13.

16. Staff only use components of intervention which are suitable for individual offenders in each case.

Research has also found that high risk offenders respond best to more intensive intervention and supervision, while low risk offenders relate best to moderately intense programmes. Further, recidivism fell when those factors that agitated towards crime, such as addiction, were dealt with, and interventions matched an offender's ability and learning style.⁸³ As pro-social behaviour became more rewarding, this meant that there was more to lose by antisocial behaviour.⁸⁴ Education, substance abuse treatment, work furloughs, and pre-release plans that test an individual's ability to adapt to increasing increments in freedom, also tended to reduce recidivism.⁸⁵

The results of a 1988 study supports the efficacy of a cognitive behaviour approach. Nine months after release, there was a reconviction rate of seventy percent for a regular probation group; forty-eight percent for a group of life skills trainees; and eighteen percent for cognitive learners. Reincarceration rates stood at thirty percent, eleven percent and zero percent respectively.⁸⁶

Intensive supervision and parole uses community service, employment, curfews, drug and alcohol testing, and frequent face to face contact with supervisors. Used with offenders convicted of relatively serious crimes, one study showed a ninety-two percent successful parole completion rate. This success rate was higher than that of low risk regular probationers.⁸⁷

2. Alternative Approaches Now Used to Some Extent in New Zealand

(a) Release on condition

The Criminal Justice Amendment Act 1993 provides that all offenders, other than those imprisoned for violent offences or life terms, serving sentences longer than twelve months, are eligible for parole after serving a third of their sentences. Parole and District Prisons Boards are able to set conditions of release which can last until the end of the particular sentence. Offenders who breach these conditions can be recalled to prison. The Amendment Act also gave courts extra flexibility in dealing with sentencing matters, by allowing them to impose community-based sentences cumulatively with jail terms.⁸⁸ The Amendment Act also allows courts

⁸³ Ibid, 13-14.

⁸⁴ Ibid.

⁸⁵ Ibid, 58-69.

⁸⁶ Study by Ross, Fabiano and Ewles cited by in "Reasoning and Rehabilitation" (1988) International Journal of Offender Therapy & Comparative Criminology, 32, 46.

⁸⁷ Ibid, 66-67.

⁸⁸ Supra at note 45, at 17.

to sentence offenders to rehabilitation centres set up by the Justice Department.⁸⁹ The 1985 Amendment Act previously allowed parole, with six months supervision, once offenders had served half their sentences. The Department ran a study of the effects of this on recidivism, and tentative results showed that early release on parole was associated with lower recidivism rates than inmates released, but not subject to supervision.⁹⁰

(b) Emphasis on low-cost sentences

This approach⁹¹ involves increasing the use of fines, rather than community based programmes. First, since people have differing wealth and income levels, penalties apply on the basis of the offender's daily income, ensuring the *effect* of fines is similar between offenders.

Second, new community based programmes will provide the judiciary with viable alternatives to prison. A challenge to the Department is to devise programmes suitable for offenders who might otherwise go to prison or corrective training. One possible scheme is home detention, which not only can incapacitate like prison, but can substitute for custodial remand purposes. Intensive supervision can involve participation in programmes, such as those targeting drug or alcohol abuse, anger management, skills training, and community service. Follow-up supervision can successively decrease the rigour of curfews and conditions, allowing offenders gradual, community based progression to full autonomy. Rigorous study would evaluate programme effectiveness in enabling social adjustment, employment, and stability, as well as subsequent reoffending.

Third, those offenders still sentenced arrive into a prison system which has a clear focus on inmates acquiring skills that will help them earn a lawful income on release. To these ends, the development of a "unit management" system, where custodial staff work more closely with inmates in small groups, and a "case management" programme are envisaged.

(c) Case management

Central to the Department's submission to the Ministerial Committee of Inquiry into the Prisons System 1989,⁹² the findings of which were published in "Te Ara Hou: the New Way", was the concept of case management. Case management aims for prisons to assist offender reintegration into society by way of a wide range of programmes and services.⁹³

89 Ibid. See text, *infra* at Part IV, 3 for discussion on habilitation centres.

90 *Supra* at note 4, at 40-45.

91 Suggested by Webster, *supra* at note 55, at 9-11.

92 *Supra* at note 24, at 199.

93 Executive Summary, *ibid.*, 6.

Successful reintegration of the offender is considered the best protection for society. Case management uses programmes and services designed for each offender from the time of arrival until completion of the sentence. It aims to coordinate resources, both inside and outside institutions, with an emphasis upon developing cognitive and social skills.

On arrival at the prison, the needs of each inmate are identified, and a specialist committee equipped to help the inmate rectify relevant problems is assigned.⁹⁴ As most inmates lack the skills necessary for effective functioning in society, the Department proposed a common core of programmes targeting such deficiencies.⁹⁵ Fully operational, case management would involve inmates spending a large part of each day involved in these programmes. As work may be the best integrative tool for many inmates, more opportunities for such activity are necessary. Although a 1988 survey found seventy-one percent of inmates were employed, only forty percent of these were in "clearly productive" work.⁹⁶

The Department recognised limitations on the likelihood of "curing" psychiatrically or emotionally disturbed inmates while in prison, but aimed to ensure that the prison experience did not aggravate the problem. Meanwhile, social workers could help inmates adjust to their loss of liberty, and to the disruption of whanau, family, and community relationships.⁹⁷ The well-established links between drug and alcohol abuse and crime necessitated a nationally coordinated response to this issue, instead of the piecemeal approach currently prevailing.⁹⁸

The focus of case management is to recognise that inmates predominantly come from economically and socially disadvantaged sectors of society. Many inmates have little education, histories of unemployment, and personal problems such as substance abuse.⁹⁹ Nevertheless, case management recognises that as offenders differ in important ways, such as gender, ethnicity, and offending history, treatments will need to be adapted to the needs of individual inmates.¹⁰⁰

Unfortunately the programmes will be run within a prison environment that breeds a hostile, non-supportive, exploitative relationship between inmates and staff.¹⁰¹ The Department admits that prisons are presently "less than ideal settings for rehabilitative efforts", and necessary change should not be dismissed from consideration.¹⁰²

A programme already trialed involved a University of Victoria social learning course, offered to inmates not as treatment, but towards an undergraduate humanities degree. Follow-up research found inmates who completed at least two terms

94 Ibid, 21.

95 Ibid, 22.

96 Ibid.

97 Ibid, 24-25.

98 Ibid, 26.

99 *Supra* at note 80, at 10.

100 Ibid.

101 Ibid, 12. Comments quoted in the submission Appendix originate in Thomas, "The Correctional Institution as an Enemy of Corrections" (1973) Vol 37(1) Fed Probation 8-13.

102 Ibid.

of instruction had a fourteen percent recidivism rate compared to a fifty-two percent rate for a matched group.¹⁰³

(d) Correctional training

Correctional training does not appear to deter recidivism. On its introduction in 1981, the Minister of Justice said correctional training was to “reduce offending by the experience of a punitive but fair sentence.”¹⁰⁴ Trainees were typically aged from sixteen to eighteen years old, had one or more previous minor convictions, and had usually already come to the attention of the Department of Social Welfare.¹⁰⁵ The trainees generally came from unstable home backgrounds, and typically had no formal qualifications.¹⁰⁶

The study found seventy-one percent of trainees were reconvicted. Of those reconvicted, fifty-nine percent reoffended within three months of release from the programme, another twenty-seven percent within six months and the rest within a year.¹⁰⁷ The study concluded that correctional training programmes had no long lasting beneficial effect on the employment, health, recreation, or domestic situations of trainees.¹⁰⁸

(e) Community service

The Criminal Justice Amendment Act 1980 introduced community service sentences.¹⁰⁹ This allowed the courts to impose between eight and 200 hours of community service on any person convicted of an offence punishable by jail.¹¹⁰ A survey of sixty-eight participants found that seventy-one percent felt they had benefited from the experience.¹¹¹ Another study compared 419 people on community service orders averaging ninety-two hours, with people sentenced to periodic detention for an average of five months. Results showed that the rate of recidivism by community service participants (thirty-eight percent) was close to Justice Department targets, and compared favourably with the recidivism rate in the periodic detention group.¹¹² However, the study cautioned that people likely

¹⁰³ Ibid, 15.

¹⁰⁴ Walker and Brown, Department of Justice, *Corrective Training: An Evaluation* (1982) 1.

¹⁰⁵ Ibid, 26-27.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid, 33.

¹⁰⁸ Ibid, 43.

¹⁰⁹ Department of Justice, *Community Service Orders in New Zealand: Three Research Reports* (1984) 4.

¹¹⁰ Ibid.

¹¹¹ Ibid, 152.

¹¹² Ibid, 170.

to find themselves subject to a community service order already had a history that indicated less risk of reoffending than those sentenced to periodic detention.¹¹³

(f) Reparation

Reparation aims, where possible, to compensate a victim for loss or harm. The Criminal Justice Act 1985 includes a presumption of reparation, which recognises that the victim has an interest in proceedings, and makes the offender accountable for their actions. An apparent hurdle to its use is that many offenders do not have the resources to be able to meet the levy within a reasonable time frame.¹¹⁴

(g) Therapeutic jurisprudence

Therapeutic jurisprudence (“TJ”) aims to enhance existing criminal law, rather than replace it altogether. It has, as its base, the behavioural sciences, and treats law as a therapeutic agent, where this is consistent with traditional legal concerns.¹¹⁵ Although TJ emerged from mental health fields, it may effectively apply in relation to sex offenders and the plea process, and conditional release and the psychology of compliance.¹¹⁶ It aims to have offenders accept responsibility for their actions.

Sex offenders exhibit minimalisations, called “cognitive distortions”, that deny the impact of their offence. Therapists role play with offenders, to enable a rethink of such cognitions. The present adversarial legal system fosters denial, and in this context, offenders may more readily refuse treatment to promote non-deviant sexual arousal.¹¹⁷

Conditional release programmes might also benefit from a TJ approach, where the inmate enters into a behavioural contract outlining conditions of release. This contract should be developed from negotiations with the inmate, in a process enlisting behavioural science methods to reinforce commitment to comply.¹¹⁸ Methods include introducing mild counter-arguments as to why the inmate should not comply, so that in refuting them the inmate reinforces their own determination. The programme also involves the offender’s family and whanau, to whom the inmate can explain the conditions. Behaviour contracts detail positive outcomes of compliance, as well as the negative results of non-compliance.¹¹⁹

¹¹³ Ibid, 193.

¹¹⁴ Supra at note 45, at 34.

¹¹⁵ Wexler, “Therapeutic Jurisprudence and the Criminal Courts”, (1993) 35 William and Mary L Rev 270.

¹¹⁶ Ibid, 284.

¹¹⁷ Ibid, 285.

¹¹⁸ Ibid, 291-294.

¹¹⁹ Ibid, 292-295.

The application of TJ is found in the Kia Marama programme, which works with people guilty of sex offences against children. The programme uses comprehensive behavioural design methods, including orgasmic reconditioning, correction of cognitive distortions, social skills, and assertion training, together with relapse prevention training. Initial results from the programme indicate a positive contribution to crime prevention.¹²⁰ The programme, now in its third year of operation, has seen none of the eighty-five men released rearrested for sex offences.¹²¹

(h) *Restorative justice*

Restorative justice ("RJ") rejects the retributive response to crime. Impoverished or chronically unemployed people might conclude that obeying the law brings few benefits, and many short-term disadvantages. People who cannot read or write may consider they have no choice but to make their way even if that conflicts with the law. Drug addicts or alcoholics may simply have lost the ability to function within the law.¹²² Incarceration constitutes a short-term negative response.¹²³

RJ questions the efficacy of traditional sentencing principles, instead favouring the compensation of the victim for the infringement, and the vindication of the victim's position. It also aims for reconciliation between the individuals, reintegration into the community, and atonement, in order to "restore" the parties involved.¹²⁴ RJ adherents consider punishment as being destructive, exacerbating the already difficult situation following commission of an offence.¹²⁵

Alternative sentencing functions are first, to underscore the widespread willingness of people to obey law and enforce it; second, to persuade people to obey the law who otherwise may not; third, to enable individuals who might otherwise be unable to obey the law to do so; and finally, to cultivate public confidence in the law's ability to fulfil these functions.¹²⁶

Punishment is replaced with mediation, reconciliation, restitution, and social reparation. The offender is encouraged to take responsibility for their actions. Central to the strategy is the participation of the victim in the proceedings. This returns a sense of significance to the victim, and brings home the personal nature of the offence to the offender.¹²⁷

¹²⁰ *Supra* at note 45, at 60.

¹²¹ *Supra* at note 80, at 55-56.

¹²² Cragg, *The Practise of Punishment: Towards a Theory of Restorative Justice* (1992) 186.

¹²³ *Ibid.*, 177.

¹²⁴ Van Ness, "New Wine and Old Wineskins: Four Challenges of Restorative Justice", (1993) Vol 4(2) *Criminal Law Forum: An International Journal* 264.

¹²⁵ *Supra* at note 122, at 140.

¹²⁶ *Ibid.*, 169.

¹²⁷ *Ibid.*, 259.

The state's continued involvement is to provide, in the first instance, a receptive but firm environment, designed to communicate each party's position to the others involved. Parties focus on common interests and seek solutions acceptable to all. To avoid imposition of measures, which have been shown not to reduce recidivism, gestures of co-operation can encourage mediation and rehabilitation. If offenders can participate in formulating well-considered and administered programmes, their reintegration into the community may be more successful.¹²⁸ Attempting persuasion does not preclude the use of imprisonment, where this is necessary to protect the public.¹²⁹

Japan has a two-tier justice system, whereby an offender may confess, repent, negotiate for the victim's pardon, and make restitution, all before arriving at the final judicial hearing. In return, authorities treat these offenders with "extraordinary leniency".¹³⁰ Under this system, prosecutions proceed in only about five percent of all prosecutable cases.¹³¹ Practical applications of RJ now used in New Zealand include reparation, police pre-trial diversion, and family group conferences under the Children, Young Persons and Their Families Act 1989.¹³² Concerning the latter:¹³³

If the focus remains on the offending behaviour and its impacts, rather than on our rattled emotions in respect of the offender, then the language of justice can be changed from threat and intimidation to putting right the wrong that has been done. We should be and we are now talking about reparation rather than punishment.

In the RJ model, justice supports dialogue and mutual agreement, and accords a central place to victims *and* offenders. It is judged by the extent that responsibilities are assumed, needs met, and healing encouraged.¹³⁴ Once the strengths of this system are known, it may be applicable to adult offending.¹³⁵

Difficulties with applying RJ to the New Zealand context may arise from people who do not feel they live in a society in which they have a "stake". People who already respond to community responsibilities are those least likely to offend in the first place.¹³⁶ In addition, research shows many victims of an offence dealt

¹²⁸ Ibid, 181-182.

¹²⁹ Ibid, 185.

¹³⁰ Supra at note 124, at 274.

¹³¹ Ibid.

¹³² Morrell, "Restorative Justice – An Overview" (1993) 5 Crim Just Q, 4.

¹³³ Comment by Michael Doolan – Manager of the New Zealand Children's and Young Persons Service for the Southern Region; reported in a paper by Judge FWM McElrea presented to the Youth Justice Conference of the New Zealand Youth Court Association (AKld) Inc, 25 February 1994, *The Intent of the Children, Young Persons and Their Families Act 1989 – Restorative Justice?*, 19.

¹³⁴ Ibid, 3; quoting from H. Zehr's seminal work, *Changing Lenses: A New Focus for Crime and Punishment* (1990) 211.

¹³⁵ Ibid, 6.

¹³⁶ Supra at note 132, at 5.

with by police pre-trial diversion reported little opportunity for input into the decision.¹³⁷ Also, a victim may not want to participate in the process; should they choose to do so, different victims will likely differ in terms of the desire for punishment. Prosecutions should not reflect the preferences of individual victims.¹³⁸ Other critics maintain that punishment should remain a function of the state,¹³⁹ however, in many cases this function makes the crime's effect on the victim a prime focus of the trial.¹⁴⁰ Further difficulties arise when one tries to establish appropriate responses to attempted crimes, where no victim in the normal sense exists. There is also tension between the present system's focus on *mens rea*, whereas RJ focuses on reparation for the *effect* of the crime.

Notwithstanding such potential difficulties, people experienced in the present family group conferences enthuse about its value as a forum:¹⁴¹

The primary objectives of a criminal justice system must include healing the breach of social harmony, of social relationships, putting right the wrong and making reparation rather than concentrating on punishment On the basis of our experience to date, we can expect to be amazed at the generosity of many victims and (to the surprise of many professionals participating) the absence of retributive demands and vindictiveness. Victims' responses are in direct contrast to the hysterical, media-generated responses to which we are so often exposed.

3. The Format of Te Ara Hou

Te Ara Hou presents a two-tier system designed to cope with offenders. The system relies on the bicultural partnership between Maori and Pakeha.¹⁴² For this purpose, an independent commission would be established, responsible for guiding policy and recommendations. Kaumatua visits would bring cultural and spiritual dimensions to inmates' lives. Rehabilitation councils would oversee the transfer of inmates from prisons to rehabilitation centres, and finally back into the community, in marae-based custody for example.¹⁴³

The scheme retains secure confinement where necessary, but on a different basis, and with the use of therapy to target recidivism. As environments of punishment, prisons are not surroundings within which positive changes can take place, therefore separate rehabilitation centres would exist in the community to develop the change necessary to reduce recidivism. Prisons would remain for persistent, serious offenders, but would otherwise act as holding areas, where

¹³⁷ Ibid, 6.

¹³⁸ Ashworth, "Some doubts about Restorative Justice" (1993) Vol 4(2) Criminal Law Forum: An International Journal, 290 and 297.

¹³⁹ Ibid, 284.

¹⁴⁰ Ibid.

¹⁴¹ MJA Brown, Principal Youth Court Judge, in McElrea, supra at note 133, at 18.

¹⁴² Department of Justice, *Prison Review Te Ara Hou: the New Way – Ministerial Committee of Inquiry into the Prisons System* (1989) 32.

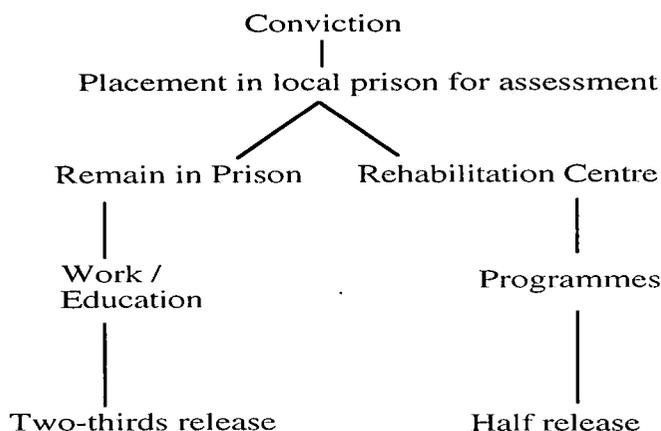
¹⁴³ Ibid, 27-34.

initial evaluation of new arrivals takes place before they are assigned to an appropriate rehabilitation centre.¹⁴⁴

Rehabilitation will focus on social learning, with much emphasis on making inmates confront their criminal behaviour, and reinforcing pro-social activities. These rehabilitation centres must be full-time, positive, intense, and challenging, where inmates can seek to translate learned concepts into daily practice.

Specific rehabilitation programmes should include secure treatment centres for inmates deemed to be a risk to the community, therapeutic and confrontational centres, and community-based work with violent offenders. They should also include marae-based education and training, drug and alcohol treatment, and sufficient education and training to enable the inmate to find employment before release. This will also enable inmates to fulfil restitution obligations, and prepare generally for release.¹⁴⁵ These centres would not adopt a “soft” approach; inmates who fail to fulfil their obligations in the centres would return to prison.¹⁴⁶

Progress and release of offenders would follow the plan in Figure 2 below:¹⁴⁷



Te Ara Hou sees the prison system of the future being based on a network of small, community-based jails. Some of these would have secure units for those inmates posing special security risks, but generally such offenders would live in purpose built units elsewhere. Special units would also exist for minimum and medium security inmates with special needs. Rehabilitation programmes would not be available to inmates within prisons.¹⁴⁸

Te Ara Hou also noted a system that could deal with people on remand. Using “intermediate sanctions” such as house arrest, electronic monitoring, and intensive

¹⁴⁴ Ibid, 35-39.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid, 38-39.

¹⁴⁷ Ibid, 42.

¹⁴⁸ Ibid, 53-54.

supervision, probation could replace prison for the eleven percent of the current inmate population on remand. These intermediate sanctions might also apply usefully to people on release from habilitation centres.¹⁴⁹

The Ministerial Committee also stressed the need for education, to inform the public that effective and positive ways to reduce recidivism exist.

The Justice Department's response to Te Ara Hou was to question some of this logic. First, the Minister of Justice rejected the notion that rehabilitation programmes should not be offered to those inmates in prisons. Regardless of whether the programmes could reform long term inmates, they are an important outlet for activity, and thereby relieve boredom.¹⁵⁰ The Department maintains that the success or otherwise of programmes depends more on their internal nature, and how well they target areas for change, and provide for follow-up, than on their setting in prison or the community.¹⁵¹ The Department report also cautioned that the inmate culture might be transplanted to rehabilitation centres, thus losing the advantage of externally offered programmes.¹⁵²

Most people agree that prison sentences themselves *should* involve deprivation of liberty and removal from the community for a significant portion of inmates' sentences.¹⁵³ The Department questioned whether inmates *wanted* to change, noting that many inmates chose to stay in prison rather than be released subject to demanding community-based programmes.¹⁵⁴

Notwithstanding these reservations, the Department conceded that it is reasonable to expect rehabilitation programmes to succeed, so long as clinicians gained control, and anti-criminal attitudes outweighed pro-criminal inmate culture.¹⁵⁵ In 1994, the Department made provision for sixty inmates to go into pilot rehabilitation centres. It sees these centres as a natural extension of the Department's new case management policy.¹⁵⁶

V: MOVING ON: AN EXPLORATORY MODEL FOR PENAL REFORM

As noted in Part II, the likelihood and quality of pro-social activities increases as constraints of opportunity are alleviated. On a cost benefit analysis, increasing a person's stake in the community will increase the personal cost to that person of jeopardising pro-social activity by crime. In other words, the more one benefits legally, the less incentive there is for illegal activity.

¹⁴⁹ Ibid, 61-64.

¹⁵⁰ Department of Justice, *Habilitation Centres: Report of the Department of Justice Habilitation Centre Development Group* (1990) 16.

¹⁵¹ Ibid, 15.

¹⁵² Ibid, 19.

¹⁵³ Ibid, 22.

¹⁵⁴ Ibid, 29.

¹⁵⁵ Ibid, 30-31.

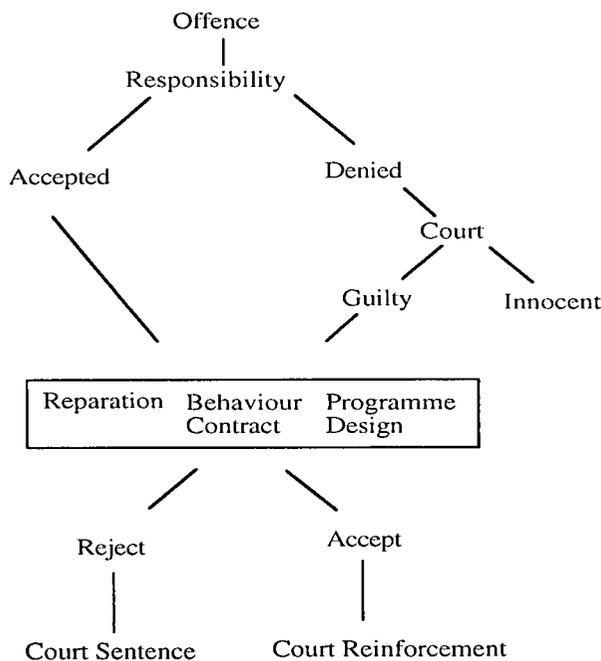
¹⁵⁶ Ibid, 37.

If intervention programmes can reduce recidivism, the extra social and economic value generated by consequent pro-social activity accrues on top of similar type savings in the direct costs of crime.

“Moving On” uses the concepts mooted in Te Ara Hou, together with improvements characteristic of successful intervention. It rejects a traditional penal approach, where this conflicts with efforts to stop a cycle of reoffending. This means that the initial prison stay proposed by Te Ara Hou is rejected in favour of immediate reparation, programme participation, and behaviour contracting. “Moving On” requires offenders to assume responsibility for their actions, and begins the rehabilitation process without delay or further entrenchment of the deficiencies which contributed to offending in the first place.

Offenders will not be imprisoned unless special circumstances require confinement. The major thrust of “Moving On” is to develop a more constructive response to serious crimes which are currently dealt with by imprisonment.

Major crimes will be dealt with through the system set out in Figure 3 below:



Once the offender is caught, they may admit responsibility early, and thereby may avoid prison. Similar to plea bargaining, this early admission can lead to the quick disposal of the situation. The offender may agree to reparation, and to participation in appropriate intervention programmes. If reparation cannot be paid immediately, a surcharge system applies. Where possible, programme attendance is scheduled not to interfere with work. Of prime importance is targeting those

deficient aspects of the offender's life, without impacting on areas where they function pro-socially.

Once the offender agrees to participate in a programme, the case comes before the court. The offender publicly accepts responsibility for the offence, and undertakes to comply with the programme. The court reinforces the programme, reparation, and behavioural contract with its authority. The behaviour contract identifies certain liabilities and rewards for non-compliance and compliance respectively. The offender will then take part in the programme while continuing to participate normally in the community. The offender may choose to accept responsibility, but not accept a programme or behaviour contract. Under these circumstances, they will appear in court as normal, but the court's ability to order alternatives to incarceration, supervision, or home detention is proportionately constrained. It may eventuate that some offenders will be imprisoned if they refuse to accept constructive diversion.

Those offenders who do not immediately admit responsibility for their actions will go through a procedure similar to that presently operating, except at any stage the defendant may change their mind and seek a restorative outcome. If the offender asserts innocence, but is found guilty, there is a stay in proceedings between verdict and sentence, during which time the offender may seek restorative remedies. If so, when the offender finally comes up for sentence, they can explain to the court the programme and reparation agreement that has been devised, and the court may still choose to divert the offender from prison or other less efficacious responses.

If the offender does not seek restorative remedies, the court's decision will reflect this. Although a presumption against prison persists, other considerations may prevail. Serious offenders who pose a threat to the community, will participate in programmes in environments that restrict their opportunity to re-offend. They will remain in these secure units until the effect of the programmes counter-balance this threat. The programmes should instil a realisation that the benefits possible from pro-social activity outweigh the benefits obtained from regression to crime. Following this realisation, offenders will gradually be exposed to society and risk situations.

Fines will be paid into a central fund, which will be used to compensate victims according to the nature of the crime. If, for example, the offender is convicted of a minor burglary, the offender will pay reparation. If the offender is unable to pay, they will first take part in a community-based programme organised through the Labour Department, which is designed to enable the offender to gain employment. Once working, a weekly "surcharge" will be withdrawn from the wages to pay the reparation in instalments. If the offender already has a job, but is unable to pay necessary reparation immediately, the same automatic surcharge system will apply.

In addition to reparation, a punitive fine will also apply as a general disincentive to crime. This punitive element will also follow a proportionate day fine system and be collected along with reparation. If offenders refuse to pay fines or to

co-operate with training programmes, they will return to the justice system, where the options available to deal with the situation decrease with their recalcitrance.

This outline of an alternative corrections system is really two-tiered. It retains the present system, but only uses it as a final alternative, for those offenders unwilling to remedy the deficiencies that lead to their criminal activities. The restorative alternative is seen to accommodate the vast majority of offenders. As evidence of its success mounts, it is submitted that it would gradually predominate, and because of its relative redundancy, the second tier penal option would house fewer and fewer inmates.

One criticism possibly levelled against "Moving On" is that it discriminates against those presently constrained by lack of opportunity, but who do not offend. They may be left to cope with their situation alone, whereas offenders, who cause harm by their offences gain from the activity in terms of the programmes they then get access to. This misses the fundamental point, that "Moving On" only seeks to remedy destructive situations, instead of aggravating them. However, it should be added that this alternative approach should exist in a wider social context, giving similar educational and vocational chances to those law-abiding members of the community who are constrained by limited opportunity.

VI: CONCLUSION

"Moving On" is an exploratory model. Embedded in the process are the effective programmes and approaches canvassed throughout this article. Given that present approaches fail, "Moving On" is proposed in the belief that the community will embrace alternative measures to deal with crime.

A constructive approach saves resources which would otherwise be used on imprisonment, and produces pro-social outcomes, both from these diverted resources, and the retrieved future productivity of ex-offenders. By alleviating opportunity constraints, offenders progressively have more to gain by pro-social behaviour and more to lose from criminal activity.

The most obvious saving is economic. This saving derives from lower prison musters, fewer resources spent on crime processing, and the lower social costs of crime. Socially, a positive penal response allows for individuals to become productive members of society, rather than preying on it. Further, emotional costs to direct and indirect victims are avoided when reoffending stops.

On a micro level, it is submitted that the practical application of IPO involves the removal of criminogenic deficiencies, such as drug abuse. Removal can not only end a negative cycle for the abuser, and the detrimental impact on the community, but clear the way for positive activity by that ex-abuser. Once criminogenic deficiencies are removed, follow-up programmes should then introduce the offender to opportunities conducive to participation in a crime free life.

The approach impacts beneficially on both the person and the community. This positive cycle is expandable to a macro level, with society benefiting overall from the enabling of its members, and the increase in their pro-social activity.

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