



Reconsidering the Aotearoa New Zealand Criminal Justice Policy Model

PART 1 OF A BRIEFING NOTE SERIES

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This Briefing Note is the first of a series of three notes to be issued over the next two months. The series will explore key issues in criminal justice policy, beginning with an exploration of some fundamental questions in this note, a programme analysis in note two, and culminating in a set of policy approaches which will appear in the third note.

Waiho mā te whakamā e patu; waiho hai kōrero i a tātau kia atawhai ki te iwi.¹

Introduction

The Salvation Army Social Policy Unit has participated in the national conversation on criminal justice policy over more than a decade, beginning with the publication of *Beyond the Holding Tank: Pathways to Rehabilitative and Restorative Prison Policy* in 2006 and a follow-up 2016 report, *Beyond the Prison Gate: Reoffending and Reintegration in Aotearoa New Zealand*.² The unit also participated in the criminal justice summit held in Porirua last August and the regional hui hosted by the Safe and Effective Justice Advisory Group—Te Uepū Hāpai i te Ora. We are pleased to continue our contribution with these Briefing Notes.

The Salvation Army is an international Christian human welfare organisation that has worked in Aotearoa New Zealand since 1883. We have a commitment to the wellbeing of vulnerable and hard-to-reach New Zealanders. We provide a wide range of social, community, and faith-based services, particularly among those experiencing injustice or who have been marginalised or forgotten by mainstream society. We are inspired by our faith to articulate a vision of human flourishing consistent with the teachings of Jesus Christ.³

Our activities in Aotearoa New Zealand include spiritual formation and development, direct welfare and counselling services, family-functioning casework, community development, emergency relief, support for those struggling with addiction (alcohol, drugs, gambling), prison visiting, rehabilitation and reintegration, supported housing, and public policy research and advocacy. In 2018, we provided assistance to more than 120,000 people including social work or counselling to almost 7,000 individuals or families and court support for 9,000 victims or defendants and their families.⁴

We have long acknowledged the crucial importance of joining social and economic assistance with spiritual, emotional, and intellectual support to enable our fellow men and women, made in the image of God, to reach their full potential.⁵ In this, we associate ourselves with the human rights discourse in acknowledging the inherent equality and dignity of all peoples and a firm conviction in the potential of all for growth and development.⁶

Our co-founder, William Booth, writing in 1890, identified the role of criminal justice as a vital element in societal reform. Adopting the growing understanding of criminal behaviour as having its roots in socioeconomic structures that drive one to ‘absolute despair’, he proposed that criminal justice policy should be oriented to rehabilitation and reintegration, the prior elements that are required if one is to take his or her rightful and equal place in the community filled with dignity, purpose, and respect.

He noted that criminal justice policy invariably had the opposite effect:

[A] man [in] the ranks of the criminal class...would never have fallen into the category of criminal convicts if adequate provision had been made for the rescue of those drifting to doom. When once he has fallen, circumstances seem to combine to keep him there. As wounded and sickly stags are gored to death by their fellows, so the unfortunate who bears the prison brand is hunted from pillar to post, until he despairs of ever regaining his position, and oscillates between one prison and another for the rest of his days.⁷

Drawing on these principles of reform and regeneration, from 1884 The Salvation Army in New Zealand began to provide ‘Prison Gate’ services whereby wraparound support is delivered to those in the criminal justice system—including to their families—so as to break the cycle of criminality that Booth believed to arise from the effect of societal problems and persist due to society’s response to ex-criminals.⁸ In 2018, we continued our Prison Gate work with education and employment support to 500 people preparing for release, chaplaincy to 1,343 prisoners, reintegration (including supported accommodation) for 574 people; and integrated services to meet the needs of offenders with addictions. Our reintegration programmes, framed in the terms articulated by William Booth 130 years ago, have enabled 76 percent of clients to stay out of prison for more than 12 months, a higher proportion than is achieved nationally.⁹

The Salvation Army has regarded criminal behaviour and its effects, both literally and figuratively, as a metaphor for developmental and societal challenges that prevent human beings from becoming their best selves.¹⁰ We draw on Jesus’ teachings ‘to bring good news to the poor’, ‘release to the captives’, ‘recovery of sight to the blind’, and freedom for the ‘oppressed’ (Luke 4:18). Our Christian teachings emphasise forgiveness and restitution as the affective means to redemption.

These powerful concepts have found their counterpart in Te Ao Māori and are gaining momentum in western processes such as alternative resolution and restorative justice. It is the purpose of these Briefing Notes to survey some of these key issues in the criminal justice debate as a contribution to the wider policy discussion and, in so doing, promote holistic, human-centred reform for an effective twenty-first century justice framework.

The issue—what is at stake

Crime is fundamentally a communitarian problem. Societies recognise criminal behaviour in terms of the damage it produces for those who live in a particular space and time (and, increasingly, the cost to future generations). Therefore, every society in every age discerns anew its understanding of what constitutes a crime and how offenders are to be dealt with. Over the generations, New Zealand has carried out its own inquiry into the aetiology of crime and the best approaches to offenders. We have grounded the conversation on the triple goals of reducing criminal behaviour, deterring potential criminals, and ameliorating the harm caused by crime.¹¹

Given the complexities of the phenomenon of crime, the conversation has moved this way and that according to the findings of research, the political climate (and the values of individual governments), and ‘focussing events’¹² that shift the public narrative. These are in turn often reliant on the framing of public problems by key opinion formers such as the mass media, public intellectuals, charismatic community leaders, and concerned organisations: in short, civil society.¹³

Successive governments have entered office with a mandate to reduce crime, reflecting ongoing societal concerns about its impact. However, crime reduction activities in office are shaped by explanatory models reflective of individual politicians' understandings of crime aetiology or influenced by prevailing public sentiments promoting 'penal populism', essentially a *tough on crime* discourse that triggers political parties to compete to appear tougher on crime than their competitors. This has generated criminal justice policies that advocate harsher punishments in the popular belief that deterrence is the most effective (and efficient) means of reducing crime.¹⁴

Inter-disciplinary research has gradually shown that policies of deterrence are ineffectual to the wider goal of reducing crime¹⁵ and may, in fact, promote offending behaviour¹⁶, particularly when crime is interpreted principally as personal antisocial behaviour rather than having structural and systemic roots in (a) life-course development, (b) the effects of historical trauma, and (c) opportunities (or lack of) for rehabilitation and reintegration. These factors are often intensified in nations with deeply stratified social outcomes (ie. those that are shaped by colonisation, experiencing wide inequality, having limited (or, indeed, are opposed to) income transfer arrangements; and those possessed of cultural narratives that promote individual as opposed to community wellbeing).¹⁷ Furthermore, substance misuse (and mental health issues) is also a key correlative in offending.¹⁸

In addition, the prevailing political-economic discourse known as neoliberalism, has resurrected the phenomenon of "deserving" and "underserving" poor as a counterpart and defence of austerity measures, particularly where they relate to public expenditure on personal welfare and income redistribution.¹⁹ Where such public expenditure challenges relate to the availability of treatment services, and compounded by the multiple and complex needs of those who fall into these demographics, the likelihood of offending is exponentially magnified.

Going into the 2017 General Election, the main parties articulated the view that a reform of the criminal justice system was necessary to achieve better outcomes for communities blighted by crime, the victims of crime, and criminals themselves. These included effective judicial processes and outcomes so as to speed up trials, reduce the number of those remanded in custody, and ultimately, reduce offending; address systemic issues that are believed to be important causes of high rates of incarceration (including among young people and those on remand awaiting trial), better rehabilitation and reintegration programmes to reduce recidivism, improve community safety and victim support, and address the high levels of criminal justice involvement within the Māori and Pasifika communities.²⁰

On 12 July 2018, the Minister of Justice, Hon Andrew Little, announced a set of activities to examine the reform of the criminal justice system. These included a Criminal Justice Summit in August and creating an advisory group to canvass public and expert opinion, study models of justice reform, and make recommendations for change. After the summit, the Justice Advisory Group hosted a series of hui across the motu to facilitate community discussion and feedback. These hui resulted in the recent publication of the Advisory Group's first report, *He Waka Roimata—Transforming our Criminal Justice System*²¹, which offered a detailed picture of attitudes among New Zealanders to the criminal justice system from the point of view of victims, whānau and communities, iwi and hapū, ex-offenders, service providers, and NGO spokespeople.

Importantly, the report proposed a range of principles that New Zealanders felt would promote effective remedies to the problems of current criminal justice policy. As we await the publication of the Advisory Group's second report, The Salvation Army is pleased to offer this Briefing Note as a contribution to the national conversation on achieving better criminal justice outcomes and, therefore, to Kiwis whose aspirations, whose hopes and dreams, are fundamentally tied to—and determined by—the safety of their families and communities.

Background—positioning the problem

Although more than 70 percent of adults experienced no crime in the year to September 2018 and despite less than a quarter of all crime estimated to be reported²², New Zealand has, over the years, tended to exhibit high levels of criminal punishment, particularly for violent and sexual offences.²³ (Personal offences as a whole, which also include theft or robbery, make up about two thirds of identified crime.)²⁴

The typical offender is likely to belong to a small percentage of people responsible for the vast majority of offending. He is likely to be male, between 24 and 49 years of age. He is also likely to be recidivist: 30 percent will reoffend within a year and 50 percent within five years. Sadly, he is also likely to be Māori.²⁵

However, he is also likely to have experienced severe socioeconomic deprivation in his life. In their interpersonal relationships, three quarters of offenders will have experienced violence, and up to four fifths of Māori offenders. A fifth would have experienced sexual violence. Three fifths would have experienced the unexpected death of someone close, for example, through murder or suicide. In their health histories, they are likely to have experienced traumatic brain injury, mental health problems, addictions, or have had other health issues. (See endnote 18 below.) They will be broadly illiterate, more likely to smoke, and more likely to be long-term welfare recipients. They will have experienced poverty and family adversity including deficit parenting, school problems, and deviant peer affiliations. They will also be likely to be living in an area of high deprivation.²⁶

What is instructive is that the typical victim of crime will also exhibit similar characteristics: this tends to the conclusion that the perpetrator of crime is more likely to be within the same demographic that is likely to experience crime. With the exception of sexual violence, which appears to be a phenomenon across all demographics²⁷, crime in New Zealand, therefore—at least reported crime—is closely correlated with the poverty experienced in the deprived regions of New Zealand and the outcomes that have tended to correlate with poverty: deficit family functioning, long-term benefits dependency, and insecure and inadequate (therefore, unhealthy) housing. When this is compounded by poor physical health, unstable mental health, intellectual limitations, and illiteracy, crime becomes as much a function of socioeconomic and psychosocial deprivation as poor personal choices.²⁸ And finally, problematic substance use,

Characteristics of those affected by crime, whether perpetrator or victim



Among the 30% of those who experienced crime

- Male**
- More likely to smoke**
- 3/4 experience violence**
- Recidivist: 30% within a year & 50% within five years**
- Severe socioeconomic deprivation**
- 3/5 experience unexpected death (eg murder or suicide) of someone close**
- 1/5 experience sexual violence**

Broadly illiterate

Experienced school problems and deviant peer affiliations

Experience traumatic brain injury, mental health problems, addictions or other health issues

Long-term welfare recipient

poverty

Living in insecure and family housing in high deprivation areas

Between 24 and 49 years of age

problem gambling, exposure to violence, and exposure to poor prenatal care compound such deprivation, drawing families and communities into a spiral of problematic functioning that has an exponential effect, usually resulting in criminal careers from which a large proportion of our sentenced offenders will never disentangle themselves.²⁹

While prison populations have grown at around the same pace as the global population (c. 24 percent since 2000³⁰), criminal justice policy across the world has encountered fairly intense political shifts along a continuum of penal populism on the one end and preventative or rehabilitative models on the other.³¹ Some countries have seen dramatic rises in incarcerated offenders, with the United States leading the way at 655 prisoners per 100,000 of population followed by countries such as El Salvador (604), Turkmenistan (552), Thailand (526), Cuba (510), the Maldives (499), Rwanda (464), The Bahamas (438), Seychelles (437), Grenada (435), St Vincent and the Grenadines (426), and Russia (402). Others are exhibiting drastic reductions in prison populations: more than half have rates below 150. (The world prison population rate, based on United Nations estimates of national population, is 145 per 100,000.) Iceland and Mali have the lowest rates at 37 and 33 respectively.³²

Within the OECD, about half are above the global average, as is to be expected. New Zealand, while nowhere near the United States outlier (which has seen a remarkable shift back to a preference for incarceration for a growing number of offences), is in the top fifth of OECD incarceration rates.³³ In the most recent *Department of Corrections Annual Report*, we learnt that a cohort in the region of 10,500 were incarcerated (70 percent sentenced, 30 percent on remand). In addition, some 30,000 individuals are on various types of non-custodial community sentences. Furthermore, 16,000 individuals are released from prison each year.

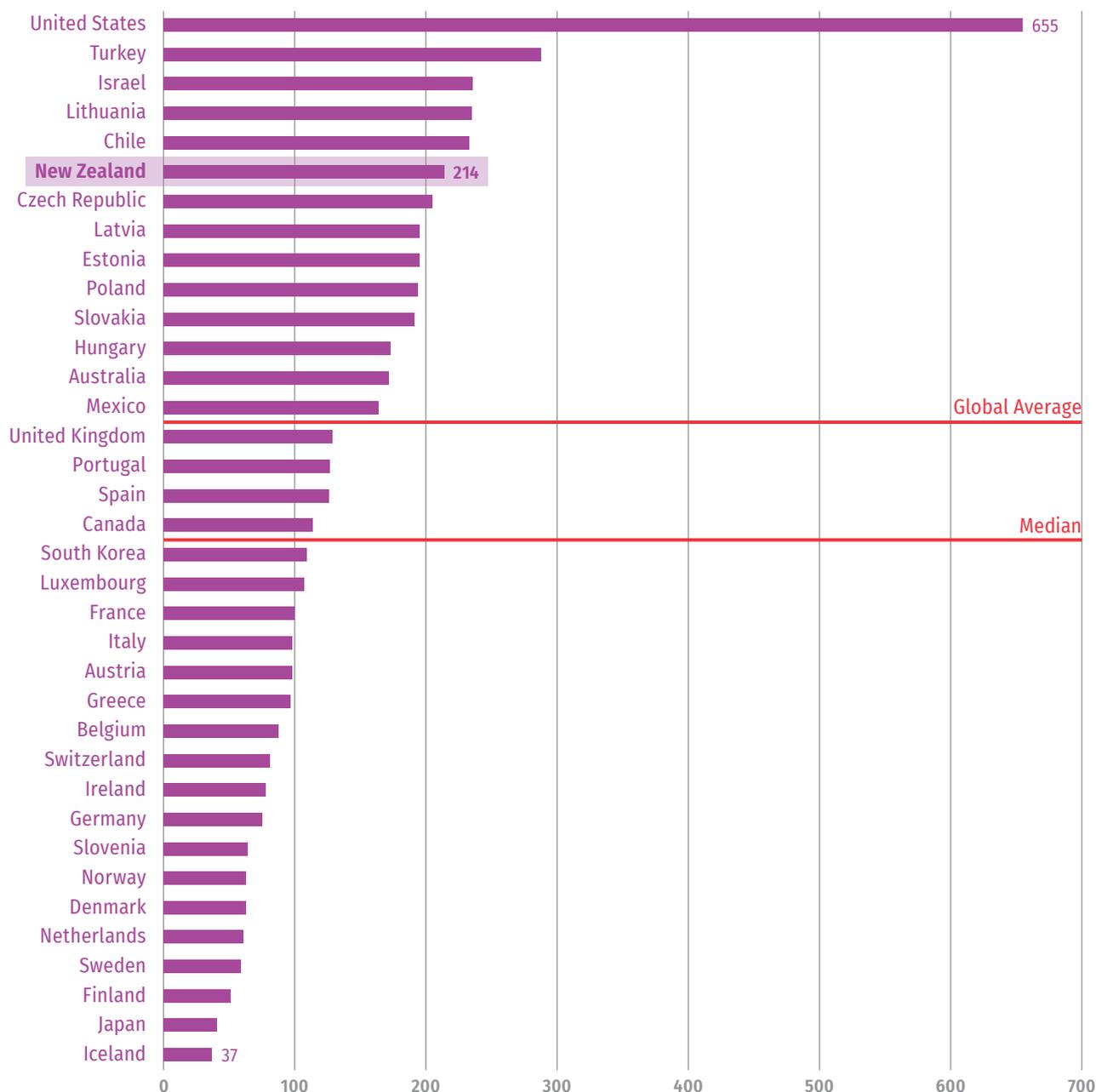
Taken as a whole, these figures give the impression of significant churn back through the system: a relatively small cohort of individuals is responsible for the majority of criminal offending year after year. Given the paucity of conclusive data on offending both globally and at home (see, for example, the estimate of three quarters of crime being unreported in New Zealand³⁴), it is challenging to assess the effectiveness of criminal justice policy. Indeed, the growing consensus is that punishment-oriented approaches have little to no correlation with rehabilitation and reintegration.³⁵ The Crime and Victims Survey found that 71 percent of adults experienced no crime in the year of the survey. Therefore, it might be suggested that about a third of Kiwis experienced four times more crime than was captured in official victimisation records and these crimes are perpetrated by a relatively small number of (increasingly, repeat) offenders. It is a challenging statistic, particularly when set against the high levels of violent, sexual, and theft crimes within (mainly) interpersonal and family encounters and given the socioeconomic, neurobiological, and psychosocial deficits experienced by most offenders.

Context—locating the challenge

Crime is a key public policy issue and, as Jared Gilbert suggests, its management is as significant as it is complex.³⁶ The extreme (and often brutal) harm of such crimes as interpersonal violence, high recidivism rates, the alarming proportions of (particularly) young Māori and Pasifika men in the criminal justice system, the seemingly fixed prevalence of certain types of crimes, multifactorial and poly-offending, alcohol and certain drugs as drivers of crime, and the role social deficits play in offending suggest a multifaceted and complicated policy nexus.

Criminal justice policy has tended towards punishment approaches designed to interrupt offending patterns among current offenders and deter potential offenders. As suggested above, this has to an extent been the result of growing insecurity on the part of citizens, partly abetted by the sensationalisation of crime in the media. Harsher punishment regimes have resulted, abetted by the temptation to penal

OECD Incarceration Rates (prisoners per 100,000 population)



populism on the part of political parties. The rhetoric of penal robustness has a certain popular appeal, given the complexities of criminal justice policy that is itself based on the complexities of criminal aetiology. In certain countries such as the United States, penal populism has reached bizarre proportions, giving rise, for example, to extremely high prison sentences for victimless crimes and the building of more and more children’s prisons. In New Zealand (and other countries), insecurity, fear, and a perception of growing crime are widespread, despite Kiwis accessing less formal information sources on crime.³⁷

However, more evidence-based regimes are also emerging, with some governments opting for programmes that seek to address the social and behavioural drivers of crime before they result in offending behaviour and focussing on reoffending as a fundamental feature of overall offending.³⁸ As mentioned above, this approach has characterised The Salvation Army’s criminal justice thought since 1890. However, this is a challenging policy space to defend given the vast range of explanatory models that research has generated and the slow pace at which pilot programmes can be effectively evaluated.

In addition, pilot programmes, particularly those based on therapeutic and casework approaches tailored to the particular needs of offenders, tend to be more expensive, and therefore difficult to rationalise in the present environment. Thirdly, programmes tend to be preferred which can be scaled up across large cohorts. Those programmes that approach rehabilitation and reintegration in an individualised, casework model are likely to cost more.

Despite this, both the present and immediate previous governments of New Zealand have recognised the need for a better-modelled, better-planned, and better-funded criminal justice policy. Former Prime Minister Bill English famously said (twice) that prisons were ‘a moral and fiscal failure’ and his successor, Prime Minister Jacinda Ardern, repeated the elegant, if saddening, phrase when she opened the Criminal Justice Summit last August.³⁹ Both governments recognised the complex and interlocking character of criminal justice policy and expressed the aim of systemic, long-term, and evidence-based structural reform under the respective rubrics of social investment and wellbeing.

Warren Young, civil servant and academic, has argued⁴⁰ that the logic of a social investment approach (which has similar principles to the current wellbeing approach) is unassailable but would require strong evidence-based policymaking; front-end spending designed to improve the conditions of lives such that criminal behaviour was averted; long-term cross-party commitment; coordinated, multifactorial budgeting and administrative decision-making across government departments; and service commissioning approached from a whole-of-government perspective. Young identifies a range of challenges to such comprehensive “regime change” which others have echoed in their critique of the current government’s wellbeing approach, broadly framed around the issues of outcome measurement; conflicting discourses (and therefore, departmental goals) within different policy areas (for example, penal populism versus poverty alleviation); value-based versus evidence-based decision-making; and the overly deterministic nature of such approaches to policy-making given the complexities of human and social functioning.

In addition to these investment-led approaches, certain sociopolitical or socioeconomic analyses provide other explanatory perspectives which further complicate the discussion. Some theorists seek a unified theory of crime based on psychopathology,⁴¹ suggesting that criminal behaviour is essentially an outworking of brain deficits coupled with an interaction with social determinants.⁴² Others view the position from a moral perspective, arguing for crime as vice. Still others speculate on what might be termed “socio-pathological” or individual maladjustment within a social contract framework. This might be said to include feminist analyses which argue for crime as emerging from social structures that valorise physical strength as a factor in the control of resources (including the assumption of human chattel resources that are said to account for family and partner violence). These are argued to produce masculinities that are celebrated but when taken to extremes become toxic and cause harm. And finally, Marxist analyses interpret crime as the re-appropriation of resources denied to certain socioeconomic groups as a result of the outcomes of capitalism.

The foregoing gives a broad—although fairly shallow—survey of some of the context of criminal justice and proposes that a better analytical framework may be yielded by a holistic model incorporating a range of perspectives. Nevertheless, the challenge of better criminal justice policy is not underestimated. Therefore, in developing analytical models, we should try to avoid grand or unified theories. We would also be wise to avoid grand or unified programmes writ large across the nation but explore how holistic or eclectic perspectives may be deployed to build service models appropriate to specific client groups.

In closing this section, it would be remiss to ignore the role played by colonialism in generating certain socioeconomic outcomes that have deeply disadvantaged and alienated the Māori community. These have produced persistent hardships giving rise, in some cases, to intractable social outcomes. Economic policies (and social welfare policies) over the past 30 years have exacerbated and embedded economic and

social divisions; these feed into divisive community dynamics. When these are interpreted or understood within the diversity of theoretical approaches listed above, they indicate exponential challenges requiring intensive attention over the long term. They also require fairly robust leadership designed to shift the discourse from traditional to more fruitful lines of enquiry around rehabilitation and restoration while also addressing the development and implementation problems identified by Warren Young.

Key considerations—a framework for reform

The problem of crime has been thought about since early in our human story.⁴³ Early accounts attempted to read criminal or deviant behaviour through the lens of the supernatural, producing, as a result, essentially moral programmes of action. As scholarship developed, a wider range of theoretical approaches were proposed, grounded in the expanding bodies of scientific knowledge and tested through research procedures which were constantly being refined. Initially, such research sought to posit a unified theory of crime and subsequently—into the present—more holistic or eclectic models are being proposed that incorporate insights from a variety of academic disciplines.⁴⁴

While it is beyond the scope of this Note (and my competence) to enter into an in-depth evaluation of crime aetiology, this section provides a brief survey of key models by way of framing the current state of knowledge. As Trevor Bradley suggests⁴⁵, such a survey can assist in approaching criminal justice policy-making in the knowledge of its multifaceted complexity and also of the tentative ways in which the scientific enterprise arrives at evidence and solutions. This may go some way to producing better-informed responses from citizens as we arbitrate the effectiveness of specific programmes since policy-making is a tentative, time-bound exercise, benefitting from constant data gathering and review.

Broadly speaking, I would like to propose that criminal behaviour appears, according to current knowledge, to be explicable within four domains. These domains necessarily interact, producing individual criminal profiles that roughly fit inside discernible categories. I would like to call these neurological, sociological, philosophical, and psychosomatic. The neurological domain⁴⁶ argues that criminal propensity and criminal behaviour are fostered by brain development or genetic inheritances causing certain deficits that manifest in poor judgment and impulse control; inability to delay gratification; susceptibility to peer influence; and risk-taking behaviour. There is also some data to the effect that gender plays a differential role in how these factors are established. Furthermore, data suggest that brain deficits may pass from parent to child and, therefore, produce enduring deficit outcomes across generations. These generational problems also interact with wider socioeconomic deprivation (for example, poverty, poor housing, ill-health); lack of access to creative and intellectual resources; and psychological deprivation (such as the experience of despair and hopelessness in deprived communities), giving rise to people whose likelihood of criminality is heightened. Furthermore, where such deficits arise, external as opposed to internal loci of control frame the behaviour and social engagement of such people, giving rise to programmes aimed at control rather than rehabilitation.

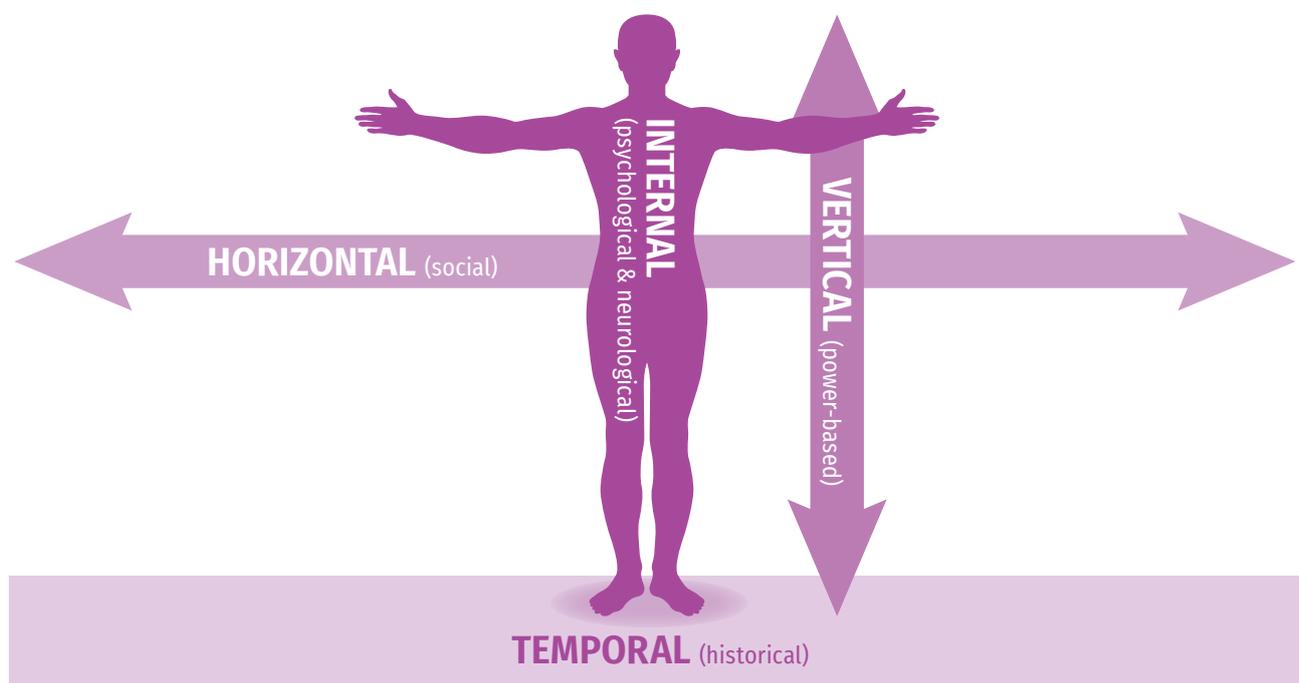
Sociological factors, on the other hand, span the issues of socioeconomic deprivation listed above as well as outcomes produced by sociohistorical structures that produce self-concept ideas and social positioning which promote (or even encourage) antisocial behaviour. Social positioning is also used to explain how official and unofficial groups interact amongst themselves to produce antisocial outcomes: one example is the institutional racism that accounts for the preponderance of Māori in the criminal justice system, so powerfully captured by Sacha McMeeking and Khylee Quince.⁴⁷

In addition, critical and Marxian analyses argue for class or discourse conflict approaches. In brief, these ideas invite us to interrogate how ideas are understood both in everyday discourse and at official policy-making and decision-making levels. Critical theory raises preliminary or prior questions⁴⁸ which, in the

context of criminal justice, include who the key antagonists are; who have access to better resources to negotiate the justice system; who are more likely to be sensationalised in the media; and who are less likely to experience rehabilitation (for example, due to being unable to obtain housing or employment after a prison spell). Marxian analyses encourage the framing of criminal justice questions around access to resources, how those who are denied them will act, and whether, in fact, criminal justice policy is better explained in terms of its defence of socioeconomic elites rather than to maintain the public peace.⁴⁹

The critical school in general (of which, I dare say, Marxism is a part) has always attempted to bridge the gap between normative and historical realities so as to uncover class and power relations that, it argues, demonstrate the underlying values that motivate social behaviour and produce mechanisms of social control. Read in this context, philosophical approaches frame the question from the jurisprudence of crime, seeking to explore foundational issues such as the definition of crime and the orientations of criminal justice policy.⁵⁰ Inevitably, such framings impact policy assumptions, programme regimes, and how the discourse is shaped.

Given our growing understanding of how the individual (both in psychic and social terms) interacts with their environment and how these interactions produce social structures *and* genetic histories (which then network with future social structures in a never-ending loop), I adopt the physiological term *psychosomatic* to represent how such interaction at internal (that is, psychological and neurological), horizontal (social), vertical (power-based) and temporal (historical) planes produces a complex nexus of behaviour patterns, social relations, value frameworks, and discourses that generate policy assumptions and public policies (together with their protagonists) that perpetuate the practices and procedures that we recognise in the 'criminal justice system'.



Some of these characteristics have become axiomatic in the New Zealand justice system. According to the Crime and Victims Survey 2018, the typical participant (whether victim or perpetrator) is likely to be poor, brown, resource-poor, living in deprived circumstances in deprived regions, in poor health, educationally disadvantaged, have experienced deficit parenting and/or family relations, culturally disengaged, and politically disenfranchised. Overlaying these characteristics is a tangible sense of despair and hopelessness. Unfortunately then, like a spider's web, these people, corresponding to the features

of the policy settlement, become more likely to be entangled, then embedded, in 'the system'⁵¹ and also have less incentive to become extricated from it. The Justice Advisory Group's recent report confirms these conclusions.⁵² However, the report also records a strong desire for transformation and a belief that it is achievable. Elsewhere, the stories of Tracey Benson and Rev. Petra Zaleski speak to this hope.⁵³ What can we learn from them? What assumptions do we need to uncover and address? In what direction should we reorientate our criminal justice system?

Maata Wharehoka, who is a Kaitiaki for the Marae at the historic peace community, Parihaka, may have some of the answers. She recently gave a lecture as part of the tenth anniversary celebrations of Otago University's National Centre for Peace and Conflict Studies in Auckland.⁵⁴ During her presentation, she spoke of her involvement in marae justice activities at Parihaka. Broadly speaking, this is a form of restorative justice that draws on Tikanga Māori principles.⁵⁵ She suggested that the success rate (measured in terms of recidivism) is higher in this programme.

It might be useful to pause here in order to reflect on some basic principles that shape Māori knowledges around offending. As tribal peoples with deep connections to the natural world, the substance of proper social functioning is based on three dynamics: vertically, Māori understand themselves in relation to kawai tīpuna (ancestral descent, stretching back to the foundation of the world); horizontally, as belonging to kin groups with individual and collective responsibility for maintaining the peace, wellbeing, and equanimity of the group and its relations with external groups; and intrinsically, as the holders of mana.⁵⁶ Each individual has the obligation to be kaitiaki (guardians) of, and uphold, their own as well as the mana of the kin group and, externally, that of other groups. Hence, the principal objective of socioeconomic relations is balance, based on the idea of whanaungatanga or relationships.

Where a harm or transgression occurs, either in a bilateral relationship or across internal or external kin groups, the objective is to seek the restoration of relationships so as to restore peace, wellbeing, and equanimity and, therefore, reinstate the mana of the affected parties. Grounded in a tradition of whaikōrero, the parties, in the context of their kin group enter into discussion to ascertain if tikanga has been transgressed. It is crucial that agreement is reached as to the exact value of the transgression and the intentionality of the act, in other words, whether the offence caused was deliberate. It is on this basis that decision-making can proceed because the specific act of restitution should be based on the specific offence: the notion of muru which prioritises proper restitution in order to achieve utu, or the rebalancing and reharmonising of relationships.

Processes of muru and utu are led by kaumātua and supported by the kin group on both sides. This ensures that, through their insight around human behaviour and motivation, kaumātua have the skills to lead the inquiry and are assisted in their task by the collective wisdom and experience of the kin groups. Collectively, this enables the accused to come to appreciate the specific tikanga that has been transgressed and, because he or she can experience whakamā (shame and remorse), is led to a place of genuine repentance and desire to make restitution. Because the outcome is arrived at through the involvement of the collective and grounded in genuine remorse, the utu, enabled by the muru, is accepted as final resolution of the matter: the guilty person resumes their rightful and full place as a member of the community, unencumbered by long-lasting guilt.

Models of justice that are gaining momentum in western societies due to their effectiveness (such as restorative justice, casework as opposed to adversarial court processes, and treatment-based as opposed to blame-based judicial processes) reflect the principles of these practices. Fundamental to the desired goal is the restoration of proper relationships as the basis for peace, harmony, and wellbeing. This is firmly understood as entailing the rights and responsibilities of all individuals as bearers and conduits of mana and their duty to protect the resources of the natural world. Mana gives rise to an acknowledgment of personal dignity and respect for the self and the other and the duty of reconciliation

be argued that a greater proportion of criminal offenders would benefit from restoration and reintegration programmes, including at trial stage.

In listing the objectives of criminal justice policy as (a) messaging intended to weigh society's attitudes to particular actions; (b) punishment and deterrence; (c) restitution and restoration; and (d) rehabilitation and reintegration, the anecdotal evidence suggests that approaches designed, where appropriate, to reintegrate both the perpetrator through a genuine process of restitution and the victim through legitimate participation in the process of identifying guilt and measuring the restitution may provide opportunities precluded in current models.⁵⁹ A programmatic approach that appreciates the existential alienation of offenders and seeks to ameliorate it through restorative justice may well repay the effort we put into exploring them. See table below for summary of justice objectives.

Principle	Description
Affirmation	To endorse the value that society places on a particular societal belief, norm, or practice.
Deterrence	To dissuade people from behaving in a certain way.
Retribution	To seek recompense on behalf of the community for a harm or damage caused to it.
Incapacitation	To prevent an offender from continuing with a behaviour that causes harm.
Restitution	To deliver reparation or restoration to an individual or collective that has been harmed.
Restoration	To restore the mana, dignity, self-worth, and self-respect of the parties harmed or damaged by the offender's action or behaviour.
Rebalancing	To reestablish the societal relations, social arrangements, or social contract that have been undermined or weakened by the action or behaviour of the offender.
Rehabilitation	To help the offender alter the personal drivers that have led to the offending behaviour.
Redirection	To provide resources that enable the offender to desist in future from behaviours determined to be undesirable.

Such an approach is consistent with the idea of *desistance* whereby criminal justice programmes are seen as a process designed to achieve permanent abandonment of offending through a range of interventions that focus on one's self-concept; modifying perceptions of the desirability or value of crime; improving peer relationships, particularly those that embody antisocial elements; and lifestyle and employment enhancements. These lead to a re-storying of the self made up of a new self identity, personal agency, and faith in one's own ability to 'go straight'.⁶⁰ Desistance being located in, carried out by, and supported within community promotes prosocial behaviour and provides the offender with a range of resources.

As we continue the debate on what works in criminal justice, let us also survey some of the public policy pressures in the wider environment that may have an impact on criminal justice. Embedded as the phenomenon of crime is in the wider conditions of the New Zealand socio-polity today, it is appropriate in a Briefing Note such as this to scan the horizon for opportunities as well as pressure points. The recent review reports on mental health and social security as well as the Wellbeing Budget offer a great deal of hope as the policy environment tries to navigate a departure, albeit extremely restricted, from the neoliberal fundamentals of the last three decades. There is a growing awareness that narrow economic indices are essentially meaningless from the point of view of the average citizen and their family as a measure of human wellbeing and progress. This is to be welcomed not least because an over-reliance on economic measures of success has itself been partly responsible for some of the socioeconomic outcomes that play out in the criminal justice arena.

However, should an economic downturn, predicted in some quarters, occur, the Treasury's self-imposed budget responsibility rules may have the other effect of constricting the economy and generating additional public welfare problems. There are calls in various quarters for the Finance Minister to relax his budget rules on the grounds they are unnecessarily restrictive; may contribute further to an economic contraction, and simply do not make sense in this era of cheap borrowing. While I do not necessarily share the calls for additional debt-funded spending, I acknowledge the value of an ongoing debate on the principles of public spending because, where they impact on individual welfare, they go to the substance of these Briefing Notes.

Furthermore, in the absence of a regional industrial strategy—at this stage it is unclear how or if the Provincial Growth Fund will promote a re-examination of regional industrial fundamentals—the poorer districts may continue to experience the sort of enduring socioeconomic deprivation that has knock-on effects for social functioning and consequently, crime statistics. Almost by definition, a poor community is a community plagued by crime.

And finally, this Note proposes that, as a nation, New Zealand would benefit from a public conversation on some of our sociocultural habits that may be regarded, at the very least, as unhelpful to the aim of reducing crime. Chief among them are forms of toxic masculinity that have been mentioned above. Our young people, particularly our young boys and men, deserve a better set of ideals that promote compassion, empathy, collective goal-setting and action, and teamwork as precursor values for family life, community engagement, and citizenship. Otherwise, we risk another generation alienated from their community and their selves, functioning in cultural cul-de-sacs that are far removed from the aspirations that we cherish for our country.

Moving forward—some approaches

At the Porirua criminal justice summit last year, Children's Commissioner Andrew Becroft said⁶¹:

All roads lead back to (1) child/youth poverty and material disadvantage, (2) early interventions and assistance, and (3) the enduring legacy of colonisation and modern day systemic bias. We must address our enduring shame of indigenous over-representation through partnership with, and devolution of resources to, iwi and Māori services as a start.

In this, Judge Becroft acknowledged the horizontal and vertical dimensions of the problem of crime. What we are coming to understand, slowly, painfully is that as a response, punishment models like prison do not work.⁶² However, subject as it is to the public narrative, what Luke Oldfield calls the 'belligerents of the penal policy agenda'⁶³ New Zealand has long endured an expensive, ineffective, and inefficient policy that sees up to half of all offenders reoffend within five years and one which is so institutionally racist that more than half of all prisoners are Māori.

Crime, as I proposed above, is a community phenomenon with its roots deeply entrenched in social structures that give rise to outcomes of such deep inequity that recent research on housing inadequacy shows some in New Zealand are living in homes considerably below World Health Organisation standards.⁶⁴ Underlying the essentially social phenomenon of crime are domains of analysis which have reached strongly persuasive conclusions that the interplay between socioeconomic conditions; psychic despair and meaninglessness; the sense of powerlessness to improve the conditions of one's life and that of one's whānau; neural and genetic deficits exacerbated by the very socioeconomic conditions that hard-to-reach New Zealanders experience year after year; and a complex interplay of these factors that lead to embedded and unchanging deprivation, play a fundamental role in the extent of crime—including very violent and widespread physical and sexual assault—and the inability of current models to provide an effective remedy.

New Zealand finds itself at the upper end of world punishment statistics and while some improvements have occurred in the past three quarters to bring our prison numbers down, this may be on account of fewer remandees being jailed pre-sentence. Underlying these challenging statistics is the recognition that we possess a justice model that institutionally disadvantages Māori and Pasifika people and where justice is often a function of one's material resources. Ironically, it is these very indigenous cultures that have, from time immemorial, deployed cultural practices based on the values of restitution, rehabilitation, and reintegration that are showing signs of success. As scientific knowledge on the psychology of human functioning grows, we are coming to realise that human beings function and flourish in community and that criminal behaviour is often a deep-seated manifestation of alienation. Hence, reintegration models speak to and address the depth of the core deficit that reveals itself in the phenomenon of crime. Desistance theory has added significantly to the knowledge base, showing how an increase in social capital can directly and effectively begin to deter offenders from future crime by approaching the question from the twin principles of alienation and reintegration.

Concluding remarks

An Aotearoa free from crime may be beyond us. But an Aotearoa which fosters more humane approaches to offenders is achievable and, in fact, several programmes across the motu are giving more and more evidence of their viability. As the whakataukī at the top of this Note indicates, and which we as a Christian church acknowledge, there is great worth in approaching human relations through the lens of mercy. In closing, I invoke the whakataukī, 'Waiho kia pātai ana, he kaha ui te kaha' (Let the questioning continue; the ability of the person is in asking questions⁶⁵) to encourage Aotearoa New Zealand as a community to persevere in seeking answers to the seemingly intractable problem of achieving justice for victims and offenders in a criminal justice policy fitted for our needs in this twenty-first century.

In the two subsequent Briefing Notes to come, I hope to draw on the general principles articulated here to make an appraisal of offender and victim processes and programmes in Aotearoa with a view to identifying service gaps that may benefit from some of the insights presented here. We look forward to continued engagement with you on the subject and warmly welcome your views and responses to this and the following Briefing Notes.

Endnotes

- 1 'Leave them for shame to punish. Let us acquire fame by being merciful.' (*Ngā Pēpeha a ngā Tipuna*, Hirini Mead, Wellington, New Zealand: Victoria University Press, 2003, p. 418.)
- 2 Available at https://www.salvationarmy.org.nz/sites/default/files/uploads/_archive/BeyondTheHoldingTank.pdf and https://www.salvationarmy.org.nz/sites/default/files/uploads/20161207sputsa-prison-gate-2016_report.pdf.
- 3 <https://www.salvationarmy.org.nz/about-us>.
- 4 The Salvation Army New Zealand, Fiji, Tonga & Samoa Territory. (2019). *Breaking New Ground: Annual Report 2017–2018*. Wellington, New Zealand: Author. Available at: <https://www.salvationarmy.org.nz/news-events/publications/annual-report-2018>.
- 5 Clifton, S. (1999). *Who are these Salvationists: An Analysis for the 21st Century*. Virginia, United States of America: Crest Books, Salvation Army National Publications.
- 6 International Social Justice Commission, The Salvation Army. (2018). *Human Rights & The Salvation Army: Reflecting on the 70th Anniversary of The Universal Declaration of Human Rights*. New York, United States of America: Author. Available at: https://issuu.com/salvationarmyihq/docs/human_rights_and_the_salvation_army.
- 7 Booth, W. (1984). In *Darkest England and the Way Out* (originally published 1890). Georgia, United States of America: The Salvation Army Supplies and Purchasing Department, p. 67.
- 8 Bradwell, C. (1982). *Fight the Good Fight: The Story of The Salvation Army in New Zealand, 1883–1983*. Wellington, New Zealand: A.H. & A.W. Reed Ltd.
- 9 The Salvation Army New Zealand, Fiji, Tonga & Samoa Territory. (2019).
- 10 *Beyond the Holding Tank: Pathways to Rehabilitative and Restorative Prison Policy*.
- 11 Gluckman, P. (2018). *Using Evidence to Build a Better Justice System: The Challenge of Rising Prison Costs*. Auckland, New Zealand: Office of the Prime Minister's Chief Science Advisor. Available at <https://www.pmcsa.org.nz/wp-content/uploads/Using-evidence-to-build-a-better-justice-system.pdf>.
- 12 The notion of 'focussing events' draws from the physical sciences: See McCarthy, E. (2004). *International Regulation of Underwater Sound: Establishing Rules and Standards to Address Ocean Noise Pollution*. New York, United States of America: Springer.
- 13 See Tess Bartlett's assessment of the problem of penal populism in her Master's thesis, *The power of penal populism: Public influences on penal and sentencing policy from 1999 to 2008*. Victoria University of Wellington, 2009. Wellington, New Zealand. Available at <https://researcharchive.vuw.ac.nz/bitstream/handle/10063/1086/thesis.pdf?sequence=2>.
- 14 Pratt, J. (2007). *Penal Populism*. London, United Kingdom: Routledge. And see Walmsley, R. (2019). *World Prison Population List (12th ed.)*. London, United Kingdom: Institute for Criminal Policy Research. Available at https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf.
- 15 Newbold, G. (2007). *The Problem of Prisons: Corrections Reform in New Zealand Since 1840*. Auckland, New Zealand: Dunmore Publishing.
- 16 *Using Evidence to Build a Better Justice System: The Challenge of Rising Prison Costs*.
- 17 See Gluckman, P. (2018). *It's Never Too Early, Never Too Late: A Discussion Paper on Preventing Youth Offending in New Zealand*. Auckland, New Zealand: Office of the Prime Minister's Chief Science Advisor. Available at <https://www.pmcsa.org.nz/wp-content/uploads/Discussion-paper-on-preventing-youth-offending-in-NZ.pdf>; and Cullen, F. T., Jonson, C. L., & Nagin, D. S. (2011). Prisons do not reduce recidivism: The high cost of ignoring science. *The Prison Journal*, 91(3), 48S-65S. Note also that New Zealand has extremely high levels of recidivism.
- 18 'We know that most prisoners (91 percent) have a lifetime diagnosis of mental health or substance abuse disorders. Additionally, many prisoners have a personal history of trauma—52 percent of women and 22 percent of men in prison have a lifetime diagnosis of post-traumatic stress disorder.' (p. 15). 'For many offenders, long ingrained substance use is both a key driver of their offending and a stumbling block on the road to building a better life. (p.172).' Department of Corrections. (2018). *Annual Report 1 July 2017–30 June 2018*. Wellington, New Zealand: Author. Available at https://www.corrections.govt.nz/_data/assets/pdf_file/0011/926219/Department_of_Corrections_Annual_Report_2017_2018.pdf.
- 19 A word about neoliberalism may be useful here. In the West, neoliberalism tends to be traced from the Great Depression through the social democratic policies of the post-war period to the Oil Crisis of 1973 (See, for example, Jones, D. S. *Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics*. New Jersey, United States of America: Princeton University Press, 2012.). For the peoples of the colonised global south (South America, Africa, Asia, and Oceania), neoliberalism was an inevitable development from mercantilist economic approaches that prompted European merchants (usually with the connivance of their governments) to seek raw materials and consumer markets outside Europe. Once entrenched (by the late 1880s), European political-economic models gave rise to colonialism which, in turn, generated integrated processes of communications, markets, and political structures that came to be called globalisation. Globalisation gave rise, in the post-war, to the Bretton Woods system of global financial institutions which, together with phenomenal power wielded in stock exchanges, multinational companies and, later, control of indigenous farming knowledges, generated a neo-colonial environment supported by the advertising industry. The last days of the Cold War threw up strongly anti-collectivist and-socialist global leaders who eagerly embraced the liberal ideas of Hayek and Friedman to reverse the gains made by socialist, anticolonial, and nationalist struggles in the postcolonial period. Total market solutions were proposed and, in many parts of

public policy, achieved, at great cost to working class peoples throughout the world. For indigenous peoples both at home in Aotearoa and abroad, the neoliberal model has been experienced as a negation of their ways of being and knowing and as a further means of dismantling their social structures and expropriating their wealth. As Maria Burgh suggests, neoliberalism is colonialism writ anew. (*Resistance: An Indigenous Response to Neoliberalism*. Wellington, New Zealand: Huia Publishers, 2007). Some further interesting comments on the effects of neoliberalism can be found in Prof Simon Wren-Lewis's 2017 blog post, *Was neoliberal overreach inevitable?* at <https://mainlymacro.blogspot.com/2017/07/was-neoliberal-overreach-inevitable.html>.

- 20 See https://d3n8a8pro7vhmx.cloudfront.net/nzlabour/pages/8485/attachments/original/1505175899/Justice_Manifesto.pdf?1505175899; and https://www.greens.org.nz/sites/default/files/justice_20140203.pdf; and <https://www.national.org.nz/corrections>.
- 21 Safe and Effective Justice Programme Advisory Group–Te Uepū Hāpai i te Ora. (2019). *He Waka Roimata–Transforming our Criminal Justice System*. Wellington, New Zealand: Author. Available at https://www.safeandeffectivejustice.govt.nz/assets/Uploads/7efb12cccb/teuepureport_hewakaroimata2.pdf.
- 22 Ministry of Justice. (2019). *New Zealand Crime and Victims Survey: Help Create Safer Communities. Key Findings*. Wellington, New Zealand: Author. Available at <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-A4-KeyFindings-2018-fin-v1.1.pdf>.
- 23 Boomen, M. (2018). Where New Zealand stands internationally: A comparison of offence profiles and recidivism rates. *Practice: The New Zealand Corrections Journal*, 6(1), July. Available at https://www.corrections.govt.nz/resources/research_and_statistics/journal/volume_6_issue_1_july_2018/where_new_zealand_stands_internationally_a_comparison_of_offence_profiles_and_recidivism_rates.html.
- 24 Overall growth in global prison numbers has been boosted by those of the USA, Australia, and New Zealand: *World Prison Population List* (12th ed.).
- 25 Department of Corrections. (2018). *Annual Report 1 July 2017–30 June 2018*.
- 26 *New Zealand Crime and Victims Survey: Help Create Safer Communities. Key Findings*.
- 27 *New Zealand Crime and Victims Survey: Help Create Safer Communities. Key Findings*.
- 28 Fergusson, D. M. & Swain, N. R. (2004). How does economic disadvantage lead to crime. *Journal of Child Psychology and Psychiatry*, 45(5), 956–966. See also relationship of inequality to crime: Elgar, F. J. & Aitkin, N. (2010). Income inequality, trust and homicide in 33 countries. *European Journal of Public Health*, 21(2), 241–246; and Rufrancos, H. G., Power, M., Pickett, K. E., & Wilkinson, R. (2013). Income Inequality and Crime: A Review and Explanation of the Time-series Evidence. *Social Criminol* 1(1). Available at <https://pdfs.semanticscholar.org/f35d/ec6f94f129e33055d3574a8a19e601eca0eb.pdf?ga=2.43614565.1761329179.1561273199-781204894.1561273199>.
- 29 See data and arguments, for example, in Lamusse, T., Morgan, S., & Rāketē, E. (Eds.) (2016). *Abolitionist Demands: Towards the End of Prisons in Aotearoa*. Auckland, New Zealand: No Pride in Prisons Press. Available at <https://papa.org.nz/assets/bca4acc165/Abolitionist-Demands.pdf>; and Scottish Government, Children and Families Directorate. (2018). *Adverse Childhood Experiences factsheet*. Edinburgh, United Kingdom: Author. Available at <https://www.gov.scot/publications/adverse-childhood-experiences/>; and DeLisi, M & Piquero, A. R. (2011). New frontiers in criminal careers research, 2000–2011: A state-of-the-art review. *Journal of Criminal Justice*, 39(4), 289–301.
- 30 *World Prison Population List* (12th ed.).
- 31 Oldfield, L. (2018). *The Politics of Incarceration*. New Zealand Fabian Society lecture, University of Auckland, 15 November attended by the author.
- 32 *World Prison Population List* (12th ed.).
- 33 It is useful to bear in mind here that a kind of ‘moral panic’ appears to have arisen with regard to the prevalence of crime in our society and, indeed, in societies generally. Steven Pinker and Christopher Marshall note that crime has tended to decrease over the generations. (Pinker, S. (2015). *The Better Angels of our Nature: Why Violence has Declined*. London, United Kingdom: Penguin; and Marshall, C. D. (2002). *Prison, Prisoners and the Bible*. Paper delivered at Breaking Down the Walls Conference. Tūkua Nga Here Kia Marama Ai, 14–16 June. Matamata, New Zealand. Available at <https://restorativejustice.org/10fulltext/marshall-christopher-prison-prisoners-and-the-bible.pdf>.) However, Alan Johnson, formerly of this unit, suggests that the evidence to date is not adequate to draw categorical conclusions (Johnson, A. (2019). *Are You Well? Are We Safe?: State of the Nation Report 2019*. Auckland, New Zealand: The Salvation Army Social Policy and Parliamentary Unit. Available at https://www.salvationarmy.org.nz/sites/default/files/files/%5Bfile_field%3Atype%5D/20190228spputsasotn2019final3.pdf.) Interestingly, the *Public Perceptions of Crime 2016–Survey Report* found that most people in New Zealand believe both that crime in their neighbourhood is not rising but that crime nationally is (Colmar Brunton for the Ministry of Justice. (2016). *Public Perceptions of Crime 2016–Survey Report*. Wellington: Ministry of Justice. Available at <https://www.justice.govt.nz/assets/Documents/Publications/20161130-Final-PPS-report.pdf>.)
- 34 *New Zealand Crime and Victims Survey: Help Create Safer Communities*.
- 35 Pratt, J. (2010). *What can we learn from Scandinavian societies?* Video lecture to Prison Fellowship Conference, Upper Hutt, 9 October. Cited in Taylor, T. (2011). Changing the prison system. *The 2011 Quaker Lecture*. Christchurch, New Zealand: The Religious Society of Friends in Aotearoa New Zealand Te Haahi Tuuhauwiri. Available at <https://quaker.org.nz/sites/quaker.org.nz/files/Changing%20the%20prison%20system.pdf>.

- 36 Gilbert, J. (2018). Do we need more prisons. In A. Becroft & others. *The Big Questions: What is New Zealand's Future*. Auckland, New Zealand: Penguin Random House, Pp. 237–251.
- 37 *Public Perceptions of Crime 2016—Survey Report*.
- 38 Pratt. (2010).
- 39 See Minister Little's comments at the announcement of the formation of the Justice Advisory Group: <https://www.beehive.govt.nz/release/fixing-our-broken-justice-system-first-steps>.
- 40 Young, W. (2017). The justice sector: Opportunities and challenges. In J. Boston & D. Gill (Eds.). *Social Investment: A New Zealand Policy Experiment*. Wellington, New Zealand: Bridget Williams Books, Pp.289–309.
- 41 DeLisi, M. (2009). Psychopathology is the unified theory of crime. *Youth Violence and Juvenile Justice*, 7(2), 256–273.
- 42 Andrews, D. A. & Bonita, J. (2010) *The Psychology of Criminal Conduct (5th. ed.)*. New Jersey, United States of America: Matthew Vender & Company.
- 43 Bradley, T. (2017). Explaining crime through the ages. In J. Gilbert & G. Newbold (Eds.). *Criminal Justice: A New Zealand Introduction*. Auckland, New Zealand: Auckland University Press, Pp. 5–45.
- 44 The idea of a *unified* theory is borrowed from the physical sciences to suggest a theoretical framework which, deploying available data, is able to account for all the variables in a specific unit of knowledge. *Holistic* approaches on the other hand are more practical in their focus, seeking to ensure that as much of the data and insights have been accounted for in arriving at conclusions, while *eclectic* approaches opt to draw from sufficient data in order to produce workable programmes of action. These concepts are helpful in framing effective (and efficient) policy models.
- 45 Bradley. (2017).
- 46 A good summary of the current state of brain knowledge is provided in Society for Neuroscience. (2018). *Brain Facts: A Primer on the Brain and Nervous System*. Washington, D.C., United States of America: Author. Available at <https://www.brainfacts.org/the-brain-facts-book>; and Grace, R. C., McLean, A., & Beggs Christofferson, S. (2017). Psychology and criminal justice. In J. Gilbert & G. Newbold (Eds.). *Criminal Justice: A New Zealand Introduction*. Auckland, New Zealand: Auckland University Press, Pp. 209–224. The reader may also be interested in prenatal developmental issues—see the Ted Talk by Dr Johan Morreau, Consultant Paediatrician at Rotorua Hospital, on *The First 1000 Days*, available at <https://www.youtube.com/watch?v=K1sIVo3BNtM>.
- 47 McMeeking, S. (2017). Māori and justice. In J. Gilbert & G. Newbold (Eds.). *Criminal Justice: A New Zealand Introduction*. Auckland, New Zealand: Auckland University Press, Pp. 225–249; and Quince, K. (2007). Maori and the criminal justice system in New Zealand. In J. Tolmie, & W. Brookbanks, (Eds.). *Criminal Justice in New Zealand*. Wellington, New Zealand: Lexis Nexis, Pp. 333–358.
- 48 Tyson, L. (2006). *Critical Theory Today: A User-friendly Guide (2nd ed.)*. Oxford, United Kingdom: Routledge.
- 49 Newburn, T. (2017). *Criminology (3rd ed.)*. Oxford, United Kingdom: Routledge.
- 50 I believe this was Dickens' point when he put the phrase, 'the law is an ass' into Mr Bumble's mouth in *Olver Twist*: not so much that the law is bad but, like a beast of burden, may be made to carry whatever load in whatever direction one intends, hinting that legal systems are utilitarian rather than aspirational.
- 51 We only have to recall bizarre laws of the past to recognise the contingent nature of criminal justice: slavery; marriage between people of different races being illegal; women prohibited from entering university, the professions, or Parliament; rape within marriage permitted; the legal assumption of male chattel ownership of women and children; kidnap and forced resettlement of indigenous children into white homes; the murder of Australian and American native peoples by Caucasian settlers; the Jim Crow laws of the American South; and the South African apartheid regime. We might pause here to reflect on the profound trauma this has caused to countless human beings throughout history.
- 52 *He Waka Roimata—Transforming our Criminal Justice System*.
- 53 See <https://maori.salvationarmy.org.nz/article/whatever-it-takes> and <https://www.salvationarmy.org.nz/article/growing-grace>.
- 54 *Inside Keeping the Silence of Peace at Parihaka*, Thursday 30 May 2019, attended by the author.
- 55 Quince, K. (2007). Maori and the criminal justice system in New Zealand. In J. Tolmie, & W. Brookbanks, (Eds.). *Criminal Justice in New Zealand*. Wellington, New Zealand: Lexis Nexis, Pp. 333–358. Usefully, Quince includes the criticisms of a number of Māori public intellectuals on marae justice procedures.
- 56 This section is based on a reading by a tauīwi of the publications, *He Hīnātore ki te Ao Māori: A Glimpse into the Māori World* (Ministry of Justice, New Zealand, 2011), available at <https://tmoa.tki.org.nz/content/download/762/7209/file/HeHinatoreKiTeAoMaori.pdf>; and Rev. Māori Marsden's *The Woven Universe: Selected Writings of Rev Māori Marsden* (Edited by Te Ahukaramu Charles Royal, Estate of Rev Māori Marsden, New Zealand, 2003); and Cleve Barlow's *Tikanga Whakaaro: Key Concepts in Māori Culture* (Oxford University Press, Australia, 1991). I hope I have done some justice to what is a complex philosophical framework and have not inadvertently misrepresented Mātauranga Māori. For a kōrero by a Māori expert, see the Quince chapter referenced in the previous footnote.
- 57 Leopold, D. (2018). Alienation. In E. N. Zalta (Ed.). *The Stanford Encyclopedia of Philosophy (Fall 2018 Edition)*. California, United States of America: Stanford University. Available at: <https://plato.stanford.edu/archives/fall2018/entries/alienation/>.
- 58 Smith, H. P. & Bohm, R. M. (2008). Beyond anomie: Alienation and crime. *Critical Criminology*, 16(1), 1–15.

- 59 Anecdotal evidence obtained from The Salvation Army's participation in various restorative justice models seems to indicate optimistic lines of policy development including the Alcohol and Other Drugs Treatment Court (See <https://www.lawsociety.org.nz/practice-resources/practice-areas/courts/alcohol-and-other-drug-treatment-courts-transforming-lives> and adls.org.nz/for-the-profession/news-and-opinion/2017/9/1/aodt-court-models-%E2%80%9Ctransformational-justice%E2%80%9D/). However, it should be acknowledged that there is some evidence that the effectiveness of restorative models is limited: see, for example, Maxwell, G. (2007). The defining features of a restorative justice approach to conflict. In G. Maxwell & J. H. Liu (Eds.). *Restorative Justice and Practices in New Zealand: Towards a Restorative Society*. Wellington, New Zealand: Institute of Policy Studies, Victoria University of Wellington, Pp. 5–28. Further research is called for.
- 60 Bevan, M. (2015). Desistance from crime: A review of the literature. *Practice: The New Zealand Corrections Journal*, 3(1), 5–9.
- 61 Quoted in Ashton-Martyn, M. & O'Connell Rapira, L. (2018) *They're Our Whānau: A Community-powered and Collaborative Research Report on Māori Perspectives of New Zealand's Justice System*. Wellington, New Zealand: Action Station, p. 7. Available at <https://actionstation.org.nz/downloads/tow-report.pdf>.
- 62 Buttle, J. W. (2017). Imagining an Aotearoa/New Zealand without prisons. *Counterfutures* 3, 99–128. Available at <http://counterfutures.nz/3/buttle.pdf>.
- 63 Oldfield, L. (2018). *The Politics of Incarceration*.
- 64 Emery, T. (2019). *Key Findings Interim Report 2019*. Toitū te Kainga, Toitū te Ora, Toitū te Tangata—Healthy Homes Healthy People project. Rotorua, New Zealand: Toi Ohomai Institute of Technology, Scion, Unitec Institute of Technology, Tallwood, & Matekuare Whānau Trust. Advance unpublished copy.
- 65 Mead (2003, p. 418)

About the author

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