

Equal Justice Project Symposium Paper

**Retribution v Restoration – What is the
Future of the Criminal Justice System in
New Zealand?**

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I Introduction

The New Zealand Criminal Justice System leaves much to be desired. Maori over-representation has plagued the system since the 1960's, incarceration rates remain alarmingly high, as do reoffending rates (despite crime rates consistently decreasing), and there is essentially no correlation between tough prison sentences and the deterrence of crime. This paper aims to address these issues from the perspective of the roles that both restorative and retributive justice principles play in maintaining, but also in offering solutions to these fundamental problems. New Zealand's criminal justice system has historically been founded upon a penal and retributive basis, however in the last few decades a limited scope for restorative practices has been incorporated into our system. This paper seeks to first set out the history and foundations of New Zealand's Criminal Justice System. It will then analyse the current practices we have in place, their effectiveness and how further processes and alternatives to current practices can be incorporated, in order to better address some of the underlying systemic issues.

II Background of the New Zealand Criminal Justice System

A History of New Zealand's Criminal Justice System

The criminal law is a tool that has the power to exert considerable control and influence over society. The reach of the Criminal Justice Systems extends from the regulation of citizen's behaviours to influencing the values that New Zealanders uphold in their day-to-day lives. The basic premise of the Criminal Justice System is to find a balance between the need to deter and prohibit dangerous or harmful activities, with the fundamental right that each citizen has in New Zealand to freedom and autonomy.

Despite the recognition of freedom and autonomy as an essential underpinning of our democratic society, New Zealand has, from its first administrative beginnings, had a retributive and punitive approach to crime. A penal approach to crime and sentencing was introduced to New Zealand in the 1840's through the process of colonisation and the import

of British imperial law.¹ Whilst certain extreme forms of punishment were subsequently removed, the punitive approach to crime has permeated through the New Zealand legal system ever since.

A move into the 20th century saw a mix of different approaches to crime and punishment. Following the Second World War, there were calls for a more compassionate approach to dealing with prisoners.² This led to the introduction of various reforms which focused on improvements to prisoner's recreational activities, education and training programmes. Measures were taken to modernise the Criminal Justice System, as exhibited through the creation of the Criminal Justice Act 1954, which, amongst other things, abolished sentences of hard labour.³

However, in a contradictory fashion the government at the time re-introduced capital punishment.⁴ This action appeared to stem from public concern following intentional and violent homicides increased significantly in the 1940's.⁵ The increase was viewed as being due to a lack of deterrence of such behaviour, despite various other factors being linked to the increase, such as the rapid-urbanisation that was beginning to occur. The 1950's also formed the beginning of a rapid prison expansion programme, as crime rates saw no sign of declining. The outgoing Secretary of Justice, Sam Barnett, forewarned that the incarceration rate would continue to rise so long as archaic perspectives of prisons remained.⁶

The 1960's saw a slightly more progressive era for the New Zealand Justice system. In 1964, a work release programme was introduced that allowed prisoners to work during the day to earn money for life after their sentence.⁷ The temporary work-release programme survives today in the Corrections Act 2004 as one way of trying to successfully re-integrate prisoners into the community upon their release.⁸

¹ Greg Newbold *The Problem of Prisons: Corrections in New Zealand Since 1840* (Dunmore Publishing, Wellington, 2007) at 23.

² Greg Newbold *Crime, Law and Justice in New Zealand* (Routledge, New York, 2016) at 216.

³ Criminal Justice Act 154

⁴ Capital Punishment Act 1950.

⁵ Newbold *Crime, Law and Justice in New Zealand* at 218.

⁶ Newbold, above n 1, at 56.

⁷ Penal Institutions Amendment Act 1961, s 2. Inserted into the: Penal Institutions Act 1954, s 21A.

⁸ Corrections Act 2004, s 62(2)(a)(i).

Considerable flux in the approaches to crime and sentencing occurred throughout the following few decades. A prominent influence was the introduction of the Criminal Justice Act 1985, which attempted to address the public view that the current system was ‘weak’ on violent offenders, yet overly harsh on minor offenders.⁹ Responses to this public concern was enacted through requiring a mandatory 5-year minimum imprisonment for violent offenders.¹⁰ Additionally, based on the Review Committee's report (where they suggested that prison was unable to serve a truly rehabilitative function), it was determined that property offenders should not be imprisoned unless a non-custodial sentence would be highly inappropriate.¹¹

In 1977 the Ombudsman delivered a scathing review of the New Zealand Corrections System, in which seventy-three recommendations arose. The essence of the recommendations was that New Zealand desperately required a reduction in imprisonment, and they suggested that the only effective way to achieve such a goal was to expand the availability of alternatives to imprisonment.¹²

Yet, across this period and into the 1980's incarceration rates continued to rise steadily, with the disparities and over-representation of Māori becoming an ever pressing issue. The increase in Māori incarcerations rates were not helped by a lack of Tikanga Māori and Te Ao Māori principles in the strategies used to target offending. Moana's Jackson's 1988 He Whaipaanga Hou report argued that these inequities were due to systemic bias, resulting from the frameworks and fundamental basis of New Zealand's Criminal Justice System being overwhelmingly Pākehā and Euro-Centric.¹³

Over the 1990's and through to the 2000's, a number of markers of retributive justice in the New Zealand Justice system have arisen. Across this time period, the number of prisoners

⁹ Criminal Justice Act 1985.

¹⁰ Section 5.

¹¹ Section 6.

¹² Dr Peter Johnston “Twenty years of Corrections – The evolution of offender rehabilitation” (2015) 3(2) Practice: The New Zealand Corrections Journal 5 at 12.

¹³ Moana Jackson *The Maori and the Criminal Justice System: A New Perspective: He Whaipaanga Hou (Part 2)* (Ministry of Justice, Study Series 18, 1988) at 26.

serving indefinite sentences of preventative detention increased significantly.¹⁴ Furthermore, incremental changes during the 1990's resulted in increased sentence lengths for various violent offences and restricted parole for groups of prisoners.¹⁵ Whilst various youth restorative-based schemes were introduced in relation to the punishment of adult offenders (especially those convicted of any violence related crimes), New Zealand has become increasingly punitive.¹⁶

B The Place of Penal Populism

As evidenced by the evolution of New Zealand's Criminal Justice system over the last 100 years, especially in the last decade, governments have been increasingly influenced by the public's view and their penal sentiments as a part of their framework for policy change.¹⁷ This has led to what is coined "penal populism", which is the concept that politicians advocate for greater punitive laws and sentences in an attempt to improve their chances of re-election, especially following times of high-profile offences that are sensationalised by the media. However Pratt and Clark argue that such populism can go much further than merely finding resonance with the public views when it suits them, but may actually be coerced by extra-parliamentary forces which claim to speak on behalf of the public.¹⁸

II A Snapshot of New Zealand's Current Criminal Justice System

Now that we have outlined the basic foundations of our Criminal Justice System, and acknowledged penal populism as having a considerable effect on criminal justice policy over time, it is necessary to assess the current statistics and approach in New Zealand. This section seeks to show some of the major problems facing our Criminal Justice System. Despite numerous policy reforms, we continue to see increasing rates of incarceration, remand rates and recidivism. In addition, Maori remain grossly overrepresented, and nearly all prisoners are facing mental health or substance abuse issues.

¹⁴ Newbold, above n 1, at 62.

¹⁵ Criminal Justice Amendment Act 1993.

¹⁶ John Pratt and Marie Clark "Penal populism in New Zealand" (2005) 7(3) *Punishment & Society* 7(3) at 304.

¹⁷ At 305.

¹⁸ At 310.

A *High Incarceration Rates*

Firstly, it is important to distinguish between incarceration rates (rates at which people are imprisoned for crime) and crime rates (rates at which crimes are committed). Incarceration rates are determined by the trial process, with judicial intervention by way of sentencing, confirming who goes to prison and for how long. High incarceration rates do not necessarily mean high crime rates, but rather, reflect an attitude and culture of retributive rather than restorative justice. New Zealand's current crime rates, as well as sentencing and conviction rates, are at an all-time low, while the prison rates are historically high – with our current prison population at more than 10,000 people.¹⁹

Not only is New Zealand's prison population at a record-high, but incarceration rates are one of the highest in the OECD, at around 220 per 100,000 (the average being 147 per 100,000).²⁰ In a comparative study, Finland was found to have consonant crime rates and demographics to New Zealand. Nevertheless, the incarceration rate in New Zealand was significantly higher.²¹ If the current retributive justice approach is maintained, New Zealand's prison population is not likely to steady or decline any time soon.

Interestingly, while crime rates are historically low in New Zealand, up to 71% of people believe that crime is steadily swelling and distrust the country's institutions to control crime.²² By contrast, in Finland, the majority of people have a higher level of trust in their social institutions dealing with criminal activity and believe that crime levels are low.²³

¹⁹ Department of Corrections "Prison facts and statistics" (September 2017) at 3.

²⁰ Peter Gluckman "Using evidence to build a better justice system: The challenge of rising prison costs" (29 March 2018) Office of the prime Minister's Chief Advisor < www.pmcsa.org.nz > at 7.

²¹ At 8.

²² Ministry of Justice, Department of Corrections & New Zealand Police *Maintaining a safe NZ and working towards a more humane and effective criminal justice system* (2017) at 4.

²³ Gluckman, above n 20, at 13.

B High Remand Rates

In addition to the prison population increasing, those in remand have also doubled in the past 18 years, and the average time in custody has increased by 17 days in the past 11 years.²⁴ The bail conditions have increased by 53%, which inevitably increases the risk of breaches – especially by the young and illiterate who comprise approximately 70% of those convicted.²⁵

The toughening of parole rules is often in response to high profile events, in the hope that they will deter criminal behaviour. However, the statistics show that despite these policy changes, the imprisonment rates do not decline in those areas, but have in fact increased by approximately 7,000 prisoners in the last 38 years.²⁶ These statistics show that the a ‘catching, not supporting’ attitude has acted contrary to the aims of remand policies and the broader aims of reducing incarceration rates in New Zealand.

Furthermore, the justice system’s individualistic focus on the specific crime and the offender involved has meant that families often suffer as a result of imprisonment. Women are often left to care for dependent children, with their primary income earner now behind bars. In addition, children whose parents are in jail are more at risk of poverty, mental, and social deprivation.²⁷

C High Rates of Recidivism

As of 2016, 31% of prisoners reoffend within a year of being released from prison and 46% are reconvicted.²⁸ For teenage prisoners, the recidivism rate is 71%.²⁹ Only a small percentage of prisoners find stable jobs (partly owing to the stigma attached to a criminal conviction), and the remaining find themselves involved criminally as a basis for survival.

²⁴ Gluckman, above n 20, at 16.

²⁵ J Bowman “Assessing the Literacy and Numeracy of Prisoners” (2014) 2(1) Practice: The New Zealand Corrections Journal 63 at 14.

²⁶ Samantha Jeffries and Philip Stenning “Sentencing, aboriginal offenders: law, policy and practice in three countries” (2014) 56(4) Canadian Journal of Criminology and Criminal Justice at 448.

²⁷ Reuben Miller and Amanda Alexander “The price of carceral citizenship: Punishment, surveillance, and social welfare policy in an age of carceral expansion” (2015) 21 at 316.

²⁸ Gluckman, above n 20, at 18.

²⁹ At 21.

However, it has been shown in countries such as Finland that greater investment in policies that provide education and support to prisoners, better equip them for their reintegration into society so that they do not become dependent on crime to make ends meet.³⁰

D Maori and the Criminal Justice System

The prison population would be 44% smaller if Māori had the same proportion of their people in prison as a Non-Maori.³¹ At every level of the criminal justice system, Māori are filtered in at much higher rates than any other ethnic group.³² Māori are more likely to be apprehended, charged, convicted and imprisoned than non-Māori. There is a high degree of discretionary decision-making involved in each of these steps, and research shows that decisions are often made for illegitimate reasons. Kylie Quince points out that the Criminal Justice System is plagued with systemic bias in relation to Māori. While comprising only 15% of the New Zealand population, Māori currently make up over 50% of the prison population, and are 3.9 times more likely to be convicted the same offence than non-Māori.³³ Due to the young age structure of Māori population one-third of those who were convicted in 2017 were younger than 24.³⁴

Furthermore, it is often overlooked that Māori are significantly more likely to be victims of crimes. Maori are victims in substantially higher rates across all types of offenses, especially the more severe crimes with high levels of violence.³⁵

³⁰ Ministry of Justice, Department of Corrections & New Zealand Police *Overall Recidivism Rates (48-month follow up)* (2017) at 17.

³¹ At 18.

³² Khylee Quince "Maori and the criminal justice system in New Zealand" J Tolmie and W Brookbanks (eds) *Criminal Justice in New Zealand* (Lexis Nexis, Wellington, 2007) at 3.

³³ At 4.

³⁴ L Snowball, and D Weatherburn "Does racial bias in sentencing contribute to indigenous overrepresentation in prison?" (2017) *Aust. N. Z. J. Criminol* 40 at 272.

³⁵ Quince, above n 32, at 10.

E Gang Affiliation

At the end of 2017 more than one-third of those in prison were affiliated with gangs. Out of that one-third, Māori made up approximately 90% of the Mongrel Mob and Black Power (the two largest groups in NZ).³⁶ More than half of Māori in prisons are gang affiliated. Evidence shows that people are much more willing to leave gangs when they are provided with alternate employment opportunities. However, given the low rates of prisoner employment, it is not surprising that rates of recidivism within gangs (where there is a culture of offending) are so high.

F Mental Health and Substance Abuse

Mental health and substance abuse are some of the biggest challenges faced by prisoners. Only 9% of the people in prison today are free from a lifetime diagnosed psychological illness or a substance-use disorder. That makes 91% of the prison population vulnerable to mental disease, of which, one third have a clinically significant personality disorder.³⁷ Despite these alarming rates, only 47% of those with a diagnosed mental health obtained treatment.³⁸ International evidence shows that diagnosing and treating substance use disorders have an impact on lowering recidivism. Countries such as Germany and Netherlands place these individuals in psychiatric hospitals and their substantially lower incarceration rates are proof of the effectiveness of reducing reoffending.³⁹

³⁶ Ministry of Justice, Department of Corrections & New Zealand Police *Maintaining a safe NZ and working towards a more humane and effective criminal justice system* (Ministry of Justice, Report, 2017).

³⁷ D Indig and C Gear and K Wilhelm *Comorbid Substance use disorders and mental health disorders among New Zealand prisoners* (Ministry of Justice, Report, 2016).

³⁸ Ministry of Justice, above n 37.

³⁹ R Subramanian and A Shames *Sentencing and prison practices in Germany and The Netherlands* (Institute of Justice, Report, 2013).

III Restorative Justice

A Definition

The concept of restorative justice is derived from a set of basic principles adopted by the United Nations in 2002.⁴⁰ Restorative justice is constantly developing but at its core, it is focused on repairing harm and preventing further harm by requiring the offender to take responsibility for their actions. Many states, including New Zealand, have since established guidelines, standards and programmes that are in line with restorative justice principles. As an alternative framework, it is focused on the relationship between victims and offenders in which the community plays a key role.⁴¹ Traditional forms of justice, such as retributive justice, focus on punishing the offender for the particular offence committed and tend to view the crime as an offence against the state, whereas restorative justice shifts the emphasis to a more human, victim-centric system by engaging victims, offenders and the wider community in dialogue.

Whilst these approaches seem to be in stark contrast with one another, the two processes are capable of co-existing. Kathleen Daly suggests that restorative and retributive approaches and processes are actually inter-related and can often be interwoven in order to strike a balance between the requirements of rehabilitation and deterrence.⁴² The question becomes – what is the correct weighting to be given to each? Whilst New Zealand has a predominantly retributive focus, the restorative processes that exist within it cannot be ignored. It is important to note this as we move forward and explore different options and future directions for New Zealand’s Criminal Justice System, where a complex mix of different restorative and retributive processes may be the best solution.

Such options include restorative justice programmes, which are defined as any initiative that uses restorative processes – for example, mediation and conferencing. Generally, offenders must participate actively in addressing the harm and difficulties caused by his or her crime

⁴⁰ *United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* UN Doc E/2000/INF/2/Add 2 at 12.

⁴¹ Howard Zehr *The Little Book of Restorative Justice* (1st ed, Good Books, Intercourse, PA, 2002) at 5.

⁴² Kathleen Daly “Restorative Justice: The Real Story” (2002) 4(1) *Punishment & Society* 55 at 61.

and take responsibility for their actions.⁴³ Offending under this conception is primarily a breach of human relationships and only secondarily a violation of the law. The goal is the restoration of mutual responsibility for correcting wrongdoing, and in this sense, it is in line with Māori values of reconciliation and reciprocity through community engagement.

B Current Restorative Justice Processes in New Zealand

While successive governments have supported a progressively retributive, as opposed to a restorative approach to crime, the integration of principles of restorative justice is an integral part of New Zealand's Criminal Justice System. New Zealand's two key restorative justice processes – conferences and mediation – will be discussed below.

1 Mediation

Mediation in a restorative justice context refers to a process in which the offender and the victim engage in discussion facilitated by an impartial third party with specialist training. This can be done through face-to-face meetings or other indirect means. Mediation is the most common type of restorative justice programme, due to the relative ease with which it can be incorporated into the existing criminal justice systems.⁴⁴

Mediation only proceeds once consent is given both by the victim and the offender. In order to protect the victim, the process can be terminated at any point if consent is withdrawn by the victim. In general, victim-offender mediation is utilised in cases involving less serious offences, but mediation can arguably be used for any type of offence.

2 Conferences

Conferences, on the other hand, differ from mediation in that they involve a larger circle of people beyond the victim and the offender. In community and family-based conferences, other persons who are affected by the offences also participate. The objective of conferences

⁴³ *United Nations Commission on Crime Prevention and Criminal Justice Resolution XXVI (2017)* at 4.

⁴⁴ At 5.

is broader: it aims to allow the offender to fully realise the impact of their actions. This is often used to break the cycle of vulnerable youth being further captured by the formal Criminal Justice System.

Since 1989, family group conferencing for all serious youth offences have been held under the Children, Young Persons and their Families Act 1989. However, it was only through the passing of the Parole Act 2002, the Victim's Rights Act and the Sentencing Act 2002 that statutory recognition of restorative justice processes was formalised in the New Zealand Criminal Justice System.⁴⁵ Restorative Justice Conferences in New Zealand are held prior to sentencing and allow the judge to take into account the agreements made between both parties, and factor in the sincerity of the offender's remorse. When measured against a control group, restorative conferences, such as Project Turnaround based in Timaru, and Te Whanau Awhina based in West Auckland, have shown reductions in recidivism, both in reconviction rates and the seriousness of offending.⁴⁶ The 2016 Ministry of Justice survey on victim satisfaction through restorative justice processes showed that 75 % of respondents felt that the conference process was beneficial in at least one way.⁴⁷ Furthermore, the success of this process, as implemented through the December 2014 amendments of the Sentencing Act 2002, also affected recidivism rates, with an estimated reduction of 620 crimes per year between 2015-16.⁴⁸

3 *Other Jurisdictions*

The Netherlands' low incarceration rate (with a prison population rate of 59 per 100,000 of the national population) can be attributed to two key reasons. The first is demographic change, resulting in an ageing population and a declining crime rate. However, the second reason attributes lower incarceration rates to restorative justice processes. The Netherlands' adoption of the Eigen Kracht conference is modelled upon New Zealand family group

⁴⁵ Ministry of Justice *Restorative Justice: Best Practice in New Zealand* (Ministry of Justice, May 2004) at 7.

⁴⁶ Gabrielle Maxwell, Allison Morris and Tracy Anderson *Community Panel Adult Pre-trial Diversion: Supplementary Evaluation* (Crime Prevention Unit, Victoria University of Wellington Institute of Criminology, May 1999) at 45-50.

⁴⁷ Research & Evaluation, Ministry of Justice *Restorative Justice Victim Satisfaction Survey* (Ministry of Justice, Research Report, September 2016) at 5.

⁴⁸ Sentencing Act 2002, s 24A requires Courts to assess the suitability of restorative justice processes for eligible cases.

conferences, and focuses on relationship-building practices aimed at targeting youth before they fall into patterns of criminal behaviour. It has proved to be more successful than traditional interventionist practices.⁴⁹

IV Better Preparing Prisoners for Reintegration into Society

For those already in our prison system, a sharp focus on education and treatment needs to be applied in order to minimise reoffending. It is important to recognise that the life journeys of many of our offenders have been heavily influenced by violence, substance abuse, state system dependence and using crime as a means of survival. There is an opportunity to affect great change through programs directed at the treatment and education of our prison population. Participation in these programs is strongly correlated with lower rates of recidivism⁵⁰

A Treatment

As highlighted above, mental health and substance-use disorders have a significant presence in New Zealand's prison system. Of the 91% of prisoners with diagnosable mental and substance orientated illnesses, less than half receive adequate treatment.⁵¹ The current services available in prison provide initial screening for mental health issues upon arrival, followed by contact with clinicians to moderate these issues in the prison environment.⁵² Although this is a good starting point, these services are relatively ineffective. As an environment marked by intimidation and stress, prison can promote the development of mental illnesses, often resulting in many prisoners being missed by the current screening system. Furthermore, there are inadequate services available in prison for the treatment of substance addiction and abuse. Time in prison itself assists with substance addiction as it eliminates access. However, without adequate rehabilitation aimed at the mental health issues related to substance abuse, it is likely that prisoners will resort back to substance abuse upon

⁴⁹ Rene Clarijs and Thijs Malmberg (eds) *The Quiet Revolution: Aggrandising people power by Family Group Conferences* (SWP Publishers, Amsterdam, 2012) at 31.

⁵⁰ Gluckman, above n 20, at 16.

⁵¹ At 17.

⁵² Frame-Reid and Thurston, *State of Mind: Mental Health services in New Zealand Prisons*. Department of Corrections Research Report, (December 2016).

release. The treatment of substance use disorders in international prisons has shown to have a significant impact on lowering rates of recidivism.⁵³ In order to enhance New Zealand's prisons in a way that effectively rehabilitates its prisoners, there needs to be more focus and resources put into providing regular screening, therapeutic counselling services to prisoners with all levels of illness (not just severe cases), programmes directed at substance abuse and self-help remedies, along with the integration of Māori values across the services.

B Education

Annah Stretton's RAW (Reclaim Another Woman) Program was launched in early 2013 and has been instrumental in the reintegration of prisoners, in particular, Māori women. The program focuses on 6 areas development: education, employment, reconnection with whanau, life aspirations, community impact and removing crime from their environment. Based on its incredible results, the program is in a strong position to lead the conversation on solutions to providing meaningful rehabilitation within our prisons. In a letter to the Minister of Justice, Annah provides recommendations based on her findings through her program.⁵⁴ The majority of these centre around bridging the gap in basic education and providing life / vocational skills that not only result in better reintegration into society, but also provide its participants with the tools to make a positive social change in their environments. There is a large emphasis on parenting courses, even for those without children. The purpose of these are to enable participants to break the circuit of crime within their families. Another initiative is providing a further incentive to refrain from reoffending. Subject to conditions, the opportunity to earn a clean slate within the public record has the potential to foster increased engagement in rehabilitation programmes.

C Early Intervention

We must recognise the importance of early intervention and the role it could play in improving our justice system. The intergenerational link between child maltreatment is unarguable. There is a direct correlation between intergenerational offending, in particular,

⁵³ Gluckman, above n 20, at 17.

⁵⁴ Annah Stretton (2018), *Tomorrow's Prisons*.

child abuse and violent offending.⁵⁵ It is a systemic issue that cannot be resolved through government policies. As discussed in Equal Justice Project's recent Symposium on this topic, we have failed as a society if the only solutions we have to crime lie waiting at the bottom of the cliff (after the offending). In order to effectively prevent crime, we need to approach the problem with solutions from all aspects of society; education, community engagement and social services to name a few. New Zealand needs to look to other countries that have implemented successful programmes and incorporate these in a way that best fits our communities.

Comprehensive studies in the United Kingdom have found that their success lies with access to a variety of well-resourced and flexible programs, including individual-focused, family-focused, school-based, community intervention-based, and behavioural parent training.⁵⁶ These programs target emotional and cognitive competences, social skills, problem solving, anger management, family management and conflict, community risk factors, along with a multitude of other developmental aspects, in the absence of which, often lead to crime. By implementing these solutions to cover a variety of different approaches, these programmes minimise the risk of leaving children behind, an issue that New Zealand's current early intervention programs often face.

Not only will early intervention aid in reducing offending, but it is also more cost effective than our current approach. Fewer resources are needed to implement early prevention programs, and they have a proven effect of reducing crime. Incarceration has cost New Zealand more than any other government spending and the total cost of prisons has tripled in the last 22 years (being three times faster than our GDP).⁵⁷ However, if we change our approach, not only will crime rates go down, but government resources can be allocated elsewhere, such as education and healthcare.

⁵⁵ Gluckman, above n 20, at 17.

⁵⁶ Andy Ross and others *Prevention and Reduction: A review of strategies for intervening early to prevent or reduce youth crime and anti-social behaviour* (UK Department of Education, Research Report, 2010).

⁵⁷ Ministry of Justice *Introducing the LMDI: A new method to understand pipeline flows and their impact on the prison spend* (Ministry of Justice, 2017).

VI Conclusion

It has been shown that New Zealand has had and continues to have a predominantly punitive, retributive approach to crime. This is driving record-high incarceration rates and high rates of reoffending, despite crime rates decreasing overall. The current focus is not serving some of the most vulnerable members of our society well – children and families continue to be at the receiving end of a ‘tough on crime’ approach. One of the most urgent issues in our Criminal Justice System is the significant overrepresentation of Maori, which is caused by a combination of social factors, government policy, and systemic bias at all levels of the system, meaning Maori are ‘filtered in’ at much higher rates than any other ethnic group. One way to begin addressing these problems is to make better use of restorative justice processes that are already incorporated in our system, which have been proven to produce better outcomes. It is also imperative that we invest in better preparing prisoners for their reintegration into society, by providing them with treatment and education so that they can stand on their own two feet. Finally, it has suggested that at a more systemic level, we need to invest in early intervention, such as better education, prevention programmes, drug and alcohol support, and family support. This will aid in preventing criminal behaviour at its sources, by helping, not punishing, those who are most vulnerable in society.