

Community Probation in New Zealand / Aotearoa

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Summary

This article describes the operation of the Community Probation Service in New Zealand / Aotearoa¹, and the range of Community Sentences available as alternatives to imprisonment. I highlight the increased use of punitive sentencing options in New Zealand and its impact on the Community Probation Service. I will discuss a shift towards effective (evidence-based) practice, which has become dominated by the Department of Corrections Psychological Service, in terms of research and evaluation. Another issue which I will briefly consider is the lack of a professional association or support structure for staff. The developments described here mirror the changes being experienced by other probation services world-wide but also reveal one or two surprises unique to probation practice in New Zealand.

Introduction

As the title suggests New Zealand / Aotearoa is a bicultural nation, with a treaty-based agreement as the basis for relationships and governance between Māori indigenous people and European settlers. The reality, however, has been colonisation, with its abuse of rights and the introduction of a criminal justice system based on white European adversarial approaches. Prior to colonisation Māori justice employed a range of restorative, cultural, family-based and punitive (retributive) practices to deal with offending. For over 150 years these have largely been ignored by the majority pākehā (non-Māori) population. From the 1970's the Māori renaissance movement influenced successive governments towards a criminal justice system that reflected the cultural heritage and diversity of the nation. The Children, Young Person's and their Families Act 1989, ensured increased involvement by victims and extended family networks in

¹ Aotearoa means land of the long white cloud – as named by the Māori, the indigenous people of New Zealand.

addressing offending, and in providing community-based support to both victims and offenders. The 1989 CYPFA legislation is restricted to children under the age of 16 years. For adult offenders the current legislation is the 1985 Criminal Justice Act. The Community Sentences available through this Act reflect the various cultural, restorative and punitive expectations of the New Zealand populous and these are explored in the next section.

New Zealand was one of the first countries in the world to pass legislation establishing probation as an alternative to custody, the ‘First Offenders of Probation Act’ 1886 (Campbell & Marra, 2000). Subsequent legislation through the 20th Century established the court officer, report writer and supervision roles for probation officers and the foundation of a professional probation service in 1954 (Campbell & Marra, 2000). The British model of advise, assist and befriend was largely adopted by New Zealand’s Community Probation Service (CPS) until the sweeping political changes of the 1980’s and 1990’s (Boston *et al*, 1996) re-defined the role and mission for CPS. From social work to corrections; from public service to government agency; from bureaucratic to market-based philosophies, CPS has mirrored many probation services throughout the world. In moving from a befriending basis to treatment models; from ‘nothing works’ and minimalist or radical non-intervention to the current era of effectiveness and evidence-based practice; the paradigmatic shifts are familiar.

Many of the current issues emerging for CPS (see later) are a reflection of the Neo-liberal and hard-line managerialist agendas of two successive National governments. More recently, however, since the election in November 1999 of a ‘new’ Labour – Alliance coalition government the rhetoric has changed to reflect community, ‘Third Way’ and restorative approaches to criminal justice. Like Britain, only time will tell as to whether real change is afoot or whether it is just the language that has shifted.

Community Sentences administered by probation in New Zealand

The range of community sentences administered by CPS date back to amendments to the Criminal Justice Act 1954 (Periodic Detention was introduced in 1962 and Community Service in 1981), and the current Criminal Justice Act (1985) which introduced sentences of Supervision and Community Programme. Recent amendments to

the 1985 Act have introduced Home Detention (1999) which includes intensive supervision, and is an option for the early release of prisoners. CPS also supervises parolees and life licences, provides pre-sentence reports and court services. CPS does not administer family court welfare or sentences for young people under the age of 15 (and only the most serious of the offenders aged 15-16 years). CPS is part of the Department of Corrections which also has the Public Prison Service and the Psychological Service as major service providers within the department.

Community sentences are seen as alternatives to short-term prison sentences. The range of options offered are perceived to have elements of punishment, surveillance and control, rehabilitation, treatment, reintegration, reparation, and of being a benefit to the wider community and promoting public safety (Ministry of Justice, 1999a).

- **Periodic Detention:** This began in 1963 and is the ‘sentence of choice’ with 22, 838 orders, or 70% of the total number of community sentences given out in 1998 for imprisonable offences (Spier, 1999). People sentenced to PD must report to the warden of the PD Centre and remain there in custody for up to 10 hours one day per week, for any sentence length of 1 week to 12 months. During their custody the detainees undertake supervised work in groups on community projects, and may also opt to attend rehabilitative groupwork programmes.
- **Community Service:** This involves unpaid work for a community sponsor which may be a charity, school or cultural group. The court may impose 20-200 hours within a 12 month period. In 1998 some 8,748 CS orders were made for imprisonable offences (Spier, 1999a). People undertaking community service have to be assessed as suitable for individual placement, whereas those on PD do not meet any suitability / trustworthiness criteria: this could be one of the reasons why PD is more frequently preferred by sentencers.
- **Supervision:** This was introduced in 1985 as a sentence in its own right, to replace probation which had been viewed as a social work, care and advise conditional release / alternative to imprisonment. Supervision is seen to involve elements of

surveillance and control alongside rehabilitation. People can be on supervision for between 6 months and 2 years, and may be involved in a range of programmes (alcohol, violence prevention, social skills and so forth). Many of these options are provided by non-profit service groups, with a probation officer providing case management and support. Since 1995 Supervision orders have averaged 5,300 per annum and these represent only 14% of the total community sentences made for imprisonable offences. These numbers are also the same as the average prison population in New Zealand (Ministry of Justice, 1999b). Supervision is seen as a soft or lower tariff option by sentencers, and as a stand alone sentence has not been viewed as a viable alternative to imprisonment. Supervision can be given concurrently with a Periodic Detention order (a popular combination with sentencers) but not with Community Service or Community Programme orders.

- **Community Programme:** This is a unique alternative to imprisonment sentence. It was created under the 1985 Criminal Justice Act, with the concept of providing a culturally relevant option for Māori convicted of imprisonable offences, although it is open to all those convicted of imprisonable offences. Those sentenced to a Community Programme are placed with sponsors who offer support to them whilst they attend rehabilitative programmes (e.g. education, therapy, treatment and cultural or recreational activities). CP is primarily aimed at the community reintegration of an offender, rather than being seen as a punishment (like PD) or as an obligation to work for the community (like CS). CP is resource intensive and has tended to be underused since its creation. In 1998, only 431 CP orders, or 1% of the total number of community sentences given for imprisonable offences, were made (Ministry of Justice, 1999a). Indications are that CP is under recommended by probation officers because they are resource intensive to set-up, and viable sponsors are difficult to find.
- **Home Detention** – A new sentence introduced in 1993 as a parole condition and updated in 1999 to an early release option for people given a sentence of imprisonment. Probation Officers provide risk assessment reports to assist District Prison and Parole Boards in their decisions to grant early release on Home Detention.

The detainee must reside at an approved residence and participate in intensive supervision programmes set-up by specialist Community Probation Service officers. Electronic monitoring is part of the package, and takes the form of anklets worn by the detainee and monitored by a security company. Since its inception in October 1999, approximately 300 orders have been made. CPS projects that between 300 and 600 HD orders will be made annually.

Reconviction Rates

Re-conviction rates for community sentences (2 year reconviction rate for people sentenced in 1995) are:

Periodic Detention – 73%;

Community Service – 52%;

Supervision – 61%

Community Programme – 63%

As compared to prison – 80% or monetary penalties – 41%. (Ministry of Justice, 1999a). When factors of age, gender, current offence and criminal history are taken into account then there are few differences in the re-conviction rates between the community sentences. There is however, a significant gap between the average prison re-conviction rates and community sentence re-conviction rates (between 10% and 20%). Also worth noting is the disproportionate number of Māori on community sentences: 50% of community sentence recipients are Māori compared to their 14% in the general population. This is an ongoing issue for the Department of Corrections, and for CPS which is introducing specific assessment procedures, programmes and services for Māori clients. The major concern for Māori however, remains at the arrest and sentencing stages of the criminal justice system and CPS has only a limited capacity to influence these areas.

Increased use of punitive options and the demise of supervision and rehabilitation:

Since 1982 PD orders have increased from 7, 068 – 22,838 for imprisonable offences. This represents a jump of 14% from 1982 to 1998 (Ministry of Justice, 1999a). The increased use of this sentence is linked to increased use of PD for offences of low-

moderate seriousness, and as an alternative to custody for certain offences. CS orders too have increased from 1,842 in 1982 to 8,748 in 1998, representing an increase from 3% to 10% (Ministry of Justice, 1999a). Most of the increase is linked to its use as an alternative to monetary payments. People rarely get imprisoned for fine default in New Zealand. However, imprisonment rates have spiralled – in 1989 the total inmate population was around 3,600, but in 1998 it was up to 5,500, a growth of 53% in the average prison population (Ministry of Justice, 1999b). More people are being sent to prison and for longer. Home Detention has also been recently introduced and this is designed to be the most restrictive sentence and intensive order outside of imprisonment. Supervision orders are low, averaging only 5,300 per annum, and Community Programme orders have never been above 1.6% of the total sentences given for imprisonable offences (Ministry of Justice, 1999a).

What this indicates is that sentencing to more punitive options has increased, and that rehabilitative and treatment options are either declining or static. These options appear to be a small proportion of the work undertaken by CPS, with PD and CS being very much the ‘bread and butter’ of its work. These latter two options are popular with sentencers, and the indicators are that they may even increase. PD is especially appealing, as anyone convicted is deemed suitable and it is, like CS, widely used for fine default. CPS has not been able to influence sentencers to increase the use of Supervision or less punitive orders. However, CPS has responded to the increased use of PD as the sentence of choice by offering rehabilitative programmes within PD; for example cognitive-behavioural skills based programmes and alcohol and drugs programmes.

Sentencers may unwittingly be contributing to net-widening by over use of PD sentences. The majority of CPS clients are therefore on the highest tariff option, with CS coming in second and Supervision third. The only hope for a changed role for Supervision is the likelihood of a new Criminal Justice Act in 2001 which may introduce Combination orders alongside existing PD and Supervision orders.

The current focus of CPS and core programmes

Following organisational restructuring in the mid-1990’s CPS developed a clear vision around reduced re-offending. This became an even bolder statement in 1999 with

zero re-offending by 2020. This enabled probation officers and their clients to be clear about the focus of the Service's work. Within the last couple of months however, this has been withdrawn as unrealistic as an achievable goal and a new business plan is awaited. Nevertheless reduced re-offending, regardless of percentages, is the main aim.

To carry out its mission CPS has introduced IOM (Integrated Offender Management) which is a strategy adopted by the wider Department of Corrections for its prisons, probation and psychological services. The aim is for co-ordinated and effective management of offenders from court through the corrective services like prison and probation. This is supported by an IOM computer network to track the progress of offenders in the system. The four phases of IOM are induction, assessment, offender management and reintegrative services. Each phase is prescribed by a carefully managed intervention package: standard induction procedures; new risk prediction and criminogenic needs assessments and court reports psychologically profiling offenders, have all been introduced. Core programmes are being developed, piloted and implemented. Finally, reintegrative services (including the creation of relapse prevention plans for post-supervision) are being researched for development in 2000. IOM is very much in its early days and an extensive process of training, information sharing and piloting is underway. It is difficult to say, at this stage, how well IOM is working: there have been inevitable teething problems; some staff are reluctant to receive yet another major change; and the computer system has yet to deliver on its promises.

The core programmes tend to be based on successful programmes developed in other countries like Australia, the UK, the States and Canada. Straight Thinking, a variant of Ross and Fabiano's successful cognitive skills programme, is one such example. Straight Thinking is an intensive groupwork programme aimed at improving cognitive, behavioural and social skills deficits for people on PD or Supervision who have a medium to high risk of re-offending. There are also sex offenders programmes and violence reduction programmes based on overseas models. However, there are new programmes which are very much 'home grown' and unique to New Zealand. The Māori Tikanga (culture) programme incorporates values, concepts, language and practices familiar to Māori. The programme includes skills-based options, cultural events, Marae (community meeting place) activities and mentoring by family members or older

community members: this is integrated with activities focused specifically on offending and its reduction.

As it is early days in the development of core programmes there has not been any evaluation to ascertain effectiveness. The Department of Corrections Psychological Service will be evaluating some of the programmes, and CPS itself has set up monitoring systems for compliance and outcome (re-convictions) information. Aside from the core group-based programmes, the one-to-one work in CPS has a familiar ring to it: Trotter's (1999) problem-solving model, known in New Zealand as the Integrated Model of Supervision (*risk assessment, role clarification, pro-social modelling, problem-solving, and relationship-empathy*) is used in Supervision cases. Also, CRIMPS, a New Zealand acronym for motivational interviewing, cognitive skills and relapse prevention work is used by probation officers in their dealing with clients. Probation Officers have been extensively trained to use these models. As yet many PD work site supervisors are not familiar with the models, even though they have more contact time with clients of the service.

Emerging issues

The developments in CPS are, of course, part of the shift to more consistent and effective practice. Drawing upon the key *What Works* criteria, CPS is ensuring that it targets the higher risk offenders and is attempting to match the intervention used with clearly identified risks and criminogenic needs. Some of the important questions are being asked (for example; is a standardised groupwork package suitable for all types of offender?). Of concern, however, is the rapid pace of change which may leave little room for informed debate; especially in relation to the pitfalls with the effective practice initiative (Leach, 1999). Māori, Pacific Islanders, women, those with physical and mental health problems may all be disserved by the new regime, if the changes are not able to incorporate diverse ways of dealing with offending. Alternative practices which focus on restoration, healing, spirituality, empathy and indigenous practices have proven and effective outcomes (Hodgson and Heckbert, 1996; Maxwell *et al*, 1999; Trotter, 1999; Wheelwright, 1999) yet these are little discussed in the current 'dealing with offending' initiatives, or government policy, or strategies to reduce offending. The problem is that

little research is being undertaken to explore crime and offending in New Zealand and that the development, research and evaluation of programmes which deal with offending, is dominated by the Psychological Service section of Corrections. Other groups of people whom may wish to research programmes, including in-house CPS researchers, Māori researchers and outside academic researchers, tend to be excluded or dissuaded through lack of funding opportunities.

On a more optimistic front the 'newish' Labour-Alliance Government has announced funding for pilot restorative justice projects with adult offenders and a number of probation areas have responded with support and personnel. One excellent example, now known world wide because it picked up an award at the Probation 2000 Conference in the UK, is the Timaru Community Panel Adult Pre-Trial Diversion Scheme (Maxwell *et al*, 1999). The scheme incorporates restorative justice conferences for adult offenders; involves community representatives and victims in criminal justice system decision-making and diverts offenders from conviction, community sentences and prison. CPS are in a good position to offer support and personnel in pursuit of increased restorative justice with adult offenders.

The dominance of research and evaluation by the Department of Corrections Psychological Service:

The Psychological Service provides key treatment, training and research services for the Department of Corrections, and has played a major part in the IOM, core programme, risk and criminogenic need instrument developments in CPS. The Psychological Service is therefore in a pivotal position for ongoing practice development and research. Historically CPS worked from a social work model and focused on practice rather than research or effectiveness issues. Probation staff had neither the expertise, nor inclination, nor agency support, to set-up extensive in-house research (with the exception of a few staff undertaking postgraduate research studies). It is only recently that CPS has turned to the literature on effectiveness, and research more generally. Corrections' Psychological Services have provided the hands-on expertise and experience for CPS to move into new initiatives. Unfortunately the Psychological Service tends to operate a narrow research base; using mainly quantitative methods and statistical models for

predictive purposes. The evaluative research is usually outcome focused, often on attitudes and individual behaviour. It misses process issues, the changes in individual social circumstances and the potential effectiveness of non-programme oriented interventions. The lack of in-house or even outside academic research and evaluation of probation work in New Zealand is concerning: whilst there is nothing wrong with the quality offered by the Psychological Service; individual pathology, and rational thinking theories of criminality are assumed. This approach limits the many alternative theories or intervention options, including indigenous, community, and networking approaches. There is room, surely, for a broader research base for CPS practice in New Zealand; research which will explore in-depth the impact, operation and effectiveness of different probation practices. Most importantly for criminal justice in New Zealand is research which can highlight the benefits of alternative practices used by different cultural groups, particularly in addressing Māori offending.

The lack of a professional association or staff activism:

The New Zealand Association of Probation Officers (NZAPO) was set-up in 1972 to facilitate pay negotiation, staff support and dispute resolution. The association was active (although struggling) until 1997, following a major CPS re-structuring which saw its demise. The 1991 Employment Contract Act also influenced the demise of the collective employment contract negotiation process, which meant a loss of interest in collective forms of bargaining. Membership of the Association was never high, partly because many probation officers felt the Association lacked real power and influence. Former Association members describe pockets of strength and activism in some cities in New Zealand, but also feel that the Association was unsupported by the agency. There are some current mechanisms for staff to anonymously give feedback to management: for example; the annual staff climate survey, which can pick up on individual concerns and to a certain extent may gauge a collective picture. However there is little time set aside at the local level for in-depth critical staff debate on organisational, employment or criminal justice system matters. CPS staff find themselves in a difficult position: if they do wish to encourage debate and resistance they may find little collective support and if they do speak out as individuals they may find themselves at risk of being disciplined by the

agency. There have been calls for the re-establishment of a staff support association; including a forum for discussion of management and staff issues and the introduction of a professional magazine and this may help. The challenge for CPS is to create a new post-managerialist climate which focuses on partnership, collaboration and open communication at all levels within the organisation.

Centralised control and managerialist culture:

The lack of staff activism is an indication of how far CPS has become dominated by a centralised management regime. Many decisions are made at 'Head Office' and 'passed down the line' to the regional managers in three areas covering the whole country, and whilst the general manager and three regional managers do make every effort to visit their area offices and service centres, the visits tend to be fleeting and usually to deliver information or answer questions about new Head Office strategies, rather than to engage in meaningful consultative exercises. The atmosphere observed at recent meetings by the author has been one of defensiveness and insecurity: It appears that staff guard their views carefully for fear of disapproval by their line-managers, and are curtailed in their ability to be critical and challenging of latest Head Office developments. Neo-liberal politics and the managerialist response has created an individualist culture of self-preservation amongst probation staff and rendered them ineffective in a collective voice on matters of mutual importance. There are the usual gaps between managers and front-line workers and these vary according to region. Of more concern, however, is the increasing staff turnover in the last five years. Staff rationale for this is due to the rigid controls imposed from Head Office upon practice, and constant change or new initiatives, the stress of which has added to already high workloads. Again, as with a staff support structure, CPS may need to reconsider its consultative practices to allow more time for constructive feedback on new initiatives and agency expectations.

Conclusion

CPS New Zealand is, not unlike its British counterparts, an agency struggling with its identity and mission, operating in a mainly punitive political and managerialist

climate. At one level, CPS is thriving with the IOM, core programme and Māori initiatives. At another level, many CPS staff are discouraged or in survival mode. CPS is still the agency in New Zealand which offers the humane face of criminal justice to people going through the system. Most of its staff remain committed to principles of justice, fairness and respect. CPS is indeed very clear about what its priorities are but the tight controls make it difficult for staff to be creative and develop their skills. Until staff are seen as the greatest asset of CPS and have greater training opportunities and support, one wonders how effective all the new initiatives can be? More broadly, the time has come to look again at the corrective framework and recognise that effectiveness can only be accomplished through partnerships with the community; with policies, research and practice being developed with, and for the benefit of the wider community.

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