

Justice Ministers, the Justice Ministry, and Penal Reform: The First 100 Years

1 Hour Seminar to the 'Justice Horizons' Series

Ministry of Justice, 27 July 2007

Origins of the Justice Ministry

Jails and lockups have existed in NZ since the 1st days of colonisation, but they had no legal authority until the 1st Legislative Council was formed in 1841.

After that, prisons were run by Sheriffs who reported to the Governor, while the administration of justice belonged to the Colonial Secretary.

Until 1853 serious criminals were transported to Tasmania but this ceased in 1853 and from then on, full responsibility for prisons passed to the Provinces that had been established under the Constitution Act 1852.

In 1858 a Justice division was created within the office of the Attorney General and a dedicated Minister of Justice was appointed in 1872.

However it wasn't until the abolition of the Provinces in 1876 that full Ministerial control over prisons became possible.

But there was no mechanism for central management so in practice the running of prisons remained with local authorities or jailers.

As a result, there was little uniformity in the way prisons were managed.

Administrative confusion and a lack of clarity about who was supposed to be running the prisons created chaos, with an inevitable series of scandals and a crescendo of calls from newspapers, visiting justices, grand juries, judges, and various government inquiries, for the Justice Department to do its job.

Finally, after much delay, the Parliament acted and in 1880 Capt. Arthur Hume, an English prison governor, was appointed to manage NZ's prisons.

[slide - Hume]

2 years later the Prisons Act 1882 confirmed the office of Inspector of Prisons under the authority of the Minister of Justice.

[OH - Prison admin]

- 1841: Justice is administered by the Colonial secretary

- 1858: Administration of Justice is given to the Attorney General
- 1872: A separate Ministry of Justice is created with oversight of prisons. 1st MoJ is J. Bathgate
- 1880: A. Hume is appointed Inspector of Prisons
- 1919: Prisons and Justice are split
- 1933: Prisons and Justice are rejoined de facto (under B.L.S. Dallard)
- 1954: Prisons and Justice are unified by law
- 1995: Prisons and Justice are divided

My purpose today is to discuss the impact of various public officials on the evolution of correctional policy during the Department of Justice's 1st Century, and to comment on the way Ministers and Permanent heads interacted during this period.

Finally I'll make some observations about the inherent difficulties involved in prison administration and about the perennial tendency for blame to fall on Correctional heads whenever something goes wrong.

The First Inspector of Prisons

The way prisons have been run in NZ since 1880 has changed over time and has often reflected the personalities and preferences of executive officers.

Arthur Hume was appointed at a time when nobody knew much about correctional philosophy so from the beginning he was able to rule pretty much as a 1-man band.

Schooled in the disciplinary tradition of the English prison service,

Hume recommended:

- * The virtual abolition of education, which he believed led to great irregularity,
- * A reduction in rations scales,
- * A prohibition on smoking,
- * And removal of remission for good behaviour, which had been in place since 1875.
- * As in England, communication between prisoners was highly restricted and when the plans for Mt Eden Prison were drawn in 1882,

[OH - Mt Eden plan]

according to the English radial model, it was designed for separate confinement in cells without plumbing.

[slide - Mt Eden Cell]

In 1892 Hume declared:

"The English system is the best system and is, as far as applicable, being carried out in New Zealand"

Hume didn't get everything he wanted.

In 1883, against his wishes, flogging was abolished for prison offences, as was confinement in a dark cell.

Initially smoking was prohibited but in 1902 a tobacco ration was given to hard labour prisoners.

Hume was against granting indulgences to prisoners but he wasn't totally vindictive and he softened his stance with time.

He supported the introduction of a Probation system in 1886 and experimented with outside work camps from 1890.

But his overall impact, which dominated the formulation of policy against the inclinations of a weak Parliament was forceful, orthodox, disciplinarian and punitive.

His resignation in 1909 was accepted with a general sigh of relief and for the next 3 years the Minister of Justice,

[slide - Dr John Findlay]

Determined to break Hume's autocratic legacy, took personal control of prison policy and generally left the Public Service out of it.

Findlay's permanent head, Dr Frank Hay, is hardly remembered.

John Findlay

Findlay's firm commitment was to bring NZ's prison system into line with international developments.

Deeply impressed with the Reformatory system that NY had been experimenting with since 1876, Findlay created an indeterminate sentence called Reformative Detention in 1910 which established the 1st Parole Boards.

RD also became the model for Borstal Training for young offenders, which came in 1924.

Charles Matthews

Findlay lost his seat in a snap election in 1911 but his momentum was carried on by Charles Matthews, a career public servant, who in 1913 became Inspector of Prisons.

[slide - Matthews]

Now the Public Service once more took centre stage and, with the support of Massey's Reform Government, huge tracts of land were bought up or developed in

Invercargill (1910), Waikeria (1912), Papanui (1914), Wai-taki (1919) and Tongariro (1921).

These became the large scale farms which for many years were the mainstay of the NZ prison system.

[slide - Waikeria farm]

By 1924, when Matthews died, more than 70% of prisoners were employed in outside work schemes.

Bert Dallard

At the time of Matthews' death, he was facing growing criticism for taking reform too far and Matthews' successor, Bert Dallard, was a reflection of this reversal.

[slide - Dallard]

Appointed during the period of financial uncertainty that characterised the late 1920s, a trained accountant with a conservative attitude toward prisons, Dallard was a man for his times.

Matthews, supported by his Ministers, had been the public face of prisons after Findlay went, but Dallard, in a similar way to Hume, virtually ran the prisons on his own.

Between 1925 and 1935 he worked under 4 different Ministers; (1925 CJ Parr; 1926-27 FJ Rolleston; 1928-29 Thomas Wilford; 1930-35 John Cobbe), all of whom served relatively short terms and seem to have had little interest in prisons, particularly during the Depression years of the early 1930s.

Then in 1935-1949, during the 14yrs of the 1st Labour Govt, Rex Mason was in charge of Prisons and Justice.

[Slide - Mason]

During the late 1930s Labour was busy building the Welfare State and after 1939 it was preoccupied with WWII.

There wasn't much time for thinking about prisons.

Mason himself was a gentle and cultured man, a vegetarian and a theosophist, who had little taste for prisons and he pretty much let Dallard do what he wanted.

So from the time he was appointed, Dallard ran the show on his own.

This suited Dallard, who was deeply conservative and had very strong views about criminals.

- EG he believed in capital punishment for murder, flogging for sex offenders, and sterilisation of mental defectives -

He was autocratic and he wasn't fond of delegating authority.

Even the decision about whether or not to commute death sentences was left to Dallard, who reviewed a condemned man's file and made a recommendation to his Minister, who passed that on to the Executive Council, which then gave it to the Governor General, who signed it.

7 men were hanged by this process during Dallard's time, all between 1930 and 1935.

In fact the only thing that Labour did that was contrary to Dallard's wishes was the suspension of capital and corporal punishment in 1935, and its abolition in 1941.

At the end of his 24 years in Prisons, Dallard came under intense personal criticism in a book written by Rev. Ormond Burton, a friend of Prime Minister Peter Fraser, who had been imprisoned during WWII as a war resister.

This book got great newspaper attention and Dallard then engaged in a rearguard battle with the newspapers, desperately trying to defend himself against their attacks.

He lost the battle and like Hume, Dallard's retirement in 1949 was received with open relief in Parliament.

In fact his regime was described as "a valley of dry bones" by the Labour MP for Timaru, Clyde Carr.

Interestingly, not a word was said about the acquiescent Labour Minister under whose authority Dallard had served.

Sam Barnett

The man chosen to replace Dallard was of entirely different feather, who reflected a general feeling in WLG that prisons needed to move forward.

[slide - Sam Barnett]

Barnett, too, was independent and forthright, but he was a liberal, educated lawyer, and was dedicated to progressive change.

Here he was in interesting contrast with his Government. National had been elected in 1949 on a death penalty ticket.

Clif Webb, his minister, was a conservative man, committed to the return of hanging.

This was one of the 1st things he did after he took office.

[slide - Webb]

Webb wasn't interested in liberal penal reform, and Barnett opposed capital punishment, but a sort of a compromise was reached, whereby Webb allowed Barnett to reform prisons while Barnett, of course, shut up about the death penalty.

Webb, working with Barnett, produced 2 major pieces of legislation in the Criminal Justice Act 1954 and the Penal Institutions Act 1954, but most of the imaginative changes in prisons such as:

- * the expansion of prison education and trade training
- * adoption of new classification procedures
- * appointment of prison psychologists
- * revision of the ration scale
- * and improvement in leisure, sporting and welfare services

Didn't need Ministerial involvement, and here Barnett was able to exercise a fairly free hand.

Webb was replaced in 1954 by Jack Marshall, another capital punishment advocate with no particular interest in penal reform.

[slide - Marshall]

But Marshall inherited the consequences Barnett's permissiveness.

Barnett had encouraged superintendents to be imaginative and inventive in the way they ran their prisons.

The results were disastrous and somewhat reminiscent of what happened 45 years later under *He Ara Hou*.

Without firm control from above, formal procedures and responsibilities became blurred, attention to security lapsed, and in 1955 a famous sex-killer and compulsive rapist called Slim Horton escaped from an evening bowling excursion in Mt Albert.

This set off what was, up to then, the largest manhunt in NZ history.

[slide - Horton]

In a situation which was absurd even by 1950s standards, it was learned that the list of 17 maximum security men on the bowls team had been compiled by another inmate and the team itself was escorted by just 3 off-duty staff.

Although he'd only just taken over the Justice portfolio, Marshall endured a barrage of Parliamentary criticism

over this and he was forced apologise and take personal control of prison management policy.

Barnett seems to have emerged relatively unscathed but 3 years later, now under a 2nd Labour Government and with Mason back in charge, an even worse scandal broke.

This time it was found that a group of inmates had been escaping from the maximum security prison at Mt Eden, committing crimes such as burglary and at least 1 rape in Auckland City, and returning to their cells before daybreak.

The scandal was potentially ruinous for both the Permanent Head and his Minister.

A major cover-up then took place, whereby 1 inmate admitted to having escaped alone, just once, from the prison, and nothing was said about the burglaries or the rape.

This got Barnett and Mason off the hook and in a compromise deal Barnett agreed to resign from his position of Commissioner of Police in return for keeping his job as Head of the Justice Department.

Nonetheless from this time onward he worked under significant Ministerial restraint, under conditions that were worsened in the 2nd half of the 1950s by a sudden and crippling explosion in prison populations.

[oh - musters 1945-75]

This effectively put an end to his hopes of reform and when he retired in 1960, Barnett was a bitter, frustrated and deeply disappointed man.

The Hanan-Robson Era

The resignation of Barnett in 1960 ushered in one of the most memorable decades in the history of prison reform.

Known as the Hanan-Robson era, the 1960s are famous for the harmonious relationship that existed between the Minister and his Permanent Head.

Here was an exemplary combination of an intelligent, dedicated, and experienced public servant, backed by a highly influential, energetic, and charismatic minister.

Secretary for Justice John Robson had a PhD in law and had served under Barnett as Asst Secretary since 1951.

[slide - Robson]

Thus he was intimately familiar with the way the department worked, and he had some well-informed ideas about what needed to be done and how to do it.

Soon after he took office Robson created an advisory committee called the Penal Group, and it was this committee which thrashed out policy in the early 1960s.

This policy was then taken to the Minister, Ralph Hanan.

[slide - Ralph Hanan]

Hanan had immense respect on both sides of the House.

He was a trained lawyer and one of the most experienced politicians in Parliament, known for his honesty, his scruples, his good judgement, and his humanity.

Hanan had been an outspoken critic of capital punishment all of his political life and one of his 1st moves was to abolish capital punishment in a new Crimes Act that was passed in 1961.

Hanan and Robson agreed on most things and they had a harmonious relationship throughout the 1960s.

So when Robson came to Hanan with ideas, Hanan wasted no time putting them into law.

As a result, between 1961 and 1965:

(1961)

- The 1st DCs were opened
- The 1st work parole hostel (for BTs) was opened (Inv.) (adults 1962)

- Bread and water punishment diet was abolished
- The rule of silence was abolished
- A 1st offenders BTC was estd at Waipiata

(1962)

- Staff training was improved

(1963)

- Periodic Detention began
- A research division was estd at Head Office with a fulltime director

(1964)

- 1/3 special remission was introduced

(1965)

- And Home Leave commenced.

There were numerous other changes as well.

Robson was highly aware of the need to protect his Minister by gaining public support.

So he kept a list of friendly journalists upon whom he could rely to give positive coverage of his ideas.

In this way he was able to sell his projects to the public as they were being developed

which made them easier for Hanan carry to his sceptical caucus.

But as has so often been the case with Corrections in this country, the even the Hanan-Robson regime was beset by crisis and scandal.

The muster blowout of the late 1950s settled in the 1st half of the 1960s but between 1965 and 1970 musters increased by another 50%.

[oh - musters 1965-85]

At Mt Eden a spate of high profiled escapes underlined the unsuitability of that 80-year old institution for maximum security.

Reprived murderer Angelo La Mattina went missing for 7 days inside the prison in 1960 and in 1962 he escaped twice.

[slide - La Mattina]

In 1961 Trevor Nash, doing 7 years for what at the time was NZ's largest theft, escaped from the prison quarry and wasn't recaptured for 6mths.

[slide - Nash]

A few months later a shot from the quarry blew a 16kg rock 200m into the air and thru the roof of a classroom

at AGS, forcing closure of the quarry and putting a large number of inmates out of work.

In 1962 high profile violent offender Frank Matich escaped from Mt Eden

[slide - Matich]

And that same year George Wilder made his 1st break from New Plymouth

[slide - Wilder]

He was out 65 days before being recaptured and was sent to Mt Eden.

A few months later he got out of Mt Eden and this time he was out for 173 days.

Then in January 1965 Wilder, Len Evans and John Gillies smuggled a shotgun into the security wing, took an officer hostage, commandeered a prison truck and holed up in a house in Mt Eden.

[slide - Gillies]

[Sensational stuff].

Just a few months later another gun was smuggled into the prison, and when a planned escape failed 2 inmates let

other prisoners out with a home made key and set the prison alight.

When rioting prisoners surrendered 3 days later the prison was burned out and unusable.

[slide - Hanan inspects riot damage]

Hanan and Robson managed to avoid responsibility for the riot by blaming it on Mt Eden's inadequacy and by saying that riots were 'part of an international trend', but from this time onward, nothing much more was heard from either of them, except for hyped-up progress reports from Hanan about the brand new maximum security prison under construction at Paremoremo.

[slide - Parry]

Hanan died in 1969 just after Paremoremo was opened and Robson retired the following year.

Thus the Hanan-Robson era came to an end.

In 1972 National was defeated and this introduced a new phase in correctional history.

Justice administration during the 3rd Labour Govt is interesting because to a large extent it was different from anything that had gone before.

Whereas the 1950s had seen a reluctant government being carried along by an energetic P/H, in the early 1970s the situation was reversed.

Now we had an enthusiastic Minister and a Public Service that was frantically trying to hold him in check.

[Missen 1970-74 and Orr 1974-78]

Martyn Finlay

Martyn Finlay was a highly-educated career politician with a PhD in law.

[Slide - Finlay]

A dyed-in-the-wool liberal, Finlay was a champion of the underdog and a sympathiser with the 'liberation consciousness' that was popular in the early 1970s.

From the very start he announced that he detested prisons and that he wished the brand new institution at Paremoremo could be pulled down.

With those kinds of views he was a surprising choice for Minister of Justice.

Finlay had fine intentions but like Matt Robson (MJ 1999-2002), Finlay was an impractical idealist who tended to get carried away with his dreams.

His statements about prisons increasingly alienated him from his department, which was constantly fighting to talk him out of some of his more radical proposals.

He had some successes:

banned punishment diets, liberalised home leave, parole and remission procedures, let inmates have telephone calls, gave inmates the vote.

But he made some huge mistakes.

Paremoremo Prison was in uproar as a result of initial mismanagement and a new superintendent, Jack Hobson, was struggling to regain control.

Finlay seemed to side with the inmates, and he was openly friendly to Project Paremoremo, a group of Leftist agitators who were trying to get rid of Hobson.

This infuriated Hobson, and alienated Finlay from the prison service as a whole.

But Finlay's worst mistake was in 1973, when he decided to allow prisoners to write personal letters to him.

Prison officers interpreted this as a sign that Finlay was against them and siding with the criminals and National had a field day, launching withering attacks on Labour's 'pro-criminal' justice policy.

In the 1975 election, in which Labour was defeated in a landslide, Finlay lost more votes than any other politician.

Conclusion

The course of Correctional policy over the past 100 years or so has been determined largely by the personalities and predilections of Ministers or Public Servants, acting within the context of their times.

Sometimes the driving force has been the Minister; but more commonly it's been the Permanent Head who has directed the course of policy.

Of all government portfolios, Corrections is probably the most prone to public criticism and from that POV, it is probably the most difficult to manage.

This has been clearly illustrated over the last 100 years or so.

In the Dept's 1st 100 years, nearly every head who served for any length of time, and some who served shorter lengths, ended up splattered in mud over things they had or hadn't done:

Hume, Matthews, Dallard, Barnett, Finlay all suffered this fate.

Hanan and John Robson were the only 2 who escaped.

If we look at recent years we seen the same pattern repeated:

David Oughton, Kim Workman, Matt Robson, and Mark Byers, all suffered from scandals that occurred during their watches.

Now it's Barry Matthews' turn.

Is there a solution to this?

I don't think there is one.

Prisons, by the very nature of their purpose and clientele, are inevitably disaster-prone.

The people appointed to run them are faced with the mammoth task of trying to maintain control of an organisation catering for people who don't want to be there, and for whom rule-breaking is often a way of life.

So prisons are inherently unstable.

If prisons run steadily, managers will mostly be forgotten because people will say that all they did was what was required of them.

But if things go wrong, as they inevitably do from time to time,

Managers will be blamed for not doing their jobs properly and remembered thereafter for failing to achieve something that was probably unachievable to begin with.

