THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND

Heather Colby

THE STRUCTURAL ELEMENTS OF THE CRIMINAL JUSTICE SYSTEM ARE IDENTIFIED AS:

- Police (including the Traffic Safety Service formerly of the Ministry of Transport)
- Courts (including the judiciary)
- Penal Division
- Community Corrections of the Department of Justice
- Psychological Services
- Youth Justice Division of the Department of Social Welfare

Together this group is comprised of three different government departments. It is the responsibility of four Cabinet Ministers, and includes the judiciary. Each of the departments at present has its own management plan agreed with the appropriate ministers and is not required to plan in conjunction with the other departments affected by its outputs and policies. There appears to be no requirement for departments or ministers or indeed organisational plans to contribute to a known and prescribed set of functions and objectives to be achieved by all parts of the system. Each of the three departments also encompasses non-criminal justice functions, which compete for scarce resources with the criminal justice responsibilities.

The three departments are generally accepted as carrying out the activities of crime prevention, crime detection, prosecution sentencing, imprisonment, and the administration of non-custodial sentences. These activities follow the same sequence in all similar jurisdictions for the prevention of crime and the application of legal processes and sanctions to those arrested for criminal offences.

Spending in the Police and Justice Departments has increased in real terms 89.6 per cent since 1984-85 to represent 1.22 per cent of Gross Domestic Product.
During this period, in spite of increased expenditure, the provision of 900 more police nationwide; proposals for longer sentences for violent offenders; consultancy reports on possible re-structuring of police and justice; and the setting up of taskforces and commissions to make recommendations to government on crime prevention, the crime rate has continued to rise unchecked.

None of the initiatives taken so far has addressed machinery of government issues as a potential solution to the problems outlined above. The only movement in this area to date has been the merger on 1 July 1992 of the Traffic Safety Service of the Ministry of Transport with the Police Department. This reluctance to embark on structural reform in the criminal justice system is in direct contrast to the experience of other State sector agencies under the fourth Labor Government (1984-1990). The present Government in its restructuring of health, and social welfare, has maintained the momentum of reform.

It may be that the risk of disruption and temporary loss of efficiency and effectiveness is considered too great in the Police and Department of Justice. Constitutional issues may also have dampened the zeal of reforming governments anxious to adopt a more integrated and managerial approach, but faced also with preserving the conventions of a Westminster system of government in respect of separation of the functions of the legislature, the judiciary and the executive.

An Interdependent System

Any police and operations decisions made in isolation by the Police Department which lead to an increase in arrests will have an immediate effect on the workloads of the courts, the judiciary, and the Department of Social Welfare. The types and length of sentences imposed in the courts have downstream effects that will be felt by prisons and community corrections. If the judiciary alters its sentencing practices, or new legislation is introduced, again the greatest effects are felt at the "back end" of the system. Downstream, though, the activities of the corrections group of prisons, community corrections and psychological services have an impact on crime prevention and reduction which in turn affects the police.

For these reasons, criminal justice systems are often described as interdependent systems, the volumes and caseloads of the succeeding agendas being determined by the policies and practices of the preceding agencies.

The Case for Coordination

If one characterises the criminal justice system as "interdependent", then it is critical that at an administrative and policy implementation level agencies have compatible outputs seen to contribute to known overall objectives and that those objectives are readily understood and communicated by the agencies involved.
Boston (1992, p. 90) makes a useful distinction between problems of policy coordination and administrative coordination. He defines policy coordination as:

dependent on the satisfactory functioning, of at least three kinds of relationships: horizontal relationships between ministers; vertical relationships between ministers and their most senior policy advisers; and horizontal relationships between senior officials in different departments.

It is at the policy coordination level that government outcomes should be developed, preferably by reference to the collective interest of government.

It is at the administrative level that problems are most apparent within the criminal justice system in the process of translation within each agency of outcomes into outputs. Recent state sector reform has not assisted coordination in this area, with the introduction of individual performance agreements (output statements) between ministers and chief executives. These agreements do not require the collective approval of Cabinet, and encourage a departmental approach to portfolio administration serving the interests of the particular portfolio minister.

**An Operationalised Function**

The importance of an understanding of the function of a criminal justice system by the general public and the various elements of the system is documented in some overseas writings. Kellogg (1976, p 50) alleges that there is "little agreement (in USA) as to the "objectives of criminal justice", but that it is desirable to establish some". Grainger (1978, p. 234) and Steenhuis (1988, p. 243) believe that the elements of the criminal justice system should share a common philosophy and common objectives. This is a view reinforced by the Povost Commission of Quebec which states that:

A detailed study of our system of justice has convinced this commission of the need to formulate a general policy which, woven into the entire system, would guide the various services with a uniform philosophy (Boydell & Conidis 1974, p. 32).

The corollary to an agreed function for an integrated criminal justice system would need to be its translation by the various agencies of the system into an agreed set of operating objectives, as suggested by Kellogg (1976, p. 50), to achieve continuity and consistency that both the public and the agencies concerned could rely on. Such a proposal is supported by Sallmann in commenting on a perceived lack of coordination in the Australian criminal justice system:

The lack of any central philosophical threads which can be operationalised is a factor inherently conducive to inefficiency . . . and likely to lead to perhaps a punitive and repressive approach by one agency and a quite liberal approach by another (Sallmann 1978, p. 196).
A proposed function of "contribution to crime prevention" for a criminal justice system in New Zealand will be the basis for examining integration of the agencies involved to meet that objective. Other considerations will be current theories that have underpinned governmental organisation in New Zealand in the past, the reform process of the core public sector from 1984-1992, and the case for policy and administrative coordination made by Boston (1992, p. 90).

It will be the argument of this paper that there is a prima facie case for integrating the separate elements. Such a proposal is advanced on the grounds that:

- the separate elements of the existing criminal justice system are in fact an interdependent system (Blumstein & Larson 1969; Boydell & Connidis 1974; Kellogg 1976; Sallmann 1978; Steenhuis 1988; and Woolf & Tumin 1990);

- the present initiatives of the Government for more effective law enforcement associated with measures of fiscal restraint highlight the need for increased integration; and

- integrated criminal justice systems are in existence in overseas jurisdictions with varying levels of achievement.

Theories of Government Organisation

Three theoretical approaches to the organisation of the machinery of government are considered. The first—Gulick's principle of similarity—has provided a framework within which these issues have long been discussed within the public administration literature (Hammond 1990). The second theoretical approach is that which has traditionally applied in New Zealand: the sectoral approach whereby all activities relating to a broad area of government activity (for example, health, education, agriculture) are the responsibility of one agency. And, thirdly, the functional approach favoured in recent reforms of the New Zealand state sector.

Principle of similarity

The New Zealand public sector has until recently been broadly organised by reference to similarity of "objective"—promoting the Government's policies in health, education, justice. That is to say that government functions affecting a recognisable area of societal activity have been grouped together. Internally departments have been organised on a variety of patterns: geographical, functional, occupational classification and so on.

The three departments of the criminal justice system in their present structure could all be advanced as showing some aspects of organising by principles of similarity. All have regional delivery determined by place.
The sectoral model

The sectoral model vertically integrates within one organisation the advisory, regulatory and delivery functions.

Advantages of the sectoral model are thought to be better interaction and feedback between the policy advice and policy implementation sections which leads to more informed policy advice, and advice that is capable of being implemented. There is opportunity for a more rapid detection of and rectification of errors, or problems of implementation. Retention and build up of institutional wisdom within the organisations especially in areas of technology, or the specialised functions of an agency is also more likely to eventuate. Transaction costs in the provision of advice with all resources in one agency, are thought to be lower.

The functional model

In contrast to the sectoral model the functional model, sometimes called "the Swedish model" because of the constitutional division of functions in Sweden is characterised by a separation in provision of the policy advice, regulation and implementation functions of agencies. Advantages over the sectoral model are thought to be that the risk of provider capture of advice to government is reduced. The theory is that "operating arms" are simply that: they do not give policy advice. At the same time encouragement may be given to the establishment of competing sources of policy advice. Departments have more specific and focussed objectives, which enhance accountability and performance. All outputs are clearly specified with costs and processes made transparent (Treasury 1987, p. 77).

Disadvantages are thought to be the loss of informed input into policy advice from the operational agency resulting in advice that may not be capable of implementation, or has to be continually modified to rectify errors in planning.

Machinery of government issues in New Zealand

The structural organisation within the three departments of the criminal justice system continues to evolve. All three departments show strong elements of the historical sectoral model of organisation. Some aspects of internal organisation reflect elements of a model based partially on similarity of functions. The only acknowledgment of the functional model is the internal split in each department of policy units.

Restructuring across core government agencies during the period 1984-1992 has continued to follow the principles of the functional model influenced also by agency and public choice theory. There has been a strong emphasis on decoupling the tasks of policy advice and implementation. This would present a strong precedent for the agencies of the criminal justice system to be reorganised in the same way, given that evidence already exists in each agency of moves in that direction, supported by recommendation from recent government reports namely, Strategos (1989(a) and (b)).
Three Options for Integrated Criminal Justice Systems

The following three options are predicated on the basis that:

- the criminal justice system is an interdependent system;
- the overall objectives and philosophy of a criminal justice system should be known and able to be operationalised, by all of the agencies involved;
- recent state sector reform in New Zealand and government reports for restructuring in the Justice and Police Departments have favoured the functional model of government organisation.

Each option will be assessed against the following criteria:

- ability to achieve the functions of a criminal justice system;
- ability to preserve the independence of the Police and the judiciary;
- ability to guard against potential abuse of the coercive powers of the state;
- ability to be cost effective.

Option one

Figure 1

An integrated Department of Criminal Justice model - Policy combined with operations

```
Minister of Criminal Justice

Chief Executive Department of Criminal Justice

Commissioner of Police
Manager of Correctional Services
Manager Criminal Court Administration
Manager Youth Justice

Coercive Functions of Police, plus Prosecutions
Prisons Community Corrections Psychological Services
District & High Court Criminal functions only
```
Arguments put forward for the development in New Zealand of an integrated Department of Criminal Justice would centre on the projected gains in effectiveness, efficiency and economy to be realised from having a department devoted to achieving the objectives of a criminal justice system, with all non-criminal justice functions removed. Opportunity would exist for the development of clear criminal justice objectives and philosophy, translated into well defined outputs. Proposals to have a single minister, chief executive, information system and policy and planning capability, are innovations that should lead to greater coherence and coordination, coupled with improved efficiency and accountability. There should also be a lessening of territorial interests and difference in formulating, interpreting and implementing criminal justice policy. There appear to be no "high constitutional" restraints that would prevent the formalisation of the department. The proposal would assist the setting up of a separate Maori response to criminal justice, with objectives incorporated in the common overall objectives for the department.

Arguments against the proposal are the undesirability of having the coercive accumulated power of the state residing in one agency, and a potential public loss of confidence in the justice system by having prosecutions, police, courts and corrections in one agency. Other considerations which mitigate against the proposal are the opportunity afforded for "provider capture" of policy advice; and the fact that the proposed departmental model is in direct contradiction to the functional model of government restructuring already implemented widely across core public agencies. The traditional functions, structure and culture of the police force would be altered by the proposal, with possible consequences in terms of industrial action supported by the public. There would be high set up costs, especially in the separation out of the criminal and the civil courts.

Option two: Variant One

A police ministry is proposed, independent of the three operating agencies. The functions of the ministry are to provide criminal justice policy advice to the Minister of Criminal Justice, and to negotiate and monitor service contracts with the stand alone operating agencies, namely, police, corrections and courts which could be established as crown owned entities under the Public Finance Act 1989. The ministry and the three operating agencies would each be headed by a Chief Executive or Commissioner.
Option two: Variant Two

In this Variant, the police ministry is structured as an independent department alongside the operating agencies also reporting to the Minister. Its role is to give quality policy advice on criminal justice matters to the Minister of Criminal Justice. It could also give advice to the Minister on the content of and monitoring of contracts, but all contracts, including that for the policy ministry will be negotiated with the Minister. Similar structures have already been set up in New Zealand in health and defence.
In both Variants One and Two youth justice functions are integrated as part of the criminal courts division.

Variant One would effectively remove the operating arms from a direct contractual relationship with the Minister, and give the ministry dual functions to deliver quality policy advice and negotiate contracts. It is an option unlikely to be favoured by the police. Variant Two would set up contracts directly between the Minister and the operating arms, including the policy arm, which may give advice to the Minister on contracts and act in a monitoring role, but would not negotiate any contracts directly. Dilution of policy aims in implementation is considered less likely under Variant Two, and the benefits of a strong relationship between the Minister and agencies should be that criminal justice overall objectives are achieved through the ability of the Minister to directly oversee and insist on compliance.

There appear to be no "high constitutional" reasons to prevent a merger of agencies nor any likelihood that the individual independence of the police or judges will be compromised as a result. For reasons of public perception and confidence in the criminal justice system, it has been concluded that an
integrated department may not be desirable because it combines in one single department the coercive powers of the state. The ordinary citizen would not necessarily be reassured therefore that impartiality would follow in the exercise of individual agency functions all located within one department. On the other hand overseas jurisdictions with Westminster systems of government have successfully combined the agencies into one department. While potential long-term gains in economy, effectiveness and efficiency have been identified from the potential mergers, there are set up costs and fiscal and social losses that would be incurred in the short-term.

Options One and Two integrate the police correctional agencies, criminal courts, the judiciary and youth justice. Advantages of integration have been identified as: enabling an overall philosophy, a strategic plan, an information system, and policy implementation to develop under the oversight of a single Minister of Criminal Justice, to achieve the known objectives for a criminal justice system. The model would overcome the present fragmentation and lack of coordination between the interdependent agencies of the criminal justice system each pursuing their own objectives, under three separate ministers.

Options One and Two both depend on extensive restructuring of present agencies to create the new department together with the contracting out, transfer or cost recovery of residual departmental functions that are not part of criminal justice. Overseas experience of restructuring government departments has produced scepticism from some commentators about the gains in economy, efficiency and effectiveness that were expected as a result of reorganising. Hood, referring to the Australian public sector restructuring, recommends that:

the Australian experiment be carefully monitored to find out to what degree and in what manner the promised bureaucratic economies of scale are in fact obtained (Hood 1989, p. 58).

and Salamon, in reference to bureaucratic reform in the United States comments that:

Not only are the aggregate administrative savings potentially available from reorganisation more limited than commonly believed, but there remain serious obstacles to gauging the contributions that reorganisation or any other change can make to governments efficiency (Salamon 1981, p. 482)

From a New Zealand perspective Boston (et al. 1991) has come to the same conclusion with regard to the restructuring of government departments from 1984 to 1990. He cites consultancy costs, costs of reorganising, redundancy costs, loss of morale and experienced staff, temporary loss of efficiency, and retraining costs as some of the losses incurred through restructuring, without evidence of quantifiable gains being achieved. His recommendation is to look first for internal efficiencies to achieve the same objectives.

It must be noted too that with the exception of Nanus (1974), none of the other criminal justice commentators quoted in this paper who subscribe to the
notion of a fragmented interdependent system, in need of reform, recommend widespread structural reorganisation as a solution.

Option three

*Figure 4*

**The Status Quo, but with a Minister of Justice and a Standing Commission**

Option Three was compared to several overseas initiatives in the area of criminal justice coordination, namely: the United States, Canada, Australia and the United Kingdom. Consideration was also given to the recent New Zealand report of the Crime Prevention Action Group (1992). Some common themes emerged, of direct applicability to all of the options proposed, namely:

- that the success of any coordination initiative will be enhanced by direct access to a Minister of Justice;

- that the judiciary is an important component of the criminal justice system, and needs to be part of any coordination initiatives;

- that because of the separation of powers under a Westminster system of government, the judiciary cannot be part of any committee involving the police and prosecution which has executive powers;

- that the relationship under the State Sector Act between a Minister and Chief Executive or Commissioner cannot be interfered with by way of a Standing Commission;
that there is an urgent need for an integrated information system about the workings of the criminal justice system;

that an overall criminal justice philosophy should be developed and published binding all agencies;

that an integrated strategic planning facility is needed to develop both "official" and "operative" goals for the criminal justice system;

that coordinated decision-making about the use and allocation of scarce criminal justice resources to meet agreed objectives is indicated;

that criminal justice research needs should be cooperatively prioritised;

that coordination at both national and local levels is indicated;

that the agencies of the formal criminal justice system are not the only agencies who should be involved in preventing crime.

It was considered that any proposals for integration between agencies which excluded the judiciary would omit a key component from the equation.

Conclusion

None of the options for integrating the agencies of the criminal justice system as described above meets all the criteria to a greater degree than any other two options.

The case for integrating the agencies in some way however, remains strong, backed up by overseas experience and initiatives, and by the recent New Zealand report of the Crime Prevention Action Group (1992).

The creation of a "super ministry" of criminal justice is the least appealing option because of the potential disruption and costs of such a large restructuring, without assurance based on overseas experience of government restructuring that the overall objectives for a criminal justice system would be met in a better way. There remain serious concerns about the coercive powers of the state residing within one large ministry, and the potential that amalgamation has for a serious loss of public confidence in a greatly altered police force and court system.

There are elements, however, from all three proposed options which could combine into a compatible rearrangement of the status quo, to meet the stated criteria, namely:

- a single Minister of Justice with portfolio responsibility for police, justice and youth justice;

- the creation of a Ministry of Justice, reporting to the Minister of Justice, with responsibility for policy advice on criminal justice
matters and for setting and monitoring contracts with police, courts, corrections, youth justice and any private providers of present criminal justice services including potential Maori and Pacific Island providers;

- the setting up of a Crime Prevention Unit also reporting to the Minister of Justice with an information and research capability, and a role to advise the Minister across the total area of crime prevention;

- the setting up of a Standing Commission on Criminal Justice with advisory functions only, comprising the Chief Justice, Chief District Court Judge, Secretary for Justice, Commissioner of Police and the Director-General of Social Welfare. Research and information services to the Commission could be provided by the Minister or the Crime Prevention Unit.

Such a proposal would go some way towards addressing the problems of policy and administrative coordination referred to earlier in the paper, as a set of horizontal and vertical relationships between Minister and agencies would be put in place.

The proposal as set out would provide the Minister with wide-ranging policy advice on criminal justice issues, accurate information regarding trends and the effects of implementation within the wider context of crime prevention, a research capability and the facility to develop and monitor enforceable contracts with the agencies involved to meet overall objectives. The inclusion of the Standing Commission would ensure that operational issues also informed policy advice without capturing it, and that the mainstream agencies including the judiciary were involved and committed to work together to achieve known objectives by operationalising them within their respective agencies and roles.

References


