

Isabella Kristina Schenk

Student ID: 300305700

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LAWS 539: CONTEMPORARY ISSUES IN SENTENCING AND PENOLOGY

“New Zealand’s recent experiences with Military Activity Camps under the new youth justice system”



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Abstract

This research paper discusses the recent New Zealand experience of Military Activity Camps (MACs) through the implementation of the Children, Young Persons, and Their Families (Youth Courts Jurisdictions and Orders) Amendment Act 2010. The paper will address the fundamental principles of the youth justice system under the Children, Young Persons, and Their Families Act 1989 and how the Amendment Act 2010 has created new possibilities of dealing with New Zealand's most persistent group of young offenders. It will furthermore address the historic background of boot camps and aims to analyse how effective the introduction of MACs has been so far. Finally it will look at what alternative measures may exist in order to fight youth offending and recidivism.

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I. Introduction

In almost every country around the world, legislators and policy makers are challenged with the task of creating an effective legal framework for young people in conflict with the law. The special nature of youth crime and the individual needs of young offenders require careful and flexible handling by the law.¹ For the past 21 years New Zealand has been a vanguard and role model in terms of presenting the right “manual” on how to deal with young offenders. With the enactment of the Children, Young Persons, and Their Families Act in 1989 (CYPF Act), it has created a unique framework with revolutionary approaches that inspired many legal systems internationally² and gained prominence due to its divergence to the “punitive populist adult criminal system”³. In 2008 however, New Zealand’s newly elected centre-right National Party made some significant changes to these existing laws.⁴

With the Children, Young Persons, and Their Families (Youth Courts Jurisdictions and Orders) Amendment Act 2010 the new policy of Military Activity Camps (MACs) was introduced as part of the supervision with residence order⁵ in order to deal with the most serious young criminals. The history of failures of juvenile boot camps in New Zealand and even more conspicuous in the United States, contributed to controversial discussions predicting poor outcomes before the policy even came into force.⁶ After three years of practical experience with MACs the question arises if the policy succeeded in holding this group of offenders to account and reduce recidivism.

This paper is divided into four parts. First, it will give an overview of the current picture of youth crime in New Zealand and will address the related legal frameworks. Second, it will describe the method of boot camps by exploring its origins and development. Third, the concept and policy behind MACs will be described and current statistics will be critically assessed. Finally, a variety of alternative approaches will be introduced and evaluated against common benchmarks for youth justice. It is contended that MAC’s in New Zealand have achieved their aim of being different from former boot camps and current results look promising. However, the success of the programme is found not to be driven by its militaristic elements.

II. New Zealand’s youth justice system

A. Youth crime and appearance in New Zealand

In every society we can find the phenomenon of youth offending and similar patterns of behaviour are observable. Unlike adult crime “most youth violence is committed under the influence of alcohol and is random, spontaneous, gratuitous street violence, usually

¹ This was also recognised by the United Nations that request their signing parties to implement a separate justice system for young offenders in Article 40 (b) of the United Nations Convention on the Rights of the Child (UNCRC) which was signed by New Zealand in 1993.

² Andrew Becroft “Are there Lessons to be Learned from the Youth Justice System?” (2009) 5 PQ 8 at 9.

³ Nessa Lynch “Playing catch-up? Recent reform of New Zealand’s youth Justice system” (2012) 12 CCJ 507 at 508.

⁴ Nessa Lynch *Youth Justice in New Zealand* (Thomson Reuters, Wellington, 2012) at 18.

⁵ CYPF Act, s 311(2).

⁶ Lynch, above n 3, at 18.

committed by small groups of young men”⁷. While on one hand, we usually experience these break-outs as minor crimes that are led by premature behaviour and ideally die away as young persons mature into adulthood⁸, serious and violent juvenile offending on the other hand, can be a predictor for adult criminality.⁹

The reason behind youth offending is so complex and linked to so many different conditions that we may not explain it by applying one single scientific theory. Researchers group their youth delinquency theories into sociological, psychological and biological categories, all together drawing a picture of risk factors that increase the probability of delinquent behaviour.¹⁰ The most dominant ones amongst them are: unstable family backgrounds, living in disadvantaged communities, contact with antisocial peers, substance abuse, exposure to violence and mental health problems.¹¹ Usually more than one of these risk factors will be inherent in the young offender’s life, but the more factors collide, the higher the risk that these young individuals may not turn their back on crime by the time they grow up.¹² In New Zealand we can currently observe such a group of persistent young offenders that, whilst being very small in number, commit nearly half of all youth crime in the country.¹³ Typical for the picture of youth crime in New Zealand is also the over-representation of young Māori in the youth justice system.¹⁴ This reveals the difficulties brought by the historic background of colonisation - the assimilation of the indigenous population.¹⁵ Lately, these facts have triggered moral panics about increased youth offending in the country, creating an overall incorrect impression that we are experiencing dramatic changes in this sector. Statistics prove perceptions to be wrong for the majority of young people in conflict with the law¹⁶ as apprehension rates are the lowest in 20 years and the number of young offenders appearing in court have decreased by 18 per cent since 2011/12.¹⁷ Children (under the age of 14 years) and young persons (over the age of 14 years but under 17 years) make up less than three per cent of the entire population charged in New Zealand’s courts.¹⁸ But since apprehension rates for violent crimes are still increasing (for all age groups), the youth justice community remains concerned.¹⁹

⁷ Becroft, above n 2, at 14.

⁸ Gabriele Maxwell “Youth offenders: who, what and why” (9 November 2012) Te Ara <www.teara.govt.nz> at 1.

⁹ Susan Tarolla and others “Understanding and treating juvenile offenders: A review of current knowledge and future directions” (2002) 7 *Aggress Violent Beh* 125 at 128.

¹⁰ Ross Gordon Green and Kearney Healy *Tough on Kids* (Purich Publishing Ltd., Saskatoon, 2003) at 60.

¹¹ The Ministry of Social Development *Evaluation Report for the Military-style Activity Camp (MAC) programme* (The Ministry of Social Development, Report, September 2013) at 20.

¹² Linda Zampese *When the bough breaks: A literature based intervention strategy for young offenders* (Department of Corrections, Literature Review, 1998) at 43.

¹³ The Ministry of Social Development *Report: The Fresh Start reforms in operation* (Ministry of Social Development, July 2011) at 1.

¹⁴ Making up 54 per cent, Ministry of Justice *Child and Youth Prosecution – trends for 2012/13* (Ministry of Justice, Report, June 2013).

¹⁵ Similar problems can be detected in Canada; Green and Healy, above n 10, at 118.

¹⁶ Maxwell, above n 8, at 1.

¹⁷ Ministry of Justice, above n 13.

¹⁸ Ministry of Justice, above n 13.

¹⁹ Andrew Becroft, Principal Youth Court Judge of New Zealand “What causes youth crime, and what can we do about it?” (NZ Bluelight Ventures Inc – Conference & AgM, Queenstown, 7 May 2009) at 2-3.

B. The Children, Young Persons, and Their Families Act 1989

1. Background information

In 1989 the pioneering CYPF Act was introduced responding to defects within the previous framework of the Children and Young Persons Act 1974 which combined a welfare and justice approach²⁰ towards youth crime.²¹ The main problems which had been experienced in similar jurisdictions internationally included the overuse of police power, resulting in the decreased possibility of rehabilitating offenders.²² The new model was designed to develop community alternatives to institutions, to respond more effectively to the needs of victims, to provide better support for families and their children, to respond to the demands from Māori for an increased involvement of decisions about their children, and to reduce the number of minor offenders appearing before the court.²³ The recipe for success was the restorative justice approach towards youth crime providing “a comprehensive set of general principles that govern both state intervention in the lives of children and young people and the management of the youth justice system”^{24, 25}.

2. Framework and schemes

The framework of the CYPF Act targets young offenders above the age of ten since this is the threshold of criminal responsibility in New Zealand.²⁶ It offers a variety of schemes in order to deal with youth offending in an efficient way whilst addressing the young person’s needs. Alongside the possibilities to remain inactive in the case of minor offences and dealing with very serious cases in front of the Youth Court, the most prominent scheme is the handling of offences through the Youth Aid system that includes Police Youth Diversion and family group conferences (FGC).²⁷ Derived from indigenous practices²⁸, the latter “lies at the heart of the New Zealand procedures”²⁹ as it provides the opportunity to deal with the young person outside the court room. It aims at mediating responsibility and repairing the damage in an educative manner. In practice this involves an apology of the offender, undertaking work for the victim or paying reparation.³⁰ This reflects the intention of New Zealand’s system to

²⁰ Allison Morris and Warren Young *Juvenile Justice in New Zealand: Policy and Practice* (Institute of Criminology of Victoria University of Wellington, Wellington, 1987) at 3.

²¹ Lynch, above n 4, at 10.

²² Nessa Lynch “Contrasts in Tolerance in a Single Jurisdiction: The Case of New Zealand” (2013) 23 Int'l Crim Just Rev 217 at 221.

²³ Gabrielle Maxwell and Allison Morris “Youth Justice in New Zealand: Restorative Justice in Practice?” (2006) 62 J. Soc. Issues 239 at 242.

²⁴ The Ministry of Social Development *Achieving Effective Outcomes in Youth Justice* (The Ministry of Social Development, Final Report, February 2004) at 7.

²⁵ CYPF Act 1989, s 4.

²⁶ The Ministry of Social Development, above n 24, at 15; Crimes Act 1961, ss 22, 21.

²⁷ Gabrielle Maxwell and Allison Morris *Family, victims and culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology Victoria University of Wellington, Research Report Series No 14, 1993) at 9.

²⁸ Kathleen Daly “Conferencing in Australia and New Zealand” Allison Morris and Gabrielle Maxwell (ed) *Restorative Justice for Juveniles: Conferencing, Mediation & Circles* (Hart Publishing Oxford and Portland, Oregon, 2001) 59 at 65.

²⁹ The Ministry of Social Development, above n 24, at 16.

³⁰ Maxwell and Morris, above n 27, at 92.

share the responsibility for the young person's offending with families, whanau, hapu, iwi and family groups.³¹

After more than twenty years of practical experience with the CYPF Act, its success has been proven in terms of holding young offenders accountable for their actions, while at the same time drawing attention to their care and protection. Today, the major strengths still lie in the diversionary approach to young suspects that are responsible for the decreasing rates of imprisonment.³²

C. The Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010

On the 8th of November 2008, the centre-right National Party won the largest share of votes and seats in the election for New Zealand's 49th Parliament after a campaign that had strongly focussed on youth offending. The campaign was of great success as it seemed to present the solution for the allegedly increasing youth crime, propagandized as "tomorrow's crises"³³. The "first 100 Days" programme³⁴ run by the parliamentary leader John Key involved the implementation of the CYPF Amendment Act 2010, being the first modification of the CYPF Act 1989 since 21 years.³⁵ It aimed to implement pre-election promises introducing the Fresh Start Reforms³⁶; a "robust framework for providing programmes based on research, monitoring and evaluation"³⁷. Targeting the worst 1,000 youth offenders in New Zealand, the concept intended to offer more severe and intensive treatments for those criminals.³⁸ Although the current laws were seen to be dealing well with the majority of youth offenders and protective factors such as "victim participation, non-politicization and practitioner attitude"³⁹ had shielded the system from punitive alterations until now, changes were about to be made. Minister Paula Bennett was convinced that:

"The youth justice sector called for more options to deal with a hard-core group of young offenders."⁴⁰

As a direct response, the reforms covered changes to the Supervision with Activity and the Supervision with Residence (SwR) orders, measures that enabled mentoring, parenting education and specific rehabilitation programmes and the extension of the jurisdiction of the Youth Court to deal with the most serious 12 and 13 year old offenders.⁴¹ One of the most

³¹ Maxwell and Morris, above n 23, at 245.

³² Becroft, above n 2, at 11.

³³ John Key, Leader of the Opposition "2008: A Fresh Start for New Zealand" (State of the Nation speech, 29 January 2008).

³⁴ John Key "Delivering on Our Election Promises: Our First 100 days" (2009) National Party <www.national.org.nz>.

³⁵ Lynch, above n 4, at 18.

³⁶ Lynch, above n 4, at 19; John Key, Leader of the Opposition "2008: A Fresh Start for New Zealand" (State of the Nation speech, 29 January 2008).

³⁷ Ministry of Social Development, above n 13, at 2.

³⁸ Paula Bennett "A Fresh Start for young offenders" (16 February 2009) Beehive <www.beehive.govt.nz> at 1.

³⁹ Lynch, above n 4, at 513.

⁴⁰ Paula Bennett "Fresh Start Reforms in operation: a progress report" (20 July 2011) Beehive <www.beehive.govt.nz>.

⁴¹ The Ministry of Social Development *Reduced re-offending by young people* (The Ministry of Social Development, Annual Report, 2010/2011) at 1; see also Andrew Becroft and others *Youth Justice practice issues – an update* (New Zealand Law Society CLE Ltd, October 2012) at 17.

significant new approaches was yet the possibility to send offenders to Military Activity Camps as part of the SwR order.⁴² The policy aimed to introduce an innovative approach to hold young people responsible for their criminal actions while at the same time decreasing the imposed risk for the community.

III. Boot Camps

A. Origin and development of boot camps

To some extent the idea of boot camps and their use as a penal sanction for criminals evolved from the constantly changing face of the correctional system.

“The best metaphor for characterizing the past 150 years of correctional policies is the proverbial pendulum that swings back and forth between liberal and conservative ideologies and practices.”⁴³

In the pursue to alter criminal patterns, methods reached from one extreme to the other, either being immensely punitive what resulted in high incarceration rates, or being very lenient in the treatment of criminals.

For most of the post-war period an accelerating crime boom could be observed, enabling the phenomenon of penal populism to emerge from the 1970s onwards.⁴⁴ This is a process whereby politicians become increasingly involved in the discussion about criminal justice and promise a get-tough response on crime in order to win votes. The success and popularity of these punitive election pledges were thankfully accepted by a society that had become sensitised to crime and welcomed any proactive stance towards this issue.⁴⁵ Additionally, fuelled by excessive media reports on the danger of “crime running out of control” a foundation was laid for a new era of punitiveness; restructuring penal powers.

Towards the end of the 1970s when juvenile correctional systems everywhere around the world had been harshly criticised for not being able to rehabilitate and prevent young offenders from reoffending, the idea of “getting tough” was appealing. In the course of this “nothing works”⁴⁶ movement, researchers, policy makers and service providers desperately searched for new methods that would actually work. Once again, instead of approaching the problem in a rehabilitative way, it was concluded it would be more promising to focus on punishment, deterrence and retribution. Especially utilitarian philosophers were convinced that the only cure for persistent offenders was incarceration until the negative behavioural patterns subsided naturally.⁴⁷ This “get-tough” response towards youth crime soon led to the American innovation of boot camps in the 1980s and 1990s which had at first been targeted

⁴² CYPF Act 1989, s 311.

⁴³ Brent B. Benda “Introduction: Boot Camps Revisited: Issues, Problems, Prospects” (2005) 40 J Offender Rehabil 1 at 7.

⁴⁴ John Pratt “When Penal Populism Stops: Legitimacy, Scandal and the Power to Punish in New Zealand” (2008) 41 ANZJ Crim 364 at 367.

⁴⁵ Kübra Gültekin and Sebahattin Gültekin “Is juvenile boot camp policy effective?” (2012) 9 Int J Human Sc 725 at 726.

⁴⁶ See Jalal Shamsie “Anti-social Adolescents: Our Treatments Do Not Work – Where Do We Go from Here?” (1981) 26 Can J Psychiatry 357 at 357.

⁴⁷ Benda, above n 43, at 9.

at adult offenders and were part of the intermediate sanctions concept.⁴⁸ Intermediate sanctions were to serve as a form of punishment between prison and probation, offering judges more options that would eventually lead to more just sentencing.⁴⁹ The aim of boot camps to reduce recidivism, decrease incarceration rates and limit costs “used a language that promised a toughness that resonated with the prevailing political climate”⁵⁰ and appeared as the ideal way out of the crisis with youth offending.⁵¹ The revolutionary concept offered a non-traditional alternative to the deprecated correctional facilities, yet picked up on former conventional disciplinary methods that were found in parenting practises from the 1920s to the 1960s.⁵² Although modern parenting practice had apostatised from these approaches, they seemed to be an appropriate measure in a criminal environment.

B. Concept and practice of boot camps

With the opening of the first correctional boot camp for juveniles in Louisiana (USA) in 1985⁵³ a flood of militaristic facilities followed in many other countries around the world. The new institutions followed the model of military training, characterized by routine, discipline, physical labour and academic education.⁵⁴ The explicit goal of all military activities being to “break”⁵⁵ the young offender in order to rebuild him and enduringly change his antisocial behaviour, also known as the “shock incarceration method”.⁵⁶ Boot camps for young offenders proliferated in many directions, including a variety of different models. They ranged from “military drilling style camps” which primarily focussed on discipline and “rehabilitative camps” with emphasis on reintegrating the offender, to “educational/vocational camps” where schooling made up a major part of the programme.

Although the idea of changing young criminals through short-term shock incarceration appeared to be a successful method at first, statistics⁵⁷ soon revealed that recidivism rates had not decreased and boot camps were actually more costly than existing models such as juvenile probation and supervision programmes.⁵⁸ After alarming and continuous reports about younger children being physically and psychologically abused in camps in the United

⁴⁸ Nicholas Bala and Sanjeev Anand *Youth Criminal Justice Law* (2nd ed, Irwin Law Inc., Toronto, 2009) at 591-592; see also William Bourns and Carol Veneziano and Louis Veneziano “A study of criminal justice policy makers’ perspectives: The forgotten component in boot camp programs and goals” (2005) 33 JCJ 113 at 114.

⁴⁹ Francis Cullen and others “The Rise and Fall of Boot Camps” (2005) 40 J Offender Rehabil 53 at 56.

⁵⁰ Cullen and others, above n 49, at 58.

⁵¹ Tim Hall and Linda McIver “Principal Youth Court Judge’s Newsletter Issue 42” (April 2009) The Youth Court of New Zealand <www.justice.govt.nz>.

⁵² Cyndi Banks *Youth, Crime and Justice* (Routledge, Abingdon, 2013) at 268.

⁵³ The first correctional boot camps for adults were set up in Georgia and Oklahoma (US) two years earlier.

⁵⁴ Leia De Vita “Statistically Speaking: Do Alternative Punishments Work? – A Comparison of Boot Camp Punishment and Traditional Facilities” (2010) 30 Child Legal Rts. J 76 at 76.

⁵⁵ Rethinking Crime and Punishment “‘To Boot or not to Boot’ - A Key Response to Youth Offending” <www.rethinking.org.nz> at 1.

⁵⁶ Benjamin Meade and Benjamin Steiner “The total effects of boot camps that house juveniles: A systematic review of evidence” (2010) 38 JRJ 841 at 842.

⁵⁷ A study in Florida in 1997 showed recidivism rates from 63 to 74 per cent, see Jerry Tyler and Ray Darville and Kathi Stalnaker “Juvenile boot camps: a descriptive analysis of program diversity and effectiveness” (2001) 38 SOC SCI J 445 at 449.

⁵⁸ Tyler and Darville and Stalnaker, above n 57, at 450.

States resulting in deaths⁵⁹, criticism got louder. Suddenly boot camps were no longer regarded as problem free and the picture of “camp fear”⁶⁰ led to a sharp decline of usage.⁶¹ Surprisingly, despite this relapse, the concept of boot camps remained proportionally popular. Today the new generation of camps still concentrates on military drills; however, educational goals dominate over sole punishment.⁶² Governmental institutions aim at offenders inside the criminal justice system, while private institutes also offer programmes for troubled children that are likely to get in conflict with the law.⁶³

IV. Military Activity Camps (MACs) in New Zealand

A. Background information

The incorporation of MACs in New Zealand was part of the many promises that were given by the National Party during their election campaign in 2008. The CYPF Amendment Bill 2009 proposed the set-up of militaristic camps, reflecting the punitive approach towards youth crime that had been one of the elementary components leading to the Party’s election success. Yet this shining example of penal populism wasn’t a new experience for New Zealand; it had already proven in the past to approach the justice system in a similarly punitive way. This becomes obvious when looking at the adult criminal system and the high prison rates which are currently at 192 per 100,000 of population for the year 2013.⁶⁴ The causes for this “populist punitiveness” have been intensively discussed in academia. The most convincing drivers identified by Pratt and Clark for New Zealand are the existence of “a homogenous society and (more recently) neoliberalism, and the cumulative effect of populist lobby groups, a crime-obsessed media and the politicization of crime, particularly victimization.”⁶⁵ However, this phenomenon is not a unique feature of New Zealand. Already Margaret Thatcher won the British elections in 1979 after promising “short sharp shock” detention centres for young offenders⁶⁶ and Australia’s recently elected Prime Minister Tony Abbott increased his chances of success by promising to get tough on gun crime.⁶⁷

Despite the identified fact that it was easy for the National Party to sell their punitive intentions to the public, it is surprising that the voters found the idea of MACs appealing since New Zealand had unsuccessfully used a similar sentence between 1981 and 2002. “Corrective Trainings”, targeting 15 to 20 year old youth offenders, were introduced to replace the sentences of detention in a detention centre and borstal training.⁶⁸ Unlike most American models that commonly focussed on pure physical labour, the institutions in New Zealand varied in their physical layout depending on their local possibilities. Most of the

⁵⁹ Banks, above n 52, at 269; Michael Janofsky “States Pressed As 3 Boys Die At Boot Camps” *The New York Times* (online ed, United States, 15 July 2001).

⁶⁰ Bruce Selcraig “Camp fear” (November-December 2000) *Mother Jones* <www.motherjones.com>, at 64-71.

⁶¹ Cullen and others, above n 49, at 65.

⁶² Tyler and Darville and Stalnaker, above n 57, at 449.

⁶³ Qatsihs Coalition “Boot Camps Discussion Paper” (March 2011) <www.qatsihs.org.au> at 1.

⁶⁴ Prison Studies “World Prison Brief New Zealand” (June 2013) <www.prisonstudies.org>.

⁶⁵ John Pratt and Marie Clark “Penal populism in New Zealand” (2005) 7 *Punishm Soc* 303 at 304; see also Lynch, above n 22, at 218.

⁶⁶ Pratt, above n 44, at 367.

⁶⁷ Simon Benson “Tony Abbott to get tough on gun crime with proposal for mandatory minimum sentence of five years jail” *The Daily Telegraph* (online ed, NSW Australia, 19 August, 2013).

⁶⁸ Walton Walker and Robert Brown *Corrective Training: An Evaluation* (Planning and Development Division Department of Justice, Wellington, Study Series No. 10, December 1983) at 1.

daily routine was directed to a work programme outside for seven and a half hours per day, involving farming and working in the forests. The educational elements of these trainings were very limited and only occupied one and a half hours per day.⁶⁹ The training's main objective was "to reduce offending by the experience of a punitive but fair sentence"⁷⁰. Yet after the reoffending rate of 92 per cent⁷¹ was revealed, the sentence of corrective training was abolished by the Sentencing Act 2002.

B. Policy and aim behind MACs

It has been discussed earlier in the paper that the perception of youth crime in New Zealand contradicts with the evidence on children and crime in the country. Generally we find that, not only in New Zealand but also for example in England, most policies dealing with youth crime are strongly linked to media hyperbole and electoral politics.⁷² Governments recognize that the public feels anxious and insecure when it comes to children involved in crime, and they sense their chances of electoral success by responding to this vulnerability with rigorous crime management. Youth crime "challenges our belief in childhood innocence – and, perhaps, some fundamental beliefs about the possibility of a 'good society'. It generates fear of lawlessness and of the effects of a breakdown in socialisation. It questions the quality of our services for children, our support for parents and our investment in future generations."⁷³ In the case of New Zealand the small group of offenders responsible for the majority of youth crime, provoked these fears once more and the government responded with stern measures to this public perception. To some extent it was intended that voters associate MACs with boot camps because the "image of offenders participating in military drill and hard physical labor make boot camps look demanding and unpleasant, characteristics that crime-conscious officials and voters find satisfying"⁷⁴. However, this intention appears as a contradiction in terms as MACs were also advertised to be different from former boot camps. Anyhow, we find that the public's blindness to evidence based policies evoked the new concept to a great extent.

With regards to the aims of MACs we find that the concept falls strongly back on one of the original goals of boot camps, the reduction of reoffending rates. Decreasing costs and incarceration rates on the other hand were only regarded as a positive side effect and didn't function as a purpose for the programme. Although reoffending is not an explicit objective⁷⁵ found in New Zealand's justice system it had a high priority in the process of their establishment.⁷⁶ By decreasing the offender's probability of reoffending it was believed that

⁶⁹ Walker and Brown, above n 68, at 8-9.

⁷⁰ Secretary for Justice to Prison Superintendents *Circular PADM 6-1 Appendix I* (Secretary for Justice to Prison Superintendents, 2 February 1981); Walker and Brown, above n 68, at 1.

⁷¹ Derek Cheng "Young offenders finish first military-style camp" *The New Zealand Herald* (online ed, Auckland, 25 February 2010).

⁷² Derrick Armstrong "A Risky Business? Research, Policy, Governmentality and Youth Offending" (2004) 4 YJ 100 at 100.

⁷³ Armstrong, above n 72, at 100.

⁷⁴ Michael Tonry *Sentencing Matters* (Oxford University Press, New York, 1998) at 110.

⁷⁵ It is only implied by ss 4, 5 CYPF Act.

⁷⁶ Gabrielle Maxwell "Alternatives to Prosecution for Young Offenders in New Zealand" T. Wing Lo and Dennis Wong and Gabrielle Maxwell (ed) *Alternatives to prosecution: Rehabilitative and restorative models of youth justice* (Marshall Cavendish International Private Limited, Singapore, 2005) 206 at 227.

youth crime could be actively controlled and thus would achieve and ensure community safety.⁷⁷

Moreover, the policy was brought in to improve on the effectiveness of current interventions. By giving the Youth Court the possibility to combine the SwR order with a specified programme⁷⁸ such as the MAC, the roots of the offending of the young person were thought to be addressed more effectively. This flexibility was worshipped in the process of working together with young people especially because it offered a promising response to their multilateral needs.⁷⁹

Despite the policy aiming to get tough⁸⁰ on youth crime, we also find that on the contrary, MACs encouraged to rehabilitate offenders and integrate them into the community. The precisely planned after care programme which follows the residential phase of the programme helped to “provide an environment where the young persons can improve their life circumstances, take responsibility for their own behaviour and live productive lives”⁸¹. Eventually this was thought to limit the urge of the offender to commit offences and lead to a sustainable transformation.

New Zealand’s planners and practitioners referred back to many schemes discussed in the “‘What Works’”⁸² literature in order to establish MACs. One of the most significant outcomes of this orientation⁸³ was that the camps were to target the top end of youth offenders that might otherwise be transferred to the adult court system. MACs therefore were also established to offer a countermeasure to this problem. This intervention should especially prevent young criminals from coming into contact with the criminal energy present in adult prisons. This may contribute to further criminal activity and inhibit the young person’s development in an anyhow critical phase of their lives.

Overall, MACs were therefore thought of as a “last resort” providing an “intensive wraparound support to the 40 most serious and persistent young male offenders each year to assist them to make pro-social choices (eg not reoffending) and ultimately make a successful transition to adulthood.”⁸⁴

C. Justification for implementation

Because of the negative reports on the use of boots camps in the past, the new policy required justification. One of the convincing arguments in favour of the camps was that further investigations and research had indicated that when used in combination with treatment options camps could make a difference.⁸⁵ A strong impetus towards MACs was also provided

⁷⁷ Chris Polaschek “What worked, what didn’t and what don’t we know?” (Australasian Youth Justice Conference, Canberra, 20-22 May 2013) at 2.

⁷⁸ CYPF Act 1989, s 311(2).

⁷⁹ Paula Bennett “‘Boot camp’ critics miss the point” (29 April 2009) Beehive <www.beehive.govt.nz>.

⁸⁰ Bennett, above n 38, at 3.

⁸¹ Lee A. Underwood and Pamela Knight “Treatment and Postrelease Rehabilitative Progress for Juvenile Offenders” (2006) 15 Child Adolesc Psychiatr Clin N Am 539 at 545.

⁸² Polaschek, above n 77, at 13.

⁸³ Polaschek, above n 77, at 13.

⁸⁴ The Ministry of Social Development Evaluation *Report for the Military-style Activity Camp (MAC) programme* (The Ministry of Social Development, Report, September 2013) at 3.

⁸⁵ Polaschek, above n 77, at 2.

by the great success of the “Limited Service Programme”⁸⁶ (LSV), a motivation programme run by the New Zealand Defence Force for long-term young unemployed.⁸⁷ This programme includes many outdoor activities, vocational training and counselling in order to encourage and enable young people to get a job after completing the programme. However, participants in the LSV aren’t criminals; they are unemployed and join the programme voluntarily.⁸⁸ Young persons in the MAC programme on the other hand have a much more difficult background. They have been in conflict with the law for a long time and most importantly MACs are a part of their sentence which is given by the Youth court. Although the young person’s consent to this certain activity is required, their freedom of decision is strongly undermined as the order remains a court sentence.

At the whole, the concept of military programmes for troubled youths was considered the right strategy and had only failed in the past because of the lack of therapeutic interventions. Therefore it was emphasized that:

“The camps are not like the old sentence of corrective training. They are a modern innovation incorporating army style discipline with cognitive behaviour treatment from experts.”⁸⁹

A lot more complex is the question why the public regarded or still regards MACs as an effective measure for treating young offenders, if these programmes have been proven to be ineffective more than once.⁹⁰ At a first glance the dichotomy between scientific evidence and the public’s perception appears indecipherable. Simon attempts to explain the positive resonance of society towards “[the] return of military gestures in contemporary penal practices [as] an exercise in nostalgia”⁹¹. According to this observation, wilful nostalgia is a powerful factor that poles the human mind into a certain direction. In the case of boot camps many minds will associate “favourable impressions of the armed forces”⁹² often portrayed excessively by the media. Pictures involving juveniles crawling through mud and being shouted at by Drill Sergeants will most certainly come along with these thoughts.⁹³ These visions are so appealing because they are perceived as an uncomfortable punishment that reminds one of old-school education techniques. Although today’s educational methods have shifted drastically from those in the past, as mentioned above already, the nostalgic taste in times where getting through to young people seems difficult, is convincing.

Another factor may be that especially the older generation, which had been subject to compulsory military training under the Defence Act 1909⁹⁴ until 1972⁹⁵ will remember their time serving in the Army. They may recall this “experience as not necessarily pleasant but as

⁸⁶ Robert Maxwell “‘What do boot camps really achieve?’ A means-end analysis of the limited service volunteers programme” (2011) 37 SOC POLICY J NZ 1 at 2; see also Phil Goff “Military training proven not to work for young offenders” (29 January 2008) Beehive <www.beehive.govt.nz>.

⁸⁷ Royal New Zealand Navy “Our Defence Force Prepares to Deliver Youth Development Programmes” (May 2010) <www.navy.mil.nz>.

⁸⁸ Lou Gardiner *Youth Programmes Companion Study* (The New Zealand Ministry of Defence, Report, October 2010) at 5.

⁸⁹ Bennett, above n 38, at 3.

⁹⁰ For example: Doris Layton Mackenzie, David Wilson and Suzanne Kider “Effects of Correctional Boot Camps on Offending” (2001) 578 *Annals Am Acad Pol & Soc Sci* 126 at 139.

⁹¹ Jonathan Simon “They Died with Their Boots On: The Boot Camp and the Limits of Modern Penalty” (1995) 22 *Soc Just* 25 at 29.

⁹² Simon, above n 91, at 5.

⁹³ Simon, above n 91, at 26.

⁹⁴ Later under the Compulsory Military Training Act 1949.

⁹⁵ Wikipedia “Compulsory Military Training in New Zealand” <www.wikipedia.org>.

an effective way to learn self-discipline and to learn to work as part of a team”⁹⁶ and therefore regard MACs as a proper fit for youth offenders.

For one or the other reason, many will just imagine MACs as a place where young adults are kept busy so they do not have time to develop negative ideas leading to further crime.⁹⁷ Being outdoors, experiencing nature is regarded as an efficient tool to confront troubled kids. On the contrary, the public will rarely consider the negative side effects of these facilities; neither will they give further thought into what will work best on the long run.

D. Legal implementation

The MACs were introduced with the enactment of the CYPF Amendment Act 2010. However, as part of the new SwR order under s 311(2) CYPF Act, they were not explicitly stated in the wording which enables their quick abolition without having to change the law itself. Since MACs are part of an SwR order, they don’t appear as a direct alternative to prison although some sort of custody⁹⁸ is involved in the order. Nevertheless, a Judge may now use MACs as an alternative to transfer the offender to the adult court system under s 283(o) CYPF Act which can eventually result in a prison sentence because the Sentencing Act 2002 applies. The suggestion for an order including MACs is therefore reserved for the top end of offenders which appear to be resistant to any other treatment. Furthermore s 290A CYPF Act applies according to s 311(2) CYPF Act, which ensures that the court does not impose the condition unless the residential component of the specified programme or activity is to be provided by one of the listed bodies.⁹⁹

As part of the CYPF Act and as a measure of New Zealand’s youth justice system, the programme had to comply with the principles of s 208 CYPF Act. Since MACs are considered a punitive measure in the correctional system, the government was forced to design camps that would not violate the non-punitive principles. Although it is almost impossible to unite all of these goals in one programme, concepts shall certainly not be contradictory to them.

With respect to s 208 (fa) CYPF Act which states that “measures...should...address the causes underlying the child’s or young person’s offending”, we find that MACs focus very well on the underlying causes of the offending.¹⁰⁰ As discussed above they can be an alternative to s 283(o) CYPF Act in many cases which therefore address s 208 (f)(ii). Functioning as a “last resort” for persistent offenders, they even pick up on Article 37 UNCRC.¹⁰¹

⁹⁶ Tonry, above n 74, at 110; Benda, above n 43, at 12.

⁹⁷ Paula Bennett “3000 troubled youth to get a Fresh Start” (26 August 2009) Beehive <www.beehive.govt.nz>.

⁹⁸ CYPF Act, s 311(1).

⁹⁹ CYPF Act, ss 290A(1)(b),(2)(b), 396.

¹⁰⁰ The Ministry of Social Development, above n 84, at 12.

¹⁰¹ Raymond Arthur *Young offenders and the law: How the law responds to youth offending* (Routledge, Abingdon, 2010) at 108.

E. Practical implementation

MACs are delivered in partnership by CYF and the NZDF and are described as an “exiting package” by the Principal Youth Court Judge Becroft.¹⁰² Unlike past models, they were envisaged to consist of limited military components but with a strong focus on education aiming at a reduction of seriousness and frequency of reoffending.¹⁰³ The residential time lasts up to nine weeks, including a five day wilderness camp, and focuses on physical and mental challenges. Unlike models in the United States that target minor criminals¹⁰⁴, the local institutions concentrate on the most serious youth offenders. By aiming at a group which is not suitable for non-custodial sentences, the negative effects of net-widening¹⁰⁵ may be obviated or at least reduced. In order to prevent exposure of younger offenders (below the age of 15) to high risks of abuse and bad influence of older inmates, the age parameter reaches from 15 to 17 years. The main contents of the programme include “goal-setting, exploring job or training opportunities, drug and alcohol treatment, and attending programmes to address their offending behaviour”¹⁰⁶. After their release graduates are equipped with individual plans and must involve in an intensive after care programme as part of their supervision order lasting at least nine months.¹⁰⁷ This part of the programme is crucial in the process to help reinforce and sustain the lessons they have learnt during their time in camp.¹⁰⁸

F. Progress report

1. Statistics

Three years after the implementation the question arises, how well the “get-tough” response of the new government did in practise. Recent statistics about the programme can be used as an indicator for the success of MACs.

The first official numbers were published in 2011 and showed that out of 17 participants only two had not reoffended since their release, producing a recidivism rate of approximately 88 per cent. Out of all participants, four had been sent to prison since, 60 per cent had offended less seriously and 53 per cent had done so less frequently.¹⁰⁹

¹⁰² Royal New Zealand Navy, above n 87.

¹⁰³ The Ministry of Social Development, above n 84, at 12.

¹⁰⁴ Faith Lutze “Boot Camps Prison and Correction Policy – Moving from militarism to an ethic of care” (2006) 5 Crim Pub Policy 389 at 390.

¹⁰⁵ Angela Gover and Doris Layton MacKenzie and Gaylene Styve “Boot camps and traditional correctional facilities for juveniles: A comparison of the participants, daily activities and environments” (2000) 28 JCJ 53 at 54, 57.

¹⁰⁶ The Ministry of Social Development, above n 41, at 1.

¹⁰⁷ Bennett, above n 40, at 4.

¹⁰⁸ Contrary opinion: Megan Kurlychek and others “How long After? A Natural Experiment Assessing the Impact of the Length of Aftercare Service Delivery on Recidivism” (2011) 57 Crim & Delin 778 at 791.

¹⁰⁹ The Ministry of Social Development, above n 11, at 11.

In 2012 one could observe a similar picture. Out of 31 offenders who attended the camps, only 61 per cent had been found reoffending within the first six months of their release¹¹⁰ and 63 per cent of the young people that reoffended did so at a lower frequency.¹¹¹

In the Report 2013, the Ministry of Social Development evaluates the reoffending rates in more detail, reviewing the programme between October 2010 and July 2013. As stated: nine MAC residential programmes were run with a total of 80 young people starting the programme and 70 of these completing it. Statistics from 2013 reveal a reoffending rate of 83 per cent within 12 months of their release, 83 and 74 per cent, respectively, reducing their frequency and seriousness of offending.¹¹²

2. Evaluation

Before we evaluate the outcomes of MACs we need to acknowledge that it is still too early to deem camps efficient or inefficient since there has not been enough data yet¹¹³ and formal analysis will not take place until the end of 2014.¹¹⁴

If we compare the most recent results of MACs to the numbers of non-MAC participants sentenced to a custodial order (SwR), we observe that reoffending rates are similar for this group being at 81 per cent. In comparison to the year 2011 they are even better.¹¹⁵ Considering that “the average risk of reoffending for MAC participants is notably higher than for other male offenders”¹¹⁶, as they represent the top end of the serious criminals, these results can be rated as promising. Nevertheless, we still find that more than half of the participants are reoffending after their release. The primary goal of the camps has therefore only been achieved to a certain degree and we shouldn’t be satisfied with only little changes in this sector.

The current evaluation report suggests to improve the selection and referral process as well as the community phase of MACs to achieve better outcomes while the residential phase has been found working well. Agreeing that the camp structure comprises of many elements that are producing good outcomes and are the result of a well-planned model, we may find room for further improvement that ensures that MACs fight recidivism properly in all phases.

With regards to the camp structure it could be argued that the assigned nine month are not long enough to outweigh the negative past experiences the young person has made.¹¹⁷ If MACs are considered beneficial for the young offender there is no reason why the residential phase of the SwR order shouldn’t be extended. Instead of nine weeks, the residential phase could for example last up to six months. This would give the young persons more time to work on their risk factors in a safe environment and would further enable them to earn more

¹¹⁰ Kate Shuttleworth “Half of boot camp youths continue to offend – report” *The New Zealand Herald* (online ed, Auckland, 13 December 2012).

¹¹¹ The Ministry of Social Development *The Fresh Start Reforms in Operation to 31 October 2012* (The Ministry of Social Development, Report, December 2012) at 6-7.

¹¹² The Ministry of Social Development, above n 84, at 56.

¹¹³ The Ministry of Social Development, above n 41, at 56.

¹¹⁴ The Ministry of Social Development, above n 84, at 56.

¹¹⁵ The Ministry of Social Development, above n 84, at 79.

¹¹⁶ The Ministry of Social Development, above n 84, at 56.

¹¹⁷ Lynn Atkinson “Boot Camps and Justice: A Contradiction in Terms?” (1995) 49 Trends Iss Crime Crim Justice 1 at 5.

educational qualifications during their time in camp. Any additional competences they will gain will help to find them their place in the community after their release.

Furthermore, the new concept doesn't draw enough attention to the involvement of the offender's family as required by the principle of s 208(c) CYPF Act. It is elementary for young people to be kept inside their community and to strengthen their family bonds as "parents play key roles in preventing recidivism of juveniles"¹¹⁸. This is an even more important goal when looking at the disproportional representation of young Māori in the justice system. Their cultural background requires very active involvement of the whanau, hapu and iwi as longitudinal studies have shown and is practised in Māori customary law.¹¹⁹ Furthermore, a strong sense of Māori identity and the connection to their culture have been identified as protective factors that can prevent recidivism.¹²⁰ There exist several methods by which the family could be integrated further into the programme, such as having regular family visiting hours and getting families involved in the child's therapy programme.

Moreover, "[stripping] down a person through regimentation, then send[ing] the offender home to an environment that is the exact opposite of the boot camp – formally unstructured and often lacking commanding directive for positive behaviour" can still be regarded as counterproductive as it deprives the young person of the chance to prepare for real life. Although it is important to mediate structure and routine, these elements shouldn't be excessively exercised. It could be more beneficial to structure daily routine in a way that reflects a normal day of a non-delinquent young person (as far as possible), instead of a day spent in the Army because they won't return to the latter. It is important to make sure that the offender understands why routine is exercised but also how they can transfer this knowledge into their lives after the camps. Intensifying lessons on autonomous behaviour and responsibility are therefore essential to make sure that the young person smoothly returns to life outside of MACs.

A big issue contributing to the still too high reoffending rates is that graduating youths usually return to their pre-existing environments, making it difficult to sustain positive behavioural changes. It may be necessary to provide more assistance after their release, for example by helping them to enrol in schools, find a new job or accommodation in a different environment which is less criminogenic. It is also of great importance to educate and prepare the young person's community and give them the chance to enforce their own ideas since they will be dealing with the offender in future.¹²¹ On-going support and encouragement will facilitate the reintegration process, requiring a "strong link between local, regional and national governance"¹²². This can be done by engaging the Justice sector (Police and Judiciary) in promoting ways to manage post residential supervision and support for the offender.¹²³

Another key factor identified by the "What Works" literature which could increase the chances of success of MACs is motivation. A young person that is willing to engage in the programme and shows commitment will certainly have better chances to rehabilitate than those with a negative attitude. By using a strategy called "motivational interviewing" the

¹¹⁸ Gültekin and Gültekin, above n 45, at 731.

¹¹⁹ Ministry of Justice *Sentencing Policy and Guidance* (Ministry of Justice, Discussion Paper, 1997) at 133.

¹²⁰ Becroft, above n 19, at 12.

¹²¹ In New Zealand, plans to actively support the communities are underway as part of the Youth Crime Action Plan (YCAP); Polaschek, above n 77, at 5.

¹²² Polaschek, above n 77, at 9.

¹²³ Polaschek, above n 77, at 12.

social worker can function as a “change agent” or “role model”¹²⁴ interactively engaging with the young person. To teach such techniques it is essential that social workers undergo specific trainings and update their knowledge on a regular basis.¹²⁵ Introductory courses are usually not sufficient enough since working with young offenders requires more intensive training. The same applies for workers that are involved in carrying out the supervision order following MACs. To incentivise positive responses and behavioural changes of young offenders MACs will need to draw even more attention to this issue.¹²⁶

Overall, the evaluation report 2013 produced promising data with regards to the effectiveness of MACs in New Zealand. Besides the fact that MACs have proven to have positive effects on recidivism rates and led to less severe and frequent reoffending, there are still a range of options that could be considered to improve the concept further. We need to be aware though that the more rehabilitative measures we continue to implement, the more we will move away from the initial idea of MACs. Radical changes to the original boot camp concept behind MACs will mean that we are not providing a militaristic facility anymore but rather a therapeutic facility that involves physical labour. Consequently, the question will arise if we need “Military” Training Camps at all, or if we can’t simply maintain their general intervention scheme leaving out the military component.

V. Alternative approaches

A. Ineffective approaches

If “MACs are the last ditch attempt, where we pull out all the stops to turn these kids around and stop them heading to adult prison”¹²⁷, what do we do, if we don’t achieve the results we hoped for? Maybe there are less punitive measures that are more effective? To prevent a revival of the “nothing works” era, it is important to reach out for further alternatives. In the past researchers have provided us with many other pathways, unfortunately not all could be considered as an effective alternative to MACs or traditional facilities. Programmes that operated on a “control-basis” such as the Scared Straight Programs in the 1970s, and Intensive Supervision Programs on Probation or on Parole were deemed inefficient at a very early stage. Lacking social-scientific principles and simply working on common sense perspectives has proven to be counter-productive since negative behavioural patterns are further strengthened.¹²⁸

B. Te Hurihanga Pilot Project (THPP)

Lately, there have been several attempts in New Zealand to provide non-punitive but effective alternatives. Schemes such as the THPP, MYND Auckland, Canterbury Youth

¹²⁴ Polaschek, above n 77, at 10.

¹²⁵ Polaschek, above n 77, at 12.

¹²⁶ Goff, above n 8.

¹²⁷ Bennett, above n 385, at 1.

¹²⁸ Banks, above n 52, at 267-270.

Development, and Start Taranaki have demonstrated that alternatives may work if given the chance to.¹²⁹

The THPP, the most promising project of the above mentioned, was run by the Youth Horizon Trust in Hamilton and consisted of a three-phased therapeutic scheme targeted at young males, aged 14 to 16 years, who have appeared before the courts. It aimed to reduce recidivism, hold offenders accountable and provide tailored support so they “can make positive choices rather than continue on current (offending) pathways”¹³⁰.

The three phases of the programme consisted of a residential, a transition and a community phase. The first stage involved intensive monitoring in the residence for up to six months which focussed on engagement, stabilisation, motivation, education, cultural confidence and skill acquisition.¹³¹ It also strengthened family bounds by engaging them in the programme and educating them about interventions. We also find that there was a great focus on Tikanga Māori values, reflecting the principles of s 208(b) CYPF Act. When comparing this stage of the programme to the residential phase of the MAC programme we find that within the THPP the cultural background of the offender is more foregrounded than within the MAC, where the bicultural focus is usually limited to the Waanga and activities that include Māori language in the daily routine.¹³²

The task of the transition phase is to integrate the young person back into the midst of their communities offering possibilities to attend school and join community based activities. The supervision at this stage will be gradually reduced over time to guarantee an independent and smooth transition into the community phase of the programme.¹³³

Within the community phase the offender returns home, but receives assistance of THPP staff which is directed at the whaanau of the young person. The main aim is to “sustain a high level of supervision, accountability, behavioural expectations and appropriate parenting responses”¹³⁴.

As a result of this multilateral approach graduates were recorded to have committed either no offences, or they have reduced the severity and frequency of their offending.¹³⁵ The reason for this success probably lay in the non-punitive concept of the programme. Especially the strong bond between the different phases and the focus on the transitional stage enable a realistic rehabilitation of the offender. In comparison to MACs, we find that the after-care programme which is comparable to phase two of the THPP is not as developed yet and doesn’t focus enough on making the connection to the community. Additionally, the THPP does not only comply with some of the principles of s 208 CYPF Act, like MACs, but seem to be built right upon every essential principle.

One might also argue that the structure of the THPP implemented many other international standards of youth justice. For example: the residential facility¹³⁶ of THPP is located within close proximity to the young person’s community, in order to strengthen family bonds and

¹²⁹ Bennett, above at 97.

¹³⁰ Julie Warren and Lydia Fraser *Te Hurihanga Pilot: Evaluation Report* (Ministry of Justice, Evaluation Report Corp 405, October 2009) at 11.

¹³¹ Warren and Fraser, above n 130, at 28.

¹³² Polaschek, above n 77, at 10.

¹³³ Warren and Fraser, above n 130, at 28.

¹³⁴ Warren and Fraser, above n 130, at 29.

¹³⁵ Warren and Fraser, above n 130, at 106-108.

¹³⁶ Stuff “Making a better choice” (15 August 2008) <www.stuff.co.nz> at 1.

keep the offender inside the community just as suggested in the Riyadh Guidelines.¹³⁷ The first stage of the programme draws specific attention to the educating of the young offender what is regarded as essential in the Havana Rules of the UN.¹³⁸ Phase two and three which involved rehabilitative and therapeutic approaches such as Multi-systematic Therapy (MST) and Functional family therapy (FFT)¹³⁹ correspond well with the UN Havana Rules¹⁴⁰ and promote the best interest of the child.¹⁴¹

Generally we find that within all phases of the THPP, the personal identity and background of the offender is well addressed following Art. 8 UNCRC. Especially the delivery of cultural dimensions worked well in association with indigenous offenders that make up a large portion of the participants.¹⁴² Unfortunately, this exciting programme was regarded as too expensive to be incorporated permanently and was thus forced to close its doors.¹⁴³

C. Aggression Replacement Training (ART)

Another interesting approach is the ART currently practised in the United States that allows to combine custodial orders with therapeutic measures. It provides a variety of trainings that teach pro-social behaviour and convince the offender that it is worth to interfere with negative patterns. Running for 30 hours within ten weeks, it is possible to integrate this training into traditional youth facilities, making custody a more valuable time for the youth with respect to their release.¹⁴⁴ Its high practicability makes it a popular choice in correctional facilities which are often lacking alternative methods in their structure. Nonetheless, it involves the incarceration of the young offender and can't be regarded as a stand-alone approach. Unlike the MAC programme or the THPP it relies on the functioning of other residential programmes and can only be used in addition to a specific concept.

D. Other approaches

Other programmes such as the Wilderness and Adventure camps which proliferated along with boot camps also appeared promising at first. These camps involved “taking out young offenders to remote rural or environmental locations where the clients have opportunities for ‘routine, personal space, regular meals and positive reinforcement’.”¹⁴⁵ Once again it appeared appealing to the public to see young offenders involved in outdoor activities. However, the programme itself was too simple in its structure and lacked therapeutic

¹³⁷ CYPF Act, s 208(c)(i), (d); United Nations Guidelines on the Prevention of Juveniles Delinquency (Riyadh Guidelines), s IV(A)(12).

¹³⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), s E (38).

¹³⁹ Warren and Fraser, above n 130, at 30; Banks, above n 52, at 265, 267.

¹⁴⁰ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), s D (32).

¹⁴¹ UNCRC, Art 3.

¹⁴² Warren and Fraser, above n 125, at 25

¹⁴³ Lynch, above at 4, at 515,516; Cheng, above n 71, at 1.

¹⁴⁴ Banks, above n 52, at 267.

¹⁴⁵ Qatsihs Coalition, above n 63, at 2.

components necessary to change behavioural patterns to become successful on the long run. Additionally they lacked any support in evaluation.¹⁴⁶

Related programmes, such as the Sports/Recreational Camps, where sporting and recreational activities are used to teach young offenders the value of team work and self-confidence, or the Art/Music/Cultural Camps which focuses on rehabilitating indigenous youth offenders by engaging them in arts, music and cultural activities, also proposed valuable ideas.¹⁴⁷ The huge benefit is that these camps offer the opportunity for the offender to continue with a certain sport or art/music activity after their release. Finding their way back into the community is made a lot easier, when they can share experiences or interests with the people in their community. However, we find that these components alone are not sufficient enough to turn the offender around and make sustainable changes to their behavioural patterns. As discovered beforehand, an intensive therapeutic intervention is necessary to address the multiple problems of young offenders who often suffer from mental health problems, substance abuse and are used to an environment where violence is on the daily agenda. Overall, it appears propitious to include elements such as sports, art and music into a rehabilitative programme. The complex nature of youth offending obviously requires an approach that is multifarious.

VI. Conclusion

In the strive for an effective treatment of New Zealand's most persistent young offenders, MACs remain a controversial correctional option. But despite the troubling past of the concept, we can conclude that New Zealand's MACs succeeded in offering a new concept, diverse to traditional boot camps. Current statistics revealed positive effects on recidivism rates compared to other interventions and as a result of practitioner's non-punitive interpretation of the new policy they even turned out to be less punitive than originally intended.¹⁴⁸

The evaluation throughout the paper has shown that the key to fighting youth delinquency lies in offering small, community-based programmes which provide a fully developed therapeutic framework and involve the offender's family and cultural background.¹⁴⁹ MACs in New Zealand have strongly orientated their programs according to these findings. However, most of these elements have been found not to be essential characteristics of military training.¹⁵⁰ The only "working" components associated with the Military itself were the structure and daily routine that was carried out during the programme. MACs in New Zealand appear completely stripped of their original boot camp traits so we may question if we need the militaristic approach at all.¹⁵¹ It appears that the camps could work even better if they would elide the Army measures and concentrate solely on the therapeutic schemes that are making up most of the camp structure anyhow.

¹⁴⁶ Banks above n 31, at 269.

¹⁴⁷ Qatsihs Coalition, above n 63, at 2.

¹⁴⁸ Lynch, above n 4, at 229.

¹⁴⁹ Qatsihs Coalition, above n 63, at 3.

¹⁵⁰ Robyn Lincoln "Boot camps a poor fit for juvenile justice" (24 October 2012) The Conversation <www.theconversation.com>.

¹⁵¹ Atkinson, above n 117, at 2.

Alternative approaches have also proven that daily routine, educational and psychological training can be achieved in a less hostile environment. Especially the THPP with its different phases seemed to have combined all the essentials necessary in the process to reduce youth offending. Yet we need to acknowledge that almost all alternative programmes involve high costs. MACs however, can be considered the financially most feasible programme in comparison. Obviously though, improving further on the MAC scheme as suggested, will involve further financial investment, consequently outweighing the cost aspect in favour of the camps. Generally, we will find that every efficient approach towards the most persistent group of young offenders will be cost-prohibitive, but it may be worthwhile to intervene at an early stage before this group enters into a cost-efficient adult criminal career.

It remains to be seen which pathway New Zealand will chose in future to overcome the problems with this group of young offenders and if MACs will still be part of it. After all, it appears desirable to see New Zealand returning to its non-punitive roots approaching youth crime in a rehabilitative way.

VII. BIBLIOGRAPHY

PRIMARY SOURCES

A. Legislation

1. Statutes

Neglected Criminal Children Act 1867

Juvenile Offenders Act 1906

Child Welfare Act 1925

Child Welfare Amendment Act 1948

Child Welfare Amendment Act 1960

Children and Young Persons Act 1974

Children, Young Persons, and Their Families Act 1989

Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Act 2010

Children, Young Persons, and Their Families Amendment Act (No 2) 2011 Commencement Order 2013

Crimes Act 1986

Sentencing Act 2002

Defence Act 1909

Compulsory Military Training Act 1949

2. Bills

Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill 2009

3. International statutes and conventions

United Nations Convention on the Rights of the Child 1989

United Nations Guidelines on the Prevention of Juveniles Delinquency (Riyadh Guidelines) 1990

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) 1990

B. Other Official Sources

1. Government Publications

Social Services Committee, *Commentary on the Children, Young Persons, and Their Families (Youth Courts Jurisdiction and Orders) Amendment Bill* (18 February 2009).

2. Papers and Reports

Andrew Becroft and others *Youth Justice practice issues – an update* (New Zealand Law Society CLE Ltd, October 2012).

Gabrielle Maxwell and Allison Morris *Family, victims and culture: Youth Justice in New Zealand* (Social Policy Agency and Institute of Criminology Victoria University of Wellington, Research Report Series No 14, 1993).

Julie Warren and Lydia Fraser *Te Hurihanga Pilot: Evaluation Report* (Ministry of Justice, Evaluation Report Corp 405, October 2009).

Linda Zampese *When the bough breaks: A literature based intervention strategy for young offenders* (Department of Corrections, Literature Review, 1998).

Lou Gardiner *Youth Programmes Companion Study* (The New Zealand Ministry of Defence, Report, October 2010).

Ministry of Justice *Child and Youth Prosecution – trends for 2012/13* (Ministry of Justice, Report, June 2013).

Ministry of Justice *Sentencing Policy and Guidance* (Ministry of Justice, Discussion Paper, 1997).

Secretary for Justice to Prison Superintendents *Circular PADM 6-1 Appendix I* (Secretary for Justice to Prison Superintendents, 2 February 1981).

The Ministry of Social Development *Achieving Effective Outcomes in Youth Justice* (The Ministry of Social Development, Final Report, February 2004).

The Ministry of Social Development *Report: The Fresh Start reforms in operation* (Ministry of Social Development, July 2011).

The Ministry of Social Development *Reduced re-offending by young people* (The Ministry of Social Development, Annual Report, 2010/2011).

The Ministry of Social Development *The Fresh Start Reforms in Operation to 31 October 2012* (The Ministry of Social Development, Report, December 2012).

The Ministry of Social Development *Evaluation Report for the Military-style Activity Camp (MAC) programme* (The Ministry of Social Development, Report, September 2013).

Walton Walker and Robert Brown *Corrective Training: An Evaluation* (Planning and Development Division Department of Justice, Wellington, Study Series No. 10, December 1983).

SECONDARY SOURCES

A. Texts

Allison Morris and Warren Young *Juvenile Justice in New Zealand: Policy and Practice* (Institute of Criminology of Victoria University of Wellington, Wellington, 1987).

Cyndi Banks *Youth, Crime and Justice* (Routledge, Abindon, 2013).

Michael Tonry *Sentencing Matters* (Oxford University Press, New York, 1998).

Nessa Lynch *Youth Justice in New Zealand* (Thomson Reuters, Wellington, 2012).

Nicholas Bala and Sanjeev Anand *Youth Criminal Justice Law* (2nd ed, Irwin Law Inc., Toronto, 2009).

Ross Gordon Green and Kearney Healy *Tough on Kids* (Purich Publishing Ltd., Saskatoon, 2003).

B. Essays in edited books

Gabrielle Maxwell “Alternatives to Prosecution for Young Offenders in New Zealand” T. Wing Lo and Dennis Wong and Gabrielle Maxwell (ed) *Alternatives to prosecution: Rehabilitative and restorative models of youth justice* (Marshall Cavendish International Private Limited, Singapore, 2005) 206.

Kathleen Daly “Conferencing in Australia and New Zealand” Allison Morris and Gabrielle Maxwell (ed) *Restorative Justice for Juveniles: Conferencing, Mediation & Circles* (Hart Publishing Oxford and Portland, Oregon, 2001) 59.

C. Articles

Andrew Becroft “Are there Lessons to be Learned from the Youth Justice System?” (2009) 5 PQ 9.

Angela Gover and Doris Layton MacKenzie and Gaylene Styve “Boot camps and traditional correctional facilities for juveniles: A comparison of the participants, daily activities and environments” (2000) 28 JCJ 53.

Benjamin Meade and Benjamin Steiner “The total effects of boot camps that house juveniles: A systematic review of evidence” (2010) 38 JRJ 841.

Brent Benda “Introduction: Boot Camps Revisited: Issues, Problems, Prospects” (2005) 40 J Offender Rehabil 1.

Derrick Armstrong "A Risky Business? Research, Policy, Governmentality and Youth Offending" (2004) 4 YJ 100.

Doris Layton Mackenzie, David Wilson and Suzanne Kider "Effects of Correctional Boot Camps on Offending" (2001) 578 *Annals Am Acad Pol & Soc Sci* 126.

Faith Lutze "Boot Camps Prison and Correction Policy – Moving from militarism to an ethic of care" (2006) 5 *Crim Pub Policy* 389.

Francis Cullen and others "The Rise and Fall of Boot Camps" (2005) 40 *J Offender Rehabil* 53.

Gabrielle Maxwell and Allison Morris "Youth Justice in New Zealand: Restorative Justice in Practice?" (2006) 62 *J Soc Issues* 239.

Jalal Shamsie "Anti-social Adolescents: Our Treatments Do Not Work – Where Do We Go from Here?" (1981) 26 *Can. J. Psychiatry* 357.

Jerry Tyler and Ray Darville and Kathi Stalnaker "Juvenile boot camps: a descriptive analysis of program diversity and effectiveness" (2001) 38 *SOC SCI J* 445.

John Pratt "When Penal Populism Stops: Legitimacy, Scandal and the Power to Punish in New Zealand" (2008) 41 *ANZJ Crim* 364.

John Pratt and Marie Clark "Penal populism in New Zealand" (2005) 7 *Punishm Soc* 303.

Jonathan Simon "They Died with Their Boots On: The Boot Camp and the Limits of Modern Penalty" (1995) 22 *Soc Just* 25.

Kübra Gültekin and Sebahattin Gültekin "Is juvenile boot camp policy effective?" (2012) 9 *Int J Human Sc* 725.

Lee A. Underwood and Pamela Knight "Treatment and Postrelease Rehabilitative Progress for Juvenile Offenders" (2006) 15 *Child Adolesc Psychiatr Clin N Am* 539.

Leia De Vita "Statistically Speaking: Do Alternative Punishments Work? – A Comparison of Boot Camp Punishment and Traditional Facilities" (2010) 30 *Child. Legal Rts J* 76.

Lynn Atkinson "Boot Camps and Justice: A Contradiction in Terms?" (1995) 49 *Trends Iss Crime Crim Justice* 1.

Megan Kurlychek and others "How long After? A Natural Experiment Assessing the Impact of the Length of Aftercare Service Delivery on Recidivism" (2011) 57 *Crim & Delin* 778.

Nessa Lynch "Contrasts in Tolerance in a Single Jurisdiction: The Case of New Zealand" (2013) 23 *Int'l Crim Just Rev* 217.

Nessa Lynch "Playing catch-up? Recent reform of New Zealand's youth Justice system" (2012) 12 *CCJ* 507.

Robert Maxwell "'What do boot camps really achieve?' A means-end analysis of the limited service volunteers programme" (2011) 37 *SOC POLICY J NZ* 1.

Susan Tarolla and others "Understanding and treating juvenile offenders: A review of current knowledge and future directions" (2002) 7 *Aggress Violent Beh* 125.

William Bourns and Carol Veneziano and Louis Veneziano “A study of criminal justice policy makers’ perspectives: The forgotten component in boot camp programs and goals” (2005) 33 JCJ 113.

D. Other Sources

1. Internet Materials

Bruce Selcraig “Camp fear” (November-December 2000) Mother Jones <www.motherjones.com>.

Gabriele Maxwell “Youth offenders: who, what and why” (9 November 2012) Te Ara <www.teara.govt.nz>.

John Key “Delivering on Our Election Promises: Our First 100 days” (2009) National Party <www.national.org.nz>.

Palak Shah “Modern Tough on Crime Movement” (2005) Defending Justice <www.publiceye.org>.

Paula Bennett “A Fresh Start for young offenders” (16 February 2009) Beehive <www.beehive.govt.nz>.

Paula Bennett “Boot camp” critics miss the point” (29 April 2009) Beehive <www.beehive.govt.nz>.

Paula Bennett “3000 troubled youth to get a Fresh Start” (26 August 2009) Beehive <www.beehive.govt.nz>.

Paula Bennett “Fresh Start reforms in operation: a progress report” (20 July 2011) Beehive <www.beehive.govt.nz>.

Phil Goff “Military training proven not to work for young offenders” (29 January 2008) Beehive <www.beehive.govt.nz>.

Prison Studies “World Prison Brief New Zealand” (June 2013) <www.prisonstudies.org>.

Rethinking Crime and Punishment “‘To Boot or not to Boot' - A Key Response to Youth Offending” (March 2008) <www.rethinking.org.nz>.

Robyn Lincoln “Boot camps a poor fit for juvenile justice” (24 October 2012) The Conversation <www.theconversation.com>.

Royal New Zealand Navy “Our Defence Force Prepares to Deliver Youth Development Programmes” (May 2010) <www.navy.mil.nz>.

Stuff “Making a better choice” (15 August 2008) <www.stuff.co.nz> at 1.

Tim Hall and Linda McIver “Principal Youth Court Judge’s Newsletter Issue 42” (April 2009) The Youth Court of New Zealand <www.justice.govt.nz>.

Qatsihs Coalition “Boot Camps Discussion Paper” (March 2011) <www.qatsihs.org.au>.

Wikipedia “Compulsory Military Training in New Zealand” <www.wikipedia.org>.

2. Newspapers

Derek Cheng “Young offenders finish first military-style camp” *The New Zealand Herald* (online ed, Auckland, 25 February 2010).

Kate Shuttleworth “Half of boot camp youths continue to offend – report” *The New Zealand Herald* (online ed, Auckland, 13 December 2012).

Michael Janofsky “States Pressed As 3 Boys Die At Boot Camps” *The New York Times* (online ed, United States, 15 July 2001).

Simon Benson “Tony Abbott to get tough on gun crime with proposal for mandatory minimum sentence of five years jail” *The Daily Telegraph* (online ed, NSW Australia, 19 August, 2013).

3. Speeches

Andrew Becroft, Principal Youth Court Judge of New Zealand “What causes youth crime, and what can we do about it?” (NZ Bluelight Ventures Inc – Conference & AgM, Queenstown, 7 May 2009).

John Key, Leader of the Opposition “2008: A Fresh Start for New Zealand” (State of the Nation speech, 29 January 2008).

Chris Polaschek “What worked, what didn’t and what don’t we know?” (Australasian Youth Justice Conference, Canberra, 20-22 May 2013).