

## From Roper to Regional Prisons: a story of habilitation

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**ABSTRACT:** Among its recommendations, the 1989 Report of the Ministerial Committee of Inquiry into the Prison System included the establishment of "Habilitation Centres" in the community as an alternative to imprisonment. This idea has recently undergone a revival with the last year's *Turuki Turuki* report from the Safe and Effective Justice advisory board's report which recommended the "gradual replacement of most prisons with community-based habilitation centres;" and the Green Party adopting the idea of Habilitation Centres as an election policy.

Habilitation Centres were legislated for in the Criminal Justice Amendment Act 1993 (s102), the same amendment which introduced the sentence of home detention (s103). Four pilot centres were formed, with Christchurch's Salisbury Street Foundation (SSF) the only one that Newbold credits with success. While the SSF is still in operation, the idea of habilitation centres as part of New Zealand's criminal justice system ended with their repeal by section 166(a) of the Sentencing Act 2002. This paper examines the idea and architecture of New Zealand's Habilitation Centre experiment in the 1990s.

### Introduction

On 1 June 1987, a Ministerial Committee of Inquiry into the Prison System (the Roper Inquiry) was announced<sup>1</sup> under a Labour government with Geoffrey Palmer as Minister of Justice. The Department of Justice submission to the Inquiry promoted regional prisons - with their potential for community connections, and case management - prioritising programmes to support prisoner reintegration.<sup>2</sup> However, while the Inquiry's 1989 report favoured any new prisons to be small and regional, it rejected the fundamental basis of case management because the Inquiry did not believe that rehabilitation could occur

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<sup>1</sup> Department of Justice *Prisons in Change* p 5. Newbold gives August 1987 as the date the committee was established. Newbold *The Problem with Prisons* p 93.

<sup>2</sup> Department of Justice *Prisons in Change*.

in prisons. Instead, the resulting report, titled *Prison Review: Te Ara Hou: The New Way*, attributed the failure of prisons to "the system itself."<sup>3</sup> It stated that:

[t]he public has the unrealistic expectation that prisons can both punish and reform. That is an impossible aim in a prison system based on a containment model as we know it.<sup>4</sup>

In this way the Inquiry identified the very modern problem that historically led to the increasing specialisation of buildings and the creation of architectural typologies from the eighteenth-century onwards. Examples of distinctive architecture, where previously non-descript buildings would do, such as

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<sup>3</sup> MCI *Prison Review: Te Ara Hou* p 5, para 25.

<sup>4</sup> MCI *Prison Review: Te Ara Hou* p 5, para 25.

hospitals and prisons, come to mind. The idea that prisons cannot rehabilitate is a version of the idea that some activities and social outcomes can be undermined by context. *Te Ara Hou* thus proposed the idea of Habilitation Centres as a distinct mechanism to enable the function of "reform," the very function that Robin Evans persuasively argued in *The Fabrication of Virtue* that eighteenth- and nineteenth-century architects intentionally designed their prisons to achieve.<sup>5</sup>

The term "Habilitation Centre," derived from a submission to the Inquiry from the Christchurch Prison Chaplains that distinguished "habilitation" from

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<sup>5</sup> Evans *The Fabrication of Virtue*.

"rehabilitation." It

argued that the aim of therapeutic programmes was rarely "rehabilitation," meaning the restoration of former capacities, but was actually "habilitation," that is, to equip and make fit for life.<sup>6</sup>

The Inquiry likewise determined that habilitation was a "more positive and realistic approach,"<sup>7</sup> and contrasted Habilitation Centres (which would require offenders to face up to the causes of crime and its consequences), to prisons, which, in their view, did not. *Te Ara Hou* thus recommended that prisons be largely replaced by this new idea of community-based Habilitation Centres.

The Roper Committee was clear that Habilitation Centres were to be located in the community and that they would each focus on a specific type of habilitation programme,<sup>8</sup> namely:

- (a) Delancey Street Foundation-type programmes (based on the American precedent),<sup>9</sup>
- (b) programmes for violent offenders,

<sup>6</sup> MCI *Prison Review: Te Ara Hou* p 35, para 5.4.

<sup>7</sup> MCI *Prison Review: Te Ara Hou* p 35, para 5.4.

<sup>8</sup> MCI *Prison Review: Te Ara Hou* pp 37-38, para 5.13.

<sup>9</sup> "Delancey" is incorrectly spelt "Delaney" in *Te Ara Hou*.

- (c) marae-based programmes for "alienated Maori offenders,"<sup>10</sup>
- (d) drug and alcohol treatment programmes,
- (e) education, trade-training and work skills programmes,
- (f) social skills programmes, and
- (g) programmes in secure centres for "repetitive and compulsive sexual offenders"<sup>11</sup>

These last programmes for sex offenders would be located in secure units run by the Justice Department, and were contrasted to the Kia Marama unit,<sup>12</sup> which had been

<sup>10</sup> Ministerial Committee of Inquiry *Prison Review: Te Ara Hou* p 38, para 5.13.

<sup>11</sup> Ministerial Committee of Inquiry *Prison Review: Te Ara Hou* pp 37-38, para 5.13.

<sup>12</sup> The Kia Marama (Behold the Light) unit, the dedicated child sex-offenders' unit at Rolleston Prison opened in September 1989, after approval in 1987, and its success promoted a second 60-bed unit, which is a kaupapa Māori unit, Te Piriti (The Bridge) being established in 1994 at Paremoremo (Newbold *The Problem with Prisons* pp 108, 151). The programmes in these units "are among the few treatment regimes to have produced significant and sustained reductions in recidivism," with Newbold citing figures of 22% reoffending within seven years of release, with lower recidivism rates for Māori of 4.41% and 13.58% at Te Piriti and Kia Marama respectively (Newbold *The Problem with Prisons* p 151). Newbold

approved in 1987, and would open in September 1989, but which the Roper Inquiry distanced itself from because it was located within a prison.<sup>13</sup>

### The Delancey Street Foundation

The American Delancey Street Foundation (DSF) was a model the Roper Report supported. It had begun in 1971 when ex-prisoner John Maher took in four other ex-prisoners. It is self-described as the US's "leading residential self-help organization for former substance abusers, ex-convicts, homeless and others who have hit bottom."<sup>14</sup>

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writes that the success of Kia Marama resulted in the Department of Justice in 1994 "touting the use of psycho-social techniques as a general solution to offending" (Newbold *The Problem with Prisons* p 108) resulting in the "criminogenic needs" diagnosis, that would underpin the new Department of Corrections and its 1996 Integrated Offender Management (IOM) system.

<sup>13</sup> *Te Ara Hou* is explicit that its model of a secure treatment centres for sex offenders differed to Kia Marama, stressing a need for them to be separate from the prison system (Ministerial Committee of Inquiry *Prison Review: Te Ara Hou* p 38, para 5.13) - though they would be run by the Department - and stated that they were "strongly opposed to the provision of varied types of treatment for sex offenders undertaken solely for research purposes" (Ministerial Committee of Inquiry *Prison Review: Te Ara Hou* p 123, para 18.21).

<sup>14</sup> DSF "Who We Are" np.

Its website states that:

[r]ather than following the traditional non-profit model of hiring a staff and procuring funding, we chose instead to follow an extended family model. Those of us who could work did traditional jobs and contributed our salaries. ... Everyone did something to contribute to our community. Someone who could cook became our "head chef." Someone who knew how to hold a hammer became the "head of construction." Whoever could read tutored those who could not. We pooled our talents and our funds and within 2 years, we purchased our first building and had 80 residents, all learning, teaching and helping each other.<sup>15</sup>

This first building was located in Pacific Heights, a wealthy San Franciscan neighbourhood. The Foundation states that:

[w]e knew that neighbors were worried that crime would go up and property values would go down because we were in the neighborhood. So we patrolled the neighborhood and crime went down; our construction department renovated the mansion to ensure that property values would go up. ... Slowly the neighborhood battle was being won by being good neighbors, by solid legal arguments and political negotiation, by humor and by the good will of everyone involved. ... By 1977, the battle was finally settled. When we moved from Pacific Heights to our newly self-built home on the waterfront (almost 20 years later), our Pacific Heights neighbors reported they were upset to see us leave.<sup>16</sup>

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<sup>15</sup> DSF "Our Story" np.

<sup>16</sup> DSF "Our Story" np.

Not only did the DSF use an existing building for its accommodation, which meant that it was architecturally indistinguishable from the surrounding buildings, but it proactively erased any potential for a negative change in the community (lower property values, or increased crime) to be attributed to its move into the neighbourhood. Its strategy of invisibility and reinforcement of the values and appearances of its new wealthy context meant it became an integral part of the neighbourhood. The *modus operandi* of building renovation would be repeated in its expansion across the US as the DSF bought other run down historic properties to accommodate former prisoners and restored them.

The DSF was a model operating in New Zealand during the Roper Committee of Inquiry, having been the precedent for Christchurch's Salisbury Street Foundation (SSF). The SSF was initially accommodated in a four-bedroom house at 237 Salisbury Street leased from the Methodist Mission in October 1979.<sup>17</sup> Months later it moved into a former periodic detention centre owned by the

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<sup>17</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" pp 83, 86.

Department of Justice at 15 St Albans Street, Merivale.<sup>18</sup> Hough wrote that:

SSF's new location imitated DSF and Maher's rationale behind locating the programme in one of the most prestigious areas of San Francisco, Pacific Heights. He had declared: "All social problems should move to where the rich people live - that way the problems can receive attention from the sector which has most control over the system that produced them ... You can no more cure an addict or criminal in slum than you could cure an alcoholic in bar." Those working at SSF also believed it was important to move the residents away from their former associates in order to enable them to develop greater connections with the values, attitudes and skills of "anti-criminal" groups.<sup>19</sup>

SSF was operating out of this Department of Justice house during the Roper Inquiry and it was only one of a number of pre-existing community-based programmes that *Te Ara Hou* had identified as possible models for the idea of the Habilitation Centre. Others included Beck House (Napier), Downie Stewart Foundation (Dunedin), Montgomery House (Hamilton) and Te Moana Marae (Wellington).<sup>20</sup> As *Te Ara Hou* envisaged it, the physical location of the Habilitation

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<sup>18</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" p 91.

<sup>19</sup> Maher quoted, Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" pp 91-92.

<sup>20</sup> MCI *Prison Review: Te Ara Hou* p 37 para 5.8.

Centres in the community would enable them to be run by the community - including ex-inmates, enable visits to the community by the residents - including their involvement in community service, increase family, and other, visitors,<sup>21</sup> and support the proactive employment of ex-offenders. The emphasis placed on community connections was underpinned by the assertion that Habilitation Centre programmes "must be based on a social learning model rather than a medical model of treatment."<sup>22</sup> These aspects all supported a blurring of the locational and social barriers between prison and the community life, and favoured reducing the distinction between detention and normal life.

### The Habilitation Centres

However, the Habilitation Centres, while located in the community, would be required to ensure the "close supervision of inmates ... at all times."<sup>23</sup> Being community-based was not an increase in inmate freedom and *Te Ara Hou* anticipated "that there will be no leave of

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<sup>21</sup> Yeboah "Report on the Evaluation of Salisbury Street Foundation Habilitation Centre" p 5; Yeboah "Interim Evaluation Report on Aspell House Habilitation Centre" p 7.

<sup>22</sup> MCI *Prison Review: Te Ara Hou* p 36 para 5.12.

<sup>23</sup> MCI *Prison Review: Te Ara Hou* p 38 para 5.15.

absence from the Centre except where specifically directed by the Habilitation Centre's staff and where it may be necessary for the purposes of the programme."<sup>24</sup> In this way the Habilitation Centres would still, like prisons, be places of detention.

At the core of the Habilitation Centres proposal was the idea that the detention of people can occur without the negative systemic and architectural aspects of a prison and instead create an "atmosphere of hope, self-determination and an opportunity to learn new ways of behaving."<sup>25</sup> It hence recommended a model of containment that will be different to the "model as we know it," and its identification of existing community-run rehabilitation programmes also identified their "non-authoritarian atmosphere."<sup>26</sup> A prime obstacle to this atmosphere in prisons was identified as: prison security, the prison regime, and a lack of prisoner agency. As the report observed:

This is rarely possible in a prison, where the overwhelming emphasis on security necessitates bars on the window, a strict and rigid daily routine and the

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<sup>24</sup> MCI *Prison Review: Te Ara Hou* p 38 para 5.15.

<sup>25</sup> MCI *Prison Review: Te Ara Hou* p 35 para 5.3.

<sup>26</sup> MCI *Prison Review: Te Ara Hou* p 36 para 5.8.

removal of any prospect of self-determination.<sup>27</sup>

This premise was strongly endorsed by community advocates of Habilitation Centres. For example, Jim Consedine, a Christchurch prison chaplain and later national co-ordinator of the National Habilitation Task Force, wrote that:

To habilitate is to begin afresh to equip oneself for life and to develop skills of communication and non-violence, trust and real friendship, self-respect, whanaungatanga, pride, cultural identity, and obligations instead of irresponsibility. This process cannot take place in the prison environment where codes of conduct demand staunchness, resistance, and a siege mentality in order to survive.<sup>28</sup>

Kathy Dunstall, a member of the Roper Committee, would likewise stress the environmental relevance of prison context to this, when she wrote in December 1990 that "[t]he issue was not whether rehabilitation can occur in prison, but whether it should, given the type of environment within prisons."<sup>29</sup>

The Habilitation Centres scheme also proposed to alter the then 4-level security classification system of minimum, medium,

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<sup>27</sup> MCI *Prison Review: Te Ara Hou* p 35 para 5.3.

<sup>28</sup> Consedine "Better approach to punishment" p 14.

<sup>29</sup> Dunstall "Prisoner habilitation or incarceration?" p 8.

high and maximum security by abolishing minimum and maximum security prisons.<sup>30</sup> However, minimum security prisons would not be replaced by Habilitation Centres in a simple or straightforward way, because prisoner need for specific programmes, not security classification, would determine placement at Habilitation Centres. Additionally, any prisoner who refused placement in an Habilitation Centre, regardless of any security classification, would be housed in medium security prisons by default, with high security units only being provided "for those on precautionary segregation;" maximum security having also been abolished.<sup>31</sup> Because of this structure, where Habilitation Centres would replace imprisonment for those sentenced to incarceration, "containment in an Habilitation Centre [... was envisaged to be] part of the individual's sentence."<sup>32</sup>

*Te Ara Hou's* commitment to community-

<sup>30</sup> The report recommended that "in the long term minimum security accommodation should not be provided and the term should be abolished." Ministerial Committee of Inquiry *Prison Review: Te Ara Hou* p 54 para 7.13.

<sup>31</sup> MCI *Prison Review: Te Ara Hou* p 53 para 7.4; p 54 paras 7.9, 7.11.

<sup>32</sup> MCI *Prison Review: Te Ara Hou* p 38 para 5.15.

located institutions was not restricted to Habilitation Centres, with the report promoting the building of any future prisons in metropolitan industrial areas to support whānau connections, be closer to transport for staff and visitors, reduce servicing costs, increase post-release work opportunities, lessen community resistance, and increase the likelihood of available premises that could be adapted into prisons.<sup>33</sup> It consequently recommended "that where town planning provisions prevent the building of local prisons in industrial areas, legislation should be introduced to overcome the bar."<sup>34</sup> It is possible that the locations of Auckland South Corrections Facility and Auckland Regional Women's Prison were influenced by this thinking.

### Reception of *Te Ara Hou*

*Te Ara Hou* was widely reported on, including the specific aspect of Habilitation Centres. These reports were generally positive stressing the idea of habilitation as having the ability to break cycles of offending and better support, reintegration and reduce crime and save money. In part, this was due to the

<sup>33</sup> MCI *Prison Review: Te Ara Hou* p 57 para 7.33-7.35.

<sup>34</sup> MCI *Prison Review: Te Ara Hou* p 57 para 7.36.

strong advocacy of Jim Consedine, the National Co-ordinator, Habilitation Task Force - which had formed as a result of the Roper Report recommendations - who saw the proposal for Habilitation Centres "as an exciting, viable alternative to cut through the entrenchment of criminal tendencies that prisons foster" and "a creative and hope-filled solution."<sup>35</sup> Kathy Dunstall, once member of the Roper committee, and now a SSF Board member, and convener of lobby group CHOICE (the Coalition of Habilitative Organisations in the Community)<sup>36</sup> was an equally strong advocate of Habilitation Centres.

Official reception, in contrast, appears to have been more ambivalent. Pauline Swain, in September 1989, wrote that *Te Ara Hou* "brought nervous responses from the Government" and noted that the "official Government response ... has been delayed by a change of minister,"<sup>37</sup> namely to Bill Jeffries in August 1989, following David Lange's resignation as Prime Minister, and the then Justice Minister, Geoffrey Palmer, suddenly

<sup>35</sup> Swain "The Journey up against a brick wall" p 11; Consedine "Better approach to punishment" p 14.

<sup>36</sup> Ioseta "Rehabilitation curb opposed" p 33.

<sup>37</sup> Swain "The Journey up against a brick wall" p 11.

becoming PM. Likewise Bruce Ansley, writing in October 1990, stated that the report had been "largely ignored by the government," and that it "was doomed the day the Prime Minister Geoffrey Palmer received the report. The public might not like it, he said. It would cost too much."<sup>38</sup> This is consistent with Greg Newbold's recollection that "almost as soon as it [*Te Ara Hou*] was released Palmer commissioned this author [Newbold] to write a counter report on the proposal's viability."<sup>39</sup>

Newbold attributes Palmer's action to "an apparent bid to extricate himself from the report,"<sup>40</sup> referring to its naivety. He was highly critical of the Committee of Inquiry, described its composition as "odd,"<sup>41</sup> and its proposal for Habilitation Centres as:

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<sup>38</sup> Ansley "[Clinton Roper profile]" p 20.

<sup>39</sup> Newbold *The Problem of Prisons* p 94. The Ministry of Justice have been unable to locate a copy of this Newbold report. Wakefield. Pers Comm. letter: Official Information Act request: 1989 Greg Newbold report (18 November 2020). In a paper published in 1994, Newbold & Eskridge wrote that the Roper habilitation centres idea "was rejected by the government as unworkable" Newbold & Eskridge "Penal innovation in New Zealand" p 25.

<sup>40</sup> Newbold *The Problem of Prisons* p 94.

<sup>41</sup> Newbold *The Problem with Prisons* p 93.

brehtaking ... [it] was a reformer's reverie and an administration's nightmare ... it would have cost hundreds of millions to set up, [and] been impossible to run, and there was no guarantee at all that recidivist rates would be significantly altered. The Minister of Justice, who had commissioned the report, saw immediately that the inordinate costs of what would effectively amount to a complete reconstruction of the country's prison system made it unthinkable.<sup>42</sup>

Newbold also attributed Palmer's risk-aversion to the failure of his Criminal Justice Act 1985, which had legislated changes to sentencing and parole and, while within six months it saw the prison population reduced by a third, "[w]ithin two years inmate numbers were back to 1984 levels," with Newbold concluding that the Act "did little more than shorten the recidivism cycle."<sup>43</sup>

Kim Workman (Assistant Secretary Penal Institutions, Department of Justice 1989-93) also notes that the Roper Report "had received a lukewarm reception," but attributes this to "the Labour government's neoliberal policies ... generating a more punitive climate," and states that, following National's November 1990 election win, new Minister of Justice Doug Graham "belonged to a government

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<sup>42</sup> Newbold *The Problem with Prisons* p 94.

<sup>43</sup> Newbold *The Problem with Prisons* pp 87, 94.

with punitive intent, and felt the need to act accordingly."<sup>44</sup> Workman would write the Department's implementation strategy for *Te Ara Hou*, which he pointedly titled *He Ara Hou*, but observes that

[t]he Justice Department's own resistance to the idea of habilitation centres was palpable - it set up a development group to advance the proposal, but moved slowly and with extreme caution - so if any rehabilitation was going to happen, it would have to happen in prisons.<sup>45</sup>

He consequently aligned *He Ara Hou* "to the belief that rehabilitation *should* take place in prisons" noting that "the critical factor in programmes is not their location but their quality and the way they target specific needs of inmates."<sup>46</sup> Workman also notes that while the 1990 prison-by-prison review "was largely driven by the recommendations stemming from *Te Ara Hou* [... it] clung defiantly to the idea that rehabilitation could be effective in prisons,"<sup>47</sup> undermining the Roper Committee's clear preference for habilitation to be community-based.

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<sup>44</sup> Workman *Journey Towards Justice* pp 162, 163.

<sup>45</sup> Workman *Journey Towards Justice* pp 160-161.

<sup>46</sup> Workman *Journey Towards Justice* p 161; Penal Division pamphlet quoted, Workman *Journey Towards Justice* p 161.

<sup>47</sup> Workman *Journey Towards Justice* p 162.

### The Habilitation Centres Development Group

In April 1990, a year after the presentation of the report in April 1989, the Department of Justice's Habilitation Centre Development Group (HCDG) was established. The stated aim of the group was to evaluate the idea of Habilitation Centres, within a context in which "[t]he government has rejected the suggestion that programmes should be withdrawn from prisons."<sup>48</sup> The HCDG reported back in July that same year. It identified a number of challenges with implementing the Habilitation Centre proposal, specifically:

- (a) the idea of prisons as "places of humane containment only" without rehabilitation. The HCDG challenged this because prisons without rehabilitation would not be humane and would breach international human rights obligations.<sup>49</sup>
- (b) the assumption that Habilitation Centres would not replicate "the coercive nature of the system and the inmate subculture"<sup>50</sup>

<sup>48</sup>HCDG *Habilitation Centres* foreword.

<sup>49</sup> HCDG *Habilitation Centres* p i; e.g. Rule 65, United Nations. Standard Minimum Rules for the Treatment of Prisoners.

<sup>50</sup> HCDG *Habilitation Centres* p i.

- (c) the report's lack of research demonstrating that community-based programmes are more successful than prison-based programmes.<sup>51</sup>
- (d) the transferring of prisoners to Habilitation Centres, when they have been sentenced to imprisonment, would undermine the legislative distinction between custodial and non-custodial sentences.<sup>52</sup>
- (e) the tension between prisoners being held in custody and the intended "'non-institutional" benefits of habilitation centres,"<sup>53</sup> and
- (f) the management structure proposed by *Te Ara Hou* and its lack of "clear lines of accountability."<sup>54</sup>

The group concluded that "[t]he habilitation centre concept seems to be based on a very optimistic view with regard to assumptions about inmate behaviour in this setting."<sup>55</sup> It proposed a tentative approach of two to three pilot habilitation centres being established, available to only minimum security inmates

<sup>51</sup> HCDG *Habilitation Centres* p i.

<sup>52</sup> HCDG *Habilitation Centres* p ii.

<sup>53</sup> HCDG *Habilitation Centres* p ii.

<sup>54</sup> HCDG *Habilitation Centres* p ii.

<sup>55</sup> HCDG *Habilitation Centres* p ii.

who had completed one third of their sentence, and that legislation be amended to allow for the conditional release of these prisoners to the centres with the ability for recall back to prison.<sup>56</sup> It also recommended monitoring and evaluation processes of the Habilitation Centres.<sup>57</sup>

### The Criminal Justice Law Reform Bill 1992

Following a mid-1991 announcement that Habilitation Centres would be trialled,<sup>58</sup> Minister of Justice, Douglas Graham, introduced the Criminal Justice Law Reform Bill into the House on 8 December 1992. The Bill enabled courts to impose a mix of sentences in order to allow a community-based sentence following imprisonment,<sup>59</sup> expanded the use of parole conditions,<sup>60</sup> and introduced residential parole (defined as "either release to an habilitation centre or release to home detention"<sup>61</sup>), including the ability to recall offenders on residential

<sup>56</sup> HCDG *Habilitation Centres* pp iii, iv.

<sup>57</sup> HCDG *Habilitation Centres* p iv.

<sup>58</sup> Blimcoe. Penal Institutions Amendment Bill Introduction p 254.

<sup>59</sup> Criminal Justice Law Reform Bill 1992 clause 4.

<sup>60</sup> Criminal Justice Law Reform Bill 1992 clause 38.

<sup>61</sup> Criminal Justice Law Reform Bill 1992 clause 31 (new section 93c(1)).

parole.<sup>62</sup> The Bill thus did not envisage Habilitation Centres as an alternative sentence to prison.

During the Bill's Introduction debate, the Habilitation Centres pilot was largely welcomed,<sup>63</sup> though David Lange observed that the Bill would take things

back to where we were 20 years ago ... when a person could go to court on a Thursday, be sentenced to 4 months in prison .... and, instead of that person leaving his or her job on that Friday, the authorities would shove that person in a pre-release hostel up at the back of Mount Eden, and he or she would be able to go to work on Friday. Such people paid money to the Department of Justice for their board and keep, the whole family was not disrupted, and they finished their time.<sup>64</sup>

However, Lianne Dalziel noted that *Te Ara Hou* did not intend Habilitation Centres as a form of pre-release hostel, but instead an alternative to prison sentences, and

the opportunity to deal in a therapeutic way with the issues that under lie the offending. In some cases [she said] there is drug and alcohol abuse; in others, deep-

<sup>62</sup> Criminal Justice Law Reform Bill 1992 clause 40 (new section 106A).

<sup>63</sup> Caygill, Criminal Justice Law Reform Bill Introduction p 216.

<sup>64</sup> Lange, Criminal Justice Law Reform Bill Introduction p 222.

seated psychological and emotional problems [that] need to be dealt with in order to break the pattern of violence.<sup>65</sup>

Dalziel also reinforced this in May 1993, during the introduction of the Penal Institutions Amendment Bill, when she also distinguished pre-release hostels from "the genuine habilitation option that recognises that the prison system has failed society as a whole,"<sup>66</sup> stating that the idea of the Habilitation Centre as "residential parole" was a very different reframing of *Te Ara Hou*'s proposals of Habilitation Centres.<sup>67</sup> This distinction was likewise identified by community advocates, with Dunstall having written in the *Dominion* in 1990, in response to the Department of Justice's HCDG report: "that the department's recasting of the habilitation centre concept falls well short of the major Roper recommendations for change,"<sup>68</sup> and Consedine in 1994, writing to Phil Goff, that "[i]n 1990 the Department of Justice usurped the language of the Roper Report, and subverted its aims to their own

<sup>65</sup> Dalziel, Criminal Justice Law Reform Bill Introduction p 227.

<sup>66</sup> Dalziel, Penal Institutions Amendment Bill Introduction p 259.

<sup>67</sup> MCI *Prison Review: Te Ara Hou* p 61 para 8.4.

<sup>68</sup> Dunstall "Prisoner habilitation or incarceration?" p 8.

ends."<sup>69</sup> The Select Committee explicitly defined "Habilitation centre" as

an approved residential centre that operates programmes for offenders designed to discover and address the cause or causes of or factors contributing to their offending.<sup>70</sup>

and widened the eligibility for Habilitation Centres to include violent offenders,<sup>71</sup> who had been excluded in the initial Bill.<sup>72</sup> While it was also apparent that not all Habilitation Centres would be the same, with an intention that different Habilitation Centres would cater for different prisoners' needs, the debate also identified that Habilitation Centres would not be available equally to all qualified prisoners because: "whether it will be appropriate for particular offenders to go to such a centre will depend on the types of habilitation centres that are available."<sup>73</sup>

Residential parole included home detention and electronic monitoring. While the *Te Ara*

<sup>69</sup> Consedine. letter to Goff (18 January 1994)

<sup>70</sup> Criminal Justice Law Reform Bill 1993 clause 3.

<sup>71</sup> Dalziel, Criminal Justice Law Reform Bill Second Reading p 778.

<sup>72</sup> Graham, Criminal Justice Law Reform Bill Introduction p 214.

<sup>73</sup> Graham, Criminal Justice Law Reform Bill Second Reading p 761.

*Hou* recommended further research into the use of these intermediate sanctions,<sup>74</sup> it had initially anticipated home detention or electronic monitoring to be used in conjunction with, and following, detention in Habilitation Centres "as a means of assisting the inmate to make proper arrangements for final release or to attend other treatment centres."<sup>75</sup> Instead, the idea of residential parole reframed both Habilitation Centres and home detention as post-prison stages following Parole Board approval. David Lange pointed to the contradiction that at sentencing the offender would be identified as capable of rehabilitation and so would be sentenced to a Habilitation Centre, but that this would occur after two-years' imprisonment, saying that "[i]t would be better if there were a move towards that habilitation-centre concept at the time of committal to prison."<sup>76</sup> Another consequence of this formulation was a tighter and more restrictive parole, including the extension of parole conditions for the full length of a sentence,<sup>77</sup> when previously there

<sup>74</sup> MCI *Prison Review: Te Ara Hou* p 64 para 8.26.

<sup>75</sup> MCI *Prison Review: Te Ara Hou* p 41 para 5.39; p. 64 para 8.22.

<sup>76</sup> Lange, Criminal Justice Law Reform Bill Second Reading p 771.

<sup>77</sup> Criminal Justice Law Reform Bill 1992 clause 37 (new

was "a period before the final expiry date of a sentence in which an offender is not subject to any conditions."<sup>78</sup> The Criminal Justice Amendment Act was passed on 23 June 1993.

### **The Establishment of Habilitation Centres**

Following the passing of the Criminal Justice Amendment Act 1993, the Coalition of Habilitative Organisations in the Community (CHOICE) convened its inaugural hui on Saturday 4th September 1993 in Rongotai, Wellington,<sup>79</sup> while the Habilitation Centre Task Force held a National Awareness Day for Habilitation Centres when two volunteers were detained in a mock prison cell in Cathedral Square during lunch time a month later on the 1st of October.<sup>80</sup> The Habilitation Centre Task Force (HCTF) and CHOICE were the dominant lobby groups for Habilitation Centres and had strong connections with the Roper Committee of Inquiry, the Labour Party and Christchurch. For example, Clinton Roper was the patron of CHOICE in 1993, and a member of the Board of Trustees of SSF in 1994, along with Newbold and Dunstall. Phil

section 99B).

<sup>78</sup> Graham, Criminal Justice Law Reform Bill Introduction p 214.

<sup>79</sup> CHOICE [newsletter] (December 1994) pp 1-2.

<sup>80</sup> Anon. "Campaign backs habilitation centres" p 7.

Goff made his first address as Labour Spokesperson on Justice to the Habilitation Centres Task Force AGM in March 1994 in Christchurch. Goff was also in regular correspondence with the National coordinator of HCTF (Jim Consedine), in early 1994,<sup>81</sup> as well as his being a member of CHOICE, along with other Labour MPs Lianne Dalziel, Richard Northey, Judith Tizard and David Cargill. These five MPs made up 31% of CHOICE's individual memberships at that time.<sup>82</sup> At this time Goff also raised the slowness of the implementation of habilitation with the Justice Department in the Select Committee, committed "to promote the resourcing and the implementation of habilitation centres as recommended by the Roper Committee Report,"<sup>83</sup> requested information on the topic from the Parliamentary Library,<sup>84</sup> asked questions of the Minister,<sup>85</sup> and compiled a memorandum on Habilitation for the

<sup>81</sup> e.g. Consedine, letter to Goff (18 January 1994); Goff, letter to Consedine (24 March 1994).

<sup>82</sup> CHOICE [newsletter] (December 1994) p 7.

<sup>83</sup> Goff, letter to Consedine (24 March 1994) p 1.

<sup>84</sup> Gronbaek "Information request for Phil Goff, MP"

<sup>85</sup> Graham, letter to Goff (23 August 1994); Graham, letter to Goff (5 January 1995); Goff. Questions for Written Answer to Minister of Justice no. 6960-6964, 6969 (28 September/10 October 1995).

members of the Labour Caucus in July 1994.<sup>86</sup>

Departmental officials also had Habilitation Centres in their sights. The Criminal Justice Amendment Act required processes to select the community organisations which would run the new Habilitation Centres.<sup>87</sup> The Department identified specific needs for Māori and women resulting in a clear signal that kaupapa Māori Habilitation Centres and a drug and alcohol programme for women were specifically sought after.<sup>88</sup> The advantages of contracting new programmes as well as existing programmes was discussed, with relevant documents identifying potential challenges for new centres, namely establishment funding needs and delays due to planning requirements, as well as the potential that some new centres might not get required planning permission.<sup>89</sup> It was also noted that existing programmes might prefer not to undergo the "more exacting" regime that would be required.<sup>90</sup> The Department also identified potential

difficulty in finding sufficient people to fill places, and stated that people sentenced to community programmes or supervision could also attend Habilitation Centre programmes in order to take up vacant placements.<sup>91</sup> The likely difficulty attracting potential parolees related to prisoners weighing up the balance between longer time in prison and more stringent parolee conditions, and resulted in a Department preference for a "phased introduction of pilot habilitation centres."<sup>92</sup> It was determined that a maximum of five pilot Habilitation Centres would be established in the 1994/95 financial year<sup>93</sup> with organisations being initially contracted for a three-year period,<sup>94</sup> and "contract guidelines, specification and a draft tender agreement were circulated to more than 275 potentially interested groups and individuals"<sup>95</sup> in December 1994. Pilots were initially to be selected by the end of 1994, with the first contract signed by 28 February 1995.<sup>96</sup>

While Habilitation Centres were presented as a new concept, the identification of existing programmes and their associated architectures not only suggested a diverse architecture would accommodate these programmes, but also that existing buildings could do this job, removing any need for a new architectural typology, distinctive to Habilitation Centres, being developed. Instead the Habilitation Centres pilot would be a contractual rather than an architectural change, and the significant shift was the full-funding of these initiatives.<sup>97</sup> However this was not new funding. The introduction of Habilitation Centres caused funding reductions for other community programmes. Pepperell, reporting on the possible closure of the Anchorage Trust in Waikato, wrote that: "[t]he [Justice] department which hands out money under its Community Programme Fund and Maatua Whangai scheme, has this year slashed its available cash by almost half," noting this situation was due to a change in the funding formula whereby "the amount of money available is tied to the number of people appearing before the courts," thus hitting programmes successful in reducing the

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<sup>86</sup> Goff. Memorandum to All Members of Labour Caucus: "Habilitation" (26 July 1994).

<sup>87</sup> Smith "Establishment of Habilitation Centres" pp 2, 5.

<sup>88</sup> Smith "Establishment of Habilitation Centres" p 8.

<sup>89</sup> Smith "Establishment of Habilitation Centres" p 4.

<sup>90</sup> Smith "Establishment of Habilitation Centres" p 4.

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<sup>91</sup> Smith "Establishment of Habilitation Centres" p 2.

<sup>92</sup> Smith "Establishment of Habilitation Centres" pp 6, 8.

<sup>93</sup> Graham. letter to Goff (23 August 1994) p 1; Smith "Establishment of Habilitation Centres" p 2.

<sup>94</sup> Graham. letter to Goff (23 August 1994) p 1.

<sup>95</sup> Newbold *The Problem with Prisons* p 228.

<sup>96</sup> Smith "Establishment of Habilitation Centres" p 12.

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<sup>97</sup> Newbold *The Problem with Prisons* p 228; Criminal Justice Law Reform Bill 1992 clause 40.

number of people going to court.<sup>98</sup> Stone more directly reported that "[f]unding for the [habilitation] centres will come from the department's \$50 million budget for community-based sentences."<sup>99</sup>

### The Habilitation Centres

22 groups responded and five were short-listed to provide full Habilitation Centre proposals.<sup>100</sup> The four successful applicants were Salisbury Street Foundation, Christchurch (for a programme for 10 men); Te Whānau o Waipareira Trust, West Auckland (for a kaupapa Māori programme for 12 people); Aspell House, Plimmerton (for an alcohol and drug programme for 10 women); and Te Ihi Tu Trust, New Plymouth (for a kaupapa Māori programme for 10 men).<sup>101</sup> Challenge Trust in South Auckland had also been a successful applicant, but it was unable to gain a needed resource consent in order to operate. The "first Habilitation Centre contracts were signed in 1996,"<sup>102</sup> and evaluations were to occur over the first two

years.<sup>103</sup>

As noted above SSF was located in a former periodic detention centre, owned by the Department of Justice. In August 1999, this St Albans Street property was bought by SSF from Ngāi Tahu, who had become the owners in c1995.<sup>104</sup> Three years later (April 2002) SSF would buy additional premises - three two bed-room flats in Manchester St, in central Christchurch.<sup>105</sup> The other successful applicants all appear to have also accommodated their habilitation programmes within existing buildings. In 2000 David Yeboah published an evaluation of the Habilitation Centre pilot programme reporting that the scheme produced "mixed results," but that "the objectives of the programme were generally achieved."<sup>106</sup> This report followed specific evaluations of SSF and Aspell House in c1998, which identified a number of problems. The most significant issues for SSF were insufficient people being

referred to it<sup>107</sup> and high rates of reoffending, though these were decreasing as the programme became established. It noted that the cost per resident of running the Habilitation Centre was 33% that of imprisonment, excluding set up costs, and 38%, if these costs were included, observing that more referrals would further reduce the cost.<sup>108</sup>

Te Whānau o Waipareira Trust was (and is) located in West Auckland.<sup>109</sup> I am yet to identify the building or buildings used for the Waipareira Trust Habilitation Centre, but the website's history refers to the Trust buying the old Henderson Police Station as its headquarters in 1988,<sup>110</sup> which has a satisfying irony if it was those premises that were used. The Waipareira Trust Habilitation Centre would close in 2000. Both Hough and Newbold have attributed this to management issues, including problems with financial statements, incidents involving absconding

<sup>98</sup> Pepperell "Anchorage Trust may close"; Pepperell "Anchorage answers demanded"

<sup>99</sup> Stone "Parole plan unveiled" p 3.

<sup>100</sup> Newbold *The Problem with Prisons* p 228.

<sup>101</sup> Newbold *The Problem with Prisons* pp 228-229.

<sup>102</sup> Newbold *The Problem with Prisons* p 117.

<sup>103</sup> Graham. letter to Goff (23 August 1994) p 1.

<sup>104</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" p 182.

<sup>105</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" p 183.

<sup>106</sup> Yeboah "The evaluation of New Zealand's Habilitation Centre's Pilot Programme" p 227.

<sup>107</sup> Yeboah "Report on the Evaluation of Salisbury Street Foundation Habilitation Centre" pp 4-5.

<sup>108</sup> The exact numbers given were \$16,697 for each SSF resident and \$51,121 per inmate for prison (on average). The SSF amount when set-up costs were included was \$19,254.

<sup>109</sup> Newbold *The Problem with Prisons* p 228.

<sup>110</sup> "Nau mai, haere mai" np.

and drug use, and low resident numbers.<sup>111</sup>

Te Ihi Tu Trust had initially tried to gain resource consent to operate out of the former IHC village in Davies Rd, New Plymouth, but, after neighbourhood opposition, it established itself in the old Tabor Unit in the former Barrett St Hospital, which was bought by the government about this time in 1996.<sup>112</sup> The Barrett St Action Committee that had opposed the Habilitation Centre pointed to the contradictions of a facility where "offenders will not be permitted to leave the site unaccompanied" needing to be in "a community setting."<sup>113</sup> They also argued that "[a] programme can be community-based without being sited in a densely populated residential area. The facility need not be located in anyone's back-yard."<sup>114</sup> Despite

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<sup>111</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" pp 272-273; Newbold *The Problem with Prisons* p 229.

<sup>112</sup> Utiger "Old hospital faces demolition" np.

<sup>113</sup> McEwen and Strombom "[untitled]." The Minister's December 1994 press statement when proposals for the pilot scheme were called for, likewise referred to Habilitation Centres as providing "'live-in" programmes [... and] close supervision of offenders 24 hours a day." Minister of Justice "Press Statement: Habilitation Proposals" p 1; also Stone "Parole plan unveiled" p 3.

<sup>114</sup> McEwen and Strombom "[untitled]."

these protests, in 1996, Te Ihi Tu Trust established an Habilitation Centre, and Newbold and Hough note that the programme was evaluated as effective.<sup>115</sup> Writing in 2003, Hough observes that only Te Ihi Tu Trust and SSF were still functioning - albeit renamed as "Residential Community Centres."<sup>116</sup> Alexinas, writing in 2008, also lists Te Ihi Tu Trust as still in operation - though by this stage the Habilitation Centre cum Residential Community Centre had apparently become a "Community Residential Centre,"<sup>117</sup> rather than an Habilitation Centre. However, in 2009 the Department of Corrections stopped funding Te Ihi Tu stating the programme was ineffective. In response Te Ihi Tu's chairman Howie Tamati noted: "'We were constantly under attack. The major cause was that the department would not supply the prisoners'."<sup>118</sup> Demolition of the former hospital buildings on the site, except the Nurses Home, began in March 2016.<sup>119</sup>

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<sup>115</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" p 270; Newbold *The Problem with Prisons* p 46.

<sup>116</sup> Hough "A History and Analysis of the Salisbury Street Foundation in Christchurch" p 269.

<sup>117</sup> Alexinas "Working for better outcomes" p 45.

<sup>118</sup> Tamati quoted, Humphreys "Rehab scheme dumped" np.

<sup>119</sup> "New Plymouth's Barrett St Hospital demolition

The Aspell House building in Plimmerton is said to date from 1926 and is likely to have been on the site of Plimmerton House, which burnt down in 1906. By 1926 the new building was Cameron Guesthouse, run by widow Agnes McKenzie Cameron,<sup>120</sup> soon renamed "Hotel Mana."<sup>121</sup> Postwar it was still a boarding house, then known as Karehana Boarding House. Today it is known as "Moana Lodge." Yeboah's interim evaluation of Aspell House deemed it to have "successfully completed the set-up phase" with the pilot being "well established."<sup>122</sup> Management problems were identified,<sup>123</sup> and - like the other Habilitation Centres - insufficient referrals was a problem. Reference was made to the Department of Corrections preparing brochures on Habilitation Centres in order to facilitate higher uptake.<sup>124</sup> Like SSF the cost of the

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begins" np.

<sup>120</sup> "Estate at Plimmerton" p 10.

<sup>121</sup> e.g. "'Hotel Mana," Plimmerton" p 22

<sup>122</sup> Yeboah "Interim Evaluation Report on Aspell House Habilitation Centre" p 5.

<sup>123</sup> Yeboah "Interim Evaluation Report on Aspell House Habilitation Centre" p 6.

<sup>124</sup> Yeboah "Report on the Evaluation of Salisbury Street Foundation Habilitation Centre" p 5; Yeboah "Interim Evaluation Report on Aspell House Habilitation Centre" p 6. Department of Corrections "Habilitation Centres:

Habilitation Centre was significantly lower than imprisonment, being "only 24% of the average cost of keeping an inmate in jail."<sup>125</sup>

The year preceeding the finalising of the evaluation reports in 1998 had been a publicly difficult one for the Habilitation Centres because they all, to varying degrees, experienced problems inherent to their aims. Aspell House in particular came under sustained fire by the Labour MP Mike Moore. This followed a November 1996 newspaper report that Aspell House - with its seven staff and "around-the-clock supervisors" - had remained in operation even though it had no residents. Moore published media statements in March and April 1997 lambasting the apparent problem that "prisoners refuse to attend," and characterising the situation as "like something out of a Yes Minister episode, except it's not particularly funny."<sup>126</sup> The fact that the chief executive of the National Society on Alcohol and Drug Dependence (NSAD)<sup>127</sup> -

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Information Leaflet."

<sup>125</sup> The amounts quoted in a newspaper article at the time, given by the CE, were \$37,000 cost for Aspell House residents and \$50,000 for each prison inmate (i.e. 74%). Wilson "Empty rehab centre fully staffed" p 1.

<sup>126</sup> Moore "Controversial Drug Rehab Unit Continues to Amaze [media statement]" p 1.

<sup>127</sup> Wilson "Empty rehab centre fully staffed" p 1.

the organisation running Aspell House - was Annabel Young, a National Party list candidate who was in line to replace MP Jim Gerard, added a very specific political target for Moore's opposition to Aspell House.<sup>128</sup>

### **The Repeal of the Habilitation Centres**

It appears however that the Department of Corrections considered the Habilitation Centres to be integral to its operation - its 2001 *Statement of Intent* stating that the (then) three habilitation centres were required "to meet judicial requirements and geographic, demographic and other offender needs."<sup>129</sup> However, the context of the late 1990s and early 2000s for New Zealand's justice sector was redrawn with the 1999 result of the referendum of another Cantabrian, Christchurch councillor, Norm Withers. Withers' referendum followed the July 1997 assault on his 70 year-old mother, as she looked after her son's shop, and from which she suffered a fractured skull and needed 75 stitches on her face and skull. The petition prompting the referendum was presented in

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<sup>128</sup> Moore "Drug Rehab Unit Treats One Person Successfully for Half Million \$\$\$ [media statement]" p 1.

<sup>129</sup> Department of Corrections *Statement of Intent 2001/02* p 52.

January 1999.<sup>130</sup> The referendum question asked: "Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?" 92% of New Zealanders who voted answered "yes."

### **Conclusion**

Habilitation Centres were disestablished with the passing of the Sentencing and Parole Acts of 2002, as Newbold writes: "[i]n July 2002 the centres ceased to exist as legal entities."<sup>131</sup> However, the proverbial "flash in the pan" that was the Habilitation Centres, is not so historically clear cut. Just as its architecture was slippery, so is its historiography. The Criminal Justice Act 1985, under Geoffrey Palmer, had introduced a new sentence of "community care," which enabled people who offended to be sentenced to residential programmes in the community - exactly the sentence that the Roper Committee advocated to replace imprisonment. The 1993 Act that introduced Habilitation Centres as a form of residential parole, renamed the sentence of

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<sup>130</sup> "Obituary: Nan Withers" np.

<sup>131</sup> Newbold *The Problem with Prisons* p 94.

"community care" as "community programmes,"<sup>132</sup> meaning that the sentence option of community-based residential detention was retained. The Sentencing Act continued the lineage of community care (or "community programme"), and in 2002 this became incorporated into the community sentence of "supervision"<sup>133</sup> - as remains the case today.

As outlined above, the terminology of Habilitation Centres became co-opted, not as a type of sentence, but, as an option for parole. The previous legislation - the Criminal Justice Act 1985 provided for special parole conditions that included the condition of undergoing a programme, which was defined such that this could include a residential programme,<sup>134</sup> and, as identified above, community-based residential programmes for offenders in New Zealand preceded those associated with Habilitation Centres. Even at the point when the specific provisions naming Habilitation Centres were repealed, the ability for residential programmes to form a condition of parole remained in the newly-

minted Parole Act 2002.<sup>135</sup>

Consequently, the mechanism to achieve this brave new idea of the Habilitation Centre both pre-dated the seemingly revolutionary terminology and survived it - even if the two - terminology and mechanism - never elegantly co-incided. What was needed was not so much a mechanism of reform, but rather a more prolific use made of the existing mechanism and a repositioning of the relative hierarchy of imprisonment to other sentences. The emphasis on activity, rather than the architecture or setting - of a programme, rather than Habilitation Centre - may have been a more critical issue.

As an architectural label, the term "Habilitation Centre" enabled the objectification and comprehension of a concept. It enabled this to be attached to a much less potent operation - parole rather than sentencing - as well enabling it to be easily promoted and easily abandoned. Equally important, the Habilitation Centre was defined in opposition because its proponents aimed to achieve a process of negation - what a prison was not. At the same

time, the conventional idea of the criminal jars with conventional notions of community. The re-use of existing buildings, avoiding visual promotion of an Habilitation Centre in a neighbourhood was useful. Ironically it was this kind of indistinctiveness that Robin Evans argued was discarded with the ambition to find a prison design that was truly reformatory. It is also an indistinctiveness that was replaced with the diversity of architectural typology that supported the emergence of the architectural profession, beginning from the late eighteenth-century. In saying this I am stressing the obvious - that specialisation and typological distinction in building - or perhaps just simply distinction - is the one factor critical for the idea of architecture to exist. Needless to say, the idea of the Habilitation Centre occupied a fundamentally conflicting role for conventional ideas of architecture.

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<sup>132</sup> Criminal Justice Amendment Act 1993 (NZ) s25.

<sup>133</sup> Sentencing Act 2002 (NZ) s51.

<sup>134</sup> Criminal Justice Act 1985 ss2,101.

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<sup>135</sup> Parole Act 2002 (NZ) ss15-16.

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