"Justice Matters"

A presentation delivered by Kim Workman, Strategic Adviser to the Rethinking Crime and Punishment Project, at the Quaker's Retreat on Penal Reform, held at Quakers Acres, 76 Virginia Road, Wanganui, Saturday, 18th August.

Introduction

When I provided Murray Short with the topic for this evening, I said I would consider the idea that "**the wellbeing of a nation is measured not by the absence of disorder, but by the presence of justice. "**

New Zealand as a Just and Peaceful Nation

On the face of it, New Zealand presents to the rest of the world as a just and peaceful nation. The OECD Social Justice rankings which measures poverty, access to health, and other indicators place New Zealand well above the average ; we are positioned 3 above the UK and 9 above Australia. In the Global Peace Index, New Zealand ranks third in the world (after Iceland and Denmark). The Fraser Institute, Canada's leading public policy think-tank, and Germany's Liberales Institut, reported last month that New Zealanders have the most freedom in the world, in an international index that ranked 123 countries. New Zealand was ranked number one for offering the highest level of freedom worldwide. Those of you interested in trivia, will be pleased to learn that **Auckland was ranked the third best city** out of the top five for quality of living, after Vienna and Zurich. New Zealand's crime rate was ranked the 24th highest - well below that of the USA which was placed at 5th.

Our crime rate has been trending downwards over the last twenty years with a significant drop in the last two years. This last year the number of recorded offences is at its lowest since 1989, and the rate of recorded crime is the lowest since 1979.[1] The youth crime rate

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[1] For the year to June 2012, the total number of recorded offences was 394,522 —a decline of 5.2% from the previous year, and a decline of 7.5% over the number of reported offences in 2006/07.22

has also decreased significantly. The rate of apprehensions of children and young people fell by 23 per cent between 2002 and 2011.

There have been modest increases in the resolution of crime, and modest decreases in the reoffending and re-imprisonment rates. While community sentences have increased, the imprisonment rate has fallen for the first time since 1993.

With all these positive indicators it would suggest that New Zealand is socially just, peaceful, cohesive and cares for its citizens. There is one other indicator however, that suggests otherwise - - the "locking up fellow citizens" indicator. In the late 1980s the prison population in New Zealand began to go up very fast (we measure imprisonment rates by 100,000 of the general population) It went from 91 per 100,000 in 1987 to 200 per 100,000 in 2009. It has since reduced to 194 per 100,000, a reduction of 2.1% over last year. [2]

Criminologists often compare New Zealand's imprisonment rate with that of similar Western democracies, and say it has the second highest imprisonment rate next to the United States. It's not a very satisfactory or accurate measure. In fact, we are ranked 27th in the world. The important point is that we are not in the Western European League Table. At the present time, Germany has 83, France has 102, Australia has 130, Scotland has 151, and England has 154 (the top of Western European league.) Over the past 20 years we have moved out of that league into a different league. Last year, New Zealand was in the Eastern European league – joining the former Soviet bloc countries. We were sandwiched between Moldova.at 183, and Slovakia at 203. The recent decline from 197 to 194 per 100,000 now puts us into the African bloc, between Gabon and Namibia.

According to international experts, high prison populations are associated with high levels of inequality, low levels of social trust, low levels of welfare spending, and an electoral system that does not have proportional representation.

Our taste for imprisonment puts New Zealand out of kilter with our social justice position in the world. It is also out of kilter with our global peace position. How can we explain that? I don't have the answer. But I spent last week, in the words of Darcey-Ray Flavell-Hudson ,

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[2] Given this modest decline in prisoner numbers, the national imprisonment rate has also fallen slightly from 198 prisoners per 100,000 population in 2010/11 to 194 per 100,000 in 2011/12. This modest recent imprisonment rate is still slightly higher than the rate of 183/100,000 in 2006/07

"internalising a really complicated situation in my head." – It occurred to me that it might have something to do with politics.

When you think about it, the criminal justice system is a fairly straightforward activity. You have a list of crimes, and the criminal law. You have policemen who catch wrongdoers, and courts that try them. The less serious ones are warned, or fined. The more serious offenders may end up in community based sentences, and if you're really naughty you go to prison. When they are let out, there is sometimes ways in which they can be helped back into society.

However, the size and shape of the criminal justice system is in the hands of politicians. They decide what is a crime, how many crimes we should have, how and whether they should be reported, and what the penalties should be. They can decide how old a person has to be in order to commit one, what behaviours to target, set criteria around who will be remanded in custody, which communities to target, and which ones get the 'serious' tag.

When you have a long list of crimes, prosecute lots of people, and have hefty punishments, then it can get really expensive. The more you imprison, the more you spend.

If you really overdo the imprisonment thing, then you contribute to the increased marginalisation of vulnerable communities – it is what is known as mass imprisonment. The impact usually falls disproportionately on ethnic minorities. In that situation imprisonment becomes part of the socialization process. Every family, every householder, every individual in these neighbourhoods has direct personal knowledge of the prison – through a spouse, a child, a parent, a neighbour, a friend. Imprisonment ceases to be a fate of a few criminal individuals and becomes a shaping institution for whole sectors of the population.[3] There is a tipping point at which high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.[4]

The tipping point – i.e. the point at which high imprisonment takes effect, is considered to be around 700 prisoners per 100,000. In the United States, where people are imprisoned at a rate of 716 per 100,000, the impact on high-crime, marginalised communities is

[3] D. Garland, ed, *Mass Imprisonment: Social Causes and Consequences. London:* Sage, 2001).

[4] D. Stemen *Reconsidering Incarceration: New Directions for Reducing Crime* (New York: Vera Institute of Justice, 2007)

devastating. New Zealand, with a rate of 194 per 100,000 should be immune from the effect of mass imprisonment.

Not so. We imprison Māori at a rate of 700 per 100,000, six times higher than non-Maori. That impact is being felt in poor, marginalised Māori communities.   We remand Māori in custody at a rate <u>eleven</u> times higher than non-Maori. For Māori males born in 1975, it is estimated that 22 percent had a Corrections managed sentence before their 20th birthday, and 44 percent had a Corrections managed sentence by the age of 35.[5] [6] The rush to punish has taken us into the situation of Māori mass imprisonment.

There is another problem. There is no relationship anywhere in the world between the imprisonment rate and the crime rate. The imprisonment rate is not a measure of crime. It is a measure of the consumption of punishment.

Occasionally, a politician will have the courage to separate themselves from the flock, and declare that the cost of punishment is too high. When, in 2009, the Deputy Prime Minister, the Hon Bill English referred to imprisonment as both a "fiscal and moral failure" he gave politicians, public servants and the public permission to talk about the effectiveness of prison as punishment. That discussion has increased general awareness of the futility of prisons – that there is no evidence that they act as a general deterrence, or reduce reoffending. They are one of the causes of crime. The longer you stay in prison, the more likely you are to offend when you leave. The more harshly you are treated, the more likely your will be to victimise innocent people on release.

That is not to say that very serious offenders who present a clear and ongoing risk to public safety and to themselves, should not be imprisoned for a long time, if not forever. Most experienced prison managers tell me that that group represents about 5 to 7% of the current prison population.

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[6] Ministry of Justice: Personal communication, 5 May 2011

In summary then; we live in a country which internationally , punches above its weight in the areas of social justice, peace and freedom. On the other hand, it's imprisonment rate compares unfavourably with other Western democracies. Is that likely to change?

Positive Signs Ahead

I believe that it can. There are promising signs ahead. In the last couple of years, our understanding of what we need to do to reduce crime has improved. The Police, the Judiciary and Corrections are starting to work together in ways which reflect that understanding. We are starting to see those understandings translate into operational policy. We know about the importance of engaging with high-crime communities to reduce crime. We know that the most effective thing you can do with most young offenders is to keep them out of the formal criminal justice system. We know that 6% of adults experience 54% of all crime – this small group is victimised five or more times. It's not only about targeting repeat offenders, but also about protecting repeat victims.

A lot of that understanding has been activated through the Better Public Service Reducing Crime and Reoffending Plan. The establishment of prisoner reintegration centres, strategies for dealing with low level offenders, an expansion of restorative practise, establishment of Rangatahi courts for young Māori offenders, and drug and alcohol courts for those with dependency issues are all part of the shift.

On the basis of the above scenario, most people will be entitled to conclude that we have a criminal justice system that mostly works, and on the basis of recent results, is working better than it has in recent years. There is by and large, an absence of serious disorder. The fundamental question however, is whether we are not only low crime and safe nation, but whether we are a just nation.

About Justice

About a year ago , I spent a day with 25 New Zealand Judges, discussing the topic "When Justice Fails". They were asked to discuss and then describe what justice is. They had some

difficulty, and came back with a variety of answers. They were then asked to give examples of "injustice" That was not at all difficult. The words came pouring out; oppression, transgression, exploitation, discrimination, violation , intimidation, disempowerment, segregation, inequality, inequity, partiality, bias, malice, prejudice, unfairness, violence, abuse, misuse, and so on.

Why is that? I suspect that when we observe the criminal justice system in action, we clearly see what justice is not. Our response is to fight against the tangible injustices we identify and know, rather than work toward a justice that we can't fully comprehend. For that reason, our criminal justice system reflects society's negative or punitive response to crime and injustice, much more than being a positive and pro-active process of developing a more just society." [7]

I have spoken a great deal about prisons in this talk, and for good reason. If we want to get a grip on whether New Zealand is a just nation, as well as being relatively free of disorder, the conduct of our prisons provides part of the answer.

Prisons provides a useful measure of the extent to which governments have purchased and consumed punishment .   As I said earlier. the rate of imprisonment in New Zealand grew from 91 per 100,000 population in 1987 to 200 per 100,000 in 2010, in the face of a declining crime rate.

The forms, functions and significance of punishment in modern society reach well beyond its ability to "reduce reoffending" or "preserve public safety". The way we run prisons, and the values that underlie their management, communicate meaning about the nation's attitude to power, authority, legitimacy, normalcy, morality, and social relations.[8] [9] Prisons are not just about punishment, deterrence, rehabilitation and incapacitation. They hold a moral and symbolic role – they reflect in miniature the state of the world in which you and I live.

No one knew that better than Nelson Mandela, when he said that , "no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its

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[7] Ronald W. Nikkel. "Conversatio Morum "Justice from the Dark Side", 31 October 2010

[8] D. Garland *Punishment and Modern Society*, (Oxford: Clarendon Press, 1990) 252.

[9] Michael Ignatieff, A *Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750 – 1850*, (London: Macmillan, 1978).

highest citizens, but its lowest ones." The way prisons are run, tell us a great deal about the values and priorities that exist within the world of politics.

What do prisons tell us about the New Zealand character. Firstly, New Zealand prisons are incredibly secure. With nearly 8,000 in prison, there were only 2 breakout escapes last year.[10] The percentage of positive random drug tests for prisoners last year was four percent, another all-time low. New Zealand prisons are very hard to escape from, and even harder to get drugs and contraband into. Prisons are highly risk averse, and the level of prisoner control and surveillance is extremely high. Increasingly, prison visitors describe the prison environment as unwelcoming and hostile to outsiders.

But security of that kind comes at a cost. . Over-restrictive security requirements, and the constant body searching of prisoners and their cells quickly breaks down trust, respect and ideas of treating prisoners with dignity. That in turn leads to increased violence and disorder.

That is what has happened in New Zealand. Last year there were 18 serious assaults on staff, a 33% increase over the previous year), and 48 serious prisoner on prisoner assaults. The chances of running successful rehabilitation programmes in an environment of that kind, is negligible. Our prisons may be secure, but they are not safe. And they are not that effective.

Over the last twenty years, imprisonment has become more punitive, and more security-minded. Prisoners are less eligible for such privileges as release to work and family visits, and more likely to be described in official reports as culpable, deserving of punishment and sometimes dangerous. They are no longer clients in need of support, but risks to be carefully managed. Instead of emphasizing rehabilitative methods that meet offender's needs, the system has emphasized effective controls that minimize costs and maximize security. Prisoners have become objects rather than subjects. Probation was represented as punishment in the community, not as a social work alternative to conviction. Its priority

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[10] http://www.corrections.govt.nz/__data/assets/pdf_file/0004/633982/ar-corrections-2011-12.pdf

became the close monitoring of released offenders, which led to the more frequent return of offenders to custody.

In short, the Corrections system has placed a greater emphasis on managing risk than managing relationships. In the process, we have sacrificed justice at the altar of security.

But a change is coming. There has been an increased work activity in prisons, increased rehabilitation and reintegration activity, increased prisoner literacy and numeracy, and plans to bring restorative justice back into the prison. In addition, the Prison Safety Review chaired by former Commissioner Howard Broad, will develop strategies to reduce assaults on staff and prisoners. The prevailing culture within prisons will be difficult, but not impossible to change.

What is at the heart of this change? I believe that there are a significant number of public servants and politicians that want to see a move away from the punitive, negative and controlling behaviour that has dominated our approach to criminal justice for the last twenty five years. While the structure of criminal justice entails judgement and punishment, the heart of justice is a grace that affirms human dignity and seeks the wellbeing of offenders and their victims. Justice that exists only to judge and to punish is a justice without humanity.[11]

Secondly, we are starting to understand that justice is always relational. It is not a detached exercise involving breaches of the law, judgement and punishment. It embraces the whole fabric of social relationships and inter-relationships—individuals, families, communities, nations—economics, politics, religion, gender, race, environment. Justice is about us and how we live with one another in nourishing and supporting the individual and social well-being of all people.[12]

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[11] Ronald W. Nikkel " Conversatio Morum, The Heart of Justice" 19 October 2010
[12] Ronald W.Nikkel, Conversatio Morum, "Justice Between Us" 7 November 2011

Finally, justice cannot exist without a moral centre. Prisons are 'special moral places' where relationships, and the treatment of one party by another, really matter. [13] [14] Questions of fairness, order, authority, trust, respect and well-being are important. These qualities are difficult but not impossible to measure, and provide a more insightful understanding of the quality of prison life, than standard or official approaches to performance measurement. It is the difference between focussing on what can be measured, and focussing on what matters.

Humane treatment results in less disruptive and violent behavior and reduces institutional management problems. [15] It also increases the likelihood of prisoner success upon release.[16] [17]   When Corrections develops a moral framework from which to administer prisons, real justice will prevail. When the language of morality stands alongside the language of performance, real justice will prevail. When Corrections leadership strikes a balance between on the one hand, the need for political acceptability, for improved performance, and on the other an end to violence by staff, and a robust, challenging, but humane approach to offenders, real justice will prevail. It is possible for the concepts of citizenship, decency and respect to sit alongside the evidence of 'what works'.

I believe that the Department of Corrections is attempting to introduce a 'moral centre' into the prison system. Rather than exist as a reflection of what is happening in wider society, it is setting about its business in a way that introduces the promise of 'real justice' in the way it works with prisoners and their whānau and families. There is also evidence that the Police are exercising discretion more wisely, and doing what they can to keep young people and others out of the criminal justice system.

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[13] Goffman, E. (1987) 'Asylums: Essays on th Social Situations of Mental Patients and Inmates, London: Peregrine; 1st pub 1961.

[14] Sparks, R. (1994) ' Can Prisons be Legitimate?' in R.King and M McGuire (eds.), The Oxford Handbook of Criminology, 2nd edn., Oxford: Clarendon Press.

[15] Seiter, R.P. (2002) *Correctional Administration: Integrating Theory and Practice.* Upper Saddle River, NJ: Prentice Hall, p.384

[16] Wright, K.N. (1994). *Effective Prison Leadership*. Binghamton, NY: William Neil Publishing.

[17] Chen, Keith M. and Shapiro, Jesse M., 'Do Harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach' American Law and Economics Review V9 N1 2007 (1–29)

A Wider Justice

The larger question is whether a commitment to change in one part of the criminal justice sector, is sufficient to compel change elsewhere within the social sector.   For this change to influence the wider spheres of social and economic policy, it will require moral leadership from our political masters and senior public servants. The more authoritative, stable and legitimate the political-moral order, the less need there is for terroristic or force-displaying uses of punishment.[18]

It will require a great deal of personal courage, and an ability to move the new thinking that is driving systemic change, out into the open. There is not within the general public the 'hang 'em high' attitudes of yesteryear. More people understand 'what works' and are highly supportive of the initial reductions in the crime rate, the imprisonment rate, and improvements in rehabilitation and reintegration. Now is the time to change the way we dispense justice.

Influencing Change

What can we do to influence the change – how can we reclaim a justice that is compassionate, relational, life-affirming and ultimately effective. A justice with a moral centre.

There are some outstanding issues in the area of personal racism and structural discrimination within the criminal justice system. We need to know why it is that while Māori are imprisoned at a rate six times higher than non-Maori, they are remanded in custody at a rate eleven times higher than non-Maori. We need to understand the impact of ethnic profiling on those groups who are more susceptible to Police stopping and checking.[19] [20] Why is it that Māori caught in possession of cannabis are three times more likely to be prosecuted that non-Maori? Why it is that the percentage of Māori youth who qualify for Police diversion, differs significantly from region to region? What research there

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[18] Garland, D. (1990). *Punishment and Modern Society: A Study in Social Theory*. Oxford: Oxford University Press.
[19] Coleman, C. & Norris, C. (2002). Policing and the police: Key issues in criminal justice. In Y. Jewkes, & G. Letherby (Eds.), Criminology: A reader. London: Sage.
[20] Lundman Richard J & Kaufman Robert L (2003) Driving while black: effects of race, ethnicity, and gender on citizen self-reports of traffic stops and Police actions. Criminology 41 (1) 195-219

is points in the one direction; namely, that the level of structural discrimination in the criminal justice system is unacceptably high. [21] A closer examination is required.

One of the larger challenges it to persuade government to join the dots between criminal justice policy and the wider social policy agenda. Ideally, criminal justice policy should be a sub-set of social policy. In 2009, the government introduced the Drivers of Crime Strategy – a strategy to address underlying causes of criminal offending and victims' experiences of crime. It recognised that certain circumstances of people's lives are associated with a greater likelihood of offending and victimisation. The initial Ministerial meeting, and the expert reports that contributed to it, identified key issues which impacted on crime – for example family violence, child poverty, child abuse, access to drug and alcohol, employment and housing. What started off with a hiss and a roar, soon sputtered. The last published progress report was in June 2011. Since then, there have been a number of public inquiries and expert analysis on issues that contribute to crime – alcohol reform, social housing, child poverty, drug law reform – all of which have been ignored by government. The decision to add 500 additional pokie machines and create at least another 400 problem gamblers is symptomatic of a government which refuses to consider the moral consequences of their actions.

The Way Forward

There is however, an upside. The government's actions have not gone unnoticed by the public, and there is a growing discontent at the its reluctance to assume leadership. There is a stirring of public discontent, that may well compel the changes we are seeking

Firstly, the business sector is becoming more actively engaged in the criminal justice sector. Businesses like the Warehouse, Fletcher Construction, Downers, and Turners and Growers are making a commitment to employ released prisoners, and in some cases, provide them with training and induction before release. The acknowledgement of a corporate responsibility to assist those who have engaged with the sector, is a welcome shift from years gone by.

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[21] Workman, Kim, "Māori Over-representation in the Criminal Justice System – Does Structural Discrimination Have Anything to Do with It?" http://www.rethinking.org.nz/Default.aspx?page=4342

Secondly, the philanthropic sector is exploring ways in which to invest in projects which reduce crime and social harm, and Philanthropy NZ will this year at its Annual Conference, discuss those issues. The Glenn Inquiry into child abuse and domestic violence is of course a standout example, and I am privileged to be a member of the Inquiry's Thinktank. $80m is not to be sniffed at, and is an indication that there are people who are sufficiently disenchanted with the lack of action over the years, to invest heavily in getting positive outcomes.

Thirdly, community service providers are taking the lead in developing new responses to prisoner rehabilitation and reintegration. Innovation in such areas as restorative justice and whānau based responses, are likely reshape the way we do criminal justice.

Fourthly , the NGO sector has responded by forming the Justice Coalition, comprising 12 major Justice sector organisations, and with a growing membership. The Coalition is meeting regularly with the CEO's of Justice, Police and Corrections to promote and pursue the development and implementation of just, humane and effective justice sector strategies.

Perhaps the most significant response has come from the younger generation, and n particular the members of Justspeak. In April 2011, I called a meeting for young people who might be interested in discussing and debating crime and justice issues. I expected about 8 young people – 44 turned up. A committee of 11 young people aged between 18 and 30 was formed, and within three months they were holding monthly public meetings to discuss and debate crime and justice issues. They organised panel discussions, crime and justice quizzes and visits to service providers working with vulnerable communities. Within three months the meetings were attracting 80 – 120 people. Within six months they were making submissions on legislation and publishing reports on crime and justice issues. By the en d of their first year they held a national retreat attended by 150 young people from across New Zealand, and established an Auckland branch which is doing as well. Selected members are now engaged in public speaking and media interviews. They are planning two publications in the next year, one on youth offending and the other entitled 'Beyond

Prisons'. They have attracted the attention of politicians, of philanthropy, and of public sector organisations. Two further branches are planned for 2013.

Concluding Comments

Let me conclude. It is not possible to account for all the policy misfiring, ambiguities and contradictions which abound in the world of criminal justice, given the absence of a cohesive and long range criminal justice strategy. It is difficult to know what, if anything, is on the government's mind. Changes in the levels of social support to marginalized communities and the increased penalization of the social welfare system, have and will contribute to increased vulnerability in marginalized communities. If that trend continues, then levels of inequity and injustice will increase.

It is not possible to claim at this point of our history, despite our international rankings in the areas of social justice, peace and freedom, that we live in a just society. But it is within our grasp. The final question than, is what would it take for things to change.

In last week's 'State of the Nation' report, Major Campbell Roberts of the Salvation Army called for courageous leadership. It was time, he said , to discard the prevailing ideas in politics, economics and society that no longer serve us and develop a leadership approach which has a fresh appreciation of our situation, circumstances and options.

What does it take for enough people to take up a cause with sufficient strength to bring about change? In a recent publication, the Princeton philosopher, Kwaime Anthony Appiah takes a look through history at three cruel and immoral practices; dueling, the footbinding of Chinese women, and the Atlantic slave trade.[22] He points out when these practices ceased, it wasn't because people were convinced by new moral arguments. What was awakened on each occasion, was the nation's sense of honour. Shame and ridicule, criticism from more civilized nations, are sharp moral motivators. When a highly immoral or deplorable practice becomes sufficiently repugnant in the eyes of a sufficient number of people, there will be a mood swing against it. Appiah argues that in forty years time,

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[22] Kwane Anthony Appiah, *The Honour Code: How Moral Revolutions Happen* (W.W.Norton and Company, New York, 2010)

nations will look back and wonder why they didn't take action to address the social ills that exist today. He identifies three key issues, for which there is currently sufficient information to awaken our moral indignation; climate change, the care of the elderly, and mass imprisonment.

What Can You and I do About it?

What can you and I do about it? The philosopher, Noah Chomsky, puts it this way, "

"The more privilege you have, the more opportunity you have. The more opportunity you have, the more responsibility you have."

Tonight, I am talking to people of privilege. I am talking to people with opportunity. And I am talking to people who are able to take responsibility.

We all have the capacity to lead – and that if we choose to do so - there is a further cost to pay. The price of vision, and determination to pursue a vision, includes humiliation. loneliness, and abuse. The reward is that if you persist for long enough, you have the potential to transform. You may never see a justice system that restores. But from your own mountain top, situated in your own community, you will have pointed the way for others. Imagine the collective impact if each of us here today, sought to change the way our community conceives justice. Consider the possibility of a 'tipping point', - a time when the community influences the nation, and the way it does justice. Imagine   a nation that measures itself by how it treats the least, the lost and the lonely, a land in which strength is defined not simply by the capacity to engage in politics and civil conflict, but by a determination to forge peace - a land in which all might come together in a spirit of unity.