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The Maori and the Criminal Justice System

A New Perspective

He Whaipanga Hou

U.S. Department of Justice
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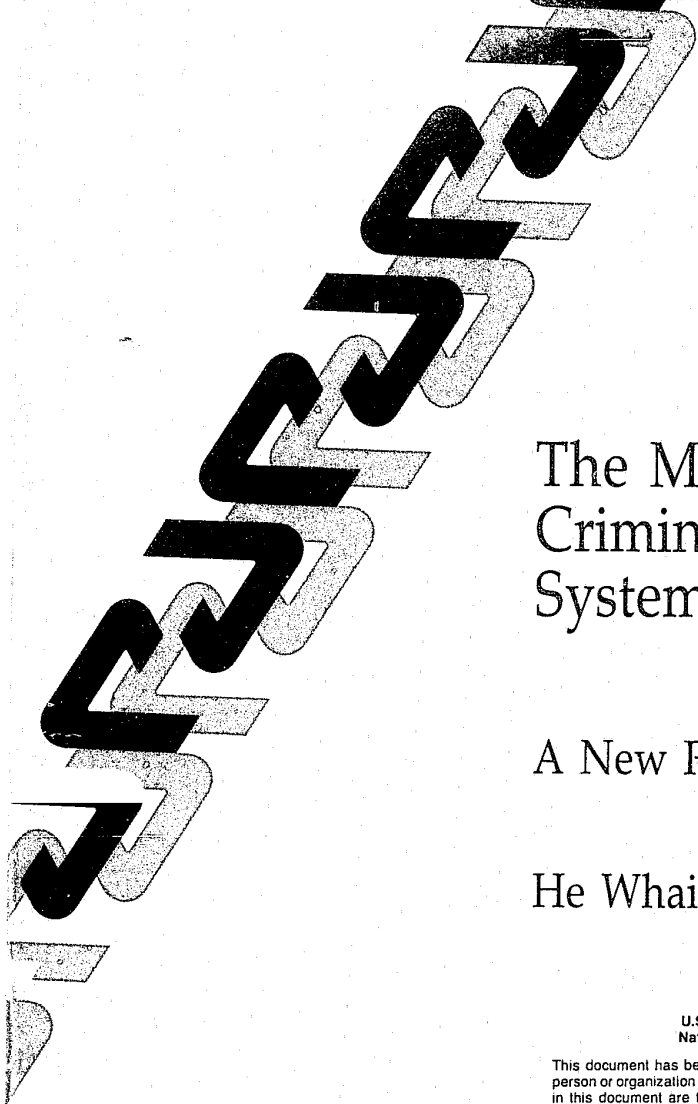
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A New Perspective
He Whaipaaanga Hou

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NCJRS

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Nga Kupu Tuatahi

Foreword

This Paper is the first stage of an attempt to address the problem of criminal offending by Maori youths and the subsequent imprisonment of a disproportionately high number of those youths when they appear before the courts. It is te tahu tuatahi or first thread of a research weave from which some understanding may hopefully be gained.

The Paper seeks to develop a research methodology which can explore the much objectified field of Maori crime from a different and possibly more effective perspective. It is a perspective which takes strands from the extant research and weaves them around a conceptual framework that is especially Maori.

The existing research is analysed to elicit responses to certain broad questions: what perspective is the research based on; what facts does it present; what conclusions does it reach; what solutions, if any, are proffered? From each of these questions arise concerns which illustrate the need to adopt a different research viewpoint. These concerns, and the methodology which may be developed from them, are the focus of this Paper.

The second stage of this research project is a process of consultation within the Maori community to ascertain Maori views and perspectives on the justice system. The consultation will take place in a manner and in forums deemed appropriate by Maori people within the various tribal areas.

The consultation will provide a hitherto largely untapped information base from which Maori perceptions of the justice system may be formulated. It will also provide pointers to those areas of interaction between the justice system and Maori people which may require further research.

Together, the two stages will contribute to 'he whaipanga hou' - a new perspective - on the criminal justice system and how its operations affect and are perceived by Maori people. This different perspective will be a useful stimulus to further research and the development of a criminal justice system which is truly "equal for all".

A handwritten signature in black ink, appearing to read 'Geoffrey Palmer', written in a cursive style.

Geoffrey Palmer
Minister of Justice

Acknowledgements

Many people have helped in the preparation of this first Paper.

I wish to thank especially my own people in Ngati Kahungunu and Ngati Porou for their support and understanding: E nga rau rangatira, nga whaea, he tino mihi ki a koutou. Anei tenei te mahi a to koutou mokopuna.

I thank those of our people throughout the land who helped and contributed in so many ways. Your interest and support has given strength.

I thank my research collators Dean Hapeta, Ngati Raukawa, and Hinemoa Awatere, Ngati Porou/Ngati Whakaue.

My thanks also to the staff of the Policy and Research Division, Head Office, Department of Justice, and the Courts staff throughout the country.

I humbly offer this work in memory of my Kaumatua John Tangiora, who stood on the marae with us and gave us strength through his wisdom and understanding -

Haere e koro, haere ki te atamira o o tatou tipuna.

Haere ki nga tipuna e takoto mai na i te Po.

Ahako kua wheturangitia, e kore koe e ngaro i roto
i te ngakau o te tangata.

MOANA JACKSON

He Whakamarama Introduction

Ma te tohunga whakairo ano e korero te whakairo.

Ma te whakato kai ano e korero te whakato kai.

The expert carver speaks with authority on carving.

The expert gardener speaks with authority on gardening.

... Maori research takes place in a Maori cultural framework. This means that there will be Maori values and attitudes which must be considered.¹

The aims of the research as a whole are:

- (a) to review existing research on Maori crime from a Maori perspective and so develop a Maori conceptual framework for further research;
- (b) to consider structural and procedural factors that may lead to the excess conviction, sentencing, and imprisonment of Maori people;
- (c) to present a qualitative analysis of courtroom procedures based on Maori non-participant observation;
- (d) to use the Maori conceptual framework to elicit perspectives on processes under the control of the Department of Justice, and to facilitate explanations for Maori offending from a Maori point of view.

The issue is a complex one and can be addressed on many levels. This research was initially prompted by concern over the disproportionately high number of young Maori men in prison, and will concentrate on male offenders between the ages of 15 and 24. This group of young men is not only the one with the highest rate of

imprisonment; it is also the group most at risk in other ways. It is the group most prone to motor accidents, to work-related injuries, and to suicide. Somewhere deep in the organisation of our life as a community are factors which propel young men to behaviours which predispose them towards offending and arrest, or a tragic early death. All young men are at risk, but Maori young men are at a greater risk.

There are clearly many social issues which impact upon young Maori men with such devastating consequences. Unemployment, which is becoming recognised, at least in part, as structural in our economy, is one such issue. One could address the question of unemployment in much the same way as the question of offending is here addressed: how many young men suffer from it, what sort of young men are more at risk, what factors contribute to the risk, what differential prospects for employment do young men have depending on their race or educational qualifications?

Similar questions can arise in relation to education. How many youths fail to achieve academic "success" in the school system; what sort of youngsters are more at risk of "failure"; what structural and curriculum factors contribute to this failure; what differential prospects for "success" do youngsters have depending on their race or socio-economic status?

Because the justice system does not exist in isolation from the society it serves, any study of its processes must include consideration of these questions. The influence of social, educational, and employment strategies upon the people who come into contact with justice processes, and the way in which the processes react to or maintain these structures are within the ambit of this study. It is accepted in this Paper that

... research must deal with the problem of how to describe and interpret the facts of social and economic conflict that seem to be related to the problem of crime.²

A basic foundation underlying this Paper is the need to view these conflicts and the justice system from what may be termed a Maori perspective. A research framework will therefore need to be developed to reflect this perspective.

Such a framework requires the acceptance of two assumptions. First, that the extant research and any consequent policies which may have flowed from it have been grounded in monocultural methodology. The research has been vicarious, with an apparent unawareness

... that the interpretation of Maori data must be perceived in Maori terms, not forced into preconceived Pakeha methodologies.³

It is essential that attempts be made to elicit the perceptions of Maori people if some understanding of the Maori offender is to be formed. From their perceptions of the behaviour of their own young people may come the seeds for comprehending that behaviour. From their perceptions of the justice system may come some insights into its impact on Maori people and the seeds for positive amelioration of those effects. If, as the dictum decrees, "justice should not only be done, but manifestly and undoubtedly be seen to be done", it is important to gain some understanding of how, or whether, Maori people see criminal justice being done.

In 1971, the then Chief Justice, Sir Richard Wild stated,

It is good for the profession, and the courts, to pause now and then, to see themselves as others see us.⁴

An evaluational framework which can enable views to be expressed in a culturally appropriate and sensitive way will provide a positive alternative viewpoint.

The second assumption underlying this Paper is that the wider social setting, of which the justice system is a part, reflects institutional racism in many of its structures.

The 1985 Report of the Maori Advisory Unit of the Department of Social Welfare defined institutional racism as

... the perpetuation of policies and practises which advantage Pakehas and disadvantage other racial groups.⁵

The effects of these policies have been defined as being the processes by which

... many normal, seemingly neutral operations of our society create

stereotyped expectations that justify unequal results; unequal results in one area foster inequalities in opportunity and accomplishment in others; the lack of opportunity and accomplishment confirm the original prejudices or engender new ones that fuel the normal opportunities generating unequal results.⁶

The clear racial differentials of "success" in terms of educational achievement and employment indicate that our vocational and education structures are institutionally racist. Indeed, while the term itself may be unfamiliar to many Maori people, its consequences are known to them in those areas through often bitter experience. A recognition of the pain caused by this experience is an integral part of any Maori perspective on social issues.

The justice system is rooted in the same cultural foundations as other major social structures such as the education system; it is inevitably influenced and shaped by the same cultural values and ideals. Indeed, the legal truism that the justice system operates 'one law for all' contains implicit seeds of institutional racism since it is one law based on the English common law with no acknowledgement of specific Maori rights or forms of social control. This foundation and the consequent permeation of monocultural attitudes throughout the justice system impacts upon Maori people in particular ways. An analysis of these consequences will unavoidably raise questions about the systemic fairness of justice operations.

The interrelationship of these two assumptions focus this research primarily on the interaction between the Maori offender and the justice system. However the impact of wider societal forces upon both the offender and the justice process are inseparable concomitants to the research.

Te Wahanga Tuatahi

Nga Kaupapa Me Nga Whaipanga:
The Topic And The Issues Arising
From It

Na ringa huhua i tu ai te whare whakairo.

It takes many skilled hands to complete the carved house.

... the research workers' actions and his products are as much a part of New Zealand's race relations as are the actions of landlords, employers, and the law courts.¹

Past research and current statistics seem to create a clear and depressing picture: the young Maori male offends more and is imprisoned more than the young non-Maori male. What are less clear are the reasons for this, and what requires analysis are the interpretations and perspectives used with the facts highlighted by the research.

This part of the Paper outlines some of the major research and statistical perspectives, presents some viewpoints on them and poses some questions which arise from them.

Since the 1961 Hume Report there has been considerable research into the

... inordinately high incidence of law-breaking by Maoris.²

The research however has tended to reflect many of the theoretical debates within criminology about the nature of criminal deviancy itself. A plethora of theories has arisen as a result of this debate, creating

... a chaos of competing factions: neofunctionalists ...; phenomenologists-cum-ethnomethodologists ...; labelling theorists ...; conflict theorists ...; not to mention the relentless empiricists.³

Notwithstanding this debate, there is a discernible emphasis on the various correlates of crime including socio-demographic variables such as race, age, sex, and class. The central focus has been with apparent ethnic differentials in offending rates and various attempts to describe or analyse the differentials.

Studies of the differential Maori/Pakeha rates have attempted to control for socio-economic status and ethnicity. However it has been pointed out that these studies have been limited in terms of

... sample size, data source or population covered, or ... global correlations.⁴

It is a contention of this Paper that they have also been limited by the cultural inappropriateness of the applied methodology.

The emphasis on comparative analyses of Maori/Pakeha offending has intrinsic socio-cultural limitations. It leads to an "offender-based" methodology in which the Maori offender is too often viewed in isolation from the culture which shaped him and the society in which he lives. It also results in comparative judgements being made from the cultural standpoint of the researcher, not the offender being researched.

These difficulties need to be briefly canvassed in turn.

THE "OFFENDER-BASED" APPROACH

For the purposes of this Paper, "offender-based" research is that which has sought to focus on the "socio-psychological indices" of a Maori offender's makeup. Whether these indices include factors such as the socio-economic status of offenders or the emotional trauma of "cultural deprivation", there is a clear socio-cultural assumption underpinning the research. It is one which

... minimises the significance of power and coercion in everyday life between subordinate and superordinate groups, emphasising the social psychology of individual and group adaptation to dominant group values and practices.⁵

It is an assumption which has reflected the New Zealand belief that non-Pakeha people must integrate into the existing framework of Pakeha society and adopt its

prevailing cultural mores. With this underlying belief, research has tended to view various behaviours as indicators of the relative success of the integration process. This has limited analysis of "extra-individual" elements in the crime situation and has led to a "victim-blaming" approach in which the socio-psychological circumstances of the offender are analysed almost to the exclusion of other factors. There is little recognition that

... if we are to deal realistically with crime it is necessary to study less romantic and dramatic elements; to emphasise things and situations in relation to decisions.⁶

The "things and situations" which have not been adequately researched include functions both within the justice system and the wider social setting. Thus there has been little analysis of some areas of interaction between Maori offenders and actual justice processes. In particular, there appear to be

... no studies (which) have investigated whether Maori offenders are more likely to be apprehended than non-Maori, or whether once apprehended, Maori offenders are more likely to be dealt with formally than non-Maori offenders.⁷

This failure to adequately address the influence of systemic decisions and operations narrows the focus of research and effectively inhibits attempts to understand Maori offending and imprisonment.

Formulating the issue in "offender-based" terms also distorts and oversimplifies the situation because it ignores social factors. There has been comparatively little structural analysis of the social forces which influence an offender. While evidence is adduced to show that many of the "causes" of crime lie within society itself, there is little consideration of how or why society operates the way it does. There is an apparent perception that

... social theory might examine social reality as it is, (but) neglect the problem of how this reality is produced and maintained.⁸

A descriptive perception of social reality is therefore produced, not an analytic explanation of it. However description alone can never provide sufficient explanation of the functioning of society, or the impact of its operations upon its people.

A Maori conceptual framework would attempt to provide these explanations. It would consider the offender, the pressures placed upon him and the roots of those social structures which create the pressures. If the high incidence of Maori offending reflects the

disadvantaged socio-economic status (of the Maori) in New Zealand society⁹ or a markedly lower level of educational attainment¹⁰,

it is essential that the structures underlying and creating these situations be considered. The young Maori offender is both responsible and responsive to the society around him. Research aimed at understanding his behaviour must also consider the structure and rationale of the social forces which impact upon him.

The research framework proposed in this Paper melds "offender-based" research with a "system-based" approach. This method of analysis enables an assessment of how justice processes operate in the treatment of Maori offenders and how those processes fit within the total social system.

THE COMPARATIVE APPROACH

Much of the comparative research undertaken faces limitations similar to those evidenced by the offender-based approach. However a more serious perceptual concern with the comparative approach is its wider attitudinal impact.

There is a widespread feeling within the Maori community that a great deal of research

... only serves to reinforce existing negative stereotypes - low SES, high crime rates ... and so on.¹¹

The media publicity given the frequent comparisons of Maori/non-Maori criminal statistics, coupled with an apparently endless stream of analysis in other areas, impacts in several ways.

At its most personal level, it helps perpetuate

the progressive development of a negative self-image¹²

among many young Maori. Research findings appear as yet another example of the overt and covert ways in which Maori people are reminded of their "shortcomings" or "weaknesses".

The extension of this into wider social attitudes is obvious. The constant reiteration of negative images about one group in society helps create the misconceptions from which prejudice springs. It is this emphasis on comparison in areas of negative social activity which prompts many Maori people to question the motives and value of such research:

... the Maori is written about, scrutinised and ultimately objectified by others. For whose long-term gains?¹³

There is expressed concern too at the possible effects of repeated negative findings on the workings of the justice system itself. Many factors influence the exercise of discretionary powers, but it is possible that perceptions about behaviour may be coloured by expectations deduced from sources such as research findings. If comparative research shows a greater likelihood of certain behaviour by one group it could arguably influence how that group is perceived within the justice system. The cues used to interpret behaviour or to apprehend offenders could be such that

... the connotation of race ... becomes the connotation of offending.¹⁴

At a research level, the stress on comparative methodology has led to the same "victim-blaming" focus as the offender-based emphasis. It has produced Maori/non-Maori comparisons without reviewing the substantive social and cultural factors which may be responsible for the comparative differences. It has led to a perspective which

... exculpates the particular social system and excuses it from responsibility for those gaps between the 'real' and the 'ideal' that exist within it.¹⁵

A DIFFERENT APPROACH

It is submitted in this Paper that a different analytic viewpoint is needed to address the problem of Maori offending and imprisonment. Strands of existing research can

provide an information base with valuable insights. However these need to be fused with a conceptual framework which goes beyond the limits of comparative offender-based research.

Criminologists have long been aware that to isolate the "cause" of crime is a Sisyphean task. Perhaps the best that research can do is provide some explanations of past trends and seek out common factors in those trends. A noted British criminologist has defined the purpose of such explanations as being

... to render intelligible the behaviour under examination, with an intelligibility that is compatible with the subjective meaning of the behaviour for the actors involved.¹⁶

The approach adopted in this research will attempt to satisfy both requirements of this definition. To "render intelligible" both the behaviour of the young Maori offender and the systemic consequences of that behaviour; and to elicit understanding of those behaviours and consequences from the "actors" and the Maori community from which they came.

Te Wahanga Tuarua

Nga Tahu Maha:

The Many And Varied Threads

Kimihia nga putake katoa o te kaupapa,
ina kitea kimihia nga rongoa.

Look for more than one reason for the problem
then seek the solution.

No analysis of any problem can be undertaken without an understanding of its past. In the field of Maori offending and imprisonment, the past is recorded in research.

This section of the Paper attempts to interpret the research and to assess the validity of its approach from the cultural perspective of those being studied. By adopting a Maori standpoint it attempts to illustrate how some methodology and research assumptions are limited or culturally biased. It does not, indeed could not, assess all research on Maori crime. However it does endeavour to show that a better understanding of the "pain of our Maori young" may come from a research structure attuned to their own culture.

NGA TAHU WHAKAMARAMA

THE THREADS OF DEFINITION

This Paper is concerned with the disproportionately high Maori crime and imprisonment rate. However the term itself gives rise to difficulties which need to be addressed. They lie in the definitions and perspectives adopted to produce particular rates and the interpretations placed upon them.

The first difficulty involves the basic conceptualisation of who is "Maori", New Zealand society has long felt it necessary to classify, categorise, and stereotype the Maori people. These classifications have all reflected a Pakeha perspective on the ethnographic make-up of this country and have ignored the holistic Maori view of being.

A key concept of identification in traditional terms is not "Maori-ness" but "tribal-ness" - Kahungunutanga or Arawatanga or Tuhoetanga, as distinct from Maoritanga. One's "Maori-ness" today is still derived from the tribe. Tribal whakatauki, waiata and tangi voice its history; whakapapa outline its genealogical and historic ties. References to identity, history and place are "tribal" not "national"

... these feelings are ... my Tuhoetanga, rather than my Maoritanga. Because my being Maori is absolutely dependent on my history as a Tuhoe person.¹

It is the tribe which identifies a person and which gives a sense of place in physical, cultural, and emotional terms. In the tribal pepeha or sayings the identification is explicit -

Ko Hikurangi te maunga,
 Ko Waiapu te awa.
 Ko Ngati Porou te iwi.
 Hikurangi is the mountain,
 Waiapu the river,
 Ngati Porou the people.

Ethnic classifications have ignored this concept. They have also confused a biological definition of race or ethnicity with a cultural definition as a 'state of mind' or sense of identity. They have thus adopted a range of classifications which can either be culturally insulting or merely amusing. Thus the degree of "Maoriness" has been defined in one instance by asking.

...how much Maori blood the mother and father had, then assigning a score expressing the number of eighths of Maori ancestry.²

Others have used a simple process of observer estimation in which the racial variable has been defined by the researcher or other outside agent. Race was then assessed in various ways including coding

... into eleven categories using a standard classification³

These various methods of classification are culturally insensitive as well as statistically unsatisfactory. From a Maori viewpoint, ethnicity is not dependent upon quantifiable amounts of "blood". Indeed, many Maori people would retort that all their blood is red (or blue).

Neither can ethnicity be dependent upon the assessment of some outside observer.

It is an inherently personal concept which is a mix of an individual's cultural, physical, spiritual and linguistic make-up. Any attempt by a non-Maori to quantify or define the factors in this make-up is seen by many Maori people as culturally arrogant. It is also seen by some researchers as quantitatively impossible.

There appears to have been some recognition of these difficulties in recent years. The definition of "Maori" in the 1974 Maori Affairs Amendment Act s2(1) states

A Maori is a person of the Maori race of New Zealand; and includes any descendant of such a person.

Within justice processes, most classifications use this definition with self-identification being the criteria. A similar method, with set guidelines, is used in the census.

The police however do not rely solely on self-identification. They also use observer estimation and regard the race of an offender as one of many identifying characteristics including height and hair colour. It is classification for administrative purposes, and the assigned classification by a police officer may overrule an offender's self-identification.

The extent to which observer identification is used is unknown but there is considerable ethnocentric insensitivity in such an approach. It is this aspect which causes Maori concern in a broad sense. In a narrow sense there is concern over the accuracy of statistics compiled using observer estimation.

The concern is a specific methodological one in relation to the term "Maori crime rate". Interpretative difficulties arise when the numerator data is defined by one criterion and the denominator data is defined by another. In most of the Maori/non-Maori research, the numerator base has been the justice records of offenders or prisoners. Rates have then been assessed as the ratio of the number of those offenders classified as Maori, to the number of persons in the population classified as Maori in the census. Because the census and records may be based on different methods of classification however, the rates are not strictly accurate.

Most researchers are aware of this difficulty and the need for care in interpreting the data. Indeed, the problem was recognised by the Penal Policy Review Committee which stated in its report

... the classification of offenders ... tends to be somewhat arbitrary ... (and) ... caution is required in interpreting this data.⁴

The Report of the Review Committee on New Zealand Justice Statistics referred specifically to the problem of police classification methods and warned

... if ethnic data collected by the police are to be widely used, then their ID objective should be stressed.⁵

The fact that such care is often not exercised in the use or publication of Maori crime rates reinforces both Maori and empirical research concern over the methods of ethnic classification.

Another difficulty with interpreting the term "Maori crime rate" is based in broad ethno-social concerns. It is possible that published rates are imbued with deep-seated societal perceptions of a problem and therefore reflect more than the mere numerative analysis of the problem.

It is clear that not all committed crime is brought to the notice of the police. The so-called "dark figure" of crime is an unknown variable and the term "crime rate" often refers only to those crimes actually reported to the police. A "Maori crime rate" could therefore simply be those crimes committed by Maori people and reported to or by the police. If however there was a consistent use of observer estimation to classify Maori offenders, and such classifications were inaccurate, the rate so produced would not be a true "Maori crime rate" but a "Maori as perceived by the Police" crime rate. As such the rate would not just reflect the statistical enumeration of Maori offending: it would also reflect ethno-social perceptions of who are Maori and how they allegedly behave. It could be construed as an ethnocentric index of stereotyping and perhaps describe more

... the behaviour of officials - policemen, judges and probation officers, - rather than the behaviour of adolescents.⁶

A related ethno-social difficulty is that the publication of a "crime rate" may also reflect particular social concerns about crime and the police response to those concerns. The police tend to concentrate on those offences which they and the public regard as the most serious breaches of the law. The definition of seriousness is variable and reflects societal reaction at a given time. If there is a media or public outcry over a particular issue such as the gang problem, the police will tend to increase effort in that area. Gangs will cease to be a social problem and will become a law and order problem. If a majority of gang members are Maori, and a greater number of Maori arrests result from this concentrated effort by the police, the consequent "Maori crime rate" will also increase.

Society's preoccupation with "public crime" demands that the police concentrate resources in certain areas of social life. This impacts upon the type of offender coming to the notice of police. If a designated area of concern is one attractive to young Maori people, more of them will be of potential concern to the police. An analogous interpretation was placed on the arrests of economically deprived people in a 1985 Canadian report which concluded

Police are both the gate-keepers of the criminal justice system and the social hygienists of the community. The police will find a certain variety of crime among the poor because that is where they seek it.⁷

The "Maori crime rate" may therefore be interpreted to some extent as a social barometer of Pakeha priorities. If police action in response to social concern results in increased arrests in a particular area, the action will reinforce society's acceptance of the need for resources in that area. It is wryly observed by many Maori that the areas of concern are usually those where social forces confine the young Maori: if there was a similar public concern about "private" offending such as fraud or white collar crime there would be a different allocation of resources and a different statistical story.

A Maori approach to a crime rate based on offences brought to notice is therefore one of considerable circumspection. The social interests which may influence compilation, the statistical methods of compilation, and the interpretations placed on the results require careful analysis. If the index of criminal behaviour was based not on offences brought to notice but on criminal conviction one might assume that these concerns would be ameliorated. However this is not the case.

The steps leading to the recording of a conviction within the justice system contain procedures which could adversely effect particular offenders. If, for example, Maori defendants were unrepresented or represented through legal aid more often than non-Maori, and if such defendants were convicted more often, the "crime rate" based on conviction may reflect more than Maori "criminality". Likewise, if solicitors and prosecution counsel colluded to efficiently process a defendant with subsequent conviction, and this affected Maori more than non-Maori, the "crime rate" so recorded would illustrate systemic prejudice as much as Maori culpability.

In summary, attempts to define the "Maori crime rate" raise both methodological and conceptual difficulties. The different methods of classifying ethnic background

and the consequent variation in numerator and denominator criteria raise questions about the statistical accuracy of recorded rates. The social attitudes which may influence the compilation and interpretation of the rates raise questions about the actual information they convey. From a Maori perspective, these questions are rather like, the twisted vines confronting Tawhaki. They need to be worked through before a satisfactory base for research can be established.

NGA TAHU WHAKAMARAMA I NGA RITENGA - THE THREADS OF COMPARISON

Comparative analysis is a frequently used research tool and has been much applied in studies of Maori crime and imprisonment. The Maori has been compared to the Pakeha on the basis of many criteria (sex, age, socio-economic status), and for many subject purposes (rate of offending, arrest, sentencing).

Several important questions arise from the results of this research and the assumptions which underlie it. From a strictly analytic viewpoint, what are the bases of comparison used in these studies and are they valid? Are societal biases reflected in the concentration on comparative research and what is its empirical and aetiological value? What limitations does the methodology impose, and what possible explanations does it present to "render intelligible" the behaviour of the Maori offender and the systemic consequences of his behaviour? From a broader Maori perspective, the comparative approach raises interrelated issues: how culturally valid are the assumptions made in comparative research, and do the findings achieve anything other than a reaffirmation of a positive-negative dichotomy within society?

Anthropologists and sociologists have long been aware of the extreme difficulty in making accurate cross-cultural comparisons. Because each culture is unique, the behaviour exhibited by its members has certain unique characteristics. No members of a culture can be understood in isolation from the cultural forces which shape them, and no culture can be understood unless account is taken of the attitudes, expectations, beliefs and values on which it is based. Any index of behaviour across

cultural boundaries must acknowledge these different values and attitudes and interpret them within their own cultural context. Unfortunately, many researchers' understanding of other institutions and values

... has often been obscured by over-facile interpretation of them in terms of their own institutions.⁸

This has led to a misunderstanding of certain phenomena and the consequent wrongful imputation of motive on alleged cultural grounds - what has been termed the "social imputation of causality of social action."⁹

A specific example of this is found in criminal research. Some researchers hold that disparity in Maori/non-Maori offending rates may be accounted for to some extent by differences in the perception of property. It is asserted that

... the Polynesian attitude to property is less personal than the European and ... sanctions against theft differ markedly.¹⁰

or that

... the Maori is not nearly as preoccupied by the concept of private ownership of chattels as the European.¹¹

Unfortunately these assertions are culturally inaccurate. Traditional Maori society imposed many sanctions for theft and there were clear guidelines for acceptable and unacceptable behaviour. The strictures imposed are recorded in oral and written history. I nga ra o mua (in the days gone by), legends tell how Kae stole the whale Tutunui and paid dearly for his crime. Tribal stories tell of many sanctions imposed for theft, as when Ira-tu-moana killed a man for stealing fish. Written records tell of a thief being ordered by his chief to forfeit all his goods to a Pakeha from whom he had stolen a rope.¹²

The Maori drew a clear distinction between sharing with whanaunga, and taking from a stranger, which they classified as theft. A "help-yourself" philosophy was

... far from being a true picture of Maori views with regard to property. Maoris do recognise individual rights of possession.¹³

Attempts to explain Maori/Pakeha disparities on this basis are therefore fallacious. However they are indicative of the broader problem inherent in comparative research across cultural lines: ethnocentrism.

Comparative research, by its nature, looks at factors that are shared or held in common by the groups under comparison. No two groups are exactly comparable but some factors such as age or sex distribution can be standardised to produce quantifiable conclusions. Where the groups are from different cultures however, assessing comparability becomes problematic.

Although two cultures may co-exist within one wider society, as do the Maori and Pakeha, they continue to exhibit perceptions and insights which are frequently at variance. These differing perceptions will affect the theoretical base a researcher might adopt to assess cross-cultural behaviour. They will also influence the subsequent interpretation the researcher places upon that behaviour.

In New Zealand, the construction of this theoretical base is shaped by European ethnocentrism which implies that differences between Maori and Pakeha can be standardised to produce valid comparisons; an assumption that cultural differences are in fact irrelevant to the particular study. If the differences are actually deemed to be relevant, they are interpreted from a European perspective in terms of non-adaptational conflict.

This approach views cultural difference in terms of a conflict in which Maori cultural values have not adjusted or adapted to the dominant Pakeha value system. Its roots lie in an ethnocentric belief that assimilation is the path to true 'progress' and a Victorian equation of 'civilisation' with technological advance. It leads to judgements, about what behaviour is acceptable, being made according to the dominant Pakeha values. Reasons for non-normative behaviour by members of the minority culture, the Maori, are sought in instances of non-assimilation, or in specific cultural mores of the Maori, they are not sought in the cultural norms of the Pakeha which are impacting upon Maori people. Thus an explanation of the high rate of Maori theft was sought, albeit incorrectly, in an alleged Maori value. It was not sought in a questioning of the relevant Pakeha values or systems.

For research based on evaluational comparison to be a useful methodological tool it needs to move beyond the internalised conceptions of just one group. Interactions within or across ethnic boundaries are determined by the interplay of varied socio-cultural forces. To be valid, comparative research must recognise that viewpoints engendered by the cultural status quo are not the only appropriate focus. Categorisations and assumptions beyond the ethnic group of the researchers may be equally, or more, appropriate to the particular problem being studied.

If research assessments are not made in this way, comparative analysis merely maintains the assumed universal applicability and legitimacy of the Pakeha cultural system. It implies that the "cause" of any cultural conflict is due to deviance from behaviour or attitudes proscribed by inviolate Pakeha values. Whether current research and explanations of Maori/non-Maori crime differentials exhibit this cross-cultural sensitivity will become apparent from an analysis of its findings.

In general, the comparative research may be divided into two categories

- (a) an analysis of the impact of factors such as age and socio-economic status on offending and the standardisation of those factors to explain Maori/Pakeha disparities;
- (b) an analysis of procedural consequences for Maori/Pakeha defendants within the justice process.

These will be considered in turn.

There are limited factors which can be standardised to achieve statistically valid rates of comparison. However a number of studies have concentrated on standardising the age and socio-economic status of offenders in an attempt to isolate factors which might explain the disparity in the offending and imprisonment rates of Maori and Pakeha youths.

Because crime is generally accepted to be confined largely to certain age groups it is arguably possible that a group's age distribution structure may have some influence on its rate of offending. The most "criminally vulnerable" group is that of

young men aged 15 - 25. As the Maori population is proportionately "younger" than the Pakeha, with a large group under the age of 25, it is conceivable that this may explain the obvious racial disparity.

However a standardised study of offenders in 1968 showed that while the different Maori age structure had a "boosting" effect on the overall offending rate, it accounted for only 7.5% of the difference between the Maori/Pakeha rates.¹⁴ When the two rates were standardised to the Maori population structure, the ratio of the Maori to the Pakeha was 4%. Almost identical results were gained in a 1976 analysis of corresponding figures.¹⁵ A standardisation of 1983 statistics similarly showed that less than 4% of the disparity between Maori and Pakeha could be accounted for by the different age structure.¹⁶

These findings clearly show that the Maori/Pakeha age differential does not explain the disparities in crime statistics. Comparative analysis of socio-economic levels is similarly inconclusive.

A study by Fergusson et al showed that the risk of offending for boys up to 17 is significantly influenced by the socio-economic status of the youngster.¹⁷ The "higher" the SES, the "lower" the risk of offending. This applied to both European and non-European youths. However the risk of offending for non-Europeans was higher than for Europeans, irregardless of SES. Standardisation of the non-European SES distribution did not remove the differences in offending rates for the two groups. A 1980 analysis of comparative socio-economic levels based on the 1966, '71 and '76 censuses confirmed that Fergusson's links between SES, race, and juvenile offending were durable over time.¹⁸ Both studies concluded that

... it is not possible to dismiss the difference in European and non-European offending rates as being solely due to socio-economic factors.¹⁹

The correlation between SES and educational or vocational attainment is illustrated by much research. A markedly lower level of Maori educational qualifications has caused them to be over-represented in lower-paid and unemployment statistics. The comparative SES research would indicate that these relative disadvantages would not explain the offending disparities.

These areas of research are "offender-based" and neither fully explain Maori/Pakeha disparities nor highlight factors which "render intelligible" the Maori offender. When the comparative focus is shifted to the consequential offender-justice system interaction, the results are similar: the disparities are adduced but the explanations are wanting.

The 1986 Outline Study on Maori/non-Maori imprisonment rates identified various stages of the judicial process at which the Maori and non-Maori rates may be different. These were the initial reporting of the offence, the apprehension and arrest of an alleged offender, prosecution, conviction or acquittal, and sentencing.²⁰ The marked Maori/Pakeha disparity at these various stages is obvious from the statistics but not all steps in the process have been researched in depth.

A detailed 1985 study of the prosecution process produced considerable descriptive analysis of the process and concluded, *inter alia*, that

... the emphasis is upon processing guilty defendants in an expeditious manner.²¹

The study concentrated on the methods of initiating prosecution by summons, arrest, or minor offence notice, and did not review discretionary powers to prosecute. Another study described a greater tendency for the police to prosecute Maori offenders than Pakeha.²² A subsequent analysis of the data showed that the chance of a young Maori offender being prosecuted is about 1.3 times greater than a Pakeha for non-serious offences.²³

The comparative rates of conviction or acquittal consequent upon prosecution have also been little analysed. A sampling of court cases in Auckland in 1970 showed that a significantly higher proportion of Pakeha defendants than of Maori were acquitted.²⁴ The only subsequent testing of similar findings suggested that a higher rate of previous offending by Maori defendants may have accounted for part of the difference.²⁵ Another factor identified in this study was comparative Maori ignorance in dealing with the law, especially in relation to legal rights and representation.

A number of studies have attempted to establish links between the quality or lack of representation and the conviction/acquittal outcome of a hearing. In a study of over 600 District Court cases it was found that legally aided defendants were at least twice

as likely as privately represented defendants to be convicted.²⁶ A 1981 Review found that Maori defendants were significantly more likely to have legal aid than Pakeha and similarly higher conviction rates were recorded.²⁷

The final stage of the process, sentencing, has frequently shown disparities between Maori and Pakeha. Research into this aspect has focussed on the effect of procedural matters such as remand status²⁸ or representation. Neither have accounted fully for the disparity.

It is clear from this summary that there are gaps in the research material. Particularly there are gaps in the early justice processes of reporting through to arrest where the system is controlled by the exercise of police discretion. There is an absence of any real analysis of how this discretion is exercised or the effects of its application. It would seem to be theoretically possible to construct a quantitative study of discretionary procedures and so establish a research framework inclusive of all judicial stages. That this has not been done is regrettable but perhaps illustrative of the philosophical limitations imposed by an ethnocentric viewpoint.

A monist system assumes that the dominant norms are inherently fair and valid. Any powers exercised by the state or its agents to maintain those values are also assumed to be fair and valid. If the powers are discretionary in nature, there seems to be a further assumption that the discretion is inculcated with fairness and validity. Those who exercise this discretion do so on behalf of society: they are seen to apply judgements which

... reflect the concerns of the conforming public.²⁹

A questioning of those judgements may be seen as a questioning of the very concerns and ideals which are the basis of social conformity.

These cultural assumptions are incorporated into a research framework which maintains that the various stages of the criminal justice system are inherently fair and effective for all. As a result, the research focus placed upon the system is a descriptive one in which its officially stated goals are taken for granted. The means by which these goals are realised are analysed only insofar as they permit descriptive revelations of their functional application. The actual rationale

behind particular discretionary actions, which is often at the heart of the system, is precluded from analysis by the monocultural base of the research itself.

Inequities which may be uncovered are neither processed into theoretical questionings of decision-making nor used to develop quantitative analyses of structural appropriateness. They are inequities seen as aberrational rather than systemic.

In analytic terms, this has had two effects. It has limited research to the degree of people's adaptation to set structures, rather than an assessment of the structures themselves. It has also meant that most research into the operation of the justice system towards the Maori offender has merely described the existence of certain disparities between him and "comparable" Pakeha offenders.

In order to seek explanations behind the descriptions it is necessary to consider the various untouched threads of research and so set up a framework which will enable an understanding of both the Maori offender and the system which seems so often to impact inequitably upon him.

NGA TAHU KAORE ANO I KITEA THE UNTOUCHED THREADS

The inability of research to offer substantive explanations of Maori offending is a consequence of the accent placed upon descriptive methodology, and the inherent, if unwitting, socio-cultural bias involved in cross-cultural analyses. Another consequence is that certain relevant areas of research have been largely untouched while an inappropriate emphasis has been placed on others.

A 1981 study summarised the proffered reasons for the disproportionate representation of the Maori as being due to factors ranging from the

...comparable inequities of a characteristically Anglomorp society favouring a particular group, namely European, to ambiguities in the process of law enforcement.

The Paper then outlined how manifestations of these factors included arguments that

... the problem of Maori offending can be attributed to the lower socio-economic status of ... the Maori (and) the process of attrition whereby Maoris are more likely to be disfavoured by the process of law.³⁰

This is an accurate distillation of much of the research but its generalised nature illustrates how research has tended to describe certain perceived phenomena without adequately explaining them.

A less definitive summary was propounded the following year -

It is unclear whether the high crime rates for Maoris means that (1) they commit more crimes than Europeans; (2) they are less sophisticated offenders, and hence are more frequently detected, apprehended and convicted; (3) they are the recipients of differential policing by virtue of their powerlessness and cultural vulnerability; or (4) by a combination of all or some of these processes.³¹

The uncertainty evinced in this summary is an honest but nevertheless inevitable consequence of inherent socio-cultural bias. The inability to be more definitive flows from the fact that the research has misinterpreted certain phenomena, asked the wrong questions, or been prevented by its own constructs from scrutinising all relevant contributory factors. A consideration of three specific areas of analysis will illustrate these points and isolate a number of untouched research threads.

The most obvious instance in which research is hindered by its own ethnocentricity is in its search for "cultural correlates" of crime. One such correlate which has been found to have profound cultural, social, and economic consequences for the Maori people is the post-war urban shift.

This movement of nearly 70% of the Maori population from rural to urban areas in the last 30 years has been the result of economic and land use policies implemented by successive governments. Its consequences for the Maori people have been a physical and emotional separation from their ancestral roots and a consequent dislocation of traditional kinship ties. As well, there have been the social and psychological difficulties involved in any adaptation to a new environment. These consequences have been labelled as the "cause" of much Maori behaviour,

ranging from failures in education to criminal offending. This imputation of causality has convincingly placed the "blame" on Maori inability to adapt and excluded consideration of the rationale behind the original policies, or the factors within it which have led to so much cultural disruption. Instead, research has simply focussed on the fact that

... differences in the whole network of values and behaviour associated with the urban environment seem likely to increase the probability of ... offending.³²

The increased risk of non-normative behaviour therefore arises because the Maori is perceived to be incapable of adapting to the new urban environment. The cultural appropriateness of the urban milieu itself is not considered; neither is the rapid pace of the upheaval. It is assumed that with time the Maori people will adapt, the spread of urbanisation will slow down, and the crime rate will decline -

... we cannot realistically expect a significant improvement in the Maori crime rate until the process of urbanisation has slackened...³³

It is clear from a Maori viewpoint that the pain and loss caused by separation from one's papakainga and whanaunga have many emotional and behavioural consequences. However the explanation of these consequences lies not in the pain, but in the situation which created it. An evaluation of the causes of particular behaviour should be sought not in the outward manifestations of loss, but in the societal forces which have occasioned it. Many Maori people would in fact argue that the difficulties associated with the urban shift are due in part not so much to their "cultural vulnerability", as to the inability or unwillingness of society to cater for their different kinship structures within an urban setting.

The emphasis in urban-drift research has therefore been misplaced. The extent and effects of tribal and whanau dislocation do need to be understood. However they need to be understood as the consequences of particular policies, not just the cause of certain behaviour. Indeed, if one accepts that

... the urban milieu itself spawned the brown proletariat ...³⁴

then explanations for that alienated group's behaviour will be found largely in the structures of the urban environment itself.

In specific investigative terms this means that factors identified as "cultural correlates" of crime need to be re-assessed. There needs to be a clear distinction drawn between the specific cultural mores which shape the Maori offender and the wider social forces which act upon those mores. Such a re-assessment will require that different factors be emphasised and different questions be asked in relation to the effect of phenomena such as the urban shift. Thus because not all young Maori men commit crime, it is necessary to first ascertain whether the undoubted sense of cultural loss consequent upon urban migration is in fact greater among urban Maori offenders than it is among urban Maori non-offenders. If it is not, then clearly any attempts to link cultural "inadequacy" or non-adaptability to criminal offending would be hard to validate. However, if it is, the emphasis should not immediately be upon assuming that cultural loss per se is a contributory factor in offending. Rather the loss should be perceived as a consequence of the shift itself and hence of accumulated economic pressures and social attitudes which impact upon young Maori in particular ways. It is these pressures which need to be considered, and questions asked as to how they prevent a Maori retaining the basic foundations of his tikanga Maori and how they might also create situations which predispose him to commit crime.

The second area in which a different research emphasis is required is in the relationship between SES and offending. Maori/Pakeha differences have been correlated and

... it is possible that the differences in the Maori and non-Maori rates of offending reflect differences in the socio-economic distribution rather than cultural or other differences between the two groups.³⁵

Although not all of the disparity can be attributed to socio-economic difference, it is postulated that a reduction in Maori crime may come from

... improvements in the relative socio-economic position of Maoris (although) improvements in socio-economic status are unlikely to lead to a reduction ... unless they are sufficiently large to advance the position of Maoris compared to non-Maoris.³⁶

This presumption posits the rather simplistic belief that money and time will ameliorate the inequality and hence the offending. It is consistent with the monist perspective that crime differentials will be lessened when the process of Europeanisation has promoted the Maori to an appropriate level of material

security. It maintains that integration/assimilation will help reduce offending since the "causes" of Maori crime are basically comparable to the "causes" of Pakeha crime.

This view does not explain the disparities in offending at comparable socio-economic levels and is inconsistent with findings which indicate that improved Maori SES does not reduce offending to a degree comparable with the Pakeha. However it does uphold the validity of existing socio-economic structures and so effectively precludes their examination. It maintains the inherent "potential for equality" in the system and prevents an analysis of the ways in which the structures themselves might confine Maori people to lower socio-economic levels.

Clearly there are several questions which can arise from this approach. If disparities in socio-economic levels do not account entirely for the higher Maori offending and imprisonment rates, is it possible to identify other contributory factors within the broad social or economic structures? If so, how do they affect Maori people, and in what ways can they be interpreted as increasing the likelihood of criminal offending? If not, where can the other factors indicated by research be found? Are they within the particular processes of the justice system itself?

The "process of attrition" within the justice system results in obvious differences in rates of conviction and imprisonment. Where research has proffered explanations for this it has concentrated on issues such as prior offending: the Maori is in jail more because he offends more. There are almost Alice in Wonderland tones of circumlocution to this statement but the approach which it represents has effectively prevented any detailed consideration of systemic or procedural operations which might contribute to higher Maori imprisonment rates. Apart from begging the obvious question of "why does the Maori offend more", the focus is safely placed on a descriptive actuality borne out by statistics. The possible existence of unfair or even prejudicial practices, within or outside the justice system, is not contemplated.

The lack of quantifiable data for each stage of the justice process has meant that there is no comprehensive analysis of how the system works viz-a-viz the Maori offender. In the place of analysis, there has simply been an assumption that the system operates towards all people equally, as if the concept of equality flowed from one culturally impartial norm. In fact, of course,

... we use (the term) equality in law ... without realising that we are surreptitiously asserting diverse and sometimes conflicting moral and legal norms.³⁷

There are many specific questions left untouched by such an assumption: how are various discretionary powers exercised by justice functionaries in relation to Maori people; what criteria are applied in bail and remand decisions; how culturally sensitive or appropriate are justice processes? Consideration of these and similar questions should be an essential component of any research into offending and imprisonment. They are particularly apposite when the application of a system is across cultural lines.

It is now necessary to draw together the relevant strands of research with the untouched threads of analysis and create a new fabric of perspective.

Te Wahanga Tuatoru

Nga Tahu Hou:

The New Threads

Kotahi ano te kohao hei urunga atu mo te miro ma, te miro whero me te miro pango.

The white, the red and the black threads are drawn together through the single eye of the needle.

The new weave of research arises from several interrelated strands of enquiry. Some have been extracted from existing research, others have developed as a result of its shortcomings. All have interlocking hypotheses.

The first supposition is that research must view the Maori offender as an entity quite distinct from the Pakeha offender. He is a person who is shaped by cultural forces which are unique to his being Maori, and who is subject to particular influences which are consequent upon that sense of Maoriness. Any behaviour which manifests itself in this context requires an "ethno-specific" base of understanding.

Such a base means that research must analyse the specific complex of factors which may predispose certain young Maori men to commit crimes and to scrutinise the systemic responses to that behaviour. It is an "ethno-specific" approach in that it seeks to render intelligible the "causes" of his offending as distinct from the "causes" of Pakeha offending. It presupposes that while Maori and Pakeha young people may have much in common and may share the apparently similar facades of youthful bravado, they are also different, and the reasons for their offending are different. It seeks to ascertain whether responses to that offending are also different, and endeavours to avoid the descriptive pitfalls and socio-cultural biases of comparative analysis.

The corollary of this supposition is that the behaviour of any person must be understood within the parameters of a distinctive cultural milieu. For the Maori offender this means that he is a product of formative influences which are best interpreted from within the same cultural framework and from insights rooted in the same values and cultural experiences.

One researcher has compared a people's culture to a set of books which an outsider

... strains to read over the shoulders of those to whom they properly belong.¹

Existing research on Maori crime has either misread the "books", not consulted them at all, or ethnocentrically judged them by their covers. It has therefore failed to isolate the particular characteristics of the Maori offender and the special features which separate him from the Pakeha offender.

A closely linked supposition is that a person's cultural esteem is unavoidably affected by the wider social perceptions of that culture's worth. Entrenched ideas of cultural superiority may deliberately or unwittingly demean another culture and hence a person's perception of his worth and the worth of his heritage. Any analysis of Maori behaviour needs to accept that there are many historic and contemporary pressures which challenge the value of Maori ideals. These may manifest themselves in overt bigotry, institutional racism, or ignorant insensitivity. Whatever their manifestation, they are an inextricable part of the socio-cultural fabric impacting upon the Maori. Any efforts to understand the Maori offender need to consider how these pressures might influence his sense of self-esteem and consequent behaviour patterns.

The final supposition is that an understanding of Maori crime and imprisonment is possible only if the operation of systemic responses to an alleged Maori offender is available for analysis. The untouched threads of research in this area have hindered the understanding of offender-system interaction and hence the whole phenomenon of the Maori crime rate. This has led to a clear methodological need to analyse

justice processes which arises from the Maori belief that one gains an understanding of a problem only by considering all of the parts which contribute to the whole. It is an attitude to knowledge and understanding which is essentially holistic: it seeks not merely to describe, but to seek out seeds of understanding. Its relevance to an analysis of Maori crime is perhaps best illustrated by way of analogy.

Customary Maori thought conceived of good health as a state in which the interrelated parts of one's being were in harmony. The body (te tinana) was never divorced from the state of mental well-being (te taha hinengaro) or from one's spiritual aspect (te taha wairua); they were interrelated parts of a functioning whole which in turn was part of an interdependent community and natural world. Illness occurred when one or more parts of a person's being were in disharmony with the other parts which shaped his existence. The subsequent diagnosis and treatment depended upon a holistic assessment of this totality.

The Maori offender or prisoner of today can only be understood or "diagnosed" if his total existence is similarly assessed. He is shaped by various internal and external forces which are interrelated. The functioning of the internal forces is a complex cultural and socio-psychological process. The functioning of the external forces is an interactional exercise of power in the name of the wider community of which the justice system is an integral part. The existence of a phenomenon such as the disproportionate number of Maori men within the prison system indicates a state of social disharmony. To render it intelligible the total interaction between the internal and external forces at work upon young Maori men must be reviewed. To concentrate on the "offender-based" indices while ignoring "system-based" influences such as the judicial process is to give an incomplete diagnosis. To consider them both is to point the way to a meaningful prognosis.

Based on these suppositions, this research will address several issues, ask different questions, and seek different perspectives.

Because most research to date has been by Pakeha people its monocultural framework has resulted in "top-down" research which has tended to preclude

consultation with the group most affected. The basic thread of methodology in this research will attempt to remedy this and will be based on a process of consultation with Maori people. While it will naturally be necessary to also consult a wide range of Pakeha people involved within justice processes, the key consultative guide will be Maori. It is essential to draw out from the diversity of Maori opinion the hitherto largely untapped wisdom and perceptions which may render intelligible both the behaviour of Maori offenders and the systemic responses to that behaviour.

The information gained from this consultative process will be difficult to quantify and impossible to fit within traditional Pakeha methodologies. However it is the contention of this Paper that the recorded perceptions and views will be developed within a Maori framework which is equally valid. It is a framework of whakawhitiwhiti whakaaro (shared thoughts) which encourages input from both old and young and then relies on accurate and impartial assessment to draw out the major issues of concern. It is a framework which needs to be taken to tribal, not court, districts, and to be held in the forums which each tribal group deems appropriate. Most importantly, it is a framework which will allow for a synthesis of Maori views.

The methodology is therefore specifically Maori. The information gathered in the course of the research will consequently need to be gathered in a way which is also specifically Maori. This is best done by conducting unstructured and open-ended "interviews" in a way and in a forum which are culturally appropriate.

Normally this is a more "public" forum than the term "interview" implies in a Pakeha situation, because it becomes talk in a marae situation where others are present. The collection, analysis, and interpretation of the material elicited in this situation requires an understanding of the cultural forces and attitudes at play.

It is a methodology which is valid in a cultural sense and which therefore needs to be recognised as equally valid in an analytic and research sense. It draws its validity

not from pre-set surveys or questionnaires, but from a form of input determined by the particular tribal, hapu, or other group concerned. It is input based on an oral, rather than a written transmission of information.

In specific terms, the research draws heavily on the traditional structure of decision-making and requires consultation with appropriate elders, Kaumatua and Kuia, to provide an accepted based for consultation with the wider Maori community. It also requires an acceptance of the need for such research by the researcher's own tribe and whanaunga.

This consultation, and the concurrent discussion with staff inside the justice system, will enable the welding together of both "offender-based" and "system-based" analyses. The former will be an ethno-specific deduction based on the views of Maori people, both offenders and non-offenders. The latter will be a qualitative and quantitative assessment of judicial structures and processes arising from the issues considered important by Maori people.

Preliminary consultation on the offender-based indices indicate a need to investigate such factors as the causes and effects of tribal dislocation on Maori offenders. This could perhaps be done through a controlled comparison with a group of Maori non-offenders. There is also a clear need to monitor increasing Maori unemployment and the continuing consequences of cultural stereotype and denigration. Each of these issues must of course be seen as a part of the much wider historic and social fabric of institutional and cultural racism which impact upon Maori people.

Preliminary consultation on the operation of the justice system has highlighted areas which Maori people perceive to be unfair or unjust. These areas cover all steps in the process from arrest and apprehension procedures through to sentencing. An analysis of administrative guidelines and procedures operating in those areas would elicit whether this perception of unfairness arises from systemic or aberrational prejudice. A quantifiable evaluation of a limited set of cases in particular districts would indicate specific patterns in Maori arrest, conviction, and imprisonment, and would also indicate whether those patterns were due to the monocultural structure

of the system or other factors. A qualitative analysis of courtroom processes based on non-participant observation would enable a more structured interpretation of Court behaviour to be aligned with the perceptions drawn from the consultative process.

This amalgam of consultation and analysis is the specific research which will flow from and be concurrent with the recorded perceptions of the Maori community. The total project will not illuminate all of the "causes" of criminal offending by young Maori men. However, it will give new insights into the behaviour of the Maori offender and enable the justice system to see itself through the eyes of the community from which most of its defendants come.

References

INTRODUCTION

- 1 Stokes, E Maori Research and Development. A Discussion Paper. National Research Advisory Council. 1985. (p3)
- 2 Vold, G B Theoretical Criminology. Oxford University Press. 1979. (p392)
- 3 Stokes, E Ibid. (p3)
- 4 Wild, Sir R, C J Quoted in Speech Notes: Minister of Maori Affairs. October 1971.
- 5 Department of Social Welfare publication, 1985 (p8)
- 6 Affirmative Action in the 1980s: Dismantling the Process of Discrimination. United States Commission on Civil Rights. Clearing House Publication 1981. (p14)

TE WAHANGA TUATAHI

- 1 MacDonald, G "The Categories Maori and Pakeha as Defined by Research Workers and by Self-Report". NZ Journal of Education Studies, 1976. 11 (p48)
- 2 Hunn, J Report on Department of Maori Affairs. 1961. (p10)

- 3 Scull, A "Competing Perspectives On Deviance".
Deviant Behaviour, 1984. 5. (p281)
- 4 Hughes, O Research Proposal: Differential Criminal
Offending Paterns In NZ. Department of
Statistics. 1985. (p8) (Unpublished)
- 5 Reasons, C "Native Offenders and Correctional
Policy". Crime and Justice. 1977 4. (p255)
- 6 Wilkins, L "Probation, Parole and Community
Corrections". New York Wiley Press. 1976.
(p57)
- 7 McDonald, C Maori and non-Maori Imprisonment Rates:
An Outline of previous Studies.
Department of Justice (in press)
- 8 Hampton, R "The Social Construction of Statistics:
Labelling Theory Applied to the Police
Decision to Prosecute Juveniles". Paper
presented to NZ Sociological Association.
1974. (p4)
- 9 Fergusson, D, Donnell, A
and Slater, S The Effects of Race and Socio-
Economic Status on Juvenile Offending.
Statistics Research Report No 2. Govt
Printer. 1975. (p10)

- 10 Fifield, J, Donnell, A Socio-Economic Status, Race and Offending in New Zealand. Research Report No 6. JCYO. 1980
- 11 Stokes, E Ibid. (p4)
- 12 Tauroa, E Te R Report of Advisory Committee on Youth and Law in our Multicultural Society. 1983. (p28)
- 13 Te Awekotuku, N "Conclusions" in "Tuiwi: Racism and Ethnicity in NZ" Eds. Spoonley P, Macpherson C, Sedgwick C, Pearson D. Dunmore Press. 1984. (p247)
- 14 Gronfors, M "Give a Dog a Bad Name..." A Research Paper on the Effects of Group Labelling on Probation Pre-Sentence Reports. 1973. (p37)
- 15 Connor, W "Deviance in Soviet Society: Crime, Delinquency and Alcoholism". Columbia University Press. 1972 (p16)
- 16 Bottomley, A Criminology in Focus. Martin Roberston Ltd. 1979. (p77)

TE WAHANGA TUARUA

- 1 Rangihau, J "Being Maori" in "Te Ao Hurihuri" ed. M King. Hicks Smith and Sons Ltd. 1975. (p232)

- 2 Stanhope, J NZ Medical Journal. 84 1976. (p187)
- 3 Fergusson, D et al Op Cit
- 4 Report of the Penal Policy Review
Committee. Govt Print. 1981. (p12)
- 5 1982. 4.12.26. (p54)
- 6 Voss, H "Ethnic Differentials in Delinquency in
Honolulu. Journal of Criminal Law,
Criminal and Police Sci. 1963. (p322)
- 7 Havemann, P "The Over-Involvement of Indigenous
People With the Criminal Justice System -
A Canadian Case Study. Aboriginal
Criminal Justice Workshop No 1.
Australian Institute of Criminology. 1985
(p129)
- 8 Beattie, J "Other Cultures: Routledge and Kegan Paul
Ltd. 1964. (p117)
- 9 O'Malley, P "The Amplification of Maori Crime:
Cultural and Economic Barriers to Equal
Justice in NZ". In "Race" 15. 1973.
(pp47-57)
- 10 McDonald, C Op Cit.
- 11 "Crime in NZ". Justice Dept. 1968. (p397)

- 12 Hunt, F "Twenty-five years in NZ and the Chatham Islands". 1886. Quoted in "Economics of the NZ Maori" R. Firth. Govt Print. 1973. (p.347)
- 13 Metge, J "The Maoris of New Zealand". Revised ed Routledge and Kegan Paul. 1976. (p217)
- 14 Jensen, J Research Design for Investigating A Socio-Economic Hypothesis of Crime Among Maoris. JCYO. Mimeographed Report. 1968
- 15 Fifield, J, Donnell, A Op cit.
- 16 McDonald, C Ibid
- 17 Fergusson, D, et al Op cit
- 18 Fifield, J, Donnell, A Op cit
- 19 Fergusson, D, et al Op cit
- 20 McDonald, C Ibid
- 21 Stace, M The Prosecution Process in NZ. Institute of Criminology. Victoria University of Wellington. 1985 (p89)
- 22 Hampton, R Op cit
- 23 Fergusson, D, et al Op cit

- 24 Duncan, L Crime by Polynesians in Auckland. Auckland University 1970
- 25 Jensen, J Differences with Respect to Race in the Rates of Acquittal of People Appearing in Court charged With Offences. JCYO. Mimeographed Report. 1971
- 26 Neill, W The Quality of Offenders Legal Aid in the District Court. Institute of Statistics and Operations Research. Victoria University. 1983
- 27 Oxley, P Offenders Legal Aid. File Survey (Appendix 6. Access to the Law: A Research and Discussion Paper. Study Series No 6). Department of Justice 1981
- 28 Neill, W Op cit
- 29 Kelsey, J, Young, W "The Gangs: Moral Panic as Social Control". Institute of Criminology. Victoria University. 1982 (p100)
- 30 Minority Group Involvement in the Criminal Justice System. A Statistical Analysis. Justice Department 1981 (p3)
- 31 Gidlow, B "Deviance". In "NZ Sociological Perspectives: eds P Spoonley, D Pearson, I Shirley. Dunmore Press. 1982 (p334)

- 32 McDonald, C Ibid (p13)
- 33 Te Punga, R "Maoris and Crime". In "Essays on Race Relations and the Law in NZ". ed. W McKean. Sweet and Maxwell. 1971 (pp40-56)
- 34 Walker, R "The Lost Tribes". In "Korero", NZ Listener, March 1985 (p42)
- 35 Fergusson, D et al Op cit
- 36 Fifield, J, Donnell, A Ibid (p52)
- 37 Estern, P "The Empty Idea of equality". Harvard Law Review. 95 1982 (p537)

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- 1 Geertz, C "Myth, Symbol and Culture", W W Norton, 1974 (p47)